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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - CENTRAL DIVISION
THE HONORABLE DAVID O. CARTER, U.S. DISTRICT JUDGE

JEFFREY POWERS, et al,

Plaintiffs,

Case No. LACV22-8357

vs.

DENIS RICHARD MCDONOUGH,

Defendants.

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
TRIAL DAY 12
Monday, August 26, 2024
8:30 a.m.
LOS ANGELES, CALIFORNIA

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LOS ANGELES, CALIFORNIA; MONDAY, AUGUST 26, 2024

8:30 a.m.

--oOo--

THE COURT: Is everybody comfortable?

Dr. Harris, will you return to the stand, thank you.

Counsel, will this be redirect?

MR. ROSENBAUM: Yes, Your Honor.

THE COURT: All right. So redirect examination.

REDIRECT EXAMINATION

BY MR. ROSENBAUM:

Q Good morning, Dr. Harris, I hope you had a nice weekend.
How are you?

A Thank you. Likewise, Mr. Rosenbaum.

Q Dr. Harris, on Friday, you referenced the Sherman bill.
Do you recall that?

A I do.

Q Have committee hearings been held yet on the bill at the House?

A Yes. Actually, I sought a little update on the legislative references I made, so I'm going to pull out my phone for those, if that's okay? I just looked into these a little more because I wasn't precise in the way I talked about

1 some of these Friday.

2 The Sherman bill has passed out of committee, yes.

3 Q Has it been voted on by the House?

4 A It is awaiting floor action.

5 Q So the answer is "no"?

6 A The answer is no.

7 Q Do you -- has a vote been scheduled so far as you know?

8 A I'm not aware of one.

9 Q And then after there is a vote -- strike that.

10 When it comes up for vote there could be amendments made
11 to it; isn't that right?

12 A I believe that's right, yes.

13 Q Okay. So we don't know if that is going to happen,
14 correct?

15 A That's correct.

16 Q Then, assuming it passes roughly in the state it's in,
17 then it goes over to the Senate, right?

18 A Yes.

19 Q Then it goes to a committee in the Senate?

20 A I wish I understood all this better, but sometimes the
21 Senate will develop a companion bill as opposed to take the
22 House bill so it kind of depends, but basically yes.

23 Q We just don't know?

24 A That's right.

25 Q Or how long that process will be?

1 A Unfortunately, that is right.

2 Q And then it has to go to the President if it's passed?

3 A That's correct.

4 Q Or it could, if there are changes, it might go back to the
5 House or back to the Senate, right?

6 A It can be a lengthy process, yes.

7 Q Even assuming it passes, you told us that the Sherman bill
8 has provisions for rulemaking?

9 A Yes, which is a benefit of that bill. I want to be clear.

10 Q I'm not here to attack the way Congress does its business,
11 but that rulemaking takes time, right?

12 A Oh, yeah. Yes.

13 Q When you say, "oh, yeah," do you know what the average is,
14 the amount of time for rulemaking?

15 A I was thinking two thoughts simultaneously. I
16 participated in rule making it took multiple years.

17 The bill has language requiring rulemaking I believe
18 within 90 days, I would have to double-check that, but it's
19 meant to both require the action of rulemaking and also to
20 expedite it is my understanding.

21 Q But that 90-day requirement could get modified?

22 A Of course, yes.

23 THE COURT: Could each of you give me a brief
24 summary of the bill again just for my record and my
25 recollection?

1 BY MR. ROSENBAUM:

2 Q Sure. Dr. Harris, you are well set up to do that, do you
3 mind doing that?

4 A Sure. And I'm doing this from memory, sir, so forgive
5 anything that is not quite perfect.

6 But the idea of the bill is that it revises the
7 statutory definition within Title 42 to exclude VA disability
8 benefits from the definition of annual income.

9 And it includes the additional provision that VA
10 disability benefits would not be excluded from the definition
11 of adjusted income, which is the income definition used to
12 determine portion of rent, we've talked about that distinction
13 a couple of times already.

14 And it also requires rulemaking from HUD where HUD would
15 need to revise its regulatory definitions of income at 24 CFR
16 5.609 and 5.611.

17 THE COURT: Just one moment. What I don't
18 understand is when the rulemaking takes place, what is
19 Treasury's interplay with HUD's interplay in relation to the
20 timing of the bill? That's where I'm naive and I need help.

21 MR. ROSENBAUM: That is going to be one of my next
22 questions.

23 THE WITNESS: I'm happy to speak to that.

24 MR. ROSENBAUM: Sure.

25 THE WITNESS: Right now, Treasury, LIHTC program

1 uses HUD's regulatory definition of income as its definition of
2 income.

3 THE COURT: Would you repeat that again?

4 THE WITNESS: Treasury's LIHTC program uses HUD's
5 regulatory definition of income --

6 THE COURT: I understand.

7 THE WITNESS: -- as its definition of income. So
8 when HUD changes it -- I'm sorry, did you say to pause?

9 THE COURT: Just a moment. Would you spell LIHTC
10 for me.

11 THE WITNESS: L-I-H-T-C.

12 BY MR. ROSENBAUM:

13 Q And I was going to inquire, just for the record here,
14 that's what we've been talking about in terms of the issues
15 with respect to using disability compensation as income, right,
16 in terms of the requirements in order to get those tax credits?

17 A It is a common funder and a common entity that imposes
18 funding restrictions and, again, it stands for Low Income Tax
19 Credits.

20 THE COURT: Just a moment. LIHTC.

21 And what, then, is Treasury and HUD's definition
22 of income? I think I know the answer to that generally, but
23 what is their definition?

24 THE WITNESS: Part of what's complicated here is
25 that they each have different definitions of income, but in the

1 case of the LIHTC program, Treasury uses HUD's.

2 THE COURT: Okay. Now, Treasury uses HUD's, but I
3 don't know what that is. What is the definition of HUD then?

4 THE WITNESS: HUD's definition of income?

5 THE COURT: Yeah.

6 THE WITNESS: It's in regulation, like I can give
7 you a citation --

8 THE COURT: I don't want the regulation, I want the
9 definition.

10 THE WITNESS: Okay. Well, it's lengthy. It's
11 essentially all sources of income, but there are some
12 exclusions written into it in the regulatory definition. But
13 when it comes to VA disability benefits, HUD's definition
14 includes the majority of benefits in its calculation of income.

15 THE COURT: It's as simple this: HUD's definition
16 includes disability.

17 THE WITNESS: That's right. I don't know if you
18 want weeds, but.

19 THE COURT: Just a moment. Does HUD have discretion
20 to change this definition as the VA did?

21 Hold on, I don't need a lot of words about that,
22 lawyers do that to me all of the time.

23 Does HUD, in your opinion, have the ability to change
24 the definition just as the VA recently did?

25 THE WITNESS: Short answer, yes. The reason --

1 THE COURT: Yes. Just a minute, I'm going to write
2 that down. Yes.

3 Now the long-winded explanation.

4 THE WITNESS: The recent action was taken by HUD,
5 not VA.

6 THE COURT: I'm sorry?

7 THE WITNESS: The recent action was taken by HUD,
8 not VA.

9 THE COURT: So this is a HUD announcement? This is
10 HUD's announcement?

11 THE WITNESS: That's right. And it's --

12 THE COURT: This is the VA's position also.

13 THE WITNESS: Yes, it's what we proposed.

14 THE COURT: Now that we have HUD and VA in a like
15 position, explain to me, once again, why Treasury has a say in
16 this and why they write the regulations? Of all of the people
17 to write regulations, I'm baffled why it's Treasury who has a
18 self-interest of being cheap.

19 THE WITNESS: So, first, Treasury is only one of
20 many entities in this --

21 THE COURT: No, no, I'm talking about Treasury now,
22 not other entities.

23 All that was given to me before was Treasury, HUD
24 and the VA. So before we expand this, I asked you about
25 Treasury.

1 THE WITNESS: Yes. Because Treasury's LIHTC program
2 is a common funder of affordable housing.

3 THE COURT: What does that mean?

4 THE WITNESS: Many affordable housing developments
5 finance those projects through the LIHTC program that Treasury
6 runs.

7 THE COURT: So it's as simple as this: Because
8 Treasury is the common funder, not HUD?

9 THE WITNESS: A common funder.

10 THE COURT: Not HUD?

11 THE WITNESS: HUD provides some funding also.

12 THE COURT: Why does Treasury write regulations, why
13 doesn't HUD?

14 THE WITNESS: They each write regulations for their
15 programs.

16 THE COURT: I know that. Why doesn't HUD write
17 these regulations? They're a more appropriate agency, I mean,
18 just naively thinking this through, than Treasury who has a
19 self-interest in one thing and that is decreasing the amount of
20 money they're going to pay.

21 THE WITNESS: Yes, and Treasury's statutory guidance
22 requires it to use HUD's definitions, so I think it's along the
23 lines what you're saying, and that is why the two agencies are
24 kind of joined at the hip in this issue.

25 THE COURT: Well, the obvious question is: Is

1 Treasury on board with this or not?

2 Because we have taken a year now, this has been
3 out floating --

4 THE WITNESS: Yes.

5 THE COURT: -- your efforts, and I compliment you
6 about that. It must be frustrating to be at your level,
7 pushing for something you believe in and, quite frankly,
8 waiting for a year, to find ourselves in trial waiting for
9 phone call this coming Tuesday -- I mean, it puts you -- I'm
10 quite complimentary about your personal efforts, I'm baffled by
11 the inner machinations of the government, quite frankly.

12 THE WITNESS: All signs point to yes.

13 THE COURT: Well, then why hasn't it been done? In
14 other words, why do we find ourselves -- why do we find
15 ourselves in this position? Obviously I would like this to
16 occur because it would be nationwide, there's not going to be
17 an appeal, you'd get the credit for it, I would love that.

18 But that hasn't happened. And I've got the sneaking
19 suspicion it's only because of this litigation, you know, that
20 you finally have their attention. Now, you're going to deny
21 that and say that they were always planning this and I'm going
22 to look at you and start laughing so.

23 THE WITNESS: Okay. Let's do that.

24 THE COURT: So let's have a conversation about that,
25 okay?

1 THE WITNESS: Okay. So can I?

2 THE COURT: Yeah.

3 THE WITNESS: Play my part in that.

4 THE COURT: Yeah.

5 THE WITNESS: So Treasury agreed in concept to this
6 some time ago.

7 THE COURT: How long ago?

8 THE WITNESS: At least six months ago. And they
9 drafted --

10 THE COURT: You know what I'm going to say, for six
11 months they are sitting back there with a conceptual about
12 something this important?

13 THE WITNESS: They did draft -- they thought it
14 required Congressional action. They drafted a legislative
15 proposal that would exclude VA's benefits for the income
16 definition.

17 THE COURT: What it's doing is putting the Court in
18 a tough position that I'm happy to accept the responsibility
19 for and then is writing in this area, when, quite frankly, I
20 would have loved to see the Government take credit for this,
21 that we were able to road-test this with the local folks, and
22 see if this worked, what their response was, and my guess is it
23 might have worked out beautifully. But coming now, how do I
24 have any -- well, you can't answer that.

25 I will tell both parties, I don't have a lot of

1 confidence, because I'm done with what I call aspiration wind,
2 that's spelled aspirational W-I-N-D, you can fill in the
3 blanks, okay? It's decision time and now that it's come to me
4 I'm going to have to write in this area.

5 THE WITNESS: Understood.

6 THE COURT: Unless I have somebody here, I mean, you
7 know -- I'm not important, but much above your level. Much
8 above your level.

9 THE WITNESS: No offense taken.

10 THE COURT: That is why I've expressed a
11 disappointment with McDonough or whoever or a member of the
12 administration or somebody who can put this together as a
13 central authority. You understand I want this to pass.

14 THE WITNESS: Both of us do.

15 THE COURT: Yeah.

16 Okay, counsel, we've had our discussion, it's
17 been interesting.

18 BY MR. ROSENBAUM:

19 Q Just to close the loop on the legislation, you also told
20 us on Friday there is certainly an awareness that there's going
21 to be a new President, there's going to be a new Congress,
22 there's going to be a new Secretary of the Treasury, there's
23 going to be a new Secretary of the VA, there's going to be new
24 secretary of HUD, so that also adds to the uncertainty in terms
25 of timing, does it not?

1 A Uncertainty and urgency, I would say both.

2 Q The Judge referenced this call tomorrow you told us about.
3 Who do you expect to be on this call?

4 A I don't -- I haven't seen names. I anticipate it's fairly
5 senior people from both HUD and Treasury, but people who are
6 involved in writing Treasury's guidance.

7 Q Do you think there will be anybody from the White House?

8 A It would not be out of character for the White House to be
9 on this. They have been involved in a few of the other calls
10 between HUD and Treasury on this issue, but I don't have
11 confirmation on that either way.

12 Q And the subject matter of the call -- help me here, it's
13 about the guidance that Treasury has to issue, right?

14 A Yes, and it's a very weedy, technical topic that I,
15 frankly, don't fully understand.

16 THE COURT: Let me talk to both you as parties for
17 just a moment with complete transparency. You've just heard
18 that I would be your biggest cheerleader if this occurred. In
19 self-interest, it avoids an appeal and gives credit to the
20 agencies involved, it's extraordinarily helpful to the
21 veterans, that we need to road-test it locally to see if it
22 worked, hopefully, Mayor Bass would get involved and other
23 people locally and make this work, but it comes at such a late
24 date.

25 How would the Court possibly continue to give you

1 that leeway on good faith, you know, when we find ourselves on
2 the eve of trial?

3 In other words, what I can't do is I can't wait
4 six months or a year, but if I had any way of having a good
5 faith belief that this could occur, I think the plaintiff would
6 be on board, I know the defendants would be on board, the
7 agencies would get the credit for this. But it comes so late
8 that that's my concern and I don't want you making these
9 representations.

10 I don't need the President of the United States,
11 but I need somebody close to it, because I need some central
12 person driving Treasury, driving VA, contacting Mayor Bass,
13 getting the local folks on board. And to make that happen, if
14 I have to wait another six months or a year, I'm not willing to
15 do that.

16 If I could literally postpone this part of the
17 decision, you know, in good faith for a period of time, I would
18 do that, but it doesn't sound to me like I've got a reasonable
19 period of time and I'm going to get forced into writing
20 something that I would prefer, quite frankly, you get the
21 credit for.

22 Now, that's transparently where I'm at. I think
23 I'm in a box in that regard. I think I'm going to have to
24 write, but I want you to know I do want this to take place and
25 I want the agencies to get the credit, but it's not turning out

1 that way right now.

2 There's too many ifs and one of those is
3 Treasury. Okay? It's been a year already after your
4 good-faith efforts, Dr. Harris, and I'll put that on the record
5 to drive this forward and it's got to be frustrating to you, so
6 thank you.

7 Counsel?

8 BY MR. ROSENBAUM:

9 Q Just to remind us, the PowerPoint, frankly, the powerful
10 PowerPoint that you presented, that was in June of 2023?

11 A Yes.

12 Q And the -- is it possible -- I know you can't predict
13 exactly what is going to be said on the call tomorrow by any
14 stretch, but I take it you would not be surprised if one of the
15 outcomes of the call is we need to wait for the election to see
16 where things stand and come back to this maybe in January.

17 Is that a possibility?

18 A Call me naive, but I would be shocked if that was the
19 outcome of the call. I do not think that will be the outcome
20 of the call.

21 Q You can't rule that out altogether though, right?

22 A I would almost fully rule that out.

23 Q Okay. After the guidance is drafted, that's not the end
24 of the story, right?

25 A Well, clarify the story you are referencing.

1 Q What the press release said was that there's going to be
2 encouragement of local and state entities that actually issued
3 the credits, correct?

4 A That's correct.

5 Q And that process hasn't started yet, right?

6 A I would say that process has started. Every level is
7 working on their piece of this anticipating the way it will
8 roll out.

9 Q But you don't have a final decision from the local or
10 state entities; is that correct?

11 A That's correct.

12 Could I add one more piece to that? It just
13 fills it out a little more.

14 Not only do the state agencies administering the credits
15 have to take their own action, but other entities outside of
16 tax credits entirely that use HUD's definition of income also
17 have to take their corresponding actions. So it's a little
18 more even of a cascade than what you were describing.

19 Q I appreciate your filling that in.

20 Just as a quick update also, the Judge on Friday asked
21 you about Shangri-La. Do you remember that?

22 A Yes.

23 Q Have there been any developments with respect to
24 Shangri-La in terms of its role with house and project-based
25 housing both on and off the grounds to your knowledge?

1 A So probably a better question for Mr. Simms later, but my
2 recollection of prior testimony here and my understanding is
3 they are no longer involved in the developments on campus, that
4 their minority partner or secondary partner has taken over.

5 Q But what about -- they run some of the project-based off
6 of campus; isn't that right?

7 A Unfortunately I don't know the answer to their involvement
8 in any other off-campus projects.

9 Q Okay. Doctor, you were present, were you not, for the
10 testimony of Laurieann Wright and Lavon Johnson?

11 A Yes, I was.

12 Q And Laurieann Wright, her placement is in Lancaster?

13 A All I know is what I heard in the room.

14 Q Okay.

15 A And I wouldn't be able to share anything I knew from the
16 clinical record, but I also don't know anything about the
17 clinical record, just to clarify.

18 Q Do you know how far Lancaster is from the medical center?

19 A I heard her talk about drives up to two hours with
20 traffic.

21 Q I told you it was 201 miles -- well, that wouldn't
22 surprise you.

23 A Yeah, I'm not sure how I was going to answer that.

24 Q If I told you it was equal distance of three orbits around
25 the moon...

1 Do you know how far Lancaster is?

2 A Well, again, I only know what I heard her describe.

3 Q Do you know how far Pomona is?

4 A I am embarrassingly light on my Southern California
5 geography.

6 Q You actually live in Oregon, correct?

7 A That's correct.

8 Q So if I asked you about Lancaster or Pomona or Harbor City
9 or Templeton or Marmion Way, those are all locations where
10 there is project-based housing, is there not?

11 A They sound familiar. I will take your word for it.

12 Q Do you know the distance for any of them?

13 A I do not.

14 Q The travel time for any of them between the center and
15 those locations?

16 A Not beyond references we've heard here in the room, no.

17 Q Do you know, sir, how many project-based housing units
18 there are within a five-mile radius of the medical center?

19 A No, not off the top of my head.

20 Q Do you know if there are any?

21 A I'm assuming we're not counting what is on the campus?

22 Q Right.

23 A I do not know.

24 Q Do you know if there are any planned for within say a
25 5-mile radius?

1 A I'm not aware of any plans either way.

2 Q Okay. Doctor, when you heard Ms. Wright's testimony, what
3 did you think about the fact that she was in Lancaster?

4 A I thought that sounded problematic and I had some
5 questions about exactly why she is in Lancaster.

6 Q Yeah. Do you know, incidentally, for any of the
7 communities I mentioned, Lancaster, Templeton, Marmion Way,
8 Pomona, whether there are communities of veterans in those
9 areas?

10 A I don't know either way.

11 Q Doctor, do you think that depending on the acuity of
12 conditions, unhoused veterans suffering from depression, PTSD,
13 anxiety disorders, traumatic brain injury, co-occurring mental
14 illness and substance abuse, that the stress that would be
15 associated with traveling to the GLA campus for treatment and
16 therapy might be an insurmountable barrier? Do you think that
17 is true?

18 A I think that is possible, yes.

19 Q In fact, you mentioned on Friday, Vince Kane?

20 A I did.

21 Q K-A-N-E?

22 A K-A-N-E.

23 Q I forget, is it Dr. Kane?

24 A No.

25 Q Okay. Mr. Kane, he goes all the way back to the *Valentini*

1 case, does he not?

2 A Yes. In terms of involvement here, yeah.

3 Q Yeah. And he is an individual who consults with the
4 Secretary on issues of -- matters relating to unhoused
5 veterans, does he not?

6 MS. WELLS: Objection, lack of foundation.

7 BY MR. ROSENBAUM:

8 Q Do you know that answer, sir?

9 THE COURT: You can answer the question if you know
10 the answer.

11 THE WITNESS: I don't know the answer with respect
12 to our current Secretary. It was absolutely the case with
13 Secretary McDonough from back then.

14 BY MR. ROSENBAUM:

15 Q Do you know if he ran a project in Philadelphia for the
16 VA?

17 A Could you clarify what project you are referring to?

18 Q A project with respect to unhoused veterans in
19 Philadelphia?

20 A Vince was the director of the National Center on
21 Homelessness Among Veterans which was housed in Philadelphia,
22 if that's what one you are referring to.

23 Q He's someone whose opinion you certainly respect?

24 A Yes.

25 MR. ROSENBAUM: Could I have Exhibit 138, page 1 put

1 in front of the witness, please.

2 BY MR. ROSENBAUM:

3 Q So, Dr. Harris, you have that now?

4 MR. ROSENBAUM: Did Your Honor get a copy? Does the
5 Court have a copy?

6 THE COURT: Well, I may have. But was it already
7 received into evidence?

8 MR. ROSENBAUM: Not yet.

9 THE COURT: If it wasn't, I don't have a copy.

10 MR. ROSENBAUM: We're getting a copy for you.

11 THE COURT: That's okay. Why don't you put it up on
12 the screen.

13 MR. ROSENBAUM: I think it is on the screen.

14 THE COURT: I can look at it and save some time.

15 BY MR. ROSENBAUM:

16 Q Dr. Harris, you can read as much of this as you would
17 like. I'm going to focus on the part of Mr. Kane's -- strike
18 that.

19 This is an e-mail from -- strike that.

20 This is a message from Vince Kane, correct, dated
21 March 18, 2018?

22 A I don't recall ever seeing this before, if that's what you
23 are asking.

24 Q That's okay.

25 A It does look like it's in the form of an e-mail, yes.

1 Q Okay. And directing your attention to the sentence -- I
2 just lost it on the screen.

3 Okay. Directing your attention to the sentence that
4 says begins -- you see, I don't know, maybe 60 percent down, in
5 the middle of the page there is a sentence that says, "A
6 national sample."

7 Do you see that?

8 A I do.

9 Q Okay. I'm going to read the two sentences: "A national
10 sample of veteran users of healthcare for the homeless clinics
11 reveal the following prevalence rates, often in combination:
12 Heart disease, 39.7 percent; depression, 73 percent; PTSD,
13 66.7 percent; anxiety disorder, 73 percent; traumatic brain
14 injury, 17.5 percent; co-occurring mental illness and alcohol
15 abuse 55.6 percent; hepatitis C, 28.6 percent; and HIV/AIDS,
16 12.7 percent.

17 Depending on the acuity of these conditions, the stress
18 associated with traveling to the GLA campus for treatment and
19 therapy may be an insurmountable barrier."

20 Do you see those two sentences?

21 A I do.

22 Q I take it from your testimony you agree with Mr. Kane?

23 MS. WELLS: Objection. I think that
24 mischaracterizes the former testimony. He didn't have any of
25 this information before him at the time he gave the previous

1 answer.

2 BY MR. ROSENBAUM:

3 Q Do you agree with that statement, sir?

4 THE COURT: He has been made aware of this. If you
5 agree with this or not, you can answer that question.

6 THE WITNESS: I do. This is the reason we send case
7 managers out to where veterans live in many cases. It's a
8 fairly fundamental aspect of the HUD-VASH program in
9 particular.

10 BY MR. ROSENBAUM:

11 Q Do you know the number of unhoused veterans in the
12 project-based units that suffer from traumatic brain injury,
13 anxiety, orders, PTSD, depression, co-occurring mental illness
14 and alcohol and substance abuse?

15 A Point of clarification before I answer -- if they are in a
16 project-based unit, they are housed.

17 Q I'm sorry, you are exactly right.

18 A I don't have that information in my head. We do collect a
19 lot of this data on veterans once they are in our programs.

20 Q Okay. Do you know if -- have you ever seen that data
21 anywhere as to those numbers?

22 A Not specified strictly to project-based participants, no.

23 Q And again you heard Ms. Wright's testimony. Ms. Wright
24 checks a lot of those boxes, does she not?

25 A I have not viewed her record. Based on what we heard

1 here, it certainly sounded like she checks some to many of
2 these boxes, yes.

3 Q And you also heard the testimony of Lavon Johnson, did you
4 not?

5 A I did.

6 Q And you heard him talk about his experience in South LA,
7 the placement there, did you not?

8 A Yes. I don't recall details of that particular placement.

9 Q Okay. Would you say -- you know, you talked to me in your
10 earlier testimony about, you know, the manifestations and the
11 conditions we have been talking about. And your Ph.D. is in
12 psychology?

13 A Clinical psychology, yes.

14 Q And would you say Mr. Johnson checks some of those boxes
15 too?

16 A Again, I'm just going to, based on what he reported to us,
17 not drawing any formal, clinical conclusions, but he reported
18 checking several of these boxes, yes.

19 Q Yeah. And talked about being in that unit and feelings of
20 loneliness and suicidal thoughts?

21 A Yes.

22 Q If -- how about the 110 corridor? I can't remember if you
23 and I talked about that, but do you -- do you know where the
24 110 corridor generally is when the Judge referred to that
25 phrase?

1 A That's where I learned about it, so I learned it from that
2 reference, yes.

3 Q Do you know the distances from the project-based units on
4 the 110 corridor to the medical center in West LA?

5 A I do not.

6 Q Driving distances?

7 A I do not.

8 Q With respect to individuals who are housed in any of the
9 units that we have been talking about -- I will break it down
10 if you'd like -- Lancaster, Pomona, Harbor City, South LA, the
11 110 corridor. Do you know the percent of individuals living in
12 those units who have cars?

13 A No, I do not.

14 Q And with respect to South LA, do you know the percent of
15 individuals who are in communities of veterans?

16 A Sorry, can you rephrase that.

17 Q Yeah. Do you know with respect to South LA whether or not
18 there is a community of veterans at or near where Mr. Johnson
19 was living?

20 A I don't. It might help me for you to define "community of
21 veterans."

22 Q Is that a phrase you are familiar with?

23 A I have my own assumption of what you mean. I want to make
24 sure --

25 Q Well, why don't you give me your assumption, please.

1 A Well, I take it to mean a cohort of veterans in the
2 building. A community in the way people reference within a
3 building.

4 Q Well, if you are in a building in a project-based, a
5 cohort could be one floor; is that correct?

6 A Sure.

7 Q Okay. Do you know whether or not there is a community of
8 veterans outside that building, in any of the buildings, in any
9 of the locations that we have been talking about?

10 A Again, veterans are well dispersed throughout Southern
11 California. But I don't know of any particular -- such as a
12 VFW post nearby. That kind of detail, I don't have.

13 Q If Ms. Wright tomorrow said I want to go to West LA and
14 live in one of the permanent supportive housing buildings
15 there -- you heard her express that, right?

16 A I did.

17 Q Very, very eloquently and powerfully, right?

18 A Yes.

19 Q If she said "tomorrow, I want to do that," would there be
20 a place for her?

21 A On campus right now?

22 Q Yes.

23 A The last time -- I think I mentioned this Friday, there
24 were only a handful of vacant units, and I'm guessing some
25 degree of a waitlist for those.

1 Q Okay.

2 A So I don't think there would be a spot for her
3 immediately, but I don't know that for sure. I don't know if
4 she's already on a wait list, for instance.

5 Q All right. I appreciate that. Do you know how long those
6 wait lists are?

7 A I don't.

8 Q Give me a ballpark figure?

9 A I couldn't even give you a ballpark.

10 Q Okay. The process here, if an individual who is in a
11 project-based unit wants to go to West LA, isn't it true that
12 that person first has to become homeless before they can
13 actually go into that unit?

14 A Not necessarily.

15 Q Let's break it down. Possibly, right?

16 A No. My understanding, and this is a level of program
17 policy that I'd probably would have to reference to be
18 100 percent certain of, but my understanding is that in
19 project-based settings, the veteran has to live there for one
20 year, at which point the veteran can move within the Housing
21 Choice program.

22 They do not have to become homeless again before they
23 could live somewhere much.

24 Q But if they wanted to move before that year was up, then
25 they would have to become homeless first; isn't that true?

1 A I don't want to -- I don't want to agree or disagree with
2 that because I'm not 100 percent certain, but if I may, one of
3 the bills I talked about on Friday that I have worked with
4 Congress on, this is one of the amendments that I have
5 advocated for because there are circumstances in HUD-VASH where
6 a veteran would have to become re-homeless before they could
7 enter the program.

8 The amendment in that bill would eliminate that and
9 allow for transfers between subsidies. It's one of the changes
10 I'm hoping Congress will take action on to resolve that
11 problem. Because you're right, there are circumstances where
12 that is the situation.

