



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

AUDIT

REPORT #18-00474-300

SEPTEMBER 28, 2018



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Executive Summary

Why the OIG Did This Audit

Pursuant to the West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226 (hereinafter referred to as the WLA Leasing Act or the Act), the Office of Inspector General (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...”

The objective of this audit was to determine if VA was complying with the WLA Leasing Act of 2016. Specifically, the OIG assessed whether

- Leases, Enhanced Use Leases, and Land Sharing Agreements were used for purposes allowed under the WLA Leasing Act;
- Leases and land use agreements complied with federal laws;
- Leases and other land use agreements complied with the Draft Master Plan’s goal of being veteran focused and consistent with VA’s objective to revitalize the West Los Angeles (WLA) campus; and
- Land use agreements were managed effectively.

Background

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 establish a home for disabled veterans. Two additional deeds were added later to expand the WLA campus to its current size of 387 acres.

In June 2011, a class action lawsuit, *Valentini vs. Shinseki*, was filed against VA in the U.S. District Court for the Central District of California. The plaintiffs included veterans suffering from mental health disorders and other injuries who, as a result, were homeless; Vietnam Veterans of America; and a descendent from the family that donated the land. The plaintiffs asked the Court to find, in part, that VA had breached and continued to breach its fiduciary duty as trustee by allowing the WLA campus to be used for purposes other than for disabled veterans.

On August 29, 2013, the court granted the plaintiffs’ claim alleging that nine Enhanced Sharing Agreements at West LA were illegal. The judge found the nine Enhanced Sharing Agreements were unauthorized by law and therefore void. The agreements did not constitute a sharing of health care resources consistent with VA’s legal authority. Enforcement of the judgment was pending the resolution of any appeal. The litigation continued until settlement was reached in 2015.

On January 28, 2015, the Secretary of Veterans Affairs, the plaintiffs' attorney, and the former mayor of Santa Monica announced that all parties involved had entered into a good faith agreement to end the lawsuit. This agreement, *Principles for a Partnership and Framework for a Settlement*, required the two parties to work together as partners, in coordination with key federal, state, and local government bodies, as well as community stakeholders and charitable and philanthropic entities, to end veteran homelessness in Greater Los Angeles in 2015 and beyond.

From June through October 2015, VA officials met with key stakeholders, including local neighborhood leaders, offices of members of Congress, offices of California state legislators, and veteran and housing advocacy groups. The purpose of these meetings was to solicit input and brief these stakeholders on the status of the Draft Master Plan (DMP) for the WLA campus. On January 28, 2016, VA published the DMP, providing a framework to assist VA in revitalizing the campus to become veteran focused. The new veteran focus required VA to only enter into land use agreements that resulted in healthcare benefits, services, or resources being provided directly to veterans and/or their families.

On September 29, 2016, President Obama signed the WLA Leasing Act into law. Under the law, the VA Secretary is required to ensure all Real Property Leases and Land Sharing Agreements on the WLA campus principally benefit veterans and their families. The law defines the term “principally benefit veterans and their families” as services provided by a person or an entity under a lease or Land Sharing Agreement that are¹

- Provided exclusively to veterans and their families; or
- Designed for the particular needs of veterans or their families as opposed to the general public; and
- Exclusive of services in which the only derived benefit is revenue to the VA.

What the OIG Did

While the WLA Leasing Act requires the Secretary to report only on leases and Land Sharing Agreements carried out at the campus, the Act also mandates the OIG “report on all leases, *and the management by the Department of the use of land* [emphasis added] at the Campus.” To carry out this mandate, the OIG reviewed all land use agreements (not just leases) that were

- In place or planned between September 29, 2016, and May 1, 2018, and
- Of a duration of one year or longer.

¹ For leases to the Regents of the University of California, the predominant focus of the lease must be additional services provided at no cost to VA and not compensated through an existing medical affiliation agreement which principally benefits veterans and their families.

The OIG also reviewed land use arrangements where

- An entity was operating on the WLA campus under an expired land use agreement, or
- An entity was operating on the campus without an agreement.

The OIG identified 40 land use agreements that met these criteria. These land use agreements included Enhanced Use Leases, Real Property Leases, Real Property Leases to the University of California Regents, Land Sharing Agreements, and other land use instruments not specifically named in the WLA Leasing Act, such as Revocable Licenses.²

What We Found

Finding 1: Inappropriate Use of WLA Campus

The OIG reviewed 40 land use agreements on the WLA campus and determined that 11 did not comply with either the WLA Leasing Act, other applicable federal laws, or the DMP.³

Furthermore, 14 non-VA entities were operating on the WLA campus with an expired agreement or no documented land use agreement. The OIG determined that these key factors played a role in why 25 of 40 of the land use agreements (63 percent) on the WLA campus were improper:

- Veteran input on WLA land use was insufficient.
- VA policies lacked clarity on appropriate use of Out Leases and Revocable Licenses.
- Greater Los Angeles Healthcare System (GLAHS) Capital Asset Inventory land use agreement records were incomplete.

West Los Angeles' Improper Land Use Agreements

Improper land use agreements fell into two categories: (1) land use agreements that were not compliant with federal law or the DMP and (2) non-VA entities were operating on the WLA campus with an expired agreement or no land use agreement. The OIG determined that 11 land use agreements were not compliant. Following is a brief description of these agreements.

- **1887 Fund** – A Revocable License allows the 1887 Fund, a non-profit organization with a mission devoted, in part, to restoring five historic buildings on the WLA campus, to use Building 33 and three parking spaces to conduct fundraising activities to restore the

² Real Property Leases to non-VA parties are described as “Out Leases.”

³ The OIG’s review included expired and undocumented agreements.

Wadsworth Chapel. The OIG found the 1887 Fund did not comply with federal regulations concerning soliciting donations on VA property.⁴

- **American Red Cross** – The American Red Cross occupies an office building that was designed and constructed pursuant to a Revocable License granted in 1989. The current Revocable License, dated September 11, 2016, states that the purpose is for “General office use and to terminate the 1989 Revocable License.” The Revocable License also states that the “Red Cross will prospectively provide additional Veteran-focused service,” but the agreement does not specifically describe any service to veterans. The OIG concluded that this general statement is insufficient to conform to the DMP’s requirement that land use be veteran focused.
- **Association for Parrot C.A.R.E.** – A Revocable License allows Parrot C.A.R.E to operate the Serenity Park parrot sanctuary on the WLA campus. The Revocable License states the Association for Parrot C.A.R.E. will “provide access for VA patients to the premises for therapeutic activity as well as job opportunities for veterans through Compensated Work Therapy.” However, while the terms of the Revocable License are clearly veteran focused, the OIG could find little evidence that veterans were benefitting from this land use agreement. OIG auditors visited the Serenity Park location on three separate occasions and in each instance the gates to Serenity Park were padlocked. According to the terms of the Revocable License, the Association for Parrot C.A.R.E. is required to provide “a Quarterly report, due at the end of every quarter, outlining [*sic*] the number of veterans trained in the Program, the outcome of the trainings, number of veterans using the services provided by Licensee.” As of May 2018, the Association for Parrot C.A.R.E. has not submitted a single quarterly report detailing the number of veterans served by the organization.
- **Barrington Parking Lots** – The Barrington Parking Lots are composed of two parking lots located adjacent to a Brentwood shopping center. Combined, the two parking lots comprise about 3.9 acres and provide 450 parking spaces. The Barrington Parking Lots were managed by Westside Services under an agreement that was terminated on January 19, 2017. However, on April 3, 2018, OIG auditors observed that the parking lot adjacent to a Brentwood shopping center was providing unrestricted access to the public. The OIG concluded this was a nonveteran-focused use of the land.
- **Brentwood School** – A lease allowed Brentwood School’s continued use of their Athletic Facilities located on 21 acres of the WLA campus. VA reviewed this land use agreement following the settlement of *Valentini vs. Shinseki* to determine whether it could be made sufficiently veteran focused. In November 2016, VA decided to continue its long-term

⁴ 38 CFR § 1.218 (a) (8) *Soliciting, vending, and debt collection*, states that “soliciting alms and contributions...in or on property is prohibited.”⁴

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 non-monetary, in-kind consideration valued at \$918,000.⁵ The OIG determined that the Brentwood School lease violated the WLA Leasing Act because 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 non-monetary, in-kind consideration is not authorized under 40 U.S.C § 1302, which requires VA to only accept monetary consideration for Out Lease agreements. 38 USC § 8122 (a)(1) does allow non-profit organizations like the Brentwood School to make in-kind consideration related to the maintenance, protection, and restoration to the property leased. However, the in-kind consideration the Brentwood School provided included maintenance of upgraded landscaping or physical structures installed by the school and other costs related to operation of the athletic facilities, which are not allowed under federal law.

- **Brentwood Construction** – A Revocable License provides the “right of ingress and egress access... over land that is under VA’s jurisdiction and control at the West LA Campus, via one or more access routes to be expressly identified from Licensee to Licensor, and subject to VA’s prior documented approval.” The sole purpose of the Revocable License was to accommodate construction on the Brentwood School campus, and therefore it does not conform to the DMP’s requirement that land use on the campus be veteran focused.
- **Breitburn** – The Department of Interior, Bureau of Land Management, has executed oil drilling leases on the WLA campus since the 1960s. On March 7, 2017, a 10-year Revocable License agreement between VA and Breitburn was executed. The OIG determined Breitburn’s use of the property does not conform to the intent of the DMP as being veteran focused because the Revocable License’s only benefits are monetary. It does not provide any additional health care, benefits, services, or resources directly to veterans or their families.
- **CalTrans** – A 50-year Revocable License, dated October 11, 2011, provides the California Department of Transportation access to the campus as they relocate utilities and widen Interstate Highway 405 as part of the I-405 Sepulveda Pass Improvement Project. The improvements will be transferred to VA upon completion. While the Revocable License confers benefits on the public at large, it is not veteran focused and therefore not consistent with the DMP.

⁵ The Lease lists \$918,000 as the value attributed to the in-kind consideration, but the value of the following in-kind services is \$1,135,235 (lease says the amount is subject to reduction to meet the \$918,00 amount). The individual values are \$170,587 for maintenance of athletic fields and landscaping, \$348,000 for repair and replacement of physical structures, \$45,000 for veteran special events, \$223,462 for additional staffing by Brentwood School to manage veteran use of property, \$2,500 to purchase athletic equipment, \$82,458 to transport veterans from VA to Brentwood School, \$99,228 for athletic and educational programs to benefit veterans and their families, and \$164,000 for scholarships for veterans’ children to attend Brentwood School and summer camps.

- **City of Los Angeles – Veterans’ Barrington Park** – A Revocable License allows the City of Los Angeles to use a 12-acre park consisting of two softball fields, a dog park, and a parking lot. According to the terms of the Revocable License, “VA and the City agree that the purpose of the Veterans’ Park is to principally benefit Veterans and their families, and that the general community can use Veterans’ Park, so long as such use receives VA’s prior written approval.” While the language of the Revocable License is clearly veteran focused, the OIG found no evidence veterans have priority access to the park. The OIG found no signage describing veterans’ prioritized use of the park as required under the Revocable License. The OIG also observed the dog park being used by members of the local community during several visits to the WLA campus. When the OIG requested documentation, GLAHS could not produce any evidence of requests or approvals for community use of the park. The OIG concluded that the City of Los Angeles is not operating the park in a veteran-focused manner, and therefore this land use does not comply with the DMP.
- **The Shakespeare Center of Los Angeles** – A Revocable License allows the Shakespeare Center of Los Angeles (LA Shakespeare) to use the Japanese Garden and adjacent parking lots on the WLA campus to for up to 20 professional productions of William Shakespeare plays annually. The plays are open to the public. In exchange for using VA’s land, LA Shakespeare agreed to provide a minimum of 2,000 tickets per season to veterans who request them online and hire 30 veterans part time to assist in the production of the play. LA Shakespeare was selling tickets for the June 2018 production of *Henry IV* with the best seats available in donor packages ranging from \$1,500 to \$5,000. 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 DMP.
- **Westside Breakers Club** – The Westside Breakers (Westside) youth soccer organization has used MacArthur field on the WLA campus since at least 2003. However, the organization has not been under a written agreement since 2011. The OIG was informed by the GLAHS director that she is allowing Westside Breakers to use MacArthur Field without a written land use agreement, pending the start of construction of permanent supportive housing for homeless veterans on MacArthur field. This undocumented agreement does not comply with the DMP because the land use is not veteran focused and is solely for the benefit of the soccer club.

The OIG also determined that 14 non-VA entities were operating on the WLA campus with either an expired land use agreement or no documented land use agreement. Table 6 of this report lists these agreements and provides a brief description of how the entities were using the land.

Additional Veteran Input Could Help GLAHS Ensure Land Use Agreements are Compliant

In March 2015, Secretary McDonald appointed Vincent Kane to serve as his special assistant to help develop a strategy and action plan for ending veteran homelessness in Los Angeles. After the VA entered into a settlement to end the *Valentini vs. Shinseki* lawsuit in 2015, Mr. Kane and Cameron Gore, former Chief Counsel for VA's Office of General Counsel Real Property Law Group, renegotiated land use agreements on the WLA campus that they determined could be made veteran focused. Mr. Kane also worked with Heidi Marston, the Secretary's special assistant for the Secretary's Homelessness Initiative, to engage local politicians, neighborhood leaders, and veteran groups in the development of the WLA DMP.

VA DMP Outreach Efforts Were Not Primarily Focused on Veterans

VA selected an urban planner to assist with the development of the DMP in June 2015 and proceeded to solicit stakeholder comments through October 2015 by holding "Pop-Up Work Shops," weekly open houses, town hall meetings, and neighborhood community meetings. Mr. Kane facilitated multiple briefings on the DMP to key stakeholders, including the offices of 11 U.S. Senators and Representatives, eight Los Angeles city and county officials, nine California State Senators and Assembly members, and seven veteran and housing advocacy groups.

The OIG assessed the outreach effort VA used to create the DMP and concluded VA primarily focused its attention on groups that represented the public at large versus veteran interests. The briefings held with stakeholders during the development phase of the DMP focused largely on political partners and neighborhood councils. Veterans Service Organizations (VSO) made up only a small percentage of the stakeholders consulted in the development of the DMP.

The WLA Leasing Act established the Veterans Community Oversight and Engagement Board (VCOEB), which is required to have not less than 50 percent veteran membership, to coordinate locally with the department by holding public forums on the WLA campus on a regular basis and providing advice on the campus master plan updates, which occur every three years.⁶

Integrated Project Team Could Benefit from VCOEB Input to Improve Transparency of WLA Land Use

An Integrated Project Team (IPT) was established through the executive sponsorship of GLAHS Director Ann Brown in December 2016. The IPT executive summary lists 48 members, of which eight members have voting privileges. Other members can make recommendations to the voting

⁶ Non-veteran members shall be family members of veterans, veteran advocates, service providers, real estate professionals familiar with housing development projects

members and the IPT chair, Meghan Flanz. The IPT is responsible for ensuring that all WLA campus development projects are achieved on schedule, within budget, and in compliance with applicable laws.

Allowing VCOEB to provide input to GLAHS 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 GLAHS leadership and the veteran community in Los Angeles as VA works to rebuild trust, while also revitalizing the campus as a permanent home for veterans.

VA Needs to Establish Clear Policies to Ensure Land Use Agreements at West LA are Compliant with the Law

According to the U.S. 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 OIG discussed WLA's frequent use of Revocable Licenses with Mr. Gore, who explained that an important advantage of a Revocable License is that it does not give the non-VA party an interest in the land. The OIG expressed concern with GLAHS's heavy reliance on Revocable License agreements for two reasons: (1) any revenue derived from Revocable Licenses goes directly to the U.S. Treasury and cannot be used to benefit veterans or revitalize the WLA campus, and (2) GLAHS is not required to report on Revocable Licenses in its annual land use report to Congress. Mr. Gore responded to OIG's concerns by stating that VA needed to balance the decision of extending the right of a lessee versus the need to generate revenue for VA when reviewing each land use proposal. However, he did agree that Revocable Licenses should be included in GLAHS's annual report to Congress for transparency purposes.

VA policy on the use of Out Leases and Revocable Licenses consisted of an Information Letter issued on July 15, 2011, by the Acting Director of the Office of Construction and Facilities Management to VISN and VA medical facility directors to use as guidance for issuing Out Leases and Revocable Licenses.

VA Policy on Revocable Licenses at WLA Does Not Align with an Office of General Counsel Opinion

The Construction and Facility Management's information letter defines Revocable Licenses as "Permission to enter and do an act or series of acts upon land of the licensor without possession or acquiring any estate therein. It legalizes an act, in which the absence of the license would constitute a trespass."

In March 1991, the Office of General Counsel (OGC) issued an opinion on whether a commercial bank could obtain a land use agreement to operate on a VA campus in Virginia. The OGC was asked two questions in this case: (1) Is there authority for providing space in an existing or planned VA hospital for the operation of a bank and, (2) if so, what procedure should be employed to accomplish the provision of such space?

The OGC found the medical center director had the authority to allow the bank on campus but the decision on the appropriate procedure came down to a question of whether a lease or Revocable License was appropriate in this case. The OGC opinion stated that “the present authority of the VA to grant such [revocable] licenses and permits continues to be restricted to situations where the use of the space is of a transitory or temporary nature.” Transitory “means continuing only for a short time; not enduring, fleeting, evanescent, temporary.” The OGC decided the VA should offer a lease to the bank to operate on campus because its operations, by design, would not meet the definition of transitory necessary for the use of a Revocable License.

VA policy does not limit the period of time VA can agree to a Revocable License—it only requires that a Revocable License that exceeds five years be approved at the VA Central Office level. Selecting the correct land use agreement type is especially important to ensure that the purpose of the WLA Leasing Act is met. The selection of a Revocable License versus a lease affects the type of consideration required in exchange for the land use and whether the revenues can be retained by GLAHS to revitalize the WLA campus.

VA Policy Does Not Require Pricing Decisions Be Documented for Out Leases and Revocable Licenses

The OIG reviewed the Enhanced Sharing Agreements that were the subject of the *Valentini vs. Shinseki* lawsuit in 2011 and noted several were initially negotiated at rates far below the property’s fair market value. After the settlement and during the lease planning phase for the City of Los Angeles – Barrington Park, the UCLA baseball complex, and the Brentwood School’s Athletic Complex in fiscal year (FY) 2015, VA obtained independent appraisals to determine annual rent consideration for each parcel of land. The annual rental appraised values were about \$2 million for Barrington Park and approximately \$2.7 million each for both the UCLA and Brentwood School athletic complexes.

However, VA accepted consideration below these appraised amounts for the land use agreements with the City of LA, UCLA, and the Brentwood School for the renegotiated land use agreements executed after the WLA Leasing Act became law. The OIG interviewed Alan Trinh, Deputy Director of the VISN 22 Contracting Office, and Cameron Gore, the former Real Property Law Group’s Chief Counsel, to determine why consideration received in exchange for each lease was much lower than the appraised value. Neither could provide the OIG with an analysis for the basis of the negotiated consideration.

VA policy does not require price negotiations to be documented for Out Leases and Revocable Licenses. VSO officials have expressed concern regarding fair value compensation for WLA land use by non-VA parties. In response to public comments received regarding the Preliminary DMP published in October 2015, VA stated in the Federal Register in February 2016 that “VA will evaluate existing and future land use agreements to ensure they are ‘veteran focused.’ This means the arrangements must provide direct benefits to veterans and their families, and provide negotiated fair market rent to VA.” Without documentation of land use agreement negotiations, the OIG was unable to determine if VA received fair value for use of the WLA campus.

GLAHS Did Not Keep an Accurate Inventory of Land Use Agreements

VA's Capital Asset Inventory (CAI) is the database of record for VA's real property portfolio. VA policy requires all stations to continuously update their CAI database records for all real property, including buildings, land, structures, and the Out Leases and agreements associated with them. VA's FY 2017 CAI and Disposal Plans Update requires each medical facility to report on all non-VA uses of land in the CAI, but it does not define the minimum duration of land use agreements that must be recorded in the inventory. According to the Director of Capital Asset Management Service, all agreements with non-VA entities for a duration of six months or longer should be reported in the CAI. However, the CAI data for WLA did not show 28 of the 40 land use agreements in the OIG's audit's scope. The land use agreements that were not found in the CAI or other asset tracking systems were instead identified through extensive document review and inspection of the WLA campus by the OIG. In many instances, GLAHS Capital Asset Management staff were not aware of which agreements were operational without OIG's assistance in confirming which non-VA entities currently occupied WLA campus property.

Finding 2: VA is Behind on Draft Master Plan Implementation Milestones

Although WLA is making progress to implement the DMP, it will not meet its initial milestone to provide 490 permanent supportive housing units within 30 months of the passage of the WLA Leasing Act on September 29, 2016. To meet its stated objective of providing approximately 1,200 permanent supportive housing units on campus by 2026, VA is taking a phased approach. The original phase timeline is shown in Figure 1.

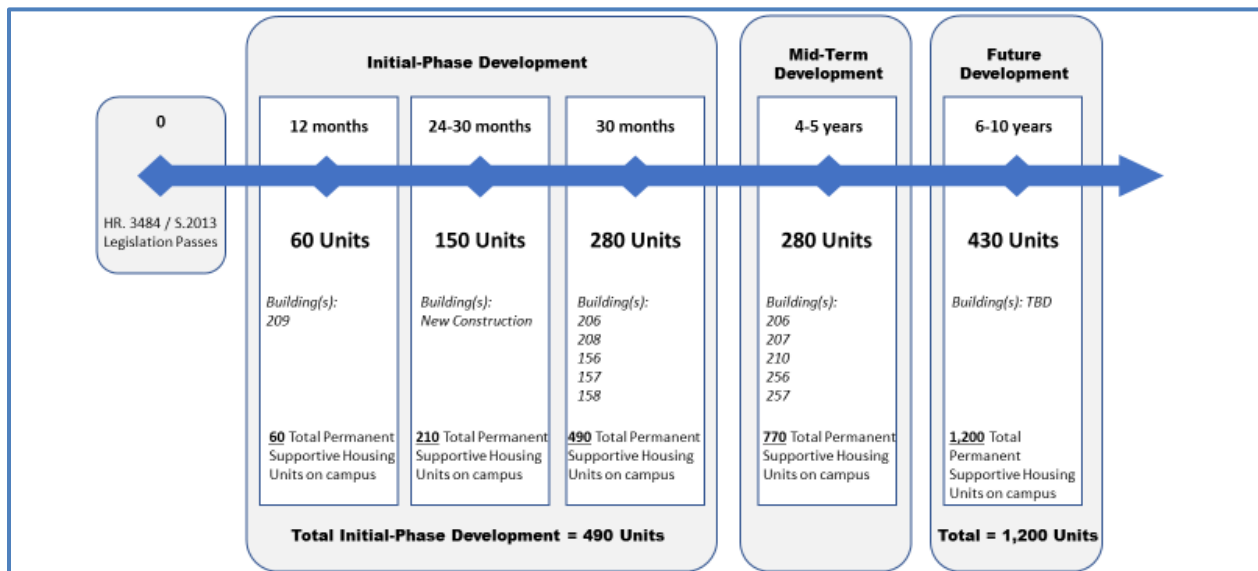


Figure 1. Original Potential Phasing Timeline

Source: Draft Master Plan, January 28, 2016.

