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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 13
Tuesday, August 27, 2024
8:30 a.m.
LOS ANGELES, CALIFORNIA

TERRI A. HOURIGAN, CSR NO. 3838, CCRR
FEDERAL OFFICIAL COURT REPORTER
350 WEST FIRST STREET, ROOM 4311
LOS ANGELES, CALIFORNIA 90012
(213) 894-2849

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APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

ROBINS KAPLAN LLP
BY: ROMAN M. SILBERFELD
TOMMY DU
Attorneys at Law
2121 Avenue of the Stars, Suite 2800
Los Angeles, California 90067

PUBLIC COUNSEL
BY: MARK D. ROSENBAUM
AMELIA PIAZZA
AMANDA MANGASER SAVAGE
YI LI
Attorneys at Law
610 South Ardmore Avenue
Los Angeles, California 90005

BROWN GOLDSTEIN and LEVY, LLP
BY: EVE L. HILL
Attorney at Law
120 East Baltimore Street, Suite 2500
Baltimore, Maryland 21202

PUBLIC COUNSEL
BY: AMANDA ROMAN MANGASER SAVAGE
Attorney at Law
610 South Ardmore Avenue
Los Angeles, California 90005

FOR THE DEFENDANT: DENIS RICHARD MCDONOUGH

US DEPARTMENT OF JUSTICE
CIVIL DIVISION - FEDERAL
PROGRAMS BRANCH
BY: BRAD ROSENBERG
AGBEKO PETTY
JODY LOWENSTEIN
TAYLOR PITZ
CODY TAYLOR KNAPP
CARLOTTA P. WELLS
Attorneys at Law
1100 L. Street, N.W.
Washington D.C. 20005

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APPEARANCES: (CONT.)

FOR THE INTERVENOR:

ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP
BY: ERNEST J. GUADIANA
JUSTIN TRUJILLO
Attorneys at Law
10345 West Olympic Boulevard
Los Angeles, California 90064

ALSO PRESENT:

Batina Washington, HUD
Kristin Grotecloss, Veterans Administration
Tobin Dale, Veterans Administration
Keith Harris, Party Representative
Robert Davenport, Counsel
Marcie Vega

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LOS ANGELES, CALIFORNIA; TUESDAY, AUGUST 27, 2024

8:30 A.M.

--OOO--

THE COURT: We're on the record. All counsel and parties are present. Mr. Simms is present.

Counsel, if you would like to continue direct examination.

MS. PETTY: Agbeko Petty for the federal defendants.

DIRECT EXAMINATION (resumed)

BY MS. PETTY:

Q Good morning, Mr. Simms.

A Good morning.

Q So, yesterday, we left off talking about the congressional appropriations for EULs. I want to shift gears now and talk about the construction of permanent supportive housing on the West LA Campus.

Are you familiar with that process that is ongoing?

A I am.

Q Who is responsible for the construction of permanent supportive housing on the West LA Campus?

A The construction is handled by the third-party developers that we enter into the enhanced-use leases with.

Q Does OAEM have an oversight rule with respect to the construction that is ongoing on the West LA Campus?

1 A We do. We do oversight, both physical oversight on people
2 on the ground that are working with the contractors. And then
3 what I will call more logistical and administrative
4 oversight -- tracking progress, dealing with issues or
5 challenges that may come up.

6 Q And when you say "physical oversight," what does that
7 entail?

8 A OAEM has direct government employees that reside on the
9 West LA Campus that -- and any time during the week will walk
10 to the construction sites, talk to the construction foreman,
11 how things are going there.

12 We also have third-party contractors that we have hired
13 that help the government do technical oversight, so
14 engineering-type backgrounds, just to make sure that if there
15 are any technical issues, we have got the right expertise to
16 deal with it.

17 Q And you also mentioned logistical oversight. Can you
18 provide a bit more about that?

19 A Sure. So we have regular status meetings with the
20 developers, construction meeting where they talk about the
21 progress that is being made, any upcoming milestones or
22 critical issues they are getting ready to work on, as well as
23 talking about the work that has been completed.

24 So that's regular status meetings that we have weekly or
25 bi-weekly with the various construction teams.

1 Q Earlier in the day yesterday, when we were going through
2 the EUL policy directive, we spoke a bit about the local site
3 monitors.

4 Can you discuss the role of the local site monitors at
5 the West LA Campus.

6 A They also have an oversight role. They obviously aren't
7 doing the construction. They are VA employees that are doing
8 oversight locally. I think the one unique piece about the
9 local site monitor is they are the connection into the medical
10 center operations, so that's who we work with to understand if
11 there is anything going on with the site that we need to
12 prepare for. If there is any planned, other construction
13 activities, or if we would need to do things like power outages
14 for utility connections, we would work with the LSM to be that
15 local point of contact to help us coordinate all of that.

16 Q Is there a local site monitor for each enhanced-use lease?

17 A For each enhanced-use lease, there is a construction LSM
18 that is assigned for that construction period, and then there
19 is a steady state LSM. In most cases, it's not the same
20 person.

21 The person that does the construction oversight normally
22 has more of a engineering, technical background, where the
23 longer term oversight in the operational phase is more about
24 the housing and operational impacts.

25 Q Mr. Simms, I want to turn back to Exhibit 1 which is the

1 2022 master plan, if you have that in front of you.

2 A I do.

3 Q Can you go to page 130 of Exhibit 1 which corresponds to
4 page 102 of the actual document?

5 A Okay.

6 Q Do you see Figure 4-22 which is entitled "existing
7 building age"?

8 A I do.

9 Q And do you see the legend in the lower left-hand corner?

10 A I do.

11 Q Can you explain what the --

12 THE COURT: Let me catch up with you, I'm sorry.

13 It's not you, it's me. I need to get --

14 MS. PETTY: Your Honor, it might be one of the
15 binders over there.

16 THE COURT: Thank you very much. I have got it now.

17 Thank you, counsel.

18 BY MS. PETTY:

19 Q Mr. Simms, can you explain the color coding in the lower
20 left-hand corner?

21 A Sure. So the color coding is based on the age of the
22 individual buildings.

23 So each building has a color that is in relation to how
24 old it is.

25 The different ones that we have listed at the bottom

1 here are under 40 years old, between 41 and 60 years old,
2 between 61 and 80 years old, between 81 and 90 years old,
3 between 91 and 100 years old, and then over 100 years old.

4 Q Does the age of the buildings on campus cause any type of
5 complications for the renovation process?

6 A So, I think the complications are both in the planning
7 aspect, in that older buildings are typically the contributing
8 elements to the national historic district designation.

9 More logistically, the older buildings almost
10 always have hazardous materials that we have to plan for.
11 Almost all of them have lead-based paint. Almost all of them
12 have asbestos and some other types of hazardous materials that
13 need to be managed in order for those to be properly renovated.

14 Q And do you have any examples from any of the buildings
15 currently on campus that demonstrate the difficulties that come
16 with renovating a building that is contributing?

17 A So, Building 207 is a good example. Building 207, for
18 those who have seen it, it has an old staircase that goes up to
19 the second floor entrance of the building.

20 That staircase was being planned to be removed to have a
21 ground floor entrance for the building.

22 When the developer submitted the design plans that
23 articulated that to the State Historic Preservation office,
24 they disagreed with that. They said that staircase was one of
25 the elements that actually made Building 207 a contributing

1 factor for it to be a historic district.

2 So they did not want them to remove the staircase.

3 Instead, the developer had to go back and find a way to
4 retain the staircase, but still provide ground level entrance
5 for disabled veterans or anyone with a disability at ground
6 level, so they created entrances under the staircase to be able
7 to accommodate that.

8 But that was part of consultation.

9 So we had to negotiate back and forth with the State
10 Historic Preservation Office to come up with a solution.
11 Instead of demoing the staircase, what is another solution to
12 keep it, yet meet our need for having that ground level
13 entrance.

14 Q Do you have an approximation on the amount of time it took
15 with Building 207 with the consultations to finally reach the
16 conclusion with respect to the work with that staircase and it
17 being completed?

18 A So, specifically on that issue, it was at least three
19 months of back and forth with the State.

20 The process itself certainly took a lot longer than
21 that, but that one issue hung us up for about three months.

22 Q And you testified yesterday about how with these
23 buildings, a lot of them aren't set up for housing occupancy as
24 that wasn't their initial purpose.

25 Can you explain how that could complicate the process of

1 renovation?

2 A Sure. So I think an example would be Building 300 that
3 we're going to start on here in the next year.

4 Building 300 was essentially a kitchen. The VA used it
5 to create --

6 THE COURT: Can you point to that? It's at the top
7 of the walkway, isn't it?

8 THE WITNESS: Yeah. Up here.

9 That was used as a kitchen. So it was not set up at all
10 for housing. It was sort of large areas, but had a lot of
11 equipment and infrastructure in there. You really don't have
12 much of a choice except to gut everything in there and then
13 build from there.

14 That is very different than some of the buildings like
15 205, -7, and -8, that were already in a configuration like that
16 H-shape where there is already areas created that you don't
17 have to fully gut it. You can actually just renovate the
18 interior. You may have to knock down some walls to create the
19 right space, but you are not starting from scratch.

20 THE COURT: Who's the developer?

21 THE WITNESS: Building 300 is the principal
22 developer team.

23 THE COURT: Who is it?

24 THE WITNESS: The principal developer team.

25 THE COURT: Principal developer team.

1 THE WITNESS: The West LA Vets Collective.

2 THE COURT: But that's a group. Is there a specific
3 developer?

4 THE WITNESS: U.S. Vets will be the lead developer
5 for Building 300.

6 THE COURT: That's what I thought.

7 BY MS. PETTY:

8 Q Mr. Simms, is there anything else you want to highlight
9 with respect to the construction process for permanent
10 supportive housing on the West LA Campus?

11 A Not that I can think of right now.

12 Q So I now want to turn to the actual delivery of permanent
13 supportive housing on the West LA Campus.

14 Are you familiar with that process?

15 A Yes.

16 Q We're going to be handing you what has been marked as
17 Exhibit 1616.

18 THE COURT: Thank you very much. I appreciate it.

19 BY MS. PETTY:

20 Q Are you familiar with this document, Mr. Simms?

21 A I am.

22 Q What is this document?

23 A This is the parcel release in phasing plan, so this lists
24 out all of the buildings and parcels that would be used for
25 construction of permanent supportive housing. And we use this

1 as away to convey current status of things under construction,
2 but also as a planning tool to show what buildings are coming
3 up next in the process.

4 Q And you mentioned this is a planning tool.

5 Is it a document that is static or does it change in
6 time?

7 A It does change. As things happen, both actual completion
8 and opening of projects, but also as we're going through the
9 construction phase, if there are changes or delays, those would
10 be reflected on here.

11 So it's intended to show a current status. We
12 generally update this about once every quarter, is what we try
13 to do.

14 Q And can you tell us what the date of this document is?

15 A This is a July 5th, 2024.

16 Q And I want to start by walking through the status column,
17 and I want to talk about each of those categories.

18 So, starting with the green category that is called
19 "open," can you explain what that means with respect to those
20 buildings that are listed on the left-hand column?

21 A Yes. So the open status means that building is in
22 operation and there are veterans living there.

23 Q And then moving onto the orange --

24 THE COURT: Would you keep that map up on the screen
25 for just a moment, or can you split that screen in some way so

1 I can track each building once again? So it's not just numbers
2 to me.

3 MS. PETTY: Are you talking about --

4 THE COURT: What I would like to do is get that map
5 up.

6 MS. PETTY: That we just had up a moment ago?

7 THE COURT: That we had up a moment ago that shows
8 the age of the buildings or a comparable map. I just want to
9 make certain I track every building. I know where 208, 205,
10 209 -- but as we go through -- all right.

11 So let's slow down just a little bit and put that map
12 up. Now, could we blow that map up on the right-hand side of
13 the screen?

14 Blow it up. That's it. First of all, let me say that
15 the folks are doing an excellent job in terms of their
16 presentation, but I need to get this map blown up so I can see
17 it. One moment.

18 We're not going any further until I can track the
19 buildings, otherwise they're just rapid numbers that are being
20 recited, and I want to walk through every building.

21 MR. ROSENBERG: Your Honor, do we still have the big
22 cardboard.

23 THE COURT: Maybe we do over here. That would be
24 great. If we do, if we just move it closer to Mr. Simms, and
25 that way.

1 Just one of these easels over here. I want to be able
2 to see it.

3 MR. ROSENBERG: I'm putting up Exhibit 1, page 291.
4 Can you see that, Judge Carter and Mr. Simms?

5 THE COURT: Yeah. And move it closer to Mr. Simms
6 so he can literally stand up and point to the buildings if he
7 wants to.

8 Kerlan, do we have a pointer of any kind?

9 Mr. Simms, I'm going to inconvenience you. I know where
10 they are, but show me 209, 208, 205, and 207.

11 Okay. Now, those are all open. Three of those are
12 Shangri-La and one of those is by TSA.

13 Okay. Counsel.

14 BY MS. PETTY:

15 Q Mr. Simms, the next category that I want to discuss is
16 that orange category that is labeled "in construction."

17 Can you tell me what that means with respect to those
18 corresponding buildings on the left?

19 A So, those are projects that we have executed the lease for
20 and they are physically under construction at this point in
21 time.

22 THE COURT: Okay. Now, just one moment.

23 I know where it's at, but would you show me MacArthur
24 Field?

25 Okay. Now show me 402.

1 THE WITNESS: 402 is not an existing building. It's
2 a new construction building that is in this area right here.

3 THE COURT: Okay. Now show me 404. I think it's
4 right next to it. Oh, 404 is a completely different location.

5 THE WITNESS: It is.

6 THE COURT: Show me 402 again. And then 404.

7 Is 404 a renovation?

8 THE WITNESS: It is not. It is a new building.

9 THE COURT: New building. Okay.

10 156 and 157?

11 THE WITNESS: Those are the sister buildings right
12 there.

13 THE COURT: Who's the developer?

14 THE WITNESS: For 156 and 157, it's Century Housing.

15 THE COURT: Okay. MacArthur Field Phase 2?

16 THE WITNESS: It is on MacArthur Field. It's set
17 back a little further.

18 THE COURT: And 158?

19 All right. Just one moment.

20 How do we get a current map showing these buildings
21 today? There is another one I think that we could put up. I
22 have forgotten a number on it.

23 MR. ROSENBERG: I was actually thinking about that,
24 Your Honor. I wonder if this map might be a better map.

25 So I'm putting up -- this is Exhibit 1069-001.

1 THE COURT: Okay.

2 MR. ROSENBERG: That has the more recent map.

3 THE COURT: Just a moment.

4 You are aware of a landfill issue, Mr. Simms?

5 THE WITNESS: I am.

6 THE COURT: It's hard for me to understand which
7 buildings are directly affected -- I'm sorry, are affected by
8 this delay in getting us certification for occupancy. And
9 counsel have basically given me a 1,000-foot radius from some
10 point that is very unclear.

11 Is MacArthur Field Phase 1, for 74 units, within this
12 landfill area?

13 THE WITNESS: It is.

14 THE COURT: Just a moment. And once again, would
15 you point to Building 404? Because 402 and 404 are confusing
16 to me because they are quite a distance apart.

17 THE WITNESS: So, this is -2.

18 THE COURT: No, I want 404.

19 THE WITNESS: It's down here.

20 THE COURT: Is 404 within that landfill area?

21 THE WITNESS: That is going to be very close, but I
22 believe it will be outside.

23 THE COURT: I'm going to put a question mark by it,
24 okay.

25 Now go down to 402. It's completely different. Yeah.

1 Is 402 within the landfill area?

2 THE WITNESS: Yes.

3 THE COURT: Point to 156 and 157. Is that within
4 the landfill area?

5 THE WITNESS: Yes.

6 THE COURT: MacArthur Field Phase 2, is that within
7 the landfill area?

8 THE WITNESS: Yes.

9 THE COURT: And then point to 158, if you would be
10 so kind.

11 Is that within the landfill area?

12 THE WITNESS: Yes.

13 THE COURT: All right. Now if I took rough math of
14 74, 118, 110, 74, and 49, and I discounted with a question mark
15 404 with 72 -- just what the math says, I have got well over
16 300 units, and I received the following answer: Judge Carter,
17 it could take a day or years.

18 How do I count those? And why do I count them?

19 In other words, if we can't move in in a month or two,
20 why do I assume that I could be all the way up to 730 veterans
21 with occupancy in the far right corner if I completed 158?

22 You have got to remember the answer I have received so
23 far. "It could be days or years." Not much of an answer.

24 THE WITNESS: So, part of it is the county has,
25 ultimately, the decision rights on what they are willing to

1 accept or not.

2 THE COURT: I understand all of that. I just don't
3 know what to do with it.

4 THE WITNESS: So, realistically, what I think we're
5 looking at here is Building 210 is over here, and we have
6 determined it is outside the thousand-foot radius.

7 THE COURT: Fair enough.

8 THE WITNESS: But barely. And this is the area here
9 where the landfill area is, in general, around the Arroyo. So
10 all of these are clearly within the thousand-foot.

11 THE COURT: So is 205, 208, 209 within the
12 thousand-foot?

13 THE WITNESS: Yes.

14 THE COURT: They are occupied now?

15 THE WITNESS: They are occupied.

16 THE COURT: How do we explain that?

17 THE WITNESS: The requirement for the landfill piece
18 is a report. It's a post-closure report. So it's not
19 necessarily an issue that it is near a landfill so long as you
20 close the landfill properly.

21 THE COURT: Hold on. Here is what I'm absorbing.
22 We have got the inability to move our veterans into over
23 300 units because of a landfill issue that must present some
24 kind of potential hazard. But we already have veterans in
25 units in 205, 208, and 209 within the same hazardous area and

1 that's okay?

2 I'm not tracking that at all.

3 All right. Counsel.

4 In other words, if it's safe for 205, 208, 209, let's
5 get our veterans moved into the others. If it's not safe,
6 let's get the veterans moved out of 205, 208, 209.

7 I don't understand the inconsistency there, at all. And
8 I don't know how to count those right now. I know it's not
9 within your control.

10 All right. Counsel.

11 BY MS. PETTY:

12 Q Mr. Simms, can you explain the meaning of the yellow
13 highlighting that appears in this document?

14 A So the yellow highlighting is used to indicate a change
15 since the last version of this document was produced.

16 Q Do you recall when the last version of this document was
17 produced approximately?

18 A February of 2024.

19 Q And then there is gray shading with the label "preliminary
20 planning." Can you explain what this means?

21 A So those in preliminary planning are ones that we have
22 actually started working on the lease and the exhibit documents
23 themselves, and the developer has put together their financing
24 plan and started to apply for the financing for those projects.

25 THE COURT: Okay. Show me 210 once again. Okay.

1 That is just outside, we believe.

2 THE WITNESS: Correct.

3 THE COURT: Then show me 300. Is that within the
4 thousand feet?

5 THE WITNESS: Likely, yes.

6 THE COURT: Okay. Show me 408, which is in Lot 20.
7 I don't know where that is.

8 THE WITNESS: So the other map is little bit better
9 because it shows the parking lot numbers, but it's going to be
10 right here. It's a new building, not an existing building, but
11 it's going to be to the northwest of Building 13.

12 THE COURT: Counsel, thank you.

13 BY MS. PETTY:

14 Q Mr. Simms, in the next box there are dashes. Can you
15 explain what those mean with respect to the buildings that are
16 corresponding to those dashes?

17 A So those are buildings that we have identified as housing
18 and would be developed, but we have not started the actual
19 lease or financing negotiations for those. So those would be
20 in the future.

21 THE COURT: Show me 256. Okay. And 409, which is
22 in Lot 18.

23 THE WITNESS: Yes. So the 400 series are all going
24 to be down along this area. That is Parking Lot 18.

25 THE COURT: I thought 404 was up near MacArthur

1 Field?

2 THE WITNESS: Yes. The 408, 9, 10, and 11 are all
3 going to be right in this area right here.

4 THE COURT: Okay. Just a moment. So show me once
5 again 409, about, approximately.

6 THE WITNESS: It's going to be right here.

7 THE COURT: Show me 256 again.

8 Okay. Now jump back to 13 and 306.

9 And then 258.

10 THE WITNESS: 258 is back up here.

11 THE COURT: And 400, which is in Lot 49. Is that
12 it?

13 THE WITNESS: Yes. That is Lot 49 right here.

14 THE COURT: Thank you. So that is down by CalVets?

15 THE WITNESS: Correct.

16 THE COURT: Is that -- it's in white which is
17 confusing me. Is it CalVet land?

18 THE WITNESS: Correct. It's not VA property.

19 THE COURT: I see. But you are going to develop
20 that?

21 THE WITNESS: This parking lot is on VA property, so
22 that's where we would develop.

23 THE COURT: Well, let me be clear. 400 -- point to
24 it again.

25 THE WITNESS: So 400 is Lot 49.

1 THE COURT: Okay. That looks like to me like it's
2 over with Cal, right?

3 THE WITNESS: Yes. Our boundary goes to here.

4 THE COURT: Okay. If that is the case, then we have
5 got 65 veterans going into that unit, correct?

6 THE WITNESS: Correct.

7 THE COURT: How do we have jurisdiction over that?
8 How are we able to build there?

9 THE WITNESS: Again, our property line -- I'm kind
10 of tracing it here.

11 THE COURT: Okay, so that white --

12 THE WITNESS: The white just means it's a parking
13 lot, but it is on VA property.

14 THE COURT: So that would be new construction?

15 THE WITNESS: It would be, yes.

16 THE COURT: Building 407 and Lot 21?

17 THE WITNESS: So those are also right down in this
18 area. Lot 21 is right here.

19 THE COURT: So I think 407, 408, 409 kind of in the
20 same general area.

21 THE WITNESS: Yes.

22 THE COURT: Are those buildings marked if I drove
23 out there?

24 THE WITNESS: They are not.

25 THE COURT: Okay. And then 236, I know where the

1 police is, but point to that. Where are they located at the
2 present?

3 Now, they are going to get a new building, aren't they?

4 THE WITNESS: I believe -- I'm not the expert on
5 that, but I believe they are getting a new building.

6 THE COURT: So this old location of the police is
7 going to hire 66 veterans -- or 68 veterans in the last line.

8 THE WITNESS: Correct. And I believe there will be
9 new construction with that.

10 THE COURT: Counsel, thank you very much.

11 Are -- those buildings aren't marked so they're
12 confusing to me and I'm having a hard time matching up the
13 building with some of the street addresses, so thank you.

14 BY MS. PETTY:

15 Q Mr. Simms, you mentioned with those dashes and the
16 corresponding buildings financing hadn't been started for those
17 buildings, can you explain why that is the case?

18 A So as we spoke a little bit about yesterday, financing in
19 general, very competitive, limited amount of financing. The
20 developers are looking to submit different projects in each
21 funding cycle rather than all in one funding cycle.

22 So these are staggered so that they are hitting
23 different funding cycles, essentially not competing against
24 themselves for those limited resources.

25 Q Does the timing attach to when a developer gets financing

1 also come into play with respect to not trying to get that
2 secured at that early stage?

3 A It does. And I may have mentioned this yesterday, but
4 once they've locked in financing, in general, there's a set
5 amount of time they have before they must start construction.

6 And if they have not started construction in that time
7 frame, they lose that financing source.

8 Q Do you see the dark blue line in several buildings listed
9 below that as "potential"?

10 A I do.

11 Q What does that mean?

12 A So these are buildings that have been identified as
13 potential for housing. They would exceed the 1,200 units that
14 we have outlined in master plan 2022, but they would allow us
15 to go up to the 1,600 or so that was assessed under the PEIS.

16 THE COURT: I'm going to want to see those
17 locations, counsel, at some point. So I don't know where 410
18 is, et cetera. Make this easy for me, where is 410?

19 THE WITNESS: So 410 will be in that same corridor
20 as 408, 9, 10, they're all going to be right in this area.

21 THE COURT: And 337?

22 THE WITNESS: 337. I'm not as familiar with these
23 at the bottom of the list, so I'm looking for it as we go.

24 THE COURT: That's okay. I'm not too concerned
25 about 337.

1 415, 415A and 342 research.

2 THE WITNESS: So those are all of these buildings
3 right, here they are labeled as 113, 14, and 15, instead of the
4 four -- the 4 series that's on here. But that's all of these
5 buildings plus there's a couple of small ones in the middle.

6 THE COURT: So 113, 114, and 115, are really 415,
7 415A, and 342?

8 THE WITNESS: Correct.

9 THE COURT: I hope I can remember that, thanks a
10 lot. Where is 413, 413A, and 340, same area?

11 THE WITNESS: Yes.

12 THE COURT: Where's 414, 114A, 117, and 346?

13 THE WITNESS: That is 117, this area right here.

14 THE COURT: I want to keep that area in mind, keep
15 your pointer on it. Is that within the thousand feet of this
16 alleged problem we have with the landfill?

17 THE WITNESS: My guess would be no, but I don't
18 think we've measured it, but it looks like it would be further
19 than 210 is from it.

20 THE COURT: 414A, 414, 117, 346 again, show me where
21 those are?

22 THE WITNESS: (Witness indicating.)

23 THE COURT: Then 206?

24 THE WITNESS: Where is 206. That might be another
25 one that the numbering is different here. I don't see 206.

1 THE COURT: 257?

2 THE WITNESS: 257 is here.

3 THE COURT: Is that within the thousand feet of the
4 landfill?

5 THE WITNESS: Yes.

6 THE COURT: Now, I want you to help me, go down from
7 -- do you see on your Exhibit 1616, I want you to look at
8 starting at Building 300I. So look down at your chart for a
9 moment. You've got one, two, three, four, five, six, seven,
10 eight, that are either in preliminary planning or with a blind
11 status. I want you to tell us which of those buildings are
12 within the thousand feet of this landfill. Take your time. In
13 fact, talk to your counsel, because this is going to be
14 important in a moment.

15 THE WITNESS: Building 300 definitely is.

16 THE COURT: Just a moment. We're going very slowly
17 now. So Building 300 is within this landfill -- this
18 regulation, all right.

19 What's the next building?

20 THE WITNESS: 408.

21 THE COURT: Just a moment.

22 THE WITNESS: I don't believe 408 will be.

23 THE COURT: So yes or no? Do we know?

24 THE WITNESS: We haven't measured it specifically,
25 no.

1 THE COURT: Okay. I will put a question mark by it.
2 Okay? You can talk to your team down there at any time, so
3 folks you can come up --

4 MS. PETTY: Your Honor, I just wanted to flag that
5 we have a demonstrative that actually circles the radius with
6 respect to the landfill and the buildings.

7 THE COURT: Great. Put it up in just a moment so I
8 can follow it. If we had it before that would have been
9 terrific but.

10 258 -- or 256, I'm sorry, is that within the
11 thousand feet?

12 THE WITNESS: That one would be close, so I would
13 say question mark on that one.

14 THE COURT: We will put up the demonstrative in just
15 a moment.

16 409.

17 THE WITNESS: It's likely outside of the radius.

18 THE COURT: Outside.

19 13 and 306.

20 THE WITNESS: Likely outside of the radius.

21 THE COURT: Okay. 258?

22 THE WITNESS: It's up here, that would be inside.

23 THE COURT: Okay. Just a moment. 400.

24 THE WITNESS: Likely outside.

25 THE COURT: Okay.

1 THE WITNESS: Actually, 400 would be inside. I
2 apologize.

3 THE COURT: Okay. 407?

4 THE WITNESS: Outside.

5 THE COURT: Okay. Go over and take the number of
6 veterans that would be in Building 300 for me.

7 I have 43, what do you have?

8 THE WITNESS: 43 in Building 300.

9 THE COURT: 408, the number of veterans inside 408?

10 THE WITNESS: 100.

11 THE COURT: The number of veterans inside 258?

12 THE WITNESS: 258 or 256?

13 THE COURT: I'm sorry. Well, let's do it this way,
14 then, 256 we had a question mark by, so I'm not counting that.

15 THE WITNESS: Okay.

16 THE COURT: In other words, I want to assume the
17 best, that we can move in, okay? I'm trying to move in.

18 But 258 is within that thousand feet you told me.

19 THE WITNESS: That's 45.

20 THE COURT: 45.

21 Then we have 400.

22 THE WITNESS: That is 85.

23 THE COURT: 85. So unless we can get this problem
24 resolved, regardless of where we are we have about -- in rough
25 figures 273 more, you know, planned that could be subject to

1 this landfill issue. I don't know how serious this is and
2 neither do you.

3 Okay, let's do the same thing with 410 and 337. Show me
4 those again.

5 THE WITNESS: It's going to be down --

6 THE COURT: Can I assume outside?

7 THE WITNESS: Correct.

8 THE COURT: 415, 415A, 342, I just want to verify,
9 but I'm going to assume outside?

10 THE WITNESS: Correct.

11 THE COURT: 413, 413A, 430, I think it's along that
12 corridor, I'm going to assume outside?

13 THE WITNESS: Correct.

14 THE COURT: 414, 414A, 117, 346, I'm going to assume
15 outside?

16 THE WITNESS: Correct.

17 THE COURT: 206.

18 THE WITNESS: I didn't find 206.

19 THE COURT: I can't either, but that's okay. Look
20 over the legend, see if you can find it over there. I went
21 blind trying to read some of this stuff. It's over on the
22 right side. Go down to see if you can see 206.

23 THE WITNESS: It's over here someplace.

24 THE COURT: Look at that legend, see on the right
25 side?

1 THE WITNESS: It says it's in quad six, which would
2 be here. But I don't see a 206.

3 THE COURT: We know it's along that road. Let's
4 been gracious and say move in, think positive about this.

5 And 257?

6 THE WITNESS: That is a question mark I think.

7 THE COURT: 248, veterans, all right.

8 All right, counsel, thank you. Now, if you want
9 to put up the demonstrative that's great if you want to.

10 MR. ROSENBERG: I just wanted to clarify. So we had
11 prepared a demonstrative last night for our next witness, which
12 is Chelsea Black, who is going to discuss the landfill issue.
13 We did not anticipate that this witness would go into that
14 level of detail, but to the extent it would be helpful at this
15 point to allow Mr. Simms, the demonstrative shows where the
16 landfill locations are and draws a radius circle around them.

17 THE COURT: You are not the expert in this, don't
18 worry, but I'm facing a nightmare here. The answer of a couple
19 of days to a couple of years is not sitting too well. I'm not
20 very comfortable and I think the VA would be a little bit
21 displeased with the County right now, but I will leave that to
22 them, especially if they were given the signal to go ahead and
23 have barriers put up.

24 But what I've got to figure out in the future is
25 what land is available, what land isn't available. If I don't

1 have available land then I need more land someplace, if I've
2 got here, we've got enough, maybe we don't have to expand.

3 But I know one thing, from 1,200 to 1,622 at one
4 time, they were on the books. There's 400 spaces out there and
5 if I took all of these numbers down here I would come out with
6 about 400.

7 THE WITNESS: Correct.

8 THE COURT: That's my guesstimate.

9 Okay, counsel, why don't you put up this
10 demonstrative and mark it just so we get a preview of it.

11 MS. PETTY: This will be marked as 1638.

12 THE COURT: Thank you so much. I'm sorry to break
13 into your presentation, but I didn't know you had a witness on
14 this.

15 Okay. Where is our landfill problem? In other words,
16 I've got three circles.

17 MR. ROSENBERG: And, Your Honor, just to clarify,
18 this was I believe prepared yesterday, it might not be last
19 night, but within the last day or so.

20 THE COURT: What do the three circles represent?

21 MR. ROSENBERG: I don't want to testify, but I can
22 answer that Mr. Simms has not seen this before --

23 THE COURT: Offer of proof.

24 MR. ROSENBERG: Right, sure. So my understanding is
25 that the three purple blotches are the landfill locations.

1 There are two that are sort of next to each other, and then
2 there's one that appears on the left side of the demonstrative.

3 THE COURT: Let's tilt this thing the other way. I
4 want to have you --

5 MR. ROSENBERG: So north is facing up?

6 THE COURT: Yeah. Perfect. Now expand it.

7 MR. ROSENBERG: So the demonstrative with north
8 facing up, we still have the three purple blotches that are --

9 THE COURT: No expand it, blow this thing up. There
10 we go now. Now just a moment.

11 Okay. Now your offer of proof.

12 MR. ROSENBERG: And then there are three yellow
13 circles, and each circle represents a 1,000-foot radius from
14 each of those three purple blotches.

