

Clean Water Compliance and Healthy Parks, Schools, and Communities

Robert García and Aubrey White
The City Project¹

I. Introduction

The City Project supports a collective vision for a comprehensive and coherent web of parks, schools, beaches, forests, and transportation that promotes human health, a better environment, and economic vitality for all, and reflects the cultural diversity of Los Angeles.² This Report urges the combination of clean water compliance with healthy parks, schools, and communities through the integrated regional water management program for Greater Los Angeles County. Green spaces in parks and schools can help clean water, and flood control basins can provide green space for parks and playing fields. The recommendations in this Report are good policy and good law under federal and state clean water and civil rights laws, including the Clean Water Act, Title VI of the Civil Rights Act of 1964 and its regulations, and California Government Code Section 11135. The following policy and legal discussion, GIS maps, and demographic analyses support equal justice, democracy, and livability for all. This Report is submitted by The City Project, Anahuak Youth Soccer Association, Mujeres de la Tierra, REMAPPING-LA, and the William C. Velazquez Institute.

Los Angeles is park poor, and there are unfair park, school, and health disparities. Children of color disproportionately live in communities of concentrated poverty without places to play and engage in physical activity in parks and schools, with no cars or an adequate transit system to reach parks and school fields. The human health implications of the lack of physical activity are profound. These children disproportionately suffer from obesity, diabetes, and other diseases related to inactivity.

We have the opportunity today to restore a part of the lost beauty and health of Los Angeles. Prop 84, passed in November 2006 with the support of 80% of Latino voters, provides billions of dollars for clean water, flood control, and urban park projects. The Los Angeles region is greening the Los Angeles and San Gabriel Rivers. The integrated regional water management program offers the opportunity to achieve compliance with clean water laws through multipurpose projects, including green parks and school playing fields that clean water through

¹ Robert García is Executive Director of The City Project, a project of Community Partners, and Aubrey White is Program Director.

² See generally Robert García and Amanda Recinos, Policy Report, *Healthy Parks, Schools, and Communities: Mapping Green Access and Equity for the Los Angeles Region* (forthcoming 2006); Robert García and Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, 2 Stanford Journal of Civil Rights and Civil Liberties 143 (2005) ("Stanford Article"); Nicolas García, Photograph Reports on bulldozing the beach, and on illegal signs and all-terrain vehicles at the beach (2005); Robert García and Erica Flores, "Anatomy of the Urban Park Movement: Equal Justice, Democracy and Livability in Los Angeles," chapter in book edited by Dr. Robert Bullard, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* (2005); Robert García and Erica Flores Baltodano, section in book edited by Prof. Denise C. Morgan, Prof. Rachel D. Godsil, and Attorney Joy Moses, *Awakening from the Dream: Civil Rights under Siege and the New Struggle for Equal Justice* (2006); Robert García et al., Healthy Children, Healthy Communities, and Legal Services, *Clearinghouse Review Journal of Poverty Law and Policy* 52 (May-June 2005); Robert García, *Environmental Justice: From the Cornfield to el Congreso*, 1 Golden Gate Journal of Environmental Law (forthcoming 2007).

natural filtration. Green spaces like the Sepulveda flood control basin can help provide parks for active and passive recreation and control floods. Mayor Antonio Villaraigosa has vowed to make Los Angeles the greenest big city in the country. City Controller Laura Chick, The City Project, and others have called for reform of recreation and parks that includes: a strategic plan to improve park services in every neighborhood, and eliminate unfair disparities; standards to measure equity and progress in achieving reform; a fair system of park financing and fees; a community needs assessment now and every five years; improved park safety; and shared use of parks and schools. Los Angeles has an historic opportunity to achieve shared use of parks and schools through the Mayor's unprecedented role in the governance of public schools.