However, prior to any new construction, the National Environmental Policy Act (NEPA) of 1969 requires federal agencies to undertake an assessment of the environmental effects of their proposed actions prior to making decisions. In May 2017, the GLAHS began a Programmatic Environmental Impact Statement/Programmatic Environmental Impact Report (PEIS/PEIR) to comply with the NEPA requirements.⁷ According to GLAHS, the DMP timeline for the first 490 units did not account for the PEIS/PEIR. Due to the WLA campus undergoing an unplanned PEIS/PEIR, VA provided a revised phasing timeline that shows Buildings 205 and 208 as next projects for Enhanced Use Leases (EUL) and moves the new construction on MacArthur Field to a later date, as shown in Figure 2.

⁷ A draft PEIS/PEIR is scheduled to be published for public review and comment in November 2018. The final PEIS/PEIR is scheduled to be published in May 2019.



Figure 2. Revised Potential Phasing Timeline

Source: Draft Master Plan Update, December 31, 2017

As shown in the revised timeline, the initial phase was to be completed within 48 months of passage of the WLA Leasing Act of 2016, or by September 2020. In the initial phase, VA was expected to develop 484 units of permanent supportive housing. These units were expected to come from renovations of six buildings and new construction at MacArthur Field. Building 209 is already operational and the developer for Buildings 205, 208, and MacArthur Field has been selected. In addition, Buildings 205, 207, and 208 are undergoing an environmental assessment.⁸

In April 2018, VA changed course from the Revised Potential Phasing Timeline, shown in Figure 2, and plans to enter into an EUL in April 2019 with a principal developer for the permanent supportive housing units, except for Buildings 209, 205, 208, and MacArthur Field. Building 207, originally part of the mid-term development phase, will be the first building developed by the principal developer once chosen. Buildings 156, 157, and 158 will be developed by the principal developer at a date that has yet to be determined.

What the OIG Recommended

The OIG recommended the following:

1. The Principal Executive Director, Office of Acquisition, Logistics, and Construction and the Acting Under Secretary for Health, in conjunction with the Director, Greater Los Angeles Healthcare System, implement a plan that puts the West Los Angeles campus in compliance with the West Los Angeles Leasing Act of 2016, other applicable federal laws, and the Draft

⁸ To expedite renovations on Buildings 205, 207 and 208, VA decided to conduct independent environmental assessments prior to the completion of the PEIS/PEIR.

Master Plan, .The plan should include reasonable time periods to correct deficiencies noted in this report.

2. The Principal Executive Director, Office of Acquisition, Logistics, and Construction, and the Acting Under Secretary for Health, in conjunction with the Director, Greater Los Angeles Healthcare System, ensures 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.
3. The Acting Under Secretary for Health, in conjunction with the Director, Greater Los Angeles Healthcare System, creates a process to allow the Veterans and Community Oversight and Engagement Board an opportunity to provide input to the executive leadership on West Los Angeles campus land use.
4. The Principal Executive Director, Office of Acquisition, Logistics, and Construction, creates documented policies and procedures for Out Leases and Revocable Licenses to govern their use, management, and pricing to ensure fair value is received and negotiations are documented.
5. The Acting Under Secretary for Health, in conjunction with the Director, Greater Los Angeles Healthcare System, ensures VA's Capital Asset Inventory accurately reflects all land use agreements six months or longer on West Los Angeles campus.

Management Comments and OIG Response

The Executive in Charge, Office of the Under Secretary for Health, and the Principal Executive Director, Office of Acquisition, Logistics, and Construction, responded that most of the OIG's findings and recommendations are well-founded in both fact and law and will greatly assist VA in its efforts to ensure all third-party land uses benefit veterans, thereby restoring the campus to its rightful purpose and rebuilding trust with veterans and other stakeholders. Accordingly, VA concurred with Recommendations 2 through 5 and partially concurred with Recommendation 1. Related to Recommendation 1, VA expressed the opinion that "a few of OIG's findings are legally and/or factually erroneous." Specifically, VA disagreed with the OIG's findings that the Brentwood School lease, the Breitburn revocable license, and the CalTrans revocable license did not comply with the WLA Leasing Act, other federal laws, or the DMP. VA's full response can be found in Appendix E.

The OIG stands by its conclusions on the Brentwood School lease, the Breitburn revocable license, and the CalTrans revocable license. An OIG legal opinion, prepared in response to VA's partial concurrence with Recommendation 1, can be found in Appendix F.

While VA disagreed with the OIG's conclusion on the three land use agreements noted above, its response to Recommendation 1 indicates they will take action on six of the other eight land uses

the OIG questioned. VA's response was silent on the remaining two land uses (the 1887 Fund and the Barrington Parking Lots). VA provided acceptable actions plans for Recommendations 2–5. The OIG will monitor VA's progress and follow up on the implementation of the recommendations until all planned actions are completed.

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Abbreviations

CAI	Capital Asset Inventory
CFR	Code of Federal Regulations
DMP	Draft Master Plan
EUL	Enhanced Use Lease
FY	Fiscal Year
GAO	United States Government Accountability Office
GLAHS	Greater Los Angeles Healthcare System
IPT	Integrated Project Team
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
OGC	Office of General Counsel
OIG	Office of Inspector General
PEIS/PEIR	Programmatic Environmental Impact Statement/Programmatic Environmental Impact Report
UCLA	University of California, Los Angeles
U.S.C.	United States Code
VA	Department of Veterans Affairs
VCOEB	Veterans and Community Oversight and Engagement Board
VSO	Veterans Service Organization
WLA	West Los Angeles



Introduction

Objective

The objective of this audit was to determine if VA was complying with the West Los Angeles Leasing Act of 2016 (WLA Leasing Act).⁹ Specifically, the OIG assessed whether:

- Leases, Enhanced Use Leases, and Land Sharing Agreements were used for purposes allowed under the WLA Leasing Act.
- Leases and land use agreements complied with federal laws.
- Leases and other land use agreements complied with the Draft Master Plan goal of being veteran-focused and consistent with VA's objective to revitalize the West Los Angeles (WLA) campus.
- Land use agreements were managed effectively.

Audit Scope

While the WLA Leasing Act requires the VA Secretary to report only on leases and Land Sharing Agreements carried out at the campus, the WLA Leasing Act also mandates the OIG report on the department's management of land use at the campus within two years after the enactment of the law. The OIG reviewed all land use agreements that met the following conditions:

- Were in place or planned between enactment of the law on September 29, 2016 and May 1, 2018
- Were of a duration of one year or longer

OIG also reviewed land use where

- An entity was operating on the WLA campus under an expired land use agreement, or
- An entity was operating on the campus without a documented agreement.

The OIG identified 40 land use agreements that met these criteria.¹⁰ The agreements included Enhanced Use Leases (EUL), Real Property Leases, Land Sharing Agreements, easements, and other land use instruments such as Revocable Licenses that were not specifically named in the WLA Leasing Act.¹¹

⁹ Pub. L. No. 114-226.

¹⁰ Includes expired and undocumented agreements.

¹¹ Real Property Leases to non-VA parties are described as "Out Leases."

History of WLA Campus

In March 1888, Senator John P. Jones and Arcadia B. DeBaker deeded approximately 300 acres of land in Los Angeles, California, to the National Home for Disabled Volunteer Soldiers to establish a home for disabled veterans. Two additional deeds were added later to expand the WLA campus to its current size of 387 acres.

Property use at the WLA campus followed the purpose of the 1888 deed for decades. However, “the federal government maintained this purpose for the property with fidelity until the 1970’s, but over years it transitioned into a condensed healthcare and research campus leaving land, housing and amenities unused and in disrepair.”¹²

The Homeless Veterans Comprehensive Service Programs Act of 1992 authorized VA to lease property on the WLA campus.¹³ VA began entering into agreements with commercial entities versus using the land to support and care for veterans.

VA’s authority to lease and otherwise dispose of the land was suspended with the passage of the *Consolidated Appropriations Act, 2008, Division I—Military Construction and Veterans Affairs and Related Agencies*.

VA’s Goal of Ending Veteran Homelessness by 2015

In June 2010, the United States Interagency Council on Homelessness and its 19 member agencies, including the VA, launched the first comprehensive federal strategic plan to prevent and end homelessness with the cooperation of state and local partners in the public and private sectors. This plan, Open Doors, established a goal of ending veteran homelessness by 2015. In June 2014, First Lady Michelle Obama announced that 77 mayors, including Los Angeles Mayor Eric Garcetti, had answered the Obama Administration’s Mayors Challenge and pledged to end veteran homelessness in their communities. The Mayors Challenge called for using a “housing first” approach to help veterans obtain permanent housing quickly, prioritizing vulnerable chronically homeless veterans for permanent supportive housing.

Class Action Lawsuit Filed on Behalf of Homeless Veterans

In June 2011, the class action lawsuit *Valentini vs. Shinseki* was filed against VA in the U.S. District Court for the Central District of California. The plaintiffs included homeless veterans suffering from mental disabilities and other injuries, Vietnam Veterans of America, and a descendent from a family that donated the land.¹⁴ The plaintiffs alleged: (1) that the design and implementation of VA’s healthcare and non-healthcare programs at WLA discriminated against the plaintiffs; (2) that VA was denying the plaintiffs meaningful access at WLA based on their

¹² VA’s Draft Master Plan, Introduction, pg. 1.

¹³ Public Law 102 590, November 10, 1992.

¹⁴ No. 2:11-cv-04846-SJO-MRW (C.D. Cal. 2015).

disabilities; (3) that a charitable trust was created by the 1888 deed; (4) that VA had breached and continued to breach its fiduciary duties as trustee by allowing the WLA campus to be used for purposes other than for veteran housing; and (5) that VA violated its Enhanced Sharing Authority and its Enhanced-Use Leasing Authority by illegally entering into Enhanced Sharing Agreements unauthorized by law or regulation.

Accordingly, the plaintiffs asked the court to grant them relief, including (1) an injunction directing VA to provide permanent supportive housing at WLA as a reasonable accommodation for their disabilities; (2) an injunction prohibiting VA from using the WLA campus for any purpose other than disabled veteran housing; (3) a declaration that VA's acceptance of the land transferred by the 1888 deed created a charitable trust; and, (4) a declaration that VA had breached, and continued to breach, their duties as fiduciary of the charitable trust by allowing VA GLAHS to use the WLA campus for purposes other than providing a home for disabled veterans.

Partnership Agreement Ends Lawsuit

On January 28, 2015, the Secretary of Veterans Affairs, the plaintiffs' attorney, and the former mayor of Santa Monica announced that all parties involved had entered into a good faith agreement to end the lawsuit. This agreement, *Principles for a Partnership and Framework for a Settlement*, required VA and the lawyers representing the class of veterans to work together as partners in coordination with key federal, state, and local community stakeholders, and charitable and philanthropic entities to end veteran homelessness in Greater Los Angeles in 2015 and beyond. The agreement, signed by the VA Secretary and the plaintiffs' attorney, called for the following actions:

- Both parties will rely on appropriate mental health and homelessness experts to develop a documented veteran homelessness strategy and action plan for WLA by February 13, 2015.
- Both parties will finalize a New Master Plan for the WLA campus by October 16, 2015, after soliciting input from pertinent stakeholders including Veterans Service Organizations (VSO), state and local authorities, and local community members.
- Both parties will coordinate a unified positive message to stakeholders and media.
- Both parties will file a joint motion by January 30, 2015, to work as partners and vacate all prior substantive decisions ordered by the district court, including the voiding of the nine Enhanced Sharing Agreements that did not constitute sharing of healthcare resources.
- Both parties will develop exit strategies for entities on VA's WLA campus that do not follow applicable law or fit within the New Master Plan.

- VA will engage experts and a reputable urban planner by June 15, 2015, to help develop the New Master Plan.
- VA will designate a national expert on homelessness to help develop a strategy and action plan for ending homelessness in Los Angeles. This person will serve as special assistant to the VA Secretary.
- VA will incorporate goals and objectives of the settlement agreement into VA's Strategic Capital Investment Plan.¹⁵
- VA will assign committed and highly competent employees to the task of ending veteran homelessness.
- Plaintiffs will form a 501(c)(3) nonprofit organization to engage federal, state, and local authorities; community partners; and charitable and philanthropic entities to work toward the goal of ending veteran homelessness.
- Plaintiffs will identify and introduce VA officials to key stakeholders, decision-makers, homelessness experts, local political leaders, and charitable and philanthropic entities.¹⁶

On February 17, 2015, the U.S. District Court for the Central District of California granted the Joint Motion to Vacate filed by VA and the plaintiffs, which effectively ended the lawsuit.

Prior Audits and Investigations

In August 2014, the United States Government Accountability Office (GAO) released a report to the Chairman of the House Committee on Veterans' Affairs, Subcommittee on Oversight and Investigations, on land use agreements. The report reviewed VA's management of land use agreements in New York City, North Chicago, and Los Angeles during FY 2012.¹⁷

Regarding WLA, GAO found that

- Revenues from WLA land use agreements, about \$810,000, were far below the amount that should have been received, which was approximately \$1.5 million;
- Over \$500,000 in revenue from medical sharing agreements was not deposited in the medical care appropriation used to benefit veterans;
- WLA waived collection of \$250,000 in revenue from a nonprofit organization without proper authority; and

¹⁵ Strategic planning tool used by VA to evaluate infrastructure needs and defined service gaps.

¹⁶ *Principles for a Partnership and Framework for Settlement by and Between the U.S. Department of Veterans Affairs and Representatives of the Plaintiffs - Valentini v. McDonald*, January 28, 2015.

¹⁷ GAO-14-501 *Department of Veterans Affairs Needs to Improve Data Reliability and Monitoring*, published August 18, 2014. For more on VA's response to this report see Appendix D.

- WLA had allowed the City of Los Angeles to use 12 acres of the WLA campus for a dog park and baseball fields with no documented agreement.

A majority of the commercial-oriented enhanced sharing agreements at issue in the class action lawsuit had been established by Ralph Tillman, a former contracting officer located on the WLA campus. Tillman worked directly for the medical center director and was the only contracting officer who remained on the WLA campus before land use requests were reviewed by the Veterans Integrated Services Network (VISN) 22 Network Contracting Office. According to Cameron Gore, formerly Chief Counsel for VA's Office of General Counsel (OGC)'s Real Property Law Group, this relationship was a problem because Tillman handled all of WLA's land use agreements and was not subject to normal checks and balances that would have been in place in the network contract office.

The OIG's Office of Investigations previously investigated allegations of land use mismanagement at the WLA campus. In one case, a contractor with a land use agreement to operate parking lots on WLA's campus in exchange for paying VA 60 percent of gross parking revenue defrauded VA of approximately \$13 million between 2003 and 2016. In January 2018, the contracting officer who signed the parking lots' land use agreement was charged with lying to OIG agents and filing a false tax return. The contracting officer admitted he accepted approximately \$286,250 in cash bribes and "hush money" from the contractor in exchange for not collecting revenue owed to VA. The owner of the company was also charged with bribing the contracting officer to commit fraud against VA. The contractor and contracting officer pled guilty to these charges. The contractor was sentenced to 70 months in federal prison in August 2018. The contracting officer is scheduled to be sentenced in September 2018 and faces a maximum federal sentence of eight years.

Draft Master Plan

The Draft Master Plan (DMP) was published on January 28, 2016, providing a framework to help VA revitalize the campus to become veteran-focused. The new veteran focus required VA to only enter into land use agreements that resulted in health care benefits, services, or resources being provided directly to veterans and/or their families. The VA Secretary then commissioned an extensive review of all land use agreements at WLA, including those nine voided agreements from the vacated federal court ruling, prior to the release of the DMP. The review determined whether the agreements were or could be made sufficiently veteran-focused—through fair market value rent to VA and services directly benefitting veterans and their families—and fit within the overall needs and vision for a revitalized campus.

In the DMP, VA emphasized a "housing first" model focused specifically on veterans who were chronically homeless, aging, disabled, or female with dependents. The framework of the DMP envisioned at least 1,200 units of permanent supportive housing with an additional capacity of approximately 840 units. The DMP also included development to provide service enhancements,

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 components.

On September 21, 2016, VA awarded a contract to Concourse Federal Group to manage the implementation of the DMP. Concourse Federal Group was hired to provide subject matter expertise in master planning implementation, EULs, and environmental and historical assessments. The Executive Summary of the DMP can be found in its entirety in Appendix A.

West Los Angeles Leasing Act Signed into Law

On September 29, 2016, President Obama signed the WLA Leasing Act into law. The WLA Leasing Act describes five specific types of land use agreements allowed under the law, including:

1. EULs to provide supportive housing that principally benefits veterans and their families.¹⁸
2. Real Property Leases, for a term not to exceed 50 years, to a third party that provides services to principally benefit veterans and their families and are limited to one of the following purposes:
 - Health and wellness, including nutrition and spiritual wellness
 - Education
 - Vocational training, skills building, or other training related to employment
 - Peer activities, socialization, or physical recreation
 - Assistance with legal issues and Federal benefits
 - Volunteerism
 - Family support services, including child care
 - Transportation
 - Services in support of one or more of the preceding list of purposes
3. Real Property Leases to the regents of the University of California for a period not to exceed ten years, which is consistent with the DMP. While providing services to veterans is the predominant focus of the activities of the Regents at the campus during the term of the lease, additional services will be provided at no cost to VA and not compensated through an existing medical affiliation agreement; the services may relate to medical, clinical, therapeutic, recreational, and legal activities and must principally benefit veterans and their families.

¹⁸ 38 U.S.C. § 8161(3), *Definitions*.

4. Land Sharing Agreements that provide additional health care resources and benefit veterans and their families beyond producing revenue for VA.
5. Easements pursuant to requirements found in 38 U.S.C. §8124, or rights-of-way on, above, or under lands at WLA campus.

In addition, the VA Secretary is required to ensure all Real Property Leases and Land Sharing Agreements “principally benefit” veterans and their families. The law defines “principally benefit” as services provided by a person or an entity under a lease or Land Sharing Agreement that are:

- Provided exclusively to veterans and their families; or
- Designed for the particular needs of veterans or their families as opposed to the general public; and
- Excludes services in which the only derived benefit is revenue to the VA.

Real Property Leases to the Regents of the University of California have additional requirements:

- The lease must be consistent with the DMP.
- The lease must have the provision of services to veterans be the predominant focus.
- The regents must agree to provide additional services that the VA Secretary considers appropriate and that are not compensated-for through an existing medical affiliation agreement that:
 - Principally benefits veterans and their families
 - Consists of activities relating to medical, clinical, therapeutic, dietary, rehabilitative, legal, mental, spiritual, physical, recreational, research, and counseling needs of veterans and their families, or any purpose allowed above for Real Property Leases.

The Secretary was required to establish a Veterans and Community Oversight and Engagement Board (VCOEB) within 180 days of the law’s enactment. The WLA Leasing Act also requires any revenue derived from the lease agreements be deposited into WLA’s medical facility account for the renovation and maintenance of the land and facilities on campus. In addition, the VA Secretary was required to provide an annual report to Congress evaluating the management of the revenue generated by the leases and additional services to veterans provided through lease agreements with the University of California Regents.

Land Use by Non-VA Entities

The VA Secretary may authorize non-federal use of real property within the Secretary's jurisdiction or control. In West Los Angeles, VA exercises this authority through many types of land use agreements:

- Enhanced Use Leases¹⁹
- Out Leases (leases of VA property to non-federal entities)²⁰
- Sharing Agreements²¹
- Revocable Licenses²²
- Memorandums of Understanding
- Memorandums of Agreement

Finding 1 details the OIG's determination of land use agreements on the WLA campus that did not comply with the WLA Leasing Act, the DMP, or other federal law. Appendix C provides a brief description of land use agreements reviewed by the OIG that complied with the WLA Leasing Act, DMP, and other federal law.

Enhanced Use Leases

The VA Secretary only has the authority to enter into Enhanced Use Leases (EUL) for VA real property for the provision of supportive housing.²³ Through the EUL program, VA leases underutilized real estate under its jurisdiction to the private sector for up to 75 years to develop supportive housing for homeless and at-risk veterans and their families. Table 1, on the next page, shows each of the five EULs that the OIG reviewed. To date, one of the five EULs has been initiated. The other four planned EULs will be initiated in future years. Each of the EULs is for the renovation of buildings (or in the case of McArthur Field, for new construction) to provide supportive housing for homeless veterans. The OIG discusses VA's progress toward implementing the DMP regarding these projects in Finding 2.

¹⁹ 38 U.S.C. § 8162, but further restricted at the WLA campus by the West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226.

²⁰ 38 U.S.C. § 8122, but further restricted at the WLA campus by the West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226.

²¹ 38 U.S.C. § 8153.

²² See Question Regarding Use of Government's Property, B-164769, July 16, 1968 (holding that the "head of a Government department or agency has authority to grant to a private individual or business a Revocable License to use Government property, subject to termination at any time at the will of the Government, provided that such use does not injure the property in question and serves some purpose useful or beneficial to the Government itself").

²³ 38 U.S.C. § 8162, *Enhanced-use leases*.

Table 1. Enhanced Use Leases

Agreement	Start Date	End Date	Operational	Annual Revenue	Annual In-Kind
Building 209	2017-05-18	2067-05-17	Yes	\$19,800	N/A
Buildings 205, 207, 208	N/A*	N/A	No	N/A	N/A
Buildings 156, 157, 158	N/A*	N/A	No	N/A	N/A
Buildings 206, 210, 256, 257	N/A*	N/A	No	N/A	N/A
McArthur Field	N/A*	N/A	No	N/A	N/A

Source: Land use agreements provided by GLAHS.

* Planned for future development

VA Real Property Leases with Non-VA Entities (Out Leases)

For leases of real property on the WLA campus, the WLA Leasing Act allows leases of real property to a non-VA entity for a term not to exceed 50 years. The lease must provide services that principally benefit veterans and their families and must be for one or more of the nine purposes defined in the WLA Leasing Act. Table 2 shows each of the four Real Property Leases the OIG reviewed on the WLA campus, other than those leases with the University of California Regents.

Table 2. Real Property Leases with non-VA Entities (Out Leases)

Agreement	Start Date	End Date	Operational	Annual Revenue	Annual In-Kind
Brentwood School	2016-11-04	2026-11-03	Yes	\$850,000	\$918,000
New Directions (Bldg. 116)	1995-08-29	2045-08-31	Yes	\$25,000 ²⁴	\$0
Barrington Parking Lots	N/A*	N/A	No	N/A	N/A
VA Desert Pacific Credit Union	2013-11-01	2016-10-31	Yes	\$0	No estimate ²⁵

Source: Land use agreements provided by GLAHS

* Planned future Out Lease, solicitations pending

Real Property Leases (Out Leases) to the University of California Regents

The WLA Leasing Act allows for the lease of real property for a term not to exceed 10 years to the Regents of the University of California. It further stipulates the leases must be consistent with

²⁴ Payment for building utility costs only

²⁵ Any costs required to maintain, restore, or protect the leased premises

the master plan and have the provision of services to veterans as the predominant focus of the activities of the Regents. Table 3 shows Real Property Leases (Out Leases) with the University of California, Los Angeles (UCLA) and two Revocable Licenses for services provided to veterans as in-kind consideration for the baseball complex lease.

Table 3. Real Property Leases (Out Leases) with UCLA

Agreement	Start Date	End Date	Operational	Annual Revenue	Annual In-Kind
UCLA Baseball Complex	2016-12-23	2026-12-22	Yes	\$300,000	\$1,350,000 ²⁶
UCLA Wellness Center*	2017-06-01	2022-05-31	Yes	\$0	\$0
UCLA Legal Clinic*	2017-06-01	2022-05-31	Yes	\$0	\$0

Source: Land use agreements provided by GLAHS

* While the baseball complex is governed by an Out Lease between VA and the Regents, the in-kind services derived from the wellness center, legal clinic, and the VA/UCLA Center for Excellence are included as in-kind consideration for the lease of the baseball complex. The legal clinic and wellness clinic have separate Revocable Licenses to define the space occupied on campus. As of August 2018, VA has not drafted a Revocable License for the VA/UCLA Center of Excellence for Training and Research in Veteran Homelessness and Recovery. According to the contractor chosen to implement the DMP, this Revocable License will be developed in FY 2019.

