



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of Audits and Evaluations

VETERANS HEALTH ADMINISTRATION

VA's Management of
Land Use under the
West Los Angeles
Leasing Act of 2016:
Five-Year Report

AUDIT

REPORT #20-03407-253

SEPTEMBER 29, 2021



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Executive Summary

VA built the West Los Angeles VA Medical Center and other facilities on land donated more than 100 years ago to provide housing for veterans with disabilities. The property is now referred to as the West Los Angeles campus of the VA Greater Los Angeles Healthcare System. In 2011, veterans with disabilities filed a class-action suit against VA to prohibit it from using the land for any purpose other than providing housing for veterans. The lawsuit ended when VA agreed to publish a draft master plan for making the campus veteran focused. Subsequently, Congress enacted the West Los Angeles Leasing Act of 2016, allowing non-VA entities to use the land, but requiring that all real property leases and land-use agreements “principally benefit” veterans and their families.

Pursuant to the act, the VA Office of Inspector General (OIG) must submit a report to Congress “on all leases carried out at the Campus and the management by the Department of the use of land at the Campus, including an assessment of the efforts of the Department to implement the draft master plan.”¹

To fulfill the congressional mandate, the OIG issued a report in 2018 on VA’s management of land use under the act.² The OIG followed up by conducting this audit to determine

- what progress the VA Greater Los Angeles Healthcare System has made implementing its draft master plan to provide housing and buildings for supportive services for veterans on the West Los Angeles campus, and
- whether the land-use agreements comply with the terms of the West Los Angeles Leasing Act of 2016 to focus primarily on veterans, as well as the VA draft master plan and other federal laws.

What the Audit Found

VA’s progress on providing housing for 1,200 veterans and other draft master plan goals has been limited following the execution of an enhanced-use lease for 55 permanent supportive housing units in May 2017. Reasons for VA’s limited progress include required environmental impact studies, needed infrastructure upgrades, the need to establish a principal developer enhanced-use lease, and challenges faced by the developers in raising needed funds from public and private sources. As of July 2021, the healthcare system had an additional 387 housing units in various stages of development. Several residential buildings with the 387 units under

¹ West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226 (2016).

² VA OIG, *VA’s Management of Land Use Under the West Los Angeles Leasing Act of 2016*, Report No. 18-00474-300, September 28, 2018. The issues the OIG raised in that report appear in appendix A.

construction lacked “wet” utility plans required for occupancy.³ Further, neither an enhanced-use lease with the principal developer nor the master plan had been finalized. An enhanced-use lease allows a non-VA entity to develop and operate supportive housing (including a range of services) for veterans and their families on underutilized VA property. The Enhanced-Use Lease Program is managed by the Office of Asset Enterprise Management (OAEM) and is an important component of both VA’s mission to end veteran homelessness and the department’s overall asset management program. According to OAEM officials, VA will enter into an enhanced-use lease after VA has reviewed the principal developer’s draft community plan for future campus development and defined the developer’s responsibilities in developing related projects. As of July 2021, VA expected the lease to be finalized by the end of calendar year 2021, over three years after VA selected the West Los Angeles Veterans Collective to be its principal developer.

As for compliance, the OIG identified seven land-use agreements that did not comply with the West Los Angeles Leasing Act of 2016. The OIG reviewed all new or previously amended leases, enhanced-use leases, land-use agreements, and licenses created or amended from September 28, 2018, through May 31, 2021. The OIG identified five agreements created since the release of the prior audit report in 2018 that did not comply with the West Los Angeles Leasing Act of 2016, the draft master plan, or other federal statutes. The other two land-use agreements were also noncompliant but were previously reported. Those 2018 recommendations for corrective action remain open as unimplemented.⁴

OIG determined that the agreements did not comply with the West Los Angeles Leasing Act for various reasons. Generally, the agreements were not veteran focused or did not comply with other provisions of the act such as limits on VA’s leasing authority under the act. The prior noncompliant agreements allowed drilling to extract nonfederally owned oil from neighboring land and allowed a lease with a private school for continued use and improvement of student athletic facilities that did not principally benefit veterans and their families. The new noncompliant agreements

- provided an easement for the maintenance and operation of on- and off-ramps for a nearby highway,
- improperly used an easement as the instrument to provide temporary housing for male veterans,

³ Wet utilities are water, sewer, and stormwater systems.

⁴ In the prior audit, the OIG identified 11 noncompliant land-use agreements. VA provided a plan to address the recommendations by September 2019, and the OIG followed up with VA every 90 days to track its progress. As of July 2021, VA had addressed all the noncompliant land-use agreements except the two discussed in this report. Appendix A of this report summarizes VA’s position on these two agreements and the OIG’s response. Appendix B describes this audit’s scope and methodology.

- provided the Department of Homeland Security use of a building to develop and evaluate technology for real-time indoor positioning and tracking for emergency responders and enhanced security services to benefit the public at large,
- allowed the public to use VA parking lots located on the northwest corner of the campus, and
- improperly used an easement as the instrument to monitor air quality in the vicinity of the campus.

The OIG acknowledges that VA rectified seven agreements previously reported as noncompliant and that it entered into 23 new agreements that are compliant.⁵ However, VA's protracted noncompliance on two prior agreements, noncompliance on five new agreements (two of which are new iterations of previously noncompliant land uses), and its deviation from VA policy in not documenting three land-use agreements in its capital asset inventory (VA's system of record) require immediate corrective action.

What the OIG Recommended

The OIG recommended that VA implement a plan that brings the five new land-use agreements into compliance with the West Los Angeles Leasing Act of 2016, the draft master plan, and other federal laws.⁶ The OIG further recommended that VA ensure its capital asset inventory accurately reflects all land-use agreements lasting six months or longer on the West Los Angeles campus.

Management Comments

In response to recommendation 1, the acting under secretary for health agreed that all land-use agreements on the West LA campus must comply with the West Los Angeles Leasing Act of 2016, the draft master plan, and other federal laws. However, the acting under secretary for health did not concur with the OIG's conclusion that the CalTrans, Bridge Home, Safety Park, and South Coast Air Quality Management District land-use agreements were noncompliant. The Veterans Health Administration's (VHA) explanation for nonconcurrency is found in appendix E. The OIG's response to the acting under secretary's nonconcurrency with recommendation 1, reiterating the OIG's legal opinion, can be found in appendix F.

In response to recommendation 2, the acting under secretary for health concurred in principle with the OIG's recommendation to update its capital asset inventory to capture all land-use

⁵ Appendix C lists the new compliant agreements, and appendix D lists those terminated since the prior report.

⁶ The two noncompliant agreements identified in the prior report are covered by the recommendation made in that report. That recommendation remains open.

agreements lasting six months or longer. The OIG will monitor the actions taken by VHA until all proposed actions are completed.

A handwritten signature in black ink, reading "Larry M. Reinkemeyer". The signature is written in a cursive style with a large initial "L" and "R".

LARRY M. REINKEMEYER
Assistant Inspector General
for Audits and Evaluations

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Abbreviations

BLM	Bureau of Land Management
FY	fiscal year
LACMTA	Los Angeles County Metropolitan Transportation Authority
OAEM	Office of Asset Enterprise Management
OGC	VA's Office of General Counsel
OIG	Office of Inspector General
UCLA	University of California, Los Angeles
VCOEB	Veterans Community Oversight and Engagement Board
VHA	Veterans Health Administration
VISN	Veterans Integrated Service Network



Introduction

The VA Office of Inspector General (OIG) conducted this audit to determine

- what progress the VA Greater Los Angeles Healthcare System has made implementing its draft master plan to provide housing and buildings for supportive services for veterans on the West Los Angeles campus, and
- whether the land-use agreements comply with the terms of the West Los Angeles Leasing Act of 2016 to focus primarily on veterans, as well as the VA draft master plan and other federal laws.

Pursuant to the West Los Angeles Leasing Act of 2016, the OIG must submit a report to various congressional committees and members of Congress “on all leases carried out at the Campus and the management by the Department of the use of land at the Campus, including an assessment of the efforts of the Department to implement the master plan.”⁷ The act also allowed non-VA entities to use the land, but required that all real property leases and land-use agreements “principally benefit veterans and their families.”

Draft Master Plan

In June 2011, some veterans experiencing homelessness who were represented by the American Civil Liberties Union of Southern California filed suit to stop improper land uses, among other claims. They agreed to settle their lawsuit with VA if a master plan was established to guide land use on the West Los Angeles campus. A draft master plan was created in January 2016, and as of July 15, 2021, it still provided the official framework for VA as it determines and implements the most effective use of the campus for veterans. According to the executive responsible, VA expects to publish a final master plan by December 2021.

The draft master plan sets a timeline for VA to develop at least 1,200 units of permanent supportive housing with capacity for an additional approximately 840 units. The draft master plan also envisions enhancements to the delivery of supports such as a family well-being center, expanded mental health and addiction services, legal services, an education and enterprise center, and other recreational and socialization programs for veterans and their families.

The draft master plan is divided into five zones, as shown in figure 1:⁸

⁷ West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226 (2016). The act requires the OIG to issue reports “not later than ... two years and five years after the date of the enactment of this Act, and as determined necessary ... thereafter.”

⁸ According to the executive responsible for the master plan, the healthcare system is making revisions to reduce the zones from five to four, combining zones 3 and 4 into a single zone called Veteran Housing + Community Services.

- **Zone 1: Health Care**—includes the main hospital buildings, acute care, ambulatory outpatient care and clinics, research facilities, hospitality for visitors and patients, housing for aging veterans or veterans with specialized needs, and other uses that support or are compatible with the healthcare programs as a newly organized healthcare neighborhood.
- **Zone 2: Care Coordination**—includes an array of services and facilities that streamline access to benefits and services.
- **Zone 3: Veteran Housing**—includes permanent supportive housing for veterans and their families.
- **Zone 4: Town Center**—includes an area at the center of the northern part of the campus to be a focal point for resident and nonresident veterans from across the campus and the region. It connects with each of the principal neighborhoods from zone 3 and functions as a downtown for the site, where veterans can socialize at a fitness center or café, participate in events in a public square, and attend outdoor concerts.
- **Zone 5: Outer Ring**—includes an area surrounding the northern part of the campus. This zone provides veterans direct access to the surrounding community.

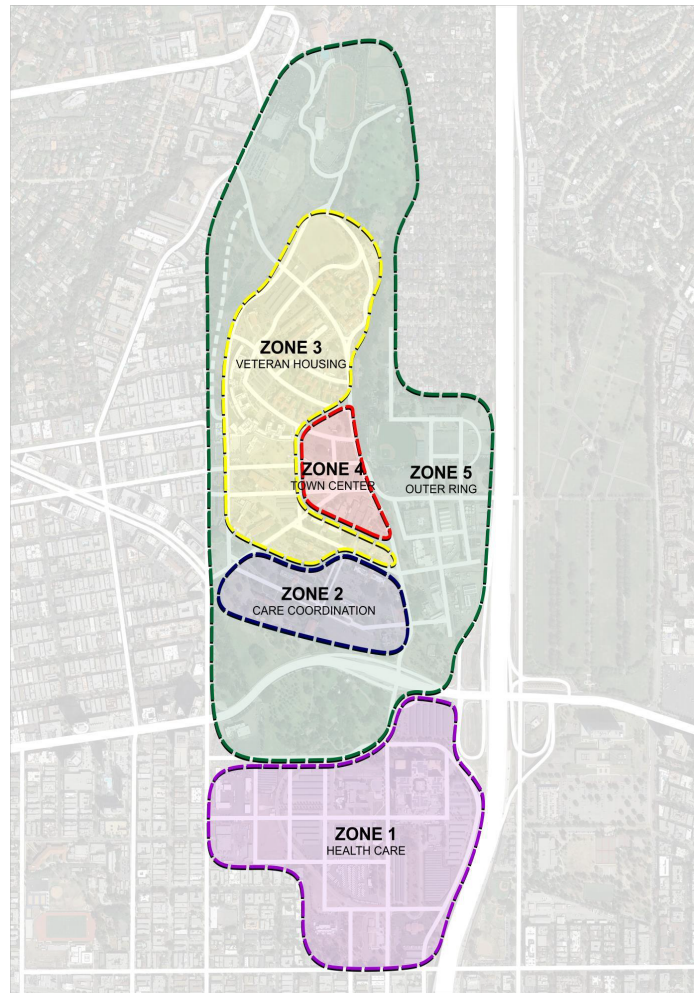


Figure 1. Map of West Los Angeles Medical Center development zones.

Source: West Los Angeles draft master plan.

Enhanced-Use Leases

VA's Enhanced-Use Lease Program is an important component of both VA's mission to end veteran homelessness and the department's overall asset management program. The Enhanced-Use Lease Program is managed by the Office of Asset Enterprise Management (OAEM). Through this program, VA leases underutilized real estate under its jurisdiction or control to the private sector on the West Los Angeles campus for up to 99 years to develop supportive housing for veterans and their families who are experiencing or at risk of homelessness.⁹ The program is a public-private partnership in which a private developer

⁹ West Los Angeles VA Campus Improvement Act of 2021, Pub. L. No. 117-18 (2021). This act extended the term of enhanced-use leases on the West LA campus from 75 years to 99 years. The enhanced-use leases in effect during the period of this audit predate that authority.

finances, develops, renovates or constructs, and operates the housing. Enhanced-use leases are typically signed once all development approvals have been obtained and all financing sources have been committed in advance of construction. Figure 2 provides an overview of the enhanced-use leasing process.

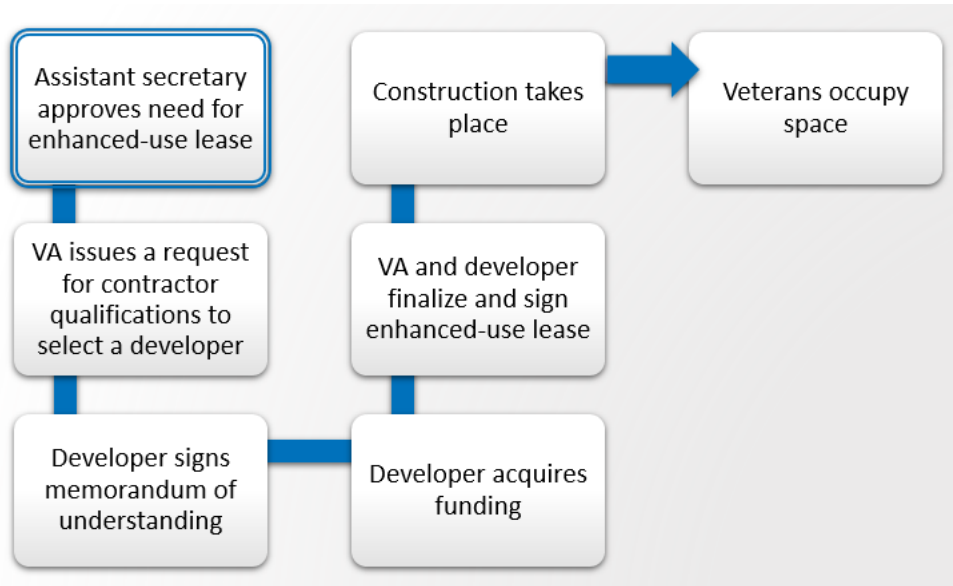


Figure 2. VA's enhanced-use leasing process.

Sources: VA Handbook 7415, *Enhanced-Use Lease Program*, September 29, 2017, and *Request for Qualifications, Principal Developer and Building 207 Solicitation*, June 26, 2018.

Note: According to OAEM, the enhanced-use lease process for the West LA campus may vary slightly from this process.

Principal Developer

In November 2018, VA selected the West Los Angeles Veterans Collective as the principal developer to provide housing on the West Los Angeles campus to veterans experiencing or at risk of homelessness.¹⁰ In October 2020, VA entered into an enhanced-use lease with the principal developer for the construction of building 207. While no additional enhanced-use leases have been signed with the principal developer, the principal developer continues to operate under a memorandum of understanding signed in March 2019 (figure 3). As of July 2021, VA was negotiating a “principal developer’s enhanced-use lease” for the principal developer to construct additional housing units. In anticipation, and pursuant to the memorandum of understanding, the principal developer has been proceeding with predevelopment activities.

¹⁰ Thomas Safran & Associates, Century Housing, and the United States Veterans Initiative make up the West Los Angeles Veterans Collective.

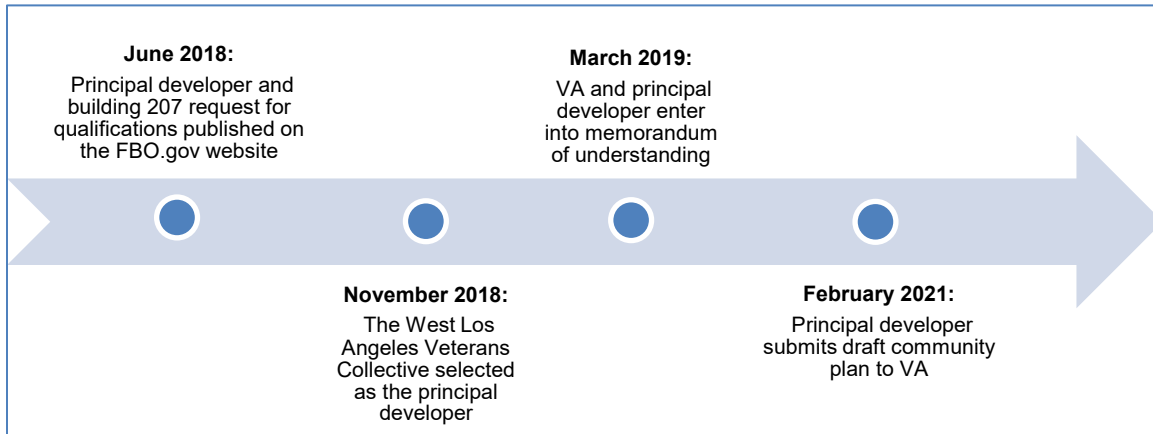


Figure 3. Timeline of key events in the selection of the principal developer and draft community plan submission.

Source: Documents provided by the OAEM and the principal developer.

Note: The FBO.gov website (formerly known as FedBizOpps) was used for entities to register for doing business with the federal government. It is now known as SAM.gov.