13 Q So, again with compliments to you for this advocacy, how
14 long have you been advocating that?

15 A Several years.

16 Q So it's what we might call "in the aspirational wind"?

17 A It's past that. It is written into a bill that has been
18 introduced, but it is awaiting further action and likely
19 looking at the next Congress.

20 Q The oversight committees -- you talked about -- I'm sorry.
21 Counsel asked you questions about your appearance in front of
22 the oversight committee?

23 A Yes.

24 Q You have done that on multiple occasions?

25 A Yes.

1 Q The oversight committee, isn't it true, sir, on the board
2 there are no members -- strike that.

3 There are no veterans who are living on the West LA
4 Campus; isn't that true?

5 A That's correct.

6 Q And there are no formerly unhoused veterans on that board;
7 isn't that correct?

8 A That is not correct.

9 Q Who is on there?

10 A Well, since he's made it public, I can share, but Jim
11 Zenner was formerly unhoused.

12 Q Okay. Other than Mr. Zenner?

13 A Jim Zenner, Z-E-N-N-E-R.

14 Q Other than Mr. Zenner?

15 A Yes. There is more than one formerly. I don't recall the
16 name of at least the one other that I'm thinking of.

17 MR. ROSENBAUM: Okay. I don't have any further
18 questions. Thank you very much for your hard work on behalf of
19 veterans in this regards, sir.

20 THE WITNESS: Happy to do it.

21 THE COURT: Counsel, do you have questions?

22 MS. WELLS: May I just have a moment, Your Honor.

23 THE COURT: Sure. Take your time. If you need a
24 recess, I'm happy to grant it.

25 MS. WELLS: I don't think that is necessary.

1 (Pause in the proceedings.)

2 MR. ROSENBAUM: Your Honor, my colleague reminded me
3 of one other question I'd like to ask, if I can.

4 THE COURT: Please.

5 BY MR. ROSENBAUM:

6 Q Thank you. I asked you about moving from a situation of a
7 project-based setting to West LA center.

8 What about from a tenant-based setting? Isn't it true
9 that a person may have to become homeless in order to do that
10 if they want to make that choice?

11 A Yes. The law currently does not allow for a transfer
12 between vouchers like that. And again, we don't like that, and
13 I think it should be changed.

14 MR. ROSENBAUM: Okay. Thank you for permitting
15 that, Your Honor. No further questions.

16 THE COURT: Counsel, do you have questions?

17 MS. WELLS: No questions.

18 THE COURT: Sir, thank you very much. You may step
19 down.

20 THE WITNESS: It's been a pleasure.

21 THE COURT: Counsel.

22 MR. ROSENBAUM: Can I move that into evidence, Your
23 Honor?

24 MS. WELLS: I'm going to object to moving that into
25 evidence, Your Honor.

1 THE COURT: Just a moment. First of all, what did
2 you say?

3 MR. ROSENBAUM: I'm sorry, the Kane memo that I
4 questioned --

5 THE COURT: First of all, that is what I was going
6 to ask you both about, but maybe it's better to ask the
7 witness. Would you sit down.

8 Who is Mr. Kane?

9 MR. ROSENBAUM: What is your question?

10 THE COURT: Who is Mr. Kane?

11 MR. ROSENBAUM: I tried to establish. I didn't do
12 it clearly.

13 THE COURT: All I know is he was instrumental with
14 talking to some secretary -- maybe McDonough, maybe past
15 secretary. I just have a name and a memo. I really don't have
16 an understanding of who this person is.

17 MS. WELLS: Which is why we object to the entry of
18 that. It's hearsay.

19 THE COURT: Let's find out, because I'm going to ask
20 you or Mr. Simms or Mr. Braverman.

21 So if you know, if not, I'll ask Braverman.

22 BY MR. ROSENBAUM:

23 Q Mr. Kane was in Los Angeles, was he not?

24 A Yes, for a time.

25 Q Okay. And he is consulted by individuals who work on

1 dealing with the issue of unhoused veterans in Los Angeles;
2 isn't that true?

3 MS. WELLS: Objection. Lack of foundation.

4 THE COURT: Well, you could ask the question if he's
5 a consultant.

6 THE WITNESS: I think that's fair to say. He's
7 presently involved in plans to develop a peer center on campus,
8 yes.

9 THE COURT: Who is he? A guy on the street corner
10 or what? I have no idea who this gentleman is.

11 THE WITNESS: Happy to answer that question.

12 THE COURT: Yeah, why don't you just tell us. It
13 could save a lot of time or save a lot of time for Braverman
14 and everybody else. Who is he?

15 THE WITNESS: Okay. So, Vince Kane for many years,
16 was the national director of the Center on Homelessness Among
17 Veterans.

18 THE COURT: Okay. Now, just a moment.

19 BY MR. ROSENBAUM:

20 Q And he was a VA employee?

21 THE COURT: Counsel, just a minute.

22 MR. ROSENBAUM: I'm sorry, Your Honor.

23 THE COURT: Was he involved in the *Valentini* case?

24 THE WITNESS: Yes.

25 THE COURT: What function?

1 THE WITNESS: In or around 2015, Secretary Bob
2 McDonald assigned Vince to be his -- I'm going to call him
3 senior advisor on the *Valentini* case.

4 THE COURT: Was he the counterpart to Dr. Sherin?

5 THE WITNESS: Essentially, yes.

6 THE COURT: So these were the two that interchanged
7 with, let's say the Secretary's position or the VA's position
8 and then Dr. Sherin's position?

9 THE WITNESS: Dr. Sherin referenced Vince.

10 THE COURT: Now I understand. Just a minute.

11 Now would one of you please put back up Exhibit 138,
12 page 1. I want to look at the date.

13 All right. Counsel, I finally understand who Mr. Kane
14 is. If you have any further questions.

15 MR. ROSENBAUM: Just one more.

16 BY MR. ROSENBAUM:

17 Q In fact, in looking at Exhibit 138 -- is that in front of
18 you, Dr. Harris?

19 A Yes.

20 Q That is an actually an e-mail from Mr. Kane's private
21 e-mail address to his VA e-mail address; is that right?

22 A It appears to be.

23 MR. ROSENBAUM: No further questions.

24 THE COURT: Counsel, do you have questions?

25 MS. WELLS: I don't have questions. I still object

1 to the admission of this exhibit into evidence.

2 THE COURT: It's received.

3 (Exhibit 138 received into evidence.)

4 THE COURT: Do you have questions?

5 BY MS. WELLS:

6 Q Just a few questions to clarify.

7 The day of this e-mail is March 18th, I believe, of
8 2018; is that right?

9 A It looks like it, yes.

10 Q At that time, you were not employed at the VA -- the West
11 LA Campus of the Veterans Administration; isn't that right?

12 A I was in my prior position as -- in the homeless program
13 office in VA central office.

14 Q And to what extent did you and Mr. Kane overlap at all
15 with respect to the work you were doing on behalf of the VA
16 here and West Los Angeles?

17 A We did overlap some. I mentioned Friday I had a team --
18 Vince asked for some of the people I oversaw to work with him
19 here. And I was pretty closely involved with my team during
20 that time. So we did overlap some, not a lot.

21 Q And in the e-mail, Mr. Kane is referencing the draft
22 master plan. Do you see that right in the first line?

23 A I do.

24 Q Is that the draft master plan from 2016, as far as you
25 know?

1 A That would be my assumption, yes.

2 THE COURT: Now, just a moment. There is an
3 objection concerning lack of foundation and hearsay. And that
4 may be correct.

5 Are you aware of this memo before testifying today?

6 THE WITNESS: Never seen it.

7 THE COURT: Where is Mr. Kane? Is he available?

8 MR. ROSENBAUM: Mr. Kane?

9 THE COURT: Is he in the Los Angeles area?

10 MR. ROSENBAUM: I know that --

11 THE COURT: Just a moment. Does anybody know?

12 Well, let's get him.

13 Technically, counsel, you may be right. Foundation,
14 lack of foundation for this gentleman -- it's a vehicle to get
15 this memo in, quite frankly. It could be hearsay. It could be
16 lack of foundation. It's going to take more time, but if
17 Mr. McKane (sic) is around, or Mr. Kane.

18 MS. WELLS: I don't know anything about Mr. Kane,
19 Your Honor. He's no longer a VA employee.

20 THE COURT: Doesn't matter. He wrote this at the
21 time when he was, and he's e-mailing it, allegedly, to the VA.
22 This can get cleared up very quickly.

23 MS. WELLS: He's e-mailing it from his personal
24 account to his own --

25 THE COURT: Counsel, two choices. I'm asking you to

1 get him here.

2 MS. WELLS: I don't know. We can look into it, Your
3 Honor.

4 THE COURT: Phone number?

5 MR. ROSENBAUM: I think I may have a phone number.

6 THE COURT: In other words, if this is technically
7 hearsay, or if this is not his opinion or it's changed, I think
8 we have a right to know. But if this is something he's writing
9 to himself when he was in the VA, as a memo to himself, then
10 this is his opinion. But you are being used as a vehicle, in a
11 sense, to get this in. I'm not too certain that it's
12 appropriate.

13 Okay. You are ordered to get on the phone and find
14 Mr. Kane. He is going to come to court.

15 MR. ROSENBAUM: Could I propose, Your Honor --

16 THE COURT: You two are going to have a
17 conversation. We are not negotiating.

18 That is an order. Move towards each other and have a
19 conversation.

20 MS. WELLS: Thank you.

21 THE COURT: It looks like we're going to go over to
22 next week. I may also want to see Mr. McKenrick, okay?
23 Mr. McKenrick may be coming to visit me. I think that's his
24 name, down in New Mexico.

25 I don't like you being used as a vehicle in that sense.

1 It looks legitimate. It looks like it was e-mailed to the VA,
2 but I don't want to take a chance.

3 MR. ROSENBAUM: Your Honor, Mr. Knapp informs me
4 that the statement that I reference with Dr. Harris actually
5 appears in the draft master plan.

6 THE COURT: I can't hear.

7 MR. ROSENBAUM: The statement --

8 THE COURT: I have got to have a mic.

9 MR. ROSENBAUM: I'm sorry.

10 THE COURT: Remember, I have got two different
11 agencies. I have got the VA and HUD, and you may not join in
12 your acquiescence. Does that make sense?

13 All I'm asking is if we're going to take the time and
14 he's available, I'm going to get him here.

15 MR. ROSENBAUM: Mr. Knapp informs me, and I very
16 much appreciate this, the statements that I reviewed with
17 Dr. Harris appear in the actual master plan.

18 MR. KNAPP: Correct, and it's actually --

19 THE COURT: Turn on the mic.

20 MR. KNAPP: Can you hear me?

21 THE COURT: Yes, I can now. Thank you. It's like
22 the ad on TV. I can hear you.

23 MR. KNAPP: It's actually at the page that is cited
24 just before the sentence that Mr. Rosenbaum read in this
25 document. It's Section 2, page 11 of the 2016 draft master

1 plan.

2 THE COURT: Then what's the dispute over this
3 document?

4 MR. KNAPP: I think it's specifically about this
5 particular document. I think the draft master plan --

6 THE COURT: It's in the draft master plan? Which I
7 have accepted.

8 MR. ROSENBAUM: Yes. We're good, Your Honor.

9 THE COURT: Well, that entire document was received
10 so you can refer back to it.

11 MR. KNAPP: Okay.

12 THE COURT: Well, that may save getting Mr. Kane
13 here.

14 MS. WELLS: Thank you, Your Honor. I have no
15 further questions.

16 THE COURT: Okay.

17 THE WITNESS: Can I keep this?

18 THE COURT: Absolutely. I think we have got a copy
19 already in evidence as part of the master plan. But if you
20 would like that, keep it.

21 And you will be here the rest of the trial?

22 THE WITNESS: Indeed, I will.

23 THE COURT: Okay. Thank you. I may have some more
24 questions, but I don't think so at the present time. I think
25 Mr. Braverman is returning.

1 Counsel, your next witness, please?

2 MR. ROSENBERG: We're going to call Mr. Simms, but
3 if we could take a short recess?

4 THE COURT: 10 or 15 minutes? Just tell me when
5 he's here. Okay. Thank you very much.

6 MR. ROSENBERG: May we start at 9:30, a little over
7 10 minutes?

8 THE COURT: We're in recess, then.

9 (Recess.)

10 THE COURT: Why don't I come back up on the stand.
11 We're back in session. All counsel are present. The parties
12 are present.

13 Sir, we swore you last week.

14 Do you recall that oath?

15 THE WITNESS: I do.

16 THE COURT: That same oath applies.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Counsel, what would we be on?

19 MS. PETTY: This would be my direct of Mr. Simms.

20 THE COURT: He was called initially by plaintiffs?

21 MS. PETTY: By plaintiffs.

22 THE COURT: But this would be the direct by the
23 defense?

24 MS. PETTY: Correct, Your Honor.

25 THE COURT: Thank you.

1 MS. PETTY: Agbeko Petty for the federal defendants.

2 DIRECT EXAMINATION

3 (Federal defendant's direct examination.)

4 BY MS. PETTY:

5 Q Good morning, Mr. Simms. It's good to see you.

6 A Thank you.

7 Q Plaintiffs' examination occurred a while ago, so I do want
8 to take a step back and reorient the Court to your background.

9 How long have you been with the Department of Veterans
10 Affairs?

11 A A little more than 15 years.

12 Q Why did you choose to work at the VA?

13 A While I myself did not serve, my family has a long history
14 of military service. My grandfather was at Pearl Harbor. My
15 father was in the Navy. Ample cousins and uncles that have
16 served.

17 I wanted to get into public service, and from my
18 perspective, the VA has the most noble service of all of the
19 public service agencies, so I looked for an opportunity to work
20 for the VA.

21 Q And what was your first position at the VA?

22 A I first served as a management analyst, which was
23 essentially someone who looked at the real estate portfolio,
24 where we had assets, whether they were used or not, what
25 condition they were in, things like that.

1 Q And as a management analyst, what office were you within
2 at the VA?

3 A I was within the Office of Asset Enterprise Management.

4 Q And how long you were in this position for?

5 A A little more than a year.

6 Q What was your next role?

7 A I became the service director for the capital asset
8 management service, which was the same service I had worked in
9 as a management analyst. I just became the director of that
10 service.

11 Q And what were your responsibilities?

12 A In general, the same type of stuff as when I was a
13 management analyst, but obviously I had a little bit of a
14 broader responsibility for the full portfolio. Not just owned
15 or leased assets but anything related to real estate, capital
16 planning, and things like that. It was a little bit of an
17 expansion of authority from what I had been doing before.

18 Q How long were you in this position for?

19 A Close to ten years, not quite ten years.

20 Q And after that, what position did you move to next?

21 A I became the deputy executive director for the Office of
22 Asset Enterprise Management.

23 Q How long were you in that position for?

24 A About one year.

25 Q And just circling back to when you were with the capital

1 asset management service, was that also within the Office of
2 Asset Enterprise Management?

3 A Correct, it was.

4 Q And just for the record, today we will be using the
5 acronym OAEM, to refer to the Office of Asset Enterprise
6 Management, correct?

7 A Correct.

8 Q What was your next role after deputy director of OAEM?

9 A I became the executive directory of OAEM.

10 Q How long have you been in this role for?

11 A A little more than four years, about four and a half
12 years.

13 Q Am I correct that all 15 of your years at the VA have been
14 with the Office of Asset Enterprise Management?

15 A That's correct.

16 Q Now, before we go into more detail about your current
17 role, can you briefly tell me your educational history starting
18 with college?

19 A Sure. So I have a bachelor's degree in computer science,
20 from West Virginia University, and then I have a master's of
21 business administration or MBA from Johns Hopkins University in
22 Baltimore, Maryland.

23 Q Can you briefly tell me your professional work history
24 before going to the VA?

25 A In general I was a consultant, so I worked for a couple of

1 different consulting companies, both in the IT consulting, as
2 well as business consulting before joining VA.

3 Q And approximately what year did you join the VA?

4 A 2009.

5 Q I want to now turn your focus to talk about OAEM.

6 Where does OAEM fit within the VA's
7 organizational structure?

8 A Sure. So, OAEM, fits underneath the Chief Financial
9 Officer, or CFO, for the Department of Veterans Affairs. We
10 are part of what I would refer to as the corporate side of VA.
11 We support the entire VA, similar to what general counsel or
12 Office of Information Technology would. We're sort of the
13 department side that is separate and distinct from the actual
14 service delivery that VA does between the health
15 administration, the cemetery administration, and the benefits
16 administration.

17 So they do the actual delivery of service.

18 These corporate entities, like the CFO, are more support
19 roles for the delivery of service.

20 Q And what are your primary responsibilities as executive
21 director of OAEM?

22 A We cover the full life cycle of the real estate portfolio
23 that VA has. So we start from the planning of what it is that
24 we need to invest in, we go through the budgeting cycle that we
25 essentially present in the President's budget each year,

1 through the execution where we do oversight and management of
2 the funds used to build and renovate facilities, all the way
3 through the end of the life cycle where we would be looking to
4 either dispose or reuse of the assets that are no longer needed
5 to support the mission.

6 Q And am I correct that you report to the CFO?

7 A That's correct.

8 Q Are there specific programs within OAEM?

9 A There are.

10 So while we have the broad responsibility of portfolio
11 management, one program that we execute directly is the
12 Enhanced-Use Lease program, so we have more than a policy or
13 oversight role, we actually do the execution of the
14 enhanced-use leases.

15 Most of the other programs are that oversight portfolio
16 level role, not the actual execution of the projects.

17 THE COURT: Just one moment, let me catch up with
18 you.

19 (Pause in proceedings.)

20 THE COURT: Thank you very much, sir.

21 Counsel?

22 BY MS. PETTY:

23 Q And you touched on this briefly during your examination
24 with plaintiff's counsel but can you briefly describe the
25 primary functions and responsibilities of the Capital Asset

1 Policy, Planning and Strategy Service program under OAEM?

2 A Certainly. That's one of the five programs within OAEM.
3 Their focus is on the planning and budgeting side, so if you
4 recall some of the discussion we had was on the Strategic
5 Capital Investment Planning, or SCIP, process. That program
6 manages the SCIP process, and ultimately they create the
7 President's budget request that goes forward each year.

8 Q And can you describe the primary functions and
9 responsibilities of the Energy, Environment and Fleet program
10 under OAEM?

11 A The Energy, Environment and Fleet program oversees the
12 sustainability and resilience of the assets, in particular the
13 policy and the plans that we need to adhere to.

14 That would cover the buildings, the leases, also by the
15 name it would include fleet, so the vehicles that we have and
16 what we would use there. So they have a policy and oversight
17 role to ensure compliance with various laws and executive
18 orders.

19 Q And I want to turn the focus on of our conversation to the
20 Enhanced-Use Lease office.

21 We've spoken a lot about that through the course of this
22 litigation.

23 What are the primary functions and responsibilities of
24 the Enhanced-Use Lease office?

25 A The Enhanced-Use Lease office covers the full spectrum of

1 management of the Enhanced-Use Lease program. So that would
2 include the planning and execution of the leases themselves, it
3 would also include the oversight of those leases for the
4 duration of their life cycle.

5 Q And as executive director you oversee this program,
6 correct?

7 A I do. And there's actually explicit authority that is
8 delegated. So from the Secretary down to the Chief Financial
9 Officer, down to my position, it's called the designated VA
10 representative, or DVR.

11 That role was specifically designated as doing oversight
12 and management of the Enhanced-Use Lease program.

13 Q And we will get a bit more into that shortly.

14 But can you just tell me what the geographic scope of
15 the VA's EUL program is?

16 A While we don't have projects in every state, we do have
17 them across the country. We have projects in the far northeast
18 in Maine, we have projects in the southeast in Florida, all the
19 way out to the west coast, Florida -- not Florida, I'm sorry,
20 Washington, Oregon, California, so we cover the country.

21 We've got over 110 leases that have been executed
22 in the program since 1991 when we first got the authority, most
23 of which are still in operation. We have had some that have
24 run their full life cycle and have now expired, assets returned
25 to VA, but we do the oversight of that across the country.

1 Q And in your opinion, what are the primary benefits of the
2 EUL program for veterans?

3 A So, VA has a lot of medical center campuses in particular
4 where we simply do not need all of the assets on the campus to
5 meet the mission. So those underutilized assets that we have
6 really are costing taxpayers money, they are not providing
7 benefits to anyone.

8 Using the Enhanced-Use Lease program we can
9 leverage those assets to provide value. And what's unique
10 about the Enhanced-Use Lease program is that value is directed
11 at veterans, it's not directed at VA.

12 While we, essentially, get the assets off of our books
13 so we don't have to maintain them, any benefits that are
14 accrued under these leases are directed at veterans, so the
15 veterans have to have a benefit for these.

16 Predominantly the ones we have executed have been
17 various types of housing, supportive housing. That's about two
18 thirds of the portfolio, are supportive housing projects.
19 That's a real and tangible way that VA can use its assets and
20 leverage its assets to support housing development across the
21 country.

22 MS. PETTY: Your Honor, may we approach the witness?

23 THE COURT: I'm sorry?

24 MS. PETTY: May we approach the witness?

25 THE COURT: Approach?

1 MS. PETTY: With a document.

2 THE COURT: You may any time, counsel.

3 MS. PETTY: Thank you.

4 BY MS. PETTY:

5 Q Mr. Simms, we're going to be handing you what has been
6 marked as Exhibit 1072.

7 Mr. Simms, do you recognize this document?

8 A Yes.

9 Q What is it?

10 A This is our handbook and directive 7415, which is the
11 management policy for the Enhanced-Use Lease program.

12 Q I want to ask you some specific questions regarding
13 certain portions of this document.

14 Would you mind turning to page 3, which corresponds in
15 the exhibit numbering as 1072-003.

16 A Okay.

17 Q Do you see Paragraph 2(a) under the section heading
18 Policy?

19 A Yes.

20 Q And do you see the second sentence of Paragraph 2(a) that
21 lists the three stages of an EUL project as formulation,
22 execution, and steady state post transaction?

23 A Yes.

24 Q Now, we'll get into the details of each stage shortly, but
25 for now, can you give a brief overview of these stages?

1 A Sure. So this is the life cycle of an Enhanced-Use Lease.
2 It starts with an idea, and that idea then is built into a
3 concept of what assets we have and what it could be used for.
4 That is the formulation piece.

5 That then runs through the point at which we're
6 actually ready to execute a lease. The execution phase starts
7 when we execute that lease, but there's almost always
8 construction or renovation work that needs to be done. That
9 occurs during the execution phase as well.

10 Ultimately, the assets is ready for use for whatever its
11 purpose may be, housing or other. At that point it becomes
12 steady state and it goes into an operational phase for the
13 duration of the lease.

14 Q I want to focus on the formulation stage.

15 Do you see Section 2(b) titled Formulation on that same
16 page we were just talking about?

17 A Yes.

18 Q And starting with Preliminary Project Review under
19 Section 2(b)(1).

20 Do you see that?

21 A I do.

22 Q Can you talk about the main factors considered during the
23 preliminary project review stage?

24 A Yes. So the main characteristics here are what assets are
25 available.

1 So do we have buildings, do we have lands, or a
2 combination of both that we no longer have a need for, so
3 they're underutilized assets.

4 Once we have identified that we have those assets, the
5 next important piece is what could it be used for.

6 In general, we start with housing and we do that very
7 quickly by just looking at the demand for housing in that
8 market to see whether there is a match of assets with housing
9 demand. If there is not housing demand, then we would look at
10 other potential uses for that besides housing.

11 But it's really try to match up the assets and what we
12 have with potential uses at the preliminary review.

13 Q And if you turn the page to 1072-004. Do you see
14 Section 2(b)(3) titled Concept Paper?

15 A I do.

16 Q Can you tell me a little bit about what this entails
17 during the formulation stage of an EUL project?

18 A So this is the first time we actually write down the
19 concept. So we may have identified assets or identified
20 opportunities, the concept paper actually puts it down in paper
21 and would explicitly say in this location these assets, we
22 would propose to reuse for this type of Enhanced-Use Lease. It
23 would then include the support or justification for why that
24 type of lease makes sense to do, as well as talk about the
25 stakeholders that are involved.

1 Particularly for housing projects, you know, we've got a
2 lot of stakeholders in the local housing markets and HUD on the
3 HUD-VASH program that we need to make sure we're in alignment
4 with, so this would explain what type of coordination had been
5 done with those entities. The concept paper then can be
6 blessed inside of VA as we can move forward with this and
7 actually try to do a project.

8 Q On that same page, do you see 2(b)(4) entitled Public
9 Hearing?

10 A Yes.

11 Q Can you tell us what the role of a public hearing is
12 during the formulation stage?

13 A So the public hearing is where we would present the
14 concept that we have before it has gone out for any type of
15 formal solicitation to gather public input.

16 It's required by statute, that we have a public hearing
17 under the Enhanced-Use Lease Statute, but it's really there for
18 us to take input.

19 If there's concerns, if there's ideas, if there's people
20 that want to be heard on this topic, a public hearing is a
21 great way to seek that input for these before we get down the
22 road to actually executing the project.

23 Q Do you see the next item listed under 2(b)(5) under Offer
24 or Solicitation and Selection?

25 A I do.

1 Q Can you describe what this process entails?

2 A So this is where we go out with an actual request for
3 quote or request for proposal.

4 This would put our requirements and what our ideas for
5 the project are. It would be put out on something like
6 sam.gov, which is the government's way of soliciting for
7 proposals.

8 And we would be looking for industry to come back and
9 provide us proposals on how they would develop the project that
10 we're requesting.

11 Once we get proposals, we would go through a selection
12 process. We would preview the proposals, we would rate and
13 score the proposals, and ultimately make a selection of which
14 developer we would like to move forward with to actually do the
15 project in the future.

16 Q What type of criteria does VA typically look at during the
17 selection process?

18 A So the criteria can change from project to project, but
19 there's generally three criteria that we look at.

20 The first one is their actual proposal. So what are
21 they proposing to do with the assets. If it's housing, you
22 know, how many units, how would they approach the development,
23 what services they would have, things like that.

24 The second one is their past experience. So what have
25 they done of this type of project in the past.

1 And then, third, is financial wherewithal. Do they
2 actually have the experience and the capital to do something
3 like this project that we're going forward.

4 That's the general three. There could be others that
5 are added or there could be variations, but we almost always
6 have those three criteria.

7 Q And with respect to those three that you just mentioned,
8 why does VA see those as important?

9 A Each for a slightly different reason.

10 I think the actual proposal is pretty common. We want
11 to know what they are proposing to do with the assets to make
12 sure it's in alignment with what we're hoping to get done.

13 The past experience has proven to be a very good
14 indicator of whether they're capable of doing that type of
15 project.

16 In particular, housing projects through the EUL program
17 are unique, not everyone has done them, and even affordable
18 housing to a certain extent is unique, not everyone has done
19 them. Having an offer that has experience in that area reduces
20 the risk to the Government that they wouldn't be able to
21 deliver on it.

22 Financial wherewithal, in the same vein, if it's
23 housing, the types of financing that they can bring to the
24 table or that they plan to tap into, is extremely important.

25 So having someone that understands what that financing

1 commitment is, in particular if they've done it before, those
2 combinations really do reduce the risk of the Government
3 compared to someone who's submitting a proposal who has never
4 done that type of work or doesn't understand the financing.

5 Q And when you are talking about risk, what type of risk are
6 you envisioning here?

7 A We have -- there's been proposals where we have selected
8 developers who ultimately could not complete the project. They
9 were either able not to get the financing in line or even get
10 to the point of seeking financing, they just didn't have the
11 wherewithal to actually do it.

12 So we spent a lot of time going through the proposals,
13 selecting a developer only for them not to be able to complete
14 the project. It's a lot of wasted time and effort, so that's a
15 big risk.

16 We've also had projects where we did get the housing
17 developed or other things developed that ultimately they didn't
18 have the financial longevity to see it through the life cycle.
19 And these are very long leases, some could be up to 99 years,
20 having financial wherewithal is really important for them to be
21 able to sustain that operation for a long period of time.

22 Q And we will get more into the details of the financing a
23 bit later, but when you say "financial longevity to see it
24 through the life cycle," what are the risks of not having that
25 financial longevity?

1 A The risk is project failure. So, ultimately, while we can
2 talk financing later, there's a very different set of financial
3 requirements once the building is built and in operation.

4 You are not talking about rental subsidies and ensuring
5 that you keep the building as full as possible so that you are
6 making cash flow available to support the operation.

7 What we have seen in a lot of cases is companies are
8 very good at building the building and getting it in operation,
9 but six or seven years down the road the vacancy rate or the
10 open units start to creep up. When that happens their cash
11 flow goes down and they stop doing things like maintenance on
12 the building because they don't have the cash flow to do it.

