

## COMMENTS

### A CRITIQUE OF FEDERAL GRANT PROGRAMS AS A SOURCE OF FUNDING FOR GREEN SPACE IN ENVIRONMENTAL JUSTICE COMMUNITIES

By

ALEXANDRIA McCASKILL\*

*Public green spaces, such as parks, sporting fields, streams and riverbanks, trails, and community gardens, are extremely beneficial to the health and wellbeing of a community. Unfortunately, environmental justice (EJ) communities, including low-income communities of color, are largely excluded from these benefits compared to middle and upper income communities. The federal government has acknowledged this disparity by providing competitive grants to fund green spaces in underserved neighborhoods. However, the current grant-based system does not address the systemic disenfranchisement that helps define EJ communities, and is therefore unlikely to properly address the absence of green space. This Comment explains the specific benefits of green space and the level of disparity between EJ communities and middle and upper income communities. It then outlines the current federal grant-based system, which primarily relies on state applications and matching funds. Next, it discusses why the current grant-based system is a poor solution to the lack of green space in EJ communities. Finally, this Comment provides alternative methods of properly funding equitable green spaces. While the current grant-based system is ill-equipped to solve the disparity in access to green*

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\*2022 Graduate of Lewis & Clark Law School, *magna cum laude*, currently working at a law firm in Modesto, California. Alexandria wrote this Comment during law school. She would like to thank Professor Lisa Benjamin for her inspiration and guidance while writing this Comment and furthering Alexandria's interest in the field of Environmental Justice.

*spaces, the Biden administration is showing an interest and emphasis on environmental justice, which will hopefully allow EJ communities to come closer to matching the green space available in middle to upper income communities.*

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## I. INTRODUCTION

Access to green space, such as parks and sporting fields, is an incredibly important benefit for both individuals and communities. Unfortunately, this access is not equitably distributed among all communities.<sup>1</sup> Underserved environmental justice communities, often low-income communities of color, have significantly less access to green spaces than higher income white communities.<sup>2</sup> The federal government is aware of this problem and its current solution is to provide grants to

<sup>1</sup> JENNY ROWLAND-SHEA ET AL., CTR. AM. PROGRESS, THE NATURE GAP: CONFRONTING RACIAL AND ECONOMIC DISPARITIES IN THE DESTRUCTION AND PROTECTION OF NATURE IN AMERICA 7 (2020); Jeremy S. Hoffman et al., *The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas*, CLIMATE, Jan. 2020, No. 12 at 10.

<sup>2</sup> Hoffman et al., *supra* note 1, at 10.

fund green spaces in underserved communities.<sup>3</sup> However, the current federal grant-based funding system is ill-equipped to sufficiently provide those underserved communities with the benefits of green space.

This Comment will explain why the grant system is a poor solution and provide alternative methods of properly funding equitable green spaces. Part II discusses the benefits of green space and the lack of access in environmental justice communities; Part III outlines how the federal government has addressed the importance of environmental justice; Part IV examines federal grant programs that support green spaces in underserved communities; finally, Parts V and VI critique the current grant-based system and provide policy recommendations on funding schemes that better address the needs of environmental justice communities. This Comment, while critical, is nevertheless hopeful that more suitable options for equitable green spaces are available.

## II. GREEN SPACE AND ENVIRONMENTAL JUSTICE COMMUNITIES

Environmental Justice (EJ) is directly related to the disparate availability of urban green spaces. This Part will give an overview of EJ and environmental justice communities (EJ communities), explain why green space is important, show EJ communities' lack of green space, and discuss the gentrification paradox. According to the U.S. Environmental Protection Agency (EPA), environmental justice is the "fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies."<sup>4</sup> EJ will be achieved when all people enjoy the "same degree of protection from environmental and health hazards," and "equal access to the decision-making process [creating] a healthy environment in which to live, learn, and work."<sup>5</sup> The EJ movement's central claim is that because of the effects of historical overt racism and acts of discrimination, along with supposedly race-neutral permitting and regulatory actions, environmental harm disproportionately affects lower income

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<sup>3</sup> See U.S. DEP'T OF THE INTERIOR, U.S. DEP'T OF AGRIC., U.S. DEP'T OF COM., & COUNCIL ON ENV'T QUALITY, CONSERVING AND RESTORING AMERICA THE BEAUTIFUL 16, 19 (2021) [hereinafter AMERICA THE BEAUTIFUL REPORT] (explaining that one of the ways to achieve President Biden's conservation goals is through grant programs for local parks, specifically the Outdoor Recreation Legacy Partnership Program); see generally, NAT'L ASS'N OF CNTYS., NACO LEGISLATIVE ANALYSIS: THE BIPARTISAN INFRASTRUCTURE LAW (P.L. 117-58) 8, 30–31 (2022), (listing the funding available to counties in the new bipartisan infrastructure law, the majority of which are in grant form to address systemic issues); see also *infra* Part IV, notes 64–69 and accompanying text.

<sup>4</sup> *Learn About Environmental Justice*, U.S. ENV'T PROT. AGENCY, <https://perma.cc/T8C7-TXJN> (last updated Sept. 6, 2022).

<sup>5</sup> *Environmental Justice*, U.S. ENV'T PROT. AGENCY, <https://perma.cc/8299-P6JD> (last updated Sept. 30, 2022).

communities and communities of color.<sup>6</sup> EJ communities are communities that are overburdened and, “consequently, exposed disproportionately to environmental harms and risks.”<sup>7</sup>

### A. Why Green Space Is Important

Green space is incredibly important to the health and well-being of a community. Unfortunately, EJ communities have much less access to green spaces than high-income white communities.<sup>8</sup> Public green spaces include “parks and reserves, sporting fields, riparian areas like stream and river banks, greenways and trails, community gardens, street trees, and nature conservation areas, as well as less conventional spaces such as green walls, green alleyways, and cemeteries.”<sup>9</sup> Some of the many benefits of green space include air and water purification, temperature reduction, groundwater replenishment, biodiversity and disease control, noise reduction, improved health, and opportunities for leisure and recreation.<sup>10</sup>

Specific health benefits of green space include: “lower stress hormones, reduced teenage obesity, boosted concentration, alleviated depression and anxiety, lower blood pressure, and reduced overall mortality.”<sup>11</sup> In fact, “every dollar spent on creating and maintaining park trails can save almost three dollars in health care” costs, a benefit “denied to the most economically distressed communities.”<sup>12</sup> Parks also often serve as places to engage in physical activity, which has consistently been associated with enhanced health and reduced risk of mortality and chronic diseases.<sup>13</sup> Several studies have shown “significant impacts of green [space] on several measures of mood and self-esteem.”<sup>14</sup> A Dutch study found that residents with “more green space near their homes were less affected by stressful life events than residents deprived of green space access,” which suggests that green space reduces stress.<sup>15</sup> Additionally, parks and other green spaces often serve as communal

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<sup>6</sup> R. Shea Diaz, *Getting to the Root of Environmental Injustice: Evaluating Claims, Causes, and Solutions*, 29 GEO. ENV'T L. REV. 767, 779 (2017); BARRY E. HILL, ENVIRONMENTAL JUSTICE: LEGAL THEORY AND PRACTICE 3 (2d ed. 2018).