The memorandum of understanding states that the principal developer is expected to do the following:

- Accelerate delivery of supportive housing on the campus for veterans and their families experiencing or at risk of homelessness.
- Provide veterans with the rights of tenancy and links to voluntary and flexible support services for people who are experiencing or who have experienced homelessness.
- Develop a housing model geared toward enabling veterans to achieve self-sufficiency and live independently.
- Repurpose vacant and underutilized land and buildings on the campus for supportive housing or associated services in a neighborhood setting.

According to OAEM officials, VA expects to enter into an enhanced-use lease by the end of calendar year 2021, after VA has reviewed the principal developer's draft proposal for future campus development and defined the developer's responsibilities in developing related projects. OAEM officials also said VA intends for the principal developer to oversee the construction of at least 900 permanent supportive housing units in zone 3. An additional 248 units will be constructed by developers other than the principal developer. The memorandum of understanding gives the principal developer the option of doing the construction work itself or competitively selecting one or more partners to develop the 900 units of permanent supportive housing.

Draft Community Plan

The draft community plan is the principal developer's proposal for implementing housing and supportive services that are envisioned in the draft master plan. The draft community plan states its primary purpose is to provide "an implementable roadmap for establishing a complete neighborhood, supportive of Veterans currently struggling with homelessness." The principal developer submitted the plan to VA on February 8, 2021.¹¹ The principal developer proposed construction of 1,691 housing units in five phases (it numbered 0 through 4), exceeding the draft master plan's minimum goal of over 1,200 housing units by the end of phase 2:

- Phase 0 – 237 housing units, to start in 2016 and finish in 2022
- Phase 1 – 682 housing units to start in 2022 and finish in 2027
- Phase 2 – 423 housing units to start in 2024 and finish in 2031
- Phase 3 – 254 housing units to start in 2031 and finish in 2036
- Phase 4 – 98 housing units to start in 2036 and finish in 2038

These phases include those units that were being performed by developers other than the principal developer. They include buildings 205, 208, 209, and the units proposed at MacArthur Field. As of August 2021, VA and the principal developer were continuing discussions of which buildings would be included in each phase.

OAEM officials stated that while VA approval of the plan is not required, VA will incorporate components of it into the principal developer's enhanced-use lease agreement and into the forthcoming master plan. In this way, VA will ensure the lease is not in conflict with the draft master plan framework or any updates.

Findings from the Previous OIG Audit on Compliance of VA's Land-Use Agreements with Laws and Draft Master Plan

In its prior report, the OIG identified six problems related to land use on the West Los Angeles campus:¹²

- Eleven of 40 land-use agreements did not comply with the West Los Angeles Leasing Act, the draft master plan, or other federal laws.

¹¹ A number of activities took place during the almost two-year period from when the memorandum of understanding was finalized until the principal developer submitted the draft community plan. These activities included engagement with the community, negotiations with VA, conclusion of environmental impact studies, assessments of supporting wet and dry utility infrastructure, and predevelopment activities and financing activities.

¹² VA OIG, *VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016*, Report No. 18-00474-300, September 28, 2018.

- Fourteen non-VA entities were operating on the campus with either an expired agreement or no documented land-use agreement.
- Additional veteran input would have helped the healthcare system ensure land-use agreements comply with the act.
- VA lacked clear policies and procedures to make certain that land-use agreements are compliant.
- The healthcare system did not keep an accurate inventory of land-use agreements.
- VA was behind on draft master plan implementation milestones for permanent supportive housing.

Appendix A provides more information on each previously identified problem area, the OIG's 2018 recommendations, and VA's subsequent actions to address those recommendations. Legal sufficiency and draft master plan compliance of VA agreements that were signed or amended since the last OIG report are the subject of finding 2.

West Los Angeles Governance and Oversight

Numerous offices and entities share governance and oversight responsibilities for the campus.

- **VA Office of Asset Enterprise Management:** Manages VA's portfolio of capital assets and oversees the Enhanced-Use Lease Program.
- **VA Office of Construction and Facilities Management:** Is responsible for the planning, design, and building of all major construction projects greater than \$20 million; manages sustainability, seismic corrections, physical security, and historic preservation of VA's facilities.
- **The Veterans Health Administration's (VHA) Office of Capital Asset Management and Engineering Service:** Manages and oversees design and planning, construction, and maintenance and is responsible for coordinating all VHA's enhanced-use lease efforts with OAEM.
- **Office of the Director, VA Greater Los Angeles Healthcare System:** Is responsible for local policy and procedures for third-party leases and has the authority to enter into revocable licenses with non-VA entities.
- **Office of General Counsel's Real Property Group:** Provides advice and concurrence to the healthcare system's leaders on any proposed third-party land-use agreements on the West Los Angeles campus.

History of the West Los Angeles Campus

In March 1888, Senator John P. Jones and Arcadia B. DeBaker donated, by deed, approximately 300 acres of land in Los Angeles, California, to the National Home for Disabled Volunteer Soldiers to provide housing for veterans with disabilities. On the grounds, VA built the West Los Angeles VA Medical Center and other facilities, making up what is now referred to as the West Los Angeles campus of the VA Greater Los Angeles Healthcare System. Two additional deeds were added later to expand the campus to its current size of 387 acres.

In June 2010, the United States Interagency Council on Homelessness launched the first comprehensive strategic plan to prevent and end homelessness with the cooperation of state and local partners. As shown in figure 4, a lawsuit filed in 2011 began a series of events leading to the West Los Angeles Leasing Act of 2016, which mandated the OIG's two audits.

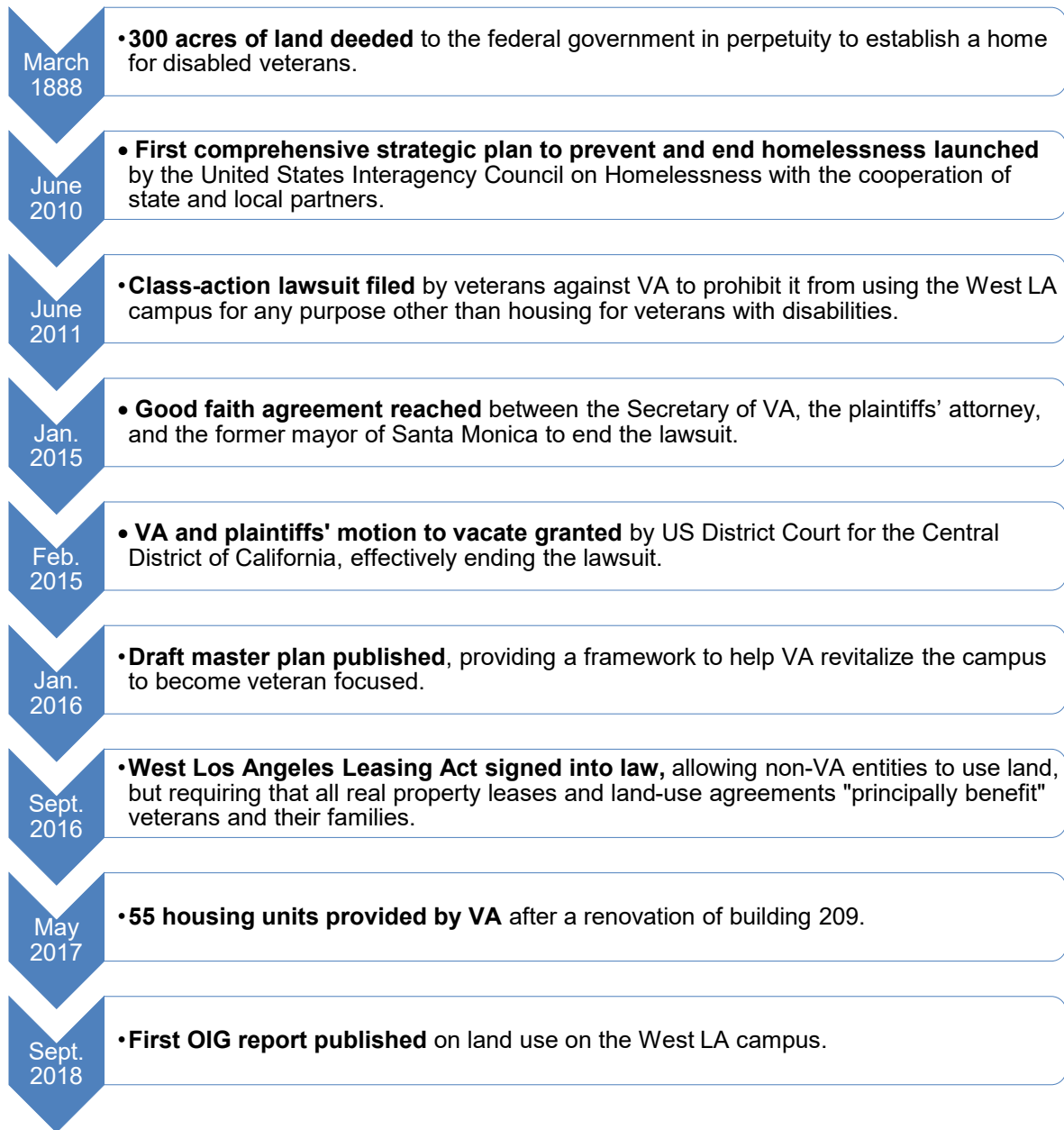


Figure 4. Timeline of key events.

Sources: Draft master plan; principal developer public hearing information; court opinions; agreement between VA and plaintiffs; the Interagency Council on Homelessness Strategic Plan; "New Commitment to Homeless Veterans at VA West Los Angeles Campus," from westsidetoday.com; West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226 (2016); and VA OIG, VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016, Report No. 18-00474-300, September 28, 2018.

Note: The class-action lawsuit was *Valentini v. Shinseki*, June 7, 2011, CV 11-04846.

Results and Recommendations

Finding 1: VA's Development of the West Los Angeles Campus Falls Short of Draft Master Plan Goals to Provide Housing for Veterans Experiencing Homelessness

VA has made little progress in implementing the housing and service enhancement goals laid out in the draft master plan for various reasons, including required environmental impact studies, necessary infrastructure upgrades, the need to establish a principal developer enhanced-use lease, and challenges faced by the developers in raising needed funds from public and private sources. The draft master plan served as the OIG's benchmark because the West Los Angeles Leasing Act requires the OIG to report its "assessment of the efforts of the Department to implement the master plan," and the master plan has not been finalized. The OIG also relied on the milestone update VA issued on December 31, 2017. The update shows a 10-year timeline to construct 1,200 permanent supportive housing units (figure 5).

September 2016	+12 months	+24-30 months	+30-48 months	+4-5 years	+6-10 years
<ul style="list-style-type: none"> • West Los Angeles Leasing Act of 2016 Enacted 	<ul style="list-style-type: none"> • 55 units 	<ul style="list-style-type: none"> • 100 units • cumulative = 150+ units 	<ul style="list-style-type: none"> • 330 units • cumulative = 480+ units 	<ul style="list-style-type: none"> • 280 units • cumulative = 760+ units 	<ul style="list-style-type: none"> • 440 units • cumulative = 1,200+ units

Figure 5. West Los Angeles permanent supportive housing timeline presented in status update of the draft master plan.

Source: Status update on the draft master plan December 31, 2017.

However, VA has not completed any housing units on the campus since the execution of an enhanced-use lease for the 55 units in May 2017. VA's draft master plan called for VA to construct at least 480 housing units by approximately September 2020 (in keeping with the timeline set out in figure 5 at 48 months). As of July 2021, VA had available only 55 of the 480 housing units, or 11 percent of the draft master plan's four-year target. The 55 housing units are located in building 209 and were made available in May 2017, about eight months after the enactment of the West Los Angeles Leasing Act of 2016 and about 17 months after the publication of the West Los Angeles draft master plan.

As of July 2021, VA had entered into four enhanced-use leases with developers to construct 387 housing units on the West Los Angeles campus, and was still working to finalize the principal developer's enhanced-use lease. This lease will prescribe the principal developer's responsibilities beyond managing the financing, construction, and operation of additional

housing units. According to OAEM, the principal developer's planning efforts are memorialized in the principal developer's draft community plan, the document created to guide future housing development on the West Los Angeles campus. While the draft community plan may serve as the road map, according to OAEM personnel, the forthcoming principal developer's enhanced-use lease serves as the legal mechanism for the principal developer to execute its responsibilities. VA expected the lease to be finalized by the end of calendar year 2021, about three years after VA selected the West Los Angeles Veterans Collective to be its principal developer.

As of July 2021, the principal developer, in anticipation of reaching a final enhanced-use lease agreement with VA, had secured \$62.3 million (27 percent) of the \$233.3 million it estimated was necessary to construct an additional 390 housing units described in its draft community plan.

Finding 1 is supported by the following determinations:

- VA has made limited progress on projects.
- The principal developer needed to obtain \$171 million to complete phase 1 of the development plan.
- VA had not finalized "wet" utility plans required for residential occupancy at the time of the audit. Wet utilities are water, sewer, and stormwater systems.
- VA was moving forward with design work for a new critical care center and central power plant (replacing the main hospital) and construction of a healthcare system kitchen.
- Execution of the draft master plan was also limited in zone 2 (care coordination), zone 4 (the town center), and zone 5 (the outer ring) of the West Los Angeles campus to provide a place for recreation and social engagement.

What the OIG Did

The audit team reviewed the draft master plan to understand VA's vision for the West Los Angeles campus, and reviewed the draft community plan to understand the principal developer's plans to implement the goals of the draft master plan. The team interviewed officials from VA's Office of Construction and Facilities Management, OAEM, the Veterans Integrated Service Network's (VISN) capital asset office, and the healthcare system.¹³ The team also interviewed officials from developers involved with constructing housing, including Shangri-La Construction, Core Affordable Housing, and the West Los Angeles Veterans Collective. For more on the audit scope and methodology, see appendix B.

¹³ A Veterans Integrated Service Network manages and oversees healthcare delivery by medical facilities in a specified geographic area.

VA Has Made Limited Progress on Housing Projects

As of July 2021, only one enhanced-use lease project (building 209) was finished and occupied by veterans. This \$20 million project was funded by VA in fiscal year (FY) 2012, and an enhanced-use lease providing 55 units was executed in May 2017. Since then, VA has entered into two additional enhanced-use leases shown in table 1—one with Shangri-La Construction to renovate buildings 205 and 208, and another with the principal developer to renovate building 207. The finished building and additional enhanced-use leases are shown in the table's shaded rows; the unshaded rows reflect projects for which full financing had not been obtained (the field buildings) and utility work to make units habitable was in progress.

Table 1. Developer Housing Projects

Project	Units	Completion date*	Percent complete	Estimated cost (\$ millions)	Developer
Building 209	55	May 2017	100	20.0	Shangri-La Construction
Buildings 205 & 208	122	May 2022	48	81.1	Shangri-La Construction
Building 207	60	July 2022	30	33.6	Principal developer
Two MacArthur Field buildings	150	To be determined	N/A	86.3 [‡]	Core Affordable Housing
Dry utilities (electric, telecom, and natural gas)	N/A	December 2021	63	10.5	Principal developer
Totals	387			231.5	

Source: Principal developer's draft community plan and documents provided by OAEM, Shangri-La Construction, and principal developer.

Note: Amounts do not sum due to rounding.

*Completion date based on project schedules as of July 2021; includes completion of construction and veteran occupancy.

VA renovated building 209 and entered into an enhanced-use lease with Shangri-La construction in May 2017 to operate the 55 units.

[‡]Core Affordable Housing had secured financing for \$17 million of \$86.3 million in estimated costs as of July 2021.

Buildings 205 and 208

On December 2, 2019, VA entered into two 75-year enhanced-use leases with Shangri-La Construction for the renovation of buildings 205 and 208. Shangri-La Construction was to renovate building 205 and transform 68 housing units for veterans who are chronically homeless, severely disabled, women, or aging. The 68 units were to be 32 studios and 36 one-bedrooms. Shangri-La Construction was also charged with renovating building 208 to provide 54 units of housing—26 studios and 28 one-bedrooms for the same population of veterans. The developer had acquired the needed funding to finance the renovations. According to the developer, construction started in September 2020, and full occupancy of both buildings was expected by November 2022. Total development costs were projected to be \$36.3 million for building 205 and \$33.3 million for building 208, for a total of \$69.6 million. According to the developer, as of July 2021, the buildings were about 48 percent complete.

Building 207

On October 29, 2020, VA entered into a 75-year enhanced-use lease with the principal developer to renovate the building to provide 60 units of permanent supportive housing. This development was the first enhanced-use lease performed by the principal developer. According to OAEM personnel, a project-specific enhanced-use lease between VA and the principal developer allowed this project to begin construction; all future development with the principal developer is subject to the terms of the principal developer's enhanced-use lease, which had not been finalized as of July 2021. According to the principal developer, the project provides priority to veterans aged 62 and above experiencing homelessness. As of July 2021, construction was 30 percent complete, and was expected to be fully completed by September 2022. Total development costs have been estimated at \$33.6 million.

MacArthur Field

In June 2017, VA selected Core Affordable Housing as the developer for the construction of two buildings on approximately six acres of land at MacArthur Field. The first building was to have 75 housing units, with another 75 units in the second building. The first building was in the predevelopment phase of planning, designing, and securing financing, and according to OAEM, the second building was to be completed about 18 months after the first. The first building was estimated to cost about \$41 million, and the developer had secured \$8 million in committed private mortgage financing. The second building was estimated to cost about \$45 million, and the developer had secured \$9 million in committed private mortgage financing. As of July 2021, Core Affordable Housing was seeking additional financing for the remainder of the funding needed.

Dry Utilities—Bonsall Dry Utilities Trunk Line Project

According to OAEM officials, making buildings 205, 207, and 208 operational required access to dry utilities: electric, telecom, and natural gas.

In December 2020, construction on the dry utilities trunk line began. According to OAEM personnel, when completed, the trunk line was expected to support a minimum of 1,200 units of permanent supportive housing planned for zone 3 (the housing area for veterans depicted in figure 1 on page 3). The principal developer funded the project through a capital contribution of \$10.5 million from VA. According to OAEM personnel, as of July 2021, the dry trunk line was 63 percent complete and was expected to be supporting buildings 205, 207, and 208 by December 2021.