15 THE COURT: Okay.

16 MR. ROSENBAUM: How much?

17 MR. ROSENBERG: 1,000.

18 THE COURT: Thank you. So, Barrington Park would be
19 affected by this. The lower portion of the Brentwood School,
20 including the tennis courts and that gymnasium would be
21 affected, hypothetically, by this. The rest of Barrington and
22 Brentwood School would not be, UCLA baseball field would not
23 be.

24 For the Bridgeland, are you within this circle?

25 MR. GUADIANA: No.

1 THE COURT: It doesn't appear you are affected.

2 MR. GUADIANA: No.

3 THE COURT: One of the parking lots would be
4 affected by this south of the post office.

5 I don't have any idea how serious this is, it
6 could be what I call de minimis, easily signed off on, or it
7 could be a project stop.

8 Okay, counsel, thank you.

9 Which then means that I need more land. Folks, we need
10 to get this resolved somehow with the County.

11 MR. ROSENBERG: Our next witness will be testifying
12 about the current status of the discussions with the County.

13 THE COURT: Uh-huh, okay. Well, aspirational wind.
14 I'm joking with you, but I better see something that I can rely
15 upon. So if you need to call chairman of the board, her name
16 is Lindsay Horvath, and you might get them involved because a
17 lot's at stake here. And the problem is I can't wait for them
18 to decide in a day or year and I don't want to publish an
19 unfair opinion. I don't want to take this off the board at
20 all, in fact, I'm just praying that his is a move in, frankly,
21 but that's up to them.

22 All right. Counsel?

23 BY MS. PETTY:

24 Q Mr. Simms, I want to go back up to the top of this chart,
25 specifically looking at Building 209.

1 Do you see the official opening date which was
2 June 30th, 2017?

3 A I do.

4 Q And then if you look directly below that, do you see
5 Building 207?

6 A I do.

7 Q And do you see the official opening date as February 28th,
8 2023?

9 A Correct.

10 Q Can you explain the gap of time with respect to the first
11 building opening and the subsequent one?

12 A So Building 209 was a building that had recently been
13 renovated by VA.

14 So the work to bring it into seismically conditioned and
15 upgraded utilities, et cetera, was already complete prior to
16 2016.

17 So VA made a determination that it could do that
18 function elsewhere, and instead wanted to use that building for
19 permanent supportive housing and quickly, once we got the
20 authority, quickly went out with a solicitation to bring in an
21 operator-developer for Building 209. So, there was a fairly
22 quick turnaround on the selection.

23 The biggest time saver there was there didn't really
24 need to be any construction work or renovation work done, it
25 was mostly just outfitting the exiting building and then

1 turning it on for use.

2 So it went very quickly.

3 All of the other buildings after that, even 205, 8, and
4 7 that we talked a little bit about yesterday, those buildings
5 we did separate NEPA assessments for so they could move forward
6 prior to the PEIS being finalized, but those still took a
7 little bit of time to get moving and that's why you've got the
8 big gap between the opening in '17 and then in '23.

9 THE COURT: When the next witness comes in and tries
10 to explain to the Court the latest information you have, that
11 won't been a decision-maker though, I take it. Who is this
12 person?

13 MS. WELLS: Your Honor, Ms. Black is the acting
14 director of planning at the West LA Medical Center.

15 THE COURT: Now, do we have somebody from the
16 County? Because it seems to me that the County is controlling
17 this process, I can almost feel the frustration on the VA's
18 behalf of this.

19 You have 300 to 400 units supposedly coming
20 online, now you're told a landfill is holding up this
21 certification -- or the certificate of occupancy.

22 And the response I get in court is, Judge, we could get
23 an answer in days or years. Well, what kind of answer is that?

24 I'm a little afraid of putting this person on the spot
25 making a representation when I don't have a policymaker here.

1 Why don't we have somebody from the County explaining
2 where we are? They're the person controlling this process. I
3 mean, you are welcome to present whoever you want to, I would
4 gladly have this information and accept the information, but
5 she's not going to control this, it's going to be the County.

6 So I'll leave that to you, but I don't see why you are
7 being so nice. I would get them in here if I was you and have
8 the Court start asking these questions.

9 Counsel?

10 BY MS. PETTY:

11 Q Mr. Simms, you mentioned with respect to Building 207 VA
12 renovated it. Can you explain why that was the case that VA
13 was able to renovate it?

14 A So that was 209.

15 Q 209, excuse me.

16 A So 209, that had been a compensated work therapy building
17 that VA had gone in to do renovation work. It was seismically
18 deficient, it had some other challenges as well, but it was
19 mainly to address the seismic issues associated with that
20 building, so VA had it as part of a larger project to renovate
21 a number of buildings on campus.

22 THE COURT: I've been in 209.

23 BY MS. PETTY:

24 Q What is the significance of it being compensated work
25 therapy?

1 A Since that was a VA program that we had explicit
2 authority, VA could spend its dollars to do the renovation.

3 Q Are there any buildings on this phasing plan and release
4 parcel schedule that will have community services or that have
5 community services?

6 A There will be. So to date there have not been any
7 completed that have community-based services.

8 Building 300 will be the first one, that one's in
9 preliminary planning. And then Building 408, that is also in
10 preliminary planning, both of those will be the first buildings
11 that have community-based services intended to provide for the
12 entire community, not just a single building.

13 THE COURT: What are community-based services?
14 Define those for me.

15 THE WITNESS: So those could be things like job
16 training, resume writing, gathering space for veteran events,
17 bringing in community partners, such as nonprofits or city and
18 county entities that provide services for veterans.

19 So those are the types of things that go beyond housing.

20 THE COURT: Okay. In other words, will they have an
21 office in that building?

22 THE WITNESS: Correct.

23 THE COURT: Thank you very much.

24 BY MS. PETTY:

25 Q And so when you mentioned these particular buildings will

1 have services for those beyond just the residents in the
2 building, are there currently buildings on campus that have
3 services just for the residents in those buildings?

4 A There are. So each building may have different things.

5 For example, fitness. There could be fitness in each
6 individual building. There could be food pantries in each
7 individual building.

8 The intent of these community ones are to make them open
9 to any of the veterans that either live there or are, you know,
10 users and on campus that could use those services.

11 Q And when you were talking about some of the community
12 services that will go, for example, in Building 300, you said
13 it will be typically nonprofits that will be providing the
14 services.

15 Why is it the case it will be typically nonprofits and
16 not, let's say, commercial entities?

17 A So the main reason being is we have to make sure that
18 whatever service is being provided is principally benefiting
19 veterans.

20 That's harder to do in commercial environments, but
21 realistically nonprofits are the ones that provide the key
22 services.

23 So that's what we are looking at. As well as, you know,
24 municipal services, state, county, or veteran service
25 organizations, they all have those types of services that are

1 very clearly geared towards veterans.

2 Q Before we move on, Mr. Simms, is there anything else you
3 want to add with respect to this current Exhibit 1616 or in
4 general about the delivery of permanent supportive housing on
5 the campus?

6 A So, I would just add, kind of your question of going from
7 2017 to 2023, with really nothing opening, while that was far
8 too long, the momentum has picked up dramatically. We have
9 brought on a number of those buildings in the last year.

10 Barring any issues with landfill, we have a lot
11 of units that will be coming up in the next 24 months.

12 And we've got a good glide path to bring the additional
13 ones on. So there's a lot of momentum building, really excited
14 about some of those services. The feedback we've gotten from
15 veterans who are living there is they want things to do beyond
16 the housing.

17 So these services are going to help fill some of that
18 void. But there is a lot of momentum. We've picked up the
19 pace dramatically.

20 Once we got through all of the due diligence, all of the
21 PEIS and that type of work, all of the infrastructure work that
22 we've done has really set us up to increase that momentum of
23 delivery of permanent supportive housing.

24 Q And why is feedback from veterans important with respect
25 to the community services that will be provided?

1 A So the feedback that we got during the 2016 master plan,
2 the 2022, the PEIS, that was a broad veteran view.

3 We now have people living on campus, so that may be a
4 different perspective, and when they're living there the things
5 they may want or need could be different than a veteran that
6 just happens to be visiting the campus. So getting that
7 feedback is really important as we start to build out those
8 community services.

9 And where the needs and wants of the veterans that will
10 be living there has always been a missing piece of information
11 that we're now able to help fill in the gap.

12 Q The next area I would like to cover, Mr. Simms, is with
13 respect to plaintiffs' real estate development experts that
14 they have proffered in this case.

15 Are you familiar with the expert reports of Mr. Randy
16 Johnson and Mr. Steve Soboroff?

17 A Yes, I have read them.

18 MS. PETTY: Your Honor, we would like to provide
19 Mr. Simms, for identification purposes, a copy of these
20 exhibits.

21 THE COURT: Sure.

22 MS. PETTY: This will be Exhibit 84 and Exhibit 82.

23 THE COURT: And any of the experts are obviously
24 welcome to be available and listen to another expert testify.
25 So although there has been a general agreement about excluding

1 witnesses, when experts are involved any expert could listen to
2 another expert.

3 Thank you very much.

4 BY MS. PETTY:

5 Q Mr. Simms, for purposes of our discussion today I would
6 also like to provide you with Exhibit 230, which you may or may
7 not have seen before.

8 Mr. Steve Soboroff provided it as new information during
9 his testimony earlier this week.

10 And so as you and I are going through some of the
11 questions I have, you can just keep this map in mind as we are
12 talking about some of the impacts.

13 THE COURT: What exhibit number was that again?

14 MS. PETTY: This is Exhibit 230. This will be the,
15 I believe, first page of that exhibit which is the map.

16 THE COURT: Just a moment.

17 Does this pertain to permanent supportive housing?

18 MS. PETTY: So as it was presented during
19 Mr. Soboroff and Mr. Johnson's testimony, it's permanent
20 supportive housing and temporary supportive housing for the
21 1,800 units of permanent supportive housing that they've stated
22 is needed and the 750 of temporary supportive housing that they
23 stated was needed.

24 MR. SILBERFELD: Your Honor, let me object to that
25 characterization. This was testimony about temporary

1 supportive housing and where to put it.

2 THE COURT: I think that counsel is right, I think
3 this was temporary.

4 MS. PETTY: Very well.

5 THE COURT: I think that we got into a somewhat
6 forced discussion about permanent supportive housing after
7 that.

8 BY MS. PETTY:

9 Q Mr. Simms, can you start by turning to Exhibit 84, which
10 is the expert report of Mr. Randy Johnson.

11 A Okay.

12 Q And if you can turn your attention to page 4 of
13 Exhibit 84, which corresponds to page 2 of the actual document.

14 I want to look at the last paragraph before the next
15 section Reliance, and this paragraph states:

16 "In short, permanent supportive housing is being slowly
17 addressed at the site but there is no plan nor any activity
18 around providing temporary housing in the near term, the next
19 12 to 18 months, or a community being developed at the site."

20 What is your reaction to this statement?

21 A So my reaction, first, would be is while I think it's fair
22 and, as I just described, it did take us far too long to get
23 moving on this, that there were a lot of activities that we
24 tried to do up front.

25 The speed has picked up dramatically. So I don't

1 believe "slowly being addressed" is a fair characterization at
2 this point. We are moving much quicker than that.

3 The "or a community being developed at this site," as
4 master plan 2022 outlined, it had a fully developed community
5 plan. So there is a lot of effort and a lot of thought going
6 into how to make this more than just housing, how to make it a
7 community.

8 And that's been going on for years now. It's just being
9 reflected in master plan 2022.

10 So those are the two that jump out at me, as I do think
11 clearly both of those things are happening right now.

12 Q When you just referenced the community plan that you said
13 was attached to the 2022 master plan, who was responsible for
14 implementing the community plan as it's identified in that
15 document?

16 A So we asked the principal developer team to help develop
17 the plan. It will be implemented by a number of parties.

18 So the principal developer team themselves will
19 implement pieces of it around supportive services.

20 The VA will implement pieces of it, leveraging our
21 canteen service for things like food and coffee shops.

22 And then we have the ability under the West LA Leasing
23 Act to do service leases for other types of services to be
24 delivered.

25 So the implementation will actually be done by multiple

1 parties.

2 THE COURT: I thought we were talking about
3 temporary supportive housing?

4 THE WITNESS: We're talking about the community
5 aspects, was what I was responding to.

6 BY MS. PETTY:

7 Q If you can now turn your attention to page 6 of this
8 exhibit, which corresponds to page 4 of the actual document.

9 And if you can turn your attention to the third bullet
10 under temporary supportive units.

11 It states: Assuming there is infrastructure to support
12 the placement of the units, the 1,000 --

13 And I will do a revision, which it's been changed.

14 THE COURT: Let me catch up with you.

15 Thank you very much. Please continue.

16 BY MS. PETTY:

17 Q So when I read this passage, I'm going to change the
18 figure from 1,000 to 750 to reflect what this expert testified
19 to.

20 "Assuming there is infrastructure to support the
21 placement of the units, the 750 temporary supportive housing
22 units can be placed and ready for occupancy on a scheduled and
23 rolling basis within 12 to 18 months of the start date."

24 What is your reaction to this assumption about the
25 infrastructure?

1 THE COURT: And you can reduce that down to 750
2 because he has changed his opinion.

3 THE WITNESS: So the assumption that infrastructure
4 is in place depends on where it goes.

5 And as we walked through some of the maps yesterday,
6 there are clearly areas of the campus that do not currently
7 have various types of infrastructure.

8 For things like stormwater, it's a much larger
9 undertaking to provide that type of infrastructure to areas
10 that do not already have it, versus electrical, which may be
11 relatively easy to provide even in areas where there may not be
12 services.

13 So, I think its assumption is based on where it is.
14 Without knowing where it is, it's hard to say where there is or
15 isn't infrastructure. But 750 supporting housing units, a lot
16 of it comes down to what is temporary. So, temporary can
17 either mean the veteran is living there as they then migrate to
18 permanent supportive. Or is the housing temporary, meaning
19 it's not affixed, it's not connected to utilities, things like
20 that.

21 I don't think that is the intent. I mean, based on some
22 of the pictures of what they are talking about, these are --
23 they are homes, so they have to have utilities, and that then
24 requires the infrastructure to do it.

25 750 is not an insignificant number to try to figure out

1 is there infrastructure, is there not infrastructure, and if
2 there is not, how to get it there.

3 The other piece that is important, I think, in this is
4 the last two words: Start date.

5 What is the start date?

6 You know, as we spent a lot of time talking yesterday,
7 there is a huge amount of due diligence upfront, both on
8 infrastructure, historic preservation, and environmental
9 analysis, all of those things, those take a significant amount
10 of time.

11 For us, that would be all part of the process. Is this
12 assuming that all of that is done? And if all of that is done
13 and you have utilities, then of course 12 to 18 months wouldn't
14 be bad.

15 We just looked at a parcel release where we're
16 renovating some of these buildings in 18 months. That is very
17 realistic.

18 But that is not including all of the prework that was
19 done. That is once financing in place. That is once you have
20 already done your historic consultation. All of that stuff is
21 already complete, then 12 to 18 months might make sense. But
22 this is -- it appears to me this is 12 to 18 months from now.

23 And I don't see that as realistic with all of those
24 things that we have talked about.

25 BY MS. PETTY:

1 Q So with 750 temporary supportive housing units, analysis
2 under the National Environmental Policy Act as well as
3 compliance with the National Historic Preservation Act would
4 have to happen?

5 A Correct.

6 Q I want to next turn to page 7 of Exhibit 84, which
7 corresponds to page 5 of the document.

8 And I just want to look at that last bullet which states
9 "design construction of replacement parking deck."

10 And this is included within that 12- to 18-month time
11 frame.

12 Do you have a reaction to the construction of a
13 replacement parking deck happening within that a allotted time
14 frame that has been identified by plaintiffs' expert?

15 A So I mentioned this a little bit yesterday. As part of
16 the Metro easement, where they are bringing on the Metro to the
17 corner of the campus, Metro has agreed to construct a parking
18 garage for VA specifically.

19 So that is consideration for VA that would be on the
20 South Campus near where that solar parking area is right now,
21 right at the corner of that.

22 THE COURT: Point to that with the laser.

23 THE WITNESS: I don't know whether you can see it
24 down there.

25 THE COURT: Just a moment. You see those two white

1 spaces -- go up.

2 Those were testified by Johnson to be two of the primary
3 areas that he thought temporary housing could go. Then he
4 wanted to block off part of that ring road and go across the
5 street and there is some solar panels over there.

6 I think he has been told that is not a possibility, from
7 the Court's perspective of blocking out of that road.

8 But in those two areas, is that your understanding where
9 the new -- point to it again -- where the new Metro parking is
10 going to be constructed?

11 THE WITNESS: Yes.

12 THE COURT: By when?

13 THE WITNESS: I do not know the schedule of when
14 they are going to do that.

15 THE COURT: Across the street, Metro has already
16 constructed a parking lot, haven't they? Point to that.

17 Also, there is another parking lot that has been
18 recently paved -- move your laser over to the other side, a
19 little more towards Metro, yes.

20 THE WITNESS: Oh, over here.

21 THE COURT: Absolutely. There a big parking lot
22 over there, isn't it?

23 THE WITNESS: Yeah, I'm not sure about this side.

24 THE COURT: No, stay with me now. Didn't Metro pay
25 for that?

1 THE WITNESS: Yes. And these parking are to support
2 Metro. Part of the easement for VA was the garage that they
3 would create down here is for VA exclusive use. It's not for
4 use by Metro; it is VA use only.

5 THE COURT: That parking lot that you just pointed
6 to right below 10 is not exclusive Metro use, though, is it?

7 THE WITNESS: I'm not sure what the use is.

8 THE COURT: VA can park there also, can't they?

9 THE WITNESS: It would be more public is the way
10 that I would look at it.

11 THE COURT: Can the VA park there, yes or no?

12 THE WITNESS: As far as I know, yes.

13 THE COURT: Pardon me?

14 THE WITNESS: As far as I know, yes.

15 THE COURT: Now move over to the other gray area
16 that Metro constructed. Can VA park there.

17 THE WITNESS: I think that is paid, so I'm sure they
18 could, but there could be a cost to it.

19 THE COURT: Do you know if there is a cost to it?

20 THE WITNESS: I haven't parked there, so I don't
21 know specifically.

22 THE COURT: Thank you, counsel.

23 BY MS. PETTY:

24 Q And, Mr. Simms, I want to draw your attention to the first
25 paragraph under "connective tissue," which is on the same page

1 we were just discussing.

2 And I want to focus on the first clause of the first
3 sentence which states: "Missing in the current development is
4 a connective issue that includes the supportive housing
5 services that veterans will require."

6 What is your reaction to this sentence or clause of the
7 sentence?

8 A So I think VA clearly has a lot of healthcare services
9 available, both South Campus and North Campus, depending on
10 what that service is. That is clearly there, so how it can be
11 connected in some cases either one integrate it, meaning VA
12 would provide it directly someplace in the housing, or provide
13 the mobility system to get veterans from the buildings on the
14 North Campus where they may live to the South Campus or
15 wherever they may need to be.

16 That is clearly there in the community plan, as the
17 appendix to the master plan 2022, that connective tissue is
18 there. There is a lot of thought that has been put into the
19 mobility and transportation systems, so I believe it is there.

20 Is it physically constructed? No. It is not all there,
21 as we just talked about. We have got some buildings coming up
22 that will have some of those community services and future
23 things like mobility hub.

24 So it's not all there. It is clearly planned for what
25 we're working on.

1 THE COURT: If I'm an amputee or I have traumatic
2 brain injury, my understanding is that your shuttle system is
3 paid for by these enhanced leases, correct?

4 And two and a half percent of that comes from oil, and
5 that goes to the DAV, who then pays a portion of the
6 transportation systems, right?

7 THE WITNESS: That is independent of the enhanced
8 use.

9 THE COURT: Yes or no?

10 THE WITNESS: It is not paid for by the enhanced-use
11 lease.

12 THE COURT: Is it not?

13 THE WITNESS: No.

14 THE COURT: So our transportation system on the
15 campus, our shuttle system, is paid for by the VA?

16 THE WITNESS: It is paid for in part by the oil and
17 gas revenue. That is not an enhanced-use lease.

18 THE COURT: Okay. I misused that term, my
19 apologies. By oil and gas?

20 THE WITNESS: Correct.

21 THE COURT: Now, why are amputees and veterans with
22 traumatic brain injury dependent upon -- I'm sorry for using
23 the word enhanced lease -- but oil revenues. Why isn't this a
24 direct appropriation for veterans coming out of the VA budget?

25 THE WITNESS: I don't have the answer to that. I

1 believe there are some transportation programs that VA does
2 fund, but I can't specifically say how much or what type.

3 THE COURT: Because you have to understand that if I
4 have got traumatic brain injury and I'm trying to find my way
5 to the hospital, even if I'm on the campus or off the campus,
6 or if I'm an amputee, it seems a little odd that veterans are
7 dependent upon oil revenue for what seems to be an absolute
8 need. But you can't change that policy and neither can I,
9 right?

10 THE WITNESS: Correct.

11 THE COURT: Okay. Well, we'll see.

12 THE WITNESS: At least I can't. I can't speak for
13 you.

14 THE COURT: Counsel.

15 BY MS. PETTY:

16 Q Mr. Simms, I would like you to take a look at Exhibit 230
17 which we previously handed to you, and this is a picture of the
18 map from plaintiffs' experts identifying the potential
19 placement of temporary supportive housing.

20 With respect to the parcels that have been identified,
21 from an infrastructure perspective, are you able to speak about
22 any challenges that may arise? Or is it the case that an
23 analysis would have to be conducted in the first place to see
24 whether or not an issue would arise?

25 A We would definitely have to do analysis. I think it's

1 fair that for the majority of these parcels, not all, but the
2 majority of these parcels, there is already infrastructure
3 service because it's part of the campus that is already using
4 electric or gas or whatever it may be.

5 But to the extent that there could be poor condition,
6 not enough capacity, we would have to assess that.

7 Q And again, there would have to be a NEPA and National
8 Historic Preservation Act analysis as well?

9 A Correct.

10 Q So I want to move to page 8 of Exhibit 84, which
11 corresponds to page 6 of the document.

12 THE COURT: Before you do, I'm going to take one
13 example, sir, and help me, please.

14 I want to take this parcel that you will see in light
15 green along Barrington, and you will see a white square at the
16 upper left-hand corner which is a post office, and below that I
17 represent to you that gray area is a parking lot.

18 Now you will see a brown area, and if you walk out you
19 will see nine acres of VA land that's got a one-year revocable
20 license.

21 Now, the reason I asked about the 1,000-foot landfill is
22 because if that parcel is within the 1,000-foot landfill, maybe
23 we can't consider that for temporary housing.

24 But then I better not see veterans moving into an unsafe
25 condition along MacArthur Field, if that is the case. Got it?

1 THE WITNESS: Understood.

2 THE COURT: If we have 1,000-foot problem with this,
3 then we have got a 1,000-foot problem with 300-some units that
4 you want to move into.

5 So, wouldn't we suspect along Barrington, since the VA
6 is not operating its own citywide sewer system, you have to put
7 it in the City or county, right?

8 THE COURT: I would think Barrington is pretty well
9 developed, wouldn't you, along with electric and sewer. Pretty
10 easy to hook into?

11 THE WITNESS: So we could go back and look. I think
12 --

13 THE COURT: I would think that Barrington is pretty
14 well developed along that area, wouldn't you, with sewer and
15 lights, since there is apartments right across the street and
16 Brentwood Village is just above it, fronting Barrington?

17 THE WITNESS: Not connected to the VA.

18 THE COURT: No, not connected to the VA, but pretty
19 accessible. We're not going to have to go a mile or anything.

20 THE WITNESS: Could be.

21 THE COURT: Okay. How about the Brentwood School?

22 THE WITNESS: They have got all of that.

23 THE COURT: They have got all of that, don't they?

24 THE WITNESS: Correct.

25 THE COURT: If I took seven acres, which isn't on

1 this map, this minimally -- and counsel, one of you put up a
2 more complete map of the area.

3 I need to include Brentwood School. And there are seven
4 acres sitting up there for a moment.

5 So as we point out all of these infrastructure
6 problems -- we don't have it yet, counsel. So get another map
7 up there for me.

8 MS. PETTY: Just a moment, Your Honor. We're
9 working on it.

10 MR. ROSENBERG: Is it 1069?

11 THE COURT: No. We have got much better maps than
12 that.

13 MR. ROSENBERG: Do you want the area with Brentwood
14 School?

15 THE COURT: Yes. I understand, Mr. Simms, that
16 there are problems with anything that we develop. I can put
17 all sorts of problems on the board, ones you haven't even
18 thought of yet.

19 But many of these seem to be easily overcome. The Court
20 is just, if I get there, is going to have to make some tough
21 choices.

22 And that's why I asked you about that 1,000-foot
23 landfill. That's why I needed to see that radius, because I
24 don't know that those nine acres that I just described to you
25 or that parking lot has landfill issues.

1 But what I'm not going to stand for is a clear bill of
2 health down here for 300 veterans, and this is off the table on
3 the nine acres.

4 THE WITNESS: Understood.

5 THE COURT: Understood.

6 And that's why this needs to be resolved between the VA
7 and the county, and I can feel the VA's frustration with the
8 County on this. So we know, do we really have these 300 acres
9 or do we spend, you know, \$100 million or more? I don't know
10 what the cost of this, and I have got the silly answer of,
11 well, Judge, it might be a day or years.

12 THE WITNESS: Yes.

13 THE COURT: All right. That is the silly answer I
14 have so far.

15 That's because I don't think the VA can answer this
16 question. No matter who the VA puts up right now as I
17 respectfully listen, it's the County that needs to be in here.
18 And I think we're dodging it, quite frankly.

19 Okay. Now, do you see this -- thank you, counsel. It's
20 hard to see, but where the BR, is you can see a little arrow
21 going over, and I'm going to represent to you that that's about
22 seven acres of field up there.

23 I would imagine Brentwood School, if they have this
24 aquatics center, the school must have pretty good
25 infrastructure up there in terms of electricity, water.

1 THE WITNESS: I would agree.

2 THE COURT: Okay. Now we have to connect it to
3 something. It's a field right now. I think we have seven
4 fields in total, baseball fields.

5 Let's go down to the UCLA site for a moment. Could
6 somebody take me down to the UCLA site?

7 MS. PETTY: He's getting there shortly, Your Honor.

8 THE COURT: How is our infrastructure at the UCLA
9 site?

10 THE WITNESS: There is some structure there.

11 THE COURT: Okay. Sewer?

12 THE WITNESS: There is sewer.

13 THE COURT: Electricity, obviously?

14 THE WITNESS: Yes.

15 THE COURT: Now let me go down to the South Campus
16 for a moment, because that's where Johnson and Soboroff
17 recommend this temporary housing.

18 And the rationale, I think, behind their reasoning is so
19 it's closer to the hospital. And it's supposed to be
20 temporary, we're not supposed to warehouse people. They're
21 supposed to pass through. And if we got there and the Court
22 made such an order, I need to be careful about the numbers. I
23 mean, what is really needed versus what is requested.

24 But I also tossed out that a good amount of our staff
25 barely have a survivable wage, frankly. And even the young

1 person who was with us who was on-site, the security guard, is
2 driving in from Riverside two hours and 15 minutes each day,
3 and he can't be making very much money.

4 So I tossed out that even if I had guessed wrong and the
5 numbers were too high, what I was looking at is, hey, the Court
6 made a mistake, but does that still have some utility in terms
7 of our working staff so that they don't become homeless on
8 these small wages?

9 And certainly, if the VA staff is living on the
10 property, Mr. Braverman and the hierarchy, it calls into
11 question why we don't accommodate a working staff there. Not
12 everybody, but as much as we can.

13 So right now, I don't know if 750, 250, or 0.

14 But tossed out to me are these two lots. See it? I
15 think I marked them in yellow just then. Did it come up on
16 your screen?

17 THE WITNESS: Yes.

18 THE COURT: I'm so proud of myself for being able to
19 do that. That is a first.

20 I don't think you did this intentionally, but I
21 told you I felt I was being misled the other day. I was blunt
22 about it. I don't think you did that, but I'm not pleased with
23 having a 2,000 map put up, and the inference is all of these
24 red lines mean this is part of our, you know, problem.

25 When, obviously, if we developed MacArthur fields, these

1 red lines are not only outdated, but they are really not a very
2 good representation to the Court. As we went through it, you
3 were kind enough to say, you know, Judge, this red line should
4 be green, obviously the electricity is in there.

5 So let's turn back to that exhibit, counsel. What was
6 that exhibit? And I want you to put up the storm drains for
7 just a moment.

8 Would you be around in early September?

9 THE WITNESS: Yes.

10 THE COURT: Good. I love your enthusiasm. I may
11 need your help. I'm not sure yet, but we will see. I may need
12 your help.

13 THE WITNESS: Okay.

14 THE COURT: Counsel, what was that? I want the one
15 with our storm drains. I think it's 147.

16 MS. PETTY: Yes. Just a moment, Your Honor. If I
17 can offer a quick point of clarification with respect to those
18 maps. So when those maps were being shown, they are from the
19 2022 master plan. It was for the purposes of showing what the
20 status of infrastructure was at that time, and Mr. Simms was
21 updating with respect to the work that has been done which was
22 not incorporated into that map. So I just want to make that
23 clear.

24 THE COURT: You don't want to get into that
25 discussion right now.

1 Counsel, I think it's 1347. Counsel, is it 1347, from
2 memory. It's a big thick binder.

3 MS. PETTY: Yes. We have the first map up which is
4 4-25, which is the stormwater system that is up right now.

5 THE COURT: Give me the exhibit. I want to go back
6 to the binder.

7 MS. PETTY: It's Exhibit 1, Your Honor.

8 THE COURT: Exhibit 1, just a moment. There we go.
9 Okay. I just walked through this for a moment. I want
10 you to go to Exhibit 1, page 135.

11 Does that come up in color for you?

12 THE WITNESS: The lines themselves are color-coded.

13 THE COURT: But if you turn to the exhibit itself, I
14 don't think it's fair that -- you can answer these questions.

15 Okay. Now, when you made your initial presentation, I
16 was under the impression that these red lines represented
17 obstacles.

18 And was -- or were impediments, and we went through a
19 series of electrical, et cetera, and as I was sitting here, I
20 kept looking at MacArthur Fields and waited until I thought
21 about the third infrastructure presentation, and then basically
22 said these had to be inaccurate, because we weren't going to
23 put veterans into MacArthur Field with a red stormwater
24 inadequate system, nor should we have put veterans into 209,
25 208, and 205.

1 All of those red lines around 208, 209, and 205, those
2 are no longer red lines, are they?

3 THE WITNESS: They are not red lines.

4 THE COURT: They are not. Simple as that.

5 You see the red line that is supposed to be our
6 inadequate stormwater system, going off towards MacArthur
7 Field -- I will show you. That is not a red line, is it?

8 THE WITNESS: I don't believe that is a red line.

9 THE COURT: "I don't believe." Is it or not?

10 THE WITNESS: So let me clarify a little bit there.
11 It could be abandoned and they could have put new
12 infrastructure around it, but there clearly is more storm drain
13 infrastructure in that area.

14 THE COURT: So we're not going to put up 3- to
15 400 units with a red line, correct?

16 THE WITNESS: Correct.

17 THE COURT: What updates this so that I can actually
18 see what the present stormwater system looks like? Because
19 this is unreliable, and it doesn't represent the true status of
20 the advancements you have made.

21 THE WITNESS: Agreed.

22 THE COURT: Okay. Then that's a plus.

23 THE WITNESS: Yes.

24 THE COURT: I'm not going to rely upon this. In
25 fact, I'm not going to rely upon any of these documents because

1 these maps go back to 2022.

2 THE WITNESS: Correct.

3 THE COURT: Right now, I might be finding -- with
4 want of better evidence -- that you have adequate
5 infrastructure on all or part of these sites. And that might
6 be unfair.