<sup>7</sup> HILL, *supra* note 6, at 3.

<sup>8</sup> Hoffman, *supra* note 1, at 10.

<sup>9</sup> Jennifer R. Wolch et al., *Urban Green Space, Public Health, and Environmental Justice: The Challenge of Making Cities ‘Just Green Enough,’* LANDSCAPE & URB. PLAN., May 2014, at 234 (internal citation omitted).

<sup>10</sup> ROWLAND-SHEA ET AL., *supra* note 1, at 7; Wolch et al., *supra* note 9, at 235. Additionally, “[g]reen cover and urban forests can also moderate temperatures by providing shade and cooling an area, thus helping reduce the risk of heat-related illnesses for city dwellers.” *Id.* (internal citations omitted).

<sup>11</sup> Sadiya Muqueeth, *Parks and Health*, in PARKS AND AN EQUITABLE RECOVERY 10, 11 (2021) (internal citations omitted).

<sup>12</sup> ROWLAND-SHEA ET AL., *supra* note 1, at 7.

<sup>13</sup> Wolch et al., *supra* note 9, at 235.

<sup>14</sup> *Id.* at 236.

<sup>15</sup> *Id.* (internal citation omitted).

gathering places, increasing the perception of safety and belonging: benefits denied to many EJ communities without green space.<sup>16</sup>

Green spaces can also improve the heat and air conditions of a community. Metropolitan areas are often much warmer than surrounding rural areas due to the urban-heat island effect caused by cities' heat-absorbing surfaces, such as asphalt and concrete, and other human activities.<sup>17</sup> Over the last 30 years, extreme heat has been the deadliest form of weather; researchers have estimated that heat contributed to 5,600 deaths each year, on average, from 1997 to 2006.<sup>18</sup> Heat can lead to heat exhaustion and then, potentially, heat stroke.<sup>19</sup> Infants are particularly vulnerable; some studies have linked exposure to excessive heat to low birth weight, birth defects, and stillbirths.<sup>20</sup> Urban forests and green cover provide cooling and shade to an area, which can reduce temperatures by as much as ten degrees Fahrenheit and lower the risk of these heat-related illnesses.<sup>21</sup> Trees in urban areas also "reduce air pollution by absorbing certain airborne pollutants from the atmosphere."<sup>22</sup> Reducing pollution is important because residents of nature-deprived areas are statistically more likely to develop asthma or other immunocompromising illnesses.<sup>23</sup>

### *B. Environmental Justice Communities' Lack of Green Space*

EJ communities often do not have access to the benefits of green space. Consistent patterns show a connection between the lack of tree canopy and historically underserved urban areas, on both national and regional scales.<sup>24</sup> Green spaces are much more abundant in wealthier and majority-white identifying neighborhoods.<sup>25</sup> "Seventy-four percent of communities of color in the [U.S.] live in nature-deprived areas, compared with just [twenty-three] percent of white communities."<sup>26</sup> Parks that

<sup>16</sup> *Id.* (internal citation omitted).

<sup>17</sup> ROWLAND-SHEA ET AL., *supra* note 1, at 7.

<sup>18</sup> TR. FOR PUB. LAND & SAVE OPEN SPACE DENVER, THE HEAT IS ON: WITH TEMPERATURES RISING AND QUALITY PARKS TOO FEW AND FAR BETWEEN, COMMUNITIES OF COLOR FACE A DANGEROUS DISPARITY 4 (2020) [hereinafter THE HEAT IS ON REPORT].

<sup>19</sup> *See id.* ("According to the Centers for Disease Control and Prevention, heat exhaustion—characterized by heavy sweating, dizziness, a weak pulse, nausea and vomiting, muscle cramps, and head-ache—can easily escalate to the more dangerous condition known as heat stroke, a health emergency leading to symptoms that include confusion, elevated body temperature, and loss of consciousness.").

<sup>20</sup> Lindsey Konkel, *Taking the Heat: Potential Fetal Health Effects of Hot Temperatures*, ENV'T HEALTH PERSPECTIVES, Oct. 25, 2019, at 1.

<sup>21</sup> Wolch et al., *supra* note 9, at 235; ROWLAND-SHEA ET AL., *supra* note 1, at 7.

<sup>22</sup> Wolch et al., *supra* note 9, at 235 (internal citation omitted).

<sup>23</sup> ROWLAND-SHEA ET AL., *supra* note 1, at 7.

<sup>24</sup> Hoffman et al., *supra* note 1, at 10.

<sup>25</sup> *Id.*; ROWLAND-SHEA ET AL., *supra* note 1, at 7 ("[I]n all states but New Mexico and the District of Columbia, census tracts classified as white had the lowest nature deprivation of any racial and ethnic groups.").

<sup>26</sup> ROWLAND-SHEA ET AL., *supra* note 1, at 6; *see also* Ming Wen et al., *Spatial Disparities in the Distribution of Parks and Green Spaces in the USA*, 45 (Suppl 1) ANNALS BEHAV.

serve a majority-nonwhite population are, on average, half as large and nearly five times as crowded as parks that serve a majority-white population.<sup>27</sup> A similar trend is visible in low-income communities, “[s]eventy percent of low-income communities across the country live in nature-deprived areas.”<sup>28</sup> “Evaluating state-level data by income shows that, in almost two-thirds of states, low-income residents were most likely to live in nature-deprived areas.”<sup>29</sup> Additionally, “[p]arks serving primarily low-income households are, on average, four times smaller . . . than parks [serving] high-income households.”<sup>30</sup>

This disparity in access to green spaces did not come about by accident. A study found that historical redlining policies are reflected in present-day, intra-urban heat differences between low-income communities of color and middle- to upper-income communities.<sup>31</sup> Redlining resulted in inexpensive land becoming ripe for the large-scale development of federally funded physical infrastructure, including housing complexes, highways, railway terminals, industrial or manufacturing sites, and major business centers.<sup>32</sup> Consequently, looking at national patterns, these areas labeled “hazardous” “exhibit quantitatively less coverage by tree canopy and more coverage by impervious [heat-absorbing and heat-radiating] surfaces.”<sup>33</sup> This finding is likely connected to the fact that in nearly all locations analyzed, neighborhoods in formerly “hazardous” redlined areas that remain predominantly lower income and communities of color are at present hotter than the most favorable “Best” rated areas by, on average, 2.6

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MED. S18, S24 (2013) (finding that for green space accessibility, “census tracts of higher poverty or greater percentages of [B]lacks or Hispanics were underexposed to green spaces”).

<sup>27</sup> THE HEAT IS ON REPORT, *supra* note 18, at 7.

<sup>28</sup> ROWLAND-SHEA ET AL., *supra* note 1, at 7.

<sup>29</sup> *Id.* at 10.

<sup>30</sup> THE HEAT IS ON REPORT, *supra* note 18, at 7.