The Principal Developer Needed to Obtain \$171 Million to Complete Phase 1 of the Development Plan

Under the Enhanced-Use Lease Program, VA does not fund the construction of housing units for veterans experiencing or at risk of homelessness. Rather, the developer must secure project funding from public and private sources such as low-income housing tax credits, historic tax credits, local government loans or grants, state loans, tax-exempt bonds, and conventional mortgage financing.

One official working for the principal developer stated it was important to note that affordable housing projects are individually financed; as such, the principal developer's efforts will comprise the individual financing and development of numerous enhanced-use leases. In the State of California, each of the public funding sources noted above is competitive and there are developers applying for more funding than what is available. Funding sources are separately administered by multiple agencies through competitive funding rounds at the local, county, and state levels. Funding rounds can occur sometimes as infrequently as once per year. Typical affordable housing transactions often require five or six funding sources to achieve financial feasibility (i.e., sufficient sources to fund construction costs). Therefore, it can take multiple years for developers to secure the necessary financing to begin construction of an affordable housing development.

The principal developer is expected to fund the permanent supportive housing units on the campus with traditional funding sources, including funding from local, county, and state sources. Once those traditional sources have been obtained, the principal developer will apply for competitive allocations of tax credits or tax-exempt bonds. These competitive funding sources are advertised via a notice of funding availability through public agencies such as California's Department of Housing and Community Development, and Los Angeles County's Development Authority.

Funding sources may sometimes feature only one solicitation each calendar year, and if funding requests are not successful, the developer may need to wait until the following year or find another funding source. Accordingly, the principal developer informed the audit team that it has continued to pursue funding commitments for the 390 remaining housing units contemplated for phase 1. Furthermore, the principal developer stated it has submitted more than \$50 million of pending applications to various funding sources for numerous enhanced-use leases. Table 2 shows the principal developer's project funding status as of July 2021 for the remaining housing units in phase 1.

Table 2. Phase 1 Project Funding Status as of July 2021

Building project	Housing units	Total budget (\$ millions)	Total funding commitments (\$ millions)	Funding needed (\$ millions)	Percent funding secured
156/157	112	59.9	21.3	38.6	36
210	41	23.1	1.9	21.2	8
300	44	47.0	4.3	42.7	9
402	120	61.9	29.1	32.8	47
404	73	41.3	5.6	35.7	14
Total	390	233.3	62.3	171.0	27

Source: Document received from principal developer with a status of July 22, 2021.

Phase 2 of the principal developer's draft community plan calls for 470 housing units, which was updated in July 2021 to 423 units. By the end of phase 2 in 2031, VA would have exceeded the goal of 1,200 permanent supportive housing units called for in the draft master plan. According to the principal developer, phases 3 and 4 of the draft community plan reflect the intention to build an additional 352 housing units. As of July 2021, the principal developer had not begun submitting applications to fund projects in phases 2–4 and was still working to secure funding and close on construction financing for phase 1.

VA Had Not Finalized Wet Utility Plans Required for Residential Buildings' Occupancy

Following various assessments of the wet utility infrastructure, the principal developer estimated that between \$10 million and \$14 million was needed to upgrade the wet utility systems required to support 1,200 housing units envisioned in the draft master plan. These wet utility upgrades include improvements to water, sewer, and stormwater systems. As of July 2021, VA was continuing to work with the principal developer on creating a long-term solution for these wet utility systems. While the existing stormwater and sewer systems were sufficient to support the occupancy of buildings 205, 207, and 208, these systems will need to be upgraded prior to the

completion of any other housing on campus, let alone the draft master plan's goal of developing a minimum of 1,200 housing units.

However, a more urgent interim solution was needed for the 89-year-old fire and water system. As of July 2021, the system was unable to provide the water pressure necessary to operate fire hydrants and sprinkler systems required for occupancy of housing units in buildings 205, 207, and 208 under applicable building codes and regulations. Unless VA resolves this problem before the completion of the buildings (expected in the fall of 2022), the developers may not be able to receive certificates of occupancy from Los Angeles County to support the new construction of additional units needed to provide housing for veterans.

VA Was Moving Forward with Design Work for a Critical Care Center, Including a Central Utility Plant, and for Utility Upgrades in Zone 1

The healthcare system received funding for about \$147.6 million of \$1.2 billion needed to replace the existing medical center with a new critical care center, central utility plant, and upgrades to the site utilities system in zone 1.¹⁴ Another project being planned is the construction of a new boiler plant for \$36.3 million. The boiler plant is in the design stage of construction.

Following are projects in zone 1 that were active as of April 2021:

- **Critical care center and central utility plant.** This project will replace building 500, the main hospital. Approximately 35 percent of phase 2 design was completed as of March 2021, and the project had been moved to the Army Corps of Engineers for review. According to the VISN project manager, the healthcare system is considering increasing the project to include an 800-space parking garage. A construction start date had not been set.
- **Kitchen.** Because of seismic deficiency, the hospital kitchen was being replaced with a new kitchen on the south campus adjacent to the main hospital (building 500) that will be the site of the critical care center. As of August 2021, the project was expected to be completed by August 2022.
- **Consolidated research facility.** This project will consolidate buildings that are seismically deficient into a single research facility. The facility will include space for state-of-the-art wet lab research, laboratory support modules, principal investigator offices, collaboration spaces, research assistant areas, health services research and development program areas, clinical research areas, and a modern veterinary medical unit including support functions. As of April 2021, it was in its

¹⁴ These projects will be funded by VA through its major construction budget.

preliminary planning phase, with design slated to begin in June 2022. Funding had not yet been determined.

- **Boiler plant.** This \$36.3 million project will provide heat for buildings across the entire campus. The project has been fully funded, and as of August 2021 the project design was 40 percent complete. Construction of the boiler plant is expected to be completed by the second quarter of 2024.

These building improvements align with the draft master plan’s goal in zone 1 (the healthcare neighborhood) of providing a collaborative integration of health care, food service, and comprehensive translational research in support of veterans while meeting VA and California seismic mandates for medical center operations. Table 3 summarizes the healthcare system’s progress on these zone 1 projects.

Table 3. Funding and Status of Zone 1 Projects

Project title	Cost estimate (\$ thousands)	Funding* (\$ thousands)	Percent funded	Status
Critical care center and central utility plant	1,027,900	75,790	7	In design
Kitchen	105,500	35,500	34	Under construction
Research consolidation	328	0	0	Preliminary planning
Boiler plant	36,300	36,300	100	In design
Total	1,170,028	147,590		

Source: Strategic Capital Investment Planning Action Plans, VA’s Office of Construction and Facilities Management Fact Sheet Reports, VA Budget Submission Reports, US Army Corp of Engineers and VA monthly reports.

Note: Amounts are rounded.

**As of April 2021.*

Execution of the Draft Master Plan Was Limited in Zones 2, 4, and 5 of the West Los Angeles Campus

The progress found in zones 1 and 3 has been detailed above. The OIG also reviewed the healthcare system’s long-range action plan for the remaining zones (2, 4, and 5) on campus and found limited advancement. The OIG did identify three projects planned for zone 2 (care coordination) designed to streamline veterans’ access to benefits and services. Following are descriptions of the three projects proposed for zone 2.

- **Nonacute psychiatric facility.** This project will renovate building 212 to provide 42 beds for a nonacute population of veterans with dementia. The facility will provide veterans a residential home as they progress through recuperative care therapies or conservatorship determinations. The project has been fully funded for \$35 million, and as of August 2021 design was approximately 35 percent completed. The expected construction completion date is July 2024.
- **Community living center.** This project will construct a new community living center complex with 153,203 square feet. A community living center is a VA nursing home where veterans may stay for a short time or, in rare instances, for the remainder of their lives. Currently, buildings 213 and 215 serve as the healthcare system's community living center, with 52 and 114 operational beds, respectively. Building 500 has an additional 26 community living center beds. A project plan for a new community living center complex was approved in March 2020 but not funded. According to a VISN program analyst, modernization and revitalization of the community living center buildings will be considered in long-term campus planning.
- **Domiciliary courtyard healing garden.** The purpose of this project is to upgrade the 118,000 square-foot area between buildings 214 and 217 into a domiciliary courtyard healing garden. Features and dedicated programs proposed in the new site layout include a therapeutic walking path, outdoor exercise equipment, pavilions, a women's garden, music entertainment, a sports court, smoking shelter, and all new landscaping. An outdoor amphitheater is also planned. This project will be funded entirely through the use of West Los Angeles lease revenue funds and was approved by the VISN in March 2020. Its cost is estimated at \$4.7 million.

After reviewing the healthcare system's strategic plan, the OIG was unable to identify any projects planned for zone 4 (town center) or zone 5 (outer ring) to improve veteran socialization and recreation as envisioned in the draft master plan.

Finding 1 Conclusion

Because the West Los Angeles Leasing Act requires the OIG to report its "assessment of the efforts of the Department to implement the master plan" and the master plan has not been finalized, the OIG assessed progress by relying on the timelines and goals set forth in the draft master plan, as well as a milestone update by VA issued on December 31, 2017. By these measures, the OIG found progress was limited. As of July 2021, VA had completed construction of just 11 percent of the draft master plan's target for housing units to be done by September 2020. The healthcare system also had 387 housing units in various stages of development on the West Los Angeles campus. All but 60 of the 387 units in development were

being managed by contractors outside of the West Los Angeles Veterans Collective principal developer group.

VA needs to finalize the principal developer's enhanced-use lease, and the principal developer needs to secure an additional \$171 million to complete another 390 housing units slated for phase 1 of its draft community plan. The principal developer has planned an additional 775 housing units for phases 2 through 4, subject to its ability to secure the construction financing. VA envisions all phases of construction will be completed in the next 17 years. However, the OIG has no assurance that this goal will be met, as further construction largely depends on the principal developer's ability to secure financing from local and state government sources, which for phase 1 has resulted in only 27 percent of the funding needed.

Finding 2: Despite Taking Steps toward Compliance, VA Had Seven Land-Use Agreements That Did Not Comply with the West Los Angeles Leasing Act

The OIG reviewed all 41 land-use agreements, including leases, enhanced-use leases, and revocable licenses created or amended from September 28, 2018, through May 31, 2021, (the period since the prior 2018 OIG report). Of the 41 land-use agreements, 28 were new agreements or amendments since the prior audit. The audit team identified 34 agreements that were compliant (including 23 new compliant agreements that were signed since the prior report) and determined there were seven land-use agreements that did not comply with the West Los Angeles Leasing Act of 2016, the draft master plan, or other relevant federal statutes. These seven included five agreements created since the release of the OIG's prior 2018 audit report.¹⁵ The other two noncompliant land-use agreements were identified in the 2018 report. In addition, the OIG determined that the healthcare system did not document three land-use agreements in its capital asset inventory as required by VA policy.

The team noted that VA had resolved seven agreements previously reported as noncompliant.¹⁶

This finding builds on the following determinations, each detailing the legal rationale for the OIG's conclusion:

- Five new land-use agreements were noncompliant.
- Two prior land-use agreements were still noncompliant.
- VA has resolved seven previously noncompliant land-use agreements.
- Twenty-three new agreements were compliant.¹⁷
- Three land-use agreements were not recorded in the healthcare system's capital asset inventory as required.

What the OIG Did

The audit team obtained a listing of land-use agreements from the capital asset inventory, compared it to the universe of 41 agreements, and corroborated the list with a review of the healthcare system's website and interviews with officials from the healthcare system. As

¹⁵ Two of these were new iterations of previously noncompliant agreements.

¹⁶ Resolving the remaining two of the 11 noncompliant agreements in the 2018 report, Safety Park signed an agreement to manage Barrington Parking Lots, and VA confirmed that the 2011 Caltrans revocable license had been terminated.

¹⁷ These agreements are listed in table 5.

mentioned above, each agreement was reviewed to determine its compliance with legal mandates and VA's own draft master plan.

Five New Land-Use Agreements Were Noncompliant

1. **CalTrans.**¹⁸ VA granted the State of California Department of Transportation (CalTrans) “an easement and right of way for the maintenance and operation of the I-405 freeway on and off ramps ... to be on, over, under, across, or through certain portions of VA property” at the West Los Angeles campus. The easement took effect September 30, 2019, and is in perpetuity.

However, the OIG determined the maintenance and operation of the freeway on- and off-ramps are not authorized purposes for an easement under the West Los Angeles Leasing Act of 2016, which limits the Secretary's authority on the campus to two types of easements or rights-of-way—for public transit and public utility work.¹⁹

2. **City of Los Angeles (Bridge Housing).** This easement is for the citywide “A Bridge Home” initiative to construct supportive housing in facilities in each city council district. There are two temporary housing structures that can provide male veterans with up to six months of housing stability while giving them access to VA medical services and other supportive services. While the structures can accommodate up to 100 veterans, the facility had limited available beds to 60 due to COVID-19 social distance restrictions. The start date was November 6, 2018.

The OIG determined that the services offered to veterans are consistent with the draft master plan in that they are veteran focused and address temporary housing for those experiencing homelessness. However, the decision to use an easement as the land-use instrument to provide these services does not comply with the West Los

¹⁸ Prior to the easement described here, VA had established a 50-year revocable license with the California Department of Transportation to provide access to the campus for relocating utilities and widening Interstate Highway 405. The OIG determined in its 2018 report that the revocable license did not comply because revocable licenses must be veteran focused, and the CalTrans revocable license instead conferred benefit to the public at large. Subsequently, VA terminated the revocable license and during this audit period entered into the easement with CalTrans.

¹⁹ West Los Angeles Leasing Act of 2016, §§ 2(e)(1)(A), 2(e)(1)(B). Section 2 (e)(1)(A) of the act allows easements to “any local or regional public transportation authority to access, construct, use, operate, maintain, repair, or reconstruct public mass transit facilities including, fixed guideway facilities and transportation centers.” Section 2 (e)(1)(B) allows easements to “the State of California ... or any public utility company (including any company providing electricity, gas, water, sewage, or telecommunication services to the public) for the purpose of providing such public utilities.”

Angeles Leasing Act of 2016, which allows only two types of easements or rights-of-way, despite the veteran-focused nature of the agreement.²⁰

3. **Department of Homeland Security.** This permit with the Department of Homeland Security allowed it to “operate the [Precision Outdoor and Indoor Navigation and Tracking for Emergency Responders] project on the Property and provide Veteran-centric services for enhanced security for [West Los Angeles] Campus buildings through shared due diligence and program findings.”²¹ The Department of Homeland Security was allowed to use building 23 on the West Los Angeles campus to conduct experiments to develop and evaluate the technology and algorithms required to enable real-time indoor positioning and orientation tracking. The permit start date was December 1, 2020, and the end date was to be June 30, 2021. While the permit states that the “[p]ermittee shall provide Veteran-centric services” and those services are “for enhanced security for [the West Los Angeles] Campus buildings through shared due diligence and program findings,” the OIG determined this permit is noncompliant because it could only incidentally benefit veterans; the work is not veteran focused. As a result, this permit is not consistent with the draft master plan. During this audit, VA terminated this agreement with the Department of Homeland Security after the OIG expressed concerns about its compliance in a series of written questions.²²
4. **Safety Park.**²³ The purpose of this lease agreement was to manage, operate, and maintain the VA Barrington (Avenue) parking lots located on the northwest corner of the campus. The parking lots are physically separated from the healthcare facilities on the south part of the campus and appear to primarily support public access to the nearby Brentwood Village business district. The initial term of the lease between VA and Safety Park Corporation started June 1, 2019, and expired on May 31, 2020; it was extended by a lease agreement that started June 1, 2020, and expired May 31, 2021. The lease has continued by providing for “nine (9) one (1) year extension options to extend the Lease Term.” Safety Park pays zero dollars in annual rent to VA; however, Safety Park is required to “diligently collect all Gross Receipts and promptly pay all Operating Expenses... from the operation and use of

²⁰ West Los Angeles Leasing Act of 2016, §§ 2(e)(1)(A), 2(e)(1)(B).

²¹ Office of Construction and Facilities Management Information Letter, IL 00CFM-11-01, July 15, 2011; VA Handbook 7633, *Managing Underutilized Real Property Assets, Including Options for Reuse and Disposal*, January 11, 2018. A permit is a revocable license granted by one federal agency to another.

²² Appendix D lists agreements terminated since the previous OIG report.

²³ Before the lease described here, VA had operated the VA Barrington Parking Lots without a lease from January 19, 2017, until the lease described here started on June 1, 2020. In the prior report, the OIG determined the Barrington Parking Lots were a non-veteran-focused use of land.

the VA Barrington Parking Lots.” Safety Park Corporation must remit the gross receipts less operating expenses (“net parking revenues”) to VA by no later than the 10th day of each month of the initial term and any extension terms. The OIG determined this agreement is noncompliant because its primary purpose is to provide parking to the public, not principally benefiting veterans.

5. **South Coast Air Quality Management District.** This easement states its purpose is to “provide ambient air quality monitoring information data collected in the immediate vicinity of the VA Greater Los Angeles Healthcare System used by [South Coast Air Quality Management District] for research and health studies.” South Coast Air Quality Management District is required to “provide quarterly air-quality reports to the VA Contracting Officer or designee, due at the end of every quarter.” A trailer where data are collected sits on the campus occupying an area approximately 30 feet by 40 feet. The easement started August 30, 2019, and continues in perpetuity.²⁴ The OIG determined this agreement is noncompliant because it is not one of the two easement types allowed under the West Los Angeles Leasing Act.²⁵

Two Prior Land-Use Agreements Were Still Noncompliant

The following agreements were cited in the earlier OIG report as noncompliant. Excerpts of VA’s comments published in the 2018 report regarding its prior nonconcurrence with implementing the related recommendations for corrective action appear in appendix A and are summarized below for each agreement. The OIG’s response to VA’s position is also included.

1. **Breitburn Operating LP.** The Department of the Interior, Bureau of Land Management, has executed oil-drilling leases and licenses on the West Los Angeles campus since the 1960s. On March 7, 2017, a 10-year revocable license agreement between VA and Breitburn was executed (No. 691-97-01-IL) that did not involve the Bureau of Land Management because it covered slant drilling on nonfederal property. The OIG determined this revocable license did not conform to the draft master plan requirement that it be veteran focused as the only benefits are monetary. It does not provide any additional healthcare benefits, services, or resources directly to veterans or their families.