The City Project is part of the Alianza de los Pueblos del Rio. "The Alianza de los Pueblos del Rio formed after [Robert] Garcia and others decided that development of a new L.A. River was a symbolic and literal convergence of a myriad of issues confronting L.A.'s Latino population. To be left out of the discussion, they realized, was to be left high and dry, as the river shifts directions into the future. Instead, the alliance which includes [The City Project], the Anahuak Youth Soccer Association, Re-mapping L.A., Mujeres de la Tierra, and the William C. Velasquez Institute, spearheaded river meetings and community outreach that have ballooned into a comprehensive new platform of urban Latino environmentalism. Part legal strategy, part organizing principle, this green movement en español has put people--immigrants and poor people, mostly--at the center of an issue traditionally focused on flora and fauna, and which has pitted some environmentalists against immigrants." Evan George, *Browning the Green Movement*, Los Angeles Alternative, Sept. 15, 2006, available at www.laalternative.com/index.php/2006/09/15/browning-the-green-movement.

II. The Olmsted Vision

To achieve these goals, Los Angeles can look for guidance to the classic Olmsted Report. The firm started by the sons of Central Park designer Frederick Law Olmsted proposed a network of parks, schools, beaches, rivers, forests, and transportation to promote the social, economic, and environmental vitality of the Los Angeles region and the health of its people. (Map 101.) According to the Olmsted Report in words that remain true today:

Continued prosperity will depend on providing needed parks, because, with the growth of a great metropolis here, the absence of parks will make living conditions less and less attractive, less and less wholesome. . . . In so far, therefore, as the people fail to show the understanding, courage, and organizing ability necessary at this crisis, the growth of the Region will tend to strangle itself.³

Implementing the Olmsted plan would have made Los Angeles one of the most beautiful and livable regions in the world. Powerful private interests and civic leaders demonstrated a tragic lack of vision and judgment when they killed the Olmsted Report. Politics, bureaucracy, and greed overwhelmed the report in a triumph of private power over public space and social justice.

³ Olmsted Brothers & Bartholomew and Associates, *Parks, Playgrounds and Beaches for the Los Angeles Region 1* (1930), reprinted in Greg Hise & William Deverell, *Eden by Design* (2000).

We have an opportunity to restore a part of that vision and the lost beauty of Los Angeles combining clean water compliance with healthy parks, schools, and communities.

III. Equal Access to Parks, Schools, and Health

Children of color living in poverty with no access to cars have the worst access to parks and schools with five acres or more of playing fields (Map 201). Much of Los Angeles lies more than half a mile from the nearest park (Map 202).

Children of color disproportionately live in the state assembly districts with the highest levels of child obesity and the worst access to parks and recreation. The levels of obesity are intolerably high for children throughout the region -- ranging from 23% to 40% (Map 203). This is the first generation in the history of the country in which children will have a lower life expectancy than their parents if present trends in obesity and other diseases related to inactivity continue. Over 87% of children in Los Angeles Unified School District (LAUSD) are not physically fit, according to state fitnessgram standards. Yet LAUSD and more than half the school districts in California do not enforce state physical education requirements.

There are unfair disparities in access to parks and recreation by every political subdivision in the Los Angeles region. Thus, for example, State Assembly District 10 (Nuñez) in the inner city has only .51 net acres of urban parks per thousand residents, compared to 282.79 net acres in District 37 (Strickland). The disparities are even more dramatic if total acres of parks including forests and other large natural open spaces are included. For example, there are .51 acres of total parks per thousand residents in District 10, and 3348.72 acres in District 27. (Map 201, Chart 401C, Graph 401N).

There are similar unfair disparities based on State Senate, Congressional, County Supervisorial, City Council, and LAUSD districts. *See*, respectively, Maps 501-502, Chart 501C; Maps 601, 603, Chart 601C; Maps 701-702, Chart 702C; Maps 801-806, Chart 801C; Maps 901-903, Chart 901C (the publication of these maps is forthcoming).

The shared use of parks and schools can alleviate the lack of places to play and engage in physical activity, while making optimal use of scarce land and public resources. Unfortunately, schools with five acres or more of playing fields tend to be located in areas that are disproportionately white and wealthy and have greater access to parks (Map 204).

According to a survey by the Public Policy Institute of California, 64% of Californians believe that poorer communities have less than their fair share of well-maintained parks and recreational facilities.⁴

The residential patterns are not an accident of unplanned growth but a part of a continuing legacy of discriminatory housing, mortgage, and land use policies.⁵

⁴ Mark Baldasare, Public Policy Institute of California Statewide Survey: Special Survey on Californians and the Environment vi (June 2002).