13 So there's a very real risk over the long period. If
14 they don't know how to ensure that cash flow or they don't know
15 how to manage the financing properly, the project fails. And
16 once they start losing tenants and people start moving out,
17 they can't make their mortgage payment and it goes into a big
18 mess of financial default.

19 Q And just so we're clear, when you say "financial default,"
20 essentially the building is no longer in operation, correct?

21 A It could be that it's no longer in operation or it could
22 be that we have to bring in a new partner to operate that
23 building, which would at least be a break in service there that
24 we would have to manage.

25 Q And that's a break in service that is provided to

1 veterans, correct?

2 A Correct.

3 Q Now turning back to Exhibit 1072. On the same page we
4 were just looking at do you see Section 2(b)(6) entitled
5 Environmental and Historic Preservation Compliance?

6 A Yes.

7 Q Can you explain the significance of this section?

8 A So the Enhanced-Use Lease statute explicitly requires that
9 Enhanced-Use Leases adhere to all federal, state, local codes,
10 jurisdictions, laws.

11 The federal level, environmental and historic are the
12 two largest overarching statutes we have to adhere to.

13 When we talk about environmental it's more than just
14 sort of hazardous materials environmental, it's impact to the
15 environment and we're required to assess, for any of these
16 Enhanced-Use Leases what the impact could be and how we
17 mitigate that impact.

18 Very similar on the -- what would be the historic
19 preservation requirement. If the project involves either
20 historic buildings or historic land, we have to look at the
21 impact that the project is going to have. And, specifically
22 there, we have to consult with third parties on what that
23 impact would be and how we could potentially mitigate the
24 impact of the project on any historical or cultural resource.

25 Q I want to break down those two answers.

1 So with respect to the answer you gave about
2 environmental compliance, are you referring to the National
3 Environmental Policy Act when you are talking about
4 environmental compliance and testing?

5 A Correct.

6 Q And when you are talking about historical preservation,
7 are you referring to the National Historic Preservation Act?

8 A Correct.

9 Q You also spoke about compliance when you were talking
10 about historic preservation.

11 In Section 2(b)(6) you will see a reference to NHPA
12 Section 106, Compliance. Is that what you are referring to
13 when you were talking about soliciting third parties?

14 A Correct. Section 106 is what they refer to as the
15 "consultation requirement," that we're required to consult with
16 certain third parties before we undertake any of these
17 projects.

18 Q And what type of evidence is typically needed to show
19 compliance with Section 106?

20 A At the end of a consultation, you normally would have
21 either a Memorandum of Agreement, an MOA, or a Programmatic
22 Agreement, a PA, that would outline the agreement of the
23 consulting parties on what the project will do and what
24 mitigations will be put in place to help offset any impacts.

25 Q And we will talk a bit more about these two topics

1 shortly.

2 But if you turn to page 1072-005, which is the next
3 page.

4 Do you see Item 8 that lists EUL Documents and EUL
5 Sign-In?

6 A Yes.

7 Q What are the key components of a EUL document?

8 A The Enhanced-Use Lease itself is normally the primary
9 document. That lease would then be accompanied by various
10 exhibits that would outline requirements for operation, for
11 tenant selection if it's housing, financing, development,
12 design, could also have commitment agreements if VA is
13 providing any funding, as well as any type of mitigations
14 required under the historic preservation. So all of those
15 would be exhibits to the lease.

16 The lease in general is a fairly standard real property
17 lease that is going to talk about the actual parcels, it's
18 going to define the parcel, the use, and then requirements for
19 who is responsible for the asset during the life of the lease.

20 Q And who is typically involved at this stage of the
21 process?

22 A So we've selected a developer, so whoever that selected
23 developer is generally working directly with VA to finalize
24 these documents.

25 The finalization of the documents, though, on the VA

1 side we certainly are working with our counsel. The developer
2 is also working with their counsel. And at the time we are
3 ready to execute these, in general there is financing lined up
4 for them.

5 In almost every case financial entities will have their
6 own legal counsel and their own engagement in this process. So
7 multiple stakeholders involved in getting these leases and
8 exhibits to final form.

9 Q And with respect to the exhibits, you mentioned
10 development plans, operation plans, tenant selection plans,
11 financing plans, and design plans.

12 What are the significance of these exhibits?

13 A So the exhibits are called out, but have the same force
14 and effect as the lease in and of itself.

15 Those are VA's expectations of how the project is going
16 to progress. How they're going to build it, how they're going
17 to operate it, and the various components within there.

18 So this outlines the expectations. We certainly don't
19 want to micromanage to the every single activity level, but VA
20 has requirements that we need to ensure are reflected and that
21 the lessee is going to be held to. The exhibits are the way to
22 do that.

23 Q And on this same page, do you see Item 9 that is listed as
24 Congressional Notification?

25 A Yes.

1 Q Can you describe the congressional notification process?

2 A Congressional notification is a statutory requirement
3 under the EUL statute that we send a notification to our
4 congressional committees 45 days prior to entering into any
5 Enhanced-Use Lease.

6 The form of that is basically a project summary. It
7 explains what we intend to do, it talks about the benefits to
8 the Government, the benefits to the veterans, and outlines some
9 of the basic project parameters, such as which assets are going
10 to be there, how long the lease will be for, things like that.

11 That is then transmitted to Congress. It's also
12 published in the Federal Register at the same time if there's
13 any public comments that would want to come in for that lease.

14 Q And what is the purpose of notifying Congress?

15 A Congress has an oversight role in everything we do.

16 This is one of the ways that they have requested to be
17 kept in the loop for the statutes that so they're made aware
18 before we actually execute anything.

19 In theory, Congress could object to it. They have never
20 done so on any of the leases we have sent forward, but it would
21 give them an ability to at least ask questions and exercise
22 their oversight responsibilities.

23 Q And this section also identifies the Senate and House
24 Congressional Committees on Veteran Affairs?

25 THE COURT: I'm sorry, I missed something.

1 Did you say that Congress has never objected to
2 any of the leases that you have set forth thus far?

3 THE WITNESS: That's correct, sir.

4 THE COURT: My apologies. Thank you. And that
5 includes, obviously, enhanced leases.

6 THE WITNESS: Correct.

7 THE COURT: And you also have what I'm going to call
8 whatever normal leases are?

9 THE WITNESS: Regular real estate leases. That's
10 correct.

11 THE COURT: That's 100 percent record, then.
12 Congratulations.

13 BY MS. PETTY:

14 Q So, Mr. Simms, this section also identifies the Senate and
15 House congressional committees on veteran affairs and budget
16 appropriations.

17 Does VA also engage with individual member offices?

18 A We can, and there certainly is interest if that lease is
19 going to be in a particular congressional jurisdiction. So we
20 can and we certainly have. It's not something that we notify
21 them through this process. There is normally already
22 engagement with them.

23 And I say that because if we go back to that concept,
24 paper stage where we're talking about how we have done
25 stakeholder engagement, a lot of that stakeholder engagement is

1 local, and we're already working within that jurisdiction so
2 the congressional offices are already part of that discussion.

3 But we certainly can and have worked with individual
4 offices.

5 Q Now, before we move to the execution stage, is there
6 anything else that you would like to add with respect to the
7 formulation stage?

8 A Only that this is not a quick process.

9 In general, we can come up with ideas and get them
10 through this process as quick as possible, but it is not
11 something that just because of the requirements we have for
12 compliance planning, that we have for notification, that we
13 have for solicitation and selection, those things just take
14 time to do.

15 I, myself, as the overseer of the program have often
16 said why can't we do this quicker, and we certainly strive to
17 do that, but this does take time because each of these steps
18 are ultimately sequential.

19 I can't execute a lease until I have solicited for it.
20 So we do have to work in a very clean manner, but it can take
21 some time.

22 Q So I would now like to turn your attention to Section 2C,
23 this is at the bottom of page 1072-005.

24 Do you see the section on that page entitled
25 Pre-construction?

1 A Yes.

2 Q Can you tell us a bit about the pre-construction phase?

3 A Pre-construction is all about coordination.

4 So we have executed an enhanced use lease at this point,
5 we're ready to start building or renovating, but the individual
6 campus where this is going to take place, there is a lot of
7 coordination that we need to do from my office to their office,
8 and with the contractor that is actually going to be doing the
9 work.

10 So we're trying to ensure that we have got the right
11 points of contact. We understand who and when things are going
12 to occur. And then how the oversight of the construction is
13 actually going to happen.

14 And that is with the local site, wherever the project is
15 taking place, as well as one level up which is the VISN level
16 or the Veteran Integrated Service Network level just to make
17 sure everybody is on the same page of what the plans are for
18 construction.

19 Q Now, Section 2C-1A, mentions a local site monitor.

20 Can you explain the role of a local site monitor during
21 this phase of the project.

22 A Local site monitor is a designated role so there is
23 someone that is actually formally designated as the site
24 monitor. It is someone that works at the medical center level
25 that understands how, operationally, the medical center works.

1 But also, from an engineering standpoint, how the
2 infrastructure and the buildings work.

3 So that designation there is really a key point of
4 contact where, you know, myself and a lot of my support staff
5 in Washington, D.C. do not have the knowledge of the local
6 site, nor do we know the operational tempo of the site. So we
7 assign a local site monitor as that eyes and ears on the ground
8 that can help us make sure that the local site isn't negatively
9 impacted.

10 Q And in Section 2C-1B, it notes that your office is
11 responsible for coordinating all pre-construction activities
12 with the lessee and the local VA facility.

13 Can you talk a bit about this.

14 A Sure. This is again where they have that coordination
15 role. We have to make sure everyone is on the same page in
16 terms of construction, how it's going to happen, when it's
17 going to happen.

18 While the local site and the lessee will work together,
19 they may not have any experience at this point. Where my
20 office has gone through, we understand who the proposer is, who
21 is going to be doing construction. We're trying to make sure
22 we're passing that information along to the VA facility so that
23 they understand what is going to happen, and how we can work
24 with them better.

25 As we talk about some of these, it's quite possible that

1 these projects are at the back third of a campus and really
2 won't touch their operations at all.

3 It could also be the opposite and there could be
4 construction going on right in the middle of the medical
5 district of that campus that has a lot more potential for
6 negative impact.

7 So that coordination role that my office plays with a
8 local site is really important to make sure that doesn't
9 happen.

10 Q And if you turn the page to 1072-006, do you see the
11 section entitled Construction? And this is under Section 2C-2.

12 A Yes.

13 Q Can you describe the construction phase.

14 A This is the actual building of the building, or renovation
15 of the existing building if that's what we're doing there.

16 So this would be the actual construction work going on.

17 The role of the LSM really comes into play here and to
18 help make sure that the construction isn't impacting the
19 medical center. It's also a lot of paperwork. I would say
20 there is a lot of requirements for things like permits, for
21 certificates of occupancy, things like that that my office
22 helps coordinate on that.

23 And then there is the general status tracking. You
24 know, as they are building the building, our design and
25 development plans lay out an expectation of how long it's going

1 to take them to complete that project. But we have to do
2 constant oversight monitoring to make sure they are on track
3 and there aren't issues that are going to slow them down.

4 Q And you mentioned that your office helps with the
5 coordination of getting permits and certificates of occupancy.

6 Am I correct that it's not the responsibility of your
7 office or VA to actually get the permits?

8 A Correct. So VA is not the issuing agency.

9 Anywhere in the country, there will be a local
10 jurisdiction, be it city or county, that does the approval of
11 the designs, and ultimately are the ones that would issue
12 certificates of occupancy. VA does not directly do that.

13 Q And in the second sentence, it discusses the role of the
14 local VA facility.

15 Can you talk briefly about this.

16 A So while we designate a construction LSM, that is one
17 person. If the project is big enough, or even if it's smaller,
18 chances are that one person is not going to be able to do all
19 of the interaction that is necessary.

20 So we are looking to the local facility to support that
21 person, provide them with additional staff or resources if
22 needed to help support the construction phase.

23 Q And the last sentence of this paragraph mentions OAEM's
24 responsibility. Can you talk a bit more about this?

25 A So this is where we're kind of playing both the forcing

1 function but also the receiver, so we work with the LSM if they
2 have any issues or concerns. They are the ones on-site. They
3 are the ones seeing the progress of construction. If they have
4 issues, they can reach out to us and we will help resolve them
5 with the lessee.

6 On the flip side, we're doing that oversight of the
7 lessee. So, are they on track? They have got their
8 construction plans. They have got milestones schedules. We're
9 monitoring to make sure they are staying on track, and if there
10 is issues, that they are raising those issues up so they can be
11 resolved.

12 So it's that both combination of receiving but also a
13 forcing factor manage the lessee.

14 Q Now, do you see the last -- the next section entitled Use
15 of VA Funds?

16 A Yes.

17 Q Can you explain the purpose of this section?

18 A Under the Enhanced-Use Lease statute that is cited here,
19 we are allowed to contribute minor construction funds as part
20 of an Enhanced-Use Lease.

21 It's referred to as a capital contribution.

22 So that contribution, it's not necessarily limited to
23 what it can be used for. It can just be something that VA
24 commits to provide as part of an Enhanced-Use Lease.

25 It has to adhere to the requirements for minor

1 construction. So minor construction is one of our
2 appropriations, and the EUL statute explicitly calls for the
3 use of minor construction funds. So as long as we could do it
4 with minor construction funds, it can be used to contribute to
5 an Enhanced-Use Lease.

6 Q And we will get a bit more into the details of that later,
7 but thank you for that explanation.

8 Before we move on to the steady state stage, is there
9 anything else you want to highlight with respect to the
10 execution phase?

11 A I don't think so.

12 Q Can you turn your attention to the bottom of 1072-006, and
13 do you see Section 2D entitled Steady State (Post-Transaction/
14 Operational)?

15 A Yes.

16 Q What does it mean for an EUL project to be in the steady
17 state or post-transactional/operational phase?

18 A So, once construction is completed and they have their
19 certificates of occupancy, the building is officially opened
20 and can be used.

21 At that point in time, it's considered to be in steady
22 state, operational, post-transactional -- those are three
23 different terms that really all mean the same thing. It's open
24 and available for use.

25 THE COURT: I'm sorry, I lost the page that you were

1 on and I apologize. I want to catch up with you. You are at
2 1072 --

3 MS. PETTY: -006.

4 THE COURT: -006. Are you at D?

5 MS. PETTY: Correct, Your Honor.

6 THE COURT: And just a moment. Let me catch up with
7 you.

8 The certificate of occupancy is mentioned in
9 subparagraph 2 on page 6 which is your 1072-006.

10 I don't see that certificate of occupancy set forth in
11 the post-transactional/operational. Help me.

12 THE WITNESS: It would be the transition point.

13 THE COURT: So, it's not specifically mentioned. I
14 look to what paragraph?

15 THE WITNESS: So in the construction paragraph that
16 you were just citing.

17 THE COURT: I have seen that. I have already
18 referenced 2, and in fact, you will see I -- look up, I put
19 yellow around it.

20 Now we're on D, and this is where I have lost your
21 testimony.

22 THE WITNESS: Okay.

23 THE COURT: I don't understand. I need your help.
24 Show me in the certificate of occupancy that you are referring
25 to in D, what I would look at in terms of verbiage.

1 THE WITNESS: Okay.

2 THE COURT: Right here. Completion?

3 THE WITNESS: Acceptance.

4 THE COURT: So, acceptance and completion, I refer
5 back to certificate of occupancy, obviously, being one of
6 those.

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Thank you very much. I
9 appreciate it.

10 BY MS. PETTY:

11 Q Mr. Simms, what is OAEM's role during the steady state
12 phase of an EUL project?

13 A So, broadly, we're doing monitoring to ensure that the
14 lessee is in compliance with terms of the lease.

15 Q And what does that monitoring look like?

16 A So there are different requirements within the lease.
17 Some are more administrative in nature.

18 For example, the lessee is required to have insurance on
19 the lease so part of our role is to collect that insurance
20 documentation to ensure they have the proper insurance through
21 the life of the lease.

22 There is also more operational oversight that we do. In
23 particular for housing projects, it would be around the tenant
24 selection and the operations plan of how they are actually
25 operating the facility.

1 We would be working to make sure they are adhering to
2 those requirements from the lease and/or exhibit.

3 Q So before we move on to discuss the default process, is
4 there anything else that you want to bring up with respect to
5 the steady state stage of an EUL project?

6 A The fact that this is by far the longest. We do have
7 leases that have been relatively short, for example, 35-year
8 leases. The vast majority of these enhanced-used lease are
9 75 years up to 99 years. That's a very long period of time.

10 So thinking about that stage early in the process is
11 really important if you want to actually survive through the
12 full term of that lease.

13 You have to give consideration to the operational stage,
14 not just the planning and construction upfront. You have
15 really got to take your time, because this is by far the
16 longest period of time, which means there is the highest risk,
17 the highest opportunity for failure during steady state.

18 Q And earlier you mentioned the importance of financial
19 longevity. Is this where the importance of that would come
20 into play?

21 A This is exactly where that would come into play.

22 Q So I now want to look at page 1072-007.

23 In particular I want to look at Section 2E which is
24 entitled Default Process.

25 Can you describe the default process generally?

1 A So a default, in general, is when the lessee has not
2 complied with a term or requirement under the lease, and VA
3 would proceed to issue them a notice of default that, hey, you
4 are not in compliance with the lease, you either need to get in
5 compliance or we would proceed to either terminate or look to
6 do something else with the lease.

7 Q And again, financial longevity comes into play with
8 respect to default, correct?

9 A It does, absolutely.

10 Q From your perspective what are the benefits of VA being
11 able to outsource housing development in the way that EULs
12 allow for?

13 A So I think the biggest one is VA is good at many things.
14 Construction in general isn't necessarily one of them, and
15 housing is definitely not one of them.

16 VA has no experience in building housing, and we
17 certainly don't have experience in building communities that
18 we're looking at for the West LA Campus here. Asking us to do
19 something that we don't have the experience in and that we're
20 not very adapt at doing isn't going to have the best outcome.

21 And we have seen that in a lot of different locations.
22 We have some very successful housing projects -- none to the
23 scope of what we're proposing to do here, but in all of those
24 cases, in every state, there is always something unique. There
25 is something that is a quirk.

1 VA would have no way of understanding what those are.
2 We have our medical centers, our larger construction
3 projects. We understand those. We have got requirements for
4 those.

5 But you get outside of that, and we're just not the
6 right entity to do that type of work.

7 Q So, Mr. Simms, before we move on to talk specifically
8 about the West LA Campus, is there anything that you want to
9 mention with respect to these three phases that we have gone
10 over?

11 A No. I don't think so.

12 Q So, Mr. Simms, you are familiar with the VA's development
13 plan for permanent supportive housing on the West LA Campus,
14 correct?

15 A Correct.

16 Q We're going to be handing you what has been marked as
17 Exhibit 154.

18 And specifically, can you turn to page 19 of
19 Exhibit 154?

20 THE COURT: Using the exhibit number pages?

21 MS. PETTY: Yeah, this will be using the exhibit
22 number pages. But for those that only have the copy with the
23 document pages, it will be 15.

24 THE COURT: They should also put that on the screen
25 so you can see it, okay?

1 THE WITNESS: Got it.

2 THE COURT: I will coordinate each time to make sure
3 we have the right page.

4 BY MS. PETTY:

5 Q Mr. Simms, are you familiar with the information on this
6 page?

7 A Yes.

8 Q I want to look in particular at the first sentence of
9 Paragraph 2 under the section Legislative Overlay.

10 Now, that sentence states the following:

11 "Section 224 of public law 110-161 (enacted in
12 December 2007) prohibits VA from taking any action to exchange,
13 trade, auction, transfer, or otherwise dispose of or reduce the
14 acreage of the 3,888-acre GLA campus."

15 Did I read that correctly?

16 A Yes.

17 Q Can you explain the impact of this prohibition as it
18 relates to the start of the phasing timeline that is described
19 on this page?

20 A So, at the time that this chart was being put together for
21 the draft master plan, the public law referenced here actually
22 prohibited VA from entering into enhanced-use leases for the
23 delivery of housing.

24 We had the Enhanced-Use Lease authority more broadly.
25 This public law was specific that prevented us from doing it on

1 West LA's Campus. So when we were putting this overlay
2 together on this timeline, we actually didn't have authority to
3 deliver any of that.

4 Q So is it correct that the phasing timeline would not begin
5 until legislation was passed that gave VA authority to engage
6 in the activity that was prohibited?

7 A That is correct. And there was a specific House and
8 Senate bill that had been introduced that is the reference in
9 the chart below as the starting point.

10 Q And do you see the third paragraph on this same page that
11 states: "A key authority that will be pertinent to the VA
12 providing the supportive housing on the campus will be VA's
13 Enhanced-Use Lease authority contained at 38 U.S.C. 8161-8169."

14 I did read that correctly?

15 A Yes.

16 Q And you have spoken a little bit about this, but why is
17 the VA's EUL program identified as a key authority for the
18 implementation of permanent supportive housing?

19 A The authority that is cited here was already in use across
20 the rest of the portfolio to deliver permanent supportive
21 housing, various types of housing including permanent
22 supportive housing. So it was envisioned in the draft of
23 legislation that we just talked about that the Enhanced-Use
24 Lease authority would continue to be the vehicle that we would
25 deliver that at West LA.

1 Q Are you familiar with the legislative step that was taken
2 for VA to be able to move forward with the phasing timeline for
3 permanent supportive housing on the West LA campus?

4 A Yes.

5 Q Do you know the name of the statute?

6 A The West Los Angeles Leasing Act of 2016.

7 Q And what impact did the West Los Angeles Leasing Act of
8 2016 have on the VA's ability to provide permanent supportive
9 housing?

10 A The leasing act explicitly provided VA authority to enter
11 into Enhanced-Use Leases for that permanent supportive housing
12 on campus.

13 Q I now want to look at the bottom of page 19 of
14 Exhibit 154.

15 Do you see the image labeled as "potential phasing
16 timeline"?

17 A I do.

18 Q And you are familiar with this timeline, correct?

19 A I am.

20 Q Can you explain the purpose of this timeline?

21 A The purpose of this timeline was to lay out a phasing or a
22 phased approach to deliver housing on campus, with there being
23 an initial phase midterm and future development that was spread
24 out across the ten-year horizon.

25 So the intent was to lay out an approach to deliver

1 housing in phases -- not all at one time -- and to put into
2 context some potential timelines on when certain amounts of
3 housing could be brought onto the campus.

4 Q And why was it important to do a phase development
5 approach as opposed to doing it all at once?

6 A Lots of different reasons.

7 Financing, which we have kind of talked about, is a
8 scarce resource. It's a limited resource. It wouldn't be
9 necessarily advisable to plan everything all at once when
10 financing is a scarce resource that likely wouldn't be
11 available to support all of it.

12 Logistically, the amount of work that is required to
13 deliver the 1,200 housing units that are referenced here would
14 essentially make the operations of the medical center -- it
15 wouldn't function. There would be so much work going on that
16 it wouldn't be possible to continue without impacting the
17 medical center's operations. And as acknowledged here, and I
18 think importantly, there is dependencies on a lot of these
19 things. Some of the parcels that are envisioned for later
20 phases on this chart actually had VA operations in them at the
21 time.

22 That would mean VA has to do something in order to
23 enable that to be available for redevelopment.

24 So, there are a number of things that are important out
25 there, but ideally a big bang approach here wasn't feasible for

1 us to be able to deliver.

2 Q And why is it important not to impact the function of the
3 medical center?

4 A That is VA core mission at the West LA Campus, aside from
5 the cemetery across the road there. It's the healthcare
6 delivery function that is the main mission for VA at that
7 campus.

8 Q And this is labeled as a potential timeline because of
9 various dependencies that make it so this timeline cannot be
10 set in stone, correct?

11 A For one reason, yes. I think the other broad reason is
12 touched upon on the footnote there. We had not completed any
13 significant due diligence.

14 At the time that this was put together, there was no
15 historical preservation engagement. We had done nothing about
16 NEPA at the time. And frankly, just situationally, you know,
17 some of these buildings were hypothetical. We hadn't looked at
18 could they actually be converted to permanent supportive
19 housing.

20 So it was done with the idea of we have to have a plan,
21 we have got to have a target, we have to have an approach. The
22 phased approach was the right thing to do, but we did it
23 without the necessary information to actually say it's
24 realistic.

25 Q And I want to focus in on the font below the phasing

1 timeline, and you were just talking about some of these items,
2 but I want to break it down.

3 Why was future due diligence needed to address utility
4 infrastructure issues?

5 A The functions that were -- well, hypothetically let me
6 start by saying all of these buildings proposed were on the
7 North Campus for West LA. But realistically, we had not done
8 an assessment of the utility infrastructure on the North Campus
9 and that is a critical dependency when it comes to housing.

10 The volume of things like sewage, water, electric -- the
11 capacity and the condition of those systems, is critical.

12 We certainly didn't have a plan for delivering
13 1,200 units of housing on the campus had when those utility
14 systems were put in play, so assessing what we need to do was
15 really important to be able to deliver that housing.

16 Q And we will certainly get into the details of the
17 infrastructure on campus, but can you approximate just the age
18 of the infrastructure at this point in time?

19 A Most of the infrastructure was over 30, some approaching
20 60 years old.

21 Q And this paragraph below the potential phasing timeline
22 also mentions the need for environmental and historic
23 preservation analysis.

24 Why was this important?

25 A So I will start with the environmental piece. So part of

1 compliance with NEPA that we talked about is actually looking
2 at different ways of achieving the goal that you set out.

3 So that would allow you to potentially look at different
4 parcels for different housing units and things like that.

5 But the idea behind it is you are minimizing the
6 environmental impact of what you are proposing to do.

7 So the NEPA analysis and looking at different
8 alternatives was critical for us to then settle on here is the
9 path that makes the most sense for us to achieve housing, yet
10 mitigate the impacts to the environment.

11 Q And with respect to the historic preservation piece?

12 A So, and we will talk about this, I'm sure, but the entire
13 West LA Campus is a historic district which has some very
14 unique requirements and considerations for it.

15 We had not contemplated that, but we knew it would be a
16 significant impact and to what and how we would proceed with
17 actually delivering the housing.

18 Q And in that same paragraph, it mentions timing issues
19 regarding the selected housing developers to obtain non-VA
20 monetary capital needs from various housing-related funding
21 sources.

22 It lists the examples of equity construction and
23 conventional loans, tax credits, grants, operational subsidies
24 like HUD-VASH vouchers, then it also mentions local zoning, and
25 permit processes.

1 You have touched on some of these, but can you just
2 briefly describe what this sentence in the paragraph means?

3 A So the first part of it, the timing of selecting
4 developers, really came down to again the idea that we did not
5 have legislative authority at the time that this was put in
6 place.

7 So not only did we need the authority, we needed to
8 figure out what the authority allowed us to do, and then go
9 seek developers under whatever that authority would be.

10 The timing of that was unknown, so that is a risk.

11 The non-monetary capital needs is broadly financing, so
12 how would all of this housing actually get financed? Again, VA
13 is not the expert in that type of financing deal, so getting
14 developers on board, getting the right expertise in place to
15 figure out financing was a risk at the time.

16 And then the last piece, the local zoning and permit
17 processes, I think it was contemplated that EUL would be the
18 method which would then kick in that local jurisdiction's
19 requirements for permitting, oversight, design reviews, and
20 things like that.

21 We had certainly had engagement within city and county,
22 but not specifically what their role in permitting and how they
23 would manage that.

24 Q Had a project of this magnitude been completed before by
25 VA?

1 A Not by VA, no.

2 Q So, Mr. Simms, I now want to turn to discussing the campus
3 and the historic nature of it.

4 Do you deal with properties that are identified as
5 historic districts in your role as executive director of OAEM?

6 A I do.

7 Q What is a historic district?

8 A A historic district is essentially a boundary or an
9 outline on a map that has within it characteristics that are a
10 combination of individual buildings, could be roads, could be
11 structures, could be trees, could be views, all of that
12 collectively builds into a district. So it's not one
13 individual asset or one individual thing, it's collectively a
14 historic district because of all of those factors.

15 And the historic piece is because there is
16 significance there, that the history of it means that there is
17 something of significance that it is worth looking and
18 preserving.

19 Q And so with respect to a location, if it's identified as a
20 historic district, that generally signifies that it needs to be
21 preserved; is that correct?

22 A So the intent of the historic preservation requirements
23 are preservation. Wherever there is a historic resource or
24 cultural resource that is identified, the goal is to preserve
25 that for current and future generations.

1 Q When you are talking about "historic preservation
2 requirements," are you referring to the requirements in the
3 National Historic Preservation Act?