VA officials did not concur with the recommendation to cure this deficiency because they stated that they lack authority to do so because of a related drilling lease between

²⁴ Although described as perpetual, the deed of easement contains a clause allowing either party to terminate with notice.

²⁵ West Los Angeles Leasing Act of 2016, Section 2 (e)(1)(A). As previously mentioned, allowable easements may only be for the outlined purposes related to public transit and public utility access and work.

Breitburn and the Bureau of Land Management. Because the revocable license is necessary to prevent the United States from breaching a legally binding contract to which VA is not a party, VA stated it lacks the authority to terminate Breitburn's access to the campus.

Responding to VA, the OIG explained that the revocable license it found noncompliant had no connection to the Bureau of Land Management as it did not relate to slant drilling on federal mineral lands; the Bureau of Land Management has authority only on federal mineral lands. Breitburn does have another revocable license (No. VA262-17-RL-007) related to Lease No. R 1956 with the Bureau of Land Management which VA referenced; however, the OIG did not object to that revocable license.

2. **Brentwood School.** A lease allowed the Brentwood School continued use of its athletic facilities located on 21 acres of the West Los Angeles campus. VA reviewed this land-use agreement following the settlement of *Valentini v. Shinseki* to determine whether it could be made sufficiently veteran focused.²⁶ In November 2016, VA decided to continue its long-term relationship with the Brentwood School by executing a 10-year lease. Under this lease, the Brentwood School was to pay \$850,000 in annual rent and provide nonmonetary, in-kind consideration valued at \$918,000.²⁷ The OIG determined the Brentwood School lease violated the West Los Angeles Leasing Act because the purpose was not to principally benefit veterans and their families; rather, the principal purpose of this lease was to provide the Brentwood School continued use of the athletic facilities.

The OIG also found that VA's acceptance of nonmonetary, in-kind consideration is not authorized under the law, which requires VA to accept only monetary consideration for the leasing of buildings or property of the federal government.²⁸ Legally, nonprofit organizations like the Brentwood School can provide in-kind consideration related to the maintenance, protection, and restoration of leased property.²⁹ However, the in-kind consideration the Brentwood School provided included more than allowable maintenance of landscaping or physical structures installed by the school. Other in-kind consideration costs such as additional staffing and veteran special events are not allowed under federal law.

VA responded that the OIG's assessment of the Brentwood School lease was erroneous because the legislative history showed that Congress intended for the West Los Angeles Leasing Act to extend to the Brentwood School lease. Also, VA interpreted the act as

²⁶ *Valentini v. Shinseki* is the name of the class-action lawsuit that led to the act.

²⁷ In-kind consideration is goods or services provided in lieu of money.

²⁸ 40 U.S.C. § 1302.

²⁹ 38 U.S.C. § 8122 (a)(1).

allowing in-kind consideration despite the OIG's finding that it was not allowable. VA stated further that the OIG's recommendation to take corrective action was unreasonable because it would require discontinuing the lease, a step that would likely trigger litigation. A summary of VA's position is found in appendix A.

A summary of the OIG's response to VA's position is also found in appendix A. In short, the OIG found noncompliance with the act and stated that if Congress had intended to provide different language for the Brentwood School, Congress could have done so as it did when it crafted language for the University of California, Los Angeles (UCLA) that was different from the general language in Section 2 (b)(2) of the act; Congress did not. The OIG further determined that VA's agreement with Brentwood School did not comply with laws prohibiting in-kind consideration, 40 U.S.C. § 1302 and 38 U.S.C. § 8122. These must be read as applying to agreements under the act including the Brentwood School lease because the laws do not conflict with the act, a requirement for overriding or repealing them.

VA Has Resolved Seven Previously Noncompliant Land-Use Agreements

In its prior report, the OIG identified 11 land-use agreements that did not comply with the West Los Angeles Leasing Act of 2016.³⁰ VA has taken action to bring seven of these noncompliant agreements into compliance. Table 4 summarizes VA's actions.

Table 4. VA's Actions to Bring Agreements into Compliance

Non-VA entity	Reason for noncompliance	What VA did
1. The 1887 Fund	Federal regulations prohibited using VA property for fundraising.	VA issued a letter to the 1887 Fund on September 9, 2019, requiring it to cease fundraising activities on VA property. The 1887 fund acknowledged receipt and agreed to comply in October 2019.
2. American Red Cross	Revocable license did not conform to the requirement that land be veteran focused.	VA reported on May 30, 2019, that the entity had vacated the campus.
3. Association for Parrot C.A.R.E.	The OIG found little evidence that veterans were benefiting from the land use.	VA issued the entity a letter to vacate on June 7, 2018.

³⁰ VA OIG, *VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016*.

Non-VA entity	Reason for noncompliance	What VA did
4. Brentwood Construction	The purpose of the revocable license was to accommodate construction on the Brentwood School campus and was therefore not veteran focused.	VA did not renew agreement after completion of construction.
5. City of Los Angeles—Veterans’ Barrington Park	The agreement did not comply with the draft master plan because the OIG could not find evidence that the city actually provided priority access to veterans.	VA entered into a new agreement on January 19, 2021. The OIG was unable to visit the site due to COVID-19 travel restrictions; however, in a phone call with city officials, the audit team learned that the city provides priority access to veterans as well as other services. Furthermore, in a virtual walk-through of the area, the OIG observed signage granting priority access to veterans.
6. The Shakespeare Center of Los Angeles	While this revocable license provides benefit to veterans, the primary purpose is to produce plays for the public at large, which does not conform to the draft master plan.	VA issued a letter to vacate dated May 9, 2019.
7. Westside Breakers Club	The agreement did not comply with the draft master plan because the land use is not veteran focused and is solely for the benefit of the soccer club.	VA issued a letter to vacate by October 1, 2020.

Source: Audit of VA’s Management of Land Use Under the West Los Angeles Leasing Act of 2016 for “Non-VA entity” and “Reason for noncompliance” columns; and various documents provided by VA for the “What VA did” column.

Twenty-Three New Agreements Were Compliant

The OIG determined 23 new land use agreements were in compliance with the West Los Angeles Leasing Act of 2016, the draft master plan, and other federal statutes. As shown in table 5, VA’s new compliant agreements include permanent and temporary housing, recreational services for veterans, and social programs for veterans. See appendix C for a more detailed description of each of the new compliant land-use agreements.

Table 5. New Compliant Agreements

Non-VA entity	How the land is being used
1. American Veterans Post II	American Veterans Post II is using the area for veteran-centric services for sanitation equipment.
2. AmVets Department of California Service Foundation	The revocable license allows space to be used for veteran-centric services “involving the storage of furniture and household items to be delivered to Veterans moving into new housing through VA’s Housing and Urban Development-VA Supportive Housing (HUD-VASH) voucher program.”
3. Bandini Foundation	The revocable license allows for a nine-hole golf course for veteran and visitor recreational use.
4. Blue Green Preservation and Development Company	The property access agreement grants a nonexclusive, revocable license giving Blue Green Preservation and Development Company permission to enter the campus to perform soil testing as may be reasonably necessary to complete due diligence investigations in preparation for the renovation and rehabilitation of buildings 205 and 208 into permanent supportive housing for veterans who are experiencing or at risk of homelessness.
5. Building 205 Holdings enhanced-use lease	The lease agreement between Building 205 Holdings and VA is to provide supportive housing to eligible veterans and their families and will consist of renovating building 205 to accommodate permanent supportive housing.
6. Building 207 Limited Partnership enhanced-use lease	The lease agreement between Building 207 Limited Partnership and VA is to provide supportive housing to eligible veterans and their families and will consist of renovating building 207 to accommodate permanent supportive housing.
7. Building 208 Holdings enhanced-use lease	The lease agreement between Building 208 Holdings and VA is to provide supportive housing to eligible veterans and their families and will consist of renovating building 208 to accommodate permanent supportive housing.
8. Carlos Lopez Associates	The revocable license allows for office space to help veterans experiencing homelessness find permanent housing.
9. City of Los Angeles—Veterans’ Barrington Park	The purpose of the revocable license is to provide day-to-day management and maintenance of the park.

Non-VA entity	How the land is being used
10. Community Partners	The agreement creates community services related to an automotive parking program for veterans.
11. Core Affordable Housing	The revocable license grants Core Affordable Housing entry to the West Los Angeles site for performing due diligence activities related to the planned veterans' housing projects.
12. Desert Pacific Credit Union*	The agreement is focused on providing credit union services on the West Los Angeles campus.
13. LA County Dumpster Initiative	The purpose is to provide dumpster service for trash and refuse pickup and removal for use by veterans experiencing homelessness.
14. LACMTA (license)	The revocable license allows LACMTA to perform due diligence activities in preparation for the construction and expansion of the Purple Line subway extension.
15. LACMTA (easement)	The easement provides for the design, construction, and operation of the Purple Line subway extension.
16. New Directions, Building 257	New Directions will partner with the healthcare system's clinical staff to provide residential rehabilitation services to veterans who have a dual diagnosis of a substance abuse disorder and a chronic, severe mental illness.
17. Salvation Army	Office space will be made available for the Salvation Army to provide services that include veteran housing, career development, and job placement.
18. Thomas Safran and Associates Development Inc.	Access will be granted to conduct due diligence investigations in preparation for additional permanent supportive housing.
19. University of California (UCLA), Regents	The provision of services to veterans is the predominant focus of the activities of UCLA at the campus during the term of the lease.
20. Village for Vets	Food boxes will be delivered to veterans experiencing food insecurity in project-based housing in Los Angeles County.
21. Volunteers of America	Office space will be used for services that include veteran housing and job placement.
22. Wadsworth Chapel Heritage Partners	The agreement is to help preserve and rehabilitate the Wadsworth Chapel for the use of veterans and their families.

Non-VA entity	How the land is being used
23. West Los Angeles Veterans Collective	The revocable license allows the principal developer access to the campus to perform due diligence investigations before construction activities.

Source: *OIG analysis of land-use agreements provided by the healthcare system.*

* 12 U.S.C. § 1770 allows credit unions that meet specified requirements to occupy space in government buildings.

Three Land-Use Agreements Were Not Recorded in the Healthcare System’s Capital Asset Inventory as Required

VA’s capital asset inventory is the database of record for VA’s real property. VA policy requires all VA medical facility directors or designees to continually update their capital asset inventory database records for all real property, including buildings, land, structures, and the leases and agreements associated with them.³¹ By maintaining reliable data, the healthcare system can easily monitor non-VA use of the land. In its previous report, the OIG identified 28 land-use agreements that should have been reported in the capital asset inventory but were not. Although the healthcare system has made progress with updates, the OIG determined that improvement is still needed.

Of the 41 land-use agreements the OIG determined should be in the capital asset inventory database, three agreements had not been recorded as of July 2021. These three were in effect for at least six months or longer and were required by policy to be inventoried:

1. **City of Los Angeles (Bridge Housing Facility).** The start date was November 6, 2018, and it expires “when the Grantee has complied with its obligations ... which shall be no later than four (4) years after the date of execution.”
2. **Core Affordable Housing.** The start date was August 27, 2020, and the end date is the earlier date of November 30, 2021, or Core Affordable Housing’s completion of its due diligence activities.
3. **West Los Angeles Veterans Collective.** The start date was June 3, 2020, with an end date of June 2, 2022.

Issues with inaccurate capital asset inventory were also identified in the previous report.

³¹ VA Directive 4085, *Capital Asset Management*, December 2020.

Finding 2 Conclusion

Veterans represented by the American Civil Liberties Union settled a lawsuit in January 2015 against the VA for using its West Los Angeles property in ways that were improper.³² The settlement called for the creation of a draft master plan for the West Los Angeles campus to provide housing, services, and other opportunities for veterans experiencing or at risk of homelessness and to guide future use of the land. VA's noncompliance with both the subsequent West Los Angeles Leasing Act and the draft master plan to ensure that the land is used to principally benefit veterans and their families undermines the settlement agreement and the promise made to veterans to use the land appropriately. The OIG recognizes VA's efforts to comply with the laws and draft plan in signing 23 new agreements and to rectify the seven noncompliant agreements identified in the 2018 audit report. However, two agreements that the OIG earlier found noncompliant remained so, contrary to sound legal opinion supporting the OIG's position, and five new agreements were also noncompliant. Although the accuracy of the capital asset inventory has significantly improved, healthcare system officials need to ensure the capital asset inventory is accurate. These measures would help ensure that non-VA users do not reap benefits or use resources that should be focused on supporting and serving veterans and their families.

Recommendations 1–2

The OIG directs recommendation one to the principal executive director of the Office of Acquisition, Logistics, and Construction and the under secretary for health, in conjunction with the director of the VA Greater Los Angeles Healthcare System; recommendation two is directed to the under secretary, in conjunction with the healthcare system director.

1. Implement a plan that brings the five new noncompliant land-use agreements into compliance with the West Los Angeles Leasing Act of 2016, the draft master plan, and other federal laws, allowing reasonable time to correct deficiencies noted in this report.³³
2. Ensure VA's capital asset inventory accurately reflects all land-use agreements lasting six months or longer on the West Los Angeles campus.

Management Comments and OIG Response

In response to recommendation 1, the acting under secretary for health agreed that all land-use agreements on the West LA campus must comply with the West Los Angeles Leasing Act of 2016, the draft master plan, and other federal laws. However, the acting under secretary did not

³² Valentini v. Shinseki.

³³ See appendix A for the status of the two land-use agreements that remained noncompliant (Breitburn and Brentwood) from the OIG's prior report. The recommendation from that report remains open and will not be repeated in this report.

concur that the CalTrans, Bridge Home, Safety Park, and South Coast Air Quality Management District land-use agreements were noncompliant. VHA's explanation for not concurring is found in appendix E. However, the OIG stands by its conclusions on these four agreements. The fifth noncompliant agreement was with the Department of Homeland Security. That agreement was terminated by VA during the course of this audit. The full text of the acting under secretary for health's comments appears in appendix E. An OIG legal opinion, prepared in response to the acting under secretary's nonconcurrence with recommendation 1, can be found in appendix F.

In response to recommendation 2, the acting under secretary concurred in principle, and noted that while the current published policy did not explicitly require access agreements or easements to be entered into the capital asset inventory, he recognized the importance of having a more robust real property data record. The acting under secretary further noted that OAEM is updating field guidance to address access agreements and easements, that the healthcare system has updated the capital asset inventory, and that VHA considers the recommendation closed. The OIG will monitor implementation of the recommendations by VHA until all proposed actions are completed.

Appendix A: Issues Identified in Prior OIG Report

In its 2018 report, the OIG identified the following six issues:³⁴

Issue 1: Noncompliant Land-Use Agreements

The OIG reviewed 40 land-use agreements and determined 11 did not comply with either the West LA Leasing Act, the draft master plan, or other federal laws.

The OIG recommended the principal executive director of the Office of Acquisition, Logistics, and Construction and the acting under secretary for health, in conjunction with the director of the VA Greater Los Angeles Healthcare System, implement a plan that brings the West Los Angeles campus into compliance with the West Los Angeles Leasing Act of 2016, the draft master plan, and other federal laws, including reasonable periods to correct deficiencies noted in this report.

The acting under secretary for health and the principal executive director, Office of Acquisition, Logistics, and Construction, concurred with this recommendation in part.³⁵ However, the acting under secretary disagreed that the Breitburn revocable license and Brentwood School lease were improper. Below are the views the acting under secretary presented to OIG on these land-use agreements as well as a synopsis of OIG's response to those views:³⁶

1. *VA's response to OIG's finding on the Breitburn revocable license:*

“The history behind the oil-drilling activities on the Campus is complex, and the documentation permitting that activity equally so. While the audit report refers only to a revocable license between [*sic*] that allows Breitburn surface access to VA property, that revocable license is related to a slant drilling lease (Lease No. R. 1956) between Breitburn and the Bureau of Land Management (BLM), which administers subsurface drilling rights on all federal lands.

VA is at a loss to understand whether or how it might cure this deficiency. The underlying lessor, BLM, is not bound by either the draft master plan or the Act. VA is not a party to the Breitburn-BLM lease. The Breitburn-VA revocable license is necessary to prevent the United States from breaching the Breitburn-BLM lease. To effectively negotiate more Veteran-centric consideration to support this revocable license, VA would have to have the authority to terminate Breitburn's access to the Campus if Breitburn refused to

³⁴ VA OIG, *VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016*.

³⁵ VA provided a plan to address the recommendations by September 2019, and the OIG followed up with VA every 90 days to track its progress.

³⁶ OIG's complete response can be found in VA OIG, *VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016*, appendix F.

provide such consideration. Because the revocable license is necessary to prevent the United States from breaching a legally binding contract to which VA is not a party, then VA clearly lacks the authority to terminate Breitburn's access to the Campus.

The recommendation that VA cure this deficiency is thus unreasonable, and VA declines to concur in it for that reason.”

The OIG's comments on VA's response to the Breitburn revocable license:

The revocable license that OIG found noncompliant with the draft master plan due to it not being veteran focused is different from the revocable license VA discusses in its response. As background, License No. 691-97-01-1L between VA and a predecessor of Breitburn allowed for slant drilling on nonfederal property. From 2002 to 2017, no instrument was in place to permit the slant drilling, but the activities continued on the site. On March 7, 2017, License No. 691-97-01-1L was revived in a 10-year agreement between VA and Breitburn. This “revived” revocable license No. 691-97-01-1L is the one at issue in OIG's report, and it has no connection to BLM. Revocable license No. 691-97-01-1L covers slant drilling on nonfederal property; BLM has authority only on federal mineral lands.

Breitburn does have another revocable license with VA, No. VA262-17-RL-0007, which is related to BLM Lease No. R 1956. VA states this license “is necessary to prevent the United States from breaching the Breitburn-BLM lease.” However, the OIG did not object to revocable license VA 262-17-RL-0007 involving the site guaranteed by VA under the BLM lease. Therefore, OIG reiterates its prior finding that the use of the West Los Angeles campus under License No. 691-97-01-1L does not comply with the draft master plan.