Land Sharing Agreements

The WLA Leasing Act states, “The Secretary may not carry out any land sharing agreement... at the Campus unless such agreement—

- (1) provides additional healthcare resources to the Campus; and
- (2) benefits veterans and their families other than from the generation of revenue for the Department of Veterans Affairs.”

Table 4 shows the one sharing agreement the OIG reviewed.

Table 4. Sharing Agreement

Agreement	Start Date	End Date	Operational	Annual Revenue	Annual In-Kind
Cyclotron	2009-07-17	2017-07-16	Yes	\$0	N/A

Source: Land use agreements provided by GLAHS

Land Use Agreements Not Specified in WLA Leasing Act

The OIG did not limit its review to the five types of land use agreements specified in the WLA Leasing Act because the act requires the OIG to report on how VA is managing the use of land at

²⁶ Annual estimated value of services provided UCLA’s Wellness Center, Legal Clinic, and the VA/UCLA Center of Excellence.

the WLA campus. Therefore, the OIG reviewed all types of land use agreements found on the WLA campus and land use where no agreement existed. This included 22 Revocable Licenses, one Memorandum of Understanding (MOU), one VA Service Contract, and four instances where there was no documented land use agreement in place. The OIG's approach to determining whether these instruments were consistent with the DMP and other federal law consisted of the following assessments:

- Whether the instrument was veteran-focused
- Whether land use agreements were consistent with the DMP objective to revitalize the campus and provide not only health care and benefits, but education, socialization, recreation, culture/arts, and interaction opportunities with the community
- Whether the land use agreements violated any federal law besides the WLA Leasing Act

Agreements are veteran-focused if they result in additional healthcare, benefits, services, or resources being provided directly to veterans and/or their families on the WLA campus. Monetary proceeds paid to VA alone will not constitute an acceptable agreement, nor will agreements that only benefit the public at large.²⁷

Table 5 shows each of the 27 land use agreements the OIG reviewed not specified by the WLA Leasing Act.

²⁷ Department of Veterans Affairs Greater Los Angeles Campus Draft Master Plan, January 28, 2016. (Appendix A, page 58)

Table 5. Land Use Agreements not specified in WLA Leasing Act

Agreement	Type ²⁸	Start Date	End Date	Operational	Annual Revenue	Annual In-Kind
1887 Fund	RL	2017-05-15	2022-05-14	Yes	\$0	\$0
American Red Cross	RL	2016-09-11	2018-12-31	Yes	\$0	\$672,445 ²⁹
Breitburn	RL	2017-03-07	2027-03-02	Yes	No estimate ³⁰	\$0
Brentwood School Construction	RL	2016-12-30	2018-02-28	Yes	\$0	\$0
Volunteers of America	RL	2016-08-11	2017-08-11	Yes	\$0	\$0
Salvation Army	RL	2016-08-29	2017-08-29	Yes	\$0	\$0
Weingart	RL	2016-08-11	2017-08-11	Yes	\$0	\$0
US VETS Inc.	RL	2016-08-11	2017-08-11	Yes	\$0	\$0
CalTrans	RL	2011-10-11	2061-12-31	Yes	\$0	\$0
City of Los Angeles – Veterans Barrington Park	RL	2016-09-01	2019-08-31	Yes	\$0	\$200,000
Gary Sinise Foundation	RL	2015-11-01	2017-10-31	Yes	\$0	No estimate ³¹
Golf Course - Bandini Foundation	RL	2015-09-15	2018-06-30	Yes	\$0	No estimate ³²
Jewish War Veterans Post 118	None	N/A	N/A	Yes	N/A	N/A
LA Shakespeare	RL	2017-12-27	2022-12-26	Yes	\$0	No estimate ³³
New Directions (Bldg. 257)	SC	2015-09-28	2018-09-27	Yes	\$0	No estimate ³⁴

²⁸ Agreement types shown in Table 5 – RL – Revocable License, SC- Service Contract, MOU – Memorandum of Understanding, VCS – Veterans Canteen Service.

²⁹ Rent was prepaid by Red Cross through unbilled blood products provided to WLA under prior EULs.

³⁰ 2.5 percent royalty of gross value of all oil, gas, and other hydrocarbons extracted from the property.

³¹ No monetary estimate in Revocable License, temporary use of parking lots to distribute hot meals to veterans.

³² All costs associated with maintenance of the property

³³ No monetary estimate in the Revocable License; required to hire 30 veterans part time during performance period and distribute a minimum of 2,000 free tickets to veterans.

³⁴ No monetary estimate. This is a VA Service Contract with New Directions to provide Bridge Housing services and supportive services for the Welcome Center located in Bldg. 257.

Agreement	Type ²⁸	Start Date	End Date	Operational	Annual Revenue	Annual In-Kind
Association for Parrot C.A.R.E.	RL	2017-03-15	2019-03-14	Yes	\$0	No estimate ³⁵
South Coast AQMD	RL	2013-04-01	2018-03-31	Yes	\$9,720	\$0
Southern California Edison	RL	2014-12-03	2039-12-02	Yes	\$0	\$0
Team AMVETS	None	N/A	N/A	Yes	N/A	N/A
Twilight Brigade	None	N/A	None	Yes	\$0	No estimate ³⁶
USPS PO Boxes	None	N/A	N/A	Yes	\$0	\$0
Vets Corps USA	None	N/A	N/A	Yes	No estimate ³⁷	\$0
Westside Breakers	RL	N/A	N/A	Yes	\$60,000 ³⁸	\$0
Westside Food Bank	RL	2016-09-08	2021-09-07	Yes	No estimate	\$0
Columbarium Expansion	MOU	2015-04-01	2020-09-30	Yes	\$0	No estimate. ³⁹
Freedom Barber	VCS ⁴⁰	2017-10-23	N/A	Yes	10 percent ⁴¹	No estimate ⁴²
Veterans Park Conservancy	RL	2017-12-06	2022-12-06	Yes	\$0	\$0

Source: Land use agreements provided by GLAHS

³⁵ No monetary estimate. The organization is required to provide access to VA patients for therapeutic activity and job opportunities to veterans through Compensated Work Therapy program. No specific amounts required but must report therapy and Compensated Work Therapy activity quarterly to the contracting officer.

³⁶ Volunteer support for terminally ill veterans, palliative training, and education for WLA staff.

³⁷ VA is paid for direct labor costs for veterans working for Special Operations Technology under the agreement plus 15 percent administrative fee.

³⁸ Rent payment of \$60,000 may be reduced by maintenance costs incurred to maintain the soccer fields, based on the prior Enhanced Sharing Agreement (V691S-5309).

³⁹ This Revocable License allows for construction of a columbarium and cemetery development for veterans' use after death.

⁴⁰ This Revocable License is pursuant to a Concessionaire Agreement with the Veterans Canteen Service; not a GLAHS Revocable License.

⁴¹ 10 percent of gross receipts will be paid to the Veterans Canteen Service under their agreement.

⁴² Freedom Barber provides veterans free haircuts three days per month.

Results and Recommendations

Finding 1: Inappropriate Use of WLA Campus

The OIG reviewed 40 land use agreements on the WLA campus and determined that 11 did not comply with either the WLA Leasing Act, the DMP, or other federal laws.⁴³ Furthermore, 14 non-VA entities were operating on the WLA campus with either an expired agreement or no documented land use agreement. The OIG determined that these key factors played a role in why 25 of 40 of the land use agreements (63 percent) on the WLA campus were improper:

- Veteran input on WLA land use was insufficient.
- VA policies lacked clarity on appropriate use of Out Leases and Revocable Licenses.
- Greater Los Angeles Healthcare System (GLAHS) Capital Asset Inventory land use agreement records were incomplete.

The inappropriate agreements resulted in use of land that did not principally benefit veterans and their families or maximize revenue necessary to revitalize the campus as a permanent home for veterans.

Non-Compliant Land Use Agreements

The OIG determined that 11 land use agreements were not compliant with federal law or the DMP.

1887 Fund

The 1887 Fund, a nonprofit organization part of whose mission is to restore five historic buildings on the WLA campus, uses Building 33 and three parking spaces per a five-year Revocable License, effective May 15, 2017.⁴⁴ The license permits the 1887 Fund to use Building 33 to raise funds for the renovation of the Wadsworth Chapel and four other historic buildings. The Revocable License states that “through restoration of these buildings, Veterans will have opportunity for spiritual healing and hope the process will allow job opportunities.”⁴⁵ A series of letters from 2015 to 2017 between the 1887 Fund and the Secretary of VA expressed the 1887 Fund’s desire to make donations for the restoration of the historic buildings. The Secretary expressed his gratitude for its fundraising efforts and contributions. None of the

⁴³ Including expired and undocumented agreements.

⁴⁴ Buildings include Wadsworth Chapel (Building 20), Governor’s Mansion (Building 23), Superintendent’s Home (Building 33), Trolley Station (Building 66), and Hoover Barracks (Building 199).

⁴⁵ The Revocable License does not mention fundraising; however, evidence including letters, e-mails, and statements from VA personnel confirm that the building will be used for this purpose.

correspondence mentioned, nor did the Secretary agree to, the use of land on the WLA Campus to perform this fundraising, which is prohibited on the property.⁴⁶ The OIG found that the 1887 Fund did not comply with federal regulations concerning soliciting charitable donations.

American Red Cross

The American Red Cross occupies a building on the south campus that was designed and constructed pursuant to a Revocable License granted in 1989. The current Revocable License, effective September 11, 2016, through December 31, 2018, states that the purpose is for “General office use (Red Cross regional office facility and service center)” and to terminate the 1989 Revocable License effective September 10, 2016. Nothing in the Revocable License specifies services the American Red Cross will provide for veterans and their families, other than a general statement that “Red Cross will prospectively provide additional Veteran-focused service.” The OIG determined that this general statement is insufficient to conform to the DMP’s requirement that land use be veteran-focused. VA and GLAHS leaders are currently working on removing the American Red Cross from the campus and expect they will vacate by December 31, 2018, when the current Revocable License expires. The OIG also determined that GLAHS’s payments to the American Red Cross under the Revocable License were improper because VA paid \$1,254,807 without documentation to support why it provided a \$791,156 credit for products and services received from 1989 through 2016 and why it provided \$463,651 of appraised excess land without receiving consideration.

Association for Parrot C.A.R.E.

A two-year Revocable License, effective March 15, 2017, allows the Association for Parrot C.A.R.E. to use Serenity Park on the WLA campus. According to its website, the Association for Parrot C.A.R.E. is an

animal charity which operates Serenity Park sanctuary on the grounds of the Greater Los Angeles VA Healthcare Center. Serenity Park is an oasis for abandoned, abused, neglected or family-relinquished parrots in need of a forever home. Here these often-traumatized parrots meet combat veterans who also experienced trauma. It is through this common bond that a mutual path of healing occurs.

In consideration for use of the land, the Revocable License states the Association for Parrot C.A.R.E will “provide access for VA patients to the premises for therapeutic activity as well as job opportunities for Veterans through Compensated Work Therapy.”

⁴⁶ 38 CFR §1.218(a)(8), *Soliciting, vending, and debt collection* applies to all property under the “charge and control” of VA.

While the terms of the Revocable License are clearly veteran-focused, the OIG could find little evidence that veterans were benefitting from this land use agreement. OIG auditors visited the Serenity Park location on three separate dates between 9:00 a.m. and 1:00 p.m., and in each instance the gates to Serenity Park were padlocked.⁴⁷ Furthermore, when auditors reviewed the Association for Parrot C.A.R.E.'s website on July 18, 2018, it contained the following statement:

Serenity Park Sanctuary (Parrot C.A.R.E.) is open to veterans and their families, and on a limited basis for pre-arranged tours for the general public, please see below.

...during regular hours of operation, Monday through Friday 9:00 am-1:00 pm, and you may contact us to schedule a weekend tour in advance. Remember to bring your VA ID. Friends and family of veterans are also welcome when accompanied with a veteran with his or her VA ID.

Tours at Serenity Park are available for the general public with advance notice and a suggested donation made via PayPal prior to the day of the tour. The suggested donation amount is \$100 for 1-4 people and \$150 for 5-8 people. Please contact us if you would like to schedule a tour with more than 8 people as this requires additional staff. Please fill out the following form for a tour. We will contact you once the donation is cleared through PayPal. No same day tours are permitted.

According to the terms of the Revocable License, the Association for Parrot C.A.R.E. is required to provide

a Quarterly report, due at the end of every quarter, outlining [*sic*] the number of veterans trained in the Program, the outcome of the trainings, number of veterans using the services provided by Licensee, and any other supporting documentation deemed appropriate to justify the services provided by Licensee as “veterans-centric.”

As of May 2018, the Association for Parrot C.A.R.E. had not submitted a single quarterly report detailing the number of veterans served under this land use agreement.

Barrington Parking Lots

The Barrington Parking Lots are two parking lots located on the northwest portion of the WLA campus. Combined, the two parking lots comprise about 3.9 acres and provide 450 parking spaces. The Barrington Parking Lots were managed by Westside Services under an agreement that was terminated on January 19, 2017. However, on April 3, 2018, VA OIG auditors observed

⁴⁷ These OIG onsite visits took place occurred on January 23, 2018, January 24, 2018, and April 3, 2018.

the parking lot adjacent to a Brentwood shopping center was providing unrestricted access to the public. The OIG concluded this was not a veteran-focused use of the land.

On February 14, 2018, VA posted a solicitation for parking management services to operate the Barrington Parking Lots on a one-year Out Lease with nine option years. The Out Lease requires veterans to receive a 25 percent discount on parking and requires the lessee to employ veterans for no less than 75 percent of the staffing requirements. As of July 2018, GLAHS has not entered into an agreement with a contractor to manage the parking lot.

Breitburn

On March 7, 2017, VA and Breitburn entered a 10-year Revocable License allowing Breitburn to conduct slant drilling to extract non-federally owned oil from neighboring land. As part of this Revocable License, Breitburn donates a monthly monetary amount to the Disabled American Veterans, Los Angeles Chapter that is equal to 2.5 percent of the total gross production of all oil, gas, and other hydrocarbons produced under the Revocable License. The OIG's review of the Revocable License determined the use of the property by Breitburn does not conform to the intent of the DMP as being veteran-focused because the only benefits produced by the Revocable License are monetary—it does not produce any additional healthcare, benefits, services, or resources provided directly to veterans or their families.

Brentwood School

A 10-year lease, effective November 4, 2016, with one 10-year extension option allows Brentwood School's continued use of athletic facilities including a swimming pool, football/soccer field, indoor basketball/volleyball facility, tennis court complex, baseball fields, and supporting buildings and infrastructure that the school constructed at different points between 1998 and 2012.⁴⁸ Since the mid-1970s, the Brentwood School has had three different agreements to use VA's property for what has ultimately become, according to the school's website, "one of the premier athletic programs in West Los Angeles. With over 21 acres of field and competition space." Following settlement of *Valentini vs. Shinseki* in January 2015, VA reviewed the Brentwood School's land use agreement to determine whether it could be "made sufficiently Veteran focused (through fair market value rent to VA and services directly benefitting Veterans and their families)."⁴⁹ In November 2016, VA and the Brentwood School continued their long-term relationship by executing a lease of real property for its athletic

⁴⁸ The cost of the development is reported to have been \$17 million. Appraisal of Brentwood recreational facilities, January 11, 2016, Jones Lang LaSalle.

⁴⁹ No. 2:11-cv-04846-SJO-MRW (C.D. Cal. 2015).

complex. Under the lease, the Brentwood School was to pay \$850,000 in annual rent.⁵⁰ The OIG determined the Brentwood School lease violated the WLA Leasing Act section that covers any lease of real property “to provide services that principally benefit veterans and their families,” because the principal purpose of this lease is to provide the Brentwood School with continued use of the athletic facilities.⁵¹ In addition to the monetary consideration provided under the lease, Section II was entitled “In-Kind Consideration from Brentwood School to VA” and included various categories of non-monetary consideration.⁵² The OIG found that VA’s acceptance of non-monetary consideration is not authorized by law:

Except as otherwise specifically provided by law, the leasing of buildings and property of the Federal Government shall be for a money consideration only. The lease may not include any provision for the alteration, repair, or improvement of the buildings or property as a part of the consideration for the rent to be paid for the use and occupation of the buildings or property.⁵³

A very limited exception to this monetary-consideration-only requirement allows non-profit organizations like the Brentwood School to provide maintenance, protection, and restoration to the property leased as part or all of the consideration for the property leased.⁵⁴ This exception, however, applies only to the land leased from VA, not for costs related to the maintenance of upgraded landscaping or physical structures installed by the Brentwood School and other costs related to operation of the athletic facilities.

Brentwood School Construction

A 14-month Revocable License, effective December 30, 2016, gave Brentwood School the right to enter and leave “over land that is under VA’s jurisdiction and control at the West LA campus, via one or more access routes to be expressly identified from Licensee to Licensors, and subject to VA’s prior documented approval.” The sole purpose of the Revocable License was to

⁵⁰ The Jones Lang LaSalle appraisal found \$2,650,000 to be a fair market annual ground rent for the property being used by the school. The lease stated that annual rent increases in the amount of 2.5 percent would apply, which could also be satisfied through annual-in-kind consideration.

⁵¹ WLA Leasing Act, Section 2(b)(2).

⁵² The Lease lists \$918,000 as the value attributed to the in-kind consideration, but the value of the following in-kind services is \$1,135,235 (lease says the amount is subject to reduction to meet the \$918,000 amount). The in-kind services values are \$170,587 for maintenance of athletic fields and landscaping, \$348,000 for repair and replacement of physical structures, \$45,000 for veteran special events, \$223,462 for additional staffing by Brentwood School to manage veteran use of property, \$2,500 to purchase athletic equipment, \$82,458 to transport veterans from VA to Brentwood School, \$99,228 for athletic and educational programs to benefit veterans and their families, and \$164,000 for scholarships for veterans’ children to attend Brentwood School and summer camps.

⁵³ 40 U.S.C. § 1302, *Lease of buildings*.

⁵⁴ 38 U.S.C. § 8122(a)(1), “Notwithstanding section 1302 of title 40, or any other provision of law, a lease made pursuant to this subsection to any public or nonprofit organization may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease.”

accommodate construction on the Brentwood School campus, and therefore, the license does not conform to the DMP's requirement to ensure land use on the campus be veteran-focused.

CalTrans

A 50-year Revocable License, effective October 11, 2011, provides the California Department of Transportation access to the campus as they relocate utilities and widen Interstate Highway 405 as part of the I-405 Sepulveda Pass Improvement Project. The improvements will be transferred to VA upon completion. The OIG's review determined that the Revocable License confers benefits on the public at large and is not veteran-focused, and therefore is not consistent with the DMP. Furthermore, 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.

City of Los Angeles–Veterans' Barrington Park

A three-year Revocable License, effective September 1, 2016, allows the City of Los Angeles to utilize a 12-acre park consisting of softball fields, a dog park, and a parking lot. According to the terms of the Revocable License, veterans have a priority access and use of the park. Specifically, the Revocable License states, "VA and the City agree that the purpose of the Veterans' Park is to principally benefit Veterans and their families, and that the general community can use Veterans' Park, so long as such use receives VA's prior written approval." Pursuant to the Revocable License, the name of the park changed from "Barrington Park" to "Veterans' Barrington Park". In return for using the land, the City of Los Angeles agreed to hire veterans at a total annual cost of not less than \$200,000 per year, citywide.⁵⁵

When promoting citywide hiring of veterans, the Revocable License states the city will emphasize Barrington Park. The city also agreed to erect a veterans' memorial for up to \$100,000, assist GLAHS with special events, and spend up to \$50,000 on beautification. There is no promise to specifically hire veterans to work at Barrington Park.

Provisions related to the dog park portion of the land are separately set out in the agreement:

- The city will use its best efforts to find an alternative location to relocate the dog park and do so within 180 days of the effective date of the agreement.
- Within a year of the effective date, the city would reduce the size of the dog park by 50 percent with the understanding that VA could further reduce it.

While the language of the Revocable License is veteran-focused, the OIG has not found that the city has actually provided veterans priority access as required by the Revocable License.

⁵⁵ Veteran Hiring – The City agreed to hire veterans at a total annual cost of not less than \$200,000 per year, however, citywide; not specific to Barrington Park. Maintenance and staffing-city will continue to provide. Veteran Events – City will coordinate with GLAHS and assist with events i.e. athletic, rehabilitation, social etc. Beautification up to \$50,000 Veterans Memorial up to \$100,000 – City will design and erect.

The Revocable License states, “Signage and park rules will be prominently and permanently posted, including, without limitation, on the City’s website.” There was no sign when audit team members visited Barrington Park or as recently as July 2018. When a GLAHS contractor assigned to oversee the implementation of the DMP was asked whether a sign had been erected, he confirmed that no sign had been installed. The city website page for Veterans’ Barrington Park also did not mention anything about veteran preference. In the section of the website that identifies the various dog parks around the city, there is no information on the Barrington Park section concerning veterans. When audit team members visited Barrington Park, there were several people using the dog park. It is very unlikely that they requested permission in writing to use the park, as the GLAHS representative responsible for reviewing the requests to use the park told the audit team that he had not received any. The audit team also did not observe anything that suggested the dog park was veteran-focused. In fact, the very terms of the Revocable License indicate that VA does not believe the dog park is veteran-focused, hence the 50 percent reduction and the language about looking for an alternate location for the dog park. The OIG found that despite the language in the Revocable License, use of Veterans’ Barrington Park is not being administered in a manner that is veteran-focused, and therefore does not comply with the DMP.

The Shakespeare Center of Los Angeles

A five-year Revocable License, effective December 27, 2017, allows the Shakespeare Center of Los Angeles (LA Shakespeare) to use the Japanese Garden on the WLA campus to present up to 20 professional productions of William Shakespeare plays per year. The Revocable License also allows the use of the adjacent Japanese Garden and parking lots. The plays are open to the public. In exchange for using VA’s land, LA Shakespeare agreed to make a minimum of 2,000 tickets per season available to veterans who request them online, and to hire 30 veterans part-time to assist in the production of the plays. LA Shakespeare was selling tickets for the June 2018 production of Henry IV with best seats available in donor packages ranging from \$1,500 to \$5,000. The OIG determined that while this license provides benefits to active members of the armed forces and veterans, the primary focus is to produce Shakespeare plays for the public at large; thus, the Revocable License does not conform to the DMP requirement of being veteran-focused.

Westside Breakers

The Westside Breakers (Westside) youth soccer organization has used MacArthur field on the WLA campus since at least 2003. However, the organization has not been under a written agreement since 2011. Westside submitted a land use proposal on August 7, 2017, and it was approved by the GLAHS Director for a one-and-a-half-year Revocable License in a memo dated October 5, 2017. However, the license has not been formally executed. The Revocable License, when or if executed, would officially allow Westside to continue using MacArthur field for their

soccer practices and games. VA had been treating the arrangement with Westside as an implied agreement because they continued to make monthly payments to VA; subsequently, the soccer club was allowed to continue using MacArthur field. The club paid VA approximately \$55,832 in FY 2016 and paid approximately \$41,874 in FY 2017. There were no billings or payments after June 2017. The OIG was informed by the medical center director that GLAHS is currently allowing Westside to use MacArthur field without a written land use agreement in place while waiting for the start of the planned EUL on MacArthur field that will construct a new facility for permanent supportive housing. This unwritten arrangement does not comply with VA policies that require Revocable Licenses to be in writing. Furthermore, it does not comply with the DMP because it is not veteran-focused: the use of the land is for the sole use and benefit of the soccer club. Although Westside was paying VA for the use of the field, the financial benefit to VA was insufficient. In discussing the types of land use agreements that are acceptable, the DMP states, “Monetary proceeds paid to VA alone will not constitute an acceptable agreement.”

