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(pre-ACLU law suit)

Annenberg Charges Breach of Trust at West L.A. VA

ACLU, Veterans Support Investigation of Local VA Conduct

POSTED FEB. 23, 2011, 9:55 PM

TERENCE LYONS



The Annenberg Foundation has charged the West Los Angeles VA with improper use of its land for non-veteran-related activities, which it says are prohibited by the original deed made by the city of Santa Monica's founders.

The same month that the leadership at the VA Greater Los Angeles Healthcare System in West L.A. finally released a draft master plan (see how they used "master" even before McDonald does two years later) for the 387-acre property in response to a 1998 Congressional mandate, the nonprofit Annenberg Foundation charged that the GLAHS leadership was in breach of fiduciary duties imposed by the 1888 deed by which the initial land was given as a permanent home for veterans.

Some of the uses on the premises that are disputed include vehicle storage by rental car and charter bus companies, laundry operations for Marriott hotels, a public park, commercial oil wells, private school athletic facilities, a city dog park, the Wadsworth and Brentwood Theatres, the UCLA baseball field, and the renovation of the golf course for the UCLA men and women golf teams.

On Jan. 12, lawyers for Lauren Bon, an Annenberg director who heads the Metabolic Studio, a direct charitable activity of the Annenberg Foundation, wrote to VA Secretary Eric Shinseki and the U.S. and California attorneys general, charging "a clear breach of the fiduciary duty of the [VA] in failing to adhere to the restrictions imposed upon it as a trustee under a charitable trust created pursuant to an 1888 deed ... subject to a restriction that it be permanently used as a home for disabled veterans."

That deed for 300 acres of the Rancho San Vicente y Santa Monica was made by Arcadia Bandini de Baker and U.S. Senator John P. Jones, who founded the city of Santa Monica on other land from that rancho (see Santa Monica Mirror, November 25, 2010). (that deed set the tone for the three that followed, donated in exchange for a promise)

Bon also wrote on Annenberg letterhead on Jan.14 to the Veterans Park Conservancy, a nonprofit group that has contracted with the West Los Angeles VA to use 16 acres at the corner of Wilshire and San Vicente boulevards as open space "for benefit of veterans and the general public" according to a 2007 "Sharing Agreement" between the Conservancy and VA GLAHS.

In that letter, Bon said that the Annenberg Foundation's \$1 million grant previously made to the Conservancy had been solicited without disclosure that the park was to be located on a portion of the 300 acres "subject to a deed restriction that specifically limits the use of the land as a permanent home for veterans." Bon did not ask for a return of the Foundation's earlier gift, but said that it now prefers that it "be treated as an anonymous donor," that its grant "should not be recognized with any acknowledgement of any kind" within the property or otherwise, and that it "should not be identified in any manner as a donor" to the Conservancy or to the park. (Annenberg left \$1 million on the VPC table, the 990 report for the following year shows that the Ex Dir's salary was over \$1m)

Enclosed with both letters was a 30-page "position paper" of the Metabolic Studio (plus supporting exhibits), which outlined both the legal authorities for the imposition of the trust and the factual basis for the claimed breaches. In essence, the Studio argued that GLAHS had entered into multiple agreements or property transfers with commercial and other parties to use land for non-veteran-related uses and then "hospitalized" all of the remaining land without providing the benefits of a "home" for veterans. (making the VAL-OR, USA case)

Lauren Bon and the Metabolic Studio were on-site at the West Los Angeles VA property in 2009 and 2010 with the "Strawberry Flag" project, an artwork made of salvaged strawberries and reclaimed water that was fully powered off the VA grid; during that time, the project employed veterans and worked with clinicians at the campus. The Annenberg Foundation has long been a supporter of veteran-related projects, stemming from the dedication of its founder, Ambassador Walter Annenberg, who General Colin Powell in 1994 called "one of America's leading businessmen and greatest philanthropists."

Response from VA and VPC: VA General Counsel Will A. Gunn in Washington, D.C. (find this guy or his replacement and confront him with the latest) sent the Annenberg/Metabolic lawyers a Feb. 9 one-page reply, saying the "VA is meeting its legal responsibilities" and citing an unpublished 1990 decision of the U.S. Ninth Circuit Court of Appeals which denied relief to heirs of the 1888 property grantors who sought to reclaim property as a reversion when the VA sold 2.13 acres for an unrelated use. Annenberg/Metabolic lawyer Richard L. Fox has responded that the decision is irrelevant to any effort to enforce the deed restrictions against the VA. (confirms our allegation that the VA uses legal responsibilities, bureaucratic code, to bury legal responsibilities, Act and Deed)

Susan C. Young, **executive director of the Veterans Park Conservancy (VPC)**, sent Bon a Feb. 7 two-page reply, saying that VPC would honor Annenberg's request to be dissociated from the park project and that it would "rely on the Department [of Veterans Affairs] to address your concerns" regarding improper use of the land. Young wrote that VPC "will continue to develop the National Veterans Park as an expression of our profound gratitude for veterans' service and patriotism," but said nothing further about the claim that the park project actually interferes with the use of the land to benefit veterans, such as by providing homeless housing. (Veterans need much more than expressions, every square inch of the gift-land to begin with)

GLAHS Draft Master Plan: On Jan. 19, the VA GLAHS posted on the Federal Register a Draft Master Plan "to satisfy the legislative mandate of the Veterans Programs Enforcement Act of 1998 regarding 'a master plan for the use

of the lands ... over the next 25 and over the next 50 years.” The 39-page draft called for written comments to be received in Washington, D.C. within 30 days, after the 13-year preparation period. (These precedents only serve to misinterpret the explicit language of the Act and Deed, very difficult to undo as time passes).