4 A The requirements are there, the regulations are then
5 perpetrated by the ACHP, the Advisory Council For Historic
6 Preservation, is who actually writes the regs that go along
7 with the statute.

8 Q We will certainly get into that a bit more later.

9 So we're going to be handing you what has been marked as
10 Exhibit 1.

11 MS. PETTY: And just quickly, Your Honor, we would
12 move to admit Exhibit 1072 in evidence.

13 THE COURT: Received.

14 (Exhibit 1072 received into evidence.)

15 MS. PETTY: We also move to admit Exhibit 154 in its
16 entirety into evidence. This is the 2016 master plan.

17 THE COURT: Received.

18 (Exhibit 154 received into evidence.)

19 BY MS. PETTY:

20 Q Mr. Simms, what is --

21 THE COURT: Just a moment, counsel. Isn't that
22 Exhibit 1?

23 MS. PETTY: This current exhibit we are on is
24 Exhibit 1.

25 THE COURT: This is the 2022?

1 MS. PETTY: Correct, Your Honor.

2 THE COURT: Thank you.

3 BY MS. PETTY:

4 Q Mr. Simms, what is this document?

5 A This is the master plan, 2022.

6 Q Can you please turn your attention to page 125 of
7 Exhibit 1 and this will be the page that is associated with the
8 exhibit.

9 MS. PETTY: But for those that don't have the
10 exhibit page, it's 97 of the actual document.

11 BY MS. PETTY:

12 Q Mr. Simms, are you familiar with this map?

13 A I am.

14 Q What is the purpose of this map?

15 A The map has two purposes. One is to outline the
16 boundaries of the actual historic district, which the West LA
17 Campus is part of.

18 But also to flag some of the key characteristics that
19 are relative to why it's considered a historic district.

20 Q And we will go through this map in detail.

21 But how is this map relevant to the development of the
22 West LA Campus?

23 A It's relevant in the sense because this is a historic
24 district, changes within that district can impact the
25 historical significance of whether it would remain a historic

1 district or not.

2 They have a term they call "cumulative effect," meaning
3 one individual change may not seem like a big deal, but if you
4 make three or four of those smaller changes, you are now
5 impacting the actual historic nature of the campus.

6 So the intent of the district is to show all of the
7 contributing elements, buildings, roads, views, et cetera, that
8 are all contributing pieces. So as we start to think about the
9 renovation or the modification of the campus, that you can do
10 so in the context of it being in a historic district.

11 Q What is the impact if a historical district is delisted?

12 A So, it essentially becomes no longer a historic district.

13 If there are individual buildings, which in this case
14 there are a couple that are considered historic, they could
15 remain considered historic, but you would lose that historical
16 thread to the history of the campus to the point where it would
17 no longer be considered a historic district.

18 THE COURT: Can individual buildings within historic
19 districts be delisted?

20 THE WITNESS: They can.

21 THE COURT: Thank you.

22 Counsel?

23 BY MS. PETTY:

24 Q And if it were the case that a historic district was
25 delisted or individual buildings were delisted, would that be

1 in compliance with the National Historic Preservation Act from
2 your perspective working on these?

3 A With the intent of it, no. The intent is to preserve that
4 historic nature.

5 Q So, Mr. Simms, I want to look more specifically at this
6 map on page 125.

7 Do you see the legend in the lower left corner?

8 A Yes.

9 Q I want to walk through each of these.

10 So do you see the first symbol listed is a square with
11 lime green lines it's labeled as Historical Open Spaces?

12 A I do.

13 Q What's the significance of an area being labeled as
14 historical open space?

15 A So historically that area has not had construction on it
16 and as part of the fabric of the campus has always been that
17 open area. And the preservation side would say that open area
18 contributes to the character of the campus.

19 The goal being is that those are designated. You
20 certainly see other open areas that are not designated as open
21 space, if you will.

22 But these are core to that character of the campus as
23 being open space.

24 THE COURT: Let me get oriented for just a moment.

25 Do you see that white block? I'm going to point

1 so there is no misunderstanding. Is that the post office or is
2 that parking lot?

3 THE WITNESS: I'm not sure what that is up there. I
4 don't --

5 THE COURT: Below that is the first green area, I'm
6 going to point to it.

7 Is that the dog park or is that the nine acres
8 leased to the City of Los Angeles on a one-year revocable
9 lease?

10 THE WITNESS: I think that is the latter.

11 THE COURT: The nine acres?

12 THE WITNESS: I believe so.

13 THE COURT: If it's the nine acres then there should
14 be a parking lot that should be Barrington. I don't see a
15 parking lot. Do you?

16 THE WITNESS: Not in this map.

17 THE COURT: I don't see Barrington up against that
18 green area, do you?

19 In other words, Barrington curves around, you'll
20 see it's along a black line. I would suspect that that's where
21 our parking lot is. I would suspect that that white area is,
22 quite frankly, the post office.

23 THE WITNESS: Well, it could be.

24 THE COURT: Not part of the VA property. Now, do
25 you know or not?

1 THE WITNESS: That is not part of the VA property.
2 I do know that.

3 THE COURT: That's a post office. Now if you go
4 just south of that along Barrington you'll see it is fronting a
5 non-historic area, and I would suspect where that red dot is
6 that that's a parking lot.

7 Do you know?

8 THE WITNESS: I certainly can't tell.

9 THE COURT: If you walk further back you would see
10 nine acres leased to the City and I would suspect that green
11 area is a dog park.

12 Do you know?

13 THE WITNESS: I don't.

14 THE COURT: Okay.

15 Counsel?

16 Now what I'm saying is there is a parking lot just off
17 of Barrington. So it's impossible that that parking lot is
18 where Barrington curves around. Now, I could be wrong and we
19 can go out there tonight if you want to look at it. Okay?

20 THE WITNESS: Okay.

21 THE COURT: Counsel?

22 BY MS. PETTY:

23 Q Mr. Simms, can you identify just with north, west, south,
24 those orientations, the historical open spaces on the campus?

25 A There is one to the northwest, one to the northeast, and

1 then further down in the middle part of the campus along
2 Wilshire, there's some to the northeast, southeast, northwest,
3 southwest.

4 Q What impact does the designation of historical open space
5 have on developing this area?

6 A So, in general, this is where I get into that cumulative
7 effect. If you were going to change one of these, maybe it
8 wouldn't be that significant. If you were going to change
9 multiple of these, you are adding to that cumulative effect
10 that could ultimately say you've disturbed part of the historic
11 character of the campus and, therefore, maybe it isn't a
12 district anymore.

13 THE COURT: Is that upper -- I'm going to point to
14 it again, where is this located?

15 THE WITNESS: That is just outside of the golf
16 course area.

17 THE COURT: Is that on the Brentwood School
18 property?

19 THE WITNESS: I don't believe so, I believe that's
20 on the other side.

21 THE COURT: Okay. The Brentwood School property
22 isn't shown on this map?

23 THE WITNESS: It would be in the upper left portion
24 right in there. The very top.

25 THE COURT: Is all of the Brentwood School property

1 shown on this map?

2 THE WITNESS: It's kind of hard to see the gray
3 behind it, it should be.

4 THE COURT: Counsel?

5 BY MS. PETTY:

6 Q And is it correct, Mr. Simms, that before any type of
7 project can be implemented to these historical open spaces a
8 consultation is required?

9 A Correct. The Section 106 consultation process.

10 THE COURT: I'm going to keep pressing you because I
11 want to make sure we're speaking the same language.

12 Would you blow that up again just a moment.

13 We're going to blow that up for you, sir.

14 All right. You see where that red dot is?

15 THE WITNESS: The athletic field.

16 THE COURT: Is that seven acres on the Brentwood
17 School property where two baseball diamonds are, the softball
18 diamonds.

19 THE WITNESS: I think that's to this side here.

20 THE COURT: Is that seven acres?

21 THE WITNESS: Yes.

22 THE COURT: So the seven acres is not within the
23 historical space, is it?

24 THE WITNESS: Correct.

25 THE COURT: Thank you.

1 Counsel?

2 BY MS. PETTY:

3 Q What would that consultation look like?

4 A So a consultation starts with VA engaging the ACHP that I
5 mentioned earlier, the State Historic Preservation officer, and
6 any tribes or other cultural entities within the area that may
7 have an interest.

8 We would send them a letter, and say we're proposing to
9 do something, we would invite to you consult.

10 Those parties then can respond and say, yes, we would
11 like to participate in that consultation, and we would set up
12 meetings with those entities to review what it is that we're
13 proposing to do.

14 Those meetings would then talk about here is the
15 undertaking, so is it building something in the area, is it
16 demolishing something, whatever it may be, and then we would
17 walk through potential mitigations there are to the proposals
18 that we would have out there.

19 Q To be able to move forward after your consulting the
20 parties, what needs to happen?

21 A So generally you have an agreement that is documented
22 through a memorandum of agreement.

23 Q So if an agreement is never reached, what does that mean?

24 A So there are procedures that if you have engaged at the
25 State level and you have gone through the consultation in good

1 faith and are not able to get to resolution, you can raise that
2 up to the federal level at the ACHP, and you can engage them
3 and ask them to help get to an agreement on what you would
4 propose to do and what the mitigation strategies are there.

5 Q So the next symbol on the legend in the lower left-hand
6 corner is a square with a dashed outline. It's labeled as
7 National Register historic district.

8 Do you see that?

9 A I do.

10 Q And is this what we were talking about at the beginning of
11 our conversation about a historic district?

12 A Yes.

13 THE COURT: Show me. Just trace that for me.

14 THE WITNESS: It's going to be all the way -- it
15 goes around the state home so it excludes that, and then it
16 stops it at Wilshire, but then it picks up and covers the South
17 Campus. Really the only things that it doesn't include is the
18 California State Home here and the NCA columbarium over here.

19 THE COURT: Thank you very much, sir.

20 BY MS. PETTY:

21 Q And with respect to developing in a national register
22 historic district, the consultation process that you just
23 described applies in this situation as well, correct?

24 A It would.

25 Q And then the next symbol is an orange square. It's

1 labeled as NA -- excuse me, NRHD Contributing Building.

2 Do you see that?

3 A I do.

4 Q What does NRHD stand for?

5 A So National Register Historic District.

6 Q Can you explain the significance of the building being
7 designated as an NRHD contributing building on the West LA
8 Campus?

9 A So, buildings are designated as contributing if they have
10 some architectural significance that ties to the historic
11 nature of the campus. So they are explicitly supportive of
12 that historic designation, so they're contributing to that.

13 There are some buildings that are noncontributing, so
14 these could be support buildings or things like that that do
15 not have anything unique, there's no architectural or historic
16 significance to those. So there's other buildings on campus,
17 obviously, that are not considered contributing.

18 These are called out because they are explicitly
19 contributing elements.

20 THE COURT: Eventually, counsel, I'm going to ask
21 both of you to use this overlay, and you can do this over lunch
22 or later tonight, and show me as best you can how I would use
23 this map as an overlay to trace the Brentwood lease of the
24 22 acres, the UCLA baseball, the oil lease, and the two parking
25 lots on Barrington.

1 Don't do that now, talk to your counsel, and I
2 want to get an overlay to see if it's overlaid some of these
3 historic.

4 BY MS. PETTY:

5 Q Am I correct there are approximately 55 of the 92
6 buildings on campus that are identified as National Register
7 Historic District contributing buildings?

8 A That seems the right number. Yes.

9 Q What impact does this designation have on either
10 demolishing or renovating these buildings?

11 A It's the same concept as the open area. Meaning, if you
12 are going to do something to a single building, renovate the
13 building, for example, you would consult on how to mitigate any
14 negative impacts that that renovation may need. So you are
15 looking at it, again, in the collective, the cumulation effect
16 of what you are doing and whether that affects the district or
17 not.

18 Q And when you say "consult," that is with respect to the
19 National Historic Preservation Act and the parties that you
20 previously mentioned?

21 A Correct.

22 Q The next symbol is a blue arrow labeled Major Historical
23 Axis.

24 Do you see that?

25 A Yes.

1 Q What is the significance of this?

2 A So this essentially is a pathway, it doesn't have to be a
3 road, in this case it's at least mostly a road.

4 It divides the campus north to south in general, that is
5 considered to be historic and that that's how the campus has
6 operated with that sort of north-to-south orientation
7 for -- historically.

8 THE COURT: Is that Bonsall?

9 THE WITNESS: Yeah, from here where it comes in,
10 this is Bonsall, yes.

11 THE COURT: Thank you.

12 BY MS. PETTY:

13 Q What impact does this have on the development of areas
14 that it bisects?

15 A So in general, if you wanted to change the orientation,
16 you would have to consider that as part of the consultation.

17 So, if this was no longer going to be a
18 north/south and maybe you wanted to take it from sort of
19 northeast to southeast or something like that, there would be a
20 consultation on does that affect the historical character of
21 the campus.

22 Q Are you able to approximate, if possible, what the
23 timeline looks like during the consultation process?

24 A It's difficult do that. So the consultation process has
25 some steps that have expected time frames.

1 So, for example, when VA sends out that first
2 notification that, hey, we want to consult on this topic,
3 there's roughly 45 days that we wait for them to come back to
4 us to say, we want to be part of that.

5 But the actual consultation itself doesn't have set
6 dates or set timeframes on it.

7 So it's not uncommon for there to be multiple rounds in
8 that consultation, and different parties may be looking at
9 different aspects of the historic or cultural impacts of it.
10 So there could be an elongated period of time, more than a
11 year, to get to the point where you could get agreement on what
12 you are proposing to do.

13 Q And what impact does the major historical axis have on the
14 configuration of utilities?

15 A So on the utility side it can be a pro in the sense that
16 if you are intending on keeping that historic nature, that
17 north to south axis there, you could actually run utilities
18 along that so that you have an idea that it's going to stay
19 that way, we don't intend to change it.

20 It's also something that if you've got utilities
21 that are going to be run through it, cross sections of it,
22 you've got to contemplate that it's a historic road most likely
23 or pathway of some kind that you've got to maintain the
24 historic integrity of it.

25 THE COURT: Just a moment, let me catch up with you.

1 So does that mean if we have a historic road,
2 like Bonsall or part of Bonsall, that we would still need to
3 proceed through the historic -- I don't know what to call it,
4 let's say process, and get acquiescence to put in utilities or
5 would we have discretion to put the utilities in without -- and
6 be able to bypass this historic preservation process?

7 THE WITNESS: So we would consult, and that's the
8 process, the historic consultation, we would and we did that.
9 We actually put utilities in Bonsall as part of the first
10 effort that we did and we did have to consult with the state
11 historic --

12 THE COURT: If they objected to you doing this,
13 who's got the ultimate?

14 THE WITNESS: So the state level does not have an
15 outright -- a right to say no. They can not agree with our
16 proposal or mitigations, in which case we would raise that up
17 to the federal level, the Advisory Council on Historic
18 Preservation, they become almost like a mediator to try to get
19 to a resolution.

20 If they're unable to, then they would engage with the
21 head of the agency.

22 So there is a couple of escalation steps above the state
23 level. They can't say flat-out, no, you can't do it, but it
24 would force us into that escalation.

25 THE COURT: Thank you very much, I appreciate that.

1 BY MS. PETTY:

2 Q Is a requirement of Section 106 of a National Historic
3 Preservation Act to be able to end the consultation process?

4 A Yes.

5 THE COURT: Could you explain that to me, counsel?
6 Not you, but would you ask the witness to help me with that.

7 BY MS. PETTY:

8 Q Mr. Simms, would you like to explain that?

9 A Sure. So the end of the consultation is where we document
10 agreement and both parties or multiple parties can sign off on
11 what we're proposing, their agreement to it, and what we are
12 committing to to mitigate the impacts of that action.

13 THE COURT: Thank you. Thank you, counsel.

14 So, in other words, it could take some time?

15 THE WITNESS: Yes. By definition consultation is
16 open-ended.

17 BY MS. PETTY:

18 Q And do you see the next symbol which is blue dash line and
19 it's labeled as Historical Roads?

20 A I do.

21 Q What is the significance of historical roads on the West
22 LA Campus?

23 A So similar to the historical axis in that these are roads
24 that have been core to the setup and the operation of the
25 campus as part of that historical significance. Realistically

1 it's covered, but Bonsall is certainly one of those coming down
2 through there, it's covered by the axis there, but you've got a
3 couple of other roads that are of significance. They would
4 have to be treated the same way.

5 So we could propose to change or realign those
6 roads, but that would go through the consultation process.
7 Otherwise, what we're looking to do is preserve those roads as
8 part of the campus fabric.

9 Q And then the next symbol is a forest green arrow label as
10 View Corridors.

11 Do you see that?

12 A I do.

13 Q Can you explain the significance of view corridors?

14 A So a view corridor, similar to the axis, is an orientation
15 of what you can see from a certain point in campus in a certain
16 direction.

17 So there is two specific ones outlined here.

18 One at Building 300, that is a smaller corridor looking
19 south.

20 THE COURT: Can you point to that? Thank you.

21 THE WITNESS: And then there is a second view
22 corridor that's going from Building 13 across the parade
23 grounds down to the southwest direction.

24 BY MS. PETTY:

25 Q Is a consultation process similarly required when activity

1 would impact the view corridors?

2 A It would be, yes.

3 Q And that's the same consultation process we've been
4 talking about?

5 A Correct.

6 Q Now, the last symbol is a red dotted circle labeled
7 Buildings Individually Listed in the National Register of
8 Historic Places.

9 Do you see that?

10 A I do.

11 Q And we've talked briefly about this, but what is the
12 significance of these two buildings being individually listed?

13 A So, while they are part of the historic district, there is
14 such a historical significance for those individual buildings
15 that they are listed individually by themselves.

16 So they can support the district, but even if the
17 district didn't exist, those two buildings have enough historic
18 significance to be listed individually.

19 THE COURT: Is that the chapel and the trolley
20 station?

21 THE WITNESS: Chapel and trolley station, correct.

22 BY MS. PETTY:

23 Q And is a consultation process similarly required to do any
24 activity that would impact these two buildings?

25 A It would be, yes.

1 Q And when we were talking about the California preservation
2 officer and then the body at the federal level, which is ACHP,
3 do they typically have the same motivations with respect to
4 preserving properties? Historic properties.

5 A They do. So motivation being preservation and to the
6 extent there is going to be disturbance of any historic
7 property or location, how can you mitigate the impact of that.

8 So you have heard me use the term "mitigation" a lot,
9 that is a big part of historic preservation is how can you get
10 to your goal and accomplishment, but mitigate the negative
11 impacts on the historic nature of the property, be it a
12 building or land.

13 Q From your perspective if an action cannot be mitigated, is
14 it likely that there will be an end to the consultation
15 process?

16 A Generally what we have seen is no, unless there is some
17 exigent circumstance that comes up.

18 But if what we're proposing is non-mitigatable,
19 demolition is the simplest example, if you are going to
20 demolish a historic building, there is no mitigation we can
21 offer. In cases like that we normally do not get to agreement
22 with the State historical preservation level, and would have to
23 raise that up to the ACHP level.

24 Q Before we move on, is there anything that you want to add
25 with respect to this map?

1 A No. I don't think so on this map.

2 THE COURT: Why don't we do this, why don't we take
3 a break for a moment. I'm going to step down -- and Kerlan, I
4 will need a microphone. I'm going to draw something on this
5 map, and later on you are going to correct me, okay? I want
6 lead counsel to come up and join me and see what I'm doing.

7 (Off the record discussion.)

8 THE COURT: This is on the record.

9 I think, subject to correction, that approximately these
10 are two parking lots, give or take. I'm doing this from
11 memory.

12 THE WITNESS: Okay.

13 THE COURT: I'm going to put, I think, two parking
14 lots on Barrington, separated by a park -- or by a post office.

15 I think that, approximately, give or take, up in this
16 area, there is some configuration of seven acres with two ball
17 diamonds at the Brentwood School.

18 And I think, subject to my poor drawing, there is
19 someplace down in this rough area that is about nine acres
20 leased to the City of LA, on a one-year revocable lease.

21 I think that this is part of an acre-and-a-half dog
22 park, although it looks larger. I think that this is Building
23 297. And I think -- where is the oil?

24 I think across from 297 is about an acre and a half of
25 land that Bridgeland has, and that they own a portion up near

1 the columbarium, and that there is a section down here being
2 offered. These are rough approximations.

3 So, I'm going to put Bridgeland, Bridgeland.

4 So, let me retrace. Parking; parking by safe park; two
5 lots, post office; about seven, give or take, acres up at
6 Brentwood School. I'm not sure of the exact configuration. I
7 think there is a water tower up here, but I'm not certain of
8 the green area. I think we have got nine acres and some kind
9 of dog park here. And it doesn't show the road, but what is
10 this area?

11 THE WITNESS: The state home. The California state
12 veterans home. The gray area there is the California state
13 veterans home.

14 THE COURT: Thank you very much. I'm going to call
15 this the great park. And you can see this walkway -- by the
16 way, that is a magnificent walkway.

17 The parking lot -- the veterans originally went
18 someplace out here, and I don't know if it overlaps the green
19 area or not, nor do I probably care.

20 The tiny homes are someplace down here, and I don't flow
21 if it overlaps the green area and I probably don't care.

22 The UCLA baseball field is what I'm not certain of.

23 And you will see this historic boundary. There is a
24 road that goes down to it, and it seems to be located
25 approximately -- and this is what I'm not sure of. Here.

1 I don't know if a portion of it is inside or outside the
2 historic district, and this line designates our historic
3 district. So I don't know if part of it is inside or outside
4 that historic district.

5 And there is another small field. I'm going to make our
6 baseball diamond like this, and then there is a large area
7 here, it seems to be a parking lot and a road.

8 Then here are homes, and I'm not certain of the acreage,
9 but I think my memory is seven, six or seven.

10 Now, go check with your counsel later on. And instead
11 of making you overlay all of that, I don't think that any of
12 these areas fall within the historical open spaces.

13 But check, okay?

14 And that's enough for now. Why don't you have a good
15 recess. Counsel, you can look at that and correct me at any
16 time. That is just a rough.

17 15 minutes.

18 Off the record.

19 (Recess.)

20 THE COURT: We're back on the record. I want to
21 humbly thank the court reporter for bearing with us. Thank
22 you. On the record.

23 This is continuing direct examination.

24 BY MS. PETTY:

25 Q Mr. Simms, before we move on from this map, is there

1 anything else that you want to add?

2 A No. I don't think so.

3 MS. PETTY: Your Honor, we would move to admit the
4 entirety of Exhibit 1 into the record, which is the 2022 master
5 plan.

6 THE COURT: Received.

7 (Exhibit 1 received into evidence.)

8 BY MS. PETTY:

9 Q So, we have talked on this at various points today,
10 Mr. Simms, but I want to now talk about the VA's compliance
11 process with respect to the environmental and historic
12 preservation related to the West LA Campus. We're going to be
13 handing you what's been marked as Exhibit 1020.

14 Are you familiar with this document, Mr. Simms?

15 A I am.

16 Q What is it?

17 A This is the record of decision that resulted from our
18 programmatic environmental impact statement or PEIS and
19 Section 106 consultation process.

20 Q And so what is the purpose of a record of decision?

21 A The record of decision documents at a high level the
22 summary of what the PEIS process was, what alternatives we
23 considered under that process, and ultimately making a decision
24 of which of the alternatives that we're going to proceed with.

25 Q And just so we make sure we're all on the same page, can

1 you tell me what PEIS stands for?

2 A Programmatic environmental impact statement.

3 Q And is it the case that the PEIS was used to comply with
4 the requirements of Section 106 of the National Historic
5 Preservation Act?

6 A Correct. When we did the PEIS process, we used something
7 called substitution that allowed us to use that PEIS process
8 and do the historic consultation of 106 as part of the PEIS
9 process.

10 Q And just as a general matter, can you briefly state any of
11 the subject areas that the PEIS analyzed?

12 A So PEIS would look at multiple alternatives, and then
13 within each alternative, it would look at a couple of different
14 characteristics. Those characteristics can be everything from
15 the actual physical geology of the area, to air quality, to
16 noise, traffic. Any impact, essentially, to the environment of
17 the area would be assessed as part of the PEIS.

18 Q I want to talk a bit about the public participation
19 process for the PEIS.

20 Can you turn to page 1020-002?

21 For those that have the document number, that would be
22 page 3 of the document.

23 The section heading for this page is NEPA Public
24 Involvement Process. Do you see that?

25 A Yes.

1 Q Now, we will get into the specifics of this particular
2 section, but for now, can you explain the purpose of public
3 input during the NEPA process?

4 A So the NEPA process, as I talked about, talks about the
5 environment and impacts to the environment. That environment
6 is not limited to VA or the property that VA would own or
7 operate. It's to the community around it.

8 So the engagement under NEPA with public input is
9 intended, first, to gather input upfront on what it is that
10 we're considering and what our alternatives are. And then
11 towards the end, when we're making a decision, we also want
12 public input on the rationale and mitigation strategies that we
13 could implement as part of the decision.

14 Q Now, can you turn your attention to Paragraph 1 of the
15 section?

16 Do you see that paragraph?

17 A Yes.

18 Q Can you explain how VA facilitated public participation as
19 noted in this paragraph?

20 A So, a couple of different ways.

21 First, any time we engage in the PEIS process, there is
22 a federal register notice that is put out, that highlights the
23 key components of what it is that we're proposing and gives the
24 public a comment period to respond to.

25 In this case, we went above and beyond that. We went

1 out to a lot of the stakeholders that had been engaged at West
2 LA for a long period of time, via e-mails, to highlight that
3 this was out there, that this was going to be occurring, and
4 that we wanted the input from the public wherever possible.

5 As mentioned, through that substitution process, we were
6 also addressing historic preservation. So we also sent out all
7 of those engagement letters for starting the consultation
8 process there.

9 Q And in the second sentence it identifies May 19th, 2017,
10 as when the publication was entered into the federal register.
11 Do you see that?

12 A Yes.

13 Q Is that date consistent with your understanding of when VA
14 kicked off the PEIS process?

15 A So there would have been some prep work before that,
16 obviously, but that's when we officially entered into it, yes.

17 Q And the publication that you are talking about that was
18 published in the federal register, it's referred to as a notice
19 of intent, correct?

20 A Correct.

21 Q Do you see the next paragraph of this section? It starts
22 with the sentence "VA conducted scoping meetings on June 7th,
23 8th, 9th, 2017 at the West LA Campus," and then it continues on
24 to describe those meetings.

25 Do you see that?

1 A Yes.

2 Q What is the purpose of scoping meetings?

3 A So the scoping meetings is informational to share what our
4 proposed action is, as well has what the alternatives are that
5 we're considering in this case.

6 And then the second part of it is generally an input, so
7 a Q-and-A-type session or just open comments that anyone may be
8 able to provide.

9 The definition, the scope, is really what is focused on
10 here. Not necessarily assessing the impacts of it, but when
11 we're thinking about what our proposed action is and what
12 alternatives we should consider, we're trying to get input on
13 that upfront piece of work before we then go and assess it
14 later.

15 Q And in the third paragraph on this page, the first
16 sentence states: "The availability of the draft PEIS was
17 announced by the Environmental Protection Agency (EPA), and the
18 federal register on December 7th, 2018 (83FR 63161), followed
19 by a VA notice of availability on December 14th, 2018 (83FR
20 64431)."

21 Did I read that correctly?

22 A Yes.

23 Q What is a notice of availability?

24 A Notice of available is that the actual draft PEIS, the
25 formal report with all of the analysis, the draft of that is

1 available for review by the public, and input.

2 Q Apart from the notice of availability, did VA use other
3 methods to ensure that various stakeholders were apprised of
4 the draft PEIS?

5 A Yes. Various different methods. We used, once again,
6 sort of an e-mail blast to send out to everyone. Physically,
7 there was, by that point, a draft master plan website that we
8 made things available on.

9 And then we also had copies available at other public
10 areas beyond just the VA hospital itself.

11 Q And do you see the fourth paragraph of this section?

12 A Yes.

13 Q And the first sentence states, "VA published a notice in
14 the Los Angeles Times on December 20th, 21st, and 22nd, 2018,
15 further advertising the comment review period for the draft
16 PEIS, and announcing three meetings to be held in the community
17 to answer questions and receive comments on the draft PEIS."

18 Did I read that correctly?

19 A Yes.

20 Q Why was it important for VA to publish notices in the LA
21 Times?

22 A Just for the ability to get it the maximum amount of
23 people who may want to comment on it.

24 Local publications is not generally something we would
25 do, however, this was a very large PEIS. We knew that there

1 were a lot of stakeholder interest in it, so putting something
2 out, followed by the meetings themselves, was important to get
3 as much input as we could.