2. *VA's response to the OIG on the Brentwood Lease, in part:*³⁷

“While the bill that was ultimately enacted as the Act—H.R. 5936—moved too quickly from introduction to enactment to be accompanied by a committee report, a related, identical bill—H.R. 3484—did have a committee report [Report No. 114-570, 114th Cong., 2nd Session, p.7.] reflecting the House Committee on Veterans' Affairs' (HVAC) explanation of the bill's provisions, including those related to enhanced-use and other leases. This report detailed the history and contents of the [draft master plan] and summarized the leasing authorities provided in H.R. 3484 and ultimately enacted through the related, identical H.R.

³⁷ The OIG is providing a synopsis of VA's views and has cut and pasted excerpts from various sections of VA's response. The text did not appear in the order presented in this synopsis. VA's complete views can be found in VA OIG, *VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016*, appendix F.

5936, including the enhanced-use leasing, service leasing, and UCLA lease provisions. Notably, the report also clarified HVAC's intent with respect to certain historic and contemplated land-use activities that were not specifically referenced in the bill itself:

'The Committee ... recognizes that the envisioned future lease arrangement between VA and the Brentwood School meets the criteria laid out in this legislation. The Brentwood School is uniquely positioned to offer veterans and their families on the [West Los Angeles] campus substantial opportunities for physical recreation, health and wellness, education, and vocational training as well as direct community service and additional revenue. As such, the Committee is supportive of VA continuing the Department's long-standing community partnership with the Brentwood School under the tenets of this bill.'

"As noted above, the Act's legislative history clearly shows that Congress intended the section (2)(b)(2) leasing authority to extend to the renegotiated Brentwood School Lease."

"As a practical consideration, VA notes that the finding that the Brentwood School lease is deficient "because the principal purpose of the lease is to provide Brentwood School continued use of the Athletic Facilities" can be corrected only by discontinuing that use. With respect to this lease, then, recommendation 1—"take action to correct deficiencies noted in this report"—requires VA to terminate the lease and bar Brentwood School from using the facilities it has constructed on the campus. Any action VA might take to comply with this recommendation would likely trigger a litigative challenge that could indefinitely suspend both the lease termination and VA's authority to carry out enhanced-use leases to house homeless Veterans. This outcome is patently unreasonable."

"Given this context, VA believes that the most reasonable interpretation of the Act is that the section (2)(b)(2) leasing authority is as an entirely new and independent authority, not derivative of or governed by either 40 U.S.C. § 1302 or 38 U.S.C. § 8122(a)(1). In this regard, VA notes that the section (2)(b)(1) enhanced-use leasing provision incorporates by reference the general VA enhanced-use leasing statute, authorizing the Secretary to carry out on the campus 'any enhanced-use lease of real property under sub-chapter V of chapter 81 of title 38, United States Code, for purposes of providing supportive housing' (emphasis added). Similarly, the section (2)(e) easement authority incorporates by

reference the general VA easement statute, authorizing the Secretary to grant easements on the campus 'pursuant to section 8124 of title 38, United States Code' (emphasis added). By contrast, the section (2)(b)(2) leasing authority makes no reference to any other statute. Congress clearly knew how to incorporate other authorities into the Act when it meant to do so; its failure to do so in section (2)(b)(2) is telling.

Further support for VA's view that leases under the Act are not governed by either 40 U.S.C. §1302 or 38 U.S.C. § 8122(a)(1) is found in the fact that certain provisions of the Act directly conflict with those prior statutes. Section (2)(d) of the Act, providing that lease revenues will stay with VA 'for the renovation and maintenance of the land and facilities at the Campus,' directly conflicts with the last sentence in 40 U.S.C. §1302, which sends lease revenues to the U.S. Treasury. If 40 U.S.C. §1302 were otherwise applicable to leases under the Act, Congress would have noted that applicability by inserting the phrase 'notwithstanding 40 U.S.C §1302' into section (2)(d). Similarly, the fifty-year lease term provided in section (2)(b) conflicts with the three-year term provided in 38 U.S.C. §8122(a)(1). If Congress had intended §8122 to otherwise apply to leases under the Act, it would have included 'notwithstanding' language in the portion of section (2)(b)(2) providing for fifty-year lease terms.

Because VA believes that OIG's findings with respect to the Brentwood School lease are legally erroneous, VA declines to concur in recommendation 1 with respect to this lease."

*The OIG's comments on VA's response to the Brentwood School lease, in part.*³⁸

The language of Section 2 (b)(2) describes the type of leases that are authorized on the West Los Angeles campus. Although the OIG believes the language is clear, VA has presented an alternative interpretation. The differences in our views are described below:

The OIG Legal Counsel's Interpretation of Section 2(b)(2):

The OIG interprets Section 2 (b)(2) as requiring the purpose of the underlying lease to be providing services that principally benefit veterans and their families with the permissible services being those listed in subparagraphs (A) –(I) above. As illustrated on the following page, Section 2 (b)(2) concerns the Lease of Real Property at the West LA campus and describes the necessary elements of the lease, one of which is that the purpose of the lease is to principally benefit veterans and their families. The 'Lease' is the subject.

³⁸ The OIG's complete comments can be found in VA OIG, *VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016*, appendix F.

LEASE



not to exceed 50 years



To a 3rd party

to provide services that principally benefit veterans and their families

Not only is OIG's interpretation consistent with the plain language of the West LA Leasing Act, it acknowledges that land use at the West Los Angeles campus has been of paramount importance to veterans, Congress and the public. One of the issues underlying the *Valentini v. Shinseki* lawsuit was VA's alleged misuse of the land at the West LA campus. Paragraph 6 of the Principles for a Partnership and Framework for Settlement between VA and the Plaintiffs in that lawsuit stated that an exit strategy would be developed for entities whose use of the property did not comply with law and fit within the master plan.

VA's interpretation of section 2 (b)(2) and OIG's response

In its response, VA does not provide its interpretation of the requirements of Section 2 (b)(2) or whether it believes the Brentwood School lease complies with the law's requirements that the lease principally benefit veterans and their families. Instead, it supports its conclusion that OIG's finding was erroneous on the following: Members of Congress visited the campus and were aware of the Brentwood School's original purpose and of VA's renegotiation efforts; the Committee Report for H.R. 3484 expressed the Committee's strong support for the services the Brentwood School was to provide to veterans; and, that nonmonetary consideration is allowed on the campus.

The language in the Act is clear as to the requirements for leases under Section 2 (b)(2) to principally benefit veterans and their families. The Act is also clear that Congress asked the OIG to determine whether leases and land use at the campus complied with the West LA Leasing Act, other federal laws relating to leases and land use, and the draft master plan. In essence, as to the Brentwood School, VA is asking the OIG to ignore the clear language of the statute and instead focus on the limited legislative history, the congressional visits to the campus, and the long history of the Brentwood School on campus. This would be contrary to the OIG's charge in the Act and would require the OIG to ignore established laws of statutory construction. If Congress had intended to provide different language for the Brentwood School given its long relationship with VA, it could have done so. Indeed, in the West LA Leasing Act, Congress recognized unique circumstances with UCLA and considered its relationship with VA.

Congress crafted language for UCLA that was different from the general language in Section 2 (b)(2). This was not done for the Brentwood School. It is presumed that the legislature “meant what it said and said all it intended to say.”

—*Racing Services, Inc. v. State of North Dakota*, a governmental entity, 779 F.3d 498 (2015) citing *Estate of Christeson v. Gilstad*, 829 N.W.2d 453 (N.D.2013).

VA's interpretation of in-kind consideration

VA states that the OIG's finding regarding the nonmonetary consideration under the Brentwood School lease is misplaced. In support of its position that “OIG's finding that the Brentwood School lease is unauthorized under the Act conflicts with ... the Act's legislative intent.” VA argued the following:

- “The Homeless Veterans Comprehensive Service Programs Act of 1992 exempts the West L.A. VA Campus from 38 U.S.C. § 8122, except for leases to ‘a representative of the homeless’ to provide services to homeless Veterans and their families.”
- “The Feinstein Amendment to the Consolidated Appropriations Act of 2008 reiterates that the Homeless Veterans Comprehensive Service Programs Act of 1992 is the sole authority available for the disposal of any of the land or improvements at the West L.A. VA Campus.”
- “‘The West L.A. Leasing Act provides a new and comprehensive authority for leasing at the West L.A. Campus.’ Section 2(d) of the WLA Act, which provides that lease revenues will stay with VA to be used to maintain the land and facilities at the Campus, does not say ‘notwithstanding section 1302 of title 40,’ even though it is in direct conflict with the second general rule provided by that authority. Congress didn’t need to except West L.A. leases from any aspect of 40 U.S.C. § 1302 because the prior legislation had already rendered 40 U.S.C. § 1302 inapplicable to this campus.”
- “In Section 2 of the WLA Act, the authority for enhanced use leases is included (38 U.S.C. 8161(3) and the authority for easements is included (38 U.S.C. 8124), but the authority for leases, 38 U.S.C. 8122 is not included.”

Although VA cites the above provisions, it is unclear which tenet of statutory interpretation leads to the conclusion that 40 U.S.C. § 1302 and 38 U.S.C. § 8122 do not apply to the campus.

OIG Legal Counsel's Interpretation of In-Kind Consideration

Due to the following rules of statutory interpretation, the OIG stands by its conclusion that 40 U.S.C §1302 and 38 U.S.C § 8122 apply to leases at the campus, including the Brentwood School lease:

- **Repeals by Implication:** The repeal of a statute by implication “requires the most speculation about the intent of Congress” [citation omitted]. The Court in *Rodriguez v. United States*, 480 U.S. 522, 524 (1987) stated that “[r]epeals by implication ... will not be found unless an intent to repeal is clear and manifest” (citations omitted). Although the West LA Leasing Act does not state that 40 U.S.C. § 1302 and 38 U.S.C. § 8122 do not apply, VA believes the inapplicability of these statutes is implied primarily due to the Homeless Veterans Comprehensive Service Programs Act of 1992 and the Feinstein Amendment. Since there is no clear and manifest evidence in the West LA Leasing Act that Congress intended to override or repeal 40 U.S.C § 1302 and 38 U.S.C. § 8122, repeal by implication cannot be found and these laws remain in force.
- **Plain Language West LA Leasing Act (All Federal Laws):** OIG legal counsel agrees with VA that the West LA Leasing Act is a new authority for leasing at the West Los Angeles campus. However, it is not all inclusive and other laws still apply. In this regard, Section 2(h)(1) Compliance with Certain Laws, Laws Relating to Leases and Land Use identifies certain consequences if the OIG finds that VA “is not in compliance with all Federal laws relating to leases and land use at the Campus” (emphasis added). If Congress wanted the West LA Leasing Act to be the only law applicable to leases and other land use at the campus as stated by VA, there would not have been a need to require OIG to check compliance with “all Federal laws.” Both 40 U.S.C. § 1302 and 38 U.S.C. § 8122 relate to VA leases at the campus, so they were considered by OIG legal counsel.
- **The West LA Leasing Act takes precedence over other laws only to the extent it conflicts with an earlier law:** “VA believes that since Section 2 (d) of the WLA allows revenue received under leases to be used by VA and 40 U.S.C. § 1302 and 38 U.S.C. § 8122 previously required that the revenue be returned to the Department of Treasury, no aspect of 40 U.S.C. § 1302 and 38 U.S.C. § 8122 applies to the campus ... VA’s interpretation is inconsistent with applicable law. If two statutes are silent about their relationship and there are areas of conflict, the courts will attempt to harmonize them so they can both be given effect. ‘[I]f any interpretation permits both statutes to stand, the court must adopt that interpretation, “absent a clearly expressed congressional

intention to the contrary” [citations omitted]. Also, although provisions in a later enacted statute, such as the [West LA] Leasing Act, will control over those provisions in earlier statutes, such as 40 U.S.C. § 1302 and 38 U.S.C. § 8122, the later statute controls only “to the extent it conflicts with the earlier-enacted statute [citations omitted].”

- In relation to what happens to revenues received under leases on the campus, Section 2 (d) of the West LA Leasing Act takes precedence. However, pursuant to the law, all other aspects of 40 U.S.C. § 1302 and 38 U.S.C. § 8122 that do not conflict with the West LA Leasing Act are applicable. Specifically, the requirement for only monetary consideration except for the narrow exception is still applicable. This provision does not present a conflict with any language in the West LA Leasing Act.

Based on the rules of statutory interpretation, the OIG’s conclusion remains the same: the nonmonetary consideration under the Brentwood School Lease, that did not fit under the exception of 38 U.S.C. § 8122, is not authorized by law.

Issue 2: 14 Non-VA Entities Were Operating with Expired or Undocumented Agreements

The OIG also found 14 non-VA entities were operating on the campus with either an expired agreement or no documented land-use agreement (table A.1). The OIG determined that these entities’ activities complied with the West Los Angeles Leasing Act, the draft master plan, and other federal laws.

Table A.1. Land Uses Where Agreements Were Either Expired or Undocumented

Non-VA entity	Land use	Action taken by VA
1. Bandini Foundation	Management and maintenance of golf course	VA executed a new revocable license effective October 1, 2019, to September 30, 2024.
2. Cyclotron	Sharing agreement between UCLA and VA which allows VA to use Cyclotron equipment	VA provided internal memos dated October 1, 2019, and October 13, 2020, stating they have ownership of Cyclotron. As of May 2021, the OIG had not received formal confirmation by UCLA to support ownership transfer.
3. Gary Sinise Foundation	Distribution of hot meals once a month	The agreement expired in October 2019. As of June 2021, VA had not provided the OIG evidence that the agreement had been extended.

Non-VA entity	Land use	Action taken by VA
4. Jewish War Veterans Post 118	Veterans service organization meeting space	VA issued letter to vacate on December 11, 2018.
5. Salvation Army	Supportive services office space	VA executed a new revocable license from August 21, 2020, to August 20, 2021.
6. South Coast Air Quality Management District	Air quality testing equipment	VA executed a new easement from August 30, 2019, until terminated.
7. Team AMVETS	Provides furniture to veterans in transitional housing	VA issued a revocable license effective October 1, 2019, to September 30, 2020.
8. Twilight Brigade	Office space for volunteer training to serve terminally ill veterans	VA issued letter to vacate by February 7, 2019.
9. United States Postal Service Post Office Boxes	Post office boxes and mail service	VA issued letter to vacate on December 7, 2018.
10. US VETS Incorporated	Grant and Per Diem Program and supportive services for veteran families	VA reported in August 2021 that entity had vacated campus.
11. VA Desert Pacific Federal Credit Union	Space to operate credit union	VA executed an easement effective October 1, 2019, until September 30, 2024.
12. Vets Corps USA-Green Vets Los Angeles	Storage of 40-foot container used to store equipment to fabricate VA plaques for 1887 and training equipment for classes for veterans	VA issued letter to vacate on December 11, 2018.
13. Volunteers of America	Grant and Per Diem Program and supportive services for veteran families	VA authorized a revocable license effective August 21, 2020, to August 20, 2021.
14. Weingart	Information and access to services provided by the Weingart Center Association Grant and Per Diem Program	VA reported July 2021 that Weingart no longer occupies space on campus.

Source: *Audit of VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016, Report No. 18-00474-300, September 28, 2018.*

The OIG recommended the principal executive director, Office of Acquisition, Logistics, and Construction and the acting under secretary for health in conjunction with the director, VA Greater Los Angeles Healthcare System, ensure all non-VA entities operating on the West Los Angeles campus with expired or undocumented land-use agreements establish new agreements compliant with the West Los Angeles Leasing Act.

In response to the OIG, the acting under secretary for health and the principal executive director of the Office of Acquisition, Logistics, and Construction concurred with the recommendation.

Issue 3: Additional Veteran Input Could Help the Healthcare System Ensure Land-Use Agreements Are Compliant

The West Los Angeles Leasing Act established the Veterans Community Oversight and Engagement Board to coordinate locally with the Department to (1) identify the goals of the community and veteran partnership, (2) provide advice and recommendations to the Secretary to improve services and outcomes for veterans, members of the armed forces, and families of veterans and service members, and (3) provide advice and recommendations on the implementation of the draft master plan. The OIG determined that allowing Veterans Community Oversight and Engagement Board to provide input to the healthcare system leadership on existing and proposed land-use agreements will ensure veterans have a voice on whether land-use agreements benefit veterans and their families. This would improve transparency between the healthcare system leadership and the veteran community as VA works to rebuild trust while revitalizing the campus as a permanent home for veterans.

The OIG recommended the acting under secretary for health, in conjunction with the director of the VA Greater Los Angeles Healthcare System, create a process to allow the Veterans Community Oversight and Engagement Board (VCOEB) an opportunity to provide input to the executive leadership on West Los Angeles campus land use. In response to the OIG, the acting under secretary for health and the principal executive director of the Office of Acquisition, Logistics, and Construction concurred with the recommendation, but later communication between the OIG and VHA officials indicated VA's Office of General Counsel was going to review whether there were legal impediments to implementing the recommendation. On February 23, 2021, the Office of General Counsel's Information and Administrative Law Group issued a memo stating, in part, that the VCOEB "operates in accordance with the provisions of the Federal Advisory Committee Act, as amended, title 5 United States Code (U.S.C.) Appendix 2." The opinion states further that "the recommendation as drafted indicated that the VCOEB would be pre-decisionally advising or 'reporting back to' [the under secretary for health] and the local facility Director, which exceeds the scope of the authority provided by the VCOEB's charter and by [the Federal Advisory Committee Act] itself, both of which provide that the VCOEB is to advise and provide recommendations to the Secretary, not to [the healthcare system] or Veterans Health Administration leadership." After reviewing the Office of General Counsel's opinion, the OIG closed the recommendation.

Issue 4: VA Needs to Establish Clear Policies and Procedures to Ensure Land-Use Agreements Are Compliant

The majority of land use observed by the OIG on the West Los Angeles campus was through revocable licenses, but when the OIG requested the healthcare system's local policies and procedures for developing and approving land use for non-VA entities, there was very little information on revocable licenses. Furthermore, the OIG reviewed a select number of the enhanced-use sharing agreements that were the subject of *Valentini vs. Shinseki* in 2011 and noted several were previously negotiated at rates far below the property's fair market value. The VA has a policy that provides guidance on appropriate pricing and requirements to document decisions related to pricing for land-sharing agreements, but VA had limited guidance on this topic for leases and revocable licenses.