<sup>31</sup> Hoffman et al., *supra* note 1, at 6. Redlining is a practice that evolved out of federal programs that offered government-insured mortgages for homeowners after the great depression. Candace Jackson, *What Is Redlining?*, N.Y. TIMES (Aug. 17, 2021), <https://perma.cc/A3KH-QWZS>. The programs included “parameters for appraising and vetting properties and homeowners who would qualify for mortgages,” using “color-coded maps ranking the loan worthiness of neighborhoods.” *Id.* Areas classified as locations where property values were likely to go down were labeled hazardous and marked in red as “not worthy of inclusion in homeownership and lending programs.” *Id.* Not surprisingly, most of the redlined areas were majority-Black neighborhoods. *Id.* Thus, “[t]hose living in redlined areas experienced reduced credit access and subsequent disinvestment, leading to increased segregation and lower home ownership, value, and personal credit scores.” Hoffman et al., *supra* note 1, at 2. “Though redlining was banned in the US as part of the Fair Housing Act of 1968, [42 U.S.C. §§ 3601–3619 (2018)],” a majority of redlined areas remain dominated by low-to-moderate income and communities of color to this day. Hoffman et al., *supra* note 1, at 2.

<sup>32</sup> Hoffman et al., *supra* note 1, at 10.

<sup>33</sup> *Id.* at 6. Areas judged most suited for real estate investment were classified as “Best.” *Id.* at 2.

degrees Celsius.<sup>34</sup> Much work is needed to close the gap in green space investment between formerly redlined and “Best” neighborhoods.

### *C. The Gentrification Paradox*

While closing this disparity in access to green space is incredibly important, if planners are not careful a gentrification paradox could be the unfortunate result of increased green space in EJ communities. Gentrification is ordinarily understood to mean “a process in which a neighborhood gains wealth and sees its population become more affluent, whiter, and younger.”<sup>35</sup> As more green space becomes available in low-income and minority communities, better public health makes the neighborhood more attractive.<sup>36</sup> This increased desirability can lead to a rise in housing costs, which may result in gentrification.<sup>37</sup> The residents meant to benefit from the green space can be displaced, excluded, or both, by the higher cost of living.<sup>38</sup> Those who stay can become precariously housed, and those “displaced may be forced to leave their communities, ending up in less desirable neighborhoods with similar park-poverty problems” to their previous neighborhood.<sup>39</sup> The gentrification paradox is difficult to prevent, but potential solutions are provided later in this Comment. Now that the importance of green space and disparity in access for EJ communities has been explained, this Comment will discuss governmental policy responses to environmental justice.

## III. FEDERAL POLICY RESPONSES TO ENVIRONMENTAL JUSTICE COMMUNITIES

The Biden Administration has demonstrated a commitment to addressing the harms of failing to achieve EJ, and has incorporated EJ considerations into many of its policies and programs. Examples that will be discussed in this Part include the Infrastructure Investment and Jobs Act, the Justice40 initiative, and the America the Beautiful plan.

### *A. Infrastructure Investment and Jobs Act*

The Infrastructure Investment and Jobs Act<sup>40</sup> is a wide ranging law designed to address the “nation’s core infrastructure, . . . including roads and bridges, rail, transit, ports, airports, the electric grid, water systems,

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<sup>34</sup> *Id.* at 6, 10.

<sup>35</sup> Lindsay M. Miller, *We Need to Change How We Think About Gentrification*, NAT’L CIVIC LEAGUE: NAT’L CIVIC REV. (2019), <https://perma.cc/K8HZ-GCYV>.

<sup>36</sup> Wolch et al., *supra* note 9, at 235.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Pub. L. No. 117-58, 135 Stat. 429 (2021).

and broadband.”<sup>41</sup> The Act addresses many specific environmental justice considerations, including strengthening the “nation’s resilience to extreme weather and climate change, cleaning up toxic pollution, expanding access to clean drinking water, remediating legacy pollution, delivering electric school buses to support clean air, and more.”<sup>42</sup> However, none of the money set aside in the Act clearly and specifically addresses green space. Some provisions could potentially fund green spaces, such as the Reconnecting Communities section which includes “\$1 billion between contract authority and new appropriations.”<sup>43</sup> This section funds projects that “remove barriers to opportunity caused by legacy infrastructure,” including money “for planning, design, demolition, and reconstruction of street grids, parks, or other infrastructure.”<sup>44</sup> Therefore, while this law can help EJ communities, it may not be the best method of attaining funding for green spaces.

### *B. Justice40 Initiative*

To ensure that EJ communities will enjoy the benefits of the new infrastructure bill along with other existing federal programs, President Biden has implemented the Justice40 initiative.<sup>45</sup> President Biden signed Executive Order (E.O.) 14008, Tackling the Climate Crisis at Home and Abroad, which outlined the administration’s commitment to delivering forty percent of the overall benefits of federal investments in climate, clean energy, affordable and sustainable housing, clean water, and other environmental initiatives to disadvantaged communities that have been historically marginalized, underserved, and overburdened by pollution.<sup>46</sup> The E.O. dramatically expanded the United States’ investment in environmental justice by mobilizing “nearly every Federal agency to transform hundreds of programs to meet the Justice40 goal.”<sup>47</sup> Some identified benefits applicable to this Comment include: increased acres of greenspace; increased tree and vegetation cover; and sustainable shade

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<sup>41</sup> BIPARTISAN INFRASTRUCTURE INVESTMENT AND JOBS ACT SUMMARY: A ROAD TO STRONGER ECONOMIC GROWTH 2 (2021) [hereinafter IIJ SUMMARY].

<sup>42</sup> Press Release, White House, The Bipartisan Infrastructure Law Advances Environmental Justice (Nov. 16, 2021), <https://perma.cc/D7CM-AV6Y>.

<sup>43</sup> IIJ SUMMARY, *supra* note 41, at 3.

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

<sup>45</sup> Brentin Mock & Hadriana Lowenkron, *The Infrastructure Bill is a Trillion-Dollar Test for Environmental Justice*, BLOOMBERG (Aug. 11, 2021), <https://perma.cc/2NYT-6G9M>.

<sup>46</sup> Tackling the Climate Crisis at Home and Abroad, Exec. Order No. 14,008, 86 Fed. Reg. 7,619, 7,632 (Jan. 27, 2021). The Executive Order directed the Director of the Office of Management and Budget (OMB), the Chair of the Council on Environmental Quality (CEQ), and the National Climate Advisor, in consultation with the White House Environmental Justice Advisory Council (WHEJAC), to jointly publish guidance on “how certain Federal investments might be made toward a goal that 40 percent of the overall benefits” of such investments flow to disadvantaged communities. *Id.* at 7,631–32.