4 Q And the purpose of the communicate meetings was to get
5 more feedback on the draft PEIS; is that correct?

6 A That's correct.

7 Q And I want to talk about the fifth paragraph.

8 Do you see that section?

9 A Yes.

10 Q So this talks about the comment period. Can you talk a
11 bit about the information that is contained in this paragraph?

12 A Sure. So, in general, when we publish that notice of
13 availability and when EPA publishes the draft PEIS, there is a
14 set period of days that we allow for comments to come in.

15 In this case, the last day was supposed to be July -- or
16 I'm sorry, January 29th, 2019.

17 VA got a lot of requests from stakeholders. They wanted
18 more time to get their comments in, so we extended that period
19 for two weeks until February 13th, 2019, to collect more
20 comments.

21 Q How did VA respond to the comments that were received on
22 the draft PEIS?

23 A So VA reviewed all of the comments received.

24 And generally, there is a triage of those comments.

25 The first is, is it related to the PEIS? In many cases,

1 we get comments that are just not related to the PEIS. Those
2 are sort of set aside.

3 For the ones that are related to the PEIS, VA would then
4 respond to those by either making changes to the PEIS or a
5 response to the input in terms of where we have addressed, how
6 we have addressed it.

7 Or in some cases, we couldn't address it. Those were
8 then documented.

9 Q In the last paragraph in this section, in the second
10 sentence, it states that the release of the final PEIS was
11 announced in the federal register by the VA on June 26th, 2019.
12 And then by the VA -- or the EPA on June 28th, 2019.

13 Are those dates consistent with your understanding of
14 when VA completed the PEIS process?

15 A Yes that's consistent.

16 Q So in total, the PEIS took approximately two years; is
17 that correct?

18 A Roughly two years, yes.

19 Q So I now want to get into more detail about the specific
20 consultation process. I know we have touched on it at various
21 points during our time today, but I want to look specifically
22 at page 1020-003. And this is section 1.4 entitled NHPA
23 Consultation Process.

24 Do you see that?

25 A Yes.

1 Q And NHPA refers to National Historic Preservation Act,
2 correct?

3 A Correct.

4 Q How did VA identify the stakeholders for the NEPA --
5 strike that -- for the National Historic Preservation Act
6 consultation process?

7 A So, a couple of different ways. One, there is a
8 requirement that we engage with the State Historic Preservation
9 Office, as well as ACHP. Those are required, so we always
10 engage with them.

11 Beyond that, we're looking for any stakeholders that
12 have expressed interest and are advocacy groups related to
13 historic preservation, as well as tribes, so there are some
14 resources available of any tribes that may have connections to
15 the campus that we would then send consultation letters to.

16 Q And so within the first paragraph of this section, there
17 is a bulleted list of various stakeholders that VA engaged. Do
18 you see that?

19 A Yes.

20 Q I want to talk about a couple of them.

21 And the first stakeholder listed is ACHP. Do you see
22 that?

23 A Yes.

24 Q And this references the entity that you were speaking
25 about earlier when you used that acronym, correct?

1 A Correct.

2 Q Can you again just briefly state their role during the
3 consultation process?

4 A So the Advisory Council for Historic Preservation is the
5 quasi-federal entity that sets the regulations for how
6 Section 106 consultation is done.

7 So, ACHP is always invited to participate.

8 They choose in most cases not to participate, unless it
9 is a project that they believe has some significance on a more
10 national level. So in this case, ACHP was invited. They chose
11 to participate in the consultation.

12 Q The next stakeholder listed is CA SHPO. Do you see that?

13 A Yes.

14 Q Does this stand for the California State Historic
15 Preservation Office, sir?

16 A Correct.

17 Q Can you again just briefly describe their role during the
18 consultation process?

19 A So the state, generally, is the lead. Even if ACHP is
20 involved, they are more of a bystander.

21 So the California SHPO office is the one who leads the
22 consultation. They are the ones who we would work with when we
23 are drafting any of our plans and mitigations strategies. They
24 have a critical role in the consultation.

25 Q The paragraph below this bulleted list identifies two

1 additional stakeholders that were later added as consulting
2 parties?

3 A Correct.

4 Q One of the consulting parties referenced is the West LA
5 Veterans Collective LLC, correct?

6 A Correct.

7 Q Before we discuss their role, what is the purpose of
8 consulting parties?

9 A Consulting parties are any stakeholder that has a vested
10 interest into the undertaking that we are proposing, as well as
11 the mitigation strategies that we would employ.

12 Q Before we get into the role of the West LA Veterans
13 Collective during the consultation process, who are -- what is
14 this entity?

15 A The West LA Veterans Collective was the proposal that was
16 selected -- the proposer that was selected when we went out
17 with the principal developer solicitation for permanent
18 supportive housing under the EUL authority.

19 Q And we will get into the details more later with respect
20 to their specific role in the entirety of this process.

21 But for now, what was their role during the consultation
22 processes.

23 A So when we enter consultation in 2017, they had not been
24 selected.

25 So at this point, we were talking hypothetically about

1 what buildings we would renovate, which ones we would demolish,
2 et cetera. That was all being assessed as part of the PEIS.

3 Once they were selected, they actually become the entity
4 that would carry out that work.

5 So they are the ones who would actually be doing the
6 renovation or construction work, so it was important to bring
7 them in because the consultation, ideally, ends with an
8 approval of here is what we're going to do, here is the
9 mitigation, and we agree to it.

10 Q Now, the third paragraph mentions that consultation
11 working sessions with the consulting parties occurred on
12 November 29, 2017. What is the purpose of consultation working
13 sessions?

14 A So, this, and partly because we were doing this in concert
15 with the PEIS, was to look at each of the alternatives we were
16 considering and sharing what we believed the impact to historic
17 properties or assets would be.

18 Q And the remaining paragraphs on this page discuss the
19 draft programmatic agreement. What is that?

20 A So a programmatic agreement is one of the ways that you
21 can end the consultation process. And essentially what it does
22 is it sets the process by which each individual project you
23 undertake would be then reviewed and consulted on as part of
24 the historic preservation compliance reviews.

25 So it's a process. It's not approval or specific

1 mitigation strategies. It sets out programmatically how we're
2 going to approach historic preservation with any of the
3 alternatives.

4 Q How does it incorporate the viewpoints of the consulting
5 parties?

6 A So, the actual programmatic agreement itself is a
7 document.

8 That document has certain requirements and processes
9 embedded within it. That would be the subject of input and
10 agreement by those parties.

11 So, for example, what it is that we need to consult on.
12 Is it just certain scopes of projects or types of projects,
13 things like that. That would be articulated in the
14 programmatic agreement, and then the consulting parties could
15 provide input. And if they agree with that or if they have
16 different suggestions.

17 Q And those consulting parties include the ones we just
18 discussed?

19 A Correct.

20 Q In addition to the other names or entities on that
21 bulleted list?

22 A Correct.

23 Q And in the last paragraph of this page, it states that the
24 programmatic agreement was executed on May 1st, 2019.

25 Is that consistent with your understanding of when the

1 programmatic agreement was executed amongst these parties?

2 A That's correct.

3 THE COURT: Just a moment, counsel. Is it on
4 page 1020-003. In other words, when you say the last page.

5 MS. PETTY: Yes. This is on page 1020-003, and this
6 is the bottom -- the last paragraph.

7 THE COURT: "April 9th, 2019, the VA hosted a
8 conference call." Is it in that paragraph?

9 MS. PETTY: Excuse me, Your Honor. It's going to on
10 the next page which is 1020-004.

11 THE COURT: So -004, just a minute. There it is.
12 "May 1st, 2019."

13 Thank you.

14 MS. PETTY: Correct.

15 BY MS. PETTY:

16 Q And just so it's clear, with the draft -- or strike that.

17 With the programmatic agreement, you stated that what it
18 does is set out what the process would be when it is the case
19 that a historic property or something of historic nature is
20 impacted. This is the process that would be taken to come to a
21 resolution as to what to do; is that correct?

22 A That is correct. We did not propose specific actions on
23 any building or any specific mitigation strategies. All we
24 agreed to was how we would consult on those individual projects
25 for the property going forward.

1 Q So if it's the case that you have a building you want to
2 take some action on, you would then look at the programmatic
3 agreement and look at the way in which you would consult on
4 that?

5 A Correct. For each individual building or project that
6 we're going to undertake, we would then go to the programmatic
7 agreement and follow that process.

8 Q So I want to now focus on the alternatives that were
9 analyzed under the PEIS. And for this, I want to look at
10 page 1020-004 and Section 2.1 which is titled as Alternatives
11 Analyzed.

12 Do you see that?

13 A Yes.

14 Q Can you explain the purpose of analyzing multiple
15 alternatives in the PEIS?

16 A Sure.

17 So, alternatives are defined in a way that you can use
18 different approaches to get to the same or similar outcome.

19 So we understood that we wanted to develop the master
20 plan as it was presented in the 2016 master plan, but there
21 could be many different ways to approach that.

22 So the intent of alternatives is to look at different
23 paths, and for each of those paths, what the impact to the
24 environment would be.

25 Q And just because an alternative is studied, doesn't mean

1 that that is the action that VA is going to go forward with or
2 that that alternative has been blessed as appropriate?

3 A Correct. So the purpose of the analysis is to analyze all
4 of the different alternatives looking at the same types of
5 impacts.

6 The record of decision, the document we're looking at,
7 would actually select the alternative that we're proposing to
8 proceed with, then we would have to satisfy whatever other
9 requirements we would need to do. But this is just the
10 assessment of the different alternatives. It isn't approval.

11 Q What is the significance of having a no action
12 alternative?

13 A So in any case, you always want to have a baseline
14 scenario. So, if we didn't do anything, we would want to look
15 at what the environmental impact that would be, therefore, any
16 alternative to do something can be based to that as the
17 baseline.

18 Q Are you aware of how the alternatives were selected?

19 A So, in general, the alternatives started with internal VA
20 discussion on how we could approach this.

21 When we talked about the dates a few minutes ago, those
22 scoping sessions were reviewed. We had some draft
23 alternatives -- those scoping sessions helped us fine tune and
24 changed a little bit of those. And then once the public input
25 was received, at that point we finalized on this set of

1 alternatives to proceed with.

2 Q So the alternatives that were selected incorporate
3 feedback from various different entities or parties, and it's
4 not just the VA drafting these alternatives?

5 A Correct. All of the public input received during that
6 first federal register notice as well as those scoping sessions
7 that we talked about, all of that shaped these final
8 alternatives.

9 Q So I want to briefly look at each of these alternatives.
10 They are listed on page 1020-004 for your reference.

11 But starting with Alternative A, can you describe what
12 this entailed?

13 A Alternative A essentially did renovation of existing
14 buildings for purposes of permanent supportive housing, and
15 that was it. So no new construction was contemplated. We
16 looked at exiting buildings that could be used for housing, how
17 many units, and that was the extent of what this alternative
18 would deliver.

19 Q Can you describe Alternative B?

20 A Sure. So Alternative B was sort of an odd one.
21 Essentially, this was assuming we actually didn't have the
22 ability to move forward with permanent supportive housing on
23 campus, but we wanted to revitalize the campus.

24 So, essentially, we would demolish all of the buildings
25 that were unneeded on campus leaving green area there but not

1 developing any permanent supportive housing.

2 Q Can you describe Alternative C?

3 A So Alternative C is one where we looked at a combination
4 of demolition of existing buildings but replacing them with new
5 buildings and doing new construction. So this would identify a
6 certain set of buildings that we no longer had a need for,
7 demolish and replace, but then do additional new construction
8 to get to the maximum 1,622 units that we assessed.

9 Q Can you describe Alternative D?

10 A So in the scenario of Alternative D, instead of
11 demolishing those buildings, we actually renovated those
12 buildings. So we put them back into service as supporting
13 housing, we just basically did renovation, and we also did do
14 new construction as well to get to the same number of
15 1,622 units.

16 Q And you mentioned the 1,622 number.

17 Was that the maximum number of housing that the PEIS
18 analyzed?

19 A That was the maximum number under the alternatives that we
20 assessed.

21 Q And Alternative E was no action, correct?

22 A Correct.

23 THE COURT: Just a moment. Was this for permanent
24 supportive housing, the maximum was 1622?

25 THE WITNESS: Correct.

1 THE COURT: This did not include any discussion
2 about temporary housing?

3 THE WITNESS: It did not.

4 THE COURT: Just a moment.

5 BY MS. PETTY:

6 Q What alternative --

7 THE COURT: Counsel, I'm sorry, give me one moment,
8 please.

9 (Pause in proceedings.)

10 Counsel, thank you. Please continue.

11 BY MS. PETTY:

12 Q Mr. Simms, what alternative did the VA select?

13 A VA selected Alternative D.

14 Q What factors led to the selection of Alternative D?

15 A So Alternative D and one other alternative got us to the
16 maximum number of potential permanent supportive housing. That
17 was one of the critical criteria that we looked at.

18 The other was the impact in some of the areas that were
19 assessed.

20 Particularly historic properties, that Alternative D had
21 much less of a negative impact on historic properties as
22 compared to the others, so it was the more environmentally
23 preferred alternative.

24 Q Alternative C talked about demolition and new
25 construction. Can you talk about the difficulties of new

1 construction and managing hazardous materials?

2 A Sure. So I think there's a couple of different ways.

3 One is any time you are going to demolish a building,
4 especially one of these older buildings, the assumption is it
5 had lead-based paint, it has asbestos, it has other
6 environmental contaminants that have to be managed as part of
7 that demolition. So not quite as simple as just coming in and
8 knocking the building down. So there's a lot of consideration
9 given to the hazardous materials that would be contained within
10 those buildings.

11 Once you have done that and you have mitigated that,
12 then new construction on the same site could occur just the
13 same as if it would on a brand new clean site that you are
14 working with.

15 There's also existing contamination that you have to
16 factor in, whether it be things that were there, like the
17 landfill matter that we had talked about before, or other
18 environmental concerns that you would have to factor in.

19 So all of that you have to look at when you are doing
20 both demolition and new construction.

21 Q Would you say that renovation allows for a more controlled
22 environment of abating hazardous materials?

23 A In most cases, yes. I think, again, in a demolition
24 scenario there is going to be a really hard time to manage the
25 release of some of those hazardous materials, both into the

1 ground and into the air, so that's a tougher thing to do than
2 if you are renovating within a given building, being able to
3 sort of segregate the work that you are doing it and manage it
4 on a much smaller scale and then disposing of that properly
5 outside of the building.

6 Q Do you see at the bottom of page 1020-004, the section
7 titled Environmental Impact Analysis?

8 A Yes.

9 Q And going into page 1020-005, do you see the first
10 paragraph where it lists various resource areas that were not
11 adversely impacted by any of the alternatives analyzed?

12 A Yes.

13 Q What does that mean?

14 A So when the PEIS looks at each alternative, they assess a
15 bunch of different potential impact areas.

16 These impact areas were assessed such that none of the
17 alternatives had a significant adverse impact to these areas.

18 They still would have impacts, but they weren't
19 considered significant, nor where there's a significant
20 difference between the alternatives in any of these areas.

21 Q If the number of housing units on the West LA Campus
22 increased significantly, would these factors have to be
23 reevaluated?

24 A Yes.

25 Q The next paragraph on page 1020-005 talks about major

1 impacts that were identified.

2 I want to talk about some of these, but as a general
3 matter, what is a "major impact"?

4 A A major impact is something that would have both an
5 adverse impact, but also something that is measurable.

6 Something that's acknowledgeable that you can see what that
7 impact would be.

8 Q Why is it important to avoid or minimize major impacts?

9 A In some cases because there could be a difference between
10 the alternatives, that helps the agency, in this case VA, make
11 a decision of which one would have more of a minimal impact
12 that we would then have to mitigate.

13 It's also in a case where even if all of the
14 alternatives have a significant adverse impact out there, we
15 can start planning for it. We can work on those mitigation
16 strategies, of how to minimize what that impact would be so
17 that it doesn't affect anyone beyond what would be necessary.
18 And that's both VA and the community that would be near there.

19 Q In the next paragraph do you see the heading Air Quality?

20 A Yes.

21 Q And I want to talk a bit about this paragraph.

22 Can you talk about some of the major impacts that were
23 identified about air quality in this paragraph?

24 A Sure.

25 So when it comes to air quality, three of the

1 alternatives -- and we'll exclude the status quo do nothing
2 alternative, but three alternatives were acknowledged as having
3 an impact, that there would increase the amount of pollutions
4 and emissions.

5 That was expected. You are adding 1,600 plus units of
6 housing in some of these scenarios, of course there is going to
7 be an impact there.

8 The difference here is that those would be generally
9 limited and could be manageable, where in the case of
10 Alternative C it was expected to exceed a number of levels of
11 releasing pollutants. And a lot of that goes back to the
12 approach there of demolishing a significant amount of property
13 there. It was expected that that would release a significant
14 amount that would be difficult to mitigate.

15 So the air quality here impacted across all
16 alternatives, but significantly above for alternative C.

17 Q And just pulling out a specific sentence, this is the
18 third sentence of this paragraph.

19 It says, "Based on the conservative modeling assumptions
20 applied for alternative C, the construction and/or operational
21 emissions of the projects would result in an exceedance of
22 significant thresholds for criteria pollutant emissions for the
23 years 2022, 2026, and 2027, even after mitigation."

24 Did I read that correctly?

25 A Yes.

1 Q Does this encapsulate what you were just stating about
2 Alternative C?

3 A It does.

4 Q Why is it problematic if an alternative cannot meet
5 mitigation measures?

6 A So in this case, if mitigation measures can help but they
7 cannot actually address the full amount, then you are going to
8 be exceeding some -- a number, whatever it is, which means you
9 your plan would have to change.

10 It would force changes in that alternative if you are
11 not able to meet the requirements for whatever the
12 contamination releases would be. It could be timing, it could
13 be extend the duration of it so that you are not doing as much
14 as one time, or it could be doing less demolition in general.

15 Q So I want to move to the next section which is entitled
16 Cultural Resources, Including Historic Properties and this is
17 on the same page, 1020-005.

18 Do you see that?

19 A Yes.

20 Q And the last two sentences of the first paragraph states
21 the following:

22 "For purposes of the proposed action, VA defined the
23 area of potential effect (APE) for this undertaking to include
24 the West LA Campus and the LANC.

25 However, this undertaking does not include any projects

1 at the LANC."

2 What does the LANC refer to?

3 A The Los Angeles National Cemetery.

4 Q And what is the purpose of defining an area of potential
5 effect?

6 A In some cases, even if you are not doing a project on a
7 particular piece of property, it could be impacted, the effects
8 could be felt there. Whether it be things like traffic or air
9 pollution, et cetera, its proximity means that it could be
10 impacted by the undertaking.

11 Q So when it states that "no projects were considered at the
12 LANC," the PEIS did not do any type of analysis with respect to
13 that area?

14 A So, it's included in the analysis in terms of impact, but
15 we were not proposing as part of our action to demolish or
16 construct any buildings on that property in and of itself.

17 So there wouldn't be any activity proposed there, but it
18 could have impacts that we are assessing through the PEIS.

19 Q Now, the second paragraph of this section discusses
20 alternatives B and C with respect to cultural resources,
21 including historic properties.

22 Can you talk about the issues that are presented
23 regarding alternatives B and C in this context?

24 A So in both alternatives there was demolition of
25 approximately 33 buildings that was anticipated.

1 Those buildings included both noncontributing elements
2 as well as contributing elements to the historic district.

3 So when we assessed B and C, there clearly was
4 significant adverse impacts under the cultural and historic
5 resources scenario.

6 Q And in the first sentence of this paragraph, you talked
7 about the significant adverse impacts.

8 The second portion of this sentence says, "This would
9 include potentially rendering the historic district ineligible
10 for continued listing in the NRHP."

11 Why is it problematic if an alternative would render the
12 historic district ineligible in the continued listing in the
13 NRHP which is the National Register Historic...

14 A Places.

15 So it's a challenge, again, on an individual
16 building basis that's where we would look at the individual
17 pieces, but cumulative effect when we look at does that mean
18 that it's no longer a historic district, that essentially goes
19 against the tenets of the historic preservation requirements
20 that are outlined in federal law.

21 As I think we mentioned earlier, but demolition
22 is one action that there is no mitigation for.

23 So in the case of this it's irreversible. Once that
24 building is demolished there is nothing you can do about it.
25 So they want to avoid non-mitigatable actions like demolition

1 as it goes against tenets of preserving the historic nature.

2 Q And in the last sentence of this section, it states, "The
3 PA is applicable to alternatives A, B, C, and D and VA will
4 follow the review procedures of the executed PA for all
5 redevelopment projects."

6 Did I read that correctly?

7 A Yes.

8 Q Does this incorporate what you were referencing earlier
9 about how the PA, which is the programmatic agreement, applies
10 to all development projects on the campus?

11 A That's correct.

12 Q Next is the Noise Impact Analysis and it starts on
13 page 1020-005, and it's that last paragraph, and it goes into
14 page 1020-006.

15 Do you see that section?

16 A Yes.

17 Q Can you briefly describe this impact?

18 A So this impact is related to the actual construction work
19 in and of itself.

20 In all three of the alternatives B, C and D where we
21 would have either construction and/or renovation or demolition
22 work going on, it's going to create a lot of noise. And what
23 this looked at is depending on when and where there could be
24 sensitive parties, veterans or employees on campus, that this
25 could have a negative impact on.

1 It could even get to the point where it reaches off
2 campus, so that would be something that we would need to
3 monitor.

4 Q And would the duration of this impact be higher if there
5 is significantly more construction on campus than what was
6 analyzed in the PEIS?

7 A Without a doubt, yes.

8 Q How would the cumulative effect of multiple construction
9 projects going on at once impact the noise analysis?

10 A It would hit a much broader area. So when we look at
11 something like this, construction going on in three or four
12 different buildings in one location on campus, that noise
13 wouldn't reach as far as if you had projects going on in many
14 different locations on campus, so the noise is going to be
15 heard in a much broader spectrum.

16 Q Do you see the Transportation and Traffic Impact analysis
17 that is on page 1020-006?

18 A Yes.

19 Q Can you briefly talk about this?

20 A So, briefly, the traffic component here in transportation
21 was looked at, and really all of the alternatives are going to
22 have an impact on transportation and traffic.

23 Purposefully, you know, looking at doing 1,600-plus
24 permanent supportive units of housing you are going to have a
25 lot more people living on campus which necessarily is going to

1 impact traffic and transportation.

2 The approach here was to look at ways to mitigate that,
3 and there was a specific study done to look at traffic, both
4 sort of macro level, things like bus routes or public
5 transportation, to a more micro level of could you reroute
6 roads or have roads do something different to help mitigate
7 some of that traffic.

8 And the answer in general was, yes, if we
9 implemented all of the mitigation measures we could offset most
10 of the traffic impact.

11 Q What are the impacts of construction traffic if
12 significantly more housing were developed on the West LA
13 Campus?

14 A So when we looked at transportation and traffic under the
15 scenario it was two-step process. It was one sort of what
16 happens at the construction time frame, and then longer term
17 once all of the housing is operational.

18 So, the once operational scenario is much easier to
19 mitigate. You can reroute roads so the flow is better, you can
20 have things like mobility options on campus, internal bus
21 routes, things like that.

22 During construction it's much harder to mitigate.
23 You've got traffic that you can't simply do differently, you
24 need supplies delivered, you need the ability for contractors
25 to be on-site.

1 So when we looked at those, those are harder to mitigate
2 and the more you have going on, the more competition for road
3 space and lay-down space and stuff like that you have with more
4 and more construction.

5 We've got a significant amount of construction going on
6 on the North Campus right now. We've already run into
7 scenarios where there has been issues with getting larger
8 supplies, and in some cases we actually have modular housing
9 units being used.

10 To get a modular housing unit delivered takes a
11 massive amount of coordination. You are closing down roads on
12 multiple places on the campus, we've got to make sure we don't
13 hurt the medical operation, but they are coming in from the
14 South Campus in a lot of cases. So management of those
15 deliveries, management of the internal circulation, gets harder
16 and harder the more activity you have going on.

17 Q I want to now look at the section titled Agency Preference
18 and Factors in Decision, and this starts on page 1020-006 and
19 goes into 1020-007.

20 Do you see that?

21 A Yes.

22 Q And I want to look in particular at page 1020-007 and this
23 will be the first full paragraph.

24 The first sentence states: "On the North Campus
25 Alternative D includes the renovation or replacement of seven

1 703,832 square feet of existing buildings that are vacant or
2 underutilized to provide supportive housing for veterans and
3 other campus support operations."

4 I did read that correctly?

5 A Correct.

6 Q Why is it important to have a mix of renovation or
7 replacement?

8 A In this case, we're comparing how to bring on enough
9 square footage to get the housing -- maximize the number of
10 housing units.

11 In order to do that we were looking at demolishing that
12 under some scenarios and then recreating, versus a mix of new
13 construction in already open areas and renovation of existing
14 space.

15 Clearly the renovation of existing space as compared to
16 demolishing it is a much better alternative when you look at
17 the cultural resources and historic preservation. It's also
18 better on the air pollution scenario. So there was a lot more
19 advantages to mixing new construction and renovation as
20 compared to a significant amount of demolition.

21 Q I also want to look at the last paragraph of this section.

22 Do you see that?

23 A Yes.

24 Q What is the significance of the information in this
25 paragraph? This begins, "As alternative D would generate," and

1 then continues on.

2 A Okay. So in general what this is saying is that the
3 alternative that we believe is the correct alternative to
4 proceed with, Alternative D, would have the need for additional
5 utility capacity.

6 At the time, you know, it isn't specific, so it just
7 says they'll be upgraded as necessary, but it's acknowledging
8 that utilities and infrastructure, including roads, will need
9 to be upgraded in order to support the number of housing units
10 that Alternative D contemplates.

11 MS. PETTY: Your Honor, at this time we would like
12 to move admit Exhibit 1020 into evidence.

13 THE COURT: Received in its entirety, including the
14 exhibits, counsel to go with it.

15 (Exhibit 1020 received into evidence.)

16 THE COURT: Counsel, would this be a good time to
17 stop and I want to publicly thank the court reporter, Terri,
18 thank you very much.

19 But, counsel, why don't we see if we could gather
20 outside about 1:45 if that is okay. That would give us a
21 little over an hour.

22 Let us open the doors and make sure that the
23 other folks have had time from Connecticut to look at the
24 courtroom, and that way we won't be wasting any time.

25 (Lunch recess.)

1 THE COURT: We're back in session. All counsel are
2 present. The parties are present. Mr. Simms is present.

3 Counsel, you can continue -- direct?

4 Direct examination.

5 MS. PETTY: Yes.

6 BY MS. PETTY:

7 Q Mr. Simms, we just left off reviewing the record of
8 decision, and that document essentially summarizes what is
9 contained in the PEIS, correct?

10 A Correct.

11 Q Now, we're going to be handing you what has been marked as
12 Exhibit 1018.

13 Do you recognize this document, Mr. Simms?

14 A Yes.

15 Q What is it?

16 A This is the exhibits to the actual programmatic
17 environmental statement.

18 MS. PETTY: Your Honor, we move to admit
19 Exhibit 1018 into evidence.

20 THE COURT: Received.

21 (Exhibit 1018 received into evidence.)

22 BY MS. PETTY:

23 Q Mr. Simms, we're handing you what has been marked as
24 Exhibit 1021.

25 Do you recognize this document?

1 A Yes.

2 Q What is it?

3 A This is the programmatic agreement that was completed as
4 part of the PEIS process for historical preservation
5 consultation purposes.

6 Q And this is the programmatic agreement that we had just
7 been talking about before lunch?

8 A Correct.

9 MS. PETTY: Your Honor, we would like to move to
10 admit Exhibit 1021 into evidence.

11 THE COURT: Received.

12 (Exhibit 1021 received into evidence.)

13 BY MS. PETTY:

14 Q Mr. Simms, we're handing you what has been marked as
15 Exhibit 1107.

16 Mr. Simms, do you recognize this document?

17 A Yes.

18 Q What is it?

19 A This is the campus historic resource plan that was put
20 together as a result of the programmatic agreement.

21 One of the stipulations that VA agreed to was to put
22 together a campus historic resourcing plan. That is what this
23 document is.

24 MS. PETTY: Your Honor, we move to admit 1107 into
25 evidence.

1 THE COURT: Received.

2 (Exhibit 1107 received into evidence.)

3 BY MS. PETTY:

4 Q Mr. Simms, I want to change gears and talk about the
5 infrastructure system at the West LA Campus.

6 Are you familiar with that system?

7 A Yes.

8 Q Now, we will get into the details very shortly, but for
9 now, can you provide a brief overview of the infrastructure
10 system at the West LA Campus?