⁵ *See, e.g., See, e.g.,* Stanford Article at 153-56, 163-67, 186 and authorities cited.

IV. The Los Angeles River

The Integrated Regional Water Management Program, and the Revitalization Master Plan for the Los Angeles River, provide opportunities to improve parks and recreation, while revitalizing urban communities in ways that promote human health, economic vigor, and equity.

The Los Angeles River stretches 51 miles through diverse communities from Canoga Park in the San Fernando Valley through downtown to the ocean in Long Beach. The City of Los Angeles has embarked on an 18 month L.A. River Revitalization Master Plan Process.

Children of color living in poverty without access to a car have the worst access to parks, and to schools with at least five acres of playing fields, and disproportionately live along the length of the River that lies within the County, but not within the City (Map 1001, Chart 1001C).

The City and County must work together to ensure equal access to public resources along the full 51 miles of the Los Angeles River, not just the 32 miles within the City. Planning for the full length of the River, as well as the San Gabriel River (Map 1101, Chart 1101C) should be included as part of the Integrated Regional Water Management Program, to achieve compliance with clean water and civil rights laws and social justice concerns.

V. The Heritage Parkscape

The Heritage Parkscape, inspired in part by the Olmsted plan and the Cornfield Advisory Committee Recommendations Report, would unite the rich cultural, historical, recreational, educational, and environmental resources in the heart of Los Angeles by linking the Los Angeles River, the Los Angeles State Historic Park at the Cornfield, El Río de Los Angeles State Park at Taylor Yard, El Pueblo Historic District, and the Great Wall of Los Angeles, along with 100 other resources. Public art projects including murals, installations on the ground and on the web, school art projects, oral histories, and theater will be part of this living legacy. Public transit can take children and their families and friends from the Heritage Parkscape to the beach, forests, mountains, and other wilderness and recreation areas. In park-poor Los Angeles, it is necessary to bring natural space to the people, and take people to the natural space.

The Heritage Parkscape (Map 104, Table 104T) will serve as a "family album" to commemorate the struggles, hopes, and triumphs of the Native Americans, settlers, and immigrants who entered Los Angeles through this area.

VI. Legal Compliance

The Integrated Regional Water Management Program should achieve compliance with federal and state civil rights laws.

A. Compliance with Clean Water and Environmental Laws

State and federal clean water laws provide the framework for environmental restoration, revitalization and development along the Los Angeles and San Gabriel Rivers. *See, e.g.*, Federal

Water Pollution Control Act, 33 U.S.C. §1313(a) et seq.; Porter-Cologne Act, Cal. Water Code §13000 et seq. Designated uses to be considered include recreation, and propagation of fish and wildlife. (40 C.F.R. §131.6, 131.10-131.12 (2003).) The Clean Water Act provides for citizen suit enforcement.⁶

The California Environmental Quality Act (“CEQA”) applies to public agency actions that potentially impact the environment. (Cal. Pub. Resources Code, § 21000 et seq.) The National Environmental Policy Act commits the federal government to “encourage productive and enjoyable harmony between man and his environment” and “promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.”⁷

B. Compliance with Civil Rights Laws

Federal and state laws prohibit both intentional discrimination under statutory and constitutional provisions and unjustified discriminatory impacts for which there are less discriminatory alternatives.

Title VI of the Civil Rights of 1964 and its implementing regulations, for example, prohibit both (1) intentional discrimination based on race, color or national origin, and (2) unjustified discriminatory impacts for which there are less discriminatory alternatives, by applicants for or recipients of federal funds such as the City of Los Angeles. 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.”⁸

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.⁹

⁶ On July 5, 2001, plaintiffs in intervention Baldwin Hills Estates Homeowners' Association, Inc., Baldwin Hills Village Garden Homes Association, United Homeowners Association, Village Green Owners Association, and Concerned Citizens of South Central Los Angeles filed a complaint in intervention against the City of Los Angeles in Civil Action 01-191, alleging that sewage spills and nuisance odors violated the Clean Water Act, 33 U.S.C. § 1311(a), and/or the terms and conditions of National Pollution Discharge Elimination System (“NPDES”) permits. The plaintiffs in intervention represented the interests of residents in Baldwin Hills, Crenshaw, Leimert Park, and South Central Los Angeles, which are disproportionately communities of color or low income communities. After the City conceded liability for certain spills, the City settled the matter for \$2 billion in 2004 through a Settlement Agreement and Final Order as part of an agreement settling a broader suit by the United States, the State of California, the California Water Quality Control Board, and Santa Monica Baykeeper in Civil Actions No. 01-191-RSWL and 98-9039-RSWL.