The OIG recommended the principal executive director, Office of Acquisition, Logistics, and Construction create documented policies and procedures for leases and revocable licenses to govern their use, management, and pricing to ensure fair value is received and negotiations are documented. In response to the OIG, the acting under secretary for health and the principal executive director of the Office of Acquisition, Logistics, and Construction concurred with the recommendation.

In collaboration with the Department of Veterans Affairs Real Property Law Group, the Office of Acquisition, Logistics, and Construction's Office of Construction and Facilities Management, VA provided OIG with interim policy to "assist administrations in the proper use of land-use agreements, guidance, and documentation on pricing. These documents were based on VA's authorities and the General Services Administration's policies." This recommendation was closed on December 30, 2019.

Issue 5: The Healthcare System Did Not Keep Accurate Inventory of Land-Use Agreements

VA's capital asset inventory is the database of record for VA's real property portfolio. VA policy requires all stations to continuously update their database records for all real property, including buildings, land, structures, and the leases, and agreements associated with them. However, the database records for West Los Angeles did not show 28 of the 40 land-use agreements in the OIG's audit's scope.

The OIG recommended the acting under secretary for health in conjunction with the director of the VA Greater Los Angeles Healthcare System ensure VA's capital asset inventory accurately reflects all land-use agreements six months or longer on West Los Angeles campus. The acting under secretary for health and the principal executive director of the Office of Acquisition, Logistics, and Construction concurred with the recommendation.

Issue 6: VA Is Behind on Draft Master Plan Implementation Milestones

The OIG determined that while VA is making progress to implement the draft master plan, it will not meet its initial milestone to provide 490 permanent supportive housing units within 30 months from the passage of the West Los Angeles Leasing Act on September 29, 2016. The major impediment to meeting this milestone was the requirement by VA to undertake an assessment of the environmental effects of its proposed actions before making decisions. VA began this environmental assessment in May 2017 and reached a Record of Decision in September 2019. The OIG did not make any recommendations associated with this issue. Finding 1 in this report discusses progress VA has made since the prior OIG report.

Appendix B: Scope and Methodology

Scope

The team performed its audit work from November 2020 to August 2021. The audit team reviewed planned development activities on the campus from September 29, 2016, through September 29, 2021. The team also reviewed 41 land-use agreements that were planned or in place from September 29, 2016, through May 31, 2021.

Methodology

To accomplish the objective of the audit, the audit team performed the following steps:

- Reviewed the draft master plan
- Analyzed the draft community plan
- Examined applicable laws, regulations, policies, procedures, and guidelines governing land use on the West Los Angeles campus
- Obtained a listing of agreements from the capital asset inventory to identify the initial universe of agreements and revenues under the purview of the West Los Angeles Leasing Act of 2016
- Assessed applicable controls over the management of the land-use agreements to determine the adequacy of internal controls and oversight as they relate to the audit objectives
- Conducted interviews with local managers and staff to understand the steps management is taking to execute the draft master plan, and to verify the status of selected agreements (The audit team also conducted telephone interviews with VA staff.)
- Compared data retrieved with the list of land-use agreements on the healthcare system's website
- Reviewed data from USASpending.gov to look for land-use agreements on the West Los Angeles campus
- Examined VA's Annual Report to Congress
- Accessed VA's server to review for any additional agreements not provided by VA
- Analyzed a copy of the tracking spreadsheet used by VA and the contractor to track agreements

- Requested any new land-use agreements that the West Los Angeles campus has entered into since September 28, 2018, as well as any land-use agreements to which an amendment or change was made since OIG's last review of those agreements

Scope Limitations

The team was not able to conduct a walk-through of the campus due to COVID-19 restrictions in place in the greater Los Angeles area at the time. The audit team was therefore not able to confirm through on-site evaluations that land use was as described in the agreements. However, in an attempt to exercise due diligence, the audit team worked with healthcare facility personnel to conduct virtual, real-time tours of the areas on the campus covered under land-use agreements. These tours took place in several sessions from May 7 through June 1, 2021.

Internal Controls

According to the Government Accountability Office's *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014), management should

- design control activities in response to the organization's objectives and risks, and
- document in policies the internal control responsibilities of the organization.

The team identified two components and one principle as significant to the objective.

- Component: Control Environment.
- Principle 3: Establishes the need for structure, authority, and responsibility for internal controls. VA Directive 7415, Enhanced-Use Lease Program Policies, and VA Handbook 7415, Enhanced-Use Lease Program, provided the required structure, authority, and responsibility of enhanced-use leases.
- Component 3: Control Activities. Component 3 states that control activities are "the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity's information system." As discussed in this report, OIG found that the capital asset inventory contained incorrect information. However, VA has implemented a public-facing page on the healthcare system's draft master plan website (westladraftmasterplan.org) that allows parties to submit a land-use request. The website provides a decision tree on how these land use requests are reviewed.

Fraud Assessment

The audit team assessed the risk that fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, significant in the context of the audit objectives,

could occur during this audit. The team exercised due diligence in staying alert to any fraud indicators by

- reviewing solicitations to ensure they were not overly restrictive,
- reviewing the land-use approval process to ensure supervisory and Office of General Counsel reviews occurred, and
- conducting interviews with VA officials responsible for various aspects of the implementation of the leasing process at the West Los Angeles campus.

The audit team did not identify any instances of fraud or potential fraud during this audit.

Data Reliability

To compile a universe of leases and land-use agreements carried out on the West Los Angeles campus, the audit team obtained data from various sources and identified a total of 41 land-use agreements to be reviewed. The team performed the following steps to assess data reliability and the accuracy of the universe:

- The team obtained a listing of all agreements on the West Los Angeles campus from the capital asset inventory, which is VA's official source of record for VA property data. During this review, the OIG determined that West Los Angeles's capital asset inventory accounting of land-use agreements was incomplete and outdated.
- The team identified additional instruments to be included in the universe through the review of the draft master plan and the 2013 judgment in *Valentini vs. Shinseki*.
- To test the completeness of the data compiled, the team performed the following steps: checked the list of land-use agreements on the West Los Angeles's website; reviewed a VA system that contained a list of land-use agreements; reviewed data from USASpending.gov to look for land-use agreements on the West Los Angeles campus and VA's Annual Report to Congress; gained access to VA's server to review for any additional agreements not provided by the VA; requested a copy of the tracking spreadsheet used by VA and the contractor to track agreements; compared the final list of land-use agreements from the previous West Los Angeles audit to the current list of land-use agreements to check for any missing land-use agreements; and requested any new land-use agreements that the West Los Angeles campus had entered since September 28, 2018, as well as any land-use agreements in which an amendment or change was made since OIG's last review of those agreements.

Based on these tests, the team concluded that the data were sufficiently reliable to meet the audit's objective and support the conclusions in this report.

Government Standards

The OIG conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that the OIG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on audit objectives. The OIG believes the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

Appendix C: Summary of All Compliant Land-Use Agreements and Amendments

Below is a summary of compliant land-use agreements and amendments.

1. **1887 Fund.** The revocable license's purpose is to plan, organize, and perform activities in support of refurbishing historical buildings on the VA's West LA campus. "The 1887 Fund's mission is to restore the five historic buildings ... donated in 1888." The agreement started on May 15, 2017, and ends on May 14, 2022.
2. **American Veterans Post II.** The purpose of this revocable license was to provide limited sanitation services for veterans who are homeless. Portable toilets and a portable handwashing station are provided on designated sections of the campus. The Licensee also provides maintenance services related to the sanitation equipment. The license started on November 20, 2020, and ended on June 30, 2021.
3. **AmVets Department of California Service Foundation.** The purpose of this revocable license was to provide the storage of furniture and household items to be delivered to veterans moving into new housing through VA's [U.S. Department of Housing and Urban Development-VA Supportive Housing (HUD-VASH)] voucher program. The base year start date was October 1, 2019, and the end date was September 30, 2020. The agreement was extended from October 1, 2020, to September 30, 2021.
4. **Bandini Foundation.** Under this revocable license, the Licensee operates a nine-hole golf course (Heroes Golf Course) providing veteran-centric services such as priority access and use of the course free of charge for veterans, monthly social or golf training events, and job fairs for veterans. Also, veterans are to make up no less than 75 percent of the staffing requirements for the Golf Course. The revocable license started on October 1, 2019, with an end date of September 30, 2024.
5. **Blue Green Preservation and Development Company.** The purpose of the agreement was to allow Blue Green Preservation and Development Company to conduct due diligence activities in preparation for the renovation and rehabilitation of permanent supportive housing for veterans. The start date was March 26, 2019, and the end date was April 30, 2019.
6. **Building 205 Holdings Enhanced-Use Lease.** The purpose of this enhanced-use lease is to provide supportive housing to eligible veterans and their families. The enhanced-use lease will provide affordable, safe, quality, and smoke- and drug-free housing for veterans and their families. The start date was December 2, 2019, for a term of 75 years.

7. **Building 207 Limited Partnership Enhanced-Use Lease.** The purpose of this enhanced-use lease is to “design, develop, construct, operate, and maintain affordable housing consisting of not less than sixty (60) units and associated vehicular parking spaces ... all for the purpose of providing supportive housing to eligible Veterans and their families.” The enhanced-use lease will provide affordable, safe, quality, and smoke- and drug-free housing for veterans and their families. The start date was October 29, 2020, for an initial term of 75 years.
8. **Building 208 Holdings Enhanced-Use Lease.** The purpose of this enhanced-use lease is to provide affordable, safe, quality, and smoke- and drug-free housing for eligible veterans and their families. The lease started December 2, 2019, and has a term of 75 years.
9. **Building 209 Vet Housing Enhanced-Use Lease.** The purpose of this enhanced-use lease is to provide affordable, safe, drug-free housing for veterans and their families, with a start date of May 18, 2017, and an end date of May 17, 2067.
10. **Carlos Lopez Associates.** The purpose of the revocable license is to use office space to perform case management and programming to support the transition of veterans experiencing homelessness to permanent housing. These administrative services support the service contract VA has with Carlos Lopez Associates to provide a bridge home facility for veterans experiencing homelessness. The start date was April 2, 2020, and the end date is April 1, 2024. No license fee is due or payable.
11. **City of Los Angeles—Veterans’ Barrington Park.** The purpose of the revocable license is to “provide day to day management and maintenance of the Park as set forth in the Special Conditions.” The Special Conditions state, in part, that the Licensee is “to provide activities within the Park for the principal benefit of Veterans and their families, and to permit general community park uses consistent with the terms and conditions of this License.” It states further that VA and the City of Los Angeles “shall meaningfully implement the requirement that Veterans and their families shall have first claim and priority access to the Park by making the Park available for regular and recurrent Veteran-focused activities in the Park and by maintaining signage in the Park and on their respective websites ... and social media accounts informing the public of such activities; and by coordinating public access to and use of the Park to ensure that such access and use does not impede access and use by Veterans and their families.” The OIG determined that the language of the revocable license is veteran focused, and that a new sign and online advertising provide evidence that veterans are prioritized. However, due to COVID-19 restrictions in place during the period of the agreement (and the resulting closure of the park), it was not possible to determine whether the steps

taken by VA and the City of Los Angeles were effectively prioritizing veterans and their families. The start date was January 19, 2021, with an end date of January 18, 2022, and a one-year optional extension term.

12. **Columbarium.** The memorandum of understanding transfers approximately 13 acres of property from the jurisdiction and control of VHA to VA's National Cemetery Administration. The property will be converted to a columbarium for preserving the remains of veterans.
13. **Community Partners.** The purpose of this revocable license agreement was to carry out an automotive parking program that "provides services exclusively for homeless Veterans and their families free of charge."³⁹ Up to 50 parking spaces were provided exclusively for veterans experiencing homelessness and their families providing a safe space for them to park their cars and gain access to food, medical, sanitary, and additional services while they waited for permanent housing. The agreement start date was October 16, 2019, and expired on December 31, 2019; however, Community Partners exercised options 1 through 3, thus extending the lease to June 30, 2021.
14. **Core Affordable Housing.** The purpose of the property access agreement is to allow Core Affordable Housing to do its due diligence. The start date was August 27, 2020, and the end date the earlier date of November 30, 2021, or Core Affordable Housing's completion of its due diligence activities.
15. **Desert Pacific Federal Credit Union.** The purpose of the revocable license is "to provide credit union services in the [West Los Angeles] Campus Main Hospital, Building 500, and provide Veteran-centric services as set forth in the Special Conditions ... including a convenient location for financial services for its members, including federal employees and their families, and convenient [automated teller machine] access to funds for Veterans and their families."⁴⁰ The start date was October 1, 2019, with an end date of September 30, 2024.
16. **Freedom Barber.** This entity is not under a land-use agreement with the healthcare system but is instead under a Veterans Canteen Service Agreement. It provides free haircuts for veterans three days each month. The start date was October 23, 2017, with no end date.
17. **Gary Sinise.** In the prior report, the OIG noted that the non-VA entity was operating on campus with an expired agreement. VA executed an agreement with this entity on November 2016 expiring on October 2017 for the distribution of

³⁹ Community Partners revocable license, page 1 of 13, section (box) 8, first sentence.

⁴⁰ VA Desert Pacific Federal Credit Union revocable license, page 1 of 9, section 8.

meals to veterans. The agreement had a base year and the option to extend the agreement four more years until October 2021. While the agreement was compliant in terms of the purposes it served—providing meals to veterans on the campus—as of June 2021, VA had not provided an updated agreement signed by an appropriate West Los Angeles official with authority to approve agreements on campus.

18. **Los Angeles County Dumpster Initiative.** The purpose of the revocable license was to provide dumpster service for trash and refuse pick up and removal for homeless veterans. The start date was October 21, 2020, and the end date was June 30, 2021. During the virtual site visit, the dumpsters were observed close to the edge of the campus, next to a tent encampment being used by veterans experiencing homelessness.
19. **Los Angeles County Metropolitan Transportation Authority, Revocable License.** The purpose of the revocable licenses (one in a series of licenses beginning in 2011) was to provide the Los Angeles County Metropolitan Transportation Authority (LACMTA) access to the West Los Angeles campus to perform due diligence activities in preparation for the construction and expansion of the Metro Purple Line subway extension project.
20. **Los Angeles County Metropolitan Transportation Authority, Easement.** The LACMTA easement, which was signed after the revocable license, was executed on May 28, 2021, with one of two parcels in perpetuity. The grantee is designing, constructing, and will be operating the Westside Purple Line Extension Project. The easement agreement complies with the requirements of the West Los Angeles Leasing Act as the services are to design and construct a public mass transit facility and system.
21. **New Directions, Building 116.** The lease provides use of building 116 for providing transitional and permanent housing for veterans experiencing homelessness, as well as comprehensive support services for veterans who are homeless with chronic substance abuse. The lease start date was August 29, 1995, and the end date is August 31, 2045.
22. **New Directions, Building 257.** Under this revocable license, the Licensee partnered with the healthcare system's clinical staff to provide residential rehabilitation services to those veterans who have a dual diagnosis. The services included developing, managing, and maintaining a sober, positive therapeutic environment. The healthcare system's clinical staff provided the medical/psychiatric treatment of the patients while New Directions provided beds, utilities, equipment, furnishings, food service, education, job training, legal services, case management, outreach, crisis intervention, money management, and relapse prevention. The agreement was from August 21, 2020, to August 20, 2021.

23. **Salvation Army.** The purpose of the revocable license was for the Salvation Army to provide veteran-centric services including “promoting housing stability and community integration.” The Licensee also provided career development and job placement services. The start date was August 21, 2020, with an end date of August 20, 2021.
24. **Southern California Edison, Building 525.** The easement gives Southern California Edison access to a portion of the property for constructing, operating, and maintaining an electrical conduit on the south portion of the campus. The standard for easements is pursuant to Section 2(e) of the West Los Angeles Leasing Act. This is one of the allowable easements in the West Los Angeles Leasing Act.
25. **Thomas Safran and Associates Development Inc.** The purpose of this access agreement was to perform geological borings along the perimeter of building 207 as part of necessary due diligence activities related to the renovation and rehabilitation of building 207 into permanent supportive housing for homeless veterans and those at risk for homelessness. This agreement started on August 13, 2019, and ended on August 31, 2019, unless earlier terminated.
26. **UCLA, Regents.** The purpose of the amendment to this revocable license was to further amend the lease entered into on December 23, 2016. It had a start date of December 10, 2020. The amendment approved the proposed scope of work for the Practice Field, comprising a new synthetic turf practice infield with bullpen, perimeter fencing, sports lighting, and a reconfigured parking lot.
27. **UCLA Veterans Legal Clinic.** The revocable license provides office space in building 206. The legal clinic provides free legal services to veterans and their families. The revocable license expires on May 31, 2022.
28. **UCLA/VA Veteran Family Wellness Center.** The revocable license provides office space in building 220. The Wellness Center provides family education and family supportive services for veterans and their families. The revocable license expires on May 31, 2022.
29. **Veterans Park Conservancy.** The stated purpose of the revocable license was to provide “the purpose of maintenance and upkeep of the Rose Garden.” The Veterans Park Conservancy is for the use of veterans and their families and is consistent with the draft master plan. The revocable license started on December 6, 2017, and was to expire on February 6, 2022. On May 28, 2021, VA sent a letter giving a 30-day notice to Veterans Park Conservancy.
30. **Village for Vets.** The revocable license grants use of one parking space on the West Los Angeles campus for the truck used by Village for Vets for deliveries of food boxes to food-insecure veterans in project-based housing in Los Angeles County;

deliveries of donated food, clothing, equipment, and hygiene items to veterans residing on the West Los Angeles campus; and deliveries for Food First programs providing nutritious food to food-insecure veterans. It started on February 19, 2021, and ends on February 18, 2022.