11 A Sure. So the infrastructure system, I will break it into
12 three distinct parts.

13 The first one is the wet utility infrastructure. That
14 is going to include water, sewer, storm water management.

15 There are dry utilities, which is the second bucket.
16 That is going to be electric, natural gas, telecom-type.

17 Then there is mobility infrastructure. So, that is
18 roads, paths, things like that that exist, as well as parking
19 on the campus.

20 THE COURT: All right. Just a moment, please.

21 Counsel, thank you. Please continue.

22 BY MS. PETTY:

23 Q Mr. Simms, what was the condition of the infrastructure
24 system at the West LA Campus when the 2016 draft master plan
25 was published?

1 And you can touch on this very briefly, then we will go
2 into detail shortly.

3 A Certainly. So, in general, the system was older, so the
4 condition was poor.

5 There were some systems that had sections that were a
6 little bit newer. But, in general, the infrastructure was in
7 poor condition.

8 Q Was it sufficient to support the proposed development of
9 permanent supportive housing?

10 A In some cases, yes, with some extensions to get into areas
11 that may not have that utility service today.

12 In other cases, no, the capacity would have to be
13 expanded.

14 Q And I want to turn back to Exhibit 1 that we spoke about
15 earlier.

16 If you can turn to page 135 of Exhibit 1, which will be
17 page 107 of the document.

18 Do you see Figure 4-25 entitled "existing stormwater
19 system"?

20 A Yes.

21 Q What is the purpose of a stormwater system?

22 A A stormwater system is what they would use to manage
23 runoff from rainstorms in general.

24 If there is any other kind of flooding type event, it's
25 to manage the water flow on campus.

1 Q And do you see the conditions legend in the lower left
2 corner of the map?

3 A Yes.

4 Q Do you see the line, green line that is labeled "good
5 condition"?

6 A Yes.

7 Q What does that mean in the context of the stormwater
8 system?

9 A It means for wherever there is a green section, that the
10 condition of the existing stormwater management in that area is
11 in good shape.

12 Q And with respect to the orange line that is labeled "fair
13 condition," what does that mean?

14 A That means that the existing lines in that area are in
15 relatively fair condition, still usable, no cord deterioration
16 at this point.

17 Q Do you see the red line that is labelled "poor condition"?

18 A Yes.

19 Q What does that mean?

20 A Poor condition means the existing lines in that area have
21 started to degrade, potentially even leak or fail in some
22 areas.

23 THE COURT: Just a moment. What exhibit are you
24 looking at?

25 THE WITNESS: This is 425.

1 THE COURT: What exhibit?

2 MS. PETTY: Exhibit 1, Your Honor.

3 THE WITNESS: I think it's this one right here.

4 THE COURT: Counsel, thank you very much. I
5 appreciate that. On page 135, correct?

6 MS. PETTY: Correct, Your Honor.

7 THE COURT: Would you repeat that, sir?

8 THE WITNESS: Sure. So, the legend at the bottom
9 left has different colors for different conditions of the
10 stormwater system.

11 Green being good condition, no issues. Completely
12 workable.

13 Fair condition meaning it hasn't started to deteriorate,
14 but it is starting to get older.

15 And poor condition, meaning it has already started to
16 show signs of deterioration, leaks, or failures.

17 THE COURT: Thank you.

18 BY MS. PETTY:

19 Q Mr. Simms, do you see the next symbol with various dotted
20 colors labelled "assumed alignment"?

21 A Yes.

22 Q What does that mean?

23 A So, in cases where we were already doing work, if we were
24 going to move or add, that is where -- how we would articulate
25 where we're aligning that stormwater drain system to.

1 Q And the last key on this legend is a dotted purple line
2 labeled "removal/abandon pipe."

3 What does that mean in this context?

4 A That that pipe is no longer connected to the main part of
5 the system. It has been capped off, and it is either slated
6 for removal or it will simply be abandoned in place.

7 THE COURT: Show me where some of that is. Use my
8 exhibit because it's hard to see that purple.

9 In South Campus, okay. Thank you.

10 Is there any up in North Campus?

11 THE WITNESS: Not of the removal, no.

12 BY MS. PETTY:

13 Q Now that we have gone through the condition legend, can
14 you describe the general layout and components of the existing
15 stormwater system as depicted in Figure 4-25?

16 A Sure. So the stormwater system is a gravity-fed system,
17 meaning that it starts from the northern portion of campus and
18 flows generally south to the bottom part of campus.

19 This system is one that has a mix of good and poor
20 condition, so you will see sections where there is good
21 surrounded by bad or vice versa.

22 So in the case of stormwater, you have got decent
23 coverage on the North Campus, however, it isn't full coverage.

24 There are certainly areas where stormwater management do
25 not exist right now, but around most of the buildings that we

1 were proposing for renovation, the immediate lines around the
2 buildings were in pretty good shape, but the roads -- or the
3 lines along the roadways were in poor condition.

4 Q Were any upgrades done to the stormwater system?

5 A We are currently doing stormwater system upgrades. This
6 is one of the largest set of upgrades, mainly because
7 stormwater isn't something that is a utility that you sort of
8 drive a line from point A to point B.

9 You have to figure out where the topography is going to
10 move water naturally, where you can build drains, and where
11 those drains can connect into larger pieces there.

12 We have broken the stormwater upgrades into two
13 different phases.

14 The first phase is the design phase. That is complete.
15 We are now moving into the actual upgrades that are needed for
16 the system, so that is work that we are launching right now but
17 it is not complete. We have not finished those upgrades.

18 Q Do you have a rough estimate around how much it has cost
19 thus far?

20 A Between the design that is complete and our estimate for
21 construction, around \$30 million.

22 Q Are there any challenges related to upgrading the
23 stormwater system as a gravity-fed system?

24 A There can be.

25 So when you are working with existing buildings,

1 generally it's not that big of a deal. You have already got
2 the landscaping laid out and the ground, in and of itself, you
3 are not changing the topography.

4 But if you start to move into new construction areas
5 where you are going to be leveling ground, bringing in
6 additional soil there, that can change how the stormwater
7 system has to be set up.

8 We have done that, and we have run into that as we have
9 worked on MacArthur Field and some of the parking lots where we
10 have actually had to change the topography of the ground.

11 And in those cases, we needed to make sure that we were
12 not only extending the stormwater system there, but making sure
13 that it connected from the right drains and the right locations
14 so that it flowed north to south.

15 Q Plaintiffs' experts have proposed an additional
16 1,800 units of permanent supportive housing, and 750 units of
17 temporary supportive housing.

18 As it currently stands, is the existing stormwater
19 system adequate to handle this type of additional housing?

20 A So, possibly, but we have not assessed what that would
21 look like.

22 The stormwater, and as we will look at some of the other
23 utility systems, they have dependencies that we connect to off
24 campus, so we're actually flowing stormwater into, I believe
25 it's in the LA County stormwater management system. They have

1 capacity, based on what we originally assessed.

2 There is no guarantee that with additional stormwater
3 management that they would be able to take that. It is
4 certainly possible they could, but we have not actually ran
5 that math.

6 THE COURT: One of the assumptions I hear is that if
7 the Court granted that request, I think that there is a
8 legitimate concern that that would come all at once. I can't
9 imagine, if this occurred, this not being sequenced in this
10 some way.

11 And the capacity of the stormwater system right now is
12 unknown to us, but if this was sequenced in over a period of X
13 years, we would be able to evaluate that, wouldn't we, as we
14 go?

15 THE WITNESS: Yes. That's what we had to do
16 originally.

17 THE COURT: I can't imagine saying tomorrow you are
18 going to put in 1,800 permanent supportive housing units.

19 THE WITNESS: Agreed.

20 THE COURT: A lot of planning goes into that and is
21 very respectful of that process, so if the assumption is that
22 it's all at once, this could overwhelm the system. We just
23 don't know.

24 But if it's sequenced in, you could measure that
25 depending upon the next tranche going in, couldn't we?

1 THE WITNESS: Yes. You do the very same analysis we
2 did to get to 1,600 of what is that going to do to the current
3 systems, what upgrades would be needed, and then sequencing
4 upgrades.

5 THE COURT: We could also work with you and space
6 our costs in a sense, couldn't we? Like, a billion dollars
7 thrown out there, that is a lot of money in one year for any
8 entity, even if you have got a budget between 340 million and
9 407 -- billion, I mean, and 407 billion.

10 But if this took over a period of years, it would be a
11 little less painful, wouldn't it?

12 THE WITNESS: Certainly would.

13 THE COURT: And we could work with your offices, et
14 cetera.

15 THE WITNESS: Very similar to what we had to do with
16 the original planning.

17 THE COURT: Okay. Counsel.

18 BY MS. PETTY:

19 Q Mr. Simms, approximately how much time, if you can
20 estimate, that it's taken to evaluate the stormwater system for
21 the capacity of 1,600 units as identified in the PEIS?

22 A So, as articulated in the PEIS, we went from I think
23 roughly 2017 to 2019, so about two years. We did rough
24 estimates of volume against capacity and condition.

25 It was not a detailed study. It was pretty clear in the

1 PEIS that each utility system would have to have its own
2 special study. That was then completed about a year and a half
3 after the PEIS was finalized, so two phases. One more
4 preliminary; second to more detailed on a system-by-system
5 basis, that is what is articulated in master plan 2022, is that
6 more detailed study.

7 THE COURT: Counsel, I don't want to break in, but I
8 would like you to ask the witness about the most urgent request
9 that the plaintiffs are proposing to the Court, and that is the
10 750 temporary units, because their request is that the Court
11 find that this could be done within 18 months.

12 So given a hypothetical of 18 months with temporary
13 supportive -- temporary units, in some kind of modular form,
14 and primarily on the South Campus, not the North Campus.

15 From what I understand, the argument is to be especially
16 in parking lots -- is it 6 -- 6, counsel? 6A? 6B.

17 MR. SILBERFELD: I think it's --

18 THE COURT: I'm doing that from memory.

19 MR. SILBERFELD: I just call it the solar parking
20 lot.

21 THE COURT: Yeah, the solar parking lots. What
22 would your response be there, because that is going to be the
23 most urgent request I'm hearing that the plaintiffs are going
24 to request of the Court.

25 The permanent supportive housing is also a request, but

1 the urgency -- the timeline they are requesting is 12 to
2 18 months.

3 What would the stormwater system look like there?

4 Would your answer be the same?

5 THE WITNESS: It would be. So South Campus, if I
6 may, part of the challenge with the South Campus is that while
7 it may look like there is room, there is a lot of stuff planned
8 in the near term for South Campus.

9 THE COURT: I'm talking about stormwater now. We're
10 going to go through each system in a moment.

11 THE WITNESS: But stormwater would be part of it,
12 because, legitimately, they're going to be ripping pieces of
13 the South Campus up. So, there will be utility upgrades, but
14 it's going to eat up a lot of the land there.

15 So there is already going to be required reconfiguration
16 of stormwater down there, but that also may mean there is not
17 enough land left to do the temporary housing in a 12 to
18 18-month period.

19 THE COURT: How much of the stormwater
20 infrastructure has been completed on the South Campus?

21 THE WITNESS: A good portion of it. However, that
22 piece that was left, which is a pretty significant chunk around
23 Building 500, was purposefully left because we are planning a
24 new critical care tower.

25 THE COURT: I'm aware of that.

1 THE WITNESS: So, that will pick up a lot of the
2 utility stuff in the South Campus around Building 500. That is
3 part of the scope of that project.

4 So they have done some, but they have not done all of
5 the South Campus work.

6 THE COURT: Thank you very much. Counsel.

7 BY MS. PETTY:

8 Q Mr. Simms, what are the challenges of installing
9 stormwater management in places on the campus where it's not?

10 A So you have to, first, figure out where you are going.

11 So, if there were a situation where you were going to
12 put housing and there was not existing stormwater management,
13 you first have to figure out does it have to tie in to the
14 exiting VA system, or is there a way for it to tie in off of
15 campus.

16 And that will depend on where you are talking about on
17 campus.

18 Assuming it ties in to the VA system, there is generally
19 a lot of trenching and pipes that need to be laid to expand
20 into the area where the housing would be.

21 THE COURT: Counsel, would you put this up on the
22 Elmo?

23 MS. PETTY: The map of the stormwater system, Your
24 Honor?

25 THE COURT: Page 135.

1 MS. PETTY: It's up on the screen projector.

2 THE COURT: Here it is. Do you see it right there?

3 I don't know what to call it.

4 We will call it solar divided by a street.

5 THE WITNESS: Yes.

6 THE COURT: I'm guessing seven acres, maybe more.

7 What is the condition of the stormwater system in that area?

8 THE WITNESS: So in that area, right now, it's in
9 good condition outside of the loop road, poor condition inside.

10 So you can see some of the red in here. That is inside
11 the loop road. That is in poor condition.

12 That is the example of where we know it's in poor
13 condition, but that is the footprint of where the new building
14 is going to go, so they will address that then.

15 THE COURT: Okay.

16 When is the stormwater for the new building going to be
17 complete? The new tower.

18 THE WITNESS: The budget request for 2025, assuming
19 Congress acts on it at some point during this fiscal year would
20 be the full funding for the entire project.

21 THE COURT: And how long would it take to put in the
22 -- obviously we're not going to build without a stormwater
23 system, so that's one of the first things to go in.

24 So, you get your budget in 2025. How long does it take
25 to put in stormwater system?

1 THE WITNESS: Normally, utility systems are the
2 first two years of the work.

3 THE COURT: Okay. Thank you. Counsel.

4 BY MS. PETTY:

5 Q And Mr. Simms, you briefly touched on LA County having to
6 approve the increase in the stormwater flow.

7 Is that true for all changes to the capacity of the
8 stormwater system?

9 A In general, yes. Now, obviously, if you just built a very
10 small building that wasn't anticipated to change the
11 stormwater, that wouldn't be a big deal.

12 But if you were purposely expanding capacity on the
13 campus, yes, we would have to work with them and approve the
14 outlet system would have the capacity.

15 Q So with respect to the 1,800 additional units of permanent
16 supporting housing that plaintiffs' experts have proposed, in
17 addition to the 750 units of temporary supportive housing,
18 would you also have to get approval from LA County before any
19 changes can be made to the stormwater system?

20 A They would have to approve the end result of what we were
21 proposing to bring into their system.

22 Q Is there anything else that you want to highlight
23 regarding the stormwater system that we haven't touched on?

24 A I know we will talk about the other utility systems.

25 The stormwater system relies much more upon area that

1 needs to be covered, not necessarily the actual density of
2 housing.

3 But if I have got areas that are, today, natural,
4 meaning there is no pavement, there is no roads, there is no
5 nothing there, we don't have stormwater management. We just
6 let mother nature handle that.

7 As we start to expand in those areas, if we have to pave
8 it, if we have to do anything to those areas, now you are
9 creating that requirement.

10 So it isn't so much about how many units it would be,
11 it's where they would be, and is there an existing
12 infrastructure. And it can be a challenge in some of those
13 areas to get the systems extended to those areas and still fit
14 within that sort of gravity flow system.

15 Q Mr. Simms, can you turn to page 137 of Exhibit 1? It will
16 be page 109 of the document.

17 Do you see Figure 4-26 "existing sanitary sewer system"?

18 A Yes.

19 Q Are you familiar with this map?

20 A Yes.

21 Q As a general matter, what is the purpose of a sanitary
22 sewer system?

23 A It is for a graywater and waste discharge that is carried
24 through the system, into the LA city or LA County sewage
25 system.

1 Q Do you see the conditions legend in the bottom left
2 corner?

3 A Yes.

4 Q I want to similarly go through each of these items, so we
5 have an understanding of what it means.

6 When it says good condition, and that's the lime green
7 line in the legend, what does that mean?

8 A It is piping in that area is in good condition, no
9 deterioration, still flowing as clean as what it should.

10 Q With respect to the orange line that says fair condition,
11 what does that mean?

12 A The pipe has not shown serious degradation, but it is
13 aging to the point where it's starting to get buildup and could
14 fail in the future.

15 Q With respect to the pipes that are in fair condition, are
16 you able to offer an estimate on the amount of time it will
17 take to deteriorate into poor condition?

18 A So, in general, the sewage system is a little bit
19 different between north and south.

20 But the northern part is one where it's metal-cased
21 piping which has started to degrade but there really isn't a
22 timeline. It could happen at any time.

23 You could start getting pinhole leaks in the system at
24 any time once it starts to degrade.

25 It also could last for another 10 to 12 years pretty

1 easily.

2 Q Do you see the red line that is labeled poor condition?

3 A Yes.

4 Q What does that mean?

5 A Those systems are essentially beyond their useful life.
6 They have already started to degrade and have shown to fail in
7 some cases.

8 Q And then the next symbol is assumed alignment with various
9 dotted colors.

10 What does that mean in this context?

11 A Those were things that were either already underway or
12 planned of where new or replacement piping would be.

13 Q Do you see the solid purple line labeled "unknown
14 condition"?

15 A Yes.

16 Q I think I can guess what that means, but can you tell the
17 Court what that means?

18 A Yeah. There isn't access to those. And there wasn't the
19 ability to run cameras through those pipes where they were --
20 in the purple section.

21 THE COURT: Counsel, do you know where the 3- to
22 400 units are going in that have some landfill issues?

23 THE WITNESS: Right there where you were pointing.

24 THE COURT: What do you want to call those?

25 THE WITNESS: So it starts with MacArthur Field

1 right up here.

2 THE COURT: Let's call it the field.

3 THE WITNESS: That area.

4 THE COURT: How do we have 3- to 400 units that
5 we're supposed to bring online, if we can, after we get this
6 certificate of occupancy from the County, if we do, with a red
7 line servicing these units?

8 THE WITNESS: This is work that we have completed.

9 THE COURT: Then why isn't that in green?

10 THE WITNESS: When this was done, this was based on
11 the 2020 study.

12 THE COURT: So let me repeat back. I'm looking at
13 something historical because we're not stupid enough to put in
14 3- to 400 units in the field and have a red line, right?

15 THE WITNESS: Correct.

16 THE COURT: This isn't accurate.

17 THE WITNESS: This was -- it's dated. It's based on
18 the information from the study then.

19 THE COURT: This is not accurate.

20 THE WITNESS: Current status, correct.

21 THE COURT: This is not accurate. All right. Thank
22 you, counsel.

23 BY MS. PETTY:

24 Q Do you see the dotted purple line that says
25 "removal/abandon pipe"?

1 A Yes.

2 Q What does that mean?

3 A That those are either already disconnected and planned for
4 removal, or they will simply be disconnected and left and
5 abandoned in place.

6 Q Now, can you talk about the upgrades that have been made
7 to date to the sanitary sewer system?

8 A Yes. So the sanitary sewer system was one of the first
9 systems that we went in to upgrade.

10 Obviously the broad condition of this system was poor.

11 So we went in with two different phases of work. First
12 more north on the North Campus, and then working our way south.

13 The first phase of that work is complete. And the
14 second phase of that is underway now, so it is in process of
15 being complete, should be complete within the next 8 to
16 10 months.

17 That will address the bulk of the sewer system issues on
18 the North Campus.

19 THE COURT: How could we redraw this so it's
20 accurate so I have an idea of what has been completed?

21 In other words, what is being presented to me is the
22 parade of horrors about this, and yet, it's obvious that -- I
23 will just be kind. This is not accurate.

24 You have got to have completed green in this area.
25 Quite frankly, it's not reliable.

1 How do we get an update so I can view actually what we
2 have got there?

3 THE WITNESS: So, I'm not sure that we have that, at
4 least, in the system perspective.

5 We know where we have done work, but I don't think it's
6 across the system like this was done.

7 THE COURT: Okay. Thank you.

8 BY MS. PETTY:

9 Q Are there any concerns regarding the capacity of the
10 sanitary sewer system currently as it stands?

11 A So based upon the assessment we did in the PEIS, we
12 believe there is capacity for the 600 -- 1,622 units that we
13 assessed.

14 Q Are there currently additional upgrades that are planned
15 to the system currently?

16 A The South Campus work will obviously include some work on
17 the sewer system on the South Campus when we get into the new
18 critical care tower down there.

19 But other than that, the two phases of work that I just
20 described are the extent of the plans for the sewer system.

21 Q So is it the case that the work that is being implemented
22 to the sewer system corresponds to the 1,622 units that were
23 analyzed in the PEIS?

24 A That's what we assessed it to, correct.

25 Q With the upgrades that have taken place, in addition to

1 the upgrades that are planned for the future, would the
2 sanitary sewer system be adequate to handle an additional
3 1,800 units of permanent supportive housing and 750 units of
4 temporary supportive housing?

5 A We don't know. We have not done that assessment.

6 Q What would that assessment look like in terms of time and
7 cost, if you're able to proffer that explanation?

8 A So from a time perspective, it would start with
9 identifying the volume of units that we were targeting, which I
10 think we have an idea of what that is, assessing how much
11 additional graywater and wastewater that would create, and then
12 evaluating that against the sections of the sewage system to
13 see whether there is capacity.

14 Different sections of the sewage system are smaller
15 pipes, other sections are bigger pipes.

16 As you get to the south part of campus, those are the
17 biggest pipes because they're taking everything from the rest
18 of the system. So we would have to look at each section of the
19 campus, depending on where the housing was deployed to figure
20 out whether there would be capacity in those areas.

21 Q Is there anything else you want to highlight about the
22 current sanitary sewer system that we have not touched on?

23 A I think we've covered it.

24 Q Now, I want to talk a bit about the domestic water
25 distribution system.

1 If you can turn to Figure 4.27, which is on page 139.

2 A Okay.

3 Q Are you familiar with this map?

4 A Yes.

5 Q What is the purpose of a water distribution system?

6 A The water distribution system serves two purposes.

7 The buildings themselves have fire and safety
8 requirements for things like fire hydrants and fire sprinklers,
9 and then it's the standard water supply for the use of the
10 building.

11 Q Is this map the most current map that examines the water
12 distribution system that the VA has currently?

13 A As far as I know this is the most current.

14 Q But you're able to speak here today about the upgrades
15 that have taken place, correct?

16 A Yes. And, in particular, because the water system as you
17 can see on here, the vast majority of the distribution system
18 was in good condition, so condition wasn't necessarily the
19 issue there and that wouldn't have changed.

20 Q So you just spoke about good condition and that's the lime
21 green line in the conditions legend.

22 For the next key listed, it's a dotted green line
23 labeled good condition assumed alignment.

24 What does that mean?

25 A The same thing. I mean, it's a new piece of it that we're

1 working on, but it would be in good condition when complete.

2 Q The next key is a dashed purple line that is labeled
3 abandoned pipe.

4 What does that mean?

5 A As stated, it's an abandoned piece of the system no longer
6 connected to the water system.

7 Q Why would a pipe be abandoned?

8 A If there is no longer a building or a use in that area,
9 you can just cap it off, and then abandon that portion of pipe.

10 Q Can you explain the next two items on the key?

11 A So pipe to be removed due to age is a portion of the
12 system that is simply old and it is not fulfilling the ability
13 to push water through it.

14 So it's going to be removed because of that.

15 The red is due to conflict. The due to conflict is
16 because we are doing work in those areas that is going to
17 require us to remove and replace those lines.

18 Q Can you provide an overview of the existing water
19 distribution system at the West LA Campus?

20 A Yes. So unlike the other two systems we just talked
21 about, which were gravity-fed north to south, water is a
22 pressurized system. So it starts actually at mid campus around
23 Wilshire and water gets pushed through the system.

24 The distribution pipes, themselves, are in good
25 condition, but the further away you go from that initial source

1 of water, the lower your water pressure is.

2 We've ran into issues because for fire suppression
3 purposes you have to have a certain pressure of water at the
4 hydrant or in the building for the sprinklers.

5 The volume of water in the system, the further out we're
6 pushing it, we cannot get the required pressure.

7 So it's a different type of issue, it's not necessarily
8 the water lines themselves, but because it's a pressured system
9 and it's pushing it uphill on the north campus, it's running
10 out of pressure before it gets to some of these buildings.

11 Q What upgrades have been made to the water distribution
12 system?

13 A So two sets of upgrades.

14 The first one was a short-term measure that was done
15 specifically for Buildings 205, 08, and 09.

16 And it was basically a pressure booster that was
17 installed next to those buildings on the water line to increase
18 the water pressure to meet the fire safety requirements for
19 those buildings.

20 The second is a much larger project to cover the North
21 Campus where we are looking at strategically putting pressure
22 boosters of some form into the system so that we keep the high
23 enough pressure to meet fire safety across the North Campus.

24 That larger project is underway right now, we're working
25 on that project.

1 Q Approximately, how much has it cost thus far with the
2 upgrades that had taken place?

3 A So the pressure boosters, the small number that we did was
4 less than 500,000. It wasn't all that expensive.

5 The system-wide improvements that we're working on now
6 were closer to 20 million to address the system as a whole.

7 Q Are you able to approximate the length of time it will
8 take to complete the second phase of the project for the water
9 distribution system?

10 A Slated to be completed within the next 12 months.

11 Q And with these upgrades that are taking place with respect
12 to the water distribution system, are they based on the 1,622
13 housing units that were identified in the PEIS?

14 A They were based on the 1,622, as well as the specific
15 buildings and where they are located since the pressurization
16 matters of how far you have to go.

17 So it was based on both of those pieces of information.

18 Q With the changes that are expected to upgrade the water
19 distribution system, you mentioned it would be completed in
20 roughly 12 months, correct?

21 A Correct.

22 Q As it currently stands, if 1,800 additional units of
23 permanent supportive housing and 750 units of temporary
24 supportive housing were placed on the West LA Campus, is the
25 water distribution system in its current state sufficient to

1 handle that additional number of housing units?

2 A So we have not assessed it specifically, but based on our
3 on experience with this, it would not be.

4 There would be areas that we would both have to expand
5 the system into, and it's further away from the distribution
6 point so we would have to find a way to increase the pressure
7 in that part of the system.

8 Q What would the assessment process look like in order to
9 determine whether or not an additional 1,800 units of permanent
10 supportive housing and 750 units of temporary supportive
11 housing are able to be handled by the water distribution
12 system?

13 A Similar assessment to the sewage wastewater system, we'd
14 have to figure out where to know whether we had to extend the
15 system. And volume will matter on this as far as how many
16 units and where, so we would have to understand those
17 components, lay that against the map.

18 We would have to, in this case, do actual pressure
19 testing at different points of the system to make sure we would
20 have sufficient pressure wherever that housing might be
21 located.

22 Q Approximately how much time has passed with respect to
23 upgrades to the water distribution system if you are able to
24 estimate?

25 A Can you ask the question again?

1 Q How much time has passed since the VA first started
2 analyzing the water distribution system until this point in
3 time where they're still conducting studies?

4 A About five years.

5 Q Are there any challenges with putting the water
6 distribution system in places on campus where it is currently
7 not?

8 A There could be. For example, if we're trying to get water
9 extended to an area of campus that doesn't have it now, it is
10 possible that we are currently renovating or building housing
11 in between those two points.

12 So we would have to go in and either reroute the water
13 lines around those or we would have to tear up parking lots and
14 things like that in order to route it through some of those
15 areas.

16 Q What role do third parties have in the water distribution
17 system?

18 A So similar to where sewage and stormwater, it flows off of
19 VA system, in this case it's water supply coming onto VA system
20 from the water company, for lack of a better term.

21 But they've got the connection point at the
22 Wilshire intersection there, there's two large tanks that are
23 filled off of their system.

24 So providing additional capacity, we would have to work
25 with them, similar to what we would have to work with on

1 discharge for the other system.

2 Q Is there anything else you want to highlight that we
3 haven't touched on regarding the current water distribution
4 system on campus?

5 A Other than just, again, logistically when you're routing
6 any of these wet utilities, because it is a full campus system,
7 it's not as easy to just say, we want some more capacity here.
8 It's got to be tied into that larger system.

9 As we do a lot of this work on the north campus now,
10 we've already run into situations where we've had to relocate
11 piping around certain areas because of the development that's
12 going to be there.

13 So it does take a lot of planning to make sure you are
14 not recreating the wheel and you can actually get the water to
15 where it needs to be.

16 Q Are there particular challenges with having these three
17 wet utility systems intertwined?

18 A There can be. I think on all of the maps you have seen
19 pretty common that there is something near Bonsall on the
20 eastern side, and then something that is on the western side
21 running down one of the roads there, MacArthur or Pershing.

22 So realistically those system are all in the same
23 area, so we've tried through the work we have been doing on
24 these three systems to do them simultaneously.

25 So if we're tearing up a road, we tear up a road, do all

1 of the piping we need to do and then fix it.