Recommendation 1 addresses the need for VA to take action to correct non-compliant land use agreements.

Non-VA Entities on WLA's Campus 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. This list was compiled by the OIG after an extensive review of GLAHS's land use agreement files and multiple inspections of the campus. The team confirmed the status of these agreements with GLAHS and VA senior officials during a July 11, 2018, meeting. Table 6 lists these agreements and provides a brief description of how the entities were using the land.

Table 6. Land Uses Where Agreements Were Either Expired or Undocumented

Agreement	Effective Date	Expiration Date	Land Use
Cyclotron	2009-7-17	2017-07-16	Sharing Agreement between UCLA and VA which allows VA to use Cyclotron equipment
Gary Sinise Foundation	2016-11-01	2017-10-31	Distribution of hot meals once a month
Golf Course	2015-09-15	2018-06-30	Management and maintenance of golf course
Salvation Army	2016-8-29	2017-08-29	Salvation Army Supportive Services office space
South Coast AQMD	2013-04-01	2018-03-31	Air quality testing equipment
Twilight Brigade	1998-01-30	None	Office space for volunteer training to serve terminally ill veterans

Agreement	Effective Date	Expiration Date	Land Use
US VETS Inc.	2016-08-11	2017-08-11	Grant and Per Diem Program and supportive services for veteran families
VA Desert Pacific Federal Credit Union	2013-11-01	2016-10-31	Space to operate credit union
Volunteers of America	2016-08-11	2017-08-11	Grant and Per Diem Program and supportive services for veteran families
Weingart	2016-08-11	2017-08-11	Grant and Per Diem Program and supportive services for veteran families
Jewish War Veterans Post 118	None	None	Veterans Service Organization meeting space
Team AMVETS	None	None	Provides furniture to veterans in transitional housing
USPS PO Boxes	None	None	Post office boxes and mail service
Vets Corps USA-Green Vets LA	None	None	Storage of 40-foot container used to store equipment to fabricate VA plaques and training equipment for classes for veterans

Source: VA OIG analysis of land use agreements provided by GLAHS

Recommendation 2 addresses the need for VA to ensure all non-VA entities operating on WLA's campus have documented agreements in place.

Additional Veteran Input Could Help GLAHS Ensure Land Use Agreements are Compliant

Vincent Kane was appointed by Secretary McDonald to serve as his special assistant to help develop a strategy and action plan for ending veteran homelessness in Los Angeles, according to Mr. Kane. He worked with Heidi Marston, the Secretary's special assistant for the Secretary's Homelessness Initiative, to engage local politicians, neighborhood leaders, and veteran groups in the development of the WLA DMP.

After the VA entered into a settlement to end the *Valentini* lawsuit in January 2015, VA attempted to make nine enhanced sharing agreements, which the district court determined in August 2013 did not constitute a sharing of "healthcare resources," into land use agreements that would comply with future land use requirements. Following the lawsuit, Mr. Kane and former Chief Counsel for the Office of General Counsel Cameron Gore renegotiated agreements on the WLA campus that they determined could be made veteran-focused, as required by the DMP. They renegotiated two of nine Enhanced Sharing Agreements challenged in the lawsuit, resulting in new lease agreements with the Brentwood School and UCLA.

VA DMP Outreach Efforts Were Not Primarily Focused on Veterans

On June 8, 2015, VA announced it had selected a team made up of members from Hellmuth, Obata & Kassabaum, Inc.; Walsh Group; and The Core Companies to work with the community to develop a master plan for the WLA campus. The team engaged the community through six Pop-Up Work Shops, which created visual interactive presentations about potential uses for the campus. They held six weekly open house workshops to provide status updates on the development of the master plan. In addition, they hosted twelve Town Hall and Neighborhood Community meetings, two of which took place on the WLA campus and ten that were hosted in neighboring community locations.

They also briefed key stakeholders, including eleven offices of U.S. Senators and members of the U.S. House of Representatives, eight offices of Los Angeles city and county officials, nine offices of California State Senators and offices of Assembly members, and seven veteran and housing advocacy groups on the campus master plan. These workshops, open houses, town halls, and the briefing took place from June 23, 2015, through October 16, 2015. A preliminary version of the DMP was then submitted to the VA Secretary for review and was available for public comment on the Federal Register through December 7, 2015. The DMP was published on January 28, 2016, providing a framework to assist VA in revitalizing the campus to become veteran-focused.

The OIG assessed the outreach effort VA used to create the DMP and concluded VA primarily focused its attention on groups that represented the public at large, rather than specific veteran interests. The briefings held with stakeholders during the development phase of the DMP focused largely on political partners and neighborhood councils. VSOs made up only a small percentage of the stakeholders consulted during DMP development.

Mr. Kane stated he used town hall and stakeholder input to determine how to revitalize the campus. Ms. Marston referred the OIG to the comments received through public hearings and through the hearings conducted during the development of the DMP, representing the comments used to determine the voice of veterans. She also stated that they did not collect the comments from public town hall meetings as part of the analysis, but did rely on the public comments received from the Federal Register. The OIG reviewed the 1,002 comments captured by the Federal Register during the two-month public comment period for the DMP and found the majority of comments did not identify whether the respondent was a veteran or member of the general public. This made it difficult to ascertain specific veteran concerns about the land use on the WLA campus.

Besides the face-to-face meeting with veterans, the OIG was provided summary results of veteran surveys done by Vets Advocacy⁵⁶ and the VSO Coalition⁵⁷, submitted to GLAHS during the development of the DMP. The surveys covered the types of services and recreational opportunities a revitalized WLA campus might offer veterans and their families. However, these surveys were provided long after the OIG interviewed key VA officials on how GLAHS determined which land uses principally benefitted veterans and their families, and the surveys were not cited in their responses.

VCOEB Established After the Draft Master Plan Was Created

The WLA Leasing Act established the VCOEB 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 DMP. The VCOEB did not have its first meeting until December 2017—long after many of the decisions included in the DMP and individual land use agreements were negotiated and implemented.

The WLA Leasing Act states

The VCOEB shall be comprised of a number of members that the Secretary determines appropriate, of which not less than 50 percent shall be veterans. The nonveteran members shall be family members of veterans, veteran advocates, service providers, real estate professionals familiar with housing development projects, or stakeholders.

The VCOEB is responsible for holding public forums on the WLA campus on a regular basis and providing recommendations related to the implementation of the master plan and updating it every three years.

The OIG interviewed VSO leaders from the American Legion and Disabled American Veterans who were involved with the development of the DMP. The VSO leaders were generally supportive of the plan to develop permanent supportive housing on the WLA campus for homeless veterans. They were not opposed to outside parties having land use agreements as long as VA received fair compensation and the revenue was used to revitalize the campus.

⁵⁶ A 501(c)(3) non-profit organization founded by the plaintiffs as a part of the *Valentini vs. Shinseki* settlement

⁵⁷ Coalition of national Veterans Service Organizations who lent their support to the DMP. This group included the American Legion, Disabled American Veterans, Veterans of Foreign Wars, American GI Forum, Jewish War Veterans, and Vietnam Veterans of America.

Integrated Project Team Established to Implement Draft Master Plan

After the DMP was published, an Integrated Project Team (IPT) was established in December 2016 through the executive sponsorship of Ann Brown, GLAHS Director. The IPT was charged with developing a Program Management Plan for the GLAHS Director specific to the projects across the WLA campus that would be affected by the implementation of the DMP. The Project Management Plan included strategies for

- Assisting the GLAHS Director in developing and implementing a project execution strategy for development of the WLA campus;
- Ensuring all WLA campus project interfaces are identified, completely described, defined, and managed to completion;
- Identifying and meeting all project performance parameters;
- Reviewing and commenting on WLA campus project deliverables; and
- Supporting the preparation, review, and approval of WLA campus project completion and closeout documentation.

The mission of the WLA Campus Draft Master Plan IPT was to provide strategic planning, coordination, and communication across all relevant VA Program Offices. The IPT was responsible for ensuring that all WLA campus development projects were achieved on schedule; within budget; and consistent with quality, environmental, safety, and health standards. The IPT was also responsible for making sure that project management was carried out with integrity and in compliance with applicable laws. Although the IPT provided formal structure for managing land use on the WLA campus, it did not ensure that individual land use agreements complied with the WLA Leasing Act.

Integrated Project Team Could Benefit from VCOEB Input to Improve Transparency of WLA Land Use

The American Legion, on behalf of a VSO coalition, issued a letter of support for the DMP on December 8, 2015, after the public comment period. In the letter, the VSO coalition requested that a board of governors be established and that it “must be empowered to provide oversight of the management process, monitor accountability, promulgate best practices and ensure the VA Medical Center remains true to its mission of putting Veterans First.” The letter went on to state that the board “must include a strong Veteran presence that cannot be drowned out or marginalized by other entities on the board.” The OIG interviewed Lawrence Van Kuran, Commander-Department of California/The American Legion, and Richard Valdez, Legislative Director, Disabled American Veterans-Department of California, to determine their views on

whether the VCOEB had met the goals stated in the VSO coalition's letter. Neither VSO official believed the VCOEB had fulfilled the vision of the letter. Mr. Valdez felt the VCOEB meetings allowed the VSOs very little input in the process.

Ms. Brown established the IPT to help deploy a strategy to manage the use of the WLA campus. According to the IPT executive summary, "the IPT will be comprised of empowered individuals, appointed by their member organizations, who have the ability and authority to make binding decisions for the organizations that they represent." The executive summary lists 48 IPT members, of which eight members have voting privileges. Other members can make recommendations to the voting members and the IPT chair. Subgroups within the IPT were created to focus on

- Land Use,
- Communication,
- Space Planning and Construction,
- Environmental and Historic Compliance,
- Purple Line Extension Project,
- Utilities,
- Strategic Planning and Funding, and
- Services Council.

Allowing VCOEB to provide input to GLAHS leaders on existing and proposed land use agreements would ensure veterans have a voice on whether the agreements benefit veterans and their families. It would also improve transparency between GLAHS leadership and the veteran community as VA works to rebuild trust and revitalize the campus as a permanent home for veterans. Recommendation 3 addresses the VCOEB having input to WLA land use agreements.

VA Needs to Establish Clear Policies and Procedures to Ensure Land Use Agreements are Compliant

According to the GAO, 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.⁵⁸

The majority of land use observed by the OIG on WLA campus was through Revocable Licenses, but when the OIG requested WLA's local policies and procedures for developing and

⁵⁸ GAO 14 704G, *Standards for Internal Control in the Federal Government*, September 2014.

approving land use for non-VA entities, there was very little information on Revocable Licenses. The OIG discussed WLA's frequent use of Revocable Licenses with Mr. Gore, who expressed that an important advantage of using a Revocable License is that it does not give the non-VA party an interest in the land. The OIG expressed concern with the frequent use of Revocable License agreements for two reasons: (1) any revenue derived from Revocable Licenses goes directly to the U.S. Treasury and cannot be used to benefit veterans or revitalize the WLA campus, and (2) WLA is not required to report on Revocable Licenses in its annual report of land use to Congress. Mr. Gore responded to these concerns by stating that VA needed to balance the decision of extending the right of a lessee versus the need to generate revenue for VA when reviewing each land use proposal. However, he did agree that Revocable Licenses should be included in WLA's annual report to Congress for transparency purposes.

VA Policy on Revocable Licenses Does Not Align with an Office of General Counsel Opinion

In March 1991, the VA Office of General Counsel (OGC) issued an opinion on whether a commercial bank could obtain a land use agreement to operate on a VA campus in Virginia. The OGC was asked two questions in this case: (1) Is there authority for providing space in an existing or planned VA hospital for the operation of a bank and, (2) if so, what procedure should be employed to accomplish the provision of such space?

The OGC opinion found the medical center director had the authority to allow the bank on campus, but the decision on the appropriate procedure came down to a question of whether a lease or Revocable License was appropriate. The OGC stated that "the present authority of the VA to grant such [revocable] licenses and permits continues to be restricted to situations where the use of the space is of a transitory or temporary nature."⁵⁹ The OGC's opinion concluded that the VA should offer a lease to the bank to operate on campus because its operations, by design, would not meet the definition of transitory necessary for the use of a Revocable License.

VA policy on the use of Out Leases and Revocable Licenses in place during the OIG's review of WLA's land use agreements was an Information Letter issued on July 15, 2011, to VISN and VA medical facility directors by the Acting Director of the Office of Construction and Facilities Management.⁶⁰ GLAHS provided the OIG a flow chart illustrating local procedures for granting Revocable Licenses. However, the team was told on multiple occasions during the audit that the document was going to be modified. The locally developed checklist, *Evaluation Factors for VAGLAHS Land Use & Event Proposals*, was also provided to the OIG, but this document was

⁵⁹Transitory "means continuing only for a short time; not enduring, fleeting, evanescent, temporary."

⁶⁰ VA Office of Real Property issued Memorandum 2018-15 – Real Property License Policy and License Re-delegations of Authority on May 10, 2018 rescinding the Office of Construction and Facilities Management's Information Letter guidance in relation to Revocable License agreements. This new policy is only applicable to Revocable Licenses executed after its issuance.

undated and contained the language “Draft/Pre-Decisional.” Other approaches to processing Revocable Licenses were used by some of the GLAHS personnel responsible for reviewing land use agreements, but these tools were not sanctioned by management as official procedure.

The Construction and Facility Management’s information letter defines Out Leases and Revocable Licenses as “the leasing of real property owned by the Department of Veterans Affairs (VA) to public or private interests outside of VA. In such cases, VA is the lessor and the entity leasing the property from VA is the lessee.” VA’s new policy on Revocable Licenses defines Revocable Licenses as “permission to enter upon and do a specific act or series of acts upon land of the licensor without possession and without acquiring any estate or real property interest therein.”⁶¹

Current VA policy does not limit the period of time VA can agree to a Revocable License; it only requires that Revocable Licenses longer than five years be approved at the VA Central Office level. As an example of VA approving a Revocable License that did not meet the definition of transitory use, the Acting Deputy Secretary recommended in a December 2014 decision memo that VA replace a 50-year Revocable License with the American Red Cross with a renegotiated 25-year Revocable License. Ultimately, the American Red Cross only agreed to a Revocable License with a two-year term, as it planned to relocate its office outside of WLA’s campus by December 2018. Based on guidance from other federal agencies, including the General Services Administration, which limits Revocable Licenses to six months; the Department of the Navy, which limits Revocable Licenses to one year; and the OGC opinion, the OIG has determined that land uses where the activity is continual or long term should not be entered into using a Revocable License agreement, such as the use of VA land to establish a city park with permanent structures.

There is no congressional oversight if a Revocable License is used for land at WLA, as the WLA Leasing Act only requires the department to report on leases and Land Sharing Agreements. The selection of a Revocable License versus a lease also affects the type of consideration required in exchange for the land use, including whether the revenues can be retained to revitalize the WLA campus. Leases require monetary consideration except in very limited circumstances. A benefit under the WLA Leasing Act is that money received under a lease is to be “credited to the applicable Department medical facilities account and shall be available, without fiscal year limitation and without further appropriation, exclusively for the renovation and maintenance of the land and facilities at the Campus.” Under a Revocable License, any money received must be returned to the Department of Treasury. However, there is flexibility under Revocable Licenses to receive non-monetary, in-kind consideration that could be used specifically to help veterans and their families.

⁶¹ VA Policy, *Office of Real Property Memorandum 2018-15*.

VA Did Not Document Pricing Decisions for Renegotiated Land Use Agreements

The OIG reviewed a select number of the Enhanced Sharing Agreements that were the subject of *Valentini vs. Shinseki* in 2011, and noted that several were previously negotiated at rates far below the property's fair market value:

- The City of Los Angeles' use of 12 acres for Barrington Park at no cost⁶²
- UCLA's use of 10 acres of land for the Jackie Robinson baseball complex at an annual rent of \$56,000
- The Brentwood School's use of 22 acres of land for its athletic complex at an annual rent of \$300,000

After the lawsuit settlement and during the lease planning phase for the City of Los Angeles-Barrington Park, the UCLA baseball complex, and the Brentwood School's Athletic Complex in FY 2015, VA obtained independent appraisals to determine annual rent consideration. The annual rental appraised values were about \$2.0 million for Barrington Park and approximately \$2.7 million each for the UCLA and Brentwood School athletic complexes.

However, VA accepted consideration below these appraised amounts for the land use agreements with the City of Los Angeles, UCLA, and the Brentwood School for the renegotiated land use agreements established after the WLA Leasing Act became law. VA agreed to in-kind consideration valued at about \$200,000 for the City of Los Angeles' Revocable License for Barrington Park, about \$1.7 million—\$300,000 cash and \$1.4 million in-kind consideration—for UCLA's lease of the baseball complex, and about \$1.8 million—\$850,000 cash and \$918,000 in-kind consideration—for the Brentwood School's lease of the athletic complex.⁶³

The OIG interviewed Alan Trinh, Deputy Director of the VISN 22 Network Contracting Office, and Cameron Gore, the former Real Property Law Group's Chief Counsel, to determine why the consideration required by the leases was much lower than the appraised value. Neither could provide the OIG with an analysis for the basis of the negotiated consideration. VA policy does not require price negotiations to be documented for Out Leases and Revocable Licenses. However, VA did state in response to public comments that it would ensure land use agreements on the WLA campus included negotiated fair market rents. Without documentation of land use agreement negotiations, the OIG was unable to determine if VA received fair value for non-VA entities' use of the WLA campus.

⁶² There was no documented agreement in place for the use of this land prior to the lawsuit

⁶³ OIG legal counsel deemed this in-kind consideration unallowable because it did not comply with 40 U.S.C §1302 and 38 U.S.C. §8122.

VA Needs to Establish Clear Policy for Out Lease and Revocable License Land Use Agreements Price Negotiations

The VA Secretary has statutory authority to carry out leases, Land Sharing Agreements, and easements on the WLA campus.⁶⁴ The OIG discussed this authority with Mr. Gore, who stated the Secretary has complete discretion to negotiate these land use agreements as specified in the WLA Leasing Act. He also stated that he, Secretary McDonald, and Mr. Kane facilitated the renegotiation of land use agreements with UCLA, the Brentwood School, and the City of Los Angeles.

As stated previously in this report, the VSOs expressed concern that VA was not fairly compensated for land use by non-VA parties. In response to public comments received about the Preliminary DMP published in October 2015, VA stated in the Federal Register in February 2016 that “VA will evaluate existing and future land use agreements to ensure they are ‘veteran focused.’” This means the arrangements must provide direct benefits to veterans and their families and provide negotiated fair market rent to VA.

The VA has a policy that provides guidance on appropriate pricing and requirements to document decisions related to pricing for EULs and Land Sharing Agreements, but it has limited guidance on this topic for Out Leases and Revocable Licenses. Table 7 explains the differences in VA policy on the various type of land use agreements.

Table 7. VA Policy on Pricing and Documentation of Land Use Agreements

VA Policy	Pricing Requirement	Documentation Requirement
Enhanced Use Leases <i>VHA Directive 7415– Enhanced Use Lease Program Policies and corresponding VHA Handbook 7415</i>	VA must receive fair consideration, as the lease consideration shall consist solely of cash at fair value or receive no consideration as determined by the VA Secretary	Milestones, approvals, and supporting documents that occur during the formulation and execution phases of EUL projects must be reported.
Land Sharing Agreements <i>VHA Directive 1820– Enhanced Space Sharing Agreements</i>	VA must consider local commercial market rates for similar space, as well as the full cost as defined by the Federal Accounting Standards Advisory Board when negotiating reimbursement rates.	The rationale and justification for all price determinations must be fully explained, documented, and maintained. Agreements must be approved by VA Office of Capital Asset Management, Engineering, and Support and by senior VISN and VA leadership.
Out Leases	No requirement to receive fair value from nonprofit or public	No guidance on documenting pricing decisions. Authority to

⁶⁴ Lease agreements are described as EULs, Real Property Leases, or Real Property Leases with UCLA.

<i>VA Office of Construction and Facilities Management Letter IL-00CFM-11-01</i>	lessees. May accept maintenance, protection, or restoration costs as part or full consideration of the leased property	approve delegated to directors of VHA field facilities.
Revocable Licenses <i>Real Property Memorandum 2018-15–Real Property License Policy and License Re-delegations of Authority</i>	No guidance on fair value or form of consideration required in agreements where VA is the licensor.	No guidance on documenting pricing decisions. Authority to approve delegated to local medical center director unless agreement exceeds five years in length.

Source: Various VA policies

Recommendation 4 addresses VA's need to create clear policies governing the use of Out Leases and Revocable Licenses.

GLAHS Does Not Keep Accurate Inventory of Land Use Agreements

VA's Capital Asset Inventory (CAI) is the database of record for VA's real property portfolio. VA policy requires all stations to continuously update their CAI database records for all real property, including buildings, land, structures, and the Out Leases and agreements associated with them. VA's FY 2017 CAI and Disposal Plans Update requires each medical facility to report on all non-VA uses of land in the CAI, but it does not define the minimum duration of land use agreements that must be recorded in the inventory. According to the Director of Capital Asset Management Service, agreements with non-VA entities for a duration of six months or longer should be reported in the CAI. However, the CAI data for WLA did not show 28 of the 40 land use agreements in the audit scope. This is not a new issue for VA. In August 2014, GAO reported that VA did not maintain reliable data on the total number of land-use agreements.⁶⁵ GLAHS was one of three medical facilities reviewed as part of GAO's audit.

It is important that WLA maintain reliable data in its CAI so it can provide visibility over non-VA use of land. The WLA Leasing Act requires the Secretary to submit an annual report to Congress evaluating all leases and land-sharing agreements carried out at the campus. In VA's report submitted to Congress on September 25, 2017, VA reported on four leases:

- Building 209
- Brentwood School
- Regents of the University of California
- Buildings 205 and 208

The land use agreements that were not found in the CAI or other asset tracking systems were identified through extensive document review and physical walk-throughs of the WLA campus

⁶⁵ Government Accountability Office, *Land-use Agreements*, GAO-14-501, August 18, 2014.

by the OIG. In many instances, GLAHS Capital Asset Management staff were not aware of which agreements were operational without the OIG's help confirming which non-VA entities currently occupied WLA campus property.

Under the WLA Leasing Act, VA is not required to report on land use agreements other than leases and Land Sharing Agreements mentioned specifically in the law. However, to effectively provide transparency over the use of land at the campus, the land use agreements reported to Congress should reflect the land use agreements reported in the CAI. Recommendation 5 addresses the need for VA to ensure the CAI is kept current.

Conclusion

The OIG identified 11 land use agreements that did not conform to federal statutes or the DMP, and 14 other land uses by non-VA entities that were either based on expired or undocumented agreements. VA needs to create clear policies for governing the use of leases and Revocable Licenses, ensure the VCOEB can fulfill its advisory role regarding the WLA campus, and require GLAHS to keep an accurate inventory of land use agreements. Achieving these goals will allow VA to have reasonable assurance that WLA land use agreements are meeting the needs of veterans and their families in compliance with the WLA Leasing Act.