7 THE WITNESS: That's possible.

8 THE COURT: You might be motivated to get this to me
9 in the next two days.

10 THE WITNESS: I will have to look.

11 THE COURT: We will see how motivated you are, okay?

12 All right. Counsel.

13 BY MS. PETTY:

14 Q Mr. Simms, can you go back to Exhibit 84, page 8, and this
15 will correspond to page 6 of the actual document.

16 A Okay.

17 Q Do you see the heading permanent supportive housing units?

18 A Yes.

19 Q And I will just state that the number 2,740 has been
20 revised as of this past week to be -- or last week, excuse me,
21 to be 1,800.

22 With respect to the information that is contained in
23 this section for permanent supportive housing, do you have any
24 reactions?

25 A So, couple of reactions. First is I think the first

1 bullet is actually critical. Finalizing the demand analysis --
2 that is critical in the sense that from the 2016 master plan
3 on, we have been very clear that to address homeless veterans
4 cannot be a VA only thing.

5 We have got community providers. We have got housing
6 authorities. We have got lots of different people we would
7 work with to solve the problem.

8 We have made a lot of progress in working with those
9 community providers for veterans who may choose not to live on
10 campus.

11 So the demand analysis for overall and those veterans
12 who may want to live on campus, I think, is critical to give us
13 a target.

14 The other piece and I talked a little bit about that
15 yesterday is one of the worse scenarios is actually
16 overbuilding permanent supportive housing.

17 If you overbuild, you start to see vacancy rates
18 increase, and it jeopardizes all of the projects on the campus.

19 You start competing building against building for
20 veterans to move back and forth, and that cash flow starts to
21 get very low, to the point where some of these are going to
22 fail.

23 So that's a very real concern that I think demand
24 analysis is important there.

25 The EIS recirculation issue -- I think what they are

1 getting that -- on that is NEPA compliance. The EIS
2 recirculation, given the volume, even at 1,800 being double
3 what we originally did in the PEIS, would not be a simple
4 recirculation. We would have to do new analysis that is
5 just -- again, it's double what we started with.

6 So it's much more complex than just a recirculation. We
7 would have to relook at all of the impacts of that many more
8 housing units.

9 THE COURT: For both counsel, when you argue this
10 matter, I think you are going to take polarized viewpoints. I
11 think from the plaintiffs, you are going to argue the PSH is
12 1,800 or more, and that the temporary 750.

13 For the defendants, I think you are going to put forth
14 the argument that "Judge Carter, putting 1,800 units, let alone
15 750, in the short period of time would be detrimental."

16 You should be prepared in your argument to state -- if
17 you are still seeking 750 -- what that time frame is, whether
18 this would be sequenced and nuanced, or whether this is 750, or
19 whether there is a combination of apartments and housing.

20 But you should also be prepared to argue how this would
21 be sequenced in, because there says no way permanent supportive
22 housing goes within 18 months, et cetera.

23 So therefore, be responsible in that presentation and
24 tell the Court, through either Johnson's testimony or Soboroff,
25 exactly what you are saying, Mr. Simms. And that is, when a

1 billion dollars is thrown out, that doesn't mean a billion
2 dollars in one year. If we are sequencing it, it might be 150
3 to 200 million a year.

4 What is our planning time? What is our design time for
5 supportive house? What is our ratio of temporary versus
6 permanent supportive housing?

7 So this idea of 1,800 all at once, I don't think it's an
8 argument that is well received. But it may be received in
9 terms 1,800 having the capability and capacity here on
10 permanent supportive housing. And the question is how that is
11 sequenced and what makes sense. If we get there, I'm going to
12 need your expertise. But we are not there yet.

13 All right. Counsel.

14 BY MS. PETTY:

15 Q Mr. Simms, I want to look at the fourth bullet point which
16 states "demolition of existing buildings in the way of new
17 construction."

18 And I will add that Mr. Johnson testified to
19 demolishing, potentially, 55 buildings.

20 Do you have any reactions to that statement?

21 A So I think -- and it may have been in here, but they were
22 referring back to 33 buildings that had been in the original
23 PEIS that we did some of the alternatives analysis for.

24 If you look at some of these maps we have been looking
25 at, those 33 buildings aren't underutilized now.

1 The Buildings 205, 207, 208 -- all of those buildings
2 were part of the original 33 that were contemplated of demo.
3 They are now housing.

4 So the number, it just strikes me as not current, that
5 they are looking back at something that was done seven or
6 eight years ago.

7 There are nowhere near 30 buildings on campus that you
8 can demo that aren't in use today.

9 So it does get to a constraint space and environment
10 here. There is a few buildings left that I think, yes, you
11 could contemplate demo.

12 But the challenge we ran into the PEIS is most of those
13 buildings are considered contributing elements to the National
14 Register Historic District. That is going to create a very
15 difficult consultation with the State Historic Preservation.

16 I'm willing to say that because there is no mitigation
17 for demolition, it's going to be hard to get their agreement,
18 which just elongates that time frame to get to a point where
19 you could get them to agree, or if you had to escalate that to
20 the ACHP.

21 Q So if Mr. Johnson testified that 55 buildings need to be
22 demolished, in your opinion, do you think that is possible?

23 A I do not. Not without knocking down buildings that are
24 currently in use.

25 Q I want to go down to the second paragraph under

1 conclusions.

2 This sentence reads: The principal developer selected
3 to build the permanent supportive housing are very capable
4 building vertical product, but they are not master plan
5 community developers.

6 What is your reaction to that sentence?

7 A I would say that is partially true, which is why the
8 principal developer team brings in partners to do things.

9 They are not architects; they bring in key architects.

10 This is another area where the principal developer team
11 has actually engaged with experts in master planning for
12 communities to bring them in and gather their expertise.

13 So to a certain extent, the three entities that make up
14 the principal developer team may not be experts in this.
15 Although they have done development that we have talked about
16 yesterday that border on that, they have augmented their team
17 with experts in this field.

18 Q If you can turn to page 9 of Exhibit 84, and this
19 corresponds to page 7 of the document.

20 I want to look at the second paragraph on that page
21 which states: "The 2022 master plan did not address any
22 housing in the South Campus which seems like a missed
23 opportunity due to its adjacent location to the hospital."

24 What is your reaction to that sentence?

25 A So it is true that the master plan did not contemplate

1 housing on the South Campus.

2 The missed opportunity component, I think, is a matter
3 of opinion.

4 Clearly, the hospital and most of the clinical
5 operations are on the South Campus. I would also say it takes
6 up most of the South Campus. So when we talk about Building
7 500, there is going to be a new bed tower that is built south
8 of that, there is going to --

9 THE COURT: Could you point that out to me once
10 again?

11 THE WITNESS: So building 500 is here.

12 THE COURT: It's the hospital?

13 THE WITNESS: Correct. That's the hospital. The
14 new inpatient is going to be built down here so it's going to
15 take out this parking area and here.

16 There is then follow-up projects for outpatient, not the
17 inpatient component that would be in this area here.

18 THE COURT: Show me the tower again.

19 THE WITNESS: Here. And then the new tower is down
20 in this area.

21 THE COURT: Thank you.

22 THE WITNESS: So there is a lot contemplated for the
23 South Campus in addition to what is already going on with
24 Metro.

25 There's a few areas of the South Campus that there are

1 not current plans for redevelopment, some of which are those
2 green areas we looked at in terms of the historic districts, so
3 some of this up in here.

4 But, realistically, the concentration in the North
5 Campus was by design, so housing wasn't spread out across the
6 whole campus. We wanted it centered and connected.

7 There's obviously got to be mobility enhancements that's
8 articulated to get veterans from north to south down there.

9 But for permanent supportive housing, which was the
10 focus of the master plan, congregating it with existing assets
11 and new construction on the North Campus up here, there was
12 ample room to do that, there wasn't need to go to the South
13 Campus.

14 Q I want to briefly turn back to page 6 of Mr. Johnson's
15 report and this corresponds to page 4 of the actual document.

16 And I want to look at the second bullet and when I read
17 it I will revise it to be that 750 temporary supportive housing
18 units as opposed to the 1,000.

19 "These 750 temporary supportive housing units will be
20 placed so as not to interfere with any long-range plan for the
21 property."

22 Do you have any reactions to the sentence?

23 A That is going to be difficult to do.

24 And it gets even more difficult to do if you factor in
25 the potential for another 1,800 permanent supportive housing

1 units.

2 As we have spent the last couple of days, while the
3 campus is big, it's already in use in a lot of areas, and it's
4 got plans for other areas.

5 So South Campus has a lot of activity.

6 I'm not saying there's not the potential for doing
7 something on the South Campus, but making sure that it doesn't
8 conflict with any of those longer-term plans for the new tower,
9 for parking whatever it may be gets very difficult to do.

10 North Campus, we've made use of most of the
11 underutilized buildings for housing. They are being converted
12 now or they are planned to be converted to potentially get to
13 that 1,600-unit.

14 We've already brought in new construction in the
15 MacArthur areas, there is going to be more new construction
16 down here along Pershing, so we're mixing in new construction
17 -- we're mixing in new construction with utilizing the assets
18 that are there.

19 That does take up a lot of space.

20 THE COURT: Hold on for a moment. Do you see that
21 right there?

22 THE WITNESS: Yes.

23 THE COURT: A parking lot? Let's just assume there
24 was temporary supportive housing going in.

25 Let's just assume with your able advice that we sequence

1 that in, but we put some in immediately.

2 Obviously, we might not want to start here if there is
3 construction of the tower, as our first choice, what about
4 starting there?

5 THE WITNESS: You could -- that might be one of the
6 areas of South Campus that don't have a longer term --

7 THE COURT: Let's say we've got 150 or 200 units in
8 here, right. What does our infrastructure look like? Which is
9 why I'm pushing on the stormwater and electricity.

10 THE WITNESS: Yeah, in general, South Campus is
11 fairly well covered.

12 THE COURT: Well, look at. What's wrong with that?

13 THE WITNESS: Yeah. Unless it would be used for
14 laydown space for construction of the tower.

15 THE COURT: It's not going to be. I'm not going to
16 let them do that.

17 What's wrong with that?

18 THE WITNESS: I mean, nothing -- nothing from my
19 perspective.

20 THE COURT: In other words, if we get the sequencing
21 idea, it's a parking lot, isn't it?

22 THE WITNESS: Yes.

23 THE COURT: What's wrong with that?

24 THE WITNESS: I think that parking lot is used for
25 the house down there.

1 THE COURT: It's almost vacant. You have got
2 infrastructure there, don't we?

3 THE WITNESS: Yes.

4 THE COURT: Between those two sites, just sequencing
5 for a moment, here, the overnight parking, which we can move up
6 to Barrington and here.

7 What is the capacity in those two lots?

8 THE WITNESS: Yeah.

9 THE COURT: I have a temporary modular and I'm going
10 to use 400-square foot, not the tiny sheds.

11 THE WITNESS: Yeah, I don't -- I'm not good at math
12 on the fly, Judge, there would certainly be some capacity
13 there.

14 THE COURT: What is our infrastructure there?

15 THE WITNESS: In general it's good there.

16 THE COURT: It should be good, shouldn't it? All
17 right.

18 Counsel? Thank you, counsel.

19 BY MS. PETTY:

20 Q Mr. Simms, can you now turn your attention to Exhibit 82,
21 which is the expert report of Mr. Steve Soboroff.

22 And, in particular, can you turn to page 8 of Exhibit 82
23 which corresponds to page 6 of the actual document.

24 A Okay.

25 Q And I want to focus on the 7th bullet with respect to

1 demolition.

2 During Mr. Soboroff's testimony this last week, he was
3 asked about his testimony that a lot of buildings need to be
4 demolished on the campus. And when he was asked about that he
5 responded, "When in doubt, tear them out."

6 Is that a good guiding philosophy for the development of
7 the West LA Campus?

8 A That is not consistent with our campus resource plan, nor
9 the memorandum that we work with with the State Historic
10 Preservation Office.

11 MS. PETTY: And just for clarity of the record, I
12 was reading that as a direct quote from Day 9 of the transcript
13 and that's on page 77, Lines 7 through 10.

14 THE COURT: I think you also mentioned also that if
15 we had the ability to demolish or renovate, that the renovation
16 causes less hazardous waste, quite frankly, because you can
17 contain it in a renovation?

18 THE WITNESS: Exactly.

19 THE COURT: Now, it might be a little bit more
20 costly or time consuming because you've got the staircase
21 example, I understand that, but as far as spreading hazardous
22 waste, et cetera, renovation might be a better way to go.

23 THE WITNESS: Agree.

24 THE COURT: Thank you.

25 BY MS. PETTY:

1 Q Mr. Simms, I want to turn to page 9 of Exhibit 82 and this
2 corresponds to page 7 of the actual document.

3 In particular, I want to focus on that first paragraph
4 under the section "The Inadequacy of the PSH Affordable Housing
5 Model As a Financing Vehicle For New Construction."

6 And if you look at the last sentence of this paragraph,
7 Mr. Soboroff proffers a typical commercial financing of
8 construction projects possibly supplemented by philanthropy
9 could be employed to help PSH developers expedite their
10 projects.

11 What's your reaction to the use of commercial financing
12 and philanthropy.

13 A So to me, commercial financing, as I explained yesterday,
14 is not an alternative to this, it is a piece of that larger
15 financing stack puzzle that can be leveraged as much as
16 possible.

17 But realistically, the commercial market's availability
18 to provide enough financing for these projects, given the lack
19 of cash flow, is really problematic.

20 So if we went away from the funding mechanisms that were
21 created specifically for affordable housing, we would be
22 competing with housing developments that are not for affordable
23 housing, that have much better risk profiles that are making a
24 lot more money.

25 I think we would end up in a situation where we just

1 don't have funding, period.

2 It would be an unattended consequence of abandoning the
3 niche program for affordable housing to look for other
4 solutions, to find that you have no solutions that actually
5 work, and then housing can't move forward at all.

6 Q And I want to look at the paragraph at the bottom, under
7 the heading "Inadequacy of the Master Plan and Planning
8 Process."

9 And I want to focus in particular on the clause of the
10 second to last sentence which states:

11 "There has been no adjustment to the planning for
12 1,200 units of housing."

13 What is your reaction to this?

14 A So the plan in and of itself has changed a number of
15 times. I think as we pointed out in the draft master plan
16 2016, our timeline would have us almost done at this point.

17 So clearly it has changed. We have changed the plan, we
18 have been more specific on which parcels and which buildings
19 would be used for housing, so it has changed.

20 It is fair to say we are still working off of the 1,200
21 as the -- not less than 1,200 units is the way it was phrased
22 in master plan 2022.

23 Q And is it correct that in the parcel placement schedule
24 that we went through, which is Exhibit 1616, those below the
25 blue line items were potential options should housing need to

1 be increased to the 1,622 number?

2 A Yes. We felt it was good planning not to stop at 1,200,
3 especially when we had already done the assessment up to the
4 1,600-plus number identifying the parcels that could be used to
5 go above 1,200 figuring out how that fits with the rest of the
6 community. That saves us time.

7 If we get to the point, let's say three years from now,
8 we've got 700, 800 units on campus, demand is still strong, and
9 we make a decision that we want to go above 1,200. We've
10 already got plans in place to help get us above that 1,200
11 number.

12 Q And I know we've spoken about this on several different
13 occasions through the course of our direct over the past two
14 days, but I want to ask: If you total the 1,800 permanent
15 supportive housing units, plus the 750 temporary supportive
16 housing units that amounts to 2,250 -- 2,550, excuse me, I'm a
17 lawyer, I don't do math often, so bear with me.

18 THE COURT: Let the record reflect excellence in
19 terms of math.

20 BY MS. PETTY:

21 Q So 2,550 additional total housing units. How would that
22 additional amount of housing impact the existing master plan?

23 THE COURT: On top of the 1,200?

24 MS. PETTY: Correct, Your Honor.

25 MR. SILBERFELD: Objection, Your Honor. I have an

1 objection that that misstates the testimony as to the use of
2 the 750 temporary units, it's not cumulative.

3 THE COURT: I don't understand. Help me.

4 MR. SILBERFELD: The testimony from Johnson and
5 Soboroff was that you don't count the 1,800 plus the 750,
6 because the 750 are temporary. People are intended to move out
7 of those as they move into permanent housing. That's my
8 objection, Judge.

9 THE COURT: I see. But, regardless, whether we take
10 temporary or permanent supportive housing, I took their
11 testimony to be after the new figures had come in concerning
12 veterans, 750 temporary, 1,800 permanent supportive housing.

13 MR. SILBERFELD: "Or" not "and." You don't count
14 them together.

15 THE COURT: That's right.

16 MR. SILBERFELD: That's the objection.

17 THE COURT: They are not counted together. In other
18 words, I'm looking at an increased request of about 2,550 of
19 combination of temporary and permanent supportive housing. On
20 top of that, if we're successful, there's 1,200 online with the
21 present financing. So you should be, and counsel check me,
22 about 3,750 on the campus.

23 MR. SILBERFELD: Yes.

24 BY MS. PETTY:

25 Q So, Mr. Simms, would an additional 1,800 permanent

1 supportive housing and 700 temporary supportive housing have an
2 impact on the existing master plan?

3 A It could. Part of the assessment we would look at,
4 obviously, as I've stated a few times, it depends on where
5 those units go. But if those units are integrated into the
6 community, then absolutely it has an effect on the current one.

7 If they are put in locations outside of it that we
8 weren't planning to do housing on, then it may not have much of
9 an impact, but we would have to figure out if it should.
10 Meaning putting housing someplace separate and distinct from
11 the rest of the community that we're building, I don't know
12 whether that's a good thing or a bad thing when it comes to the
13 healing capacities of the community.

14 That's not my area of expertise, I'd certainly let other
15 people do that, but the citing of it probably should impact
16 what we're doing now, at least in terms of the community
17 aspects, the roads, the paths, the mobility, all of those
18 things that we're working on now, those additional units, both
19 temporary and permanent supportive, should impact what we're
20 doing now, or else we have to do it all over again, and that's
21 not really efficient.

22 THE COURT: Which is why you need me to get an
23 updated infrastructure map as quickly as possible.

24 THE WITNESS: Understood.

25 BY MS. PETTY:

1 Q And you mentioned earlier that the additional housing that
2 plaintiffs' experts are proposing would implicate the NEPA
3 process, the National Environmental Policy Act, as well as the
4 National Historic Preservation Act.

5 Are you able to approximate how long that might take to
6 complete the process?

7 A So I would put it roughly of the same order of magnitude
8 as the original PEIS.

9 I say that because the numbers are very similar. 1,600
10 versus 1,800 in permanent supportive, even if the temporary
11 would go above that, that is the same scope in general. So I
12 would say that time frame was roughly two to two and a half
13 years, that's actually very quick for a PEIS process.

14 Some PEIS processes can go four to five years, so ours
15 was a fairly quick PEIS process. That would be my best
16 estimate. That would be inclusive of the historic preservation
17 engagement, just like we did the first time, run those
18 concurrently, that would be the best guess.

19 Q When you say "the same scope," do you mean that the number
20 of housing units that plaintiffs' experts are proposing fits
21 within the current scope that was analyzed under the PEIS or
22 are you saying that the number that they are proposing is
23 similar in scope to an additional analysis of the housing
24 figures that are being looked at on top of the units that were
25 analyzed at 1,622 in the PEIS are?

1 A To clarify, the additional units are not included in what
2 we had originally assessed under the PEIS. We assessed going
3 from zero to potentially 1,622 units.

4 The new assessment would go from 1,622 to whatever the
5 right number is. Similar in growth, but certainly not included
6 at what we originally assessed.

7 Q Would there be any logistical challenges with coordinating
8 the construction of this additional housing that plaintiffs'
9 experts have proposed?

10 A So the timing and phasing would obviously be important.
11 When we look at that we do have development to get to the
12 1,200, you know, continuing for the next five years before that
13 would all be open. So if you were starting something new
14 before the end of that cycle there's the potential for
15 conflict, but that would be part of the phasing we would have
16 to really pay attention to.

17 THE COURT: Just a moment, let me catch up with you.
18 Explain that again to me.

19 THE WITNESS: Sure. So the current 1,200 that we
20 have in the master plan, we have construction activities up
21 through --

22 THE COURT: 2030.

23 THE WITNESS: Yeah. So we've got another four to
24 five years to go.

25 If we were to start on an additional 1,800 units

1 of permanent supportive housing before 2030, then we would have
2 to look at the phasing to make sure we weren't developing the
3 same areas and conflicting with the work to finish the original
4 1,200.

5 THE COURT: Thank you.

6 BY MS. PETTY:

7 Q Mr. Simms, are you aware of approximately how much the VA
8 has spent to date to update the infrastructure or otherwise
9 make the campus ready for those 1,200 units as contemplated in
10 the master plan?

11 A So I believe we have spent or are spending, some of it is
12 not spent yet, just above \$100 million for infrastructure and
13 turn over type activities.

14 THE COURT: Is that going to be the total cost or
15 will that rise?

16 THE WITNESS: For the 1,200 I expect that's roughly
17 the total cost. It could grow a little bit, but not
18 significantly.

19 THE COURT: Okay.

20 BY MS. PETTY:

21 Q Would the VA have to spend more for the infrastructure
22 system to be able to handle 750 temporary supportive housing if
23 that were the case?

24 A Possibly. Although I don't have any idea how much it
25 would be.

1 Q And with respect to the 800 units of permanent supportive
2 housing, is it possible that the VA would have to spend more on
3 the infrastructure system if it were the case that 1,800
4 additional units were developed?

5 A Likely. I would say we would have to spend some, I don't
6 really know how much more we would have to spend.

7 Q Is there anything else you would like to add with respect
8 to either of these experts' opinions?

9 A No. I mean, I think overall we have covered most of the
10 areas there.

11 I think timelines are tricky.

12 I think -- and this is my personal opinion, when we set
13 out the timelines in master plan 2016, those timelines weren't
14 realistic. They were aspirational, but we knew there were
15 things we need to do. We even said there's more studies we
16 need to do, but we didn't really factor that in.

17 I wouldn't want to get to a point where timelines are
18 driving something when we know there is a lot of things that
19 need to get done.

20 We factor that in up front so we don't make that same
21 mistake again.

22 MS. PETTY: Thank you, Mr. Simms. Let me just
23 check.

24 THE COURT: Check with your team.

25 MS. PETTY: No further questions, Your Honor.

1 THE COURT: Counsel, thank you.

2 Recess for about 15 minutes. Okay.

3 Sir, thank you very much. You may step down.

4 Counsel, we will see you in about 15 minutes.

5 (Morning recess.)

6 THE COURT: Back on the record, all counsel are
7 present, the parties are present.

8 Cross-examination?

9 MR. SILBERFELD: I think so.

10 CROSS-EXAMINATION

11 BY MR. SILBERFELD:

12 Q Mr. Simms, I know we've had a number of conversations
13 about the building of buildings by the VA, and perhaps by other
14 contractors and so forth.

15 The VA builds things, does it not?

16 A It does. Yes.

17 Q Okay. And up on the board was a chart you and I made a
18 few days ago, Exhibit 228, with some examples of things that
19 the VA builds on its own, really, correct?

20 A Yes. Some of those, yes.

21 Q So, for example, medical centers are on there?

22 A Correct.

23 Q And community living centers are on there?

24 A Correct.

25 Q And we have the renovation of Building 209 on there,

1 right?

2 A Correct.

3 Q That was a project done by VA through VA, not through
4 Enhanced-Use Leases, not through, you know, any sort of
5 developer agreement, correct?

6 A Correct.

7 Q And I think you said yesterday that VA isn't very good at
8 building housing. Was that the essence of what you said?

9 A Yes. We don't have expertise, therefore we don't have
10 standards, we don't have design templates, things like that for
11 what would be considered permanent supportive housing.

12 Q Well, I don't think you limited your answer to permanent
13 supportive housing. But in any event, you don't feel as if VA
14 is qualified to build housing, is that the sense of it?

15 A We're not experts at it.

16 Q Okay. Community living centers, which are up there on
17 Exhibit 228, are a form of housing, are they not?

18 A A form of, yes.

19 Q They are skilled nursing facilities?

20 A Correct.

21 Q There is one of those on the VA campus?

22 A Correct.

23 Q There are six of those built by VA in the VISN, the VISN
24 22 area that encompasses West LA, correct?

25 A Correct.

1 Q Those are all built by VA for VA, correct?

2 A Correct.

3 Q How many community living centers are there in the United
4 States, do you know?

5 A I don't have a specific number. It would be more than
6 100, but I don't have a specific number.

7 Q Yeah, I thought it was more than 100, too.

8 And on all of those built across the United States,
9 maybe across the world, were built by VA for VA, correct?

10 A In some cases we do lease them, so VA wouldn't be the
11 builder, but the majority are owned, so, yes.

12 Q So let's exclude the leases. But the majority of the
13 100-plus spread across the world are built by VA, for VA, owned
14 by VA.

15 Do we agree?

16 A Agree.

17 Q All right. And every one of those is a form of housing,
18 do we agree?

19 A A form of housing.

20 Q People live there, right?

21 A Yeah, for the treatments that they are there for, yes.

22 Q Well, some people live there their entire lives, right?

23 A No, not for their entire lives.

24 Q There's not a provision for -- in the community living
25 center that provides that someone could live there for the rest

1 of their life?

2 A The rest of their life is very different than their entire
3 life.

4 Q You are exactly right.

5 A Yes.

6 Q Let me amend my question and restate it. Okay?

7 Can we agree that in the community living centers
8 sometimes a patient who comes in can live there for the
9 remainder of that person's life?

10 A I agree.

11 Q And that happens a lot?

12 A Yes.

13 Q Now, in addition to building housing and medical centers,
14 such as the critical care tower that is going to go up in West
15 LA sometime I think in the next six years or so, in addition to
16 those things that VA builds by itself, for itself, it also
17 builds other things, does it not?

18 A I mean, it builds, for example, cemeteries, they have
19 columbariums, things like that. So VA does build other things
20 beyond that, yes.

21 Q What is Building 605 on the West LA Campus, Mr. Simms?

22 A I do not know off the top of my head. I could try to look
23 over here and see, but I don't know off the top of my head.

24 THE COURT: Would you point to that with that laser
25 you've got?

1 MR. SILBERFELD: It's down in the lower right-hand
2 corner south of the hospital tower.

3 THE COURT: Just point to it.

4 BY MR. SILBERFELD:

5 Q Do you see that, sir?

6 A I do.

7 Q Do you know that that is a brand new food service
8 facility?

9 A Yes.

10 Q That was built by VA?

11 A Yes.

12 Q For VA?

13 A Correct.

14 Q It's the food service facility that services not only the
15 existing hospital, but is intended to service the new hospital,
16 the critical care tower, when it's built, right?

17 A Correct.

18 Q And that was just opened in the last three months or so,
19 correct?

20 A Yeah, late spring. Yeah.

21 Q All right. And that wasn't pursuant to an Enhanced-Use
22 Lease, wasn't it?

23 A No.

24 THE COURT: Could I ask, could people go inside that
25 food service facility and actually eat there or are the meals

1 exported?

2 THE WITNESS: No, they are exported. It's a
3 production facility to produce it, so they wouldn't go there to
4 eat.

5 THE COURT: Are they going to be exporting -- are
6 they exporting to build 500 at the present time, obviously?

7 THE WITNESS: They are. I believe they are
8 exported.

9 THE COURT: Could they be exported then to temporary
10 housing, down in the two areas I showed you?

11 THE WITNESS: I don't know. I don't know what the
12 authority is.

13 THE COURT: Do you know the capacity?

14 THE WITNESS: I do not.

15 THE COURT: Counsel.

16 BY MR. SILBERFELD:

17 Q It's a 28,000-square-foot facility, is it not?

18 A I don't know the exact square footage, but that seems
19 reasonable.

20 Q Is that right?

21 A It could be.

22 Q It provides, according to an article that I found, 730,000
23 meals a year. That is the plan, correct?

24 A That sounds right.

25 Q It has, built into it, a series of tunnels where robots,

1 robot vehicles will take meals to the new critical care tower.

2 Are you familiar with that?

3 A I'm not familiar with that.

4 Q All right. But in all events, VA built that food
5 preparation facility. Would you say that VA is in the business
6 of food preparation facilities?

7 A We have a lot of those.

8 Q Okay. And you built them all?

9 A Yes.

10 Q On your own?

11 A Yes.

12 Q Not with a principal developer or otherwise?

13 A Agreed.

14 Q All right. Let's talk about the chapel, Mr. Simms.

15 Does VA have the capability, in your opinion, to
16 renovate the chapel? You know what building I'm talking about?

17 A I do. I believe VA would have the capability from a
18 technical perspective, yes.

19 Q Okay. That chapel has sat empty for 30 years, correct?

20 A Roughly, yes.

21 Q Ever since the Northridge earthquake in January of 1994,
22 right?

23 A Yes.

24 Q Have you been inside that chapel?

25 A I have not been in it. I have been outside, but I have

1 not actually been in it.

2 Q So you don't know the conditions inside?

3 A Not directly, no.

4 Q Would you say the conditions outside are deplorable?

5 A Very poor.

6 Q Okay. Deplorable?

7 A I would say very poor.

8 Q Not exactly a point of veteran pride?

9 A I would agree with that.

10 Q Not a point of VA pride?

11 A I would agree with that.

12 Q And yet, even though there is the capability, apparently,
13 nothing has been done to renovate that chapel in 30 years,
14 correct?

15 A VA has not taken any action on it, no.

16 Q Is there a plan to do that?

17 A So, there is a lease -- a service lease was put in place
18 for that building for a third party to do the renovation work
19 on it.

20 Q Which requires fundraising that hasn't been completed yet,
21 right?

22 A Correct.

23 Q All right. But is there any plan under consideration for
24 VA to renovate the chapel itself in order to have sort of a
25 beacon of hope and dignity on the North Campus for veterans and

1 VA personnel, for that matter, to enjoy?

2 A No plans for VA to do that that I'm aware of.

3 Q You said in a response to a question from counsel
4 yesterday that you thought the big bang approach was not
5 feasible. Do you remember saying that?

6 A Yes, I believe so.

7 Q And I guess by "big bang approach" you meant the proposal
8 that the plaintiffs in this case have made for both temporary
9 and permanent supportive housing, in addition to whatever else
10 is going on that are planned to occur in the next six years.
11 That's what you meant by big bang?

12 A Specifically, all at once. That is what I was referring
13 to.

14 Q Oh. So if it turned out to be the case that the temporary
15 supportive housing was phased in over a fairly short period of
16 time, 12 or 18 months, that would take some of the sting out of
17 your big bang worry, right?

18 A Well, it would. So I was mostly talking about permanent
19 supportive housing.

20 Q Sure.

21 A The temporary side, I don't know that anyone has a crystal
22 ball to know exactly what the right number is. But if it was
23 separate and distinct, my concern was more about 1,800 units of
24 permanent supportive housing, on top of 1,200 that are already
25 in play, and trying to do that all at one time.

1 Q So that if it turned out that the 1,800 permanent
2 supportive housing units were also phased in over time, based
3 on need, that would take some of the sting out of the big bang
4 problem?

5 A "Based on need" is the critical piece of that.

6 So, yes, I agree that, as we talked about, if you don't
7 start that or you don't conflict with the 1,200 that is already
8 underway, either intentionally or unintentionally, that takes
9 part of the sting out of it.

10 The other thing that I said yesterday, and I think I
11 repeated it today, overbuilding can damage the entire
12 community.

13 So, based upon demand, I would agree, that takes the
14 sting out of it.

15 Phased over time, don't impact the 1,200 that we're
16 working on already, and base it on demand so that we don't get
17 to, for example, Unit No. 2000 and all of a sudden they can't
18 fill it, and then that hurts the entire community.

19 Q For the reasons you testified about this morning?

20 A Correct.

21 Q In part, at least?

22 A In part.

23 Q But do you feel a sense of urgency to do something to
24 increase the housing stock on campus?

25 A I believe we are.

1 Q No, I was asking you personally.

2 A I personally do. I mean, this is -- I think as we talked,
3 and then I reiterated, the EUL program is my responsibility. I
4 take a lot of time and effort to do whatever we can do to
5 advance this as quick as possible.

6 And as we looked at that, I really do stand by the idea
7 that we have increased the pace of housing development
8 dramatically in the past few years.

9 And that is something I do take personally.

10 Q And yet, there is nothing that has been planned until this
11 lawsuit was brought to address the question of temporary
12 housing, correct?