31. **Volunteers of America.** The purpose of the revocable license was to allow the Licensee to provide veteran-centric services related to providing veteran housing and job placement. The start date of the revocable license was August 21, 2020, and the end date August 20, 2021.
32. **Wadsworth Chapel Heritage Partners.** The lease allows the Wadsworth Chapel Heritage Partners, a nonprofit organization, to perform fundraising, design, and construction activities related to the renovation of the historic Wadsworth Chapel (building 20) so that it can be used for services that principally benefit veterans and their families. The Lessee is required to provide postrenovation services that “provide an environment conducive to transformative services, socialization, therapeutic support ... community building, and spiritual wellness for Veterans and their families.”
33. **West Los Angeles Veterans Collective.** The purpose of the property access agreement is to allow the principal developer permission from the VA to enter the campus to perform due diligence activities for the construction of permanent supportive housing for veterans. The start date was June 3, 2020, with an end date of June 2, 2022.
34. **Westside Food Bank.** The revocable license permitted Westside Food Bank access to the Outdoor Pavilion for distributing free food to veterans. This five-year revocable license expired on September 7, 2021.

Appendix D: Agreements Terminated since the Prior Report

Below are brief descriptions of each agreement and the context regarding its termination.

1. **American Red Cross.** The American Red Cross completed its walk-through and returned keys to a VA representative on May 30, 2019. The OIG determined this agreement was noncompliant in the prior audit.
2. **Department of Homeland Security.** In a letter dated March 4, 2021, VA gave a 30-day notice of revocation to the Department of Homeland Security to vacate no later than April 3, 2021. The OIG determined this agreement was noncompliant in finding 2 of this audit.
3. **Jewish War Veterans.** VA provided a letter with a notice to vacate no later than January 11, 2019. The reason stated was that the VA was seeking alternative use of the space currently occupied by [Jewish War Veterans] in the recreation hall “to further assist Veterans specifically on-site.” The OIG determined this agreement lacked an agreement in the prior report.
4. **Los Angeles Breakers.** A letter dated August 19, 2020, gave a final notice to vacate the property effective October 1, 2020. The letter indicated that the date had been extended due to COVID-19 concerns. The OIG determined this agreement was noncompliant in the prior audit.
5. **Shakespeare Center of Los Angeles.** A letter dated May 9, 2019, reminded Shakespeare Center of Los Angeles that the effective termination date of the agreement was March 29, 2019. The OIG determined this agreement was noncompliant in the prior audit.
6. **Twilight Brigade.** VA provided a letter with a notice to vacate on February 7, 2019. The reason stated was that the VA was “in need of the space currently occupied by the Twilight Brigade in building 258 for expansion of patient [sic] care services. Per section IX (Termination) outlined in the Memorandum of Understanding Agreement, the space occupied by your organization is required to assist the VA in advancing these important initiatives.” The OIG determined this entity had an agreement with no expiration date in the prior report.
7. **United States Postal Service.** VA provided a letter with a notice to vacate no later than January 7, 2019. The reason stated was that the VA was “seeking alternative use of the space currently occupied by the United States Postal Service. Consequently, the space occupied by [the United States Postal Service] organization

is required to assist VA in advancing these important initiatives.” The OIG determined this agreement lacked an agreement in the prior report.

8. **Vet Corps USA-Green Vets Los Angeles.** VA provided a letter with a notice to vacate no later than January 11, 2019. The reason stated was that the VA was “seeking alternative uses for the space presently occupied by [Vet Corp’s] Conex Box. The use of the property on the West Los Angeles campus must provide direct veteran benefit. Consequently, the space occupied by your organization is required to assist VA in advancing the redevelopment of these important initiatives.” The OIG determined this agreement lacked an agreement in the prior report.
9. **Vet-to-Vet.** VA provided a letter with a notice to vacate no later than January 11, 2019. The reason stated was that the VA was seeking “alternative use of the space currently occupied by [Vet-to-Vet] in building 258 to further assist Veterans as part of the new master plan re-development plan.”

Appendix E: Management Comments

Acting Under Secretary for Health

Department of Veterans Affairs Memorandum

Date: September 3, 2021

From: Acting Under Secretary for Health (10)

Subj: OIG Draft Report, VHA: VA's Management of Land Use under the West Los Angeles Leasing Act of 2016: Five Year Report (Project Number 2020-03407-R8-0002) (VIEWS 573350)

To: Assistant Inspector General for Audits and Evaluations (52)

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) subject draft report. The Veterans Health Administration (VHA) provides a response to the recommendations in the attachment.

VA agrees that all land use agreements on the Greater Los Angeles VA Healthcare System's West Los Angeles Campus (West LA Campus) must comply with the West Los Angeles Leasing Act of 2016, Public Law 114-226 (West LA Leasing Act), the 2016 Draft Master Plan (Draft Master Plan), and other federal laws. VA disagrees, however, with the OIG's finding that five new land use agreements do not comply with the West LA Leasing Act, Draft Master Plan, and other federal laws. VA believes the OIG's findings with regards to those land use agreements and the related recommendation to be legally and/or factually erroneous. VA declines to concur with those findings and with the recommendation related to them.

VHA respectfully non-concurs with recommendation 1, which asks VHA to implement a plan that brings the five new noncompliant land use agreements into compliance. VHA provides an explanation for the non-concurrence with respect to the CalTrans, Bridge Home, Safety Park, and the South Coast Air Quality Management District land use agreements.

VHA concurs in principle with recommendation 1 as it applies to the Department of Homeland Security land use agreement. VA disagrees that this permit should be an OIG finding because VA's processes worked as designed and VA terminated the permit prior to the OIG's findings and recommendations. There are no additional actions VA can take in response to the OIG's findings and recommendation with regards to this permit.

VHA concurs in principle with recommendation 2. Access agreements and easements are not explicitly required to be entered into capital asset inventory (CAI) based on current published policy. However, GLA recognizes the importance of having a more robust real property data record, therefore, GLA will enter all land use agreements going forward. In addition, VA Office of Asset Enterprise Management is updating

CAI field guidance to address access agreements and easements in the next call memo distribution, which is the forum for reviewing CAI issues and formulating action plans.

The OIG removed point of contact information prior to publication.

(Original signed by)

Steven L. Lieberman, M.D.

Attachment

VETERANS HEALTH ADMINISTRATION (VHA)
Action Plan
VETERANS HEALTH ADMINISTRATION: VA's Management of
Land Use under the West Los Angeles
Leasing Act of 2016: Five Year Report
(2020-03407-R8-0002)

The OIG directs the first recommendation to the Principal Executive Director of the Office of Acquisition, Logistics, and Construction and the Under Secretary for Health, in conjunction with the Director of the Greater Los Angeles Healthcare System.

Recommendation 1. Implement a plan that brings the five new noncompliant land-use agreements into compliance with the West Los Angeles Leasing Act of 2016, the draft master plan, and other federal laws, allowing reasonable time to correct deficiencies noted in this report.

Thank you for the opportunity to review the Office of Inspector General (OIG) draft report, VA's Management of Land Use under the West Los Angeles Leasing Act of 2016: Five-Year Report (2021 Audit), and to respond to the recommendations. VA agrees that all land use agreements on the Greater Los Angeles VA Healthcare System's West Los Angeles Campus (West LA Campus) must comply with the West Los Angeles Leasing Act of 2016, Public Law 114-226 (West LA Leasing Act), the 2016 Draft Master Plan (Draft Master Plan), and other federal laws. VA disagrees, however, with the OIG's finding that five new land use agreements do not comply with the West LA Leasing Act, Draft Master Plan, and other federal laws. VA believes the OIG's findings with regards to those land use agreements and the related recommendation to be legally and/or factually erroneous. VA declines to concur with those findings and with the recommendation related to them.

VA and OIG's positions with regards to the Brentwood School lease and the Breitburn (now Maverick) revocable license have been extensively documented since the OIG's 2018 Audit of VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016 (2018 Audit), as summarized on pages 23-25 and Appendix A of the 2021 Audit. There has been no material change that would alter VA's legal interpretation or ability to implement OIG's recommendations in the 2018 and 2021 Audits with regards to both agreements. VA continues to not concur with the OIG's findings and recommendations on both land use agreements. VA will not address the Brentwood School lease or Breitburn/Maverick revocable license further in this response. VA will address the OIG's findings and recommendation with regards to each of the remaining five new land use agreements the OIG found noncompliant in the 2021 Audit individually below.

CalTrans

VHA Comments: Non-concur

Status: The agreement is operational.

Target Completion Date: Not Applicable

VA respectfully requests OIG reconsider this finding based on the following:

1. VA granted an easement to the California Department of Transportation (CalTrans) for the maintenance and operation of Interstate 405 (I-405) on and off ramps adjacent to the West LA Campus. The maintenance and operation of the ramps is essential for Veterans to safely access the West LA Campus. The 2021 Audit found the CalTrans easement to be unauthorized under

the West LA Leasing Act, which the OIG reads as limiting “the Secretary’s authority on the campus to two types of easements or rights-of-way—for public transit and public utility work.”¹

2. VA believes that the OIG’s findings are based on an erroneous interpretation of Section 2(e)(1)(B) of the West LA Leasing Act. The legislative history of the West LA Leasing Act, grammatical structure of the Act, and principles of statutory interpretation all clearly show that Congress intended Section 2(e)(1)(B) of the Act to authorize VA to grant easements on the West LA Campus to: the State of California; the County of Los Angeles; the City of Los Angeles; or to any public utility company for the purpose of providing such public utilities.
 - a. House Report 114-570, the House Committee on Veterans Affairs (HVAC) Committee Report that accompanied House Resolution (H.R.) 3484 states, “section 2 of the bill would also provide VA the authority to grant easements or rights-of-way on, above, or under lands of the West LA campus to local or regional public transportation authority, the state of California, the County of Los Angeles, or any public utility company.” If Congress intended to limit VA’s ability to provide easements to the State or County to the purpose of providing utilities, it would undoubtedly have been referenced in the Committee Report’s discussion of the contemplated easement authority.
 - b. VA’s interpretation of the easement authority is further substantiated by the plain language of the West LA Leasing Act. Section 2(e)(1)(B) is a single subparagraph written in the disjunctive, punctuated and phrased as two independent clauses. The OIG misconstrues the qualification “for the purpose of providing such public utilities” as applying to grants of easements to the State, County, City, and public utility companies. The phrase “for the purpose of providing such utilities” clearly refers back to and modifies only the parenthetical that precedes it. It is unreasonable to read the “such utilities” phrase as referring back to, or modifying, the portion of the subsection in which utilities have not yet been referenced. Instead, “for the purpose of providing such public utilities” only modifies VA’s authority to grant easements to public utility companies. The Rule of the Last Antecedent states that “a limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.” When no contrary intention appears, referential and qualifying words and phrases refer solely to the last antecedent.²
3. VA finds the OIG’s interpretation of Section 2(e)(1)(B) to be erroneous for practical reasons as well. The State of California, or any agency or political subdivision thereof, does not provide any

¹ VA OIG, VA’s Management of Land Use Under the West Los Angeles Leasing Act of 2016: Five-Year Report, August 14, 2021 at 21.

² Valerie Brannon, Cong. Research Serv., R45153, Statutory Interpretation: Theories, Tools, and Trends (2018); *Banhart v. Thomas*, 540 U.S. 20, 26 (2003). The Supreme Court provides a useful explanation of this principle in *Lockhart v. U. S.*:

The rule reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it. That is particularly true where it takes more than a little mental energy to process the individual entries in the list, making it a heavy lift to carry the modifier across them all. For example, imagine you are the general manager of the Yankees and you are rounding out your 2016 roster. You tell your scouts to find a defensive catcher, a quick-footed shortstop, or a pitcher from last year’s World Champion Kansas City Royals. It would be natural for your scouts to confine their search for a pitcher to last year’s championship team, but to look more broadly for catchers and shortstops. *Lockhart v. U.S.*, 577 U.S. 347, 251 (2016).

public utilities. If the language of Section 2(e)(1)(B) intended to restrict the VA's authority to grant easements solely for the provision of public utilities, there would be no reason to include the State of California as a permitted grantee.

4. The CalTrans easement was previously drafted as a revocable license. In the 2018 Audit, the OIG found the CalTrans revocable license inconsistent with the Draft Master Plan because it conferred benefit to the public at large rather than Veterans.³ The 2018 Audit noted that "given the purpose of the license and the long-term use of the land, it is unclear why VA chose a Revocable License over an easement."⁴ In response to the 2018 Audit, VA agreed that the land use was more appropriately documented as an easement, terminated the revocable license, and entered into an easement with CalTrans. If, as OIG posits, VA cannot enter into an easement with CalTrans for the maintenance of I-405 on and off ramps, VA has no available land use agreement in which such a necessary relationship may be documented. The logical extension of the OIG's interpretation of Section 2(e)(1)(B), is that VA would be required to maintain the I-405 on and off ramps adjacent to the West LA Campus because VA cannot enter into any sort of land use agreement to allow for CalTrans, the State agency responsible for maintaining the highway system, to do so. Not only would this be beyond VA's authority, but it would likely be a violation of federal appropriations law. It is impossible to believe that this was what Congress intended when Section 2(e)(1)(B) was drafted.

City of Los Angeles (A Bridge Home)

VHA Comments: Non-concur

Status: The agreement is operational.

Target Completion Date: Not Applicable

VA respectfully requests OIG reconsider this finding based on the following:

1. VA granted an easement to the City of Los Angeles to construct and maintain an emergency shelter facility for homeless Veterans on the West LA Campus under the City's A Bridge Home (ABH) program.
2. The ABH facility opened in April 2020, at the height of the COVID-19 epidemic, to provide emergency shelter beds to homeless Veterans who were considered particularly vulnerable to the virus, were suspected to have the virus and needed self- or group-isolation or were recovering from the virus and needed shelter to facilitate or expedite full recovery.
3. VA believes the OIG's findings are based on an erroneous interpretation of Section 2(e)(1)(B) of the West LA Leasing Act. VA's explanation of the OIG's misinterpretation of Section 2(e)(1)(B) is discussed in more detail in Paragraphs 2 and 3 of VA's discussion of the CalTrans easement, above. VA does not concur with OIG's finding and recommendation with regards to the easement to the City of Los Angeles for the ABH program, because the easement is not only permissible

³ VA continues to disagree with the OIG's finding that the CalTrans revocable license was inconsistent with the Draft Master Plan. The Draft Master Plan specifically referenced the Caltrans revocable license as an agreement that was "logistical to remain," indicating that the Draft Master Plan considered that use at least logistically appropriate to continue. Appendix H, p. H-4. The Draft Master Plan is available at www.losangeles.va.gov/masterplan/index.asp#.

⁴ VA OIG, VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016, Report No. 18-00474-300, September 28, 2018 at 19.

under Section 2(e)(1)(B) of the West LA Leasing Act, but provides essential benefits to homeless Veterans and is consistent with the overarching scheme of the West LA Leasing Act and the Draft Master Plan.

Department of Homeland Security

VHA Comments: Concur in Principle

Any non-lease, non-easement third-party uses of the West LA Campus, such as licenses, permits, and access agreements must be Veteran-focused and consistent with the Draft Master Plan. VA reserves the right to determine, through its Draft Master Plan implementation processes, Land Use Management processes, and Medical Center processes whether a land use agreement is Veteran-focused. In this case, VA made the determination that the Department of Homeland Security permit was Veteran-focused because it enhanced the physical security of the West LA Campus, allowing for the safe and continuous provision of services to Veterans throughout the Campus. Upon further review, VA determined that the limited duration of the agreement, potential impacts to Medical Center operations, and other factors, mitigated the permit's benefit to Veterans on the West LA Campus. Consequently, VA rescinded the permit as part of our ongoing evaluation. VA disagrees that this permit should be an OIG finding because VA's processes worked as designed and VA terminated the permit prior to the OIG's findings and recommendations. There are no additional actions VA can take in response to the OIG's findings and recommendation with regards to this permit.

Status: The agreement has been terminated.

Target Completion Date: Not Applicable

VA respectfully requests OIG reconsider this finding as justified above.

SafetyPark

VHA Comments: Non-concur

Status: The agreement is operational.

Target Completion Date: Not applicable

VA respectfully requests OIG reconsider this finding based on the following:

1. VA does not agree with the OIG's finding that the Safety Park lease is noncompliant because "its primary purpose is to provide parking to the public, not principally benefiting veterans."⁵ The West LA Leasing Act authorizes VA to enter into leases on the West LA Campus to provide services that principally benefit Veterans and their families. The Safety Park lease is permissible as provided for in Section 2(b)(2)(H) Transportation of the West LA Leasing Act.
2. House Report 114-570, the HVAC Committee Report that accompanied H.R. 3484 states: "The Committee recognizes that 'transportation' [in section 2(b)(2)(H)] includes the authority to enter into parking lease agreements with local community organizations, with the continuation of such leases depending on how the community groups manage the leases to both generate funds and provide services to veterans and their families". The Safety Park lease provides employment opportunities and job training to Veterans through the operation of the parking lot and implements and manages a program in partnership with Brentwood Village businesses to generate

⁵ VA OIG, *VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016: Five-Year Report*, Draft Report, August 14, 2021 at 22.

employment opportunities and discounts. In addition to the services provided under the lease, Safety Park remits its net parking revenues to VA.

South Coast Air Quality Management District

VHA Comments: Non-concur

Status: The agreement is operational.

Target Completion Date: Not Applicable

VA respectfully requests OIG reconsider this finding based on the following:

1. VA granted an easement to South Coast Air Quality Management District (South Coast), a government agency established by the State of California. The easement grants South Coast a perpetual right to access the West LA Campus for purposes of providing ambient air quality monitoring information for use in research and health studies.
2. VA believes the OIG's findings are based on an erroneous interpretation of Section 2(e)(1)(B) of the West LA Leasing Act. VA's explanation of the OIG's misinterpretation of Section 2(e)(1)(B) is discussed in more detail in Paragraphs 2 and 3 of VA's discussion of the CalTrans easement, above. VA does not concur with OIG's finding and recommendation with regards to the easement to South Coast. The easement is permissible under Section 2(e)(1)(B) of the West LA Leasing Act. The easement is also consistent with the overarching scheme of the West LA Leasing Act and the Draft Master Plan. The easement provides vital air quality data that directly supports the services provided to and the health of Veterans on the West LA Campus. VA believes that the data provided through the South Coast easement will become an even more important tool as additional supportive and permanent housing is developed for Veterans on the West LA Campus.

The second recommendation is directed to the Under Secretary for Health, in conjunction with the Healthcare System Director.