Recommendations 1–5

The OIG recommended the following:

1. The Principal Executive Director, Office of Acquisition, Logistics, and Construction and the Acting Under Secretary for Health, in conjunction with the Director, Greater Los Angeles Healthcare System, implement a plan that puts the West Los Angeles campus in compliance with the West Los Angeles Leasing Act of 2016, the Draft Master Plan, and other federal laws, including reasonable time periods to correct deficiencies noted in this report.
2. The Principal Executive Director, Office of Acquisition, Logistics, and Construction and the Acting Under Secretary for Health, in conjunction with the Director, 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.
3. The Acting Under Secretary for Health, in conjunction with the Director, Greater Los Angeles Healthcare System, create a process to allow the Veterans and Community Oversight and Engagement Board an opportunity to provide input to the executive leadership on West Los Angeles campus land use.
4. The Principal Executive Director, Office of Acquisition, Logistics, and Construction create documented policies and procedures for Out Leases and Revocable Licenses to govern their use, management, and pricing to ensure fair value is received and negotiations are documented.
5. The Acting Under Secretary for Health, in conjunction with the Director, 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.

Management Comments and OIG Response

The Executive in Charge, Office of the Under Secretary for Health, and the Principal Executive Director, Office of Acquisition, Logistics, and Construction, responded that most of the OIG's findings and recommendations are well-founded in both fact and law and will greatly assist VA in its efforts to ensure all third-party land uses benefit veterans, thereby restoring the campus to its rightful purpose and rebuilding trust with veterans and other stakeholders. Accordingly, VA concurred with Recommendations 2 through 5 and partially concurred with Recommendation 1. Related to Recommendation 1, VA expressed the opinion that "a few of OIG's findings are legally and/or factually erroneous." Specifically, VA disagreed with the OIG's findings that the Brentwood School lease, the Breitburn revocable license, and the CalTrans revocable license did

not comply with the WLA Leasing Act, the DMP, or other federal laws. VA's full response can be found in Appendix E.

The OIG stands by its conclusions on the Brentwood School lease, the Breitburn revocable license, and the CalTrans revocable license. An OIG legal opinion, prepared in response to VA's partial concurrence with Recommendation 1, can be found in Appendix F.

While VA disagreed with the OIG's conclusion on the three land use agreements noted above, its response to Recommendation 1 indicates they will take action on six of the other eight land uses we questioned. VA's response was silent on the remaining two land uses (the 1887 Fund and the Barrington Parking Lots). VA provided acceptable actions plans for Recommendations 2 through 5. The OIG will monitor VA's progress and follow up on the implementation of the recommendations until all planned actions are completed.

Finding 2: VA is Behind on Draft Master Plan Implementation Milestones

WLA is making progress to implement the DMP; however, it will not meet its initial milestone to provide 490 permanent supportive housing units within 30 months from the passage of the WLA Leasing Act on September 29, 2016. To meet its stated objective of providing approximately 1,200 permanent supportive housing units on campus by 2026, VA established an initial phased approach, as shown in Figure 3.



Figure 3. Original Potential Phasing Timeline
 Source: Draft Master Plan, January 28, 2016.

Prior to any new construction, the National Environmental Policy Act (NEPA) of 1969 requires federal agencies to undertake an assessment of the environmental effects of their proposed actions prior to making decisions. Two major purposes of this environmental review process are better informed decisions and citizen involvement. In May 2017, the GLAHS began a Programmatic Environmental Impact Statement/Programmatic Environmental Impact Report (PEIS/PEIR) to comply with the NEPA policy.⁶⁶

The WLA Leasing Act passed in September 2016; however, GLAHS did not start the process for the PEIS/PEIR until May 2017, eight months after the WLA Leasing Act passed. There were several factors as to why this occurred. First, GLAHS had to weigh several options for NEPA compliance. The options discussed were a PEIS for the entire campus, a separate PEIS for the North and South campuses, and separate environmental assessments for each building or cluster of buildings. These discussions took place from September 2016 until January 2017, when the decision was made to proceed with a single PEIS for the entire campus. Second, drafting the

⁶⁶ A draft PEIS/PEIR is scheduled to be published for public review and comment in November 2018. The final PEIS/PEIR is scheduled to be published in May 2019.

Notice of Intent took place from March 2017 until May 2017, and it had to go through VA's formal review and concurrence process. Finally, while the Notice of Intent was under review, the specific studies and analyses for the PEIS were finalized. Due to the WLA campus undergoing a PEIS/PEIR, VA provided the revised phasing timeline that shows buildings 205 and 208 as next projects for EULs and moves the new construction on MacArthur Field to a later date.



Figure 4. Revised Potential Phasing Timeline

Source: Draft Master Plan Update, December 31, 2017

As shown in the revised timeline, the initial phase was to be completed within 48 months of the WLA Leasing Act's passage, or by September 2020. In the initial phase, VA was expected to develop 484 units of permanent supportive housing. These units were expected to come from renovations of Buildings 209, 205, 208, 156, 157, 158, and new construction at MacArthur Field. Building 209 is already operational and the developer for Buildings 205, 208, and MacArthur Field has been selected. In addition, Buildings 205, 207, and 208 are undergoing an environmental assessment.⁶⁷

In April 2018, VA changed course from the Revised Potential Phasing Timeline shown in Figure 4. It plans to enter into an EUL in April 2019 with a principal developer to develop the permanent supportive housing units, except for Buildings 209, 205, 208, and MacArthur Field.⁶⁸ Building 207, originally part of the midterm development phase, will be the first building developed by the principal developer once chosen. Buildings 156, 157, and 158 will be

⁶⁷ According to VA's Office of Asset Enterprise Management, conducting independent environmental assessments of Buildings 205, 207, and 208 will allow for expedited development of permanent supportive housing for veterans on the GLA campus.

⁶⁸ According to the Executive Director of the DMP, Meghan Flanz, the rationale behind the decision to go with a principal developer was to expedite the 1,200 units and bring costs down by achieving economies of scale.

developed by the principal developer; however, an occupancy date for these buildings has yet to be determined. Principal developer selection is scheduled to take place in late 2018. Table 8 shows VA's status in developing the 484 units of permanent supportive housing in the Initial-Phase Development.⁶⁹

Table 8: Status of Initial-Phase Development in August 2018

Building	Expected EUL Operational Date per Revised DMP Timeline	Status	On track to meet DMP Revised Timeline?
209	September 2017	Operational as of June 2017 and housing residents.	Yes
205 and 208	September 2018 - March 2019	Developer selected June 2017. As of May 2018, undergoing an environmental assessment (not part of the PEIS/PEIR). Additionally, developer is trying to obtain private financing for the project. VA expects B205 and B208 to be operational in late 2020	No. more than 18 months behind revised timeline.
New Construction (MacArthur Field)	March 2019 - September 2020	Developer selected June 2017. VA expects MacArthur Field to be operational in late 2022.	No. more than 2 years behind revised timeline.
207	Midterm Development	Originally, not part of the initial phase. First building to be developed by principal developer. VA expects B207 to be operational in Fall 2020.	N/A

Source: OIG Analysis based on information provided by GLA and the Office of Asset Enterprise Management

⁶⁹ The EUL operational dates are contingent on environmental due diligence as well as developers securing private financing for projects, receipt of OMB certifications, and no delays or issues encountered in construction.

Conclusion

VA is not on track to meet its goal to provide 484 permanent supportive housing units within 30 to 48 months of the passage of the WLA Leasing Act. If Buildings 205 and 208 are operational by fall 2020 as currently planned, VA will provide 154 units of permanent supportive housing; 330 units short of its 484-unit goal. According to the DMP Executive Director, Meghan Flanz, VA did not account for the time it would take to complete the PEIS/PEIR environmental assessment. Furthermore, according to Ms. Flanz, GLAHS did not begin the process for the PEIS/PEIR until May 2017, eight months after the WLA Leasing Act passed.

Therefore, except for Buildings 205, 207, and 208; needed recurring maintenance; and any emergency action(s) required, VA cannot proceed with planned implementation of the permanent supportive housing units in the DMP until the PEIS/PEIR is completed.

Appendix A: Draft Master Plan Executive Summary

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Department of Veterans Affairs Greater Los Angeles



Campus ***Draft Master Plan***

January 28, 2016



Defining
EXCELLENCE
in the 21st Century

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Preface

On behalf of the U.S. Department of Veterans Affairs (VA), I take great pride in releasing this framework Draft Master Plan for the VA's Greater Los Angeles Campus. Getting here was not easy. The pathway to reaching this milestone involved VA ending a 5-year lawsuit (*Valentini v. McDonald*). The lawsuit Plaintiffs comprised of several Veterans, the Vietnam Veterans of America, and Carolina Barrie (a descendant of relatives that donated the GLA campus to the United States in 1888). The plaintiffs were represented by a number of lawyers and law firms to include the ACLU foundation of Southern California. The lawsuit was filed against the VA Secretary and VA as an agency. It involved serious allegations that VA was mismanaging the GLA campus, by allowing commercial uses of land versus using the land to support and care for our nation's Veterans.

Notwithstanding the challenges involved, ending the lawsuit was a historic moment for VA, Veterans, and taxpayers. It paved the way for VA to increase its engagement and bolster strategic partnerships with Veterans Service Organizations, Veterans, the local community, charitable and philanthropic entities, the former Plaintiffs in the lawsuit, legislators, Federal, State and local authorities, and many other stakeholders. Such efforts have resulted in significant strides to revitalize the campus, improve the underlying care and services to Veterans, and help end Veterans homelessness in Los Angeles. This plan is a true reflection of the power of a community coming together to do what is right for Veterans.

A critical element to this plan is the Veteran's voice. VA published the Preliminary Draft Master Plan in the Federal Register and solicited comments from the public. During the 45-day public comment period, VA received a record setting 1,002 submissions. These comments were carefully reviewed and considered in this revised framework Draft Master Plan.

We at VA want Veterans to be at the center of everything we do, and are working hard every day to gain trust, one Veteran at a time. Our goal is to provide Veterans with the best care, services, benefits, and customer service possible, while exhibiting VA's I-CARE Values of integrity, commitment, advocacy, respect, and excellence. I am confident that by continuing to work together, we can provide our nation's heroes with the respect, care, and focus that they have earned and deserve, through their selfless sacrifices for this great country.

Thank you to all who contributed to this plan, and those who continue to support VA. We cannot do this alone. This land was deeded for the benefit of Veterans in 1888 to serve as a home for our nation's heroes. This plan brings us one step closer to getting the land back to its intended purpose as an inviting, welcoming, community for Veterans and their families. By working together, this campus will serve as a 21st century model of success for other VA facilities nationwide.

Respectfully,

Robert A. McDonald
Secretary, Department of Veterans Affairs

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Executive Summary

I. Introduction to the Plan

Introduction

The framework Draft Master Plan for the Greater Los Angeles (GLA) Campus is a framework that will assist VA determine and implement the most effective use of the campus for Veterans, particularly for homeless Veterans, including underserved populations such as female Veterans, aging Veterans, and those who are severely physically or mentally disabled. The primary considerations include: (a) the provision of appropriate levels of permanent supportive housing on the campus, in renovated existing buildings or newly constructed facilities, while taking into account the parties' assessment of available housing units in the Greater Los Angeles community; (b) respect for individual Veteran choices on whether to seek housing at the GLA campus or in the local community; (c) parameters of applicable law, including but not limited to the appropriate integration of persons with disabilities into the community, and applicable environmental and historic preservation laws, regulations, and consultation requirements; (d) need for appropriate levels of bridge and emergency/housing along with short-term treatment services on campus, to provide state-of-the-art primary care, mental health, and addiction services to Veterans, particularly those that are chronically homeless.

VA is now enthusiastic about the progress made to date and the future opportunities that lie ahead; to improve Veteran outreach and coordination with all stakeholders sharing in the common goal of improving the overall well-being of Veterans and their families, on and off the campus; to help end Veteran homelessness; to assist Veterans with the transition and reintegration back into community after service to our country, and to be a leader in environmental sustainability. VA cannot solve these problems alone and appreciates the shared commitment of the key stakeholders involved, including the former Plaintiffs in the *Valentini* litigation, Federal, State, and local authorities, Veterans, Veteran Service Organizations, legislators, faith-based organizations, community partners, philanthropic organizations, and the local community.

This updated Draft Master Plan is based on Veteran and community feedback during the Preliminary Draft Master Plan Public Comment period. This is the culmination of a process that began in June, 2015 and represents unprecedented input and response to VA and the Secretary's team with over 100 meetings and over 1,000 responses in the Federal Registry. The comments and data collected during this period were carefully reviewed by VA and incorporated to reflect and address Veteran and stakeholder participation in the planning process.

Background

In March 1888, the United States received a donation of the land now comprising the GLA campus from John P. Jones, Arcadia B. DeBaker, and John Wolfskills, with the understanding and intent for the site to be used to establish a Pacific Branch of the National Home for Disabled Volunteer Soldiers. Shortly after the Korean War, nearly 5,000 Veterans called the campus home. In fact, the Federal government maintained this purpose for the property with fidelity until the 1970's, but over years it transitioned into a condensed healthcare and research campus leaving land, housing and amenities unused and in disrepair.

Today, the property, comprised of approximately three hundred eighty-eight (388) acres located in the heart of Los Angeles, currently supports one of the largest medical center campuses in the VA system. In this capacity, it provides Veterans with access to a full continuum of healthcare services in a range of treatment environments including hospital, residential, long-term and various outpatient settings. However, at present the campus itself is not authorized to offer resources beyond medical care, such as housing with support, as it had been for many decades prior in accord with its original charter as a home for disabled Veterans.

Master Plan Input, Goals, and Vision

Key to the creation of a successful master plan, and stipulated in the Partnership Agreement, was the

need to solicit input from a full range of stakeholders in determining how best to use the campus in a Veteran-centric manner so that Veterans living on or visiting the campus will be able to experience superior care, support, convenience, and customer service. The results of this outreach, which included input from thousands of Veterans in working sessions throughout LA county, a public comment period that collected a record number of entries (1,002) on the federal register and several surveys led to the goals below which have been used drive the Plan.

1. Use the planning process to create a 21st Century model for Veterans' care that honors those who have served our nation and serves as a symbol of national pride and innovative change.
2. Revitalize the site to its intended purpose as a home; a vibrant community that includes the development of high quality housing tailored to priority Veteran subpopulations with robust supports that promote wellbeing and holistic, strength based services to augment existing structure of healthcare services.
3. Ensure transparency and accountability in land use and partnering decisions by engaging Veterans in the process that underlies the site's revitalization.
4. Make certain that all on-site programs, activities, resources and initiatives are offered in a culture that prioritizes the needs and wants of Veterans from every service era, and their families.
5. Develop a variety of high quality permanent supportive housing that is tailored to the needs of vulnerable veteran sub-populations populations (e.g., chronically homeless, severely disabled, aging veterans with disabilities, females with dependents and other Veterans suffering from significant trauma and addictions disorders that have experienced housing instability) who have been prioritized to live on-site.
6. Offer user-friendly access to a holistic set of resources provided on-site for the benefit of Veterans and their families whether living on campus or residing elsewhere in the greater Los Angeles community.
7. Interconnect campus operations in real time with available off-site resources including VA facilities, state, county, city, neighborhood systems, Veteran Service Organizations and non- profit organizations.
8. Create opportunities on campus for all Veterans to interface safely and network constructively with the community at large and in the process facilitate their successful reintegration into civilian society.
9. Optimize the site by maintaining its legacy as a home wherever possible through restoration of original structures, thoroughfares, open space, trees and natural terrain while developing new facilities that are compatible with the home's scale and character.
10. Create a safe, secure sustainable campus that is not fully reliant on VA funds for development and operations of housing and services while ensuring future land use activities beyond the providing of healthcare, benefits, and memorial services, directly benefit Veterans and their families, and help foster a culture where Veterans are welcome and free to engage with each other, their families, VA personnel, and other stakeholders, to help improve their lives and overall well-being.

With the adoption of this framework Draft Master Plan, VA confirms its intent to create a 21st Century campus by renovating and protecting the property's historic features and functions as a home, expanding its resource offerings to meet current demands, enhancing its open spaces and natural features, improving its internal navigability and circulation, and optimizing its connection to the greater community, all in the interest of supporting LA's Veteran community in the broadest sense. As such, the framework

Draft Master Plan commits VA to developing and operating the campus as a safe, welcoming, vibrant and sustainable community where Veterans, including women, disabled, and elderly in particular, will feel comfortable and proud accessing the resources they have earned.

II. Housing and Services Needs

Types of Housing

Veterans, including homeless Veterans, are competing for housing in an increasingly tight market in GLA where rental vacancy rates are less than 3%. Housing is at a premium in Los Angeles. There is a significant need for more affordable housing in this market and that the GLA Draft Master Plan is a critical component of the larger community's plan to end homelessness among Veterans.

The type of housing that a Veteran pursues in the GLA market depends on his or her unique needs and preferences. These housing types include, but are not limited to the following:

- **Private rental housing** is community-based housing unaffiliated with any social program.
- **Permanent supportive housing** is long-term, community-based housing with supportive services for people experiencing or at risk of homelessness, including those with disabilities.
- **Transitional/bridge housing** is time-limited housing that aims to facilitate the movement of homeless individuals and families to permanent housing within a reasonable amount of time (usually 24 months). Veterans typically do not sign leases for transitional housing units.
- **Domiciliary** is a VA-operated residential short-term treatment program for Veterans with multiple and severe medical, mental health, addiction or other conditions.
- **Assisted living** is housing with services for the frail elderly and people with disabilities who can live independently but need assistance with activities of daily living.
- **Nursing homes** are residential care facilities for people who cannot live independently and require 24-hour care.

Housing First Approach and Permanent Supportive Housing

Like other federal and community agencies, VA emphasizes a Housing First model, where the goal is to move a Veteran into a home as quickly as possible, with as few preconditions as possible. Housing First includes not only housing, but also individualized service support. Once housed, the Veteran is much more likely to access and engage in healthcare and other services. This policy is based on evidence showing that homeless persons housed in restricted shelter and/or transitional housing programs achieve long-term housing stability at a much lower rate than those housed under a Housing First approach in permanent supportive housing.

Further, as shown in a recent study, communities that added relatively more permanent supportive housing units over a six-year time period showed more significant decreases in chronic homelessness over time. Studies also indicate that Housing First is cost-effective and saves communities resources, by reducing use of costly emergency room services, unscheduled hospitalizations, involvement with justice systems and other crisis services. There is substantial research documenting the effectiveness of Housing First. The program is endorsed by the United States Interagency Council on the Homeless (USICH), and is listed in the Substance Abuse and Mental Health Administration's *National Registry of Evidence Based Programs*. Additionally, the model has received recognition and numerous awards including the American Psychiatric Association's Gold Award for excellence in community mental health.

Target Populations

A key purpose of the Draft Master Plan is to set out the effective use of the GLA campus for Veterans, particularly for homeless Veterans with a focus on the following three high need subpopulations: severely physically or mentally disabled Veterans, including chronically homeless Veterans; aging Veterans; and female Veterans. The prevalence of chronic homelessness is high in these groups of Veterans. These populations were identified as deserving particular but not exclusive focus for housing on the GLA campus in the aforementioned *Principles for Partnership*.

1) *Severely Disabled Veterans, including Chronically Homeless Veterans* Homelessness, especially homelessness among Veterans, is associated with (and sometimes caused by) serious illness, both physical and mental. A national sample of Veteran users of Health Care for the Homeless clinics revealed the following prevalence rates, often in combination: heart disease (39.7%), depression (73%), PTSD (66.7%), anxiety disorders (73%), traumatic brain injury (17.5%), co-occurring mental illness and alcohol/substance abuse (55.6%), Hepatitis C (28.6%) and HIV/AIDS (12.7%). Depending on the acuity of these conditions, the stress associated with traveling to the GLA campus for treatment and therapy may be an insurmountable barrier.

2) *Aging Veterans*

Of those assessed and receiving care through the GLA Medical Center homeless programs, the average age was 54. The homeless Veteran population has been aging over time, in part because of the high rate of poverty among older Veterans and the aging of the Veteran population overall. Nationally, the poverty rate among Veterans ages 55-64 is 43.2%, rising to 48% for those Veterans over 65. In national samples, older (over 60) Veterans who are homeless have higher mortality rates and die 2.5 years earlier than non-homeless Veterans.

Their suicide risk is double that of non-homeless Veterans. In the 2015 Los Angeles PIT count, 25% of homeless Veterans (approximately 1,000 Veterans) were 60 or older.

3) *Female Veterans with and without Dependents*

In the 2015 PIT data, 8.6% of homeless Veterans were female, effectively the same as the national percentage of 9% noted by VA data. One of the most significant risk factors for homelessness among women is trauma, including Military Sexual Trauma (MST) associated with a sexual assault during military service. A sample of homeless women Veterans in Los Angeles found that MST survivors were 4.4 times as likely to be homeless, compared to a matched sample of housed women Veterans. MST is not limited to women Veterans; however, men are much less likely to report it. Thirteen percent (13%) of respondents to a Department of Defense survey of MST survivors were men.

Permanent Supportive Housing Unit Projection

Based on all the foregoing, we believe it is reasonable to include in the current framework Draft Master Plan approximately 1,200 units of permanent supportive housing on the GLA campus. Approximately 1,200 new permanent supportive housing units on the GLA campus will significantly increase the supply of permanent supportive housing units in the GLA market. The homeless Veteran and chronically homeless Veteran populations in GLA as of 2015 were 4,366 and approximately 1,300 respectively. Given the limited turnover and vacancy in the existing permanent supportive housing stock, which includes the 4,364 units identified by the GLA CoC and the 5,800 HUD-VASH vouchers in circulation, the infusion of roughly 1,200 new permanent supportive housing units has the potential to make a big impact. This planning analysis will be refreshed at least every three years utilizing the most current community and VA data available to establish current housing needs and supply targets.

Proposed Services' Enhancements

As VA revitalizes and reinvigorates the physical plan for the GLA campus, it must also add to the service plan both on the campus and in the community. The goal is to create a vibrant, welcoming, Veteran-focused, outcomes-driven model for Veterans and their families. The services must be strength-based, holistic, and aimed at helping the Veteran and the Veteran's family beyond the traditional medical models. Practically speaking, it means "how", "when" and "where" services are delivered must conform to the needs of the Veteran. This is particularly relevant for Veterans who are aging, disadvantaged, and suffering from chronic debilitating illnesses like schizophrenia and other psychotic disorders, Post-Traumatic Stress Disorder (PTSD), addictions and/or other medical complications that compromise the Veteran's quality of life. It is particularly relevant for female Veterans who need designated space and services to address their unique healthcare and preventative healthcare needs. The campus must also have capacity to address the wellbeing and preventative care concerns of younger veterans transitioning back to civilian life by addressing their employment, educational, familial and other

reintegration issues.

Services must also be delivered in partnership with VA's academic affiliates, including UCLA, and other VA partners who have expertise in caring for homeless and other vulnerable Veteran populations. As part of the service enhancements, it will be critical to create improved access processes through not only more effective staff and volunteer efforts, but also through a resource center and the use of Veteran peer supports (concierges) that should improve the ease with which various parts of the campus can be navigated. The following service enhancements are proposed in the Draft Master Plan:

- Permanent Supportive Housing and Associated Services
- Veteran Family Well-Being Center
- Expanded Mental Health and Addiction Services
- Legal services
- Veterans' Education and Enterprise Center
- Additional Educational, Socialization, Recreational, Cultural / Arts and Spiritual Components

III. Stakeholder Engagement

Initial Outcome in Metrics

On October 16, 2015, VA met the deadline outlined in the Principles Agreement by submitting a Preliminary Draft Master Plan to the Secretary for review. The plan was informed by the data collected from stakeholder outreach over the four month period leading up to the 16th. The following list includes outreach activities and associated metrics during the Preliminary Draft Master Plan outreach period (June 23, 2015 through October 16, 2015).