13 A To my knowledge, no, but that is not an area that I would
14 have focused on.

15 Q Okay. You said also -- pardon me, yesterday that no
16 project of this size has ever been attempted.

17 Do you remember saying that?

18 A By VA, yes.

19 Q Yes. You think that is true because of the decades of
20 neglect that this property has suffered?

21 A No. I mean, I was mainly referring to the idea of
22 housing. VA certainly has large projects, but housing --
23 speaking from it, from the EUL standpoint, that is how we
24 deliver permanent supportive housing.

25 I don't believe we have a project more than 230 or

1 240 units any place in the country.

2 So this is far bigger, at 1,200, than anything we have
3 done in terms of housing.

4 And certainly, the community aspects of it, none of the
5 other developments have that type of community flavor.

6 Q The hospital, Building 500, was built in roughly 1988.

7 Is that your recollection?

8 A Yeah. It's less than 40 years old. So yeah, that would
9 be roughly around then.

10 Q All right. What -- other than the food service building
11 we just talked about, Building 605, what other brand new
12 building has been built on the campus in that 40-year span?

13 A I don't know specifically. There may be smaller
14 buildings, but I'm not aware of any specifically.

15 Q How about in the 20 years before the hospital building,
16 when there was an old hospital building?

17 Were there new buildings built between 1968 and 1988?

18 A This campus is very much like most of our campuses. The
19 average building age is 60 years old. There is not a lot of
20 new stuff.

21 Q Okay. And you don't put all of this in the category of
22 long deferred maintenance?

23 A Absolutely.

24 Q Okay. And that would be an explanation for why projects
25 of this size may be somewhat unprecedented, right?

1 A Again, the projects that I'm referring to as being
2 unprecedented are on the housing arena. VA has not directly
3 done the housing. It's all been through enhanced-use lease.

4 But broadly, the system as a whole needs far more large
5 projects like the critical care tower. We need to recapitalize
6 our entire inventory. West LA is not really different than the
7 other sites out there.

8 Q Okay. Counsel spent a fair amount of time with you
9 yesterday and even a little today talking about the historical
10 designation of the campus.

11 If you remember, there was a map that showed the circle
12 that includes the historical designation of the property,
13 right?

14 A Yes, I do.

15 Q Why is the historical designation important at all?

16 And I want to put aside the individual buildings such as
17 the trolley, the chapel, and I think there is actually three
18 other buildings. Put those aside because they are individually
19 designated. I'm talking about the campus as a whole. Why is
20 historical designation important at all, sir?

21 A I think just the history of the campus, its use and its
22 donation originally, its use of a soldier home. There are not
23 much soldier homes across the country. So the history of the
24 campus, what it's delivered in terms of veteran benefit and
25 healthcare is what constitutes the history of the campus that

1 makes the whole campus significant beyond the individual
2 buildings.

3 Q And that history would continue and still be there, would
4 it not, even if the designation itself somehow went away?

5 A It depends on why the designation went away.

6 Q Why does it depend on that?

7 A I mean, if the history is tied into things like -- if you
8 demolish, let's say, the chapel and you demolish the trolley
9 depo, and you demolished a bunch of the contributing buildings,
10 then I would say, no, the history isn't continuing.

11 Q I see. So let's exclude the trolley stop, let's exclude
12 the chapel because I did that a couple of minutes ago, and
13 let's just talk about the broad designation of the entire
14 property as being historically significant.

15 If that designation was somehow lost through some
16 administrative process, the history of the campus would remain,
17 would it not?

18 A Again, why was it lost? If the actions you take that
19 would cause the campus to be delisted change the character of
20 the campus, then I would say, at least partially, you have lost
21 the history of that.

22 Q Part of the purpose of the historical designation is to
23 instill or enhance veteran pride in the property; isn't that
24 right?

25 A For VA, it certainly is. I mean, there is other

1 properties that don't have anything to do with veterans that
2 could be historically designated by for VA, it certainly is.

3 Q Well, let's limit ourselves to West LA?

4 A Sure.

5 Q The historical designation in West LA is intended to be a
6 point of pride for veterans, right?

7 A I would agree.

8 Q Do you think that the current condition of the North
9 Campus is a point of veteran pride?

10 A In totality, no.

11 Q Okay. When the lease with Brentwood School was entered
12 into, did Brentwood School seek historical consultation for its
13 track? Its swim stadium? Its tennis courts? Its ball fields?

14 A I don't have any knowledge of what happened when that
15 lease was entered into. I don't have an involvement with that
16 lease.

17 Q So you don't know?

18 A I don't know.

19 Q All right. Same question with regard to UCLA. When the
20 UCLA baseball stadium and practice infield were built separate
21 times, did they undergo historical designation, consultation?

22 A Same response. I don't know on that one.

23 Q How about the parking lots up on Barrington? That is VA
24 land. That is inside the parameter of the historical
25 designation.

1 Did whoever the operator was in those days, when those
2 lots first opened, did they undergo historical designation,
3 consultation?

4 A Same response. Those aren't leases in my purview.

5 Q How about the Metro stop on the South Campus, just on the
6 south side of Wilshire Boulevard there? You know where that
7 is. Between the hospital and Wilshire Boulevard.

8 A I do.

9 Q Did the Metro -- and that is inside the historical
10 designation, is it not?

11 A It is, yes.

12 Q Did that undergo historical designation consultation?

13 A I do not know the answer to that.

14 Q How about CalVets? You know where that property is.

15 A Uh-huh.

16 Q When that property was built in about 2010, did CalVets
17 undergo historical designation consultation, as far as you
18 know?

19 A I don't know specifically on that one. I would say that
20 in that case the property was actually transferred to them, so
21 it was no longer federal property.

22 So I don't know that it would have applied like the
23 other leases where it clearly still is VA property.

24 Q Okay. You were asked a number of questions by counsel
25 about the record of decision, which is Exhibit 1020. I don't

1 know if you still have that in front of you. It's a relatively
2 thin document.

3 A Yes, I have it.

4 Q Good. I have some questions about it. This is a record
5 of decision dated August the 20th, 2019; is that right?

6 A Yes.

7 Q All right. And you testified yesterday that in
8 considering various alternatives, one of the alternatives you
9 at least considered is no action at all, right?

10 A Correct.

11 Q And no action at all involves no compromise of anything
12 environmentally for example, right?

13 A It would stay status quo.

14 Q All right. And then most of the attention in questioning
15 yesterday, and this is going to be the focus of my questions
16 today, is about Alternatives C and D, correct?

17 A Correct.

18 Q And ultimately, VA chose Alternative D, as in David,
19 right?

20 A Correct.

21 Q Or as in demolition?

22 A The opposite of. Yes.

23 Q But there is only one difference between Alternative C and
24 D; isn't that true?

25 A There is a primary difference, yes. I mean, the number of

1 housing units are the same between the two alternatives.

2 The primary difference being demolition with replacement
3 versus renovation of buildings in place.

4 Q Not quite what it says, but let's look at it. Let's turn
5 to page 4, Exhibit 1020-004.

6 If we could put up Alternative C and D together so you
7 can have it blown up. Do you see that, sir?

8 A Yes.

9 Q Okay. Alternative C, effectively, was the demolition and
10 replacement of select existing buildings and additional
11 construction of new buildings on open land, right?

12 A Yes.

13 Q And D says the exact same thing but adds the word
14 "renovation or," correct?

15 A Correct.

16 Q And that is the only difference between those two,
17 correct?

18 A Correct.

19 Q And the purpose of adopting Alternative D was to allow VA
20 the flexibility of deciding whether to renovate or demolish and
21 replace, correct?

22 A Yes. In general, yes.

23 Q All right. Alternative C and D, in terms of all of the
24 metrics associated with environmental impacts, were pretty
25 close, weren't they?

1 A In most of them, they were similar, yes.

2 Q So, for example, if you turn to page 1020-005, under air
3 quality, Alternatives A, B, and D, but not C, are all expected
4 to result in increases in emissions of criteria pollutants,
5 toxic air contaminants, and greenhouse gases during the
6 construction phase.

7 Is the way to interpret that, that in this measure, D is
8 actually worse than C without mitigation?

9 MS. PETTY: Objection. Misstates the evidence.

10 THE COURT: Overruled. You can answer the question.

11 THE WITNESS: If you read the next sentence there,
12 the emissions expected in A, B, and D can be mitigated such
13 that they're below the level.

14 In C, it cannot be mitigated to keep it below the level;
15 so C is a worse alternative in terms of air quality.

16 BY MR. SILBERFELD:

17 Q And that has to do with the demolition option versus the
18 rental option?

19 A Correct.

20 Q Have you ever either witnessed or done any toxic substance
21 contamination removal?

22 A I have witnessed it. I have not done it.

23 Q I hope you had a hazmat suit on.

24 A Yes.

25 Q Good. That work, whether you renovate a building or you

1 demolish a building, is done in exactly the same way, isn't it?

2 A Not necessarily, no.

3 Q It's done under containment, at least in California. It's
4 done under containment, right?

5 A Could be.

6 Q It's done with negative air. Do you know what that is?

7 A Yes.

8 Q And it's done by workers who are suited up, right?

9 A Correct.

10 Q And the toxic substance material, whatever it may be,
11 whether it's asbestos or lead paint, is bagged inside the
12 containment, right?

13 A Yes.

14 Q Sealed, right?

15 A Correct.

16 Q Removed?

17 A Correct.

18 Q Until such time as the air quality inside the containment
19 is at least as good as the quality of air outside, right?

20 A Okay. Yes.

21 Q So that is how a containment happens, and that is a
22 containment that applies to both renovation work and demolition
23 work. You understand that, don't you?

24 A Yes. Can I add a piece to that?

25 Q Of course.

1 A Sure. So I think what you are talking about is
2 essentially you are doing the removal of all of that prior to
3 demolishing the building.

4 Q Exactly.

5 A So in that, I would agree with you. Renovation, slightly
6 different in that in some of those cases, you don't actually
7 have to remove all of that. There is different methods of
8 encapsulation and stuff that can be used, so you wouldn't have
9 to remove it all.

10 Q And you understand that both Mr. Soboroff and Mr. Johnson,
11 in recommending that certain buildings be demolished, made
12 clear in their testimony that the removal of toxic materials
13 would have to proceed any demolition?

14 You understood that, did you not?

15 A I understood. I haven't read all of their testimony. I
16 will take your word for it that they stated that.

17 Q Well, you read their reports, right?

18 A Their reports did not get into that level of detail.

19 Q I see. Okay. And you weren't advised that that's what
20 they testified about here?

21 A I have not read all of the testimony that they provided,
22 no.

23 Q Okay. And then moving down on page 1020-005, there is a
24 heading called Cultural Resources Including Historic
25 Properties. Do you see that, sir?

1 A Yes.

2 Q In the second paragraph that begins "Alternative B and C,"
3 do you see that?

4 A Yes.

5 Q "C" -- forget B for the moment. "C would involve the
6 demolition of multiple resources contributing to the" -- and
7 I'm going to skip the acronym. That is the historic
8 designation, correct?

9 A It is, correct.

10 Q And that would result in significant adverse impacts to
11 individual historic buildings as well as adverse effects to the
12 designation, broadly speaking. Is that how to read that, sir?

13 A Yes.

14 Q Including potentially rendering the historic district
15 ineligible for continued listing, right?

16 A Yes.

17 Q Alternative D, the next sentence, if we could just pop
18 that out, the one that begins "Alternatives A and D,"
19 Alternative D does much of the same thing, does it not?

20 MS. PETTY: Objection. Misstates the evidence.

21 THE COURT: What's the question? You can answer
22 that question.

23 THE WITNESS: So in the case of D, the renovation is
24 the primary approach. Demolition would be used selectively,
25 not entirely as proposed under Alternative C.

1 BY MR. SILBERFELD:

2 Q All right. So the difference, then, fundamentally,
3 between Alternative C and D, is C involved a larger extent of
4 demolition than D was proposing, correct?

5 A Correct.

6 Q The Court asked you a question about renovation costs. Do
7 you remember that?

8 A I do.

9 Q Broadly speaking, and there may be examples that don't
10 apply, but broadly speaking, renovating a 60-year-old building
11 will cost more than demolishing that building and building
12 something new.

13 Would you agree with that?

14 A So I don't know about the demolition part, but I would
15 agree with you of renovating for 100 units of housing versus
16 building brand new, typically, the renovation is going to cost
17 more.

18 Demolition kind of messes that up a little bit in some
19 cases because demolition can be expensive, and it can drive the
20 cost up before you actually get to the new construction.

21 Q But even if the demolition cost is built into the new
22 construction costs, new construction plus demolition is still
23 less expensive than renovating, for example, a 60-year-old
24 building for housing.

25 Would you agree?

1 A Not all of the time.

2 Q All right. The experience of VA on the West LA Campus has
3 been that renovating buildings for housing is more expensive
4 than are building new housing, correct? On a per-unit basis.

5 A I would agree with that.

6 Q So building new housing on the campus has costs, give or
7 take, \$600,000 a unit. Do you recall that?

8 A Yeah. I haven't looked at all of the numbers, but that
9 seems about what I have expected, yes.

10 Q And the renovation, for example, in Building 158 which is
11 one of those three buildings that is undergoing renovation
12 right now, the unit costs to renovate in Building 158 is 1.1
13 million per unit.

14 Do you recall that?

15 A I don't recall it being that high, but I do believe it was
16 higher. Yes.

17 THE COURT: Just a moment, counsel. Show me 158.

18 Thank you, counsel.

19 BY MR. SILBERFELD:

20 Q Do you have the VCOEB PowerPoint presentation in front of
21 you? It's Exhibit 1312.

22 A Yes.

23 Q All right. If you could, turn to page 1312-047.

24 A Okay.

25 Q This is a slide entitled Cost Per Unit for North Campus.

1 Do you see that?

2 A I do.

3 Q Is this a slide you presented on when you attended that
4 meeting that day in June?

5 A I did not. The principal developer team presented on
6 this.

7 Q Okay.

8 MR. SILBERFELD: Tommy, we don't have this one?

9 Could we ask you to put that up? Thank you.

10 BY MR. SILBERFELD:

11 Q So this is a slide I wanted to talk with you about for a
12 second, Mr. Simms.

13 You see the new construction tabs down below there?
14 There is four buildings.

15 A Yes.

16 Q And the cost per unit is somewhere between a low of
17 550,000 and a high of 646,000. Do you see that?

18 A Yes.

19 Q And then if you go up above, the upper part is adaptive
20 reuse. That is the VA term for the renovation of existing
21 buildings, fair?

22 A Fair.

23 Q Okay. And Building 158 -- the one I was just talking
24 about, I had the wrong figure -- but Building 158 was renovated
25 at a cost of \$885,000 a unit, right?

1 A Correct.

2 Q And Building 210 was renovated at a cost of million 1 per
3 unit?

4 A Correct.

5 Q And those are just two examples of how a renovation or an
6 adaptive reuse can actually cost quite a bit more than new
7 construction.

8 A In those cases, those buildings definitely cost more. I
9 mean, you have got examples there of 205, 208, 207 that are
10 either at or below the new construction level, but those
11 certainly were above that.

12 Q You testified yesterday, I think, that the compliance with
13 NEPA and the historic preservation law is required when you do
14 an Enhanced-Use Lease, correct?

15 A Correct.

16 Q Okay. It's not required if you are not doing an
17 Enhanced-Use Lease, correct?

18 A That's not accurate.

19 Q It's optional whether VA chooses to comply with NEPA or
20 the historical preservation law, correct?

21 A I don't believe it's optional.

22 Q Compliance with NEPA is not required in an instance where
23 you are doing temporary buildings, correct?

24 A You'll have to define temporary.

25 Q How do you define temporary?

1 A Temporary would be not permanently affixed to the ground.

2 Q Okay.

3 A And not attached to utility systems, other than if it was
4 an external, you know, connection point or something that could
5 be removed.

6 THE COURT: Just a moment, let me catch up with both
7 of you.

8 (Pause in proceedings.)

9 THE COURT: Thank you, please continue.

10 MR. SILBERFELD: I'm sorry, Your Honor?

11 THE COURT: Please continue.

12 BY MR. SILBERFELD:

13 Q So if, theoretically, we wanted to take a modular home, a
14 double-wide trailer, and put it on the UCLA parking lot, and
15 attach external lines of dry and wet services to it that could
16 easily be disconnected and the trailer could be moved away,
17 if all of those things could happen, that would not implicate
18 NEPA, would it?

19 A What you just did, is the assessment we would have to do.
20 So the fact you are considering whether NEPA applies, is NEPA
21 assessment. That's what you are doing.

22 The answer may be no, we don't have to go any further,
23 this type of activity is not permanent, it doesn't change
24 anything, we've now satisfied NEPA and we can move on.

25 THE COURT: Who assesses this? In other words, does

1 the VA? Are you the assessing entity that decides this?

2 THE WITNESS: Yes.

3 THE COURT: So it's discretionary with you then, in
4 a sense?

5 THE WITNESS: Yeah. We're the -- it's subjective
6 but, yes, we're the decision-maker.

7 THE COURT: Okay.

8 BY MR. SILBERFELD:

9 Q And the key difference between temporary and permanent is
10 whether something is affixed to the ground and connected to
11 some underground set of systems?

12 A Is there a permanence to it or can you, like you said, if
13 it was an RV and you moved it, you are back to the original
14 status, nothing has changed.

15 THE COURT: Well, let make this simple for the
16 Court. If I took the bottom overnight parking lot that I
17 pointed out to you before in South Campus, and I took the Metro
18 lot, could I avoid NEPA?

19 THE WITNESS: You can't avoid NEPA.

20 THE COURT: I can avoid it?

21 THE WITNESS: By thinking about NEPA you are not
22 avoiding NEPA. The assessment could be very quick.

23 THE COURT: I'm clumsy with words, let me start
24 again.

25 If a Court ordered temporary housing, I don't want to go

1 through the bureaucratic bumper-car ride of NEPA preservation,
2 am I clear?

3 THE WITNESS: Understood.

4 THE COURT: How would I do that in those two lots so
5 I don't have these bureaucracies bumping into each other and
6 slowing me down.

7 THE WITNESS: Theoretically, and I don't know how
8 you could write it, but you could make it not subject to those
9 laws.

10 THE COURT: If these were truly mobile, as you
11 defined them, not -- I have to pick out your words again, seems
12 to me that this could speed along without this bureaucracy that
13 I would have a permanent supportive housing?

14 THE WITNESS: Yeah, it certainly would take a step
15 out of the process if you excluded those laws.

16 THE COURT: Thank you.

17 BY MR. SILBERFELD:

18 Q Mr. Simms, in your experience is it also the case that
19 where you are doing something temporary, as we've talked about
20 it here, that you don't then also implicate the historical
21 preservation consultation with the State Historical
22 Preservation Officer, SHPO?

23 A Yes. The thought process you went through of not being
24 permanent, not changing it, if VA made that same thought
25 process for a particular action and determined that it did not

1 have any impact on historical or cultural resources, we would
2 not have to go through consultation.

3 Q And the Court could also order that, in your experience?

4 A Yeah. I mean, the Court -- there are laws out there that
5 would say, you can do this and it's not subject to laws A, B,
6 and C. I mean, I think that is certainly something that would
7 drive us to not look at those laws.

8 Q And, in fact, when the tiny shelters -- sheds were put up
9 on the west side of the property near the Great Lawn, there was
10 no NEPA consultation done, was there?

11 MS. PETTY: Objection, foundation.

12 THE COURT: Can you answer that question?

13 THE WITNESS: I don't have the answer to that
14 question.

15 THE COURT: Fair enough.

16 BY MR. SILBERFELD:

17 Q You don't know one way or the other?

18 A I don't know one way or the other.

19 Q Fair enough. Let's talk about infrastructure some.

20 The Court asked you a series of questions about the
21 various maps that are a part of the master plan from 2022, and
22 I think you've acknowledged that those are not accurate today,
23 right?

24 A They're not current, correct.

25 Q Yeah, and they're not accurate?

1 A Correct. In some cases where there has been work done
2 they are not current nor are they accurate.

3 Q And they could be different from reality in a number of
4 respects.

5 You mentioned one, you could have had an abandoned line
6 that wasn't removed or rehabbed and a new line put right next
7 to it or on top of it.

8 A Correct.

9 Q That is an example, right?

10 A Yes.

11 Q The Court shouldn't rely on those maps because they are
12 from 2020, right?

13 A The maps are from 2020, that's when the study was done so,
14 yeah, I mean, it depends on when you say "rely on it."

15 I think as counsel tried to explain we use that as our
16 problem statement, so here were the problems when we started
17 launching in to develop the permanent supportive housing, so
18 it's still good for us to make sure we're addressing all of the
19 problems that are out there.

20 But if you're using it for current state, I want to put
21 something here, is the utility infrastructure good, I would
22 agree you couldn't use it for that purpose.

23 Q Well, what is an as-built drawing?

24 A An as-built drawing is current state. It's normally
25 associated with building, so once someone builds a building

1 they provide as-built drawings, here's when we actually built.

2 Q And you have as-built drawings, even though they haven't
3 produced them to us in this case, as-built drawings exist of
4 all the infrastructure wet and dry that has been updated since
5 2020, does it not?

6 A Not with the state of the infrastructure, no. We do not
7 have complete pictures of all of the work that has been done
8 since those diagrams were done with current status of
9 everything.

10 Q Really?

11 A No.

12 Q So you spent \$100 million on infrastructure and you don't
13 know where your lines are?

14 A In some cases, that is correct.

15 Q This is work done by contractors, right?

16 A In this case, yes.

17 Q Hired by the VA?

18 A Correct.

19 Q Excavation contractors?

20 A It was -- generally these were not probative, meaning they
21 didn't actually disturb anything, they used cameras and things
22 like that to get into the pipes, so they didn't actually dig
23 anything up to confirm it.

24 Q No, but you put a number of new lines in the ground,
25 right?

1 A Yeah, the new lines. Yes.

2 Q That's what I'm talking about. So you had an excavation
3 contractor?

4 A Yes.

5 Q If it was water, you had a plumbing contractor?

6 A Correct.

7 Q If it was sewer you had a sewer contractor?

8 A Correct.

9 Q If it was electric, you had an electric contractor?

10 A Correct.

11 Q If it was telecom, you had a telecom contractor, right?

12 A Yes.

13 Q And don't all of those people have drawings that they were
14 given as to where to put their product in the ground?

15 A Yes. And it would be the drawings that we looked at.
16 That would have been the current state when we brought on most
17 of those contractors.

18 Q Those are the drawings I'm talking about, those are the
19 as-builts, right?

20 A At the time those were the as-builts.

21 Q I'm only talking about since 2020 to the present.

22 Work has been done to upgrade the infrastructure
23 systems, that's the \$100 million you spoke of?

24 A Correct.

25 Q And as-built drawings as to what was done and how that 100

1 million was spent exists?

2 A For the sections that they did, yes.

3 Q Yes, sir. That's what I'm talking about.

4 A It has not been brought all together for a new full campus
5 diagram that the Judge was asking for.

6 Q I got it. No comprehensive new map?

7 A Correct.

8 Q Of the entire North Campus or the South Campus has been
9 created, correct?

10 A Correct.

11 THE COURT: Just a moment, that means with this
12 \$100 million of infrastructure, you must have that
13 infrastructure in place from MacArthur Field Phase 1, 404, 402,
14 156, 157, MacArthur Field Phase 2, 158, and 210?

15 THE WITNESS: Correct.

16 THE COURT: Because otherwise our developer can't
17 build.

18 THE WITNESS: Correct.

19 THE COURT: Okay. I will wait, but next I'm going
20 to want to see those areas once again.

21 Because looking back at 2020 I can't rely upon this.
22 But I can rely upon the fact that wherever these developers are
23 developing it now, I have to assume you were successful putting
24 in adequate infrastructure to let them go ahead with their
25 building, right?

1 THE WITNESS: Correct.

2 THE COURT: So, eventually, counsel, either now or
3 later, you or the other counsel are going to walk back through
4 each of these areas so I have an idea, because these 2020 maps
5 I can't rely upon.

6 MR. SILBERFELD: Right.

7 THE COURT: They have red lines as if they are not
8 adequate and that's not the case.

9 BY MR. SILBERFELD:

10 Q Let's see if this helps. Was it the policy and program
11 since 2020 to the present for VA to do infrastructure work in
12 advance of the beginning of construction of any permanent
13 supportive housing building?

14 A Yes. Except for there were already housing developments
15 underway. So, I mean, we had already broken ground and started
16 work on some housing before we started addressing some of the
17 bigger infrastructure issues.

18 THE COURT: I'm going to tell each counsel one of
19 the assumptions I might make, so I don't make a mistake. And
20 that is if I look at Exhibit No. 1616-001 -- and if somebody
21 would put that up for me for just a moment. That way when you
22 argue this we have rebuttal. 1616-001. Excellent. Now can we
23 blow that up just a little bit.

24 One of my assumptions might be that no matter what these
25 2020 infrastructure maps show, that 209, 207, and 205, even

1 though they are -- and 208, they're ringed with what I'm going
2 to call red lines, have adequate infrastructure and that they
3 would be green. MacArthur Field Phase 1, 404, 402, 156, 157,
4 MacArthur Field Phase 2, 158, and 210.

5 Do you see that?

6 THE WITNESS: Yes.

7 THE COURT: I would make the assumption, unless
8 corrected by either counsel that there's adequate
9 infrastructure. So, if not, you or the plaintiffs need to
10 correct me.

11 Because what I'm hearing is with \$100 million, at
12 least up to that portion, which is Building 210, we're not
13 going to let our developer go forward unless there's adequate
14 infrastructure so all of these red lines I'm seeing are not
15 reliable from 2020.

16 Now what I don't know about is 300 and 308. I don't
17 know what to do about that because it's in preliminary planning
18 so it could have infrastructure partway through.

19 I have no idea what to do with 256 through the bottom
20 407 right now. Okay, counsel? That would be something I would
21 be writing about so you can push back later on. I'm just
22 putting you on notice. Okay.

23 MR. SILBERFELD: Let me pick up there and then it
24 would be an appropriate point to stop for lunch, Your Honor.

25 BY MR. SILBERFELD:

1 Q From Building 300 down to 407. Do you see that list, sir?

2 A Yes.

3 Q And that's eight buildings, right?

4 A Correct.

5 Q Is it the plan, even though they're in preliminary stages
6 and maybe not staged at all at the moment, is it the plan for
7 VA to do the infrastructure work, wet and dry, either before
8 shovels go in the ground and construction begins or soon
9 thereafter?

10 A Yes.

11 THE COURT: Just a moment. For both of you, it may
12 be because those structures are near already being developed
13 buildings or move-in buildings, which is why I need to see
14 these locations again that you've already gone past this with
15 this money, and that these are buildings that we can link into
16 very quickly.

17 They may not be. And that's why eventually, I have got
18 to see some circles up here. All right.

19 Counsel?

20 BY MR. SILBERFELD:

21 Q Last two questions before lunch.

22 So as to these eight buildings on the list,
23 Mr. Simms, isn't it true that one of two conditions is going to
24 occur either before construction begins or soon thereafter and
25 that is either new service, wet and dry, has to be pulled to

1 the location of the building, or it already exists in the
2 street and a simple connection has to be made?

3 Aren't those the infrastructure choices?

4 A One of those two, correct.

5 MR. SILBERFELD: That's all for now, Your Honor.

6 THE COURT: That means that that 100 million you
7 spoke about, that 100 million encompasses all the way down to
8 Building 407?

9 THE WITNESS: Through 407, correct.

10 THE COURT: But it doesn't encompass the potential?

11 THE WITNESS: It does not encompass the potential.

12 THE COURT: Unless I have a line going right by that
13 building, which we don't know.

14 THE WITNESS: Yeah.

15 THE COURT: Okay. Let's go to lunch.

16 THE WITNESS: They're down there, so.

17 THE COURT: Thank you very much. We will see you at
18 1 o'clock.

19 (Lunch recess.)

20 THE COURT: Thank you. Have a seat. Thank you.
21 Counsel, thank you very much for your courtesy.

22 Back on the record. All counsel are present. The
23 parties are present.

24 Mr. Simms is present for -- let's call it
25 cross-examination. Go ahead, please.

1 MR. SILBERFELD: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. SILBERFELD:

4 Q Mr. Simms, do you still have Exhibit 1072 in front of you?

5 It's the Enhanced-Use Lease Program Directive 7415.

6 A Yes.

7 Q I think yesterday you testified that there is a section in
8 here about the use of VA funds.

9 Do you recall that?

10 A Yes.

11 Q If you could, turn to page 1072-006.

12 Do you have that, sir?

13 A I do.

14 Q And there is a section there called Use of VA Funds.

15 A Correct.

16 Q Broadly speaking, what do you understand that section to
17 be describing?

18 A So it describes a section of the Enhanced-Use Lease
19 statute that specifically says VA can contribute minor
20 construction funds to enhance-used lease projects.

21 Q And what would be the purpose of such a contribution were
22 one to be made?

23 A So the statute isn't that detailed, but in general it
24 would be part of the financing for the project to be completed.

25 Q So, I think you called it a financial stack, I call it a

1 capital stack.

2 We're talking the same thing, aren't we?

3 A Agreed.

4 Q So in the capital stack, if there is Low-Income Housing
5 Tax Credits, bonds, conventional financing, a contribution from
6 the Weingart Foundation or something like that, and there is
7 still a gap in paying for the construction costs of a building,
8 the use of the VA funds is allowed, if it meets these criteria.
9 Is that the way to understand this?

10 A Yes.

11 Q Okay. Perfect.

12 And that money, that use of VA funds, that is a capital
13 contribution to an Enhanced-Use Lease, comes from a line item
14 in the VA budget called "minor construction funds"; is that
15 right?

16 A Correct.

17 Q Okay. Do you happen to know off the top of your head what
18 the amount of minor construction funds is for any particular
19 year?

20 A It's generally been about \$600- to \$700 million in the
21 last several years.

22 Q Okay.

23 A On an annual basis.

24 Q And that is VA-wide?

25 A Correct.

1 MR. SILBERFELD: Okay. I have informally marked
2 this, Your Honor, as 244.

3 BY MR. SILBERFELD:

4 Q And I have got three past years and one year to come. Let
5 me see if these are roughly correct by your recollection, all
6 right?

7 In two thousand -- fiscal year 2022, the minor
8 construction funds totaled \$553 million.

9 Does that sound about right?

10 A That sounds about right.

11 Q In fiscal year 2023, the fiscal runs October to end
12 September?

13 A Correct.

14 Q In fiscal year 2023, the minor construction funds totals
15 \$626 million.

16 Does that sound about right?

17 A Yes.

18 Q And fiscal year 2024, it was estimated to be \$680 million.
19 Is that about right?

20 A Yes.

21 Q And we will put "estimated" next to it.

22 Why is it estimated if the fiscal year is almost over?

23 A The 2024 budget request included a request for
24 discretionary funds.

25 It also included a request for us to use something

1 called a recurring expenses transformation fund, which is funds
2 that VA already has on hand, but it's swept at the end of the
3 physical year.

4 So we don't know the exact amount that is going to be in
5 that account until the physical year actually ends, but we
6 basically estimated the totality of that fund would be used for
7 minor construction.

8 Q Okay. And then we will draw a little line, and the
9 requested -- the requested amount for fiscal year '25, if I
10 have this right, was about \$687 million dollars.

11 Does that sound about right?

12 A It does.

13 Q All right. So hypothetically, if there was a building on
14 the West LA Campus undergoing the typical sort of financing
15 stack we have talked about, and there was a shortfall of
16 \$10 million, could VA funds be used from the minor construction
17 funds to fill that gap?

18 A Hypothetically, yes.

19 Q Has that ever happened?

20 A In this case, no.

21 Would you like me to explain a little?

22 Q I would like you to explain in this case.

23 A The PACT Act funds that we spoke a little bit, the PACT
24 Act funds were received in 2022.

25 That 922 million had a portion of it that we designated

1 as minor construction funds. That was not part of any of the
2 numbers you see up here, so there was a separate pot specific
3 for Enhanced-Use Leases.

4 That pot has been tapped into to fill the funding gap
5 you are talking about, so we didn't have to take it out of the
6 general minor construction account.

7 Q You did it out of the PACT money?

8 A Correct.

9 Q And how much out of the PACT money has been used to fill
10 the kind of gap I'm talking about in this hypothetical example
11 of ours?