<sup>47</sup> Cecilia Martinez & Candace Vahlsing, *Delivering on Justice40*, WHITE HOUSE BLOG (Dec. 2, 2021), <https://perma.cc/Y7LY-TJ9X>.



coverage to help with urban heat domes.<sup>48</sup> Since this program is new, agencies are currently primarily focusing on planning how to achieve these goals and report their progress.<sup>49</sup> Agencies must draft plans on how to implement the initiative, how to engage with communities and program stakeholders, how to modify existing programs, and how to report their progress.<sup>50</sup>

Justice40 currently targets programs such as: Department of Homeland Security’s Building Resilient Infrastructure and Communities Program; EPA’s Drinking Water State Revolving Fund; Department of Transportation’s Bus Facilities Infrastructure Investment Program; and approximately a dozen other federal programs that are designed to maximize environmental justice benefits.<sup>51</sup> While none of the initial priority programs directly address green space in EJ communities,<sup>52</sup> the initiative’s framework could be very beneficial if applied to existing and forthcoming programs benefiting EJ communities’ access to green space. This possibility is very promising; however, time will tell if the initiative is a success.

### *C. America the Beautiful Plan*

In 2021, the Biden administration implemented the “America the Beautiful” plan, which aims to conserve thirty percent of the nation’s land and water by 2030.<sup>53</sup> The plan is “a decade-long challenge to pursue a locally led and voluntary, nationwide effort to conserve, connect, and restore the country’s lands, waters, and wildlife.”<sup>54</sup> Administration officials say that the plan will “help combat climate change, create jobs, and promote racial equity . . . by making natural spaces more accessible to underserved populations.”<sup>55</sup> The plan’s initial report released in May 2021, included the explicit goal of combatting inequitable access to the outdoors for low-income communities and communities of color by building and improving parks in underserved neighborhoods.<sup>56</sup>

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<sup>48</sup> Memorandum from Shalanda D. Young, Acting Dir., Off. of Mgmt. & Budget, Brenda Mallory, Council on Env’t Quality Chair & Gina McCarthy, Nat’l Climate Advisor, on Interim Implementation Guidance for the Justice40 Initiative to the Heads of Departments and Agencies 4–5 (2021) [hereinafter Guidance Memo].

<sup>49</sup> *See id.* at 1 (offering initial implementation guidance to agencies).

<sup>50</sup> *Id.* at 9–10.

<sup>51</sup> Mock & Lowenkron, *supra* note 45.

<sup>52</sup> *See* Guidance Memo, *supra* note 48, at 3 (defining covered programs and their purposes).

<sup>53</sup> Katie Surma & Judy Fahys, ‘America the Beautiful’ Plan Debuts the Biden Administration’s Approach to Conserving the Environment and Habitat, INSIDE CLIMATE NEWS (May 7, 2021), <https://perma.cc/YN7Y-EJ3Y>.

<sup>54</sup> *America the Beautiful*, U.S. DEPT OF THE INTERIOR, <https://perma.cc/3PKF-NCGD> (last visited Oct. 20, 2022).

<sup>55</sup> Surma & Fahys, *supra* note 53.

<sup>56</sup> AMERICA THE BEAUTIFUL REPORT, *supra* note 3, at 18–19.

The initial report outlined America the Beautiful's key principles that will guide the conservation efforts.<sup>57</sup> The principles applicable to urban green spaces include: Principle 2—Conserving America's Land and Waters for the Benefit of all People—which describes the need to provide safe outdoor areas and access to park-deprived communities; Principle 5—Pursue Conservation and Restoration Approaches that Create Jobs and Support Healthy Communities—which explains the need to create more parks and tree cover in cities to cool neighborhoods, reduce utility bills, and improve human health and well-being; and Principle 8—Build on Existing Tools and Strategies with an Emphasis on Flexibility and Adaptive Approaches—which explains ways to achieve the program's goals including grant programs for local parks.<sup>58</sup>

Early recommendations for achieving America the Beautiful's goals include “supporting locally led conservation and park projects” by building parks and safe outdoor opportunities in nature-deprived communities.<sup>59</sup> The Great American Outdoors Act,<sup>60</sup> which provides dedicated funding to parks and open spaces through grant programs, was recommended as a potential tool to achieve the plan's goal of addressing environmental injustice by creating new parks in EJ communities.<sup>61</sup> In the plan's December 2021 updated report, the Biden Administration touted the plan's use of various governmental grant programs to increase the number of parks and outdoor areas in such communities.<sup>62</sup> The funding programs listed in the report include: the Outdoor Recreation Legacy Partnership—which aims to address the gap in outdoor recreation opportunities in underserved neighborhoods; the Urban Forests and Urban Agriculture Program—which focuses on restoring and maintaining urban and community forests; and the Urban Waters Federal Partnership—which helps communities reconnect with their waterways and restores downgraded riverfronts, parks, and watersheds.<sup>63</sup> America the Beautiful is a great example of the Biden Administration's focus on addressing environmental justice. However,

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<sup>57</sup> See *id.* at 13–16 (recommending adherence to eight key principles and summarizing the goals of each principle).

<sup>58</sup> *Id.* at 14–16.

<sup>59</sup> *Id.* at 18–19.

<sup>60</sup> Pub. L. No. 116-152, 134 Stat. 682 (2020).

<sup>61</sup> AMERICA THE BEAUTIFUL REPORT, *supra* note 3, at 19.

<sup>62</sup> See U.S. DEP'T OF THE INTERIOR, U.S. DEP'T OF AGRIC., U.S. DEP'T OF COM., & COUNCIL ON ENV'T QUALITY, YEAR ONE REPORT AMERICA THE BEAUTIFUL 8 (2021) (showing the success of two key grant programs in providing millions of dollars in funds to underserved communities).

<sup>63</sup> *Id.* The Urban Waters Federal Partnership provides funding applicable to improving the environment and public health, but not specifically for green space in EJ communities, so it will not be discussed further. *Urban Waters Federal Partnership*, U.S. ENV'T PROT. AGENCY, <https://perma.cc/KMG2-YPFZ> (Sept. 15, 2022) (“The Urban Waters Partnership reconnects urban communities, particularly those that are overburdened or economically distressed, with their waterways by improving coordination among federal agencies. The Partnership also collaborates with community-led revitalization efforts to improve our Nation's water systems and promote their economic, environmental and social benefits.”).

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the program is not without flaws, and the next Part will critique the federal government's emphasis on grants as a way to address environmental injustice and the need for urban green spaces.

#### IV. FEDERAL FUNDING FOR GREEN SPACES IN ENVIRONMENTAL JUSTICE COMMUNITIES

The federal government's primary method of funding projects—including urban green spaces—is through grant programs,<sup>64</sup> so this Part will focus on the most prominent and applicable programs. The Outdoor Recreation Legacy Partnership Program (ORLP) is the primary program to fund green spaces;<sup>65</sup> therefore, ORLP will receive the most analysis. However, two other programs are worth mentioning.