Recommendation 2. Ensure VA's capital asset inventory accurately reflects all land-use agreements lasting six months or longer on the West Los Angeles campus.

VHA Comments: Concur in principle

The three agreements identified by OIG: City of Los Angeles (A Bridge Home facility) easement; Core Affordable Housing access agreement; and West Los Angeles Veterans Collective access agreement have been entered into VA's capital asset inventory (CAI) database.

Access agreements and easements are not explicitly required to be entered into CAI based on current published policy. However, GLA recognizes the importance of having a more robust real property data record, therefore, GLA will enter all land use agreements going forward. In addition, VA's Office of Asset Enterprise Management is updating CAI field guidance to address access agreements and easements in the next call memo distribution, which is the forum for reviewing CAI issues and formulating action plans. Given the lack of CAI policy requiring log entry for land use agreements that are not required by policy to be entered into CAI, VHA respectfully requests OIG rescind its finding with respect to access and easement agreements to be entered into CAI.

Target Completion Date: Completed

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

Appendix F: OIG Office of the Counselor to the Inspector General Response to VA Allegations of Erroneous Legal Findings

I. Interpretation of Section 2 (e) of the West LA Leasing Act of 2016

VA and the VA OIG have different interpretations of Section 2(e) of the West LA Leasing Act of 2016 (“WLA Act” or “Act”), the section setting forth the types of easements allowed to operate on the West LA campus. The VA OIG’s interpretation is that the two specific types of easements cited in Section 2(e), subsections A and B, are the only allowable easements that can operate on the West LA campus. Generally, and as explained in more detail below, in the OIG’s view, the two types of easements allowed by the Act relate to local or regional public transportation facilities and utilities. This interpretation is based on well-settled canons of statutory interpretation. In addition, VA OIG’s interpretation is consistent with the veteran-centric context and purpose of the WLA Act. VA’s position is that there is also a third category of easement allowed under Section 2(e): easements to the State, County, City or any agency or political subdivision thereof whenever deemed advantageous. VA’s stance is based on how it interprets subparagraph 2(e)(1)(B) and the reference to 38 U.S.C. § 8124 in Section 2(e). While the VA OIG agrees it is critical to consider 38 U.S.C. § 8124 when interpreting Section 2(e) because it is specifically referenced, the VA OIG does not agree that the consideration of section 8124 means that any easement to the state, city, or county, for any purpose deemed advantageous can be entered into on the unique West LA campus. Neither canons of statutory construction nor the history of land use in West LA that prompted the WLA Act support VA’s position.

Applicable Legal Provisions

Section 2(e) states:

(e) EASEMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law (other than Federal laws relating to environmental and historic preservation), pursuant to section 8124 of title 38, United States Code, the Secretary may grant easements or rights-of-way on, above, or under lands at the Campus to—

(A) any local or regional public transportation authority to access, construct, use, operate, maintain, repair, or reconstruct public mass transit facilities, including, fixed guideway facilities and transportation centers; and

(B) the State of California, County of Los Angeles, City of Los Angeles, or any agency or political subdivision

thereof, or any public utility company (including any company providing electricity, gas, water, sewage, or telecommunication services to the public) for the purpose of providing such public utilities.

(2) IMPROVEMENTS.—Any improvements proposed pursuant to an easement or right-of-way authorized under paragraph (1) shall be subject to such terms and conditions as the Secretary considers appropriate.

(3) TERMINATION.—Any easement or right-of-way authorized under paragraph (1) shall be terminated upon the abandonment or nonuse of the easement or right-of-way and all right, title, and interest in the land covered by the easement or right-of-way shall revert to the United States.

Section 8124 of title 38, which is cited in Section 2(e), states, in part:

The Secretary, whenever the Secretary deems it advantageous to the Government and upon such terms and conditions as the Secretary deems advisable, may grant on behalf of the United States to any State, or any agency or political subdivision thereof, or to any public-service company, easements in and rights-of-way over lands belonging to the United States which are under the Secretary's supervision and control. Such grant may include the use of such easements or rights-of-way by public utilities to the extent authorized and under the conditions imposed by the laws of such State relating to use of public highways. Such partial, concurrent, or exclusive jurisdiction over the areas covered by such easements or rights-of-way, as the Secretary deems necessary or desirable, is hereby ceded to the State in which the land is located. The Secretary may accept or secure on behalf of the United States from the State in which is situated any land conveyed in exchange for any such easement or right-of-way, such jurisdiction as the Secretary may deem necessary or desirable over the land so acquired. Any such easement or right-of-way shall be terminated upon abandonment or nonuse of the same and all right, title, and interest in the land covered thereby shall thereupon revert to the United States or its assignee.

VA's Interpretation

In Appendix E of the OIG's 2018 audit of VA's management of land use on the West LA campus, VA stated:

VA believes subsection (2)(e) authorizes three categories of easements on the Campus, not two as OIG's reading would indicate. Subsection (2)(e)(1)(A)

authorizes easements to “any local or regional public transportation authority to access, construct, use, operate, maintain, repair, or reconstruct public mass transit facilities.’ Subsection (2)(e)(1)(B), which is written in the disjunctive, authorizes easements to ‘the State of California, County of Los Angeles, City of Los Angeles, or any agency or political subdivision thereof, or any public utility company (including any company providing electricity, gas, water, sewage, or telecommunication services to the public) for the purpose of providing such public utilities.’ The phrase ‘for the purpose of providing such utilities’ at the end of subsection (2)(e)(1)(B) clearly refers back to and modifies the parenthetical that precedes it. It is unreasonable, however, to read the ‘such utilities’ phrase as referring back to, or modifying, the portion of the subsection in which utilities have not yet been referenced ...¹

VA’s view on the operation of 38 U.S.C. § 8124 was forwarded to VA OIG in response to a question from the OIG audit team regarding an easement reviewed during the audit at issue:²

Moreover, the West L.A. Leasing Act’s easement authority incorporates by reference VA’s general easement authority, 38 U.S.C. § 8124, which provides that the Secretary may grant an easement to any state or political subdivision thereof “whenever the Secretary deems it advantageous to the Government and upon such terms and conditions as the Secretary deems advisable.” This easement is clearly within the authority provided by 38 U.S.C. § 8124 and incorporated by reference in section 2(e) of the West L.A. Leasing Act.

VA reiterates the first position above in its Action Plan and states its nonconcurrence with VA OIG’s conclusion that some of the easements reviewed did not comply with either subsection (2)(e)(1)(A) or (2)(e)(1)(B). VA argues that based on the Rule of the Last Antecedent,³ a canon of statutory interpretation, VA’s interpretation is that the phrase “for the purpose of providing such utilities” in subsection (2)(e)(1)(B) applies only to public utility companies, and, therefore, the Secretary is not prevented from granting easements to “the State of California, County of Los Angeles, City of Los Angeles, or any agency or political subdivision thereof” for purposes other than utilities. Also, as indicated above in VA’s response to VA OIG, VA states further that the reference to 38 U.S.C. § 8124 allows the Secretary to grant any type of easement on the West LA campus to the State “whenever the Secretary deems it advantageous to the Government and upon such terms and conditions as the Secretary deems advisable.” Although this canon is a tool that can be used in appropriate cases to interpret statutes, if the result of applying the rule is that there

¹ Appendix E, *Audit of VA’s Management of Land Use Under the West Los Angeles Leasing Act of 2016*. This argument is also set forth in VA’s Action Plan.

² VA GLA response to VA OIG dated March 12, 2021 (pages 18 and 19 of 32), regarding the South Coast AQMD easement.

³ See *Lockhart v. U.S.*, 577 U.S. 347 (2016) (applying the rule of the last antecedent).

are no restrictions on the types of easements that the Secretary can grant to the State on the West LA campus, for the reasons set forth below, VA OIG's position is that it cannot be relied upon in this context. Also, VA OIG does not agree with VA that 38 U.S.C. § 8124 is incorporated by reference into Section 2(e) to authorize the Secretary to grant any type of easement under section 8124 deemed advantageous on the West LA Campus.

VA OIG's Interpretation

VA and the VA OIG disagree on whether the phrase in subsection (2)(e)(1)(B) “for the purpose of providing such public utilities” applies to both easements to the State of California, County of Los Angeles, City of Los Angeles (and any subdivisions thereof), and public utility companies or only to easements to public utility companies. The VA OIG interprets this phrase to apply to easements to both and VA interprets the phrase to apply only to public utility companies.⁴ We understand VA's Office of General Counsel's (OGC) reading of the clause and its reliance on the *Lockhart* decision to support it. In isolation, we might agree with OGC, but that decision itself says the rule of the last antecedent “is not an absolute” and its application depends on the totality of the circumstances.⁵ Here, OGC's reading renders the language in the WLA Act superfluous and assumes Congress, in adding subparagraph 2(e)(1)(B), simply intended to reiterate the authorities in 38 U.S.C § 8124. That reading is not supported by canons of statutory interpretation and the VA OIG does not presume that Congress intended to pass a provision with no effect. Rather, the VA OIG reads the statute to give full effect to each of its provisions and to be in harmony with other existing legislation. Further, the history of the West LA campus, which provided the impetus for the WLA Act, cannot be disregarded to reach the conclusion advanced by VA.

Statutory Interpretation

All statutory interpretation questions begin with the plain and unambiguous language in the statute.⁶ Section 2(e)(1) of the Act states that “pursuant to section 8124 of title 38 United States Code, the Secretary may grant easements or rights-of-way, on, above, or under lands at the Campus to ...” and then sets forth two paragraphs, subsections (A) and (B), with the easements

⁴ In its Action Plan, VA states that “[t]he State of California or any agency or political subdivision ... does not provide any public utilities” to the West LA campus. “If the language of Section 2(e)(1)(B) intended to restrict the VA's authority to grant easements solely for the provision of public utilities, there would be no reason to include the State of California as a permitted grantee.” However, VA OIG determined that the Los Angeles Department of Water & Power, a municipal utility, provides both water and electric utilities to the West LA campus.

⁵ 577 U.S. at 351 (citing an earlier case, the Court provided an example of when the rule of the last antecedent would be used: “[w]here it takes more than a little mental energy to process the individual entries in the list, making it a heavy lift to carry the modifier across them all ...”).

⁶ *Town of Dutch John v. Daggett County*, 367 F. Supp. 3d 1290, 1297 (2019) and cases cited therein.

that can be issued. If Congress intended to set forth three types of easements as OGC states, it is unclear why they would have organized Section 2(e) into two paragraphs rather than three.

Second, statutes should be read in such a way that does not render provisions unnecessary or superfluous.⁷ Under the provisions of 38 U.S.C. § 8124, the Secretary may grant easements to “any State ...” for any purpose that the Secretary deems advantageous. This authority is extremely broad and would encompass the types of easements under subsection 2(e)(1)(B). Therefore, since the State of California, County of Los Angeles, City of Los Angeles already enjoyed these authorities under the general provisions of 38 U.S.C. § 8124, it would not have been necessary for Congress to specifically add subparagraph 2(e)(1)(B) to the WLA Act. Accordingly, VA’s interpretation that the broad authority of 38 U.S.C. § 8124 still applies on the West LA campus renders 2(e)(1)(B) unnecessary or superfluous. VA OIG recognizes that it is not unusual for statutory language to have some redundancies to ensure certain language is not missed.⁸ For example, the language from 38 U.S.C. § 8124 allowing termination of the easement if it is abandoned was repeated under Section 2(e).⁹ However, it is the OIG’s reading of the statute that the addition of subsection 2(e)(1)(B) was not an intentional redundancy, but rather a purposeful act of the legislators to distinguish the specific easements allowed on the West LA campus from the broader category of easements to the State typically allowed under § 8124.

Another canon of statutory interpretation is that statutes should be read harmoniously. *Raoof v. Sullivan*, 315 F. Supp. 3d 34 (2018) (if possible, statutes are to be interpreted into a harmonious whole). See also *Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers*, 619 F.3d 1289, 1299 (11th Cir. 2010) “If any interpretation permits both statutes to stand, the court must adopt that interpretation, ‘absent a clearly expressed congressional intention to the contrary.’”¹⁰ VA OIG’s interpretation is that the addition of subparagraphs 2(e)(1)(A) and (B) after the language that states “pursuant to 8124 of title 38 ... the Secretary may grant easements ... to” has the effect of modifying the scope of 38 U.S.C. § 8124 which normally would allow any easements to the State deemed advantageous. As to subsection 2(e)(1)(A), the scope of § 8124 was expanded to allow easements to local or regional public transportation authorities to work on local or regional public mass transit facilities.¹¹ As to subsection 2(e)(1)(B), the scope of § 8124 was limited from the general authority to grant any type of easement to the State. That Congress would want to limit the Secretary’s broad authority to grant easements as that authority

⁷ Id. at 1301. See also, *Johnson v. Blendtec, Inc.*, 500 F. Supp. 3d 1271 (2020) (holding that a court must construe a statute in a way that results in all parts being relevant and meaningful).

⁸ *Moore v. Wells Fargo Bank*, 908 F.3d 1050 (2018), n. 7.

⁹ Section 2(e)(3), Termination.

¹⁰ Quoting from *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1266 (11th Cir.2006).

¹¹ Since 38 U.S.C. § 8124 allows easements to the State, 2(e)(1)(A) of the WLA Act was needed to allow easements to “any local or regional public transportation authority to access, construct, use, operate, maintain, repair, or reconstruct public mass transit facilities” since it would not have been allowed under 38 USC § 8124.

pertains to the West LA campus is reasonable given the history of misuse of VA land at the West LA campus. Moreover, VA OIG's interpretation allows a harmonious reading of both statutes because even though the general authority of § 8124 was limited in terms of the types of easements allowed in subsection 2(e)(1)(B), the portions of § 8124 not otherwise set out in subsections 2(e) would still apply.¹² This interpretation allows both subsection 2(e)(1)(B) and the reference to 38 U.S.C. § 8124 to stand.

VA OIG asserts further that the statutory language at issue must always be viewed in context and not in a vacuum. In *Gundy v. United States*, 139 S. Ct. 2116, 2126 (2019), the Court stated, "it is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."¹³ Although OGC's reading of the language in 2(e)(1)(B) might be reasonable in a vacuum, in the context of the WLA Act, OGC's reading conflicts with the purpose of the Act and therefore does not seem in keeping with congressional intent. The Court has stated that "reasonable statutory interpretation must account for both the specific context in which ... language is used and the broader context of the statute as a whole."¹⁴ Consistent with this mandate to view language in context, VA OIG finds it significant that the text of the WLA Act as a whole allows only specified types of enhanced-use leases, leases of real property, and land-sharing agreements by setting forth the parameters of those agreements. VA OIG does not find it reasonable that Congress would be particular about every other type of land-use agreement on the West LA campus but, when it came to easements, would authorize the Secretary to have the same broad authority to grant easements to the State as the Secretary would otherwise have on any other VA campus as long as the easement was deemed advantageous. VA OIG's position is that, just as was done with respect to the other land-use agreements set forth in the Act, specific parameters for easements were also included through the addition of subsections 2(e)(1)(A) and 2(e)(1)(B). This view is consistent with the statutory context of the Act since restrictions were placed on all of the other types of land use agreements that can operate on the West LA campus.

Legislative History

When the language of a statute is clear, legislative history is not required to interpret its provisions.¹⁵ However, legislative history is sometimes used to confirm the plain meaning of

¹² For example, "Such partial, concurrent, or exclusive jurisdiction over the areas covered by such easements or rights-of-way, as the Secretary deems necessary or desirable, is hereby ceded to the State in which the land is located." Also, "The Secretary may accept or secure on behalf of the United States from the State in which is situated any land conveyed in exchange for any such easement or right-of-way, such jurisdiction as the Secretary may deem necessary or desirable over the land so acquired." 38 U.S.C. § 8124.

¹³ The Court in *Gundy* quoted language from a prior case.

¹⁴ Id. 2126, citing *Utility Air Regulatory Group v. E.P.A.*, 573 U.S., 302, 321 (2014).

¹⁵ See, e.g., *Darby v. Cisneros*, 509 U.S. 137, 147 (1993) (finding that legislative history was not necessary given plain language of statutory provisions).

statutory language.¹⁶ Although VA OIG's position is that the language of Section 2(e) is clear that there are two, not three, types of allowable easements on the West LA campus, there is legislative history under prior draft legislation that shows that Congress intended to establish parameters for the types of easements under Section 2(e). The Committee Report for H.R. 3484,¹⁷ the *Los Angeles Homeless Veterans Leasing Act of 2016*, which contained language identical to subsections 2(e)(1)(A) and (B) of the West LA Act of 2016, reveals that the easements that Congress considered acceptable for the West LA campus were not general, routine easements, but rather those that were needed to facilitate transportation:

To facilitate transportation in, around, and through the West LA campus, section 2 of the bill would also provide VA the authority to grant easements or rights-of-way on, above, or under lands of the West LA campus to local or regional public transportation authority, the state of California, the County of Los Angeles, or any public utility company.

The only easements mentioned are those that facilitate transportation around the West LA campus and provide utilities.

II. Individual Agreements

VA did not concur with VA OIG's assessment of three of easements and one lease that VA OIG evaluated during this audit. VA OIG evaluated the easements (CalTrans, City of Los Angeles (A Bridge Home), and South Coast Air Quality Management District) according to the standards set forth in Section 2(e). VA OIG did not evaluate the instruments against the Master Plan as VA states in its Action Plan. Regarding the City of Los Angeles (A Bridge Home), VA OIG acknowledges that the services are consistent with the Master Plan. However, the instrument used to provide those services—an easement—is what VA OIG evaluated in accordance with Section 2(e) and found to be inconsistent with the Act. The lease (Safety Park) was evaluated according to the standards set forth in Section 2(b). In its Action Plan, VA discusses this lease in the context of a committee report related to previous connected legislation. However, the language in Section 2(b) is clear and the evaluation of this lease should be based on the plain language of the Act. These agreements are addressed in the body of the audit and the summaries are not repeated here.

¹⁶ *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 209 (1994).

¹⁷ VA cited this committee report in its response to VA OIG's 2018 audit report on the West LA campus regarding another section of the Act. VA OIG did not agree with the specific proposition for which it was cited at that time but believes it has utility in the interpretation of Section 2 (e). VA has also cited it in its Action Plan.

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