12 A I think to date we have probably executed about
13 \$25 million.

14 Q In how many different projects, roughly?

15 A Four projects. It wasn't around when we did some of the
16 early buildings, but the latest projects, we have used PACT
17 funding, probably around \$20 million.

18 THE COURT: I'm assuming this is all at the West LA
19 VA campus; is that correct?

20 THE WITNESS: Correct. That is specific to West LA.

21 BY MR. SILBERFELD:

22 Q And how is minor construction funds allocated to places
23 like West LA?

24 What is that process?

25 A Each year, as part of that budget process, the minor

1 construction funds are built up from each of the
2 administrations.

3 So, NCA, cemeteries; VBA for benefits; and VHA for
4 healthcare, they each have a minor construction program. They
5 are looking to fund two things out of that.

6 The first is completion of projects that they started in
7 prior years.

8 So they have done design on a project, they need
9 construction money, they would request construction money as
10 part of their request in any given year.

11 Second, they would want to start new projects with that
12 money. The new projects are prioritized through the SCIP
13 process that we walked through.

14 So those two combinations form each administration's ask
15 from within the minor construction account, and then the
16 allocation is done from the available resources, whatever we
17 actually get, to each of the administrations.

18 They each manage it a little bit differently but they
19 essentially manage that at the administration level to figure
20 out which projects are going to get the funds underneath of it.

21 Q So how does money from the minor construction funds
22 devolve down to West LA VA?

23 A So if West LA either had a project that needed
24 construction funds, or if they submitted a project through SCIP
25 that was ranked high enough to receive funding, that funding

1 would then be provided for that specific West LA project.

2 Q Okay. Great. Thank you.

3 I have informally marked a page here as 245.

4 What I would like to do with you, Mr. Simms, is create a
5 hypothetical, conventional capital stack for two of the actual
6 buildings that are under construction at West LA VA.

7 Can we try that?

8 A Sure.

9 Q Okay. We know what the construction cost is for Building
10 401, do we not?

11 A Yeah. I think that was in the slides we looked at
12 earlier.

13 Q So if you go back to Exhibit 1312 -- that is the big
14 PowerPoint from the VCOEB meeting -- and you turn to page 47,
15 under New Construction, do you see a reference to Building 401,
16 MacArthur Phase 2?

17 A Yes.

18 MS. PETTY: Your Honor, I will object to the use of
19 this document based on foundation.

20 This is not a document that Mr. Simms prepared, nor did
21 he present on this information during this June 2024 VCOEB
22 meeting.

23 It was authored by a different individual.

24 THE COURT: Overruled.

25 BY MR. SILBERFELD:

1 Q All I want to get out of this is your agreement that it
2 cost approximately \$48 million to construct Building 401,
3 MacArthur Phase 2.

4 Can we agree about that?

5 A Agreed.

6 Q And then right below it is the construction cost for
7 Building 404.

8 Do you see that?

9 A Yes.

10 Q Roughly \$47 million. And there is just a slight
11 difference between the two in terms of the number of units,
12 right?

13 A Yes.

14 Q And the way these work is that, for example, in MacArthur
15 Phase 2, it's a 75-unit building, but only 74 buildings pay
16 rent, correct?

17 A Correct.

18 Q And one of them is a manager's unit?

19 A Correct.

20 Q So that if we're trying to create an income stream, we
21 wouldn't count anything or multiply anything by 75, we would
22 multiply it by 74 in the case of MacArthur Field Phase 2, for
23 example?

24 A Agreed.

25 Q Okay. You have heard testimony, I think, in this trial

1 that the change that HUD has made, first, with respect to the
2 use of Small Area Fair Market rents and upping the percent
3 value of vouchers to 160 percent of Small Area Fair Market
4 rents, that has been characterized in this trial as a game
5 changer.

6 Have you heard that?

7 A I have not specifically heard that, no.

8 Q Would you agree that that is a game changer?

9 A It could be, yes.

10 Q Okay. That's a significant increase in the value of a
11 voucher, correct?

12 A Agreed.

13 Q All right. So let's talk about MacArthur Field 2, which
14 is Building 401.

15 All right. That building's construction cost is
16 \$48 million, right?

17 A Yes.

18 Q And we're not now going to talk about low-income housing
19 tax income credits or bonds or philanthropy or anything of the
20 kind.

21 This is just conventional financing. Let's see if it
22 works, okay.

23 A Okay.

24 Q There has been other testimony in the trial that a voucher
25 in this small market area, at 160 percent, is worth about

1 \$4,000 a month for something between a studio and a-one
2 bedroom.

3 I just ask you to accept that as true for now, okay?

4 A Okay.

5 Q So that's the HUD contribution towards rent, right?

6 Yes?

7 A Yes.

8 Q And then the tenant also contributes a portion of rent.

9 Roughly \$1,000?

10 A Yeah, I mean --

11 Q 20 percent?

12 A It's a percentage, so it could vary.

13 Q Let's just use 1,000?

14 A Okay.

15 Q It could be a little lower, it could be a little higher.

16 The voucher could be worth a little more or a little less

17 depending on the size of the unit, fair?

18 A Fair.

19 Q Okay. So we have \$5,000 of income, right?

20 A Correct.

21 Q And that's per month. So that's, in the course of a year,

22 \$60,000, right?

23 A Yes.

24 Q And then we multiply that by 74 units, right? Not 75,

25 because the manager's unit doesn't count.

1 A Correct.

2 Q All right. And that's \$4,400,000 of income for the
3 building for rent from the voucher and the tenant for one year?

4 A Correct.

5 Q HUD vouchers are guaranteed for 20 years, correct?

6 A I'm not the expert on the voucher side.

7 Q All right. Assume for me that they are good for 20 years.

8 That gives you an income stream of \$88 million, roughly.

9 All right. Now, if that is the income stream over
10 20 years, you know enough about banking and finance to be able
11 to say no bank is lending money on the 88 million, correct?

12 A Correct.

13 Q What they are lending money on is the net operating
14 income, right?

15 A Correct.

16 Q So you have to take out of this the op ex, right?

17 A Yes.

18 Q The operating expense. And the operating expense -- what
19 is a fair number? 25 percent?

20 A I don't really know a fair number to use in this case.

21 Q Well, let's use 25 percent.

22 A Okay.

23 Q That would be \$22,200,000, you take that out, and you are
24 left with \$66,600,000, and that would be your net operating
25 income, if everything I said elsewhere was correct, correct?

1 A Agreed.

2 Q So that's your NOI, right?

3 A Yes.

4 Q With a guaranteed income stream of roughly \$66 million, a
5 conventional bank -- Chase, Wells, City National Bank, whoever
6 it may be -- would loan 80 percent of that?

7 A It would be a percentage. I don't know if they would go
8 to 80, but it would be a percentage of that.

9 Q Well, HUD's and FHA's percentage calculator has the loan
10 rate for conventional loans at 80 to 85 percent.

11 MS. PETTY: Objection. Foundation.

12 BY MR. SILBERFELD:

13 Q Do you know that?

14 THE COURT: Overruled.

15 THE WITNESS: Okay.

16 THE COURT: Just a moment. Do you know that or not?

17 THE WITNESS: I don't. I'm taking what he said --

18 THE COURT: All right. Can you get out that chart
19 real quick. It's easy to figure out.

20 MR. SILBERFELD: Well, I can do it on my phone.

21 BY MR. SILBERFELD:

22 Q Just assume it's true for the sake of this discussion.

23 So you could get an 80 percent loan, not an 85 percent
24 loan, and if you had a net operating income of \$66 million over
25 20 years, and you got an 80 percent loan -- if my math is

1 right -- this is called -- this 80 percent is called the loan
2 to value ratio, right?

3 A Yes.

4 Q LTV. And if you got that loan, the bank -- if everything
5 else is true -- would loan you \$53,280,000.

6 Do you see that?

7 A I do.

8 Q And that loan amount covers the cost of building Building
9 401, right?

10 A It does.

11 Q And we could do the same thing for Building 404, which
12 costs slightly less.

13 But if all of that is true, and if the massive increase
14 in the voucher value is, in fact, a game changer, doesn't this
15 represent a whole new way of doing financing?

16 A Hypothetically, yes.

17 Q And were that to occur, Mr. Simms, if that was a new model
18 for financing construction, that would speed up, almost in
19 light years, the ability to construct housing on the West LA VA
20 campus.

21 MS. PETTY: Objection. Vague.

22 THE COURT: Overruled.

23 BY MR. SILBERFELD:

24 Q Would you agree?

25 A So, there is a lot of assumptions built into this.

1 Q Sure.

2 A Certainly. But certainly, if there were more funding
3 sources available from commercial markets, that could speed up
4 the financing of housing on campus, yes.

5 Q Are you aware of any study, evaluation, or think group
6 within either your organization or HUD or, broadly speaking, VA
7 to analyze whether what I just put up there actually can work?

8 A So I can't speak for anyone outside of VA.

9 This is obviously relatively new information, so I don't
10 believe we have done that type of study.

11 Q Okay. All right. Last topic, and then I will be
12 finished.

13 When you and I spoke last, which I guess was Friday, I
14 asked you about the *Valentini* settlement agreement and the
15 relation of that document to the SCIP process.

16 Do you remember that?

17 A I do.

18 Q If we could display Exhibit 152.

19 You're seeing the principles for a partnership agreement
20 before you, sir?

21 A Yes. I do, yes.

22 Q If you turn to the second page, under Number 9, the
23 principles of partnership said that among the things that the
24 cooperating parties would do is that they would include the
25 objective and goals of the principals document and the new

1 master plan in VA's annual strategic capital investment plan,
2 ten-year planning process.

3 Do you see that?

4 A I do.

5 Q And you are the person who is the gatekeeper for the SCIP
6 process, correct?

7 A Correct.

8 Q And I asked you the other day whether you were aware of
9 when it was that, for the first time, any aspect of the master
10 plan costing was included in SCIP, and I think you said you
11 didn't recall.

12 A Not this specific year, no.

13 Q All right. Since Friday, have you had a chance to look
14 into that?

15 A I did not.

16 Q All right. Let me show you what we will mark as
17 Exhibit 242.

18 THE COURT: Thank you.

19 MR. SILBERFELD: While I'm here, Your Honor, I would
20 like to mark -- or sorry, I would like to have admitted 244 and
21 245.

22 THE COURT: Both are received.

23 (Exhibits 244 and 245 received into evidence.)

24 BY MR. SILBERFELD:

25 Q So, Mr. Simms, I have put before you a VCOEB

1 recommendation 23-03.

2 You have seen these recommendations before, have you
3 not?

4 A I have.

5 Q Okay. And this happened to be a recommendation read into
6 the record and discussed at the very meeting you attended in
7 June of this year.

8 Do you recall that?

9 A I recall. I don't remember the exact discussion, but it
10 was discussed.

11 Q All right. I will tell you, broadly speaking, this
12 recommendation, which we're now going to go over, is all about
13 budgeting.

14 Do you recall that there was a discussion in June of
15 this year about budgeting?

16 A Yes.

17 Q Okay. So let's start with --

18 MR. SILBERFELD: I will offer 242, by the way, Your
19 Honor.

20 THE COURT: 242 -- well, strike that. 242 you are
21 just developing now, correct? Let me see what 242 is.

22 MR. SILBERFELD: This document.

23 THE COURT: My apologizes. Received.

24 (Exhibit 242 received into evidence.)

25 BY MR. SILBERFELD:

1 Q So, the first "whereas" there, Mr. Simms, says that
2 whereas the department -- that refers to the Department of
3 Veteran Affairs, right?

4 A Correct.

5 Q -- entered into the principles agreement.

6 Do you see that?

7 A Yes.

8 Q And it goes on to say that VA stated that it would include
9 the objectives and goals of the principles documents and the
10 new master plan in VA's annual strategic capital investment
11 plan, ten-year planning process.

12 Do you see that?

13 A Yes.

14 Q And that's the same language we just looked at from
15 Exhibit 152, which was the settlement agreement itself, right?

16 A Correct.

17 Q And it goes on to say that during the fourth meeting of
18 the VCOEB, which was in January of 2019, the committee
19 recommended to the secretary that the agency identify and
20 include real property projects specific to the master plan by
21 March 2019, in VA's SCIP -- the SCIP acronym -- permitting use
22 of CHIP-IN Act strategic partnership.

23 Do you see that?

24 A I do.

25 Q That did not happen it, did it?

1 A I think we did not agree with that recommendation.

2 Q Okay. And that's what the next whereas is.

3 The secretary -- that is the Secretary of the VA,
4 correct?

5 A Correct.

6 Q -- did not accept the committee's January 2019
7 recommendation to include master plan projects in the SCIP,
8 right?

9 A Correct.

10 Q Were you in the role of being the gatekeeper for SCIP at
11 this time?

12 A I was.

13 Q And do you recall anything about why the Secretary didn't
14 accept that recommendation as of March of 2019, or January
15 of 2019?

16 A So that recommendation was specific to utilizing the
17 CHIP-IN authority, which is for VA to be able to receive
18 donations of real property that meet VA mission needs of
19 projects that we have identified in the SCIP process.

20 Q Okay. And the Secretary's rationale is more fully
21 described in the next whereas. Let me point you to that.

22 The Secretary's response was that the CHIP-IN Act was
23 not an appropriate source of funding -- that is what you were
24 just saying, correct?

25 A Correct.

1 Q And because it was set to expire in 2021, two years later,
2 right?

3 A Yes.

4 Q And because the project, meaning the master plan -- right,
5 that's what you understand "project" to mean?

6 A Projects. So the previous statement, it said identify and
7 include real property projects, multiple.

8 Q I understand. But here it's in the singular so I don't
9 want to change the quote.

10 It says, "And because the project must meet a
11 bona fide need of the VA" -- so let's just stop there.

12 Was it determined as of March of 2019, that the master
13 plan projects did not meet a bona fide need of the VA?

14 A I don't believe that was the determination at the time.

15 Q Or that it wasn't going to be an appropriate source of
16 funding because VA's long range capital planning process was
17 going to be violated by this particular ask.

18 Was that your understanding of what was going on?

19 A No, I don't believe that was the understanding.

20 Q Okay. But in all events, as of January of 2019, no part
21 of the master plan projects were included in the SCIP?

22 A I disagree with that.

23 Q Okay.

24 A And I -- when we talked before, I tried to explain.

25 The master plan is the entire campus.

1 So, work on Building 500, for example, is clearly part
2 of our budget. It's been there.

3 We requested money for it. That is part of the master
4 plan, and that has been through SCIP.

5 If we're talking about housing specifically, that is a
6 different question, but that is only one piece of the master
7 plan.

8 Q Well, let's talk about housing and community.

9 As of January of 2019, no aspect of the master plan
10 referable to housing and community buildings were included in
11 the SCIP, correct?

12 A At the time, correct.

13 Q All right. Now, if you would look at the "whereas" that
14 is third from the bottom that begins "with the benefit of
15 hindsight."

16 Do you see that, sir?

17 A Yes.

18 Q It says, "With the benefit of hindsight, it now appears as
19 though the agency's response in January of 2019, was meant to
20 indicate that it did not intend to place master plan projects
21 on the SCIP, instead, only the replacement hospital or South
22 Campus major construction projects would be included in the
23 SCIP."

24 Is that consistent with your understanding of what
25 happened at the time?

1 A It is not. That is the VCOEB's determination, not VA's
2 position.

3 Q So you don't agree with that?

4 A I don't agree with that.

5 Q But nevertheless, you do agree that no aspect of the
6 master plan referable to housing or the creation of community
7 were included in the SCIP, as of this time?

8 A Correct. Given the timing of this, the PEIS wasn't even
9 complete at the time. So we didn't have projects defined that
10 could have been put in SCIP.

11 Q That last "whereas" clause on this page says in the last
12 two lines, "The agency did not agree to put master plan
13 projects into a budget request to Congress as part of a
14 five-year planning process."

15 Do you agree that that's a correct statement?

16 A I don't -- I don't believe that was a permanent statement.
17 I think that was at the time.

18 So at the time, we did not have projects to put in, so
19 we couldn't put anything in.

20 Q Okay. If you could turn to the third page of Exhibit 242.

21 At the top, the very first "whereas" says, "Whereas
22 since the June 2022 recommendation, the agency has begun
23 including parcel turnover costs and infrastructure costs in the
24 SCIP."

25 Is that consistent with your understanding how the SCIP

1 processes work, at least as of June of '22?

2 A Yeah. By that point we had included projects in SCIP.

3 Q Those were the parcel turnover costs and infrastructure
4 costs?

5 A Correct.

6 Q And then it goes on to say, "but according to the most
7 recent version of the SCIP, there are no other master plan
8 projects included."

9 And then it has a link there.

10 Is that consistent with your understanding?

11 A At the time there weren't additional projects that we need
12 to include.

13 Q The next "whereas" suggested or recommended by the VCOEB
14 that the Secretary identify which VA office is most appropriate
15 to lead transformation of the North Campus consistent with
16 master plan 2022 and empower that office with the authority to
17 request, prioritize, and implement projects through VA's
18 regular budget process.

19 Do you see that?

20 A I do.

21 Q Did that happen?

22 A VA did not agree with that recommendation.

23 Q Okay. And do you have an understanding as to why not?

24 A There is multiple offices that are necessary in order to
25 fully implement the master plan.

1 Each one of them has their own role, some of which
2 includes requesting budget, if needed, to implement their piece
3 of the plan.

4 Q The next "whereas" says that, in substance, in the first
5 sentence, right? The Secretary's response did not agree to
6 identify one office or to empower that office with budget
7 authority to request master plan project.

8 Do you see that?

9 A I do.

10 Q So at least as of June of 2022, really, no single entity
11 or person was in charge of pushing for the funding of master
12 plan projects.

13 Do we agree about that?

14 A Not a single office, multiple.

15 Q I understand that. Not a single office?

16 A Correct.

17 Q But in the same "whereas," the Secretary's response
18 indicated that he would "work with VA's Office of General
19 Counsel, VA's Office of Asset Enterprise Management, and VA
20 GLAHS to determine and empower the most appropriate office or
21 offices within VA to lead the transformation of the North
22 Campus and satisfy the objectives of the master plan."

23 Do you see that?

24 A I do.

25 Q Did that happen?

1 A I believe so, yes.

2 Q How?

3 A I believe we internally have established governance that
4 brings those offices together, plus additional offices to help
5 provide that method or methods to push the master plan and
6 force all of those offices to be working in tandem, and
7 pointing to that same direction.

8 Q Who is that? Who is in charge?

9 A It was the Deputy Secretary for a while, who chaired the
10 integrated project team when -- well, she was the chief of the
11 staff at the time.

12 Now the Deputy Secretary transitioned to that the new
13 chief of staff to lead that effort, so that's the VA senior
14 leader that is in charge of that piece.

15 Q So, previously it was the Deputy Secretary?

16 A She was the Chief of Staff at the time, Ms. Bradsher.

17 Q Sorry?

18 A Ms. Bradsher.

19 Q In her role as Chief of Staff?

20 A In her role as Chief of Staff.

21 Q And she was the single decision-maker person in charge of
22 leading the transformation of the North Campus and satisfying
23 the objectives of the master plan, correct?

24 A She was that official, correct.

25 Q When did she serve from that role?

1 A I don't know the exact dates of it.

2 Q Roughly, what years?

3 A Probably 2021 through 2023. Parts of those years.

4 Q And then she transitioned those responsibilities to her
5 successor, the Chief of Staff?

6 A Yes, it's her successor.

7 Q Who's that?

8 A Ms. Kabat, K-A-B-A-T.

9 Q Ms. Kabat attended this VCOEB meeting we've been talking
10 about, did she not?

11 A Correct.

12 Q Does Ms. Kabat have that responsibility today?

13 A As far as I know, yes, it has not been transitioned to
14 anyone else.

15 Q And your office has a role in this, too, right?

16 A Multiple offices have roles in it.

17 Q Okay. And the transformation of the North Campus, to
18 satisfy the obligations or the objectives, rather, of the
19 master plan, are more fully set out in the next bullet, the
20 next whereas clause.

21 Do you see that, sir?

22 A I do.

23 Q It says that the West Los Angeles Leasing Act sets forth
24 an expectation that the agency will comprehensively redevelop
25 the North Campus to include services for the benefit of all

1 veterans, not just those who receive supportive housing,
2 including, A, the promotion of health and wellness, including
3 nutrition, and spiritual wellness, education, vocational
4 training, skills building, or other training related to
5 employment, peer activities, socialization, or physical
6 recreation, assistance with legal issues and federal benefits,
7 volunteerism, family support services, including childcare,
8 transportation, services in support of one or more of the
9 purposes specified above, basically.

10 Do you see that, sir?

11 A I do.

12 Q All of that takes money, right?

13 A It could. Maybe not VA money.

14 Q Okay. The next whereas clause goes on to say:

15 "Whereas, the VCOEB is unclear whether Congress
16 has or intends to provide any funding to the agency, other than
17 through the Enhanced-Use Lease program."

18 Do you see that?

19 A I do.

20 Q That was a sentiment expressed two months ago in June of
21 this year at this meeting, correct?

22 A Yes.

23 Q And Ms. Kabat, the Chief of Staff charged with the
24 responsibility of transforming the North Campus and satisfying
25 the objectives of the master plan was sitting there, wasn't

1 she?

2 A Yes.

3 Q And the next whereas goes on to say:

4 "The VCOEB is of the opinion that were the agency
5 to take the position that it has no obligation to fund master
6 plan projects and activities such as described above, and that
7 the agency need only facilitate the development of supportive
8 housing by a private developer, this would undermine the intent
9 of the master plan and the agency's commitment to
10 comprehensively redevelop the West Los Angeles Campus for the
11 benefit of all veterans, not only those are experiencing
12 homelessness."

13 Do you agree with that statement, sir?

14 A I do not.

15 Q So as a result of these whereases on the last page of this
16 Exhibit 242, the VCOEB made a recommendation. And you're
17 familiar with what those are, generally speaking?

18 A Yes.

19 Q Recommendations are like motions made at a board meeting,
20 right?

21 A Yes. The VCOEB does those motions to adopt the
22 recommendations to send to the Secretary for consideration.

23 Q And in this particular case, the VCOEB made a motion for
24 these three recommendations, A, B, and C, they had a discussion
25 about it, correct?

1 A Correct.

2 Q They had a vote about it, correct?

3 A Correct.

4 Q And they -- the vote was such that the three
5 recommendations were voted out to be provided to the Secretary?

6 A Correct.

7 Q And as of today -- it's only been two months, the
8 Secretary has yet to respond, correct?

9 A As far as I know, he has not responded to these
10 recommendations.

11 Q Okay. And in typical past fashion, some of those
12 responses could take six months?

13 A Yeah, I don't know exact time frames, but I know it can
14 take a while.

15 Q Okay. Let's look at what they recommended, okay?

16 Recommendation 23-03A, says that "The VCOEB recommends
17 that the Secretary of Veteran Affairs identify one, italicized,
18 VA office to lead transformation of the North Campus consistent
19 with the operative master plan, and empower that office with
20 the authority to request, prioritize, and implement projects
21 through VA's regular budget process."

22 Do you see that?

23 A I do.

24 Q That authority, as we speak today, does not exist, does
25 it?

1 A It exists in multiple offices, not in a single office.

2 Q And Ms. Kabat, for example, the Chief of Staff, alone by
3 herself can't implement projects through VA's regular budget
4 process, correct?

5 A Yeah, I mean, technically she isn't a submitter of budget
6 requests.

7 She certainly has a role in the overall VA budget, but
8 not specifically the way this is worded.

9 Q The second recommendation, 23-03B, says:

10 "The Secretary of Veteran Affairs instruct the
11 appropriate office that it identified the capital needs for
12 implementation of a town center area and a worker enterprise
13 zone, report those to the VCOEB, and include those in the next
14 SCIP."

15 Do you see that language, sir?

16 A I see that.

17 Q From that, can we deduce that the capital needs for
18 implementation of the town center have never yet been included
19 in a SCIP?

20 A I don't think that's factually accurate.

21 Q Okay. How about a worker enterprise zone, has funding for
22 that been included in a past SCIP?

23 A So the worker enterprise zone was gotten rid of in the
24 master plan 2022, and integrated into the town center.

25 So it's one area now, it's not two separate areas. So I

1 would have the same statement, I don't believe it's accurate
2 that nothing has been included.

3 Q The last recommendation in Exhibit 242, from the VCOEB is
4 that the Secretary of Veteran Affairs instruct the appropriate
5 office that it identify whether legislative changes will be
6 needed in order to accomplish appropriations for the town
7 center and worker enterprise zone and report those.

8 Has that happened as far as you know?

9 A I don't believe the Secretary, again, has responded to
10 this so...

11 Q Well, has any consideration been given, either within your
12 organization or another aspect of VA, to identify whether
13 legislative changes will be needed in order to accomplish these
14 goals?

15 A So we fundamentally disagree with the VCOEB's position
16 that legislative changes are needed.

17 We believe we have a plan as outlined in master plan
18 2022 for a town center, it's already there, it's in our plan.
19 We believe we have the funding identified for how that can be
20 carried out, we are still actively working on what some of the
21 services will be and that's really just to get the veteran
22 input on what services should reside in that town center area.

23 But the plan is there and we do not believe we need
24 legislative changes to make that happen.

25 Q The funding that is in place is donated funds or

1 fundraising, it's not VA money, is it?

2 A Well, it's all parts.

3 So, for example, the buildings we talked about up here
4 before, the 408 building that's going to be built, that
5 building will have service space included and it will be around
6 a town green that functions as part of the town center.

7 So the capital stack, the financing stack for Building
8 408 will be the funding source to build that building.

9 There will be green space outside of it that VA is
10 contemplating doing a capital contribution for to help fund
11 that piece.

12 So I believe we have that financing lined up for
13 delivery of the town center the way the master plan lays it
14 out.

15 The VCOEB has a fundamental different opinion on how the
16 master plan town center should be implemented, and that's their
17 right to do that. We're not financing that, we're financing
18 what is in master plan 2022 because that is our plan.

19 Q Other than the parcel turnover costs that we talked about
20 earlier and the infrastructure costs, it is true, is it not,
21 that the first time that a master plan project was included in
22 your SCIP, was for fiscal year '24?

23 A So, again, there are lots of projects outside of housing.
24 If you limit it to just the housing on North Campus, I would
25 agree with that.

1 Q And that is a full eight years after the promise was made
2 in the principles agreements in 2016, correct?

3 A The principles agreement did not say when, it just said we
4 would include them.

5 And I'll use the example of the PEIS. It wasn't
6 finalized until late in 2019.

7 We had no projects, we didn't have an approved path
8 forward. We didn't have the infrastructure studies completed,
9 so we didn't know what projects we needed to do.

10 When we got that information, when those studies were
11 done and the PEIS was completed projects were then put in the
12 SCIP as the whereas acknowledged.

13 Q So you think that because there wasn't a date, a specific
14 deadline included in the settlement agreement in *Valentini*,
15 that VA was free to include the master plan projects in the
16 SCIP that year or a decade later or 20 years from now?

17 MS. PETTY: Objection. Mischaracterizes the
18 testimony.

19 THE COURT: Overruled. You can answer the question.

20 THE WITNESS: When we knew projects were needed,
21 they were put into SCIP.

22 MR. SILBERFELD: That's all I have. Thank you.

23 THE COURT: Redirect?

24 MS. PETTY: Your Honor, can we take a quick restroom
25 break?

1 THE COURT: We can come back 15 minutes, or just
2 notify me.

3 Thank you, sir, so much. Step down, and we will
4 have you back on the stand in just a moment.

5 (Afternoon recess.)

6 THE COURT: Be seated. Mr. Simms has returned to
7 the witness stand and this will be redirect examination.

8 MS. PETTY: Redirect.

9 Agbeko Petty for the federal defendants.

10 REDIRECT EXAMINATION

11 BY MS. PETTY:

12 Q Mr. Simms, do you recall the conversation you had earlier
13 with counsel regarding the various facilities that VA has
14 built?

15 A Yes.

16 Q And this included a skilled nursing facility, correct?

17 A Correct.

18 Q It also included a community living center, correct?

19 A Correct.

20 Q It also included the critical care tower that is being
21 constructed, correct?

22 A Correct.

23 Q And also included the food facility that services the
24 medical center, correct?

25 A Correct.

1 Q For all of these buildings, do you know whether VA had
2 specific congressional authority to construct these buildings?

3 A We do.

4 Q Does VA have specific congressional authority to construct
5 permanent supportive housing?

6 A Not directly, no.

7 Q You also spoke with counsel about environmental and
8 historic preservation.

9 Do you recall that?

10 A I do.

11 Q When we're talking about temporary supportive housing,
12 does the length of time that that structure would be on the
13 property impact the analysis under NEPA?

14 A It could. Again, a lot of it depends not on the use of
15 it, but how it's attached to the property and whether or not
16 the attachment is permanent in some way.

17 Q The National Environmental Policy Act is a federal law; is
18 that correct?

19 A It is.

20 Q It's a federal law relating to environmental preservation,
21 correct?

22 A Among other things, yes.

23 Q And the National Historic Preservation Act is also a
24 federal law, correct?

25 A It is federal, yes.

1 Q That law relates to historic preservation, correct?

2 A Among other things, yes.

3 Q We're going to hand you what has been marked as
4 Exhibit 81.

5 And, in particular, I want to look at page 4 of
6 Exhibit 81.

7 And the particular section that I want to focus on is H2
8 titled "Compliance of Particular Leases."

9 A Okay.

10 Q I will go ahead and read this aloud:

11 "Except as otherwise expressly provided by this
12 section, no lease may be entered into or renewed under this
13 section unless the lease complies with Chapter 33 of Title 41,
14 United States Code, and all federal laws relating to
15 environmental and historic preservation."

16 Do you understand this section to mean that compliance
17 with the National Environmental Policy Act and the National
18 Historic Preservation Act is required by the West Los Angeles
19 Leasing Act?

20 A My understanding is that unless there is a specific
21 carve-out that wouldn't have to apply then, yes, all of the
22 leases must adhere to those laws.

23 Q Do you know whether there's specific carve-out with
24 respect to Enhanced-Use Leases having to comply with the
25 National Environmental Policy Act or the National Historic

1 Preservation Act?

2 A There is no carve-out.

3 Q And would an action that would result in the delisting of
4 the West Los Angeles Campus as a historic district be in
5 compliance with the National Historic Preservation Act?

6 A It would not be in compliance.

7 MS. PETTY: No further questions, Your Honor.

8 THE COURT: Then recross examination?

9 MR. SILBERFELD: No questions, Your Honor.

10 THE COURT: Sir, thank you very much. I don't have
11 any questions of this witness at this time.

12 I'm just wondering about your availability sometime in
13 September.

14 Do you have any personal plans, vacations?

15 THE WITNESS: No vacations. Kids are back in
16 school, so lots of school events, nothing that I can pinpoint
17 right now.

18 THE COURT: Not ever going to interfere with that.
19 That you very much, sir, you may step down.

20 Counsel, would you like to call your next witness?

21 MS. WELLS: Yes, the federal defendants call Chelsea
22 Black. We're in the process of getting her here.

23 THE COURT: Thank you very much. She is the lady
24 from Safe...

25 MS. WELLS: No, she is a VA official.

1 THE COURT: How are we doing with the lady from
2 SafetyPark? I was a little concerned about --

3 MR. SILBERFELD: She's here.

4 THE COURT: I understand she had some issues
5 concerning her ability to be transported?

6 I thought she was being brought by Uber or something and
7 I was concerned about her well-being.

8 I will leave that to you, but she's not wheelchair-bound
9 or anything like that?

10 MR. SILBERFELD: No. Just while we're waiting,
11 plaintiffs would like to move into evidence the deposition
12 testimony of Dennis Culhane, C-U-L-H-A-N-E, as Exhibit 243.

13 THE COURT: Just a moment.

14 MR. SILBERFELD: It's Docket Number 233, which is
15 the notice of lodging of the transcript and my understanding is
16 that both sides have designated testimony, as well as made
17 objections to portions of that transcript.

18 And prior to this, we had not formally moved that in.

19 Mr. Culhane lives in Pennsylvania, I think or somewhere
20 on the east coast, he's outside the subpoena power of the
21 Court.