First, the United States Department of Agriculture's Forest Service Urban & Community Forestry (U&CF) Program, which is the only dedicated urban forest program in the federal government, runs the National Urban and Community Forest Challenge Cost Share Grant Program.<sup>66</sup> U&CF “works in partnership to restore, sustain, and manage more than 140 million acres of urban and community forest lands for the benefit of communities in the United States.”<sup>67</sup> While past programs may have funded urban forests, the current round of grants “focuses on the National Urban and Community Forestry Advisory Council / public's National Ten Year Urban and Community Forestry Action Plan[s] . . . Goal 7—Strategy B: Create a nationwide urban forestry public awareness and education messaging campaign.”<sup>68</sup> The grant funds are meant to “encourage stewardship of urban forests by demonstrating the value its natural resource services contribute to a community's viability, resiliency, and well-being.”<sup>69</sup> While U&CF may eventually provide funding for urban forests in EJ communities, the current funding is not applicable.

Second, the Environmental Justice Small Grants (EJSG) Program, an EPA funding opportunity, provides two different categories of grants.<sup>70</sup>

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<sup>64</sup> See, e.g., AMERICA THE BEAUTIFUL REPORT, *supra* note 3, at 16, 19 (explaining that one of the tools to achieve President Biden's conservation goals is grant programs for local parks, listing specifically the Outdoor Recreation Legacy Partnership Program); see also NAT'L ASS'N OF CNTYS., *supra* note 3, at 7–8 (listing the funding available to counties in the new bipartisan infrastructure law, the majority of which are in grant form).

<sup>65</sup> See, e.g., *Outdoor for All Act*, AMERICAN HIKING SOC'Y, <https://perma.cc/Q3ZA-89MN> (last visited Oct. 25, 2022) (describing the ORLP as the “only federal program” exclusively focused on green spaces in cities).

<sup>66</sup> U.S. FOREST SERV., USDA FOREST SERVICE URBAN & COMMUNITY FORESTRY 2022 CHALLENGE COST SHARE GRANT PROGRAM: NOTICE OF FUNDING AVAILABILITY 1 (2022), <https://perma.cc/FCK3-3PDL>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> U.S. ENV'T PROT. AGENCY, ENVIRONMENTAL JUSTICE SMALL GRANTS (EJSG) PROGRAM: REQUEST FOR APPLICATIONS (RFA) AMENDMENT 3 (Apr. 19, 2021), <https://perma.cc/97C2-SVV9>.

First, grants for programs that “form collaborative partnerships, educate the community, develop a comprehensive understanding of the local environmental and/or public health issues, and identify ways to address these issues at the local level;” and, second, a cooperative agreement program that “address an existing local environmental and/or public health issue.”<sup>71</sup> The cooperative agreement program aims to “expand beyond community education to include more substantive activities [including] training, monitoring, and experimenting . . . that further address the issue(s)” faced by EJ communities.<sup>72</sup> While this grant program could end up improving green spaces in EJ communities, it is not as applicable as ORLP, which will be discussed in the next sub-Part.

### *A. Outdoor Recreation Legacy Partnership Grant Program*

ORLP is the premier federal grant program for funding urban green spaces in underserved communities.<sup>73</sup> ORLP was established by Congress in 2014 and is administered by the National Park Service (NPS) under the authority of the Land and Water Conservation Fund Act (LWCF).<sup>74</sup> The Great American Outdoors Act,<sup>75</sup> signed into law by President Trump in 2020, fully funded LWCF, so ORLP should continually provide grants for the foreseeable future.<sup>76</sup>

#### *1. ORLP Description and Requirements*

The goal of ORLP is to provide new or significantly improved recreation opportunities for economically-disadvantaged communities that are under-served in terms of parks and other outdoor recreation resources.<sup>77</sup> ORLP grants, which are paid through offshore oil and gas royalties—not taxpayer funds—“are selected through an NPS-led national competition following a solicitation and nomination by the

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

<sup>72</sup> *Id.*

<sup>73</sup> See *Outdoor for All Act*, *supra* note 65 (describing the ORLP as the “only” federal grant program decided to the purpose of providing funding for urban outdoor spaces); see also *Outdoor Recreation Legacy Partnership Grants Program*, NAT’L PARK SERV., <https://perma.cc/ZU5U-CY5M> (Sept. 20, 2022) (noting ORLP is “a nationally competitive program targeting . . . economically disadvantaged urban communities with no, or almost no, access to publicly available, close-by, outdoor recreation” space).

<sup>74</sup> Land and Water Conservation Fund Act of 1965, 54 U.S.C. §§ 100506, 100904, 200301–200310 (2018); see *Outdoor Recreation Legacy Partnership (ORLP) Program*, CAL. DEP’T OF PARKS & RECREATION, <https://perma.cc/K3HD-5K82> (last visited Oct. 3, 2022) (explaining ORLP as well as the timeline and eligibility requirements for receiving a grant).

<sup>75</sup> Pub. L. No. 116–52, 134 Stat. 682 (2020).

<sup>76</sup> Eli Nachmany, Note, *Conservation and Economic Recovery: Telling the Story of the Great American Outdoors Act of 2020*, 58 HARV. J. LEGIS. 425, 425 (2021).

<sup>77</sup> NAT’L PARK SERV., P21AS00509, LWCF-PGL - STATE AND LOCAL ASSISTANCE DIVISION 3 (2021) [hereinafter LWCF ASSISTANCE].

States”; individuals or cities cannot apply directly.<sup>78</sup> ORLP funds projects in urban areas within cities or towns of at least 50,000 people.<sup>79</sup> To be eligible for a grant, “the project must involve publicly-owned land and the project sponsor must possess sufficient legal title and control of the property to ensure that it can be managed and maintained for outdoor recreation in perpetuity and otherwise remain compliant with the conversion provisions of the LWCF Act.”<sup>80</sup> Outdoor recreation areas and facilities receiving ORLP grants “must be open to the general public and not limited to special groups.”<sup>81</sup>

Under LWCF, “ORLP grant projects must be cost-shared with non-federal funds at a minimum ratio of 1:1.”<sup>82</sup> Matching funds may be cash or in-kind contributions of land, services, materials, etc., from state, local, non-governmental, or private sources.<sup>83</sup> Matching funds that meet the minimum 1:1 requirement “must be secure or *firmly committed* at the time of application.”<sup>84</sup> As of October 2021, “\$46 million in federal funds have supported 68 ORLP projects, while leveraging more than \$76 million in local, state, and private match funds.”<sup>85</sup> In the current round of funding, \$150 million is available, with a minimum award of \$300,000 and a maximum of \$5 million per grant.<sup>86</sup>

ORLP projects “should directly benefit low income neighborhoods,” and residents of those neighborhoods should be engaged throughout the design process “to ensure the project will meet their recreation needs and interests.”<sup>87</sup> Specifically, the competition prioritizes the selection of projects that will directly connect people to outdoor places, and that:

- serve communities that are underserved in terms of number of parks and other outdoor recreation areas and have significant numbers of individuals who are economically disadvantaged;
- create short-term and/or permanent jobs;
- help stimulate local economic development;

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<sup>78</sup> *Id.*; Catherine Nagel, *Federal Funding Transforms City Parks, but More Investment Is Needed to Solve Inequities*, THE HILL (Oct. 21, 2021), <https://perma.cc/TVJ4-42N4>.