At the Feb. 9 meeting of the Los Angeles County Veterans Advisory Commission, Stephanie Stone, (major fence sitter) who chairs the commission, noted that there had been no input in the preparation of the draft plan from people outside the GLAHS staff (or the national Veteran demographic) so far as she was aware. Col. Joseph Smith (Ret.), county director of Military and Veterans Affairs, said there had been public meetings in connection with earlier planning efforts some years ago, and he thought these were incorporated in the Jan. 2011 draft.

The draft plan, which is replete with historic photographs and with maps and tables describing current operations, lists 22 general mission objectives, physical objectives, and operational objectives and 10 equally general “guiding principles,” but it provides no timeline for any projects, nor does it even prioritize them. It does not say which of them are part of a 25-year plan or which are part of a 50-year plan.

What the draft plan does say to Congress is that the plan “does not commit to any specific project, construction schedule, or funding priority. Each development proposal must be approved individually by the GLAHS director, the network director, and national VA officials as required by VA regulation governing the specific project.” (without input from the larger Veteran demographic)

The plan does acknowledge “21 land use agreements with 18 partners for the WLA campus” and establishes as a “guiding principle” that the VA “[m]aintain current land use agreements and lease arrangements.” (why?)

Reaction to Annenberg Position and VA Plan; In what some may consider an unusual alliance, the American Civil Liberties Union of Southern California (ACLU/SC) and veterans organizations have both voiced support for the Annenberg claims of breach of trust and called for scrutiny of the VA GLAHS draft master plan in view of those claims.

The ACLU/SC sent a Feb. 14 letter to VA Secretary Shinseki and the federal and state attorneys general, stating that it “supports the request for an investigation into whether the VA is failing to abide by the terms of the 1888 deed of land in West Los Angeles to the United States government for a home for veterans.” Managing Attorney Peter J. Eliasberg wrote, “The Veterans Administration’s failure to abide by the terms of the charitable grant – as is described in the [Metabolic Studio] position paper by [lawyers] Dilworth Paxson LLP – is not only inconsistent with the government’s legal obligation to abide by the restrictions imposed by the grantor as part of a charitable grant, **but it also has enormous human costs,**” citing figures on homeless veterans.

The Disabled American Veterans, Chapter 13 in Northridge wrote in support of the Metabolic Studio position paper on Jan. 24, charging “ongoing major mismanagement of the trust deed of 1888” at West L.A. that was “of historic proportions.” Joining DAV was Veterans United for Truth in Santa Barbara, writing on Jan. 27 of “the shameful saga of VA illegal action and gross dereliction of responsibility [that] epitomizes the unfeeling approach of the VA

bureaucrats at the West Los Angeles complex.” That letter was signed by Robert M. Handy, who not only chairs that group but also chairs the Veterans Caucus of the California Democratic Party.

Handy also submitted comments on the VA GLAHS draft master plan, and he wrote: “There is more effort spent in defining and protecting the use of these facilities by non-veteran agencies, organizations, and commercial firms than there is on how the [Department of Veterans Affairs] will meet its obligation to today’s and tomorrow’s veterans at the West LA Center, both as a medical facility and as a ‘National Home for Disabled Volunteer Soldiers,’ as was its original intent.” He added, “We had hoped to provide you with a full-blown critique accompanied by concrete suggestions. Unfortunately there is insufficient substance in the plan to support such an effort.”

Carolina Winston Barrie and Ricardo Bandini Johnson, writing “as direct descendents of the donors of this land, and on behalf of our family,” told the VA, “We believe that the West Los Angeles VA has chosen to improperly ignore the restrictions placed on the donated land under the 1888 deed and, in doing so, has turned its back on the clear intention of our ancestors that this land be used only as a permanent home for veterans.” (*set-asides by Secretary McDonald satisfied the family but still leaves genuine services for disabled Veterans out because special interests “backed-in” to staying by becoming service providers*)

More specifically, they wrote: “the West Los Angeles VA has diverted the use of the land for non-veteran uses, by entering into agreement allowing the land to be used, for example, for vehicle storage by rental car and charter bus companies, laundry operations for Marriott hotels, a public park, commercial oil wells, private school athletic facilities, a city dog park, the Wadsworth and Brentwood Theatres, the UCLA baseball field, and the renovation of the golf course for the UCLA men and women golf teams.” They criticized the GLAHS’s “continued intention of ‘hospitalizing’ the entire operation and excluding any of the aspects of a home for veterans, such as providing meaningful recreational, social, spiritual, occupational, and intellectual activities and facilities.”

Barrie and Johnson concluded, “We trust that there will be public hearings on the Draft Master Plan.”

In a separate Feb. 12 letter, Barrie resigned her position as a director of the Veterans Park Conservancy, saying that when she learned that the VPC proposed a public park on VA land, she concluded that her continued involvement in the project “would not honor [the] memory” of her great-aunt who had given the land for veterans.

And, of course, Robert Rosebrock, who leads an “Old Veterans Guard” that has been protesting misuse of VA land outside the locked gates at Wilshire and San Vicente boulevards for 153 consecutive Sundays now, has his criticisms of the VA GLAHS draft master plan. “The West L.A. VA has had a master plan for 123 years now,” said Rosebrock. “It’s called the deed of 1888.”

The VA GLAHS draft master plan can be read by clicking [HERE](#)

The Metabolic Studio position paper can be read by clicking [HERE](#)