22 THE COURT: Could you help me with an offer of proof
23 concerning what his testimony would be?

24 Just a quick summary from both sides since you are
25 stipulating.

1 MR. SILBERFELD: Mr. Rosenbaum could do that. But
2 he's out of the room.

3 THE COURT: That's fine, we'll come back.

4 MR. SILBERFELD: We will provide that.

5 THE COURT: Let me take that under consideration,
6 counsel.

7 I'd like to hear a little bit more if this is a
8 stipulation between the parties.

9 Would you step forward. Would you be kind enough to
10 raise your right hand?

11 THE COURTROOM DEPUTY: Do you solemnly swear that
12 the testimony you are about to give in the cause now pending
13 before this Court, shall be the truth, the whole truth and
14 nothing but the truth, so help you God?

15 THE COURT: Thank you. Would you please be seated.

16 Counsel, could some of you come up and get all of
17 these documents, and we will move them for the witness up here.
18 We're going to clean this up for you, just a moment.

19 Watch your steps, the steps are here, and then there is
20 two-inch ledge for some reason.

21 Would you be kind enough to state your full name,
22 please?

23 THE WITNESS: Chelsea Black.

24 THE COURT: Would you spell your first name?

25 THE WITNESS: C-H-E-L-S-E-A.

1 THE COURT: Your last name, please.

2 THE WITNESS: Black, B-L-A-C-K.

3 CHELSEA BLACK,

4 having been duly sworn,

5 testified as follows:

6 THE COURT: Direct examination on behalf of the VA,
7 counsel.

8 MS. WELLS: Thank you. Carlotta Wells on behalf of
9 the federal defendants.

10 DIRECT EXAMINATION

11 BY MS. WELLS:

12 Q Good afternoon, Ms. Black.

13 A Good afternoon.

14 Q Can you state briefly your current position at the VA?

15 A I can. I'm the acting chief of planning at GLA.

16 Q Okay. And when you say "GLA" that is West Los Angeles
17 Medical Center?

18 A That is correct, Greater Los Angeles.

19 Q Okay. Can you briefly state what your educational
20 background is, please?

21 A Absolutely. So I have a bachelor's in film and an MBA.

22 Q Okay. And when did you start working at the Veterans
23 Administration, or I guess Department of Veterans Affairs it's
24 called now. I'm dating myself.

25 A I have actually worked for VA for 17 years.

1 Q That would be since 2007?

2 A 2007.

3 Q Why did you go to work for the VA?

4 A I always really loved the mission of the VA and my mom
5 actually worked for 32 years for the VA.

6 She worked actually at the Villages of Cabrillo, which
7 is very similar to what we're doing here at GLA. She always
8 shared the mission with me.

9 I always visited VA and saw what was transpiring and so,
10 I would say, more of a mission for me, a connection to
11 something and that's kind of always what led me to it and kept
12 me there.

13 Q So what was the first job that you had when you went to
14 the VA?

15 A When I came to the VA, I came in as a TCF intern, it's a
16 technical career field in turn with contracting.

17 Q Where was that position located?

18 A At Long Beach, California.

19 Q Was that within the contracting office?

20 A Yes. The contracting office was at the VA Medical Center
21 in Long Beach.

22 We supported the entire VISN, though, four different
23 medical centers in Southern California.

24 Q Okay. And after your serving in this TCF position, did
25 you move into a permanent position?

1 A I did. I moved into a permanent position, and then
2 started different roles and responsibilities, ending up as a
3 division chief and also director of contracting for NCO 22,
4 which is the network contracting office.

5 Q So how long did you work in the contracting office?

6 A 15 years.

7 Q When you were a division chief, to what extent did the
8 service contracts you were responsible for relate to HUD-VASH
9 program?

10 A So the division I oversaw dealt with services that dealt
11 with healthcare resources. A big portion of that was the
12 homeless initiative programs.

13 I actually did the first HUD-VASH contract in 2012, did
14 many transitional programs, and even in my current role today
15 in supporting the -- our homeless program office with
16 contracts.

17 So it's always been part of my, I guess, past career and
18 current as well.

19 Q And when did you come to the West Los Angeles Campus of
20 the Veterans Administration, or VA?

21 A I came in May of 2022.

22 Q And in to what role?

23 A Deputy chief of planning.

24 Q And can you briefly describe for us what that position is?

25 A So the majority of my position in planning is overseeing

1 the master plan, making sure that our projects specifically are
2 construction projects, related to infrastructure, EUL turnover,
3 are done timely, that we are executing appropriately to then
4 continue housing developments.

5 We also plan for the facility as well, but the main
6 objective is the master plan.

7 Q And what is your current position?

8 A Currently, I'm the acting chief of planning.

9 Q So how is that different from the position you just
10 described?

11 A I think there's just a little bit more, so my
12 responsibilities expanded more to -- I think more of a
13 public-facing role, more of the communication with the
14 different organizations like VCOEB, the IPT governance board,
15 having more of that communication with those stakeholders out
16 in the community and within VA.

17 Q And how long have you been in the acting chief position?

18 A About a year and two months.

19 Q So the main reason we have brought you here today is to
20 talk a little bit about the landfill, what has been identified
21 as the landfill issue.

22 In a nutshell, can you just tell us from your
23 perspective what this issue is about?

24 A Absolutely. So we have a landfill on the West LA Campus
25 on the north side. It's a 50-year-old landfill. It's been

1 closed since 1968.

2 Recently the Department -- LA County Department of
3 Public Health, put a hold on all building permits on our
4 campus, so affecting all of the housing developments.

5 The LA County of Public Health has also said that we're
6 in violation of a particular California regulation, and that we
7 are -- we are required to produce what is called a post-closure
8 report related to this landfill, this 50-year-old dormant
9 landfill.

10 Q Okay. And just so we're clear, because I think this term
11 is going to come up again, how would you define "post-closure
12 report," what does that actually mean?

13 A So the post-closure report, it sounds like a very simple
14 task, it's actually a very lengthy process. It can take up to
15 two, three, four years and it has to do with the sampling, so
16 investigative work, sampling to kind of look at the risk, look
17 if there is safety risk on campus.

18 It all has to do with this particular regulation, with
19 -- the post-closure has to do with methane.

20 (Reporter Clarification.)

21 THE WITNESS: Methane.

22 THE COURT: Did you say methane?

23 THE WITNESS: Methane.

24 THE COURT: Coming from the landfill?

25 THE WITNESS: Coming from the landfill, correct.

1 THE COURT: Just let me catch up with you. Let me
2 read realtime for just a moment, okay?

3 (Pause in proceedings.)

4 THE COURT: Counsel, eventually would you ask a
5 little bit more about a post-closure report. I don't
6 understand what that is.

7 MS. WELLS: Right. I think we can get into it a
8 little bit more later, I have some back and forth I think
9 between Ms. Black and the county and we could talk about it.

10 BY MS. WELLS:

11 Q So you just mentioned something about methane.

12 Can you describe what the concern is with this county
13 regulation or policy to the methane or levels of methane?

14 A So when it comes to landfills and more traditional
15 municipal landfills that have a lot of organic matter, organic
16 matter creates a lot of methane. And methane isn't necessarily
17 toxic, but it's explosive.

18 So that's what this whole post-closure report typically
19 will asses in a newer landfill.

20 With our particular landfill on the West LA Campus, it's
21 50 years old, it's dormant, and at this point, there's no
22 documented evidence of any type of methane concern with the
23 areas surrounding the landfill, really any of the areas in the
24 North Campus at this time.

25 Q Okay. So when you say again, getting to the post-closure

1 report, would that then address -- identify what the risks were
2 -- what the steps were taken to mitigate the risk, and what the
3 conclusions were that, you know, everything was at a safe
4 level.

5 Is that your basic understanding of what would be
6 included in a report like that?

7 A Correct.

8 Q Okay. And there was some testimony earlier in trial, but
9 I just want to clarify with you, is it your understanding that
10 the concern is anything that is within 1,000 feet or
11 construction that is within 1,000 feet of the landfill?

12 A That's correct.

13 Q So we did show a map, which I think, actually, Ms. Black
14 and her staff were the ones who prepared it earlier, so unless
15 Your Honor feels it's necessary, I was not going to walk
16 through it again.

17 THE COURT: I would love you to walk through that
18 again.

19 MS. WELLS: You do want to walk through that again?

20 THE COURT: I would.

21 MS. WELLS: Can we pull up Exhibit 1638.

22 THE COURT: I think I understand the circles around
23 the purple area, but I would like to have you walk through that
24 with me, okay.

25 I have got it.

1 THE WITNESS: Thank you.

2 Okay. So we prepared this map based on the three
3 areas where we have identified and studied landfill matter,
4 debris matter.

5 We have identified the buildings that are associated
6 with our housing developments.

7 THE COURT: Do me a favor. Could we flip it this
8 way?

9 I'm just oriented -- I will show you -- I'm going to ask
10 them to do that for you. I would like you to go vertical.

11 MS. WELLS: We're working on it.

12 THE COURT: And then we're going to blow this up.
13 In other words, what we're going to do is we're going to look
14 at it this way.

15 THE WITNESS: Okay.

16 THE COURT: Then they're going to blow that up for
17 you.

18 So you have Brentwood School and the golf course towards
19 the north. You can see the golf course, you can see the tennis
20 courts, and as you trace down the North Campus, you will see
21 the kind of semicircle of the VA or the California Vets, right
22 there?

23 THE WITNESS: The CalVet.

24 THE COURT: Oriented? Counsel.

25 BY MS. WELLS:

1 Q Okay. So, can you just identify for us again what the
2 three purple spots are on the map?

3 A The three purple spots are the landfill.

4 Q Okay. So those are the three landfills you identified
5 earlier, talked about earlier?

6 A Yes.

7 Q The yellow lines, what do those represent?

8 A The yellow lines are the 1,000 feet of radius and
9 2,000 feet of diameter around each of the landfills, so with
10 this particular regulation, as we spoke of before, any area
11 1,000 feet or any development 1,000 feet from the landfill is
12 affected by this regulation, and, as a result, is under hold
13 from the County.

14 Q And the buildings that are most directly affected or,
15 like, you know, affected by this most eminently, can you
16 identify which ones those are?

17 A The most urgent situation is B-401. This is MacArthur.
18 MacArthur is due to get its TCO, which is its temporary
19 certificate of occupancy in September, September 3rd.

20 THE COURT: I see, so September 3rd --

21 THE WITNESS: Correct.

22 THE COURT: -- that's our immediate problem in terms
23 of move in.

24 We got a completed building at 401, and here we have
25 this county hold.

1 THE WITNESS: Absolutely. So we're working on that.
2 And then the other most urgent situation is Building 402, all
3 of these bungalows.

4 That was due to open or be completed January of 2025.
5 We then notified that it's going to complete a little earlier,
6 so they are ahead of schedule and it will be completed October,
7 November, so it's --

8 THE COURT: But for this hold?

9 THE WITNESS: Yeah. It's -- yeah. It's held,
10 absolutely.

11 BY MS. WELLS:

12 Q And then we might get into this a little bit more later
13 too, but could you tell us what the situation was when you
14 first learned about this with respect to Building 210?

15 A Absolutely. So when we first learned about the situation
16 and we tried to figure out what the regulation was all about.
17 When we understood that there was this 1,000 foot radius, you
18 can see that Building 210 is outside of that 1,000-foot --

19 THE COURT: I have got it.

20 THE WITNESS: So that was great news for us, because
21 Building 210 was due to -- we had over the parcel, which meant
22 we turned it over to the developer.

23 They were going to begin construction in August. And
24 you know, that was the first building that we were notified
25 that this permit hold was related to.

1 THE COURT: Just a moment. You mean there is a hold
2 on Building 210 from the County?

3 THE WITNESS: No. So it -- there was. There was.

4 THE COURT: There was.

5 THE WITNESS: And because it's outside of
6 1,000 feet, we made that case to the county, and they said
7 that's outside our jurisdiction and they released the hold.

8 THE COURT: So initially, there was some concern
9 about it, but it turned out once the 1,000 feet radiuses were
10 drawn, then the County agreed.

11 THE WITNESS: That's correct. And just one note.
12 The permit hold is applied to the entire campus.

13 THE COURT: Including those areas outside
14 1,000 feet?

15 THE WITNESS: Correct. That is how 210 and -- so we
16 had to make that case to release those holds.

17 THE COURT: And do you have to then get a release of
18 these holds as to each specific building outside the
19 1,000 feet, because on one hand, I'm hearing you have this hold
20 on the whole campus, but when you came back and reasoned with
21 the County and you showed them on Building 210, look, this is
22 outside 1,000 thousand feet, they acquiesced.

23 So, hypothetically, let's say, we had -- I'm making this
24 up -- Building 207, would you have to go back and reason with
25 the County and get their blessing to lift this 1,000 feet

1 again?

2 THE WITNESS: At this time, every single building
3 has to be individually communicated.

4 We did that for 404. 404 is another building.

5 THE COURT: Who are you dealing with over at the
6 county? I love names instead of bureaucracies.

7 THE WITNESS: Absolutely. Her name is Karen Gork.

8 THE COURT: Is she the decision-maker?

9 THE WITNESS: She's the chief environmental health
10 specialist, and the decision-maker of the entity that is
11 putting these holds on the campus.

12 THE COURT: Thank you.

13 BY MS. WELLS:

14 Q Just to be clear, as far as you understand, these holds
15 are being held by the Department of Public Health; is that
16 right?

17 A That is correct.

18 Q Okay. And then we can talk a little bit more about -- I'm
19 sorry.

20 For Building 210, I think you just said that that was
21 the building that made -- I guess it's the reason why you found
22 out that there was a hold placed on the campus; is that right?

23 A That's the initial communication. That's how we found out
24 there was this permit hold situation.

25 Q And who did you find out about the hold from?

1 A We found out the hold from OAEM.

2 So OAEM is the entity that oversees the EULs, the
3 leases, the developers.

4 And the developer notified OAEM, and OAEM came to GLA.

5 Q When you say "the developer," who are you referring to?

6 A U.S. Vets.

7 Q They're the principal developer for the Building 210?

8 A Correct.

9 Q And is it fair to say that they had gone to request a
10 permit for construction?

11 A That is correct.

12 Q And realized that there was a hold placed?

13 A Correct.

14 Q When did this happen? Back in May, did you say?

15 A Correct. So, at the end of May. May 29th.

16 Q Okay. So upon learning about this issue in May of -- the
17 end of May of 2024, do you know who, at VA, took the lead in
18 starting to look into what was happening?

19 A So typically in those situations we have a safety team at
20 GLA that has environmental experts, they deal with the County,
21 they deal with the inspectors, so that's who first took the
22 lead, and started to engage the County, and started that
23 communication about what we're doing on the campus, and how
24 this is, you know, an urgent situation.

25 So they took the lead at first.

1 Q And at what point did you get involved in this issue?

2 A I think I was always involved in the issue at first, just
3 because I'm kind of the facilitator between OAEM and the
4 developer, GLA, Safety.

5 So I was in it to begin with, although Safety was taking
6 the lead with discussions with the County.

7 I was there in those conversations -- not in the
8 conversations with the County, but in the conversations with
9 the different stakeholders, providing updates, and again,
10 trying to, you know, sort out this matter as best as we could.

11 Q So going back to Building 401 A, for example, the one that
12 is scheduled to open in September.

13 Do you know whether or not anybody from VA has been in
14 touch with inspectors as this building nears completion?

15 A So, Building 401 is tracking a long with their
16 inspections.

17 So there is a different, I guess, section of the County,
18 so the LA County of Public Works is the entity that issues out
19 the permits, so, will issue out the building permits, the
20 temporary certificates of occupancy, and the final certificates
21 of occupancy.

22 So, they have been on the campus, their inspectors have
23 been out there, and --

24 THE COURT: Permitting is going well.

25 THE WITNESS: Absolutely.

1 THE COURT: It's the Department of Public Health
2 that has this hold?

3 THE WITNESS: That is correct. Yeah.

4 BY MS. WELLS:

5 Q So, some of the sections, is it fair to say that would
6 include elevator safety, fire safety -- these are the kinds of
7 inspections they are doing as they are getting ready to --

8 A Absolutely.

9 Q Would the last step in this process be the issuance of the
10 temporary certificate of occupancy, or TCO?

11 A Correct.

12 Q And do you know if there has been any indication from any
13 of these inspectors from the Department of Public Works, you
14 know, that the issuance of this temporary certificate of
15 occupancy will be delayed?

16 A Not at this time. They are tracking to complete
17 September 3rd, depending on all of the inspections. And it has
18 -- it doesn't seem to have a connection with the hold on the
19 permit, but I think as we get kind of further down the line,
20 any time you have a hold on a permit, it's looked at as
21 corrective action.

22 And the developer is going to -- they assume some risk
23 having that hold on the permits as they get further and further
24 down the line.

25 THE COURT: Public Health has put a hold believing

1 that Building 401 -- and we have a laser for you, someplace --
2 unless Mr. Simms took our laser. Just joking.

3 Does somebody have the laser? We're on the hunt for a
4 laser.

5 MR. DU: It's right there, Your Honor.

6 THE COURT: Okay. I don't know how serious this is,
7 but would you back up just a little bit so I don't point this
8 laser at you.

9 There we go.

10 So, let me try to get oriented.

11 401 should be up in here someplace?

12 Now, this is completely folded on my part.

13 Public Health Department says that we can't move
14 veterans into 401 because we have a landfill with methane which
15 may be explosive.

16 THE WITNESS: Correct.

17 THE COURT: But looking at the circle, 205, we have
18 a lot of veterans in that building at the present time.

19 We have a lot of veterans in 208 and 209 within that
20 circle.

21 How are these veterans then safe, but we can't move
22 veterans into 401?

23 Why are veterans in 205, 208, and 209 with this methane
24 issue? This could be de minimis, but I certainly don't want to
25 read that I'm complicit in some methane explosion.

1 THE WITNESS: Absolutely.

2 THE COURT: Okay. So explain that rationale, if you
3 have any rationale from the County.

4 THE WITNESS: The rational from the County is a very
5 general perception.

6 They are kind of qualifying our landfill as in a modern
7 day landfill.

8 THE COURT: You must be frustrated.

9 THE WITNESS: I'm very frustrated. Very, very
10 frustrated.

11 THE COURT: Who is the -- I think it's Barbara,
12 isn't she the Director of Public Health?

13 THE WITNESS: Correct.

14 THE COURT: Counsel. You are ordered to subpoena
15 her. Am I clear?

16 Go out and issue a subpoena for Barbara, who I know
17 quite well, from the Director of Public Health and get her over
18 here. Real simple.

19 Because if we have something so serious that you can't
20 move in on September 3rd, I'm a little baffled why we have
21 veterans siting out there in 205, 208, or 209.

22 Or it's not serious and we're what I call at that lower
23 level of bureaucracy, churning, and so far the answer I have
24 gotten is, gee, Judge, we might know in a couple days or a
25 couple of years.

1 THE WITNESS: Correct.

2 THE COURT: You have already given me a time period
3 that this could take up to two years.

4 THE WITNESS: It can.

5 THE COURT: Yeah. Years.

6 Okay. That's an order.

7 MR. ROSENBERG: What is her last name?

8 THE WITNESS: You know, I know her as Barbara.
9 She's the Director of Mental (sic) Health.

10 MR. ROSENBERG: We'll figure it out.

11 THE COURT: Google it. Get on the Google. This
12 should take two seconds. Director of Public Health.

13 Let's get down to the bottom of this right away instead
14 of -- you know.

15 And if she can make a decision, fine. But if she
16 can't -- but let's get to the top level of these bureaucracies.
17 This is a lot of money, a lot of veterans.

18 And I have got the interplay again between different
19 bureaucracies playing bumper car. So let's get some
20 decision-makers in here.

21 Now, hold on. I think you are going to have to come
22 back because I will let you go on today, but I don't think you
23 can answer all of the questions because you are answering on
24 the VA's part with a frustration.

25 But was there an EIR conducted out here of Building 401,

1 for instance, before construction was undertaken.

2 Do you know?

3 THE WITNESS: There has been multiple environmental
4 studies.

5 THE COURT: Yeah, but was there an environmental
6 study that noted this landfill before we started our
7 construction, or did this suddenly pop up as we got closer to
8 certificate of occupancy?

9 In other words, how long have we known about the
10 landfill?

11 THE WITNESS: We have known about this landfill for
12 quite some time.

13 THE COURT: A day? A year? What? How long?

14 THE WITNESS: Many, many years.

15 THE COURT: Okay. Now, has the County called this
16 to your attention before?

17 THE WITNESS: So, the VA first learned about it in,
18 like I said, in May. When we started to engage the County,
19 they actually brought up that they had sent us a letter.

20 THE COURT: When?

21 THE WITNESS: May of 2023.

22 THE COURT: Oh. This is going to get interesting.
23 So they sent you a letter in May of 2023, and they are going to
24 say that they called attention to this landfill?

25 THE WITNESS: Correct. The letter wasn't addressed

1 to any particular point of contact, so nobody at the VA GLA
2 actually received it.

3 THE COURT: I see.

4 THE WITNESS: So, May of 2024, was the first time we
5 had heard about it.

6 THE COURT: So, the first time you get DPEC, U.S.
7 Vets, they are over there in building -- I forget what the
8 building was, 210 or whatever. They try to get their
9 development going and they get a pushback on the landfill,
10 1,000 feet.

11 THE WITNESS: Absolutely.

12 THE COURT: I'm trying to summarize that in basic
13 terms.

14 MS. WELLS: Your Honor, we are approaching with what
15 has been identified as exhibit --

16 THE COURT: No. I'm waiting for Barbara --
17 Barbara's name.

18 MS. WELLS: Okay.

19 THE COURT: Barbara Ferrer. My apologies for not
20 remembering that. Muntu Davis has been in my court before.
21 Subpoena both of them if you want, but let's see if we can get
22 decision-makers in here.

23 THE WITNESS: That would be great. Thank you.

24 THE COURT: Well, counsel, why don't you go on with
25 your questions.

1 MS. WELLS: Okay.

2 THE COURT: And I'd get busy with that subpoena
3 today, otherwise, you will be back next week.

4 BY MS. WELLS:

5 Q You just mentioned the letter that you found out about
6 after you started engaging the County on this issue. And what
7 has been handed to you is Exhibit 1442.

8 Is this the letter you were referring to?

9 A Correct.

10 Q If we look at the top, it's dated May 18th, 2023. But to
11 whom is it directed?

12 A It's directed to the Veterans Affairs U.S. government and
13 U.S. government.

14 THE COURT: I'm going to receive this letter as
15 1442, I have already received your exhibits, with appreciation,
16 1638. Thank you.

17 (Exhibits 1442 and 1638 received into evidence.)

18 BY MS. WELLS:

19 Q Have you taken any terms to determine what, if anything,
20 happened to this letter?

21 A I did. I started to ask different sections. Typically,
22 letters like this would be directed to engineering, safety,
23 environmental, planning.

24 None of us received it. And, yeah, it was quite a
25 surprise to understand that not only is the letter -- was the

1 letter sent last year, but the regulation that they are citing,
2 that they are saying we're in violation of is actually a
3 regulation from 2019.

4 THE COURT: I see. So once again, back to my
5 original question, there must have been an environmental report
6 when you undertook Building 401, way back when.

7 THE WITNESS: Yes. I believe we have several
8 environmental studies, both 401 and 402.

9 THE COURT: Do you know of any notice that the
10 County claims that they gave you in your discussions with your
11 counterpart at the County before May 18th, 2023?

12 THE WITNESS: No.

13 THE COURT: So, in other words, when you are having
14 this interaction with the County, they point to this letter in
15 May of 2023, as the notification about the thousand -- or about
16 the landfill.

17 THE WITNESS: Correct.

18 THE COURT: Was the EIR that was prepared whenever,
19 and I'm assuming there was one for 401, do you know if the
20 County would have been privy to that?

21 THE WITNESS: I don't know.

22 THE COURT: I will leave that to counsel, okay. I
23 imagine the court is going to fill with lawyers from the County
24 along with Ms. Ferrer.

25 BY MS. WELLS:

1 Q Ms. Black, along these lines, can you tell us does the VA
2 have a preliminary understanding of the methane levels in the
3 area and whether or not they are concerning?

4 A So over the course of probably the last decade, there has
5 been several environmental assessments, none of which report
6 any type of concern with methane.

7 We do have a report that was produced recently for
8 Building 402, which is the bungalows right beside 401. That
9 was done recently.

10 In terms of methane sampling, there was absolutely no
11 concern with methane.

12 THE COURT: Does it make sense to you that we would
13 keep veterans in 205, 208, and 209 if there was a legitimate
14 methane consideration?

15 THE WITNESS: Absolutely not.

16 THE COURT: And if there is not, it seems to me that
17 we should be moving our veterans into 401.

18 THE WITNESS: Correct.

19 THE COURT: You know, in September. You are
20 actually ahead of schedule.

21 THE WITNESS: Correct.

22 THE COURT: So we ought to be consistent between the
23 two. We ought to have in or out, just as simple as that.

24 THE WITNESS: Correct.

25 THE COURT: And we just can't get an answer back and

1 forth right now between the County and the VA?

2 THE WITNESS: That is correct.

3 THE COURT: Okay. Counsel.

4 I think if I were you, counsel, I would make
5 accommodations for next week just out of caution, okay?

6 BY MS. WELLS:

7 Q Ms. Black, you were talking about the steps that the VA
8 has taken once it learned about this issue.

9 Has one of those steps been to hire a contractor to
10 assess what is necessary in order to get started on the land
11 closure report?

12 A That is correct.

13 Q Can you tell us a little bit more about what the status is
14 of that contract?

15 A Sure. So when this whole issue came about and the
16 requirement for the post-closure report was presented, to work
17 concurrently with this issue, we immediately got a contract in
18 place to start what we call Phase 1 Preliminary Investigation.

19 So, looking at documents in the archives, pulling
20 together all of those environmental assessments, and really out
21 of that report will come a summary of all of the environmental
22 surveys that were done.

23 And again, try to piece together any other information
24 that will go into, ultimately, a sampling plan. I mean, that's
25 where we are headed, if we have to do a post-closure report, is

1 to do a full-blown risk assessment.

2 THE COURT: How long does that take? I have no
3 idea.

4 I have really gotten the answer literally in court from
5 somebody who doesn't have your background of it, hey, Judge, it
6 could be days, it could be years. I mean, where does that
7 leave the Court?

8 THE WITNESS: We have an expert on our team that is
9 helping us. He's a landfill expert.

10 THE COURT: Right.

11 THE WITNESS: He said that a Phase 1 -- what's
12 called a Phase 1 ESA, environmental survey, plus a Phase 2
13 sampling will take anywhere between one to two years. And that
14 is just the investigative work to then say "what is this?"

15 For us to then put it into -- that's really how the
16 post-closure report is completed, is with the data that we
17 obtain from these surveys.

18 BY MS. WELLS:

19 Q And I'm going to jump ahead.

20 I was going to talk to through various communications
21 you've had. But did you learn something recently about
22 possible mitigation measures that could be taken to assess the
23 extent to which methane levels are in existing buildings?

24 A Right. So as of yesterday -- so when we -- we had a
25 response from the County that was produced in a letter that

1 really laid out, like, a corrective action plan and provided
2 different steps to the VA to take, ultimately, to, you know,
3 get these holds off one way or another.

4 THE COURT: When did you receive that?

5 THE WITNESS: That was August 21st.

6 THE COURT: Just a moment.

7 MS. WELLS: And, Your Honor, we can bring up
8 Exhibit 1639.

9 THE COURT: 1639. I'm going to receive that as well
10 as 1442.

11 (Exhibit 1639 received into evidence.)

12 THE COURT: Thank you very much.

13 BY MS. WELLS:

14 Q So to give a little background, can you tell us how -- you
15 know, what precipitated your receiving this August 21st letter?

16 Was there any prior meetings or communications with the
17 County?

18 A There was. So after we communicated about Building 210
19 and was successful in getting the hold taken off that parcel,
20 we wanted to engage the County further on, you know, talking
21 about the impacts of these holds for the buildings that are
22 currently in development.

23 So we had a meeting on August 6th, and there was
24 probably eight different county representatives. There was the
25 GLA team --

1 THE COURT: Who?

2 THE WITNESS: Greater Los Angeles planning team,
3 sorry.

4 THE COURT: I see.

5 THE WITNESS: And some other experts that joined.
6 And, really, to discuss -- again, give them some background on
7 what we're trying to do on campus, give them the human aspect
8 of we have veterans that are soon to be moving into these
9 housing developments, and what can we do to lift these holds.

10 So, I wanted to understand from their perspective.

11 THE COURT: Was there any discussion about the
12 veterans who already existed close by in 205, 208 and 209 which
13 are very close to 401?

14 THE WITNESS: I brought that up.

15 THE COURT: What did they say? Leave them there?

16 THE WITNESS: Yeah. They really didn't have much to
17 say about that.

18 I brought up the existing EULs and I brought up the
19 CalVet home as well.

20 There is a lot of veterans who live on our campus right
21 now.

22 So, based on that phone call, another kind of concerning
23 aspect of it was that the County did mention that based on
24 where we were at and potential safety and health situations,
25 that they suggested that we stop all construction.

1 THE COURT: Just a moment. Now, once again, I don't
2 know if this is serious or not. On one side, I'm hearing
3 there's no methane leak, but at the same time the County seems
4 to be saying, stop all construction.

5 I've got Buildings 205, 208, 209.

6 THE WITNESS: Right. So I asked how that
7 communication would come, is it an informal discussion like
8 we're having, because something like that has great
9 consequences on developments that are -- you know, that needs
10 to be more of a formal communication.

11 And at that point Karen from the County had said
12 that, you know, if -- possibly there could be inspectors coming
13 to our campus, and issuing a cease and desist.

14 THE COURT: Let's get this out in the public. Let's
15 get this transparent now.

16 That's what we're going to do. That's why Barbara is
17 going to come over.

18 I'm really concerned about different levels of
19 government playing bumper cars with bureaucrats. And it's easy
20 to have a conversation and tell you to stop all construction,
21 but I don't document it, I don't put that out in written form.

22 In any of these letters, do they pay you the courtesy of
23 putting that in written form?

24 THE WITNESS: No.

25 THE COURT: No. So you are being threatened, you

1 are being told stop all construction, but the County doesn't
2 put that in written form. That places you in a very difficult
3 position.

4 THE WITNESS: It does, absolutely. That's what I
5 wanted to clarify with them.

6 THE COURT: We're going to get that clarified real
7 quick.

8 BY MS. WELLS:

9 Q So just to clarify, can you just hit, like, exactly what
10 -- or not exactly, but at a high level what the 8-21 letter
11 actually advised Los Angeles VA to do?

12 A Sure. So based on the response we received from the
13 County on the 21st, it laid out some different steps that we
14 should take. The number one step was this completion of a
15 post-closure report.

16 THE COURT: Okay.

17 THE WITNESS: And they gave us a year to do that.

18 THE COURT: Just a moment. Safe closure. So
19 minimally without going through the Phase 1 sampling, a year,
20 that's what I'm hearing, one year?

21 THE WITNESS: That's correct.

22 THE COURT: So one-year delay already, and that
23 doesn't mean that we have even taken on Phase 1 sampling if
24 that is required?

25 THE WITNESS: That's correct.

1 THE COURT: Which could be two years?

2 THE WITNESS: That's correct.

3 BY MS. WELLS:

4 Q Is there anything else in the letter you can recall?

5 A Yes. So the area that I was most concerned with is a
6 paragraph, actually number three.

7 Q It's on the second page of the letter?

8 A Second page, number three, Compliance with 27 CCR, and it
9 says the deadline immediately.

10 It says, "LEA may release holds" and so they're talking
11 about the holds for 401 and 402.

12 And that was the most urgent issue, like I mentioned
13 before, what I was working to really progress those two
14 developments.

15 And when I read this section, at first, all we have to
16 do is comply with progress towards a post-closure land use
17 report.

18 But there is also compliance with a 27 -- the California
19 Code, Section G -- 21.190, Section G, when you pull up that
20 section, it actually specifies design specifications that
21 buildings need to meet.

22 That is concerning for buildings that are already
23 completed.

24 They cannot meet these type of specifications where
25 they're talking about modifications to the foundation. They

1 can't meet that, so that is concerning.

2 Q All right. And your concern, again, was with respect to
3 Buildings 401, 402, and 404?

4 A 404 is excluded, because it's outside of the thousand feet
5 radius.

6 Q Okay. So after receiving this communication on the --
7 that's dated August 22st, have you had any further
8 conversations or discussions with the County?