<sup>79</sup> *Outdoor Recreation Legacy Partnership Program*, LAND & WATER CONSERVATION FUND COAL., <https://perma.cc/LP96-HFYQ> (last visited Dec. 29, 2022).

<sup>80</sup> LWCF ASSISTANCE, *supra* note 77, at 3 (internal citation omitted).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 7.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* (emphasis in original).

<sup>85</sup> Nagel, *supra* note 78.

<sup>86</sup> LWCF ASSISTANCE, *supra* note 77, at 5.

<sup>87</sup> Memorandum from Joel Lynch, Chief, State & Loc. Assistance Programs Div., on the Opening of the FY2020/2021 Outdoor Recreation Legacy Partnership Program Grant Round to Land and Conservation Fund State Liaison Officers 1 (May 10, 2021), <https://perma.cc/849G-EGBS>.

- engage and empower members of the affected community in the development of the project;
- create or expand public-private partnerships;
- benefit from a high degree of coordination among the public, multiple levels of government, and the private sector, to improve recreation opportunities for all; and
- advance goals of, or meet, priority recreation needs identified in the state's Statewide Comprehensive Outdoor Recreation Plan and other local, regional, state plans and/or initiatives.<sup>88</sup>

While not listed by name, the Notice of Funding Opportunity connects the program with the America the Beautiful plan and the Justice40 initiative: "This program supports priorities of the Secretary of the Interior, including 'Working to conserve at least 30% each of our lands and waters by the year 2030' and 'Centering equity and environmental justice' as outlined in Executive Order (EO) 14008: Tackling the Climate Crisis at Home and Abroad."<sup>89</sup>

## 2. ORLP Past Grantees

This sub-Part will provide examples of past grant recipients to demonstrate what types of projects ORLP funds.

*Arkansas, Western Hills Park Legacy Project:* a playground, paved trails, pavilions, fishing piers and restrooms, as well as updated benches, picnic tables and signs.<sup>90</sup>

*Georgia, Athens Street Park Development:* construct a new park featuring a new playground, "a pavilion/restrooms, a basketball court, a splash pad, parking, exercise/nature trails, signage, landscaping, utilities and lighting.

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<sup>88</sup> LWCF ASSISTANCE, *supra* note 77, at 4–5. According to the Notice:

For the purposes of this competition, "underserved communities" are those with:

(1) no existing parks;  
 (2) some existing parks but not enough to support the size of the population of the service area or otherwise able to satisfy existing recreational demand; or  
 (3) some existing parks (potentially even an adequate number of parks) that are so deteriorated/obsolete or underdeveloped that a major redevelopment or rehabilitation is necessary to significantly increase the number of people or user groups who could be served in a way that would be equivalent to a new park.

*Id.* at 3.

<sup>89</sup> LWCF ASSISTANCE, *supra* note 77, at 5.

<sup>90</sup> News Release, Nat'l Park Serv. Off. of Comm'n, National Park Service Announces Grants for New Park Development and Improvement Projects in 18 Cities (Dec. 27, 2019), <https://perma.cc/BN4N-SNJS>.

The park development will occur on approximately 13 acres of donated land near several densely populated, low-income residential neighborhoods.”<sup>91</sup>

*Kentucky, Bowling Green Riverwalk Park:* “improve and enhance access to the Barren River by installing a connecting path, a boat ramp, and fishing access facilities;” adding picnic/shade pavilions, seating areas, and a rock climbing course.<sup>92</sup>

*Minnesota, Midway Peace Park:* “develop trails, picnic facilities, play area, fields and courts, and other amenities at a new outdoor recreation park . . . The activities will benefit nearly 6,030 people within a half-mile of an underserved community that lives between St. Paul and Minneapolis.”<sup>93</sup>

*Ohio, Downtown Waterfront Metropark:* “restore 70 acres of former brownfields along the Maumee River in downtown Toledo [to create] [w]ater access activities such as shared-use paths, walkways, a canoe/kayak launch area, shoreline restoration, step stone access, and a river overlook boardwalk.” The park will provide public access to the Maumee River for the nearby underserved urban community.<sup>94</sup>

All these projects are large scale and elaborate, which are the type of projects that often lead to gentrification. Only time will tell what the ultimate result of the new green spaces will be, but based on past research into the gentrification paradox, the current types of projects funded, while extremely beneficial, are also concerning.

## V. SHORTCOMINGS OF THE CURRENT FEDERAL GRANT BASED SYSTEM

The current grant-based system, while useful, does not sufficiently address the inequities in access to green space. Core EJ struggles are still present in the application process because underserved communities need to go through the state government to receive a grant, since those who need the grant money have little power and influence to lobby for funding.<sup>95</sup> Additionally, the number of grants is very small and unlikely to make a meaningful difference to this important problem. This Part will discuss these critiques.

### A. *EJ Communities’ Core Struggles Are Not Addressed*

ORLP, which is aimed towards addressing the inequities suffered by EJ communities, does not take into consideration one of the most fundamental issues in environmental justice: low-income communities

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> See Diaz, *supra* note 6, at 779 (explaining that EJ communities have less political power, which is a factor in land use decisions).

and communities of color “often have less political power than high-income communities or those composed of racial majorities.”<sup>96</sup> Since EJ communities lack power and influence, members face difficulties lobbying the government, which results in a disproportionately high number of “locally undesirable land use” sites and, once sited, the lax enforcement of environmental laws at those sites creates toxic “hot-spots” in these communities.<sup>97</sup> EJ communities’ lack of influence is well recognized, not only by environmental justice researchers but also by industry actors.<sup>98</sup> This lack of influence to stop undesirable siting correlates with the lack of influence to lobby for parks and green spaces.<sup>99</sup>

Parks and green spaces are paid for in large part by grant money, which requires a certain level of sophistication and power because applying for grants is a time consuming and difficult process.<sup>100</sup> EJ communities face challenges when attempting to take advantage of those

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<sup>96</sup> *Id.*

<sup>97</sup> H. Spencer Banzhaf, *The Political Economy of Environmental Justice*, RESOURCES (May 25, 2009), <https://perma.cc/V2B8-E5RK>; R. Gregory Roberts, Note, *Environmental Justice and Community Empowerment: Learning from the Civil Rights Movement*, 48 AM. U. L. REV. 229, 249 (1998).

<sup>98</sup> CERRELL ASSOC. & J. STEPHEN POWELL, CAL. WASTE MGMT. BD., POLITICAL DIFFICULTIES FACING WASTE-TO-ENERGY CONVERSION PLANT SITING 26 (1984). In 1984, the California Waste Management Board paid the consulting firm Carrell Associates to define communities that would not resist siting of locally undesirable land uses. *See id.* at 3 (finding “seven political criteria . . . for the selection of a Waste-to Energy site that will tend to offer the least amount of political resistance to the project.”). While the report did not explicitly mention race, a preference for siting in low-income communities without political power was clear:

Certain types of people are likely to participate in politics, either by virtue of their issue awareness or their financial resources, or both. Members of middle or higher-socioeconomic strata (a composite index of level of education, occupational prestige, and income) are more likely to organize into effective groups to express their political interests and views. All socioeconomic groupings tend to resent the nearby siting of major facilities, but the middle and upper-socioeconomic strata possess better resources to effectuate their opposition. Middle and higher-socioeconomic strata neighborhoods should not fall at least within the one-mile and five-mile radii of the proposed site.