- The team and its partners disseminated the surveys by online, print and telephone to accumulate over 1,200 responses
- Stakeholders were encouraged at events and via the website to provide feedback on the master planning effort (720 comments received)
- Build and maintain website with online calendar, blog, outreach toolkit, fact sheet, presentations and other resources - 12,085 page views to date
- Build and maintain Facebook page, Twitter account, information hotline and email address
 - Followers: 1,852 total Facebook page likes to date
 - Engagement: Through our 25 wall posts and content shared, we received a total of 14,094 clicks, likes, comments, and shares on our Facebook posts.
 - Total Reach: 145,827 (the number of people who were served any activity from the Facebook page including our posts, posts to our Facebook page by other people, Facebook page like ads, mentions and check-ins)
- Calls and emails to 332 Veterans Service Organizations to provide information and encourage information sharing with their networks
- Build database with 2,165 email or mailing addresses
- Conducted briefings with 37 elected officials, neighborhood groups, and Veterans organizations
- Hosted 6 Design Open Houses, 4 Town Hall Meetings, and 6 Pop-Up Workshops
- Sent 15 email updates to database

Public Comment Period

Following the Secretary's review of the Preliminary Draft Master Plan, VA chose to provide additional opportunities for Veterans and other stakeholders to review the Preliminary Draft, follow up on initial feedback provided, and continue to participate in the planning efforts for the GLA campus. The Preliminary Draft Master Plan was published onto the Federal Register for 45 days, beginning on October 22, 2015. VA provided online links to the plan as well as hard copies at local libraries throughout the Greater Los Angeles area in an effort to encourage Veterans, members of the public and other interested

parties to review and comment on the plan. VA also continued to engage the public through a series of over 20 presentations and focus groups with Veterans, elected officials and other community stakeholders.

Federal Register Comments

In a notice published on October 22, 2015, VA presented its Preliminary Draft Master Plan for the GLA campus and solicited public comment on the plan for a period of 45 days. Following the completion of the 45 day public comment period on December 8, 2015, VA had received a record 1,002 comments in the Federal Register.

The majority of comments included one or more of the following topics: Arts, Recreation & Entertainment; Campus Circulation; Clinical; Connectivity; Housing & Campus Restoration; Land Use Agreements; Parking; Transparency & Accountability; and Veteran Access. Approximately 60% of the 1,002 total comments fell within the scope of a master plan, while the remaining 40% addressed topics that are outside the scope of a master plan. VA addressed all comments, both within and outside the scope of a master plan, in the Federal Register Response Document. For additional information on the Federal Register process, comment categories and responses please refer to the Federal Register Response Document.

MyVA Communities and Continued Stakeholder Engagement

To improve transparency and accountability, GLA leadership will continue to hold Veteran Service Organization (VSO), and congressional briefings, and Town Halls to provide stakeholder updates. A community consensus meeting will be targeted to be held within 90 days after the VA Secretary adopts the Draft Master Plan. GLA and VISN 22 leadership will also collaborate with community partners in conjunction with the MyVA Communities model. MyVA Communities are a collaborative network of Veterans, advocates, resources, and other stakeholders who organize through Community Veteran Engagement Boards, to improve outcomes for Veterans, and their communities. The MyVA Communities model enables Veteran advocates, service providers, Veterans, and stakeholders to have a voice in providing input and feedback to VA, and identifying their goals and ways to engage and improve service delivery for Veterans and their families.

IV. Existing Conditions and Site Analysis

The GLA campus exists in a natural and built environment that offers both opportunities and constraints to development. The site's natural features (topography, plant materials, microclimate) and built features (historic districts, historic buildings and landscapes, existing roads) all influence the design decisions that are intended to enhance human comfort and conserve energy and resources while providing housing and services for Veterans.

The Draft Master Plan aims to revitalize the site by integrating the GLA Campus into its context, breaking down the institutional qualities, and making the campus a part of the larger community. The campus will support recovery while improving connections to the broader community of Veterans and non-Veterans.

Assets

Historical Significance

- The historic setting helps build a character for the North campus.
- Preserving the site's historic structures and using them as building blocks for a new community and to establish the appropriate scale of new development, can enhance Veteran pride of ownership, anchor the campus in its prominent place in VA history, and bridge the needs of Veterans and the community at large.

Existing Space/Infrastructure/Buildings

- Mature landscape providing established stable landscape character.
- Topography provides excellent views and a vista from which to view downtown Los Angeles.
- A natural topography that can help define neighborhoods.

- There are a number of active recreation facilities on campus, primed for Veteran use.
- The climate conditions permit for year round use of outdoor space.

Campus Circulation

- Accessible by a number of public transportation routes and proximate to a major downtown.
- The climate conditions permit for year round use of bicycle and pedestrian transportation.

Surrounding Neighborhoods and Connectivity

- Urban proximity to neighboring retail, educational opportunities, and work training provides a high level of opportunities for residents as they bridge and reintegrate into civilian life as well as make the campus a dignified permanent home.
- Neighboring context is walkable - West Los Angeles is both very walkable and bikeable, with efficient transit access. Most errands can be accomplished on foot.

Challenges

Historical Significance

- Campus has a very low building density, some of which can be attributed to historic development patterns. Many of the buildings are currently underutilized or even vacant.
- Cost of restoration / renovation could be more expensive than new construction.

Existing Space/Infrastructure/Buildings

- Lack of high-quality and well-designed outdoor spaces.
- Though the campus has an abundance of open space, it has not been designed in a way that is usable as space for relaxation, socializing, or recreation.
- The combination of functions on campus is ambiguous and more reflective of the medical center's history and growth patterns than a cohesive set of program relationships.
- Topography and limited access points isolate the campus from the rest of Los Angeles.

Campus Circulation

- On-campus way-finding is complicated by a lack of a clear signage system and well-landscaped gateways.
- Topography of the campus slopes downward from north to south, and at the north end of campus the elevation drops considerably, which needs to be considered for pedestrian circulation as well as bicycle and vehicular circulation.
- A large average "block" size on campus results in an inefficient transportation system for pedestrians, transit users, and vehicle drivers.
- The large amount of paved parking areas contributes to an unpleasant walking experience, a lack of mobility, an emphasis on personal vehicles over other methods of transportation, and isolates parts of campus from one another.
- The considerable distance between buildings contributes to perceptions of poor walkability and concern for personal safety. The need to drive to multiple destinations and the resulting parking requirements results in an atmosphere that does not support a cohesive neighborhood feeling.
- The current scattered and auto-dependent nature of the campus does not support Veteran health, wellness, healing, and recovery.
- Contributing site plans, axis and building to open space may come in conflict with a plan for high density building to facilitate non-vehicular transportation and neighborhood activities.

Opportunities

Property Size

- The campus is a 388 acre property located within a vibrant urban context, which provides an opportunity to become a regional hub for veteran services.

Existing Connectivity

- The “West side” has existing networks of public transportation including Santa Monica’s Big Blue Bus, one of the most inclusive and efficient networks in the region.
- The campus has the opportunity to work with the existing Metro systems to establish efficient transportation to and around the campus for campus residents, visitors and staff.

Purple Line Extension

- The Purple Line extension is planned to terminate at the VA Hospital Metro Station.
- The Metro line would be a direct route from Downtown Los Angeles’s Union Station to the GLA campus, enhancing campus connectivity to the rest of Los Angeles and beyond.
- The master planning should account for and take advantage of the increased accessibility and traffic as well as anticipate neighboring developments due to the line extension.
- The proposed Purple Line Extension will have a station stop where Veteran, employees and visitors can exit on both the south and north sides of the campus easily accessing medical and services.

Public Interface Opportunities

- The stakeholder engagement process demonstrated the desire from Veterans and the local community to integrate the campus into the surrounding communities.
- The surrounding urban context can be an asset in reintegration of veterans into civilian life.

Roads

- The existing roads on campus have no clear plan or direction; however, the groundwork for former roads and road systems allow for flexibility in designing a new road system.

Registered Historic Buildings

- The two registered historic buildings on the GLA campus can serve as distinguished symbols, orienting markers and utilized spaces for the campus.
- Following restoration, the structures can be used to tell the history of the campus.

South Campus Redevelopment Opportunity Area

- The South campus has a significant amount of under-utilized land.
- It is the center of the medical services for the campus and has potential to become a world- class medical facility and treatment center.

Industrial District Redevelopment Opportunity Area

- This area has direct access from Constitution Ave off of Sepulveda.
- With the development of Purple Line station, its natural separation from the residential areas of campus and its direct access make the area prime for public interface.

Various Infill Opportunity Areas

- This area has a number of historically contributing areas that give the campus character as well as beautiful and useful open spaces.
- It is possible to densify the area and add coordinated care program and services while maintaining important historical contributions.

Recreation and Housing Opportunity Areas

- The northern area of the campus is already full of recreation and open space.
- It is home to the Japanese Garden, the Golf Course, soccer fields and the Brentwood School recreational facilities.

- This area boasts expansive lawns, matured and some historically relevant trees and great views of the ocean, Century City and Downtown Los Angeles.
- There is great opportunity to use this open space to serve the therapeutic, recreational and outdoor needs of the Veteran community.
- The northern boundary of the campus borders a small village center as well as residential neighborhoods.
- It is important to consider green space but also to consider the potential expanding need for housing and more diverse types of housing including Veteran supportive housing.

V. Master Plan Development

Master Plan Framework

The framework Draft Master Plan is one of a series of steps toward revitalization of the GLA Campus for Veterans' use, and represents a commitment to restore and improve the site to play the role for which it was historically established. It states the guidelines and principles for development, and regeneration, offers in broad concepts recommendations for improvement and advancement, and identifies a variety of projects contemplated for implementation.

The Draft Master Plan recommends alternative uses for several areas of the GLA Campus. Throughout the implementation process, there will also need to be due diligence and planning for various elements of the campus, and for specific site areas within it. As each individual project is undertaken, there will need for further due diligence, such as for example, more detailed site plans, refined development strategies, architectural designs, and utility, environmental, and historic preservation due diligence.

The road to a revitalized GLA Campus takes true shape with the Draft Master Plan presented here. It is grounded in the Veterans' housing and services requirements presented in Section II, supplemented here with consideration of the site and its characteristics, context, and capacities. The basic rules of land management, roads and circulation, land use, and sustainability are established within the Draft Master Plan. It also presents a recommended approach for phasing.

Zones of Development

The Draft Master Plan builds on existing natural features of the site and integrates new and re-purposed development with existing built resources. The plan uses natural features including the two arroyos and the sloped plateau they form running north to south along the center of the GLA Campus. The plan acknowledges and connects the major open space resources that frame the site, primarily north of Wilshire but extending as well into the Wadsworth Park area of the site. With these elements as guidance, the campus plan can be considered to include five distinct areas, or "zones."

The descriptions of the zones below are conceptual, and the boundaries of each zone are not absolute. In many cases certain characteristics of one zone apply to multiple zones.

Zone 1: Health Care

This zone includes the main hospital buildings, acute care, ambulatory outpatient care and clinics, research facilities, hospitality for visitors and patients, potential housing for aging Veterans or Veterans with specialized needs, and other uses that support or are compatible with the health care programs as a newly organized health care neighborhood. Zone 1 would include a 450,000 gross sq. ft. New Bed Care Tower (Replacement Hospital) tentatively scheduled for completion in 2020, with 200 inpatient beds, diagnostic and treatment facilities, clinical support and services in a modern state-of-the-art healing environment. Additional building improvements to Zone 1 should focus on providing a collaborative integration of healthcare, food service, comprehensive translational research in support of Veterans, and meeting VA and California seismic mandates for medical center operations.

Zone 2: Care Coordination

This zone should contain an array of services and facilities that streamline access to benefits and services. Zone 2 should contain a welcome and orientation hub for the campus to help direct Veterans to appropriate resources on site as well as in the community at large. It should include needs assessment services and facilities for placement in temporary housing. It should also house a central facility for the Veterans Benefits Administration, as well as offices for overall campus administration. Other resources should include specialized services for homeless and disadvantaged Veterans that focus on trauma, mental health, traumatic brain injury, and the full array of addiction services.

Zone 3: Veteran Housing

This zone includes primarily permanent supportive housing consistent with VA's Housing First strategy. Such housing conceptually can consist of studios, one, and two bedroom apartments for Veterans, some tailored for families with children. The housing should be organized into smaller neighborhoods, each with its own points of access that provide various levels of seclusion or privacy. Such levels should range from an exclusive neighborhood of housing and services for the more vulnerable Veteran groups on the "high ground" of the site, to others that provide more open and independent living conditions. All should be supported by basic and specialized services for their respective resident base.

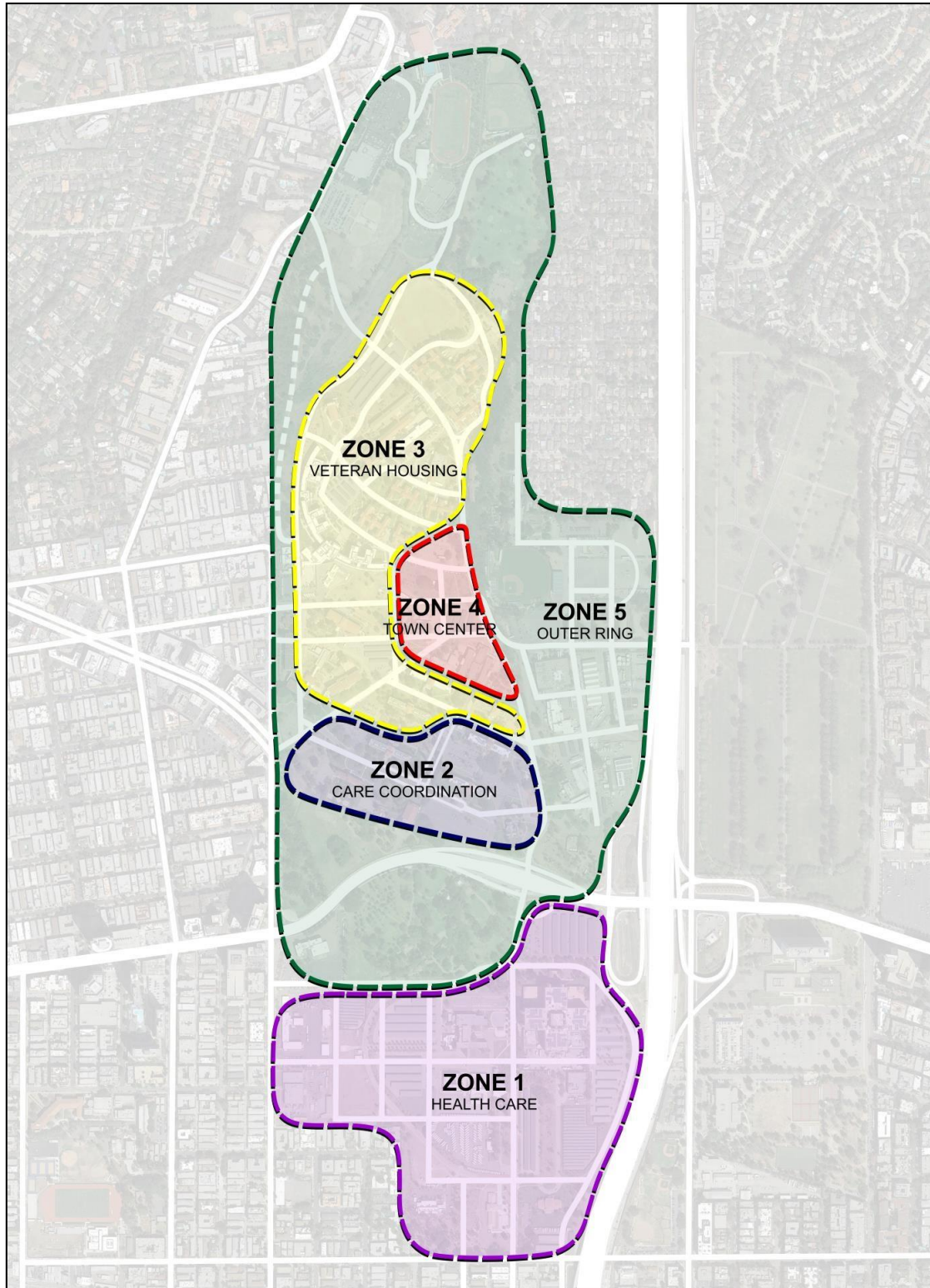
Zone 4: Town Center

This zone, at the center of the north campus, is an area of focus for resident and non-resident Veterans from across the campus and the region. It connects with each of the principal neighborhoods 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, attend outdoor concerts, coordinate a volunteer effort, develop employment opportunities, visit a library, grab a bike to ride around the property or make plans for going to a movie at one of the campus theaters.

Zone 5: Outer Ring

Surrounding most of the site, this zone is the most permeable area of the campus, where Veterans have direct access to the surrounding community, and where re-integration becomes manifest in Veteran employment opportunities. A Veterans Vocational Enterprise and Cultural Center occupies the lower-lying land at the southeast corner of the north campus, accessed from Sepulveda Boulevard. Zone 5 also encompasses the major open spaces of the campus, including the Grand Lawn, Wadsworth Park, all three arroyos, and open recreation fields to the north. The outer ring connects the chapel to other peaceful spaces and outdoor environments for reflection, relaxation, and appropriate Veteran focused events.

Planning Zones



Supportive Housing on the Campus

The Draft Master Plan provides for significant supportive housing on the campus. This includes not only new permanent supportive housing, but also the existing short-term or limited stay housing that includes Bridge Housing, Community Living Care, Domiciliary, and Transitional Housing.

The table below summarizes the housing on the site and shows the proposed housing on a parcel-by-parcel basis. Additional details about the phasing can be found in Section VI.

Time Limited and Short-Term Treatment Housing (Includes short-term or limited stay housing such as Bridge Housing, Community Living Center (CLC), Domiciliary, and Transitional Housing)	739 Beds
Permanent Supportive housing To Meet Current Demand– (Long-term, community-based housing with supportive services for people experiencing or at risk of homelessness, including those with disabilities)	1,200 Units
Permanent Supportive Housing To Meet Potential Additional Future Needs– (Long-term, community-based housing with supportive services for people experiencing or at risk of homelessness, including those with disabilities)	900 Units

Actual VA EUL Permanent Supportive Housing Facility



The following page displays a graphic that illustrates the potential long term build-out of the GLA campus.

Illustrated Vision, Aerial View



VI. Phasing and Next Steps

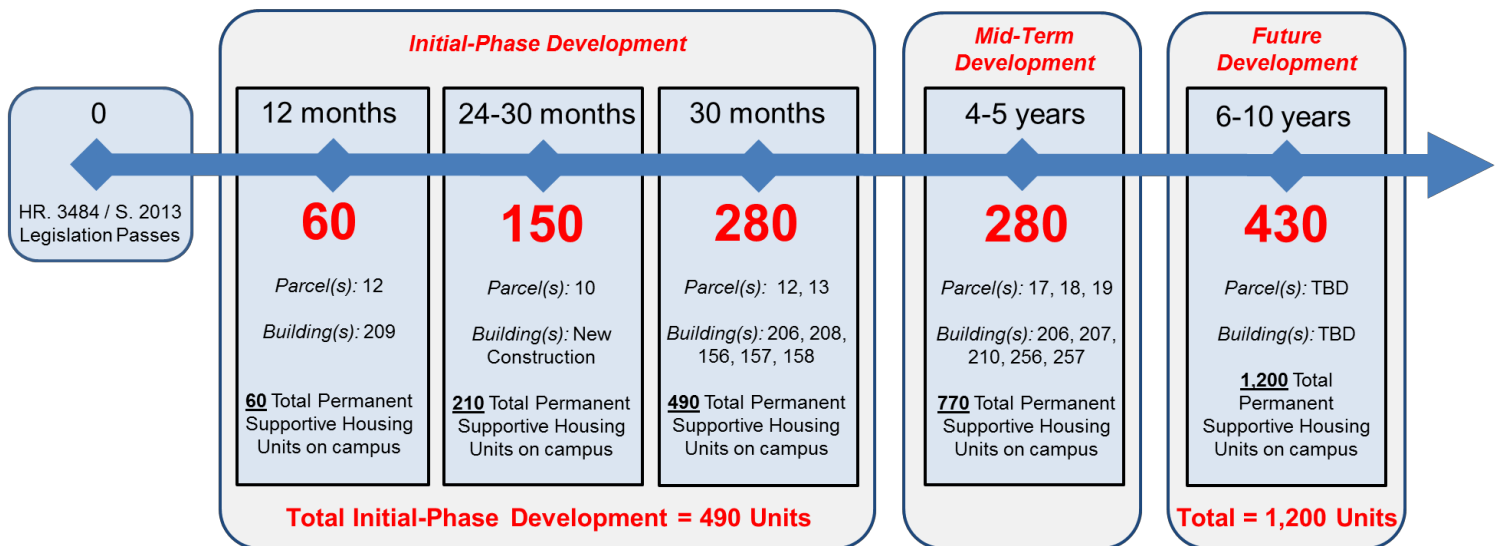
The phasing timeline begins when legislation, as described below, is passed to allow for the Veteran-focused development of permanent supportive housing units on the GLA Campus. Upon passage of legislation, the process of incorporating permanent supportive housing on the GLA Campus—with the required infrastructure, parking, and community amenities—would become part of the site plan over an extended timeline.

Legislative Overlay

Section 224 of Public Law 110-161 (enacted in December 2007) prohibits VA from taking any action to exchange, trade, auction, transfer, or otherwise dispose of, or reduce the acreage of the 388 acre GLA Campus. In support of VA's efforts to revitalize the GLA Campus and make it more Veteran-focused, Senator Dianne Feinstein and Congressman Ted Lieu recently introduced a bill titled the "Los Angeles Homeless Veterans Leasing Act of 2015." If enacted, it will enable VA to enter into certain Veteran-focused lease agreements with housing providers, local governments, community partners, and non-profits, to provide additional supportive housing and services for Veterans and their families. Notable emphasis will be on providing such housing and services for homeless, severely disabled, aging, and female Veterans, and homeless Veterans. The bill would not authorize VA to permanently dispose or transfer parcels on the GLA Campus to third party entities. It also contains specific protections to ensure that any such VA leases are Veteran-focused, and comply with applicable law.

A key authority that will be pertinent to VA providing the supportive housing on the campus will be VA's Enhanced-Use Lease Authority, contained at 38 U.S.C. 8161-8169. Established in 1991, the authority allows VA to outlease selected sites under VA's jurisdiction and control to selected Developers, to finance, develop, operate, and maintain "supportive housing" as defined in 38 U.S.C. § 8161(3). Such housing includes transitional housing, single-room occupancy, permanent housing, congregate living housing, independent living housing, assisted living housing, and other modalities of housing.

Potential Phasing Timeline



Note that the above proposed timeline will involve pertinent future due diligence to address utility infrastructure issues, environmental and historic preservation analysis, and involve timing issues regarding the selected housing developers to obtain non-VA monetary capital needs from various housing-related funding sources (e.g., equity, construction & conventional loans, tax credits, grants, operational subsidies like HUD-VASH vouchers, etc.), and local zoning & permit processes.