9 A I did. I called Karen yesterday.

10 THE COURT: Does Karen have a last name again?

11 THE WITNESS: Karen Gork.

12 THE COURT: Can you spell that?

13 THE WITNESS: G-O-R-K.

14 THE COURT: That was a phone call as recently as
15 yesterday?

16 THE WITNESS: Yesterday.

17 THE COURT: She might want to come to court also,
18 but let's start at the top with the decision-maker, for a
19 change.

20 BY MS. WELLS:

21 Q I was just going to ask, do you know if Ms. Gork works
22 with Barbara Ferrer?

23 A I'm not sure.

24 THE COURT: That may be unfair to Barbara Ferrer,
25 then, because I'm hearing public health is holding you up, but

1 I might have somebody from the County that Barbara Ferrer may
2 not even know about.

3 Well, in a moment we may be starting with Lindsey
4 Horvath, she's the chairperson of the Board of Supervisors.
5 Let's just wait a moment, because I want the decision-makers to
6 come in.

7 Counsel, you might think about -- I'm not ordering this,
8 but you might think about Lindsey Horvath, the chairman of the
9 board.

10 Once you get to the top, trust me, all of lawyers will
11 trail in and all of the people from the agency will then
12 respond very quickly, because the rate we're going, going from
13 the bottom up, with bureaucracy your top officials may not even
14 know about this.

15 So let's start at the top for a change.

16 BY MS. WELLS:

17 Q Ms. Black, can you tell us what you talked about with
18 Ms. Gork yesterday?

19 A Sure. So I wanted to get just a quick clarification from
20 her based on the design specifications.

21 I wanted her to explain how new buildings, new buildings
22 like 401 and 402, where they're already completed, how are they
23 going to meet Numbers 1 through 5 of modifying foundations and
24 installing different barriers.

25 So she told me it seemed like there was a disconnect

1 between the regulation they cited, she told me don't worry
2 about Numbers 1 through 5, look at Numbers 6 and 7.

3 So 6 and 7 have to do with monitoring, installing
4 monitors around the building, that's achievable, that's
5 achievable.

6 THE COURT: Sure. How soon could we do that?

7 THE WITNESS: So I sent a note to the developer and
8 I said -- and OAEM -- and proposed this information and said
9 let's look into this and see if this is something that we can
10 get going.

11 And from Karen -- Karen's perspective, the developer
12 would submit a work plan to provide a plan of installation, the
13 County would approve it, the developer would install it, she
14 said that would take three weeks to do.

15 THE COURT: Oh, I think we will get it done faster.

16 THE WITNESS: Absolutely.

17 THE COURT: Yeah, or at least get some decision
18 about whether that would be acceptable or not.

19 If it's not, then we need to get an alternative and know
20 the time frame and we have to decide what to do with 208, 209
21 and 205.

22 THE WITNESS: This is just what she told me
23 verbally, I don't have that in writing.

24 THE COURT: Now, that is the problem, all the verbal
25 back and forth. I'm going to want this under oath testimony

1 and I would like this in writing from the County and your
2 responses also from the VA.

3 That way everybody's tied to a position, it's not this
4 back and forth banter.

5 I don't think the VA can make good decisions based upon
6 that and I think you are probably out on a limb right now from
7 what I'm hearing.

8 THE WITNESS: Correct.

9 THE COURT: Yeah.

10 MS. WELLS: May I have a moment, Your Honor?

11 THE COURT: She's going to be coming back, counsel,
12 whenever Ms. Ferrer or Lindsay Horvath appears, I will leave
13 the supervisor to each of you, but we will be in continuous
14 session until that happens, so if you are making plans to go
15 home, don't.

16 BY MS. WELLS:

17 Q So, Ms. Black, is there anything else, any other
18 information you have relating to this issue you want to share
19 with us today?

20 THE COURT: You will be back, by the way. So I
21 don't know if it's tomorrow or Friday or next Tuesday, but you
22 will be back.

23 THE WITNESS: No additional information. It changes
24 by the day, but right now that's where it stands.

25 THE COURT: Counsel, we will get a call from County

1 Counsel if Karen is involved.

2 I'm sure Barbara Ferrer, if she gets a subpoena will
3 immediately reach out to County Counsel, which will make
4 inquiry of counsel here who then can explain the situation.

5 But I expect Barbara Ferrer to be here and maybe Lindsay
6 Horvath.

7 I'm not going to go up, what I call the food chain, from
8 well-intentioned bureaucrats who won't put things in writing.

9 It takes too long, it's too serious. And we've got to
10 be consistent. Either you're moving in or we're clearing out.
11 All right.

12 Counsel?

13 MS. WELLS: Thank you. No further questions, Your
14 Honor.

15 THE COURT: Counsel, you can ask questions now if
16 you'd like to.

17 MR. DU: Your Honor, we will defer cross-examination
18 since Ms. Black will be coming back.

19 THE COURT: Okay, ma'am. We will see you tomorrow
20 or Friday or Tuesday or Wednesday or Thursday or whenever they
21 get here.

22 I will notify you. Thank you very much.

23 Counsel, your next witness, please?

24 MR. DU: Your Honor, can we take a five-minute break
25 to go get the witness? She's downstairs.

1 THE COURT: Absolutely.

2 (Recess.)

3 THE COURT: Back on the record, all counsel and the
4 parties are present.

5 And, counsel, would you like to call your next
6 witness?

7 MR. DU: Plaintiffs call Barbara Davies.

8 THE COURT: Please be seated. Thank you for your
9 courtesy, Ms. Davies.

10 If you would come forward, please, would you be kind
11 enough to raise your right hand?

12 THE COURTROOM DEPUTY: Do you solemnly swear that
13 the testimony you are about to give in the cause now pending
14 before this Court, shall be the truth, the whole truth, and
15 nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE COURT: Thank you very much. Would you please
18 be seated here in the witness box, it's just to my right.

19 Counsel, if you would clear off these diagrams.

20 I want you to be careful, the stairs are right
21 here. Come up the stairs, there is a small lift, so watch
22 that. Thank you very much.

23 Would you state your full name -- move a little
24 closer to the microphone -- well, that chair doesn't move so
25 move the microphone closer.

1 Would you state your full name, please?

2 THE WITNESS: Barbara Davies.

3 THE COURT: And first name is B-A-R-B-A-R-A?

4 THE WITNESS: Correct.

5 THE COURT: Would you spell Davies just to be
6 certain?

7 THE WITNESS: D-A-V-I-E-S.

8 BARBARA DAVIES,

9 having been duly sworn,

10 testified as follows:

11 THE COURT: Thank you very much.

12 Direct examination, please.

13 MR. DU: Yes, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. DU:

16 Q Good afternoon, Ms. Davies.

17 A Good afternoon.

18 Q My name is Tommy Du, and I represent the plaintiffs.

19 Thank you for waiting, and we thank you for your patience today
20 in testifying today.

21 THE COURT: Let me add to that, on behalf of all of
22 the parties, you were going to come in last Monday or Friday,
23 and thank you for being patient with us.

24 BY MR. DU:

25 Q Ms. Davies, you are a general administrator at SafetyPark

1 Corporation; is that right?

2 A Correct.

3 Q You don't have a formal title, correct?

4 A No.

5 Q And you have been serving in this capacity with SafetyPark
6 for the past 17 years, correct?

7 A That is correct.

8 Q And SafetyPark operates the Barrington parking lots; is
9 that right?

10 A Yes.

11 Q This is pursuant to the lease with the VA, right?

12 A Correct.

13 Q And you are the primary person at SafetyPark that deals
14 with the VA, right?

15 A That's correct.

16 Q A primary purpose for the parking at Barrington lots is
17 access to Barrington Village businesses, right?

18 A Yes.

19 Q That was a "yes," right?

20 A Yes.

21 Q And you are the primary individual at SafetyPark that
22 deals with the VA, right?

23 A Yes.

24 Q And you are also the individual at SafetyPark that is
25 responsible for compliance with the lease, right?

1 A That is correct.

2 Q And there is no other person at SafetyPark with more
3 knowledge about the operation of the parking lots on the West
4 LA VA Campus, right?

5 A That is correct.

6 Q So I want to talk to you about SafetyPark's lease
7 agreement with the VA.

8 Now, SafetyPark entered this lease agreement with the VA
9 on June 1st, 2019, right?

10 A That is correct.

11 Q Prior to obtaining the lease with the VA, SafetyPark
12 submitted a response to the VA's request for proposal for
13 parking management services?

14 A Yes, that is correct.

15 Q And the purpose of SafetyPark -- scratch that.

16 The purpose of SafetyPark's lease with the VA was
17 for SafetyPark to provide parking management services to the
18 Barrington lot, correct?

19 A Correct.

20 Q And you are responsible for communicating with the
21 resource person to fulfill the requirements of the RFP, right?

22 A When you say the resource person, could you please explain
23 that?

24 Q Well, you are responsible for communicating what
25 SafetyPark put in its RFP, correct?

1 A Yes.

2 Q And as a result of SafetyPark's RFP to the VA, the VA
3 entered into a lease with SafetyPark, correct?

4 A Yes, correct.

5 Q So let's take a look at Exhibit 148. This is the lease
6 agreement between the VA and SafetyPark.

7 Ms. Davies, have you seen this document before?

8 A Yes, I believe so.

9 Q It's dated June 1st, 2019?

10 A Yes.

11 Q And it's an agreement between SafetyPark and the VA,
12 right?

13 A Yes, correct.

14 MR. DU: Your Honor, plaintiffs move to admit
15 Exhibit 148.

16 THE COURT: Received.

17 (Exhibit 148 received into evidence.)

18 BY MR. DU:

19 Q Let's take a look at page 2 of Exhibit 148.

20 Under Recital D it provides, "Whereas, this lease is
21 entered on the effective date for good and valuable
22 consideration set forth herein, to confirm and memorialize the
23 parties' mutual understandings of the terms and conditions
24 whereby lessee will prospectively provide veteran-focused
25 services and support to VA's WLA Campus for the direct and

1 principal benefit of veterans and their families."

2 Ms. Davies, I did read that correctly?

3 A Yes.

4 Q Let's turn to page 5 of this exhibit.

5 Under the heading Article 2, Consideration For Lease,
6 Subsection A, it reads: "Consideration: In return for VA
7 granting this lease on the WLA Campus, the lessee hereby agrees
8 to provide the following consideration for the primary benefit
9 of veterans and their families."

10 Did I read that correctly?

11 A Yes, you did.

12 Q Now, under Article 2(a), Subsection 3, the last sentence
13 of Subsection 3 reads: "Lessee will implement and maintain the
14 following initiatives."

15 Do you see that?

16 A I'm sorry, I lost where you were.

17 Q Article 2(a)3.

18 THE COURT: It's on page 5.

19 THE WITNESS: Yes, I'm on page 5. Yes.

20 BY MR. DU:

21 Q Under 3, last sentence says: "Lessee will implement and
22 maintain the following initiatives"?

23 A Yes, I see that.

24 Q 3(d) provides --

25 THE COURT: Just a moment, let's put that section up

1 so that the witness can follow that.

2 We're going to slow down and we're going to make sure it
3 goes up the screen for you also, so you are not frantically
4 looking through a document, okay?

5 THE WITNESS: Yes.

6 BY MR. DU:

7 Q Are you with me, Ms. Davies?

8 A I am.

9 Q You see 3(d) it says: "Implement and manage a program for
10 veterans to obtain discounts on goods and services from
11 Brentwood Village business establishments."

12 A Yes.

13 Q Ms. Davies, there is no such program, right?

14 A There is no such program.

15 Q Has the VA ever asked about whether this program was
16 implemented?

17 A Not that I can recall, no.

18 Q Let's turn to the next page and take a look at 3(e).

19 3(e) provides, "Implement and manage a program to
20 generate employment opportunities for veterans with Brentwood
21 Village business establishments."

22 Do you see that?

23 A I do.

24 Q This program also doesn't exist, right?

25 A No, it doesn't.

1 Q Has the VA ever asked whether this program existed?

2 A Not to my knowledge.

3 Q Has the VA ever asked whether this program was
4 implemented?

5 A Not to my knowledge.

6 Q So let's look at 3(f).

7 3(f) provides, "Implement and manage a program to
8 provide supportive services for veterans employed for the
9 parking management services that are consistent with the WLA
10 Act, this lease, and VA's objectives for the WLA Campus."

11 Did I read that correctly?

12 A Yes.

13 Q And, Ms. Davies, you can confirm for us that that program
14 also does not exist, right?

15 A I'm not really sure how to answer that, because we do have
16 the program for employment for veterans.

17 Q But you don't have a program that provides supportive
18 services for veterans, right?

19 A Like medical services or something?

20 Q The services identified in (f) which says, "Implement and
21 manage a program to provide supportive services for veterans."

22 A No.

23 Q It doesn't exist, correct?

24 A No. We don't have another program.

25 Q So let's look at Item Number 4 to this page.

1 The second Item Number 4 on the bottom of the page.

2 Ms. Davies, you understand that the lease has a
3 financial reporting requirement under operating expenses?

4 A Yes, I am aware.

5 Q The second sentence provides, "On a monthly basis, lessee
6 will provide detailed supporting documentation for the actual
7 operating expenses during the preceding calendar month, which
8 shall include a monthly statement."

9 And it identifies a number of items that must be
10 included, right?

11 A Yes.

12 THE COURT: It goes over to the next page at the
13 top.

14 BY MR. DU:

15 Q Have you provided this financial report to the VA every
16 month?

17 A Yes.

18 Q And, Ms. Davies, you agree with me that this is the only
19 report you provide to the VA on a regular basis, right?

20 A Well, it's the only report given to the VA regarding
21 financial income, et cetera, yes.

22 Q Ms. Davies, are you aware that the lease has another
23 reporting requirement, and I'll direct you to, on the same
24 page --

25 MR. DU: Let's go back one to page 6.

1 BY MR. DU:

2 Q Under G, do you see that at the top of the page? It
3 provides that, "Provide written reports no later than the 10th
4 day of each month that describes the services provided that
5 principally benefit veterans and their families in accordance
6 with Article 2(a)(2) of this lease, including, but not limited
7 to, the fair market value of such services, accomplishments,
8 outreach efforts, the number of veterans actively involved, and
9 stakeholder feedback."

10 Did I read that correctly?

11 A Yes.

12 Q SafetyPark does not provide these reports to the VA,
13 correct?

14 A Well, SafetyPark has a meeting every month with the VA, a
15 teleconference, where we go through many items including
16 finances, veterans employed, et cetera.

17 Q Ms. Davies, does a written report containing the items
18 contain in G exist?

19 A I don't believe so.

20 Q And no one at the VA has ever asked for this report,
21 right?

22 A Right, in written report. Right.

23 Q I'm sorry?

24 A Written report, right?

25 Q Right.

1 A No.

2 Q Let's talk about the operation of the parking lots
3 themselves.

4 Ms. Davies, SafetyPark receives \$3,500 a month to
5 operate the Barrington lots.

6 A That is correct.

7 Q And the parking lots operate from 6:00 a.m. to 8:00 p.m.
8 daily, correct?

9 A That is correct, yes.

10 Q And these hours were determined based on the needs of
11 Brentwood Village businesses and their customers, right?

12 A Correct.

13 Q The veterans weren't consulted on the hours of operation,
14 correct?

15 A No.

16 Q And you would agree with me that veterans can park for
17 free on those parking lots, right?

18 A That's correct.

19 Q But not their family members, correct?

20 A Correct.

21 Q And veterans don't receive any type of priority access to
22 these parking lots, correct?

23 A No.

24 Q Ms. Davies, are you familiar with a program called Safe
25 Parking?

1 A I have heard about it, but only recently understood what
2 it was.

3 Q Do you understand it's a program to allow homeless
4 veterans to securely park overnight in parking lots?

5 A Yes.

6 Q SafetyPark doesn't participate in these Safe Parking
7 programs, correct?

8 A That is correct.

9 Q SafetyPark does not allow unhoused veterans to park
10 overnight in the Barrington lots, right?

11 A That is correct.

12 Q Let's go back to Exhibit 148.

13 Let's take a look at page 14 now.

14 Do you see an Item 21, it provides for an annual audit
15 of the lease?

16 A I'm sorry, which section was that?

17 THE COURT: Just a moment, counsel.

18 THE WITNESS: Oh, I see it.

19 THE COURT: No, I need to catch up also. Page 14?

20 MR. DU: Yes, Your Honor, page 14, Item 21.

21 THE WITNESS: Yes.

22 THE COURT: Just a minute. Thank you.

23 BY MR. DU:

24 Q Do you see that provides an annual audit of the lease?

25 A I do.

1 Q In the five years since this lease has been in place,
2 Ms. Davies, there's only been one audit?

3 A That I'm aware of, yes.

4 Q And that occurred in 2022, for fiscal year, 2021?

5 A Correct.

6 Q You are not aware of who conducted this audit, right?

7 A I am aware.

8 Q Who conducted this audit?

9 A I have it in my notes, but I don't remember it.

10 Q That's okay.

11 Do you know whether the auditor spoke with the VA about
12 SafetyPark's compliance?

13 A I'm not aware of that, because I don't recall ever
14 receiving a copy of the report.

15 Q Do you know if the VA has requested any other audits of
16 any other years?

17 A For SafetyPark, right?

18 Q Correct.

19 A No. I'm not aware that they have.

20 Q Ms. Davies, are you aware of the Office of Inspector
21 General report regarding SafetyPark's lease with the VA?

22 A I recently became aware of it, yes.

23 Q Okay. Let's take a look at Exhibit 3, which is the OIG
24 report. I will put it in front of you right now.

25 A Thank you.

1 Q I'm going to direct your attention to page 30, Item No. 4.

2 And Ms. Davis, have you seen this report before?

3 A I have seen it recently, yes.

4 Q Page 30, Item 4 provides: "The purpose of this lease
5 agreement was to manage, operate, and maintain the VA
6 Barrington (Avenue), parking lots located on the northwest
7 corner of the campus.

8 The parking lots are physically separated from the
9 healthcare facilities on the south part of the campus, and
10 appear to primarily support public access to the nearby
11 Brentwood Village business district."

12 Did I read that correctly?

13 A Yes.

14 Q Ms. Davies, you would agree with me that the primary
15 purpose of SafetyPark's lease with the VA is to provide parking
16 access to nearby Brentwood Village business district, right?

17 A Yes.

18 Q The primary purpose of this lease does not principally
19 benefit veterans and their families?

20 A Correct.

21 MR. DU: Thank you, Your Honor. No further
22 questions.

23 THE COURT: Counsel, cross-examination?

24 MS. PITZ: Taylor Pitz for the federal defendants.

25 CROSS-EXAMINATION

1 BY MS. PITZ:

2 Q Ms. Davies, I don't know if we have met in person, but my
3 name is Taylor Pitz. I represent the VA in this case. I have
4 just a couple questions for you.

5 Pursuant to the terms of the lease between LA and
6 SafetyPark, SafetyPark remits all net revenues to the VA; isn't
7 that right?

8 A That is correct.

9 Q And as I believe you mentioned earlier, does SafetyPark
10 provide VA with financial statements with the relevant payment
11 of revenue each month?

12 A Yes.

13 Q And Ms. Davies, all regularly staffed parking attendants
14 employed by SafetyPark at the Barrington lots are veterans, are
15 they not?

16 A Yes, they are.

17 Q And lastly, I would like you to just turn back to the
18 exhibit that Mr. Du was showing you. That is Exhibit 148.

19 I would like you to turn to page 6. And about a third
20 of the way down the page where it says No. 4, and it reads:
21 "It is understood that it is the intent of the parties that
22 this be an absolute net lease with no cost to VA, and that the
23 department shall not be obligated to pay any charges."

24 Did I read that correctly?

25 A Yes.

1 MS. PITZ: No further questions, Your Honor.

2 THE COURT: Redirect?

3 MR. DU: Nothing else, Your Honor.

4 THE COURT: First of all, I want to humbly thank you
5 for attending.

6 You have been asked some tough questions today.

7 Could I have the name of the owner of the parking lot?

8 THE WITNESS: Yes, of course. The president's name
9 is Lisane.

10 THE COURT: Just a moment. The president's name,
11 again, is?

12 THE WITNESS: Lisane, L-I-S-A-N-E.

13 THE COURT: L-I-S-S --

14 THE WITNESS: Just one S.

15 THE COURT: Oh. L-I-S --

16 THE WITNESS: -A-N-E.

17 THE COURT: Is that the last name or first?

18 THE WITNESS: No, it's the first name.

19 THE COURT: And the last name?

20 THE WITNESS: Menezes, M-E-N-E-Z-E-S.

21 THE COURT: All right. Once again, let me express
22 that I wish Mr. Menezes had been here in your place. He's the
23 owner of this lot, and you have been put in a very difficult
24 position, asking questions about this lot.

25 So I think all counsel want to thank you.

1 Thank you very much. You may step down.

2 THE WITNESS: Should I leave these here?

3 MR. DU: Yes.

4 THE COURT: And be careful with that first step.

5 There is about two-inch --

6 Counsel, your next witness, please.

7 MR. ROSENBERG: Your Honor, while we're waiting for
8 our next witness, I just wanted to flag -- during our campus
9 tour last week, the Court had a series of questions, and just a
10 few moments ago, I filed a stipulation of the parties that I
11 believe answers the questions that the Court has.

12 THE COURT: Let me read that tonight. I will get
13 back to you tomorrow if I have any questions, but thank you.

14 MR. SILBERFELD: And also, while we're waiting, I
15 can now provide the offer of proof about Mr. Culhane.

16 The deposition transcript, Your Honor.

17 THE COURT: Just a moment. Let me, first of all, go
18 back to my notes.

19 And would you spell that name again just so I have it.

20 MR. SILBERFELD: Dennis, D-E-N-N-I-S, last name,
21 Culhane, C-U-L-H-A-N-E.

22 It's Exhibit 243, and Docket Number is 233.

23 THE COURT: Okay. Please.

24 MR. SILBERFELD: During the testimony of, I think
25 both Dr. Harris and Dr. Braverman, Mr. Culhane's name came up

1 and I think they both recognized it.

2 He's an expert in the field.

3 But the proffer from the plaintiffs, Your Honor, is that
4 Mr. Culhane's testimony would involve evidence of the length of
5 time of VA's knowledge of the effectiveness of permanent
6 supportive housing.

7 Also, the fact that VA recognizes that permanent
8 supportive housing is most effective when implemented using a
9 Housing First model.

10 Also, the fact that VA knows what the necessary elements
11 are of an effective permanent supportive housing, Housing First
12 program, and yet, does not fully implement those.

13 And the fact that permanent supportive housing has been
14 shown specifically to be effective for veterans, and that it
15 has been studied specifically in Los Angeles.

16 Mr. Culhane has also demonstrated that VA knows that
17 keeping wait times to place a person in housing as short as
18 possible is important.

19 That is the offer.

20 THE COURT: All right. What is the relevance? You
21 both have stipulated to a Housing First model.

22 In fact, the VA is based upon a Housing First model.

23 Is the real disagreement here concerning the
24 effectiveness of the program by the VA? Is that the real
25 import of his testimony?

1 In other words, I think you both have stated to the
2 Court that VA is based upon Housing First, and plaintiffs seem
3 to agree with that.

4 Is the question just the effectiveness of this that he
5 is going to opine upon?

6 MS. WELLS: Your Honor, there is no disagreement
7 with respect to the fact that Housing First is the policy the
8 VA uses and that that's a good policy, and we don't have any
9 issue with the fact that Mr. Culhane -- or Dr. Culhane is an
10 expert on the Housing First policy.

11 He previously worked for the VA.

12 Our concern with his testimony is that he stopped
13 working for the VA, I believe in 2018, and he never actually
14 looked into issues relating to veterans here in Los Angeles.

15 So he has some general information, but he said over and
16 over in the course of the deposition that he actually had no
17 knowledge about anything on the ground here in Los Angeles.

18 He is involved -- I will note -- in a study on relating,
19 I think, to the City or the County. So he has some awareness
20 of homelessness issue in Los Angeles generally, but not
21 specifically with respect to veterans.

22 THE COURT: Who was he retained by? Was he retained
23 by the plaintiff?

24 MS. WELLS: Plaintiff.

25 MR. SILBERFELD: He is a fact witness, Your Honor.

1 Not an expert.

2 THE COURT: Not an expert.

3 MS. WELLS: Although, if you look at the Rule 26
4 disclosure, they do identify him as offering opinions on these
5 issues.

6 THE COURT: Now, is there -- counsel for the
7 plaintiff stated, and it sounded like a stipulation, but I'm
8 not certain of that, that the Court was going to be able to
9 allow designations and counter designations that each of you
10 have stipulated to; is that correct?

11 MS. WELLS: I don't know if we stipulated to them,
12 but the filing that we made has the portions of the deposition
13 that we both are designating, along with our counter
14 designations, and there is a chart that shows the objections.
15 That has been lodged.

16 THE COURT: About how long will it take the Court to
17 read that?

18 MS. WELLS: It's a pretty short deposition, Your
19 Honor. I think it might not take more than an hour or so.

20 THE COURT: I will try to read that tonight. If
21 you'd have that available for me, I appreciate that.

22 Thank you, counsel.

23 MS. PITZ: Again, Taylor Pitz for the federal
24 defendants, for the record.

25 Defendants call calls Andrew Strain.

1 THE COURT: Thank you very much, sir.

2 If you would be kind enough to step forward.

3 Would you raise your right hand?

4 THE COURTROOM DEPUTY: Do you solemnly swear that
5 the testimony you are about to give in the cause now pending
6 before this Court, shall be the truth, the whole truth, and
7 nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE COURT: Thank you very much. If you would be
10 seated, sir. The entrance is just to my right.

11 It's closest to the wall. What I'm worried about is
12 there is a small step up, about an inch. I don't want you to
13 stumble.

14 THE WITNESS: Thank you.

15 THE COURT: Counsel, if you would like to get these
16 papers for just a moment so he has clearance so that any new
17 documents can be placed in front of you.

18 First of all, let us all thank you for your courtesy on
19 the tour the other day.

20 ANDREW STRAIN,

21 having been duly sworn,

22 testified as follows:

23 THE COURT: Would you state your full name for the
24 record, please?

25 THE WITNESS: My name is Andrew Strain.

1 THE COURT: Would you spell your last name, sir?

2 THE WITNESS: S-T-R-A-I-N.

3 THE COURT: Thank you. Direct examination, please.

4 DIRECT EXAMINATION

5 BY MS. PITZ:

6 Q Hello, Mr. Strain. It's good to see you.

7 Where are you employed?

8 A I'm an employee at the VA Greater Los Angeles Healthcare
9 System.

10 Q And where is your office located?

11 A My office is on the West Los Angeles campus.

12 Q And what is your position?

13 A I'm a program manager in the Office of Strategic Facility
14 and Master Planning, or I will refer to it often as just the
15 planning office.

16 Q And can you briefly describe your responsibilities in that
17 role?

18 A Yes. So I like to think of my responsibilities as falling
19 into three different buckets.

20 The first bucket is related to planning and project
21 management where I'm very involved with the offices that are
22 overseeing the construction of housing on the West LA Campus
23 with the environmental reviews and historic preservation
24 reviews, helping in a project management role to coordinate
25 between offices based on the east coast and on the west coast,

1 and then the services that are provided by the homeless
2 programs.

3 Which kind of leads into this second bucket of my role,
4 which is direct collaboration with the Community Engagement and
5 Reintegration Service, or CERS.

6 I do a lot of work helping CERS with organizing things
7 like their website, developing tools to help facilitate
8 veterans accessing housing resources, things like the
9 project-based voucher website that shows available vacancies
10 across the community for PBVs, working with CERS to coordinate
11 different inputs that go into the planning process from that
12 first bucket.

13 And then the third bucket is related to communications
14 and public affairs.

15 I work very closely with our communications office to
16 support things like responses to media inquiries, posting
17 information on our website, doing stories, like success stories
18 about veterans who have moved into housing, and trying to
19 encourage other veterans about resources that are available,
20 working with our social media to put information out through
21 those venues.

22 So, yeah, my role is to kind of coordinate between those
23 three spheres and collaborate between program management
24 construction, homeless programs and communications.

25 Q So today I have some questions for you regarding the third

1 category you have identified.

2 So with that in mind, would you please be able to
3 describe a few of your responsibilities with regards to that
4 last role, so, veteran outreach and engagement.

5 A Yeah. I think -- I am involved with, like I said, updates
6 on our online resources, like different stories and social
7 media that we push out.

8 I also attend a lot of the different veteran meetings,
9 including the community meetings that happen in each of the
10 residential buildings on the property.

11 I attend the VA town halls that happen at West LA and at
12 our 11 other sites of care.

13 I work in a role to try to help educate both veterans
14 and be transparent amongst veterans about progress with our
15 housing efforts, but also with VA employees.

16 I am often briefing two different VA employees what is
17 going on with the master plan so they can be educated in their
18 interactions with veterans.

19 I also am involved with a lot of tours. I do a lot of
20 kind of taking different stakeholders, veteran groups around
21 the property and showing them, in person, kind of what housing
22 is where, and the construction progress, and helping orient
23 them from the, you know, paper copy of the master plan to what
24 you are seeing in realtime.

25 Q And in that capacity, do you work with any of the

1 oversight boards involved with the campus?

2 A I do, yeah. We have a couple of different regularly
3 recurring oversight boards.

4 The names are a bit confusing, but we have something
5 called the Community Veteran Engagement Board, or the CVEB,
6 which meet on a monthly basis.

7 It's made up of representative of various veteran
8 service organizations and veterans in the Los Angeles area. I
9 do help facilitate the monthly briefings to the CVEB, and then
10 there is also, separately, a federal advisory committee called
11 the Veteran Community Oversight and Engagement Board, or the
12 VCOEB.

13 THE COURT: Let's slow down just a little bit
14 because we are losing you on realtime. So, very slowly.

15 The Veteran Community Oversight Engagement Board, which
16 we know, and?

17 THE WITNESS: The veteran -- so, separate from the
18 monthly Community Veteran Engagement Board is the Veteran
19 Community Oversight and Engagement Board, which is a federal
20 advisory committee that has quarterly and monthly meetings with
21 the Greater Los Angeles area.

22 It's also made up of veterans and stakeholders in the
23 space of homelessness.

24 So I'm involved in doing the presentations, both on a
25 monthly and quarterly basis, to that board.

1 And also, working with our partners via the One Team
2 efforts to share information across the County, via meetings
3 like the Los Angeles Veterans Collaborative which is another
4 monthly meeting that I attend and provide regular updates to.

5 That is an important partnership we have with the LA
6 County Military Veteran Affairs.

7 And again, all of these kind of efforts and boards are
8 presentations where we're attempting to be transparent about
9 the progress in implementing the master plan, and also
10 collecting feedback from veterans and service providers and
11 stakeholders around what is happening.

12 THE COURT: Now, we just lost you. Not in terms of
13 the content, but in terms of our record.

14 Efforts to share information across the County, via
15 meetings like the Los Angeles Veterans...

16 THE WITNESS: The Los Angeles Veterans Collaborative
17 is a meeting I present at in collaboration with the LA County
18 Military Affairs Department.

19 THE COURT: Okay. Thank you.

20 BY MS. PITZ:

21 Q And, Mr. Strain, were you involved with the campus before
22 you began your current position at VA?

23 A I was, yes. I was involved in a contract position through
24 my previous employment, both with the 2016 draft master plan
25 and with development of the master plan 2022 update.

1 Q And turning to your involvement in those master planning
2 processes, did the development of those plans involve gathering
3 a significant amount of veteran and community input?

4 A From my perspective, yes. I think both of those plans
5 include a section -- I think it's the same section in both
6 plans -- Chapter 3, which describes the veteran engagement and
7 outreach efforts that went into collecting the feedback for
8 those plans.

9 Both of those plans included presentations to different
10 veteran groups via public meetings and town halls.

11 Both of the plans included pop-up type events where the
12 drafting of the plan was collecting comments from the veteran
13 community.

14 The 2016 draft master plan was released on the Federal
15 Register as a preliminary draft and received over 1,000
16 comments that were then reviewed and incorporated into the next
17 iteration of the plan.