*Id.* at 26.

<sup>99</sup> *See discussion supra* Part V.A.

<sup>100</sup> *See* Nagel, *supra* note 78 (discussing how the federal government has been increasing funding towards grant programs which will create more opportunities for cities to create green spaces). *See, e.g.,* LWCF ASSISTANCE, *supra* note 77, at 10–11 (The ORLP application packet is 33 pages long, explaining the detailed and complicated process of applying for an ORLP grant); In California, for instance, local applicants who want the state to apply for funding must submit a concept paper, including a description of the project, cost, and matching funds sources, among other requirements, to the Office of Grants and Local Services in Department of Parks and Recreation. *Round 6 State of California ORLP Process*, CAL. DEP’T OF PARKS & RECREATION, <https://perma.cc/B67F-GG64> (last visited Oct. 4, 2022). The Department then evaluates the concept paper to determine whether the project is worth a grant application. *Id.*



opportunities.<sup>101</sup> Some specific barriers to political power include underrepresentation in institutions, less education, and language barriers.<sup>102</sup> While the ORLP grant application is prepared by the state and local governments, such grants still put a lot of responsibility on underserved communities to pressure their local government to lobby the state for funding, which is problematic because residents also often lack both the connections and the knowledge of how to pressure their local governments.<sup>103</sup> Less educated and informed communities may not even be aware that grants are available. If the community does not primarily speak English, they could have difficulty researching funding opportunities or communicating with their government to advocate for green space in their neighborhood. If local institutions do not have people from those or similar communities in power, the EJ community members may not be comfortable reaching out. Additionally, the middle- to upper-class, likely white officials, may not instinctually consider EJ communities for funding or know how to identify funding opportunities. Another important barrier to EJ communities benefiting from grant funding is many grants call for matching funds, which are difficult for both low-income communities and some local governments to raise because of common financing constraints.<sup>104</sup> If funding is available, it could be from private sources, which may be less concerned with benefiting the EJ community than improving the value of the surrounding area, which can lead to gentrification.

Middle- and upper-class neighborhoods can be very successful in advocating for green space funding.<sup>105</sup> However, their success is unlikely to be as easily replicated by low-income neighborhood residents, as those in a study's immigrant population were keenly aware due to their disadvantages in the structure of power, influence, and resource allocation of the city.<sup>106</sup> While ORLP and other federal grant systems are

<sup>101</sup> See Stephanie Pincetl & Elizabeth Gearin, *The Reinvention of Public Green Space*, 26 URB. GEOGRAPHY 365, 379 (2005) (describing the disadvantages faced by low-income communities, including a lack of familiarity with city government).

<sup>102</sup> Spencer Banzhaf et al., *Environmental Justice: The Economics of Race, Place, and Pollution*, 33 J. ECON. PERSPECTIVES, Winter 2019, at 185, 200.

<sup>103</sup> Pincetl & Gearin, *supra* note 101, at 379.

<sup>104</sup> *Id.* ("Local government in the United States is characterized by structural weakness. Cities and counties are constrained by a fiscal structure that does not allow them to borrow money, and requires a balanced budget. Local governments are also receiving declining support from states and the federal government.") (internal citations omitted).

<sup>105</sup> A study found that in Los Angeles, one middle to upper class neighborhood's successful "grass-roots" effort to plant trees and create a greened median included a design developed by a local resident and professional landscape architect and \$45,000 in private money from residents used to match a grant from the Metropolitan Transportation Authority. *Id.*

<sup>106</sup> *Id.* The interviewed low-income residents made comments including:

"So I don't know, I don't know which department. . . I don't know my way around civic government in L.A. well enough to know who should be involved [re: regreening]." Others stated ". . . I wish I could just close my eyes and boom the trees are there. I know that just can't be done like that. What is it—is it a long term that we are supposed to wait for this, or after your studies—your proposal to councils of

beneficial, and the Biden Administration obviously cares about environmental justice, the current grant system does not address the systemic powerlessness that defines EJ communities. Until this lack of power is considered, the EJ communities most in need may continue to slip through the cracks and not receive federal funding.

### *B. The Federal Grant System Is Too Limited*

The federal grants only cover a small number of projects each cycle, which are unlikely to properly address the full scope of the problem. ORLP only gives out about 75 grants per cycle.<sup>107</sup> According to the United States Census Bureau, around 780 cities have a population of 50,000 or more.<sup>108</sup> Each city with over 50,000 people presumably has several areas lacking green space, so the grants available represent only a fraction of what low-income and minority communities need. Additionally, the program is based on the 2010 census, so until the rules are based on the most recent census, many cities will not be eligible despite their current population.<sup>109</sup>

The current system does address and may even exacerbate the powerlessness of EJ communities, and the number of programs funded each year is incredibly small. However, steps can be taken to improve the grant system, particularly now that the Biden Administration has implemented Justice40, and to make a more significant positive impact on EJ communities' access to green space.

## VI. POLICY RECOMMENDATIONS

The current grant-based system can stay competitive, but must be tweaked in two key ways to address its shortcomings: first, engage with EJ communities to help states identify communities in need of green space; and second, get rid of the fund-matching requirements for grants to EJ communities. Both changes align with the current administration's emphasis on EJ and can be folded into Justice40's and America the Beautiful's goals.

Putting the responsibility on EJ communities to advocate for funding or hoping that states and municipalities recognize EJ communities' needs, is not an appropriate method to ensure equitable access to green space. Instead, the federal government should directly reach out to EJ

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the city, or how do we can help [sic]?" and "I could call (the city council offices), but do they do that, will they take care of it, will they listen to me?"

*Id.*

<sup>107</sup> LWCF ASSISTANCE, *supra* note 77, at 6.

<sup>108</sup> *City and Town Population Totals: 2010–2019*, U.S. CENSUS BUREAU, <https://perma.cc/295F-BP6Q> (Feb. 16, 2022) (under "Tables" choose "Annual Estimates of the Resident Population for Incorporated Places of 50,000 or More, Ranked by July 1, 2019 Population: April 1, 2010 to July 1, 2019").