2 But, again, we have run into situations where we have
3 crossed over different areas and had to reroute utilities so
4 that they don't interfere with each other.

5 Q Can you turn to page 143 of Exhibit 1.

6 Do you see Figure 4-29 entitled Existing Natural Gas
7 Distribution System?

8 A Yes.

9 Q Are you familiar with this map?

10 A Yes.

11 Q To your knowledge, is this the most updated map that VA
12 has with respect to the existing natural gas distribution
13 system?

14 A I believe it is.

15 Q What's the purpose of a natural gas distribution system?

16 A So natural gas can be used for heating of water, which is
17 predominantly what it is. It can also be used for heat, as a
18 heat source.

19 In this case that is generally not what most of the
20 Enhanced-Use Lease properties are going to be using, but they
21 can use natural gas as a source of fuel for both heat and
22 heating water.

23 Q And can you just briefly describe the conditions legend in
24 the lower left corner?

25 A Sure. So green, good condition, means relatively new, no

1 issues with the distribution.

2 The fair, and there really isn't any fair on this
3 particular one, would be aging but not to the point where it's
4 deteriorating or failing.

5 And then poor condition are older that are starting to
6 deteriorate and could fail.

7 Q What is the current condition of the natural gas
8 distribution system?

9 A So, in general, it's in good condition.

10 The North Campus really did not use natural gas, and you
11 can see on the map there the green ends at Building 300.
12 Building 300 did use natural gas. As a kitchen, it used it
13 pretty explicitly, so we've kept up the system in good shape up
14 to Building 300.

15 But beyond that, none of those buildings really used
16 natural gas, therefore, it's in poor condition.

17 Q Do third parties have a role in the natural gas
18 distribution system?

19 A Yes. The natural gas is supplied from off campus.

20 So it comes in and would have to be worked with the
21 utility provider for that.

22 Q Have any upgrades been made to the natural gas
23 distribution system?

24 A Yes. The primary upgrade was where you see coming in from
25 just below the columbarium along Bonsall up to the North Campus

1 there.

2 We built what we referred to as a trunk line that was
3 essentially a duct bank that was built underground to allow for
4 dry utilities, natural gas, electric and telecom to be run up
5 through Bonsall to the North Campus, so that the housing units
6 up there could tap into those utilities much easier when we got
7 to the point where we were ready to develop them.

8 THE COURT: If 209, 208, and 205 are habitable, do
9 you know where those aren't on the map?

10 THE WITNESS: Yes.

11 THE COURT: Is this red line accurate that we have a
12 poor condition natural gas line leading into those units?

13 THE WITNESS: Yeah, we do not --

14 THE COURT: We let these units open with this poor
15 condition gas line?

16 THE WITNESS: Right. So those in particular aren't
17 using natural gas so they're not tapped into the line.

18 But to your question, the trunk line went all the way up
19 to MacArthur.

20 So to the end of that red line, that is where the duct
21 bank is now that the natural gas line can easily be extended to
22 any of those developments up there that need it.

23 THE COURT: So this red line, I understand to be in
24 poor condition.

25 Is this feeding into 209, 208 or 205.

1 THE WITNESS: None. None of those are tapped into
2 that line.

3 THE COURT: Then what's the value of this line?

4 THE WITNESS: There isn't a value to it. That is
5 why we ran past it up to MacArthur Field, just past it. There
6 will be some of the development of those units that do use
7 natural gas.

8 THE COURT: Will this natural gas line continue on
9 to MacArthur Field?

10 THE WITNESS: Correct.

11 THE COURT: To have people supposedly moving in in a
12 couple of months, is this -- would this be green then?

13 THE WITNESS: Yeah. The extension would be green to
14 MacArthur.

15 THE COURT: Why don't you use this to write that in.
16 Does that new pencil line feed through this, what was
17 the former red line?

18 THE WITNESS: Yes.

19 THE COURT: So this is all good line now, correct?

20 THE WITNESS: Yeah, the old --

21 THE COURT: Real simple: This is all a good line,
22 it's not in red any more?

23 THE WITNESS: It's not in use any more.

24 THE COURT: Okay.

25 BY MS. PETTY:

1 Q Now, Mr. Simms, you mentioned a trunk line, can you
2 briefly state what that is?

3 A So a trunk line that we built essentially is an
4 underground conduit that is open space purposely built
5 underground to run through utility systems.

6 In this case that was dry utility focused so it was for
7 natural gas, electric, and telecom.

8 So underneath the road, there is this long, essentially,
9 conduit where we have run lines through that if you do need to
10 tap into or if you do need to make upgrades or access to, it's
11 much easier to get to that conduit than what it would be to run
12 lines independently from wherever.

13 Q Why was the trunk line work necessary?

14 A So as we look at the other two systems, there is obviously
15 a heavy dependence on electric and heavy dependence on telecom
16 out there.

17 Those systems aren't closed systems like the wet
18 utilities are. We essentially say we can bring in new capacity
19 from the utility system.

20 The intent was to go ahead and pre-feed the North Campus
21 with capacity that could support the housing and make it
22 available at the North Campus area.

23 The trunk line went all the way up Bonsall, it stopped
24 there, we've now got a piece that is running it down MacArthur
25 along the new developments there, so it's easy to tap into and

1 they don't then have to go bring utilities of this type, these
2 dry utilities, on from off-campus.

3 Q Approximately how much to date has that work on the trunk
4 line cost?

5 A It's about 11 and a half million dollars.

6 Q And approximately how long did it take from start to where
7 it's currently at?

8 A It took about 18 months to complete, from design to when
9 it was completed.

10 Q And when you mentioned that, the trunk line allows to tap
11 into either electrical capacity, is it unlimited?

12 A It's not unlimited, but we could go back to where it's
13 brought onto campus to increase the capacity there without
14 having to run new lines.

15 Q Are you able to talk about when new lines would need to be
16 run?

17 A So I will use, for example, Building 210. So Building 210
18 stands right next to Bonsall where we did that. They're not
19 going to have to run any new lines. They literally have the
20 tap-in, the connection point, right there at the end of the
21 parcel, so they will tap into that and they won't have to run
22 anything new.

23 Most of the buildings along the MacArthur area, those
24 are tapping into that trunk line as well.

25 There could be, when we get to the 256, 258, there is

1 electric service there now, there is not the truck line there,
2 so we could either choose to leave those lines or to extend the
3 trunk line by those buildings.

4 We'd have the option to do that.

5 But for right now, most of the work is able to tap
6 directly into that line.

7 Q Is there anything else you want to highlight regarding the
8 natural gas distribution system?

9 A Not on natural gas.

10 Q Can you turn to page 145 of Exhibit 1.

11 Do you see the Figure 4-30, Existing Power Distribution
12 System?

13 A Yes.

14 Q Are you familiar with this map?

15 A Yes.

16 Q To your knowledge, is this the most current map of the
17 existing power distribution system at the VA?

18 A I do not know whether there is a new map or not, but I do
19 know there has been work that has changed this that is now
20 complete.

21 Q Are you able to speak about that new work that has
22 occurred that alters this map?

23 A Yes.

24 Q Before we get into that, if you can briefly describe the
25 condition legend on the left?

1 A So similar to the others, green, good condition, no issues
2 with the distribution lines.

3 Fair condition, which is virtually the entire map when
4 it comes to electrical. They are still functional, they are
5 starting to age, so they could move into deterioration.

6 And then poor condition, the red, would be in already
7 failing condition or already failed condition.

8 Q Can you describe the upgrades that have occurred to the
9 power distribution system?

10 A So the main upgrade was the trunk line that we just talked
11 about.

12 If you look on the map here, there was no service going
13 up Bonsall.

14 So by running the trunk line up, what you had instead
15 was a bunch of sporadic lines throughout the North Campus.

16 We ran the trunk line up Bonsall all the way to
17 MacArthur so that all of those buildings could tap into the new
18 electrical system, get off of the fair condition system you see
19 reflected up here.

20 Q What role do third parties play in the power distribution
21 system?

22 A Southern Cal. Edison, critical player in this, they are
23 the provider.

24 What is unique about Southern Cal. Edison is in this
25 case is they actually run the lines themselves. So when we did

1 the trunk line work, the principal developer team that was
2 doing that work actually had to subcontract with Southern Cal.
3 Edison to come in and do the power line there.

4 So they have a more active role. They have to approve
5 the designs.

6 If we're doing the work, they have to approve the
7 designs, but they also participate in the work in a lot of the
8 electrical distribution stuff.

9 Q Are there any future upgrades planned for the power
10 distribution system?

11 A So there will be significant upgrades on the South Campus.

12 Those don't directly feed -- if you kind of look at
13 this, the power goes across Wilshire right now above Wilshire,
14 like hanging lines, that will be replaced by below ground
15 lines.

16 That will help the distribution system, in general, it
17 will be better and more quality lines than those hanging above
18 there, but there isn't anything large scale on the North Campus
19 because the power coming in through that trunk line is
20 sufficient for the housing up there, it will just be a matter
21 of doing those tie-ins to it.

22 Q When you say "sufficient for the housing," is that
23 particular to the number of housing units that have already
24 been assessed as it relates to the master plan?

25 A That's correct.

1 Q If significantly more housing were placed on the West LA
2 Campus, would another assessment need to be done?

3 A We would have to do another assessment.

4 In general, what I would say is, if we're using existing
5 buildings that VA used to use for clinical purposes, generally
6 clinical purposes are more energy-intensive than what
7 residential is, so it's a little bit of a trade-off.

8 But if it's brand new construction, you are adding we
9 would have to assess what that capacity would be.

10 Q Do you know what that assessment would look like and how
11 long it would potentially take?

12 A It would be very similar to the previous assessment,
13 starting with where and how many housing would be developed.

14 As with the others, we are limited. There are places on
15 campus where there is no electrical system right now, so we
16 would have to look at where we would expand and then if there
17 is a capacity issue, how we would address that capacity issue.

18 Q Is there anything else you want to highlight with respect
19 to the power distribution system?

20 A No. The power -- out of all of them it's one of the
21 easier ones to expand capacity, if needed.

22 You still have to run lines and that can be expensive,
23 but in general, the capacity is less of a concern, but it's
24 still something you've got to plan for.

25 Q Now, if you turn to page 147 of Exhibit 1. Do you see the

1 Figure 4-31 Existing Communications System?

2 A Yes.

3 Q Are you familiar with this map?

4 A Yes.

5 Q To your knowledge, is this map the most updated version
6 that VA has?

7 A Same as with electric, it is the most recent map that I'm
8 aware of, but we did complete work that would impact what's
9 available.

10 Q And do you possess knowledge of what that work has been?

11 A Yes.

12 Q Before we get into that, can you briefly, again, talk
13 about the condition legend as it relates to the existing
14 communications system?

15 A Sure. So green line is good condition, no issues, with
16 the distribution system in that case.

17 Orange is fair condition. These are ones that have age
18 on them and potentially started to degrade or would degrade
19 soon.

20 And then red being poor condition, these are ones that
21 are already failing.

22 Q And before we get into upgrades, can you describe what the
23 purpose of a communication system is and what that entails?

24 A Sure. So for -- if you factor the VA study into it two
25 general purposes.

1 One is the actual telecommunications and Internet-type
2 system for VA, so its network. And then separate and distinct
3 from that, you would have cable TV and Internet-type functions
4 for the veterans who would be residing on campus.

5 Q To date, what upgrades have occurred to the communication
6 system?

7 A So the communication system was part of the trunk line, so
8 it is now fully routed up Bonsall and available to tap into for
9 those residential pieces.

10 So for the cable, Internet, TV-type scenario, the VA's
11 communication network was not run through that so VA has got to
12 take care of its own networking issue, but for the residential
13 side running up Bonsall, the trunk line work is the upgrade
14 that's been completed.

15 Q Are there any other upgrades that are planned for the
16 future?

17 A Not at this point.

18 THE COURT: I don't understand, so help me.

19 What is causing me concern is the MacArthur Fields, the
20 3- to 400 units. And yet, in the maps I'm being shown, none of
21 this seems adequate for newly constructed units.

22 THE WITNESS: So, where the terminal point of that
23 trunk line is, is at the corner of MacArthur Field and building
24 402 -- one of the new ones that is being built there.

25 So they are able to tap in to the trunk line capacity

1 there.

2 THE COURT: Let's look at Building 205 for a moment.
3 It's surrounded by orange, isn't it?

4 THE WITNESS: Correct.

5 THE COURT: Okay. So wherever the developer is,
6 then, at fair condition in 205 at the move-in?

7 THE WITNESS: No. And that's what I was saying,
8 so --

9 THE COURT: So that would be green?

10 THE WITNESS: That would be green. That would be
11 correct.

12 THE COURT: What I'm having trouble with is just if
13 I didn't know better, if this was presented to me, I would
14 assume the parade of horrors.

15 And yet, every time I look at MacArthur Field, I can't
16 believe that we're so incompetent to put 3- to 400 units online
17 and have all of these red and orange lines running to it.
18 That's what causing me problems.

19 And I can't believe that we're so incompetent to have
20 people move 208, 209, 205, with this parade of horrors and
21 have the Court presented a bunch of red lines time after time.

22 I would really like an explanation of that because I
23 feel, tentatively, that I might be being misled, frankly.

24 THE WITNESS: These are not intended to be current.

25 THE COURT: And that should be told to me to begin

1 with, and I should have a much better representation showing
2 all of this in green and updated, so that I don't make a
3 mistake and assume that this is our parade of horrors.

4 Why wasn't that done?

5 THE WITNESS: I don't know, sir.

6 THE COURT: Okay. Thank you. Counsel.

7 BY MS. PETTY:

8 Q So, Mr. Simms, for all of the maps that we just went
9 through, you talked about the upgrades that have occurred to
10 those maps and the maps showed them in the state they were in
11 at the time of the 2022 master plan, correct?

12 A And even before that. These were all based on the surveys
13 that were completed in 2020.

14 Q And so the work that has been conducted to upgrade the
15 infrastructure system was based on the representation in these
16 current maps, correct?

17 A In part, yes. Yes.

18 Q So these maps acted as a guide with respect to areas that
19 needed to be upgraded, correct?

20 A Correct.

21 Q And to your knowledge, these are the most current maps of
22 the system that does not incorporate the upgrades that we just
23 talked about, correct?

24 A Correct. We have not done another full utility system
25 study like was done to produce these maps.

1 Q Is there anything else that you want to highlight about
2 the infrastructure system that we just went over?

3 A No. I think we have covered the majority of it.

4 As you have seen, it's all a little bit unique. Each
5 system has a slightly different challenge -- be it capacity,
6 age, or reach -- that we're trying to solve for.

7 Q These are the maps that were included in the 2022 master
8 plan, correct?

9 A Correct.

10 Q Are there any challenges with having the dry utility
11 system intertwined?

12 A Yes, especially in cases where it is running underneath of
13 a wet utility system, which we have run into.

14 There is generally requirements for separation from
15 water lines and sewer lines from dry utility systems, so that
16 can be a challenge.

17 Q Now, I want to switch gears and talk about the selection
18 of the principal developer.

19 Are you familiar with that process?

20 A Yes.

21 Q So can you first explain the concept of a principal
22 developer?

23 A Sure. So when we first started looking at delivering
24 housing after the draft master plan 2016, and after we got the
25 authority for Enhanced-Use Lease, we had a couple of buildings

1 that had already been identified as being very suitable for
2 housing.

3 We wanted to proceed with those as quick as possible.
4 The first being Building 209, and then following that with
5 Building 205 and 208.

6 So, we separated those out. Those are individual EULs
7 that we went out and solicited for so that we could get moving
8 as quickly as possible.

9 The challenge was -- is we knew in the end this had to
10 be more than housing. It had to have a community associated
11 with it. And if we did these all independent, it would be
12 really difficult to have that community built as part of it.

13 So the decision and the idea was if we went in with a
14 principal developer concept, not only would they have the
15 responsibility of the individual housing, but they would also
16 be tasked with providing consistency and planning around the
17 community aspects that we were looking for to develop up there.

18 So, once we were done with the individual Enhanced-Use
19 Leases upfront, everything from that point forward would be
20 done under the principal developer concept.

21 Q And so you mentioned the individual EUL agreements for
22 Building 209, 205, and 208, correct?

23 A Correct.

24 Q Staying on this for a moment before we turn back to the
25 principal developer.

1 How did the VA select the lessee for these individual
2 EULs?

3 A So, as I described in the morning session, we went out
4 with the request for proposal, an RFP-type process, and then
5 full and open competition, received proposals that we evaluated
6 and selected the winning bidder on.

7 All of those were done through that RFP, RFQ process.

8 Q What is the ownership structure for individual EUL
9 agreements?

10 A In most Enhanced-Use Leases, what you end up with is the
11 lessee is a special purpose entity. They are an entity created
12 specifically for that deal.

13 And they do that because of the financing schemes that
14 most of them use, which is tax credits.

15 And in tax credits scenarios, the actual tax credit
16 investor is an owner of the project, so they have to be brought
17 in to the chain. They are not an active partner, so they are
18 sort of an ownership percentage.

19 The active partner would be the lessee that we do all of
20 the interaction with. They become a very small owner of the
21 actual project.

22 All of that is formed into a special purpose entity that
23 we actually do the lease with.

24 THE COURT: Just one moment. Thank you, counsel.

25 BY MS. PETTY:

1 Q Can you describe the solicitation process for the
2 principal developer?

3 A Sure. So the solicitation process started with a posting
4 of a request for proposal, request for qualification.

5 The package included two separate parts.

6 We were looking to develop Building 207 early, so we
7 asked for a specific proposal on Building 207 -- what they
8 would do with that particular building, design, plans,
9 financing, et cetera.

10 We then asked for how they would approach the rest of
11 the development that would be done.

12 So not specifically the design, but the approach of what
13 they would do to develop the rest of the parcels, and then we
14 had the typical financial wherewithal and past experience
15 components.

16 So that's what went out.

17 We received bids back, and we then had presentations
18 from each of the offerors as the bidders would come in and
19 present their ideas.

20 In some cases, it was exactly what they had submitted in
21 the proposal. In other cases, they may have done a little bit
22 more, but they came in and presented, and then VA went back and
23 did the evaluation of the each of the proposals and made a
24 selection of the preferred developer.

25 Q And you mentioned that Building 207 was being done early.

1 Why was that?

2 A Building 207 was a previous use that was essentially
3 housing-like, so it would not require much work. And that was
4 the idea behind it.

5 It also wasn't a change in function that would be
6 problematic under NEPA. We still had to do the NEPA
7 assessment, but because it had already been used in a similar
8 fashion and we weren't proposing to demolish it or anything
9 like that, it was a relatively straightforward NEPA review.

10 Q Are you familiar with the entity that was selected as the
11 principal developer?

12 A Yes.

13 Q What was that entity?

14 A The West LA Veterans Collective.

15 Q And can you provide an overview of the organization
16 structure of the West LA Veterans Collective?

17 A Sure. It is a joint venture between three entities. The
18 first entity is Century Housing.

19 Century Housing is both an affordable housing developer
20 but also a financier, they actually fund some development.

21 The second entity was Thomas Safran and Associates.
22 They were an affordable housing developer.

23 The third entity was U.S. Vets, who is one of, if not
24 the biggest veteran service provider in the country. They
25 formed the West LA Veterans Collective for this particular

1 project.

2 Q And you touched on this very briefly, but can you talk
3 about the expertise that each entity brought to the table?

4 A Sure. So starting with Century Housing, the unique piece
5 there was, one, they are also a financier.

6 So, understanding the finance markets and how affordable
7 housing is financed was very unique.

8 Most of the people that we looked at were developers, so
9 they looked at it through one side of the equation.

10 Century Housing, because they did financing, had a
11 different perspective that we thought would be very useful in
12 navigating the financing markets.

13 Thomas Safran, they were an affordable housing
14 developer. Very good track record, and had worked very closely
15 with U.S. Vets and with Century Housing.

16 And then U.S. Vets, in particular, as a service provider
17 was very unique. VA has lots of engagement with U.S. Vets in
18 other venues, but they are a national organization, well-known
19 for their work with veterans.

20 So having them as party to this, normally we don't see
21 the service provider as the engaged entity upfront. The
22 service provider kind of waits for the developers to do it and
23 then they come in at the end.

24 But having U.S. Vets upfront was really unique because
25 it helped us instill that community aspect on what they were

1 proposing.

2 Q With Century Housing you mentioned that they are a
3 financier. What does that actually mean?

4 A So they actually do lending for some affordable housing
5 developments.

6 Q And you also mentioned that these companies have worked
7 together before.

8 What is the benefit of that?

9 A So in a lot of cases, especially with a project of this
10 magnitude, you see people pull together to create the right
11 team of individuals.

12 The challenge is if you have never worked with someone,
13 you are not familiar with how they approach their business.
14 And having someone who has worked together and gone through
15 sort of that storm-form norm scenario, they are comfortable
16 with each other.

17 They can actually move forward quicker in getting work
18 done than compared to entities who have never worked in this
19 situation before.

20 Q Did their past projects provide any insight into their
21 ability to navigate the West LA Campus?

22 A Certainly. So the Villages at Cabrillo was a very unique
23 project that stood out. While it wasn't a federal-type
24 engagement like this is, they were able to develop a large
25 scale affordable housing, mixed community-type scenario, not

1 too far from here.

2 And in that case, it was multiple partners that were
3 there -- U.S. Vets, and Century Housing were the main players
4 in that one, but they had done something similar, they also
5 knew, through working with VA and other ideas, that this would
6 be different.

7 It wasn't private property; it's federal property. And
8 it would be approached a little bit differently. But just
9 having thought through the size and the scope of what we're
10 trying to do here, was something that was unique, that we
11 really didn't see.

12 Most of the other proposers had lots of individual
13 affordable housing developments, but nothing of this size and
14 nothing with the community pieces that we were really looking
15 for.

16 Q And what is the significance of having experience in
17 affordable housing development as opposed to commercial?

18 A It really comes down to financing and operations, so both
19 of them are a little bit unique.

20 But having experience in the type of funding that
21 normally needs to get brought together for affordable housing
22 is very different than commercial development in that area.

23 Q After the West LA Veterans Collective was selected as the
24 principal developer, what happened next?

25 A So they were given a selection notice, that we are

1 selecting you for this. Two paths started.

2 One, is they started working on the Building 207 project
3 explicitly, so they were working on the designs for that, the
4 financing for that, to get to the point where we can execute a
5 lease.

6 Separately, they got involved with us on the larger
7 scale planning, so as we saw earlier, they actually ended up
8 being a party to the historic preservation programmatic
9 agreement.

10 So they started working with us in the PEIS process and
11 the PA process to get an understanding of where some of the
12 challenges could show up.

13 They brought their experience to the table to help us
14 get through those processes as cleanly as what we could.

15 Q Are you able to approximate the date in which the
16 principal -- principal developer was selected?

17 A It was fall of 2018.

18 THE COURT: Who is that? Who was the principal
19 developer?

20 THE WITNESS: That would be entity comprised of
21 Century Housing, Thomas Safran and Associates, and U.S. Vets.

22 THE COURT: So, the Veterans Collective?

23 THE WITNESS: Correct.

24 BY MS. PETTY:

25 Q What type of documentation did the West LA Veterans

1 Collective have to submit to VA?

2 A So, typically, they would submit a plan, in this case for
3 207. That plan didn't have a specific format. They could
4 present it however they chose to.

5 We also asked them for a plan related to the future
6 development, including the community aspects of it.

7 That, again, didn't necessarily have a specific format.

8 Their past experience normally is on a
9 project-by-project basis. They would provide examples of what
10 they have done, both individually and together, wherever they
11 have that.

12 And then the third one on the financial wherewithal, it
13 would be both sort of narrative explaining how they approach
14 financing, but also their actual financial statements --
15 audited financials and things like that they would provide for
16 their individual companies.

17 Q And I believe you mentioned a design plan earlier.

18 Does that design plan have to go through SHPO
19 consultation?

20 A That design plan goes through multiple different
21 design-type reviews including SHPO, yes.

22 Q So is it part of the consultation process for historic
23 preservation?

24 A Yes. When we would engage for Building 207 holistically,
25 part of that consultation would be reviewing the design, and

1 the SHPO identifying any areas of concern or things that they
2 wanted to us to mitigate or do differently.

3 Q Are you familiar with the specific responsibilities of the
4 West LA Veterans Collective?

5 A In regards to the principal developer at EUL, yes.

6 Q Can you briefly describe some of them?

7 A Sure. So, broadly, the collective is responsible for the
8 planning of development of up to 900 units of housing -- or I
9 should say at least 900 units of housing.

10 Don't get confused with the 1,200 units because those
11 others were done via individual EULs.

12 But the remainder of the housing, 900-plus units, they
13 are responsible for, and that includes the phasing, the
14 planning, the design, the financing, and the operations.

15 So, in totality, they are responsible for that.

16 They are also responsible for the synchronization of
17 services to be delivered across all of the different housing
18 that are out there.

19 So part of what we ask them to do was essentially
20 create, for lack of a better term, a homeowners' association or
21 a condo board that would help coordinate all of the different
22 buildings so that you weren't duplicating services, and that
23 you were providing services in the most effective way that they
24 could.

25 Q Is there anything else you want to touch on with respect

1 to the principal developer?

2 A I think we have covered a lot.

3 THE COURT: How did Shangri-La get involved? How
4 did Shangri-La get involved? In what form?

5 THE WITNESS: So, Shangri-La was one of the bidders
6 and the winning bidder for Buildings 209, 205, and 208.

7 THE COURT: To do what? To develop it or to service
8 it?

9 THE WITNESS: They were the -- primarily the
10 construction agent, so the developer for all three of those.
11 Although in the case of Building 209, there wasn't a whole lot
12 to do.

13 VA had completed renovation of that building so there
14 wasn't a whole lot to do, but they were the lead for the
15 construction and renovation work.

16 THE COURT: Just a moment.

17 So, what is the relationship, then, of Safran or U.S.
18 Vets or Century Housing to 209, 208, and 205?

19 THE WITNESS: Legal relationship, none. Logical
20 relationship, we have asked them to work with the service
21 providers for those buildings.

22 THE COURT: Just a moment. But they're not a
23 builder, construction, on those buildings?

24 THE WITNESS: Correct.

25 THE COURT: They are not servicing those buildings?

1 THE WITNESS: Correct.

2 THE COURT: Okay. Counsel.

3 BY MS. PETTY:

4 Q So when we're talking about the special purpose entity, if
5 we look, for example, at Shangri-La, and you can pick the
6 building that we will discuss, but can you describe the
7 relationship of Shangri-La in that special purpose entity and
8 the other parties that are in that special purpose entity?

9 A Yes. So let me start by clarifying.

10 Shangri-La is no longer part of any of the ownership
11 change, but that is a recent thing.

12 So what I will explain is where we started with those
13 projects and their role.

14 THE COURT: Why don't we take a break there. Let's
15 come back right there and give Terri a rest, okay?

16 Counsel, how about 15 minutes, okay?

17 MS. PETTY: Thank you, Your Honor.

18 (Afternoon recess.)

19 THE COURT: We're on the record. All counsel are
20 present. The parties are present.

21 Mr. Simms is on the stand.

22 Continue direct examination.

23 BY MS. PETTY:

24 Q Mr. Simms, before we broke you were talking about
25 Shangri-La, and how they aren't part of the ownership structure

1 and you were just about to explain the projects that they were
2 on and what their role was and how that relates to the
3 ownership structure?

4 A Okay. So in projects where there are tax credit investors
5 included, and that is these projects, they did have tax credits
6 as part of their financing, the organizational structure starts
7 with the tax credit investor.

8 They are 99.9 percent ownership of the entity that we
9 have the lease with.

10 THE COURT: Would that be in this case once again?

11 THE WITNESS: So the tax credit investor is
12 generally a bank. Wells Fargo has done a lot, but there are
13 other banks that we typically work with, but it's institutional
14 investors.

15 THE COURT: So in this particular case it was Wells
16 Fargo?

17 THE WITNESS: For 205 and 208 I believe it was
18 Chase, I don't believe it was Wells Fargo.

19 THE COURT: Okay. And 209 or was that already
20 complete?

21 THE WITNESS: 209 didn't have the same structure.

22 THE COURT: Thank you.

23 THE WITNESS: So in those cases, once you get past
24 the tax credit investor, you then have multiple partners that
25 are part of the ownership chain with one partner identified as

1 the managing partner.

2 THE COURT: Who is that?

3 THE WITNESS: In 205 and 208, Shangri-La was
4 initially the managing partner.

5 THE COURT: Okay.

6 THE WITNESS: After the managing partner you can
7 have one or more partners.

8 In this case, there were two other partners that were
9 identified. There was a Community for Veterans and Step Up on
10 Second were two additional partners in the ownership structure.