18 The master plan 2022 was a document that -- some of the
19 outreach efforts were a little bit more challenging due to the
20 COVID environment at the time, but there were still many
21 virtual zoom meetings where the plan was presented to veteran
22 groups, and opportunities for veterans and the VA to really
23 collect veteran feedback and comments on those plans.

24 Q And since the publication of the 2022 master plan, has VA
25 made an effort to gather ongoing veteran input or feedback

1 regarding the development of the campus?

2 A Yes. I think that is a priority of the office that I work
3 in, to continue to be transparent with veterans, and be sharing
4 updates about these plans with veterans and collecting their
5 feedback on what should be incorporated into the plans and how
6 they should be implemented.

7 I think both the draft -- the 2016 draft and the 2022
8 document were described as living documents that, you know,
9 evolve over time as the needs and interests of veterans in the
10 Los Angeles area evolve.

11 So I think it's key that VA continues to share updates
12 with veterans and listen to veterans because this is their
13 land, this will be their home, and it's important to make sure
14 that they are participating in the ongoing planning efforts at
15 the property.

16 Q And are there any regularly scheduled events that VA
17 engages with as part of that veteran feedback solicitation
18 process?

19 A Yes. I think in addition to the monthly board meetings
20 that I was describing, the VA has quarterly, and monthly,
21 sometimes, town halls at each of our sites of care.

22 The VA also attends monthly meetings at each of the
23 residential locations on the campus.

24 So, I attend all of the community meetings that go on
25 for Buildings 205, 208, 209, the EUL buildings on the property.

1 I also have been invited to attend, and I have attended
2 a couple of the peer-led engagement meetings at places like
3 CTRS where veterans are in the program, have set up kind of a
4 community structure, and bring up different concerns they have
5 with CTRS and with planning as a whole.

6 And they will invite guests to come and present, so I
7 have presented on the construction progress or the lease up
8 progress for future buildings that are opening.

9 I have also presented at other transitional housing
10 programs and attended their regular meetings, like the new
11 directions programs, both in Building 116 and Building 257, the
12 women's oasis program.

13 I presented the domiciliary as a robust meeting schedule
14 amongst the different tracks.

15 So I have been invited to present to the housing track
16 at the domiciliary, the combat track.

17 Again, these are all efforts to kind of hear what is on
18 the minds of veterans, to share resources with veterans who are
19 residing on the property, and to make sure that the VA is being
20 transparent about, you know, how sometimes these confusing
21 processes work and how to get connected to housing resources or
22 other resources that they may be interested in.

23 Q And since the publication of the 2022 master plan, has VA
24 conducted any formal survey seeking veteran input on the
25 development of the campus?

1 A Yes. Most recently we conducted a survey from February to
2 May of 2024.

3 Q And what was the subject matter of that survey?

4 A So that survey was specific to community and -- community
5 amenities and the town center as part of this North Campus
6 development.

7 And going out to ask veterans what does a veteran
8 community mean to you, in addition to housing, to have kind of
9 a robust and thriving environmental event.

10 Q And who was VA targeting with this survey?

11 A VA was targeting veterans and making additional efforts to
12 seek out responses from veterans who were working services at
13 the West LA VA and who are currently residing on the West LA
14 VA.

15 But specifically, we really wanted to hear from
16 veterans.

17 Our flyers for the survey, I think, said "Veterans, we
18 want to hear from you."

19 This was an effort for surveying veterans.

20 Q So just to be clear, with the survey, VA was specifically
21 targeting veteran input as opposed to input from the community
22 at large; is that accurate?

23 A Yes.

24 Q And I would like to ask you a few questions about the
25 process for that survey.

1 So what was the first step of that survey process?

2 A So our first step was to develop the survey questions
3 themselves.

4 To develop those survey questions, we used inputs from
5 prior engagement efforts with veterans to include what we heard
6 during the development of, most recently, the master plan 2022,
7 but also from some of the recommendations from our VCOEB board.

8 We took kind of all of those different types of services
9 and amenities that we had heard and put them into an online
10 form that we were trying to make accessible for veterans to be
11 able to fill out.

12 Q And what was the next step in that process?

13 A So, we started with doing kind of an online marketing of
14 the survey.

15 We had a publicly-accessible link, and we pushed it out.
16 We sent e-mails out to all of the stakeholders who had signed
17 up for updates from the Greater Los Angeles Healthcare System,
18 so we sent it out via our gov delivery site.

19 We put flyers together and posters together that we hung
20 around campus and in the hospital. We pushed it out on our
21 social media pages.

22 Yeah. That was the next thing.

23 Q Did VA do anything else to help publicize the survey?

24 A So, specifically, to try to get more veterans who are
25 residing at West LA to fill out the survey, we attended

1 multiple meetings -- the types of meetings I was describing
2 earlier.

3 We attended and presented this survey to the domiciliary
4 multiple times, to the CTRS veteran engagement committee, to
5 the community meetings at each of the EULs.

6 We went to the CalVet State Home and presented this to
7 the veterans at the State Home.

8 We went to New Directions and presented it to the
9 veterans in that transitional housing program, both in Building
10 116 and at the Oasis Women's program.

11 We attended these events and we presented some slides
12 that provided context around the survey, and it talked about
13 what we were trying to get out of the surveying effort.

14 We also had staff there, both with laptops to be able to
15 fill out the survey for veterans who may not be comfortable
16 just, you know, accessing the QR code.

17 We also had staff there with paper copies of the survey
18 that we could either give to veterans to fill out themselves or
19 we would sit down and take the survey with them.

20 So we really wanted to prioritize hearing from veterans
21 who were residing on the property because we felt like they had
22 the best sense for the current environment and potential for
23 the future.

24 Q And I'm just curious, how many events would you estimate
25 that you attended personally as a part of that effort?

1 A I think it was about 20.

2 Q And now turning to the survey itself, what questions did
3 the survey pose?

4 A So one of the first questions was about demographics where
5 you could indicate whether you were a respondent that was a
6 veteran, a veteran who received services at the West LA VA,
7 and/or a veteran currently residing at the West LA VA.

8 And then the majority of the rest of the survey was a
9 list of different types of services and amenities.

10 So, you had stuff like art studio, banking services,
11 coffee shop, cafeteria/commissary, legal services. And then
12 for each of those options, the respondent could indicate strong
13 interest, moderate interest, or no interest.

14 I think there was about 50 or 60 of those types of
15 options. So we were trying to use this type of format to gauge
16 what was of the most interest to veterans.

17 MS. PITZ: And, Your Honor, if I may approach, I
18 would like to show the witness what has been marked as
19 Exhibit 1640.

20 THE COURT: 1640, thank you. Is that the survey?

21 MS. PITZ: So, this is not the survey itself. We
22 can get into what this is, though, once Mr. Strain has a copy
23 of the document.

24 THE COURT: Thank you very much.

25 BY MS. PITZ:

1 Q Mr. Strain, do you recognize this document?

2 A Yes, I do.

3 Q What is this document?

4 A This is a preliminary analysis that I put together, like
5 right after the survey period closed of where I was trying to
6 do some initial analysis on the data we had received via the
7 survey system.

8 Q Okay. Let's walk through this a little bit.

9 So looking at the bar chart on the left-hand side, what
10 does that represent?

11 A So this is a breakdown -- when we were talking about the
12 questions, it's a breakdown of the different kind of
13 demographic responses that we collected. The difference -- so,
14 total responses was people -- respondents who started the
15 survey, but not all may have finished the survey.

16 Complete entries were those that were finished and all
17 of the fields were filled out.

18 Veterans receiving services at the VA West LA Campus,
19 that was a specific question that veterans would respond to
20 indicating that they did receive services at West LA VA.

21 And then veterans currently residing on the VA West LA
22 Campus was another option to check as you were filling out the
23 survey.

24 Q Ultimately, about how many people ended up taking the
25 survey?

1 A There were over 300 complete entries.

2 Q And in total?

3 A It was about 400 responses, but not all of those got to
4 the end. People, I think, didn't finish the survey.

5 Q Okay. And then looking at the chart on the right-hand
6 side of this slide, what does that reflect?

7 A So this was a preliminary analysis that I attempted to do
8 by looking at responses of strong interest and moderate
9 interest, and weighting strong interest the most.

10 And using those to try to understand, based on kind of
11 the bar chart categories, what were the most popular or what
12 were veterans most interested in of all of those services and
13 amenities that were listed.

14 So you have different columns that kind of match to the
15 bar chart on -- from the complete entries, what was the most
16 interest, and then from veterans receiving services at West LA,
17 and veterans residing at West LA.

18 Q And overall, what were some of the most popular amenities
19 and services listed on the survey?

20 A Yeah. I think this really matched to what we were hearing
21 from veterans in the community meetings and what we were seeing
22 around events for veterans.

23 I think veterans, through the surveying effort, were
24 really interested in food as something that would bring
25 veterans together, bring them outside of their apartments or

1 outside of their housing situation into communal spaces.

2 We saw cafeteria/commissary as a top response. No
3 matter how you kind of split up the data, it was top 2 or 3.

4 I think some of the other responses that really jumped
5 out and kind of echoed what we were hearing from the community
6 meetings was security. I think veterans who are attending and
7 very vocal, active members of their communities in these
8 Enhanced-Use Leases from those community meetings, security is
9 something that is brought up every month.

10 It's something that veterans call out as wanting to feel
11 safe and secure in their homes.

12 I think that criminal activities are top of mind for
13 veterans living on campus. And, you know, there is a sense in
14 some of these buildings that it's just a couple of the
15 residents that can really make for a negative experience for
16 the rest of those living in the building.

17 So security was something, I think, that carried through
18 from both the surveying effort and what we were hearing in the
19 community meetings.

20 Transportation resources, as well, is something that was
21 kinds of a common thread.

22 It's a tricky -- as the Judge probably saw last week --
23 it can be a key property to navigate with the hills and with
24 the detours and with the construction. You know, we have road
25 closures that are often -- are often changing routes that

1 veterans may have grown used to or causing delays.

2 It's also -- it's a pretty big hill from the housing to
3 the medical center. So something that was very popular in the
4 survey, and also something that I think was echoed in the
5 community meeting in the conversations that we had, was a more
6 consistent and accessible way to get around the property would
7 be helpful, especially given all of the construction that is
8 happening and the changes in day-to-day kind of operations.

9 And then some of the other themes are just around
10 activities. This especially came through -- there was an open
11 field section of the survey at the end where veterans could
12 kind of add comments or feedback.

13 And I think moving into this housing is sometimes an
14 isolating experience for veterans who may be used to more
15 communal living environments.

16 And so I think we heard both in the survey results, and
17 kind of in the administration of the survey, that the VA needs
18 to build a community that isn't just housing but has recreation
19 or services or maybe a cafeteria -- something that kind of
20 brings veterans together in communal ways so they can get out
21 of their room and continue to interact with their peers.

22 Q And were there any amenities or services for which there
23 was a particularly low or no interest?

24 A So we didn't really present the survey as, like, asking
25 veterans what they didn't want to see on the property.

1 I think one of the lower responses that I can recall is
2 childcare services.

3 I remember administering the survey to a lot of veterans
4 who said "my kids are grown," "I have no interest in childcare
5 services."

6 So, I recall kind of things like that, but it really
7 wasn't presented -- or I don't think it's being used as a way
8 to gauge what veterans don't want.

9 It was more to try to understand what is a top priority.

10 Q And then, Mr. Strain, briefly looking back at the exhibit
11 in front of you, if you could turn to page 3 of that document.

12 Is that an approximate schedule of the survey outreach
13 that you discussed earlier?

14 A Yes.

15 Q And then could you turn to -- beginning on pages 4 and 5.

16 Is this the presentation you gave at some of those
17 outreach events?

18 A It is, yes.

19 MS. PITZ: Your Honor, I move this be admitted.

20 THE COURT: Received.

21 (Exhibit 1640 received into evidence.)

22 BY MS. PITZ:

23 Q Mr. Strain, earlier you mentioned this is a preliminary
24 analysis.

25 Does VA intend to do additional analysis with these

1 survey results?

2 A Yeah, I think so. I have been in communication with my
3 colleagues and the research service. I'm not a researcher or
4 data analyst, so I'm excited about the opportunity to
5 collaborate with those colleagues in research who can have this
6 data set now and are interested in writing, like, a white
7 paper.

8 I think that would help to further analyze and maybe
9 pull out additional concepts from the data set that aren't
10 included in my preliminary analysis.

11 Q And I'm curious, what prompted VA to conduct the survey in
12 the first place?

13 A So we kind of talked about this earlier, but just in the
14 efforts of, like, transparency and ongoing outreach and
15 feedback.

16 There are a lot of different veteran groups who are
17 interested in what is happening on the West LA Campus. And I
18 think those veteran groups, their feedback is not uniform. I
19 think we hear different priorities from different veteran
20 groups, whether it's members of the VCOEB or whether it's
21 veterans seeking permanent supportive housing, whether it's
22 veterans who think that the VA should be removing all
23 third-party land use.

24 I think we get different -- we get different responses
25 from different veteran groups, and we need to understand kind

1 of when those responses aren't uniform or we're hearing from a
2 very specific veteran group, how do we try to broaden the input
3 so that all veterans can participate in the process and can
4 weigh in and that the VA is making those decisions in a
5 transparent way.

6 So I think that this surveying effort rose from some
7 recommendations from our VCOEB and additional study in response
8 to those recommendations. And then taking that additional
9 study and trying to broaden the outreach to other veteran
10 groups and all veterans to get their feedback on things that
11 the VCOEB had proposed.

12 For example, a hotel, which was one of the services
13 listed in the survey.

14 MS. PITZ: I don't have anything else for you at
15 this time. But, thank you, Mr. Strain.

16 THE COURT: Thank you, counsel.

17 Counsel, do you have cross-examination?

18 MR. DU: Yes, Your Honor.

19 May I proceed?

20 THE COURT: Please.

21 CROSS-EXAMINATION

22 BY MR. DU:

23 Q Good afternoon, Mr. Strain.

24 A Good afternoon.

25 Q You talked briefly about your role, but your role also

1 includes the planning needs for the five counties and the
2 catchment area, right?

3 A That's correct, yeah. Our planning office is responsible
4 for the entire healthcare system and all of our sites of care.

5 Q And I think you mentioned this on your examination, but
6 you work very closely with the public affairs office, right?

7 A I do, correct.

8 Q And working with the public affairs office, you assist
9 with providing updates about the VA's implementation of the
10 master plan, correct?

11 A Correct.

12 Q And, in fact, Mr. Strain, as you mentioned, you give a lot
13 of physical tours of the campus, right?

14 A Yes.

15 Q The various stakeholders?

16 A I do.

17 Q Including federal judges?

18 A I have, yes.

19 Q Politicians?

20 A Yes.

21 Q The media?

22 A Yes.

23 Q Part of your job also entails veteran outreach and
24 engagement, correct?

25 A Correct.

1 Q And from your engagement and outreach to veterans, that
2 helps inform your presentation to the various oversight boards,
3 correct?

4 A Yes. I think veteran feedback -- I mean, veterans are --
5 you know, you listed judges and congressmen and oversight
6 boards. I think veterans are our primary stakeholder. That's
7 the feedback that is most important to planning and
8 implementing this plan.

9 Q And during your meeting with veterans, have you ever heard
10 from veterans that they need more housing closer to the campus?

11 A I have, yes.

12 Q And have you informed the oversight boards that veterans
13 need additional housing closer to the campus?

14 A I think that perspective has been shared. Our
15 presentations to the federal advisory oversight -- the VCOEB,
16 that oversight board -- is typically one that -- they request
17 topics for the VA to present on, so we are presenting responses
18 to their requested topics for the VCOEB.

19 For the community veteran engagement board, that's a
20 topic that comes up around housing -- the need for housing, the
21 need for, like, changes in eligibility with the AMI issue.
22 Those are all topics that have come up in both of those forums.

23 Yeah. It's something we talk about, and it's an ongoing
24 dialogue with our oversight boards.

25 Q Have you heard from veterans that they need to be closer

1 to the campus in order to receive medical service?

2 A I have.

3 Q And have you informed your various oversight boards that
4 that is a need?

5 A I think so, yes. I think that is something that is a
6 theme.

7 And I haven't given a topic -- I haven't given a
8 presentation to that specific topic of veterans needing access
9 to the property, or done, like, a data analysis, but I have
10 been part of presentations from senior VA leadership, like
11 Keith Harris who have presented that type of information on the
12 demographics of veterans, based on our by-name list, where they
13 are located, where we understand they would fall in the
14 different AMI categories.

15 Those are regular presentations to our oversight boards.

16 Q Mr. Strain, I want to be clear, have you given a
17 presentation to the various oversight boards that veterans need
18 to be closer to the campus to receive medical services?

19 A I'm not sure I understand the question.

20 Q Have you ever presented to the various oversight boards
21 that you talked about on your direct examination that veterans
22 need to be closer to the campus in order to receive medical
23 services?

24 A I have participated in presentations that share feedback
25 we hear from veterans to include the interest in living on the

1 West LA Campus.

2 I have participated in those presentations to our
3 oversight boards.

4 Q And during your meeting with veterans, have you ever heard
5 from veterans that the VA needs more temporary supportive
6 housing on or near the West LA Campus?

7 A I have. And I have seen the VA create more transitional
8 housing and emergency shelters in response to those requests
9 from veterans and veteran stakeholders.

10 For example, the CTRS program is one that I think has
11 evolved as veterans have provided feedback and made requests to
12 the VA about capacity, about eligibility criterias, those are
13 changes that the VA has made in response to veterans who are
14 asking for more transitional housing.

15 So I see that as a collaborative process where veterans
16 and veteran advocates have made that request and the VA has sat
17 down with them and said, all right, let's figure out to make
18 this happen. Where are the eligibility issues, where are there
19 barriers, and how do we work through those barriers.

20 Q Mr. Strain, what is the current capacity of CTRS?

21 A I believe it's 135 shelters and then 12 overnight drop-in
22 shelters.

23 Q The VA currently has no plans to increase that number,
24 correct?

25 A Not that I'm aware of, but I think it's an ongoing

1 conversation amongst leadership, amongst funding and our budget
2 situation, and amongst veterans trying to understand where the
3 need is, and, again, where there might be barriers to accessing
4 services so we can make sure that we're meeting veterans where
5 they're at both at CTRS, but having a lot of options for
6 veterans.

7 Because not every veteran wants to be at CTRS; not every
8 veteran wants to be at the dom; not every veteran wants to be
9 at the domiciliary -- or at the Safe Parking program.

10 It's important for our strategy to include a bunch of
11 different access points so we can meet veterans where they're
12 at on their pathway to permanent supportive housing.

13 Q Mr. Strain, I want to direct you back to my questions
14 which is: The VA currently has no plans to increase that
15 number, correct?

16 A Not that I'm aware of.

17 Q Now, in your role in providing updates about West LA
18 Campus, Mr. Strain, you are also familiar with the various
19 construction projects going on, right?

20 A Correct.

21 Q This also includes the infrastructure of the West LA VA
22 Campus, correct?

23 A I'm familiar, yes.

24 Q And you have provided updates regarding the
25 infrastructure, right?

1 A Yes.

2 Q When the VA decided to upgrade its various utilities, be
3 wet or dry utilities, it only planned for upgrading the utility
4 to accommodate 1,200 residents, correct?

5 A Correct.

6 Q And that's for the 1,200 planned permanent supportive
7 housing units in the 2022 master plan, correct?

8 A Correct.

9 Q So if additional -- so if additional permanent supportive
10 housing units were required, the VA would need to reassess what
11 utilities need to be upgraded in order to accommodate
12 additional permanent supportive housing units, right?

13 MS. PITZ: Objection. This is outside the scope of
14 the direct examination.

15 THE COURT: It is, counsel. I don't know that he's
16 an expert on this. If it goes towards his information he's
17 received and whether he has conveyed it on to one of these
18 boards, that's acceptable, but as far as the implementation,
19 I'm not too certain he's qualified for that.

20 MR. DU: I'm happy to lay additional foundation,
21 Your Honor.

22 THE COURT: Please.

23 BY MR. DU:

24 Q Mr. Strain, you provided various updates regarding the
25 infrastructure at the West LA VA Campus, correct?

1 A I have, in the role as a project manager, but, yeah, to
2 clarify, I'm not an engineer so I am not in an engineering
3 capacity.

4 Q Who have you provided these updates to?

5 A To residents of the properties, veterans asking about why
6 is there a road closure, where am I parking, would I have to
7 move my vehicle, what's the point -- why is there construction
8 happening at 7:00 a.m.

9 I have provided those updates to our Community
10 Veteran Engagement Board. I have provided those updates to the
11 Veteran Community Oversight Engagement Board. So, yeah, again,
12 trying to be transparent about the status and also transparent
13 about the construction impacts and associated mitigations.

14 THE COURT: While you may not be an expert in those
15 areas, you are conveying that information to these different
16 boards?

17 THE WITNESS: I am, yes.

18 THE COURT: If that isn't in that area, counsel, the
19 objection is overruled.

20 BY MR. DU:

21 Q Mr. Strain, so in order -- if the VA decides to build
22 additional permanent supportive housing units beyond the 1,200,
23 the VA would need to reassess and determine what additional
24 utilities need to be planned, correct?

25 A I think it's location dependent, to a certain extent.

1 I think that it is dependent on environmental approvals
2 and space areas of the property that are currently cleared via
3 our Programmatic Environmental Impact Statement.

4 So I couldn't necessarily say one way or another.

5 But, yeah, I would assume if you had additional units
6 you need to make sure that the utilities are scoped
7 appropriately, and that those are funded.

8 I'd also, you know, same with utilities, call out the
9 services, the security, the operations.

10 I think if you are going to scope additional units, it
11 can't just be the construction of those units, it needs to be
12 the operation of those units as well.

13 Q But the current utilities on the West LA Campus as it's
14 upgraded is only planned for 1,200 residents, right?

15 A The current utilities are planned for all of the existing
16 VA facilities and the planned Enhanced-Use Leases that bring up
17 the total count of units on the property to 1,200.

18 Q Mr. Strain, I want to talk to you about the veterans on
19 the West LA VA Campus.

20 Who is Robert Merchant?

21 A He's the medical center director.

22 Q And is he your supervisor?

23 A No, he is not.

24 Q Who is he in the chain of command to you?

25 A He is my supervisor's supervisor's supervisor, I think.

1 He's three above me, I guess, or four.

2 So my supervisor is Chelsea Black. Her supervisor is
3 John Kuhn. John Kuhn's supervisor I believe is Robert
4 Merchant.

5 Q And do you often write e-mails to Mr. Merchant?

6 A On occasion, but I mean, I've worked with Robert Merchant
7 in his current role, but also in his prior roles.

8 So I -- typically if I'm e-mailing him in his current
9 role, I'm also cc-ing my boss and my boss' boss.

10 MR. DU: Let's take a look at Exhibit 105.

11 BY MR. DU:

12 Q Mr. Strain, do you recall writing an e-mail to Merchant
13 stating, "After cleaning out a few hoarders' tiny shelters last
14 week, I'm not sure those guys are going to make it in EULs or
15 even any of the various transitional housing programs."

16 A I think this is Teams message, but yeah, this looks like
17 something I think I've written.

18 Q You wrote this to Mr. Merchant, right?

19 A I would assume so, yes.

20 Q Your supervisor's supervisor's supervisor?

21 A Correct.

22 Q After you wrote this message to Mr. Merchant, did you
23 reach out to any caseworkers to help these veterans?

24 A I was working with caseworkers to clean out tiny shelters
25 that had significant hoarding issues.

1 Q Did you inform the caseworkers that you were concerned
2 that they might not make it in the transitional housing
3 programs?

4 A Yeah, I mean, we were talking as we were cleaning out --
5 this is I think a conversation you're having as you're, you
6 know, cleaning out trash and human waste, and saying, you know,
7 I'm concerned that there is going to be challenges with these
8 veterans living in an independent living situation.

9 Q And Mr. Merchant wrote back to you, he said, "Not to be
10 glib, but there's a Shawshank effect there. When people have
11 been unhoused for so long, have some lost the skills to live
12 independently."

13 I read that correctly, right?

14 A I guess so, yeah.

15 Q Mr. Strain, you understand that the master plan calls for
16 1,200 units of permanent supportive housing, right?

17 A I do.

18 Q You believe that it's a mistake to build more than 1,200
19 permanent supportive housing units, right?

20 A I don't think I've said that.

21 Q You believe that is not a well-informed plan to build more
22 than 1,200 permanent supportive housing house units, right?

23 MS. PITZ: Objection. Once again, we are outside
24 the scope of the direct examination.

25 Plaintiffs did not call Mr. Strain as a witness

1 themselves, even though he was in defendants' initial
2 disclosure.

3 He has been called by the government for the limited
4 purpose of discussing veteran input and feedback.

5 THE COURT: I tend to agree with counsel.

6 If he's conveying information, I'm going to allow that.
7 But I think we're moving into an area that I'm, quite frankly,
8 going to sustain the objection.

9 MR. DU: Your Honor, this is going towards his bias.

10 THE COURT: No. Thank you very much.

11 MR. DU: I will continue to move on.

12 BY MR. DU:

13 Q Mr. Strain, do you remember on direct examination, you
14 mentioned your efforts and how proud of your efforts with
15 respect to the 2016 master plan and 2022 master plan?

16 Do you recall that?

17 MS. PITZ: Objection. Misstates testimony.

18 THE COURT: Well, I'm not sure.

19 Do you recall that?

20 THE WITNESS: I'm confused by the question.

21 THE COURT: I am, too.

22 BY MR. DU:

23 Q Mr. Strain, do you recall testifying you were proud of the
24 outreach efforts related to 2016 draft master plan and 2022
25 master plan?

1 A Yeah, I don't know if I would be comfortable using the
2 word "proud," that kind of makes it -- I don't think it's about
3 me being proud, I think it's about the agency doing due
4 diligence and prioritizing feedback from veterans.

5 So I don't think I used word proud. If I did, I'm not
6 sure that's what I meant to say.

7 I think the VA participated in a process, but I think
8 that was the VA's process, it wasn't me or my pride.

9 Q Well, was a similar survey conducted -- was a similar
10 survey similar to the town center survey conducted for the 2016
11 draft master plan?

12 A There were surveying efforts. At the time a group that we
13 were collaborating with on the plan called Vets Advocacy had
14 set up a survey and entered each of those survey responses in
15 the Federal Register as a public comment.

16 So that was one of the inputs into the Federal Register
17 and it's part of the thousand comments we collected.

18 But we didn't necessarily standardize the format of
19 those comments, we accepted all types of comments and
20 attachments into the Federal Register, as I recall.

21 Q Mr. Strain, are you familiar with the VA's OIG report in
22 2018?

23 A Yes.

24 Q Let's take a look at Exhibit 2, page 9.

25 Do you see under the heading, "VA DMP Outreach

1 Efforts Were Not Primarily Focused on Veterans?

2 Do you see that section?

3 A I do.

4 Q Do you see the second paragraph, it states, "The OIG
5 assessed the outreach effort VA used to create the DMP draft
6 master plan and concluded VA primarily focused its attention on
7 groups that represented the public at large versus veteran
8 interest."

9 Did I read that correctly?

10 A You did.

11 Q It goes further and provides, "the briefings held with
12 stakeholders during the development phase of the DMP focused
13 largely on political partners and neighborhood councils."

14 Do you see that?

15 A I do.

16 MR. DU: Thank you, Mr. Strain.

17 No further questions, Your Honor.

18 THE COURT: Counsel, redirect?

19 MS. PITZ: May I just have a moment, Your Honor?

20 THE COURT: Certainly.

21 MS. PITZ: Nothing further.

22 THE COURT: Sir, thank you very much. Thank you for
23 your courtesy the other day, I appreciate it.

24 THE WITNESS: Thank you.

25 THE COURT: You may step down.

1 Counsel, would you like to call another witness
2 or would you like to resume tomorrow? It's your choice.

3 MR. ROSENBERG: I think we're done for the day. And
4 I think it would be appropriate to provide the Court with an
5 update on where we stand in the case.

6 THE COURT: Okay.

7 MR. ROSENBERG: So setting aside for a moment the
8 landfill issue, on which the Court has made clear how it would
9 like us to proceed.

10 THE COURT: I think you'd join me in that, wouldn't
11 you?

12 MR. ROSENBERG: I'm sorry?

13 THE COURT: I think you'd join me in that, wouldn't
14 you?

15 MR. ROSENBERG: Yep, and we've already started
16 process.

17 THE COURT: I think the plaintiffs would also since
18 we're interested in veterans welfare, right? Okay.

19 MR. ROSENBERG: The only remaining witness we
20 anticipate calling at this point is Dr. Braverman. We will
21 bring him back and he'll be ready to come back tomorrow.

22 THE COURT: Okay.

23 MR. ROSENBERG: I know that the Court -- I know that
24 Bridgeland has a witness that they would like to present on
25 Thursday, and then I believe another witness that they will not

1 be able to present until first thing on Friday morning due to a
2 conflict.

3 And we had previously scheduled and anticipate that
4 closing arguments will still take place on Friday, again,
5 subject to presumably what may happen with the landfill issue
6 and I don't know how the Court might stage that if we're not
7 able to bring somebody in right away.

8 THE COURT: We will sit here until we do.

9 MR. ROSENBERG: Understood, understood. But I just
10 wanted to flag for the Court what we anticipated so it can plan
11 accordingly.

12 THE COURT: By your choice. I don't care if you
13 bring in Lindsey Horvath, specifically from the board, I don't
14 care if you bring in Barbara Ferrer, but I'm not going to be
15 satisfied with a, once again, bumper car bureaucrat problem.

16 I want the top levels. Normally, I would be calling the
17 Mayor if this was a different matter, and I would be calling
18 the Chairman of the Board.

19 I have done that in the past, so this shouldn't come as
20 a shock, although, you don't know that, but this is at that
21 level.

22 Either move them out or move them in; that's it. I'm
23 going to sit here until we have an answer.

24 MR. ROSENBERG: We hear clearly what the Court --
25 concerns the Court is expressing.

1 I suppose one question that I have just for sequencing
2 purposes, is we have started that process, as I just indicated
3 of trying to bring somebody in.

4 If we're not --

5 THE COURT: Just subpoena them.

6 MR. ROSENBERG: No, we are working that process.

7 If they are not able to come in this week and the
8 Court has indicated it will hold continuous session --

9 THE COURT: Next week.

10 MR. ROSENBERG: -- would the Court still, for our
11 planning purposes, want to hear closing arguments on Friday or
12 would they want to defer that?

13 THE COURT: I'm at your discretion. If you two
14 agree that is a matter that can be resolved, or you hear
15 argument Friday and we will wait.

16 I think you can get this done, quite frankly. I don't
17 think that there's any problem. I think once Barbara knows
18 about this, or Lindsey, they're going to respond.

19 You have got 400 veterans sitting out there for goodness
20 sakes.

21 It affects the County and none of us know how serious
22 this is. This could be de minimis, but what is not
23 satisfactory, is not having an answer for one to four years or
24 three years. That is not satisfactory.

25 MR. ROSENBERG: Understood.

1 THE COURT: Or a plan or some indication of where
2 we're at. That's a lot of units, that's a lot of money and
3 that's a lot of veterans, so.

4 MR. ROSENBERG: Understood. So with that and in
5 light of, again, setting aside --

6 THE COURT: You two just tell me what you want, have
7 a conference.

8 MR. ROSENBERG: I recall that the Court has another
9 matter, I believe, was it tomorrow?

10 THE COURT: No, Thursday.

11 MR. ROSENBERG: Okay.

12 THE COURT: You tell me the time tomorrow. It's a
13 full day.

14 MR. ROSENBERG: Why don't we start at 8:30 tomorrow,
15 I think we could do it in the morning, 8:30 tomorrow.

16 THE COURT: We will see you 8:30.

17 Everybody have a good evening, then.

18 MR. ROSENBERG: Thank you.

19 (The proceedings concluded at 4:41 p.m.)

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STATE OF CALIFORNIA)

I, TERRI A. HOURIGAN, Federal Official Realtime Court Reporter, in and for the United States District Court for the Central District of California, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the judicial conference of the United States.

Date: 27th day of August, 2024.

/s/ TERRI A. HOURIGAN

TERRI A. HOURIGAN, CSR NO. 3838, RPR, CRR
Federal Court Reporter

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