<sup>109</sup> LWCF ASSISTANCE, *supra* note 77, at 3.

communities. Thankfully, President Biden's Executive Order 14008 has already directed the implementation of a Climate and Economic Justice Screening Tool (CEJST), which identifies communities that are overburdened by pollution and underinvested in housing, transportation, water and wastewater infrastructure, and healthcare.<sup>110</sup> However, the screening tool has yet to be fully implemented. On February 18, 2022, the White House Council on Environmental Quality (CEQ) released a beta version of the CEJST on which the public can evaluate and provide feedback comments.<sup>111</sup> The beta version of the CEJST utilizes publicly-available, nationally-consistent data on income, education, environmental burdens, health, and other economic and environmental factors.<sup>112</sup> Federal infrastructure programs covered by Justice40, including programs in the Infrastructure Investment and Jobs Act, will use CEJST to identify communities to receive the benefits of these programs.<sup>113</sup> The federal programs include grants, loans, and direct payments or benefits to individuals in the seven key areas covered by Justice40.<sup>114</sup>

While Justice40's key areas do not directly apply to green space, this tool can still be used in an edited grant program to conduct community engagement. For example, ORLP can use the tool to identify EJ communities in need of green space that have not received funding in the past, and reach out to the community directly. Federal employees could then conduct meetings or other forms of engagement to identify the community's needs and facilitate the municipality's and state's grant application. States can still be responsible for the applications and determine which communities to prioritize, but the federal government and CEJST can help states identify communities lacking green space without the EJ communities needing to lobby their local municipalities and the state.

In addition to conducting community outreach, the current competitive grant-based system should also remove the fund-matching requirement. A better system would be to simply give the communities money and allow the funding to be used to improve EJ communities most

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<sup>110</sup> EXEC. OFF. OF THE PRESIDENT, CLIMATE AND ECONOMIC JUSTICE SCREENING TOOL: FREQUENTLY ASKED QUESTIONS 1 (2022), <https://perma.cc/M5TA-XYLZ> ("A community qualifies as 'disadvantaged' if the census tract is above the threshold for one or more environmental or climate indicators *and* the tract is above the threshold for the socioeconomic indicators.") (emphasis in original).

<sup>111</sup> Press Release, White House, CEQ Publishes Draft Climate and Economic Justice Screening Tool, Key Component in the Implementation of President Biden's Justice40 Initiative (Feb. 18, 2022) [hereinafter CEJST announcement], <https://perma.cc/R2HA-G93S>. To try the tool for yourself, see *Explore the Map*, CLIMATE & ECON. JUST. SCREENING TOOL, <https://perma.cc/T7VW-LW8H> (last visited Oct. 20, 2022).

<sup>112</sup> CEJST announcement, *supra* note 111.

<sup>113</sup> *Id.* at 2.

<sup>114</sup> See *id.* at 2–3 ("The seven key areas are: climate change; clean energy and energy efficiency; clean transit; affordable and sustainable housing; training and workforce development; the remediation and reduction of legacy pollution; and the development of critical clean water infrastructure.").

in need. Not requiring fund matching would remove a barrier that often powerless EJ communities cannot easily satisfy. Finding matching funds can be difficult, especially since many local municipalities cannot match sizable federal grants and EJ communities can have a difficult time getting private investment; sometimes, the private investment received results in the type of green space that fuels gentrification.<sup>115</sup> If these two changes are made—community outreach and removing fund-matching requirements—competitive federal grants can be much more equitable and not exacerbate EJ communities' inherent struggles.

#### *A. Create an Entirely New Non-Competitive Funding Program*

Instead of tweaking the current competitive grant-based program, the federal government can implement a system of offering money to communities without requiring them to first apply for funding. This system could utilize non-competitive grants, or outright lump sum payments. Just like the tweaked competitive-grant system, this new type of funding program should also rely on CEJST to identify EJ communities and conduct outreach to determine a communities' specific green space needs. Once outreach is conducted, in a non-competitive grant system the federal government could still require the state or municipality to apply but, instead of the grant application serving as a request for funding, the application can be a way of determining the financial cost of the proposed project and allowing the community and municipality to get organized before using the funding. Alternatively, after identifying and working with an EJ community, a federal agency could give a lump sum payment to the municipality for the purpose of developing green space, allowing the funding to be used for both the planning and the execution of the green space project.

In both non-competitive grants and lump sum payments, no fund matching should be required. As described above, fund matching can be a significant barrier to developing green space in EJ communities.<sup>116</sup> Therefore the barrier should be removed, allowing EJ communities to build green space and enjoy its many benefits without straining the local municipality or relying on outside private developers.

#### *B. Develop "Just Green Enough" Projects*

No matter which form of funding the federal government uses, a new emphasis should be funding smaller and more targeted projects. New urban parks and green spaces can lead to gentrification, especially if they are designed as large projects.<sup>117</sup> One solution to the gentrification

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<sup>115</sup> Pincetl & Gearin, *supra* note 101, at 378–79; *see* discussion *supra* Part V.A.

<sup>116</sup> *See* discussion *supra* Part V.A.

<sup>117</sup> Wolch et al., *supra* note 9, at 235.

paradox is to build “just green enough” spaces.<sup>118</sup> These spaces avoid the typical “parks, cafes, and riverwalks green city” model, which describes a large percentage of past ORLP grantees.<sup>119</sup> Instead, “just green enough” spaces focus on small-scale scattered sites shaped by community concerns, needs, and desires rather than by a conventional urban design formula that emphasize geographically concentrated green space projects that might kickstart gentrification.<sup>120</sup> For example, instead of rewilding an area, cities could build small green nodes to serve as community gardens or gathering spaces that “are more connected to local concerns about food security, job creation, and human health.”<sup>121</sup> An example of a small-scale but beneficial program is a fruit tree planting initiative in Oakland, California.<sup>122</sup> This program gives away free fruit trees to residents in low-income, predominantly Black and Brown, communities.<sup>123</sup> Such a program provides free food, helps reduce pollution, and makes the community more enjoyable, without risking gentrification.<sup>124</sup> “Just green enough” spaces can be difficult to implement because they go against market forces, preferring higher property values and requiring community engagement and advocacy—a challenge in EJ communities. But a benefit of “just green enough” spaces is they are smaller and should cost less money, lowering any potential matching funds needed for a grant and making them a more viable option for low-income communities. If cities can stay committed to serving the needs of EJ communities instead of market forces, “just green enough” spaces could be a good solution to bringing the benefits of green space to underserved communities without triggering the gentrification paradox.

## VII. CONCLUSION

As this Comment shows, access to urban green space is an incredibly important benefit denied to many EJ communities. While the federal government is aware of this problem, its current solution of providing grants is insufficient to successfully combat the lack of green space in often powerless communities. However, alternative methods of properly funding equitable green spaces are available, including modifying the existing competitive grant system, implementing non-competitive funding systems, and focusing on “just green enough” projects. If these methods are utilized, EJ communities may come closer to matching the

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<sup>118</sup> *Id.* at 241.

<sup>119</sup> *Id.*; see *supra* notes 90–94 and accompanying text.

<sup>120</sup> Wolch et al., *supra* note 9, at 241.

<sup>121</sup> *Id.*

<sup>122</sup> Jessica Flores, *How an East Oakland Grass-Roots Effort is Using \$28 Million to Help Residents Tackle Climate Problems*, S.F. CHRON. (Apr. 3, 2022), <https://perma.cc/FV5S-DGZX>.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*; Wolch et al., *supra* note 9, at 241.

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green space available in middle- and upper- income communities without suffering from the gentrification paradox.