VA envisions the development of supportive housing on campus through VA's Enhanced-Use Lease

program (38 U.S.C. Section 8161-8169), pursuant to legislation Congress recently introduced in both houses of Congress – specifically, the “Los Angeles Homeless Veterans Leasing Act of 2015” (Senate Bill S. 2013 and corresponding House Bill HR 3484). VA has a phased development plan of 1,200 supportive housing units on the campus. Specifically, after legislative enactment, the proposed timeline involves developing 490 units within the first 30 months, 280 additional units within 4 to 5 years, and 430 additional units within 6 to 10 years – all totaling 1,200 units. VA plans for those units to have special emphasis on homeless, severely disabled, aging, and female Veterans. The goal will be to strategically locate units designated for those underserved populations, in a manner to provide convenient access to the pertinent care and services that they will need, in a safe setting and environment. Along with development of those units would be Veteran focused supportive service leases, geared towards Veteran Health and wellness, nutrition and spiritual wellness, education, vocational training, skills building, peer activities, socialization, and physical recreation, assistance with legal issues and federal benefits, volunteerism, family support services, child care services, and transportation.

Draft Master Plan Next Steps

While the Draft Master Plan is a guiding framework for the revitalization of the GLA campus, there are next steps that VA will undertake to realize and implements this plan. The following next steps will help to ensure that the GLA campus becomes a Veteran home and a 21st century healthcare facility, which can be a model for other VA facilities.

- Continue analysis on traffic study roads and utility capacity.
- Further environmental, historical preservation, and other due diligence.
- Establish MyVA Community Veteran Engagement Board to improve coordination, collaboration and partnership with Veteran community.
- Advance clinical and service enhancements, especially those for traumatic brain injury, addictions, mental health, legal services, family wellbeing, and Veteran peer service inclusive of customer service concierge approach to navigate the GLA campus.
- Continue to work with Congress regarding legislation needed support the master planning effort, and to implement the contemplated new / additional permanent supportive housing and services on the GLA campus.
- Advance the co-location of VA services by consolidating VHA, VBA, and cemetery services on the GLA campus.
- Include the objectives and goals of the framework master planning process into VA's annual Strategic Capital Investment Plan (SCIP) 10 year planning process. This process includes a financial analysis of each project to ensure the most cost effective delivery.
- Continue to grow partnership with UCLA, other academic affiliates, and community partners to be more Veteran-focused.
- Continue to pursue exit strategies for agreements that do not meet VA's criteria for Veteran- focused land uses.
- Pursue the restoration of the chapel and other historic buildings through partnership with the 1887 Fund community philanthropy.
- Begin process for beautification of the campus.
- Coordinate with VA's Office of Asset Enterprise Management regarding the planned permanent supportive housing Enhanced-Use Lease projects for the GLA campus, relative to key congressional legislation pending enactment (S. 2013, HR 3484, S. 2422, and HR 4334).
- Fully Implement new GLA administrative organizational structure to improve transparency and accountability for services, administrative and fiscal matters.

Veteran Focus for Future Land Use Activities

Going forward, VA's efforts to revitalize the campus will only include 'Veteran focused' agreements, or agreements that result in additional healthcare, benefits, services, or resources being provided directly to Veterans and/or their families on the GLA campus. Monetary proceeds paid to VA alone will not constitute

an acceptable agreement. Neither will agreements that only benefit the public at large, versus Veterans and their families. This concept will be a key consideration in terms of how existing and any future land use agreements are evaluated for approval, rejection, or termination.

VA's review of any proposed third party land use agreements will entail a linear, multilayered process, to ensure adequate due diligence occurs. At a minimum, each agreement will receive input from the following VA personnel:

- (1) West LA Chief of Outreach
- (2) VAMC Director
- (3) VISN 22 Director
- (4) SAO West Land Use Contracting Officer
- (5) The San Francisco Regional Counsel Office (now known as the Pacific District (North))
- (6) OGC's Real Property Deputy Chief Counsel in VA Headquarters

This Veteran focused intent for all land use agreements at GLA going forward is absolutely appropriate and warranted, particularly given the lessons learned from the August 2013 District Court for Central District of California decision in the *Valentini v. McDonald* case, which held that nine of the existing land use agreements were illegal as they did not constitute a valid sharing of "healthcare resources" under VA's Enhanced-Sharing Authority. Given those two clear principles, and as part of the "Principles for Partnership Agreement" that settled the Valentini lawsuit in January 2015, VA Secretary Robert McDonald commissioned an extensive review of the land use agreements at GLA, including those nine voided agreements. The nine agreements voided under the Court decision were as follows:

1. Brentwood School
2. Sodexo Marriott Laundry Services
3. UCLA Regents (Baseball Stadium)
4. 20th Century Fox TV
5. Veterans Park Conservancy
6. Westside Breakers Soccer Club
7. Westside Services Parking
8. TCM Farmer's Market
9. Filming Agreement ESAs

All land use agreements at the GLA campus, including the above nine agreements, have or are being reviewed, to determine whether they are or can be made sufficiently Veteran focused (thru fair market value rent to VA and services directly benefitting Veterans and their families), and fit within the overall needs and vision for a revitalized campus. To date, the terminated agreements include Richmark Entertainment; various filming agreements; Sodexo laundry agreement; 20th Century Fox; Westside Breakers; TCM Farmer's Market; and Veterans Garden (Rancho Santa Ana). VA is also in negotiations with the principals of certain existing land use arrangements (e.g., Brentwood School, UCLA, Westside Services, and Veterans Park Conservancy), to help assess the potential for Veteran focused consideration, and compatibility with the Draft Master Plan. As appropriate for those arrangements deemed to be Veteran focused, VA will seek to negotiate deals that are good for Veterans, their families, and our nation's tax payers, through a combination of fair market value rents, and Veteran focused consideration (such as in-kind consideration and use of existing and future facilities under those arrangements for purposes tied to recreation, rehabilitation, therapy, mental health support, legal and addiction services). The consideration generated will help VA significantly to transform and revitalize the campus into a state-of-the art model for other VA campuses nationwide.

Draft Master Plan Periodic Updates

In collaboration with Veteran groups, community partners and other stakeholders, VA will periodically review and reevaluate the Draft Master Plan every three years, to ensure the plan continues to meet the

evolving needs of Veterans.

The feedback process will be continued as VA selects new leadership for the GLA Campus (i.e., three senior executives – specifically the new Medical Center Director; the Director of Land Use Agreement & Community Engagement and Reintegration Services; and Director of Community Based Care, including the Sepulveda campus and Community Based Outpatient Clinics). In addition to the three year reviews of the plan, the new VA leadership team will continue to engage the Veteran voice through Town Halls, meetings with VSOs and elected officials, and the implementation of a MyVA Community Veteran Engagement Board. The MyVA Community Veteran Engagement Board empowers Veteran advocates, service providers, Veterans, and stakeholders to have a voice and a “seat at the table” in providing input and feedback to VA, and identifying their goals and ways to engage and improve service delivery for Veterans and their families. The Board will carry the visions of the framework Draft Master Plan forward. Building and sustaining these avenues for continued Veteran feedback is a critical component of maintaining the Draft Master Plan, as a guiding resource for revitalizing and enhancing the GLA campus. All of this will be done to ensure appropriate oversight and Veteran collaboration while increasing transparency and accountability.

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 B: Scope and Methodology

Scope

The OIG performed its work from December 2017 to August 2018. The team reviewed all leases and land use agreements with a duration of one year or longer that were in place or planned between September 29, 2016, and May 1, 2018. The team also reviewed all agreements that were determined unauthorized by a federal court order in 2013 as a result of the *Valentini v. Shinseki* lawsuit related to the land use of the WLA campus.

Methodology

To accomplish the audit objective, the OIG performed the following actions:

- Reviewed the DMP
- Reviewed applicable laws, including the WLA Leasing Act of 2016, regulations, policies, procedures, and guidelines governing land use on the WLA campus
- Obtained a listing of agreements from the CAI and VA financial data systems to identify the initial universe of agreements and revenues under the purview of the WLA Leasing Act. To test these listings, the team obtained source documents related to agreements and interviewed VA program officials to verify factors such as effective dates of the agreements and terms of the agreements that benefit veterans.
- Reviewed 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 objective
- Conducted onsite visits and interviews with local management and staff, as well as walk-throughs of the campus to verify the status of selected agreements and to determine how the agreements benefit veterans. The OIG also conducted telephonic interviews with VA staff located in Washington, DC, and other locations.

Scope Limitations

The audit team faced several scope limitations while conducting this audit due to incomplete and inconsistent data found in VA's systems of record, and the lack of documentation available to current leaders at GLAHS. As a result, the list of agreements on the WLA campus represents the most comprehensive list available to the audit team as of April 2018.

Fraud Assessment

The audit team assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this audit. The audit team exercised due diligence in staying alert to any fraud indicators by:

- Reviewing financial disclosure forms to identify potential conflicts of interest
- Reviewing solicitations to ensure they were not overly restrictive
- Reviewing the land use approval process to ensure supervisory and legal office review occurred
- Conducting interviews with VA officials responsible for various aspects of the implementation of the leasing process at the WLA campus

Data Reliability

To compile a universe of leases and land use agreements carried out on the WLA campus, the audit team obtained data from various sources and identified a total of 40 instruments to be reviewed. The team performed the following steps to assess data reliability and the accuracy of the universe:

- The audit team obtained a listing of all agreements on the WLA campus from the CAI, which is VA's official source of record for VA property data. The team also requested a data pull from the WLA Project Engineer who maintains the CAI listing for the WLA campus and reconciled these lists. During this review, the audit team determined that WLA's CAI accounting of land use agreements was incomplete and outdated.
- The audit team reached out to other offices such as the VA Real Property Office, VA Office of Asset Enterprise Management, OGC, VISN 22 Fiscal Quality Assurance Management, Vets Advocacy, GLAHS Fiscal Service, GLAHS Office of Asset Management, and Concourse Federal Group—the contractor responsible for the implementation of the DMP—to compile a universe of agreements for the audit.
- The audit team identified additional instruments to be included in the universe through the review of the DMP, the 2013 judgement in *Valentini vs. Shinseki*, and documents available on the WLA Asset Management shared drive.
- The audit team performed an extensive review of all available source documents from GLAHS, the VISN, and OGC officials that had or have oversight of WLA agreements and conducted walk-throughs to test the completeness of the compiled data and confirm the status of selected agreements.

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

Government Standards

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

Appendix C: Description of Compliant Land Use Agreements

Enhanced Use Leases—The 5 EULs listed in Table 1 consist of one completed building (209), the renovation of 10 buildings, and new construction on MacArthur Field. The EULs are for permanent supportive housing for homeless veterans.

Freedom Barber—This entity is housed in a trailer in a parking lot on the West LA campus. The entity is not under a land use agreement with GLAHS, but is instead under a Veterans Canteen Service Agreement. Freedom Barber is open three days a month and provides free haircuts to veterans from 10 a.m. to 2 p.m. on those dates.

UCLA Baseball Complex—The Out Lease is for 10 acres located on the east side of the campus, north of Constitution Avenue. The complex includes the Jackie Robinson Stadium, athletic facilities, and parking. The audit team determined this Out Lease is allowed under the WLA Leasing Act. The 10-year Out Lease expires December 22, 2026.

UCLA 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.

UCLA 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.

Columbarium Expansion—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. In accordance with the Memorandum of Understanding, a contract was awarded August 29, 2017, for the cemetery expansion.

New Directions—This entity has two land use agreements: a lease and a service contract. The lease provides use of Building 116 for providing transitional and permanent housing for homeless veterans, as well as comprehensive support services for homeless veterans with chronic substance abuse. The 50-year Out Lease expires August 31, 2045. The service contract allows the use of Building 257 to provide a 46-bed Bridge Housing program to temporarily house veterans while waiting for appointments, services, and referrals. This service contract was effective on September 28, 2015, with four option years. The Option Year 2 has been exercised with a period of performance of September 28, 2017, to September 27, 2018.

Southern California Edison—The Revocable License gives Southern California Edison access to a portion of the property for constructing, operating, and maintaining electrical conduit on the south portion of the campus. The audit team determined the work done by Southern California Edison is to ensure services to veterans continue uninterrupted and it specifically benefits VA's

operation of a Patriot House at Building 525. Therefore, the Revocable License is consistent with the DMP. This Revocable License expires December 2, 2039.

Veterans Park Conservancy—The Revocable License maintains a rose garden that was specifically created to provide veterans a peaceful space for relaxation and interaction with the community. The Veterans Park Conservancy is for the use of veterans and their families and is consistent with the DMP. This Revocable License expires December 6, 2022.

Westside Food Bank—The Revocable License permits Westside Food Bank access to the Outdoor Pavilion for distributing free food to veterans. This five-year Revocable License expires on September 7, 2021.

Appendix D: Entities That Have Exited the WLA Campus

Phillip Matkovsky, then acting VA Deputy Under Secretary for Health for Operations and Management, created a task force in October 2014 following GAO's August 2014 audit recommendation to independently account for the WLA land use agreements. This task force reviewed 35 land use agreements, 26 of which were for agreements located on the WLA campus.⁷⁰ The task force made recommendations on WLA land use agreements, including one to terminate three agreements; however, these entities left the campus. Furthermore, VA terminated three additional agreements that were not veteran-focused. Since the lawsuit, the audit team confirmed via site inspection that eight entities, listed in Table 9, were no longer operating on the WLA campus:

Table 9. Entities That Have Exited the Campus

Agreement	Land Use
20 th Century Fox	Parking, storage and maintenance of production sets on WLA campus
Ready America	Fabrication and assembly of Quakehold Thumb Lock by Compensated Work Therapy patients
Richmark Entertainment	Booking services, theater management, and other services for the Wadsworth Theater
Sodexo Marriott	Laundry services for processing hospitality linen
TCM LLC Farmers Market	Weekly farmers market space
The Salvation Army (Bldgs. 207 and 212)	Transitional housing and services for veterans
Veterans Garden	Horticultural work therapy program for veterans
Westside Services	Paid parking lots next to the Brentwood Shopping District

Source: VA OIG analysis of land use agreements provided by GLAHS

⁷⁰ The remaining 9 agreements were for land use on the Sepulveda VA Medical Ambulatory Care which is part of GLAHS.

Appendix E: Management Comments

Department of
Veterans Affairs

Memorandum

Date:

From: Executive in Charge, Office of the Under Secretary for Health (10)
Principal Executive Director, Office of Acquisition, Logistics, and Construction

Subj: OIG Draft Report, Audit of VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016 (VIEWS 00103973)

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

1. Thank you for the opportunity to review the Office of Inspector General (OIG) draft report, Audit of VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016, and to respond to the recommendations. OIG directed recommendation 1 and 2 to the Principal Executive Director, Office of Acquisition, Logistics, and Construction (OALC) and the Executive in Charge, Veterans Health Administration (VHA), in conjunction with the Director, Greater Los Angeles VA Healthcare System (GLAHS); recommendation 3 and 5 to VHA in conjunction with GLAHS; and recommendation to 4 to OALC.

2. GLAHS' West Los Angeles (WLA) Campus has a storied history as the former Pacific Branch of the National Home for Disabled Volunteer Soldiers, and a vital present as the site of one of VA's most complex healthcare facilities. Regrettably, the Campus' reputation has been marred in recent years by misuse of the land on which it sits and by the criminal conduct of two individuals seeking to profit from such misuse. Guided by the January 2016 Draft Master Plan (DMP) to revitalize the Campus, VA is hard at work on a multi-year plan to restore the property to its intended use as a home for Los Angeles' most vulnerable Veterans while also modernizing the hospital and other healthcare buildings.

3. The WLA Leasing Act of 2016 (the Act) affords VA the enhanced-use and other leasing authorities it needs to implement the DMP. The Act also affords VA the opportunity to restore trust through more Veteran-centric and transparent land-use policies and protocols. VA has already terminated or re-negotiated the

pre-existing land use agreements that were in conflict with the Act, and is moving actively and aggressively to redevelop the Campus into a welcoming community for Veterans and their families.

4. VA appreciates the opportunity to respond to the findings and recommendations in this report. Most of the findings and recommendations are well-founded in both fact and law and will greatly assist VA in its efforts to ensure that all third-party land uses benefit Veterans, thereby restoring the Campus to its rightful purpose and rebuilding trust with Veterans and other stakeholders.

5. Unfortunately, a few of OIG's findings are legally and/or factually erroneous. VA declines to concur in those findings or in the recommendations that relate to them.

6. The erroneous findings pertain to three land-use agreements that OIG believes are contrary to the Act and/or the DMP: the Brentwood School lease, the Breitburn Oil revocable license (RL), and the California Department of Transportation (Caltrans) RL. After the Act's passage, VA reviewed all of the WLA Campus' land use arrangements, including these three, in consultation with the subject-matter experts in its Offices of General Counsel (OGC) and Congressional and Legislative Affairs (OCLA) who had been directly involved in the development of the Act. Guided by their expertise and insight, VA renegotiated many of the agreements – including the Brentwood School lease and Breitburn RL - to comply with the Act. VA determined that others, including the Caltrans RL, - required no renegotiation.

7. VA and OIG disagree on the statutory interpretation regarding the Brentwood School lease and Breitburn and Caltrans RLs. As is explained more fully below, VA believes OIG has misinterpreted certain provisions of the Act, ignoring the legislative history and established rules of statutory construction that must rationally be employed to understand ambiguous statutory language. This misinterpretation has led to erroneous findings with respect to the legality of the Brentwood School lease and the Breitburn and Caltrans RLs. Those erroneous findings support, in turn, unwarranted and unworkable recommendations with respect to those particular land uses. Agency heads and their Inspectors General often differ on statutory interpretation issues, particularly with respect to newly-enacted legislation.

8. Under general IG practice, when an OIG audits some aspect of an agency's business, the agency head has a specified period in which to make

“management decisions” and take “final action” on the findings and recommendations in the audit report. The Inspector General Act of 1978 (IG Act), Pub. L. 95-452, § 1, Oct. 12, 1978, 92 Stat. 1101, defines “management decision” to mean “the evaluation by the [agency head] of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.” IG Act, §5(f)(5). The IG Act defines “final action” to mean “the completion of all actions that the [agency head] has concluded, in its management decision, are necessary with respect to the findings and recommendations included in an audit report.” IG Act, § 5(f)(6)(A). The IG Act clarifies that “in the event that the [agency head] concludes no action is necessary, final action occurs when a management decision has been made.” IG Act, § 5(f)(6)(B).

9. Under these general rules, an agency head has discretion to decline to accept an OIG recommendation that he considers factually or legally unfounded or inappropriate to implement. By contrast, the audit process established by the Act seems to afford the VA Secretary no such discretion. Rather, the Act provides that if OIG finds any WLA lease or land use to be non-compliant with the Act or other applicable Federal law, the Secretary must certify to Congress that he has implemented all of OIG’s recommendations before he can enter into a new lease under the Act, including an enhanced-use lease to build housing for homeless Veterans. This is true even if the OIG’s findings are unrelated to the new lease and/or are founded in an illogical interpretation of the law, or if a recommendation is unworkable from a management perspective.

10. Importantly, OIG has not found a single deficiency with respect to an enhanced-use lease (EUL) on the WLA property. All of the deficiencies noted in this report pertain to third-party land uses other than EULs or supportive housing. Yet the Act seems to deprive the Secretary of his authority to enter into enhanced-use leases to house homeless Veterans on the WLA Campus unless and until he can certify to Congress that he has implemented all of OIG’s recommendations relating to other land uses.

11. While OIG has represented to VA that its findings and recommendations are not intended to prevent VA from entering into new enhanced use leases, OIG’s misapplication of law respecting the Brentwood School lease, the Breitburn Oil revocable license, and the California Department of Transportation revocable license, make it impossible for VA to implement OIG’s recommendation regarding land use agreements. VA has no choice but to refrain from entering

into new enhanced use lease agreements or land sharing agreements until OIG applies the law correctly, or the West LA Leasing Act of 2016 is amended regarding the effect of OIG's adverse findings as to the lease and revocable licenses identified above. The Extenders bill contains a provision which would remove the prohibition on entering into a lease or land sharing agreement, and thereby render this issue moot.

12. VA provides the following facts and analysis to supplement the introductory sections of the OIG report.

Draft Master Plan

The 2016 Draft Master Plan (DMP) for the redevelopment of the WLA Campus was the product of inspired leadership, tenacious advocacy, and exhaustive solicitation and synthesis of Veteran and community input.

In 2011, the American Civil Liberties Union of Southern California sued VA on behalf of a class of severely disabled Veterans. The lawsuit, *Valentini v. Shinseki*, alleged that VA had violated the plaintiffs' civil rights by effectively denying them meaningful access to services, including permanent supportive housing, on the West Los Angeles Campus. The lawsuit also alleged that many of the third-party land use agreements were invalid under applicable law.

After a 2013 court order invalidated nine third-party land use agreements, VA agreed to settle the lawsuit, to terminate or renegotiate the invalidated land use agreements, and to develop a Master Plan to determine how best to use the Campus for the benefit of homeless and other underserved Veterans.

As noted in the OIG report, VA conducted intensive Veteran and community outreach prior to issuing the DMP. Among other things, VA conducted numerous Veteran and community workshops, Town Halls, neighborhood meetings, and briefings with elected officials, Veteran Service Organizations (VSOs), and veteran and housing advocacy groups over a six-month period from June to December 2015.⁷¹ VA also solicited Veteran and community input by publishing an initial draft of the DMP in the Federal Register for public notice and comment. This draft included both a vision for a Veteran community on the campus and a process for ensuring that all third-party uses of the land were appropriately Veteran-focused. The Federal Register notice garnered 1,002 separate

⁷¹ VA published a listing of the dates of and participants in each of these outreach meetings in the DMP itself. See Section III, *Stakeholder Engagement*, pp. 8-9, at <https://www.losangeles.va.gov/masterplan/>

comments, at least 350 of which came from commenters identifying as VSOs or Veterans' advocacy organizations.

During this same period, the nonprofit group Vets Advocacy surveyed Veterans regarding the land uses and services they would like to see on the renovated Campus, and provided the results of the survey to VA. A coalition of VSOs also surveyed its members regarding Campus land-use and services issues, and provided its results to VA.

VA published a framework Draft Master Plan (DMP) in January 2016. The DMP detailed VA's plan to "revitalize the site to its intended purpose as a home: a vibrant community that includes the development of [a minimum of 1,200 units of] high-quality housing tailored to priority Veteran subpopulations, with robust supports that promote wellbeing and holistic, strength-based services to augment [VAGLAHS'] existing structure of healthcare services."

The DMP set forth a notional timeline in which the first phase of housing (approximately 490 units) would be developed within 30 months and the balance of the 1,200 units within 10 years. The DMP specifically noted that this timeline was contingent on the enactment of enabling legislation⁷² and was subject to necessary environmental and historic preservation analyses, utility infrastructure challenges, and housing developers' need to obtain non-VA capital funding and comply with local zoning and permit processes.

In addition to housing for homeless and other vulnerable Veterans, the DMP called for a variety of non-housing activities on Campus, organized around several "zones of development." The South Campus "health care zone" would include a new bed tower and several outpatient buildings to replace the existing seismically-deficient hospital. On the North Campus, a "care coordination zone" would welcome Veterans and visitors to Campus and direct them to services on site and out in the community. The "housing zone" would sit within an "outer ring" integrating the Campus with the surrounding community through vocational, cultural, and outdoor activities, and would also adjoin a "Town Center zone" which would function as a downtown for the Campus and allow Veterans to engage in social, recreational, volunteer, or employment activities with fellow Veterans and members of the community.