11 THE COURT: Just a moment.

12 (Pause in proceedings.)

13 THE COURT: Thank you.

14 THE WITNESS: In this case, what happened was the
15 ownership structure requested that Shangri-La be removed from
16 the ownership structure.

17 So they came out and a new managing partner had to be
18 identified, which, in this case is A Community of Friends is
19 the new managing partner for all three of those projects.

20 THE COURT: The new managing partner is A Community?

21 THE WITNESS: ACOF, A Community of Friends.

22 THE COURT: A Community of Friends. Who are they?

23 THE WITNESS: They are another housing operator that
24 was partners with Shangri-La and Step Up when they entered into
25 it, so they're not new to the deals, but they were not the

1 managing partner previously and now they are.

2 THE COURT: Okay.

3 BY MS. PETTY:

4 Q Is it common for there to be ownership structure changes
5 as the project moves into different phases?

6 A There certainly can be.

7 A lot of it depends on who the managing partner is when
8 you start.

9 And I say that because a lot of our deals are with
10 housing developers.

11 Shangri-La was unique because they are really a
12 construction company where A Community For Veterans was more of
13 the housing developer.

14 But in cases where you have a specialist, like a
15 construction company, as the managing partner, it is not
16 uncommon for them to get shifted to just the general partner
17 and a new managing partner be put in place.

18 They don't always leave the ownership entirely. That is
19 unique in this case where Shangri-La was removed completely
20 from the ownership.

21 Q When Shangri-La was removed from the ownership structure,
22 was construction of that building complete at that time?

23 A Yes. For all three buildings.

24 Q And so you mentioned earlier that oftentimes once a
25 project gets to a different phase, that structure might change.

1 For example, if the construction finishes, then that
2 company will no longer be a managing partner and someone doing
3 the community service would then become the managing partner;
4 is that correct?

5 A That is correct. Although, logistically, you don't have
6 to change the ownership structure, but that is what happens,
7 regardless.

8 There is generally a person working the construction
9 piece and a different service provider, so who we interact with
10 does change throughout the life cycle of the lease.

11 Q So I want to shift gears now and talk a bit about the
12 financing for permanent supportive housing on the West LA
13 Campus.

14 Are you familiar with the process?

15 A Yes.

16 Q Who is responsible for obtaining the financing for the
17 permanent supportive housing on the West LA Campus?

18 A The developers that we partner with under the Enhanced-Use
19 Leases are responsible for the financing.

20 Q Does VA have any role in obtaining the financing?

21 A We do not obtain the financing. Our role is limited to
22 supporting them in that.

23 We do write things, like letters of support when they
24 apply for financing, but it is not VA that does the actual
25 application.

1 Q If you are able to approximate, how much financing is
2 typically required for a permanent supportive housing project
3 on the West LA Campus?

4 A So it can certainly vary. We've got some that are in the
5 50-unit range, some that are over 100, but we have seen the
6 costs generally between 30 and \$45 million per development.

7 Q Is it typical for a single financing source to fund the
8 entirety of a particular permanent supportive housing project?

9 A Not typical. Very rare for that to occur.

10 Q Has it ever happened with respect to the permanent
11 supportive housing on the West LA Campus?

12 A Not at West LA.

13 Q And today you used the term "affordable housing developer"
14 or "affordable housing development."

15 Do you consider permanent supportive housing to be
16 affordable housing, when we're talking about that term?

17 A Yes.

18 Q So I next want to ask about an overview of the typical
19 financing structure for permanent supportive housing, including
20 both the development and ongoing operations side.

21 I'm not in finance so I'm going to need you to go fairly
22 slow and explain, even when you think it is a term that
23 everyone knows in the room, okay?

24 A I will do my best on that one.

25 So complexity-wise financing for affordable

1 housing is extremely complex.

2 The development side, I will start there, it is the most
3 complex piece.

4 Typically, what you see in affordable housing is what we
5 call a financing stack, which means it's multiple sources of
6 financing, each at different levels to build enough capital to
7 get to the point you can do the development, so in this case,
8 you know, 30 to \$40 million.

9 Developers are looking to build that financing stack.

10 It is not uncommon for projects to have upwards of 15 or
11 even 20 different funding sources for them to be able to get
12 all of the financing they need.

13 It's important just for a minute here to explain why.

14 The why is very simple: People lend money and give
15 money based upon returns, what they expect to get back.

16 In the case of affordable housing, there is no intent to
17 make profit in a large scale off of this. These are the
18 opposite of commercial developments. Cash flow is extremely
19 low.

20 So it is rare for someone to want to lend money or grant
21 money to someone, unless there is a program specifically for
22 that purpose.

23 That's where the financing under low-income housing tax
24 credits as well as tax exempt bonds come into play. Those are
25 niche finance resources specifically for affordable housing

1 development.

2 Even within those programs there is limited funding.
3 They're set up on an allocation basis.

4 The federal government allocates tax credits or tax
5 exempt bonds. The states then further allocate that out.

6 So by the time you get to a local area, there's
7 generally not a lot of money to be had out there. So while
8 that's a niche program specific for affordable housing, it
9 can't be the only solution that the developers look at.

10 So they will look at combinations. They will look at
11 low income housing tax credits. They will look at tax exempt
12 bonds.

13 The next place they look at are state or local programs
14 specifically for affordable housing.

15 And California has had a number of those, No Place Like
16 Home, VHHP, those are a couple of programs that were set up.
17 Those are not tax credits or tax exempt bonds, they are
18 separate programs that the state or the localities set up to
19 provide some of that additional financing that these developers
20 need.

21 So they keep building their stack.

22 The next place they would look would be essentially
23 grants or philanthropic donations. That generally occurs in
24 almost all of the projects, but it's a smaller portion of the
25 overall development when you look at it.

1 So they are building that financing stack, each one of
2 those steps adds more and more capital to them, to the point
3 where they can get enough money together to actually go do the
4 development. Very high level on that side.

5 Let me touch on the operational side, much simpler.

6 Once the buildings are up in operation, almost all of
7 these projects, their cash flow is based on rental subsidies.
8 So rental subsidy programs, in this case we're talking about
9 HUD-VASH.

10 HUD-VASH has the rent subsidy component, others might be
11 Section 8 vouchers that are out there and then there could be a
12 few more.

13 That one is much more straightforward. It's rental
14 subsidies that they're looking for to help manage the
15 operational cash flow. If they can secure those, that gives
16 them that solid cash flow.

17 They don't necessarily have to stack or build financing
18 stacks for the operational side like they do for the
19 construction.

20 Q Thank you for that overview.

21 I want to break some of this down.

22 So you mentioned the financial stack and that consists
23 of many different sources of funding?

24 A Correct.

25 Q So it could include tax credits, it could include tax

1 bonds, it could include public funds or government grants and
2 then a portion of it can include philanthropic donations; is
3 that correct?

4 A Correct.

5 Q Thus far, has it been the case that a philanthropic
6 donation is enough to fund the entirety of a permanent
7 supportive housing project?

8 A No, not even close.

9 Q And just so it's clear how some of these funding sources
10 work, with respect to bonds, how does that work when we're
11 talking about the financing stack?

12 A So bonds are, again, allocated from the federal government
13 down to states who normally have a debt committee, and CDLAC in
14 the case of California.

15 That then further allocate those tax exempt bonds to
16 municipalities, essentially. The municipalities issues the
17 bonds and then there's an investor who buys that bond for the
18 purpose of getting a return that is tax exempt. So they're not
19 taxed on the earnings of that bond that they get.

20 And when that municipality sells that bond, that money
21 is then used to fund the actual construction project.

22 Bonds are normally a short-term thing.

23 So whoever buys the bond, again, normally an
24 institutional-type investor, a bank, at the end of the
25 construction period, they will convert that bond into just a

1 long-term loan for whatever the balance of that is.

2 So the bonds are a shorter period of time than what the
3 tax credits are. They are a little different.

4 Q Can you talk a bit about the tax credits?

5 A Sure. So tax credits, again, allocated from federal to
6 state, competed, you know, once they're allocated further down
7 they're competed for.

8 The difference with tax credits is the entity who gets
9 awarded them is normally an affordable housing developer, they
10 don't really have a need for tax credits.

11 They are not paying a whole lot of taxes because they
12 are not generally making a big profit. But institutional
13 investors do have a need for tax breaks, so they look to sell
14 those tax credits.

15 So the affordable housing developer gets them, they sell
16 them to an institutional investor. That institutional investor
17 then becomes a owner of the project and that's how they
18 actually get their tax breaks.

19 So not only are they guaranteed a tax credit that they
20 purchased for, but in some of these projects if they are
21 running in the red, meaning they're losing money, that investor
22 could get more benefit out it because they can have more of a
23 write-off, more of a loss to capture.

24 They're not an active player, so they are not housing
25 operators or developers, they are a silent partner, if you

1 will, accumulating the tax benefits after purchasing that tax
2 credit.

3 The biggest difference in that case is it's not a
4 short-term thing. That tax credit investor is physically on
5 the org chart as a 99 percent owner of the property normally
6 for 55 years. That is normally the term that they have for
7 those tax credits.

8 Now, they normally use the tax credits in 10 years. So
9 they use it, at that point, they may look to get out of it,
10 they're not going to get any more benefit, but the term they
11 look for is up to 55 years.

12 That's the main difference with the bonds which are more
13 of a short-term financing to get money to do the construction.

14 Q And why doesn't traditional financing such as bank loans
15 often -- why does it often not work for affordable housing
16 development such as permanent supportive housing?

17 In other words, why do you have to patch together all of
18 these different types of funding sources when there are other
19 methods, like traditional financing?

20 MR. SILBERFELD: Objection, Your Honor, incomplete
21 hypothetical.

22 THE COURT: Do you understand the question?

23 THE WITNESS: I do.

24 THE COURT: Then answer it.

25 THE WITNESS: It's easiest to use an example of on

1 this.

2 If an individual person is going to buy a house, they're
3 going to get a mortgage for that. The first question that
4 anyone asks before they loan you money is, how much money do
5 you make? That is your baseline to determine how much you can
6 afford and how much I'm going to loan you.

7 In this case, cash flow is how much money you make. And
8 when people look at the cash flow associated with affordable
9 housing, it's very thin.

10 Most of the quote/unquote profit so that excess cash
11 flow goes directly back into the supportive services that they
12 are required to provide.

13 So there is very little margin at the end of a deal when
14 you are looking year by year, there is not a whole lot of
15 dollars there.

16 That adds risk. If I'm going to give you a commercial
17 loan, just a standard loan, I have to be sure you're going to
18 be able to repay that and there is not a lot of margin on these
19 deals.

20 So if a commercial lender is willing to give you a loan,
21 chances are it's for a very small amount, it's not nearly
22 enough.

23 Commercial loans do play into this, they are part of
24 that financing stack, but in general, it's a relatively small
25 amount because the cash flows just don't support a higher level

1 of loan.

2 Q So when you are talking about the cash flow with
3 affordable housing developments, does that also relate to the
4 lower rents with respect to those properties?

5 Does that impact the cash flow?

6 A Yes. So the cash flow -- normally your only income in one
7 of these things is the rent subsidy, so HUD-VASH or Section 8,
8 whatever it may be, and then the tenant's rent, which is capped
9 at a certain amount.

10 So even though the combination of those two is supposed
11 to be closer to market rate, it's a finite amount, and it isn't
12 something that allows you to then generate additional and more
13 cash flows on top of it. That's really it, that is your cash
14 flow, which is highly dependent upon occupancy.

15 So if my cash flow is based on 85 percent of the units
16 being rented through the year, and something happens, and I end
17 up dropping to 70 percent occupancy, I don't have enough money
18 to actually make loan payments, in a traditional sense.

19 So there is a lot more risk in both the amount of rent
20 and the occupancy for affordable housing that gives commercial
21 lenders a lot of challenge in funding very much of those deals.

22 Q Does this analysis you just gave also apply to traditional
23 construction loans?

24 A So it would be, yes. I mean, when you think about the
25 traditional construction loan, those are typically short-term.

1 So a construction loan is replaced with a longer term permanent
2 loan at the end of two or three years, so those terms are what
3 they would be looking at is that longer term lend.

4 What is the risk there is that you are going to be able
5 to pay it back.

6 Rarely, if ever, do you pay off a construction loan when
7 you finish the construction. You are looking at paying it off
8 over that longer period of time under the loan, that's where
9 they are assessing their risk.

10 Q And you talked about cash flow, and, in particular, can
11 you explain why cash flow from a subsidy such as HUD-VASH
12 vouchers is critical to the financial viability of an
13 affordable housing project, including permanent supportive
14 housing?

15 A Sure. So when a project goes into the operational phase,
16 we build out something called a pro forma, which is essentially
17 just a budget.

18 It talks about how much money you get in and then what
19 you spend that money on.

20 Most of the equation on affordable housing are fixed
21 expenses, things that you have to pay for. And when you run
22 those numbers out, there is a set amount you have to generate.

23 The two sources are the subsidy you're getting and then
24 the payment from the tenant, so the co-pay, if you will.

25 So those two pieces have to satisfy all of your

1 requirements that are those must funds, and you get to the
2 bottom and you hope that you've got positive cash flow.

3 It is very common when we first enter deals, not
4 necessarily at West LA, but any deal, for the cash flow to be
5 negative in many years of that pro forma.

6 If they need to do upgrades on a facility, they're
7 either taking out new loans to generate new capital or they're
8 trying to pay for that out of their operational funds. And if
9 they do that, they may be in the red. They may have negative
10 cash flow for a few years, that's the financial health that is
11 concerning.

12 So that's the important piece.

13 Now, within HUD-VASH obviously, the vouchers that we're
14 talking about here to date have been project-based vouchers.
15 Very important distinction, meaning they're assigned to the
16 buildings, rather than the people and having to rely on pulling
17 in new tenants, you've got the voucher for building. That does
18 reduce risk on the rental subsidy side.

19 But not to the extent that it actually generates more
20 money, just that there is less risk associated with it.

21 Q And when you say it reduces risk with the project-based
22 vouchers being tethered to a specific building, do you mean
23 that there is a set stream of cash flow that will be coming in
24 through those particular vouchers that are assigned to a
25 building?

1 A Yes. Provided there is a veteran to use it.

2 So it can speed up the process because the voucher is
3 already approved for the unit, you just need the veteran to
4 qualify to come in and then they are immediately using it,
5 versus we have a lot of projects, not it West LA, but at other
6 places that are tenant-based vouchers.

7 You are now looking for people who have the voucher to
8 come in, and that is a much more risky proposition than already
9 having the voucher secured for the building.

10 Q From a timing perspective, when developers are trying to
11 acquire these different sources of funding for the projects,
12 what does that look like from a timing perspective, if you are
13 able to give an approximate?

14 A Sure. So normally they start with the bigger sources of
15 funding. So tax credits, tax exempt bonds, those normally have
16 application because they are competitive.

17 They have application periods, either every six months
18 or every year, so they apply for those.

19 Once they've applied there is normally an award process
20 within about six months where they know whether they've been
21 awarded and how much they've been awarded in credits or bonds.

22 Once they know that, they've quickly got to turn to the
23 rest of their financing stack.

24 The reason being is when you're awarded some of those
25 tax credits, you normally have one year from being awarded a

1 tax credit to having to start construction.

2 And if you can't meet that, you lose the tax credits.

3 So there is a finite set of time, so they have to
4 quickly pivot once they hear they've got an award, to fill in
5 the rest of the financing for that project to then move
6 forward.

7 Now, good developers, and this is where you kind of get
8 to that experience, good developers have already started
9 working on that. They've already assumed certain things, so
10 they're filling in the gaps of financing with other sources
11 well before they even know whether or not they've been awarded
12 the tax credits or bonds, so it helps them to be able to manage
13 that timeline down from the award.

14 Q And when you say "it's a competitive process," what does
15 that mean?

16 A When they apply for tax credits, the developer submits an
17 application. It is an open submission, so any affordable
18 housing development is allowed to submit for that, and request
19 those tax credits.

20 So, typically, at least in the last five to seven years,
21 the available funding, that gets allocated and is being
22 competed for is much smaller than the amount of applications
23 coming in.

24 Those applications, depending on the jurisdiction, if
25 it's county level, if it's city level, wherever it is, there is

1 lots of different affordable housing developments that are
2 being proposed, all of them are applying for that same pool of
3 tax credit or tax exempt bond financing.

4 Q And you mentioned specific timelines with respect to some
5 of these applications being six months to a year.

6 What impact does that have on the timeline for the
7 development of permanent supportive housing if, for example, a
8 developer did not get selected for funding during that
9 particular cycle?

10 A So the short answer: It delays it. They have to reapply
11 in the next financing cycle.

12 There's also scenarios where -- and I think we may have
13 talked about this when I was here last time, where an
14 application is simply not submitted. So if you haven't done
15 your planning as a developer to know when the financing cycles
16 are that you need to access, if you miss a window, you have to
17 wait for the next window.

18 The same thing would apply if you submit an application
19 and do not get awarded any of those credits, you have to wait
20 for the next cycle.

21 But, again, as we talked about, how that plays with the
22 rest of the financing stack and what commitments you need in
23 those other areas can get very complex if you have to keep
24 pushing that date back.

25 Q And from your perspective, what are some factors that

1 determine whether an affordable housing project will be able to
2 obtain the necessary funding?

3 A So there's criteria-based systems that each state sets up
4 for the award of tax credits and tax exempt bonds.

5 Some of the common ones that you look at are cost per
6 unit, so how much is it going to cost them to develop that.

7 The lower the cost per unit, the better you score.

8 There's location factors, are you close to amenities,
9 public transportation, things like that.

10 There's a third one, which is related to your rights to
11 the land that you have to establish, so slight control, so they
12 don't award tax credits to someone who doesn't even have the
13 land to build it.

14 So there's some yes/nos but also some more subjective
15 ones around the cost per unit and the location of it that are
16 important.

17 Q Aside from what we have discussed thus far, are there any
18 other challenges that developers face when they are trying to
19 obtain the necessary funding for permanent supportive housing?

20 A I think we have touched on most of them.

21 You know, certainly the competitiveness, the interplay
22 and the timing is important.

23 You know, working with the federal government is also
24 unique.

25 Many developers are very quick to say, I bought this

1 land or I have an option to buy this land. They don't have
2 that when they are working on federal property. They have
3 essentially an option to lease for a period of time.

4 That has come up as a negative when they're being looked
5 at for financing, it's not as strong as actually owning the
6 land or having access to the land.

7 The the other one is, again, sort of that location near
8 amenities. If you're on the West LA Campus you don't
9 necessarily have that as what you might if it were in the
10 community someplace.

11 So those are unique challenges because of where the
12 development is.

13 I think we've been very good at working with the
14 developers to help strengthen their applications in those
15 areas, providing them the right documentation up front on site
16 control and things like that, so it has smoothed their ability
17 to get financing.

18 Q And we talked earlier today about the concept of a phased
19 development plan.

20 How does financing availability interplay with the
21 phased development approach as opposed to just building all at
22 once?

23 A So, because the financing is limited, again, annual
24 allocations from Congress and tax credits and bonds, there is
25 always going to be a finite set of money available.

1 Even with only one or two developments applying in any
2 given cycle, you're still eating up a large portion of that
3 available funding for just these projects.

4 If you went forward under a scenario where you wanted to
5 submit eight, nine, ten projects at once, number one, there's
6 not enough money available to do all of that at one time.

7 The other option is to ask for less money to do more
8 projects. That just creates more issues than actually bringing
9 the projects to close, because now your financing stacks have
10 to get bigger and bigger and bigger and the State programs that
11 have been great here don't have a lot of money left in them or
12 they are completely out of money right now.

13 So trying to do everything at once stresses the
14 available capital out there to the point where you can end up
15 with very few projects that actually come to closure rather
16 than focusing on a couple, getting the financing started,
17 getting them started, and then moving to the next set of
18 buildings.

19 So that's where that phased approach supports the idea
20 that financing is limited at any given window.

21 Q Is there any other information you want to share with
22 respect to the financing for permanent supportive housing?

23 A So I think the one we talked a little bit this morning was
24 on the capital contribution side.

25 So VA does have authority to contribute minor

1 construction funds for EULs.

2 The capacity for us to do that is limited; one, by how
3 much money we have. But it's also limited in how that can be
4 used within these projects.

5 The uniqueness about it is while we contribute to that
6 money, if they add it to their financing stack, they actually
7 have to front the bill.

8 So VA doesn't cut them a check for that money, it's all
9 done on a reimbursable basis.

10 So we have to define exactly what work they are going to
11 do for that particular amount of money. Once they have done
12 that work, then we can reimburse them for it.

13 So, we have leveraged that, and we will continue to
14 leverage that because it can help them on their cost per unit,
15 help them be more competitive in other financing arenas.

16 But it is a little bit of a double-edged sword of the
17 more we put into, those types of activities, they have got to
18 fund themselves or find another way to pay for upfront until
19 they can get reimbursed.

20 So that can help on the cost per unit competitiveness,
21 but it can hurt them and their actual financing capability,
22 because it's going to eat up a lot of their available capital
23 to do all of that work and then get paid back later.

24 Q That segues nicely into the next topic that I want to go
25 through with you.

1 Are you familiar with the Veterans and Community
2 Oversight Engagement Board?

3 A Yes.

4 Q Do you recall attending a June 2024 meeting?

5 A Yes.

6 Q We're going to hand you what has been marked as
7 Exhibit 1312.

8 Do you recognize the cover page of this document?

9 A Yes.

10 Q What is it?

11 A This was the overview slide deck that was displayed at the
12 beginning of the Veterans Community and Oversight Engagement
13 Board meeting.

14 Q Did you attend this meeting?

15 A I did this briefing virtually.

16 Q If you can turn to page 1312-011, that is your name listed
17 on that slide, correct?

18 A Correct.

19 Q Now, if you turn to the next page, which is 1312-012, is
20 this a presentation that you gave at this meeting?

21 A I did, yes.

22 Q I want to go through some of this presentation.

23 So if you go to page 1312-014, can you talk a little bit
24 about the purpose of this page?

25 A Sure. So when we work with our VCOEB partners, there are

1 topics that they would like to hear about and they would like
2 VA to present about.

3 They have three specific topics that they flagged that
4 they would like more information about, so each of the topics
5 is outlined here in the VCOEB's words of what they wanted us to
6 talk about, and then we built a slide deck to help answer their
7 questions and provide some explanation.

8 Q Can you turn to the next page which has the heading
9 Topic 1 Appropriations for EUL Activities.

10 Can you tell me about the information that is contained
11 under the federal budget heading?

12 A Sure. So that the first piece here really talks about the
13 budget, not including a specific line item for Enhanced-Use
14 Lease projects, that is by design.

15 The statute is pretty clear that our only contribution
16 to EUL can be through minor construction, so there is not a
17 separate line that is just called EUL.

18 Within the minor construction, we do and can request
19 money for capital contributions.

20 In the budget itself, though, it is not line item
21 appropriated, meaning, we ask for a lump sum of money in minor
22 construction; Congress appropriates a lump sum; and then we,
23 internal VA, divvy it up among various projects.

24 So this is explaining some of those activities.

25 The last bullet under the first piece is explaining that

1 there are other things that happen to enable Enhanced-Use
2 Leases to occur that could be utility systems upgrades, that
3 could be ongoing security or support. Those types of things
4 are not directly paid for under the EUL heading.

5 They are covered under different appropriations,
6 specifically the non-recurring maintenance for projects.

7 Q So earlier today when we looked at the 2022 maps in the
8 master plan, and we used those maps to look at what the past
9 condition of the campus was, and then we spoke about, from that
10 map, the updates that had occurred since then that are not
11 included on the map, would those upgrades that we talked about
12 fit within non-recurring maintenance projects or what is talked
13 about in this section?

14 A So, we have done both.

15 So the trunk line that we spoke about was a capital
16 contribution, VA did a capital contribution that covered the
17 cost of the trunk line.

18 There is other work, like the sewer and the water
19 projects that we were talking about.

20 VA is doing those ourselves. We're not going through
21 the EUL to do that. We're doing those ourselves, and that is
22 using that non-recurring maintenance funding.

23 Q And if you look at the next heading that says Uniqueness
24 of PACT Act, can you explain what this portion is discussing?

25 A Sure. So the PACT Act was passed and it did two things

1 related to Enhanced-Use Leases.

2 The first one is it expanded our authority under 38
3 U.S.C. 8161 through 69. It made changes to the base authority.

4 That doesn't really apply to West LA, but it does apply
5 to the rest of the portfolio.

6 The other thing it did is it appropriated \$922 million,
7 and the quote was "to enter into Enhanced-Use Leases."

8 So, that was an appropriation. VA didn't request that
9 money.

10 But when Congress went to change the authority, our
11 congressional budget office said it will have a cost of roughly
12 \$922 million, therefore, Congress went ahead and appropriated
13 that money since they would have to cover the cost anyway.

14 Q Can you turn to the next page, which is 1312-016.

15 Can you talk about the information that is contained to
16 this page?

17 A So the 922 million that we were appropriated, it did not
18 have an account associated with it.

19 In budget terms, we would refer to that as the color of
20 money. It didn't have a color of money, so VA had to determine
21 what accounts that money would actually flow into.

22 There are four different accounts that we chose for that
23 to flow into.

24 The first one is called general administrative. That
25 is, essentially, people and travel and training-type expenses

1 that we could use some money for to increase our FTEs to
2 support more projects, et cetera.

3 The second one was minor construction. This one was
4 directly for capital contributions.

5 So we know we can use money in that account, so we did
6 put a significant amount of that 922 into minor construction.

7 The third one was major construction. This is a little
8 bit unique.

9 Major construction actually has an account that we hire
10 contractors out of to support construction activities. So we
11 put some money into this so we could hire additional
12 contractors and oversight.

13 It's not actually for projects themselves. It's just
14 for that support.

15 And then the last one was medical facilities.

16 The medical facilities account includes that
17 non-recurring maintenance, but it also includes other types of
18 facility services.

19 So it doesn't have to be a project, it can be support
20 like planning activities and things like that.

21 So we essentially divvied up that 922 million into these
22 four buckets, that is how we actually have got the money
23 appropriated to us.

24 Q And if you turn to the next page, is there anything you
25 want to highlight with respect to page 1312-017?

1 A So when we got that 922 and we divvied it into those four
2 pots, two pots in particular, we allocated the predominant
3 amount of it to West LA specifically.

4 That includes capital contributions and that
5 non-recurring maintenance line item.

6 So in those cases, if you look between the two,
7 \$378 million is what we had allocated to West LA, roughly
8 41 percent of that 922 million.

9 I would point out, this is not set in stone.

10 Meaning, we could, in capital contribution or in RM,
11 move more money to West LA.

12 Where we are locked a little bit is we can't change that
13 color of money.

14 So if we had money put in as gen ad, general
15 administrative, we can't move that to minor construction. But
16 within minor construction for capital contributions, right now
17 we're looking at 12 and a half percent of that being West LA.

18 If we need another 5 or \$10 million for capital
19 contributions at West LA, that is within our authority to do.
20 We don't need any additional approvals to make that happen.

21 Q If you turn to the next page which is 1312-018, is there
22 anything on this page that you want to explain?

23 A So I would just point out kind of what I flagged. Any
24 time we do a contribution, it is paid as a reimbursement.

25 So they create the requirement, we include that as an

1 exhibit to the lease -- that is called the commitment
2 agreement.

3 We would say, here is the money, here is what it's going
4 to be used for. And once we have executed the lease and they
5 start work, they can request reimbursement or draw down on that
6 amount that is out there.

7 But that is something they have to plan for, so it is
8 something they have to factor in is when they are actually
9 getting the money for that.

10 MS. PETTY: Your Honor, at this time we would like
11 to move Exhibit 1312 into evidence.

12 THE COURT: Received.

13 (Exhibit 1312 received into evidence.)

14 MS. PETTY: Your Honor, this might be a good point
15 to break for the day.

16 THE COURT: Thank you very much. Counsel, I have a
17 call tomorrow at 7:30, but I think it's only half an hour, so
18 would you be patient with me and gather at 8 o'clock, and if
19 I'm couple of minutes late -- I need to keep the doors closed
20 as long as I'm in that call, so I apologize.

21 In fact, better yet, go down to the cafeteria at
22 8 o'clock.

23 If I'm a little late, we will come down and find you, so
24 you are comfortable.

25 Sir, thank you very much. We will see you at 8 o'clock

1 tomorrow.

2 THE WITNESS: Thank you.

3 (The proceedings concluded at 4:41 p.m.)

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