⁷ 42 U.S.C. § 4321

⁸ 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.

⁹ *See, e.g.*, 43 C.F.R. 7.30 (nondiscrimination statement for recipients of federal funds from the Department of Interior).

California law also prohibits intentional discrimination and unjustified discriminatory impacts under Government Code section 11135, which is closely analogous to Title VI.¹⁰

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.”¹¹

An important purpose of the statutory civil rights schemes is to ensure that recipients of public funds not maintain policies or practices that result in racial discrimination. To receive federal funds, a recipient must certify that its programs and activities comply with Title VI and its regulations.¹² In furtherance of this obligation, recipients must collect, maintain, and provide upon request timely, complete, and accurate compliance information.¹³

1. Avoiding Discriminatory Impacts

There are three prongs to the discriminatory impact inquiry under the Title VI regulations—and, by analogy, under California Government Code section 11135: (1) whether an action by a recipient of federal funding (or state funding under 11135) has a disproportionate impact based on race, ethnicity, or national origin; (2) if so, the recipient bears the burden of proving that any such 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.¹⁴

Applying the discriminatory impact standards to the evidence discussed above to promote compliance with the law and sound public policy:

- (1) There is statistical evidence of disproportionate impacts. Children of color living in poverty with no access to a car have the worst access to parks and schools with five acres or more of playing fields. Disproportionately white and relatively wealthy people with fewer children than the county average have the best access to places for physical activity in parks and schools. There is evidence of disproportionate impacts of sewage spills and nuisance odors in communities of colors and low income communities.¹⁵
- (2) There is no business necessity to justify the discriminatory burdens and benefits of access to green space in parks and schools.
- (3) There are less discriminatory alternatives of achieving compliance with clean water laws through multipurpose projects including green parks and school fields.

¹⁰ See Cal Gov. Code § 11135 *et seq.*; 22 CCR § 9810.

¹¹ Cal. Gov. Code § 65040.12.

¹² *Guardians Ass’n v. Civil Service Comm’n*, 463 U.S. 582, 629 (1983) (Justice Marshall, concurring in part and dissenting in part).

¹³ *Cf.* Executive Order 12,898 on Environmental Justice (Feb. 11, 1994).

¹⁴ *Larry P. v. Riles*, 793 F.2d 969, 983 (9th Cir. 1984).

¹⁵ See note 6 above.

2. Avoiding Intentional Discrimination

The following kinds of evidence are relevant to evaluate intentional discrimination: (1) the impact of the action and 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) whether the decision maker knows of the harm its decision will cause; and (6) a pattern or practice of discrimination.¹⁶

Applying those factors to the evidence discussed above to promote compliance with the law and sound public policy:

(1) The discriminatory impacts have been discussed above.

(2) and (6) There is a history and pattern of intentional discrimination against communities of color and low-income communities in access to parks and school fields in Los Angeles.¹⁷

(3) and (4) There are procedural and substantive irregularities in providing access to parks and school fields, as documented in Controller Chick's recent audit of recreation and parks, and in achieving compliance with clean water laws.¹⁸

(5) Los Angeles officials know the impact of their actions in exacerbating disparities in access to parks and school fields. Controller Chick's audit of recreation and parks is evidence of that fact.

VII. Conclusion

For the reasons stated and under the authorities cited above, this Report urges the combination of clean water compliance with equal access to healthy parks, schools, and communities through the integrated regional water management program for Greater Los Angeles County.

Respectfully submitted,

Robert García
Executive Director
The City Project
November 15, 2006

¹⁶ See *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977); U.S. Department of Justice, Civil Rights Division, *Title VI Legal Manual* (Sept. 1998) at 49-53 and authorities cited.

¹⁷ See, e.g., Stanford Article at 153-56, 163-67, 187 and authorities cited.

¹⁸ See note 6 above.