The DMP also committed to ensuring that all land use activities on the Campus are Veteran-focused, and that the nine agreements invalidated in the *Valentini v.*

⁷² The DMP referenced two bills that were pending at the time of its issuance – H.R. 3484 and S. 2013 – that were related and in pertinent part identical to H.R. 5936, which was ultimately enacted as the West Los Angeles Leasing Act of 2016.

Shinseki litigation would be carefully assessed to determine whether they should be terminated or made sufficiently Veteran-focused through fair market rent to VA and services directly benefiting Veterans and their families.

The WLA Leasing Act

The WLA Leasing Act provided the legal authorities necessary to carry out the DMP. To understand these authorities, it is necessary to understand the various statutes that governed leasing and other land use on the WLA Campus prior to the Act, and to review the Act's documented legislative history.

Prior Authorities

Federal agencies' general authority to lease buildings or land to third parties is provided by 40 U.S.C. § 1302, which provides that such "out-leases" must be "for money consideration only;" that a lease "may not include any provision for the alteration, repair, or improvement of the buildings or property as a part of the consideration ... for the use and occupation of the buildings or property;" and that lease revenues will be deposited in the U.S. Treasury.

VA's own general out-leasing authority, codified in 38 U.S.C. § 8122(a)(1), provides that, "[n]otwithstanding section 1302 of title 40 ... a lease made ... to any public or nonprofit organization may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as part or all of the consideration for the lease."

Another statute, codified at 38 U.S.C. §§ 8161-8169, authorizes VA to lease unused or under-utilized buildings or land to third parties for the purpose of providing supportive housing for Veterans and their families who are at risk of homelessness or are homeless. This is VA's "enhanced-use" leasing authority.

Yet another statute, codified at 38 U.S.C. §§ 8151-8153, authorizes VA to enter into "sharing agreements" with third parties that allow such parties the right to use underutilized VA space and buildings as a "sharing" of health-care resources.

Pursuant to these general authorities, VA leased portions of the WLA Campus over the years to, among other parties, the Brentwood School.

Thereafter, Congress enacted legislation that specifically prohibited VA from leasing buildings or land at the WLA Campus. This prohibition was imposed by section 224 of the Consolidated Appropriations Act of 2008, known colloquially as "the Feinstein Amendment," which provided that the Secretary could not "declare as excess to the needs of the Department, or otherwise take any action

to exchange, trade, auction, transfer, or otherwise dispose⁷³ of” any land or improvements on the WLA Campus. The only exception to the Feinstein Amendment’s prohibitions was “a lease to a representative of the homeless” to provide shelter and related services to homeless Veterans under the Homeless Veterans Comprehensive Service Programs Act of 1992. Consolidated Appropriations Act of 2018, Pub. L. 110-161, § 224(b).

Legislative History of the Act

During the development of the DMP, recognizing that relief from the Feinstein Amendment would be necessary to enable VA to carry out the DMP, several members of Congress introduced bills to authorize VA to lease portions of the WLA property to provide the supportive housing and other services envisioned in the DMP. These bills – S. 2013, *Los Angeles Homeless Veterans Leasing Act of 2015*, introduced by Sen. Dianne Feinstein, on behalf of herself and then-Sen. Barbara Boxer; H.R. 3484, *Los Angeles Homeless Veterans Leasing Act of 2016*, introduced by Rep. Ted Lieu; and H.R. 5936, *West Los Angeles Leasing Act of 2016*, introduced by Rep. Jeff Miller, on behalf of himself and Rep. Lieu – all contained identical language authorizing the VA Secretary to carry out enhanced-use leases on the Campus for purposes of providing supportive housing; leases to provide certain categories of services that principally benefit veterans and their families; and a lease to the Regents of the University of California on behalf of the University of California, Los Angeles.⁷⁴

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 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 DMP and summarized the leasing authorities provided in H.R. 3484 and ultimately enacted through the related, identical H.R. 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

⁷³ The title of VA’s general leasing authority, 38 U.S.C. § 8122, “Authority to procure and dispose of property and to negotiate for common services,” makes it clear that “disposal” includes leasing.

⁷⁴ The Congressional Research Service lists these three bills as “related bills” for legislative history purposes.

laid out in this legislation. The Brentwood School is uniquely positioned to offer veterans and their families on the West L.A. 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.⁷⁵

Report No. 114-570, 114th Cong., 2nd Session, p.7.

Provisions of the Act Relevant to VA's Response to OIG's Findings and Recommendations

As enacted, section 2(b)(1) of the Act provides that the Secretary may carry out "[a]ny enhanced-use lease of real property under subchapter V of chapter 81 of title 38, United States Code, for the purposes of providing supportive housing, as that term is defined in section 8161(3) of that title, that principally benefit veterans and their families."

Section (2)(b)(2) authorizes the Secretary to enter into "any lease of real property for a term not to exceed 50 years to a third party to provide services that principally benefit veterans and their families and that are limited to one or more of the following purposes:

- (A) The promotion of health and wellness, including nutrition and spiritual wellness.
- (B) Education.
- (C) Vocational training, skills building, or other training related to employment.
- (D) Peer activities, socialization, or physical recreation.
- (E) Assistance with legal issues and Federal benefits.
- (F) Volunteerism.
- (G) Family support services, including child care.
- (H) Transportation.
- (I) Services in support of one of more of the purposes specified in subparagraphs(A) through (H).

Subsection (2)(b)(3) authorizes the Secretary to enter into a lease with the Regents of California, on behalf of UCLA, if – among other enumerated requirements - "(A) the lease is consistent with the master plan described in subsection (g); [and] (B) the provision of serves to veterans is the predominant focus of the activities of [UCLA] during the term of the lease."

⁷⁵ VA notes that Sen. Feinstein and Rep. Lieu personally reminded OIG of this legislative history in a letter to Inspector General Michael J. Missal dated August 17, 2018.

Subsection (2)(d) provides that revenues from the leases at the campus “shall be credited to the applicable Department medical facilities account and shall be available, without fiscal year limitation and without further appropriation, exclusively for the renovation and maintenance of the land and facilities at the Campus.”

Subsection (2)(e)(1) authorizes the Secretary to grant easements on the Campus, as follows:

- (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 utilities.

Subsection (2)(f) reiterates the Feinstein Amendment’s prohibition on the sale of any real property or improvements on the Campus to a third party.

Subsection (2)(g) requires that leases carried out under the Act be consistent with the DMP.

Subsection (2)(j)(2) requires periodic OIG audits of leases and land use carried out at the Campus, and of the Department’s efforts to implement the DMP.

Subsection (2)(h)(1) provides the OIG audit requirement’s oddly Draconian “teeth”:

- (h) Compliance with Certain Laws. –
 - (1) Laws Relating to Leases and Land Use. – If the Inspector General ... determines, as part of an audit report of evaluation ... that the Department is not in compliance with all Federal laws relating to leases and land use at the Campus, or that significant mismanagement has occurred with respect to leases or land use at the Campus, the Secretary may not enter into any lease or

land-sharing agreement at the Campus, or renew any such lease or land-sharing agreement that is not in compliance with such laws, until the Secretary certifies to the Committees on Veterans' Affairs of the Senate and House of Representatives, and each Member of the Senate and the House of Representatives who represents the area in which the Campus is located[,] that all recommendations included in the audit report or evaluation have been implemented.

Agency's Response to Finding 1A, *VA Allowed Non-VA Entities to Inappropriately Use WLA Campus*, and Recommendations 1 and 2

VA accepts OIG's findings with respect to the land use agreements with the American Red Cross, Association for Parrot C.A.R.E., Brentwood School Construction, the City of Los Angeles, the Shakespeare Center of Los Angeles, and Westside Breakers. VA concurs with recommendation 1 insofar as it directs VA to implement a plan to put the Campus in compliance with the Act, the DMP, and other Federal laws with respect to these agreements.⁷⁶ If the deficiencies with respect to a particular land use cannot be corrected, VA will terminate that land use.

VA also accepts OIG's findings with respect to the non-VA Entities on WLA's Campus that have expired or undocumented land use agreements, and concurs with recommendation 2. VA will immediately undertake efforts to implement the recommendation to establish new agreements compliant with the Act or terminate these entities' use of the Campus.

For the reasons set forth below, VA does not accept OIG's findings with respect to the Brentwood School lease, the Breitburn RL, or the Caltrans RL. VA believes that each of these findings is based on an erroneous interpretation of the relevant authorities. VA non-concurs with recommendation 1 insofar as it requires VA to correct the deficiencies erroneously noted with respect to those land use agreements.

Brentwood School Lease

⁷⁶ The American Red Cross RL is due to expire on December 31, 2018, and will not be renewed. VA terminated the Parrot C.A.R.E. RL in July 2018. VA will renegotiate or terminate the other land uses referenced in this finding.

OIG has found the Brentwood School lease to be deficient because its principal purpose - in OIG's view, "to provide Brentwood School continued use of the Athletic Facilities" it has constructed on the Campus - is not covered by section (2)(b)(2) of the Act, and because the non-monetary consideration agreed to in that lease is not authorized by 40 U.S.C. §1302. In VA's view, both findings are erroneous.

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 reflected on p. 18 of OIG's report, Brentwood School has had a presence on the Campus since at least the 1970s. Beginning in or around 1998, VA entered into a sharing agreement that allowed Brentwood School to construct and operate an athletic facility on the Campus. That agreement was invalidated in the *Valentini* litigation and renegotiated thereafter to provide significant new consideration, in the form of Brentwood School's obligations to, among other things, pay annual rent; establish, operate, and maintain a Veterans Center for Education & Recreation on its leasehold property that affords Veterans access to tennis, volleyball, basketball, track, soccer, baseball, and football facilities, as well as classes and clinics in activities such as swimming, conditioning, and health and wellness; host special programs on its leasehold property for Veterans and their families; and provide scholarships for Veterans' children and grandchildren to attend Brentwood School's summer camp and academic programs. The renegotiation process was ongoing while the various bills that became the Act made their way through Congress. Congressional staff involved in the drafting of the bills visited the Campus (including the Brentwood School leasehold) during this time, as did then-HVAC Chairman Jeff Miller. The bill's authors were well aware of that leasehold's original purpose and of the Veteran-centric consideration the parties were negotiating to bring the lease into compliance with the DMP and the then-pending legislation.

The committee report accompanying H.R. 3484, a bill identical to the bill that became the Act and sponsored by the Act's two sponsors, expressly reflected HVAC's recognition that "the envisioned future lease arrangement between VA and the Brentwood School meets the criteria laid out in this legislation," and reflected HVAC's strong support for the substantial benefits to Veterans and their families – physical recreation, health and wellness, education, and vocational training, as well as direct community service and lease revenue - that would be (and are) provided under the renegotiated lease. OIG's finding that the Brentwood School lease is unauthorized under the Act conflicts with this clear indication of the Act's legislative intent. OIG's view seems to be that the original

purpose of the lease taints it permanently and irreparably – a kind of “original sin” theory that runs counter to the committee report’s express expectation that the renegotiated lease would comport with section (2)(b)(2) of the Act.

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 EULs to house homeless Veterans. This outcome is patently unreasonable.

OIG’s finding with respect to the lease’s non-monetary consideration is equally misplaced. This is because the statute OIG cites in support of this finding, 40 U.S.C. §1302, does not apply to leases under the Act. As noted above, that statute, which generally prohibits non-monetary consideration in leases of Federal property (and which also provides that lease revenues will be deposited in the U.S. Treasury), was partially abrogated for VA leases by 38 U.S.C. § 8122(a)(1), which allows VA to accept certain non-monetary consideration. That VA-specific statute was, in turn, rendered inapplicable to the WLA Campus by the Feinstein Amendment, which prohibited leasing on the Campus except under the Homeless Veterans Comprehensive Service Programs Act of 1992. So, the legislative scheme the Act replaced for leases on the Campus was neither 40 U.S.C. §1302 nor 38 U.S.C. § 8122(a)(1), but rather the Feinstein Amendment, which prohibited leasing on the Campus irrespective of consideration.

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.

Breitburn RL

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 an RL between that allows Breitburn surface access to VA property, that RL 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 DMP or the Act. VA is not a party to the Breitburn-BLM lease. The Breitburn-VA RL is necessary to prevent the United States from breaching the Breitburn-BLM lease. To effectively negotiate more Veteran-centric consideration to support this RL, VA would have to have the authority to terminate Breitburn's access to the Campus if Breitburn refused to provide such consideration. Because the RL 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.

Caltrans RL

OIG has found four somewhat related deficiencies with respect to the revocable license (RL) granted to the California Department of Transportation (Caltrans) to access the Campus to relocate utilities and widen Interstate Highway 405 as part of the I-405 Sepulveda Pass Improvement Project: that the RL is inconsistent with the DMP because it benefits the public at large and is not Veteran focused; that this land use is more appropriately documented as an easement rather than an RL; that an easement to make improvements to I-405 is not authorized under the Act; and that an easement to relocate utilities, while authorized under the Act, benefits the public rather than Veterans and is therefore inconsistent with the DMP.

VA agrees that this land use is more appropriately documented as an easement rather than an RL, and will take action to convert it accordingly. However, VA believes the other findings are based on an incomplete reading of the DMP and a misreading of the relevant provisions of Act.

With respect to the DMP, VA notes that the Executive Summary that is attached as Appendix A to the OIG Audit Report is just that – a summary – and that the full DMP consists of six chapters and nine attachments.⁷⁷ One of the attachments – *Appendix H, Possessory Use Agreements* – groups each of the land use arrangements then in effect according to its intended disposition:

Figure H-1 below, displays the agreements that are under negotiations between VA and the pertinent land use entities, and will be subject to the provision of Veteran-centric services that directly support the medical, clinical, therapeutic, dietary, rehabilitative, legal, mental, spiritual, physical, recreational, research, and counseling needs of Veterans and their families. Figure H-2 shows agreements that have been terminated or where the termination is in process. Finally, Figure H-3 displays the agreements that have already agreed to provide such services and, as such, they have been given the provision to remain on GLA Campus according to the provisions described above. Figure H-4 displays the agreements that are expired or have been terminated.⁷⁸

The Caltrans RL is listed in “Figure H-3: Possessory Use Agreements Veteran Centric to Remain or Logistical to Remain,” indicating that the DMP considers that use at least logistically appropriate to continue.⁷⁹

⁷⁷ The complete DMP is publicly available at <https://www.losangeles.va.gov/masterplan/index.asp#>.

⁷⁸ DMP, Appendix H, p. H-4.

⁷⁹ Id., p. H-6.

With respect to the Act, VA notes that whereas the enhanced-use and other leasing authorities in subsections (2)(b)(1) through (2)(b)(3) of the Act – all of which require that land use arrangements principally benefit Veterans – the easement authorities in subsection (2)(e) carry no such requirement.

Moreover, 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. Thus, the first part of subsection (2)(e)(1)(B) authorizes VA to grant an easement to Caltrans - which is an agency of the State of California – for any purpose, not just to provide public utilities.

For these reasons, VA concurs with recommendation 1 with respect to the Caltrans RL only insofar as it requires VA to re-document that land use as an easement under the second of the three authorities provided by subsection (2)(e)(1).

Agency Response to Finding 1B, GLAHS Needs Additional Veteran Input to Ensure Land Use Agreements are Compliant, and Recommendation 3

As noted above, VA engaged in considerably more numerous and meaningful Veteran outreach activities during DMP development than is reflected in OIG's report. Those activities continued throughout calendar year 2015 and included solicitation of Veteran input regarding land use policies and protocols, as well as other aspects of the DMP. These efforts continue to the present day, as GLAHS leadership continues to meet monthly with the 15-member Community and Veteran Engagement Board, a gathering of VSO leaders, community representatives, and other stakeholders who discuss all matters of mutual interest, including issues relating to WLA Campus land use. As a result, VA disagrees with OIG's assessment that there was insufficient Veteran input in the formulation of the DMP or of VA's WLA Campus land use policy.

Agency Response to Finding 1C, *A Needs to Establish Clear Policies and Procedures to Ensure Land Use Agreements are Compliant*, and Recommendations 4

VA concurs with the finding that VA lacks sufficient and clear policies and procedures to indicate what type of land use agreement is appropriate under a given set of circumstances. In particular, VA policy must be revised to provide more clarity about when to use a lease, a revocable license (RL), an easement, or some other form of land use agreement, not only to ensure that land use decisions on the West Los Angeles Campus are made consistent with the West Los Angeles Leasing Act, but also to ensure that such decisions with respect to other VA properties are consistent with the laws that apply to them.

VA also concurs with the finding that VA lacks adequate policy or guidance related to appropriate pricing for out-leases and RLs, including any requirement to document pricing decisions.

VA concurs with recommendation 4, and will proceed expeditiously to develop the necessary policies.

Agency Response to Finding 1D, *GLAHS Does Not Keep Accurate Inventory of Land Use Agreements*, and Recommendation 5

VA concurs with the finding that documentation of land use agreements on the WLA Campus in the Department's Capital Asset Inventory (CAI) is not complete or current. This is not due to any intent to under-report third-party land uses, to evade oversight, or to avoid transparency. Rather, it is due to a lack of manpower in the GLAHS engineering office, which is responsibility for CAI data entry; occasional delays in information-sharing between that office and the GLAHS asset management staff, who have responsibility for initiating, amending, and terminating land use agreements; and prioritization of CAI data entry for current land uses over updating entries for land uses that are no longer in place.

With respect to OIG's comment, on page 33 of the report, that "to effectively provide transparency over the use of the land at the campus, the land use agreements reported to Congress should reflect the land use agreements reported in the CAI," VA notes that the CAI contains information about all types of land uses – including short-term permits, licenses, and interagency agreements - not just the leases and land-sharing agreements that the Act requires VA to report. VA notes that the Act is clear as to VA's reporting

requirements⁸⁰ and that VA has complied with those requirements in full. VA is happy to provide transparency with respect to other land uses at the Campus by sharing all land use records with OIG, by keeping the CAI up to date, and by updating VCOEB quarterly on Campus land use matters. That said, VA does not believe it is fair or accurate for OIG to suggest VA is being less than transparent when it reports to Congress only the leases and land-sharing agreements the Act requires it to report.

VA concurs with recommendation 5 and will work to ensure its CAI entries accurately reflect all land uses on the WLA Campus.

Agency Response to Finding 2: VA is Behind the Original Milestones on Draft Master Plan Implementation

OIG has found that VA's efforts to comply with requirements of the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) have forced updates to the notional housing timeline provided in the DMP.

The DMP was published in January 2016. In setting forth a notional timeline for the phased development of 1,200 units of permanent supportive housing, the DMP specifically noted that housing delivery was dependent upon the enactment of enabling legislation and was subject to necessary environmental and historical preservation analyses, among other factors.

The Act, which passed nine months later, specifically requires VA to comply with "all Federal laws relating to environmental and historic preservation" when entering into leases under Act.⁸¹ VA therefore made the determination that a Programmatic Environmental Impact Study (PEIS) would be necessary to ensure compliance with these laws. As detailed on pages 35-37 of the OIG audit report, the PEIS process has necessitated changes to the DMP's housing timeline.

VA is in the final phase of a solicitation engage a Principal Developer to expedite and integrate development of housing on the Campus. VA is optimistic that the Principal Developer approach will enable VA to complete and deliver housing on the Campus much more expeditiously than would be possible through single, stand-alone EULs for each building or grouping of building.

⁸⁰ Section (2)(j)(1) requires VA notify Congress at least 45 days prior to entering into or renewing any lease or land-sharing agreement at the Campus. Section (2)(j)(2) requires VA to report to Congress annually on all leases and land-sharing agreements carried out at the Campus.

⁸¹ West Los Angeles Leasing Act, §(2)(h)(2).

13. If you have any questions, please email Karen Rasmussen, M.D., Director, Management Review Service at VHA10E1DMRSAction@va.gov.

(Original signed by)

Richard A. Stone, M.D.

Karen L. Brazell

Attachment

**VETERANS HEALTH ADMINISTRATION (VHA)
OFFICE OF ACQUISITION, LOGISTICS, AND CONSTRUCTION (OALC)
Action Plan**

OIG Draft Report: Audit of VA's Management of Land Use Under the West Los Angeles Leasing Act of 2016

Date of Draft Report: August 30, 2018

Recommendations/ Actions	Status	Completion Date
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Recommendation 1: The Principal Executive Director, Office of Acquisition, Logistics, and Construction and the Acting Under Secretary for Health in conjunction with the Director, Greater Los Angeles Healthcare System implement a plan that puts the West LA campus in compliance with the West Los Angeles Leasing Act of 2016, the Draft Master Plan, and other federal laws, including reasonable time periods to correct deficiencies noted in this report.

Initial Comments: Partial concurrence.

VA concurs with Recommendation 1 insofar as it directs VA to implement a plan to put the Campus in compliance with the Act, the Draft Master Plan (DMP), and other Federal laws with respect to the American Red Cross, Association for Parrot C.A.R.E., Brentwood School Construction, the City of Los Angeles, the Shakespeare Center of Los Angeles, and Westside Breakers agreements. In consultation with OALC and OGC, VHA will renegotiate or terminate these agreements, as appropriate.

VA does not concur in Recommendation 1 insofar as it directs VA to correct the deficiencies erroneously noted with respect to the Brentwood School lease, the Breitburn revocable license (RL), or the Caltrans RL. Further explanation on the non-concurrence is located on page 10 of the accompanying memorandum.

At completion of this action plan, we will provide documentation of the correction of deficiencies related to the American Red Cross, Association for Parrot C.A.R.E., Brentwood School Construction, the City of Los Angeles, the Shakespeare Center of Los Angeles, and Westside Breakers agreements.

Status:

In Progress

Target Completion Date:

September 2019

Recommendation 2: The Principal Executive Director, Office of Acquisition, Logistics, and Construction and the Acting Under Secretary for Health in conjunction with the Director, Greater Los Angeles Healthcare System ensure all non-VA entities operating on the West LA campus with expired or undocumented land use agreements establish new agreements compliant with the West Los Angeles Leasing Act.

Initial Comments: Concur.

VA accepts OIG's findings with respect to the non-VA Entities on the West Los Angeles Campus that have expired or undocumented land use agreements. In consultation with OALC and OGC, VHA will undertake efforts to establish new agreements compliant with the West Los Angeles Leasing Act or terminate these entities' use of the Campus.

At completion of this action plan, we will provide documentation that new agreements are compliant with the West Los Angeles Leasing Act.

Status:	Target Completion Date:
In Progress	September 2019

Recommendation 3: The Acting Under Secretary for Health in conjunction with the Director, Greater Los Angeles Healthcare System create a process to allow the Veterans Community Oversight and Engagement Board an opportunity to provide input to the executive leadership on West LA campus land use.

Initial Comments: Concur.

VA engaged in considerably more numerous and meaningful Veteran outreach activities during the development of the Draft Master Plan (DMP) than is reflected in OIG's report. Those activities included solicitation of Veteran input regarding land use policies and protocols, as well as other aspects of the DMP. These efforts continue to the present day. The Greater Los Angeles Healthcare System leadership continues to meet monthly with the 15-member Community and Veteran Engagement Board (VCOEB), a gathering of Veterans Service Organization leaders, community representatives, and other stakeholders who discuss all matters of mutual interest. This includes issues related to West Los Angeles (WLA) Campus land use. As a result, VA disagrees with OIG's assessment that there was insufficient Veteran input in the formulation of the DMP or of VA's WLA Campus land use policy. At completion of this action plan, we will provide documentation of the manner and extent to which VHA has solicited, and intends to continue to solicit, input from the VCOEB.

Status:	Completion Date:
Complete	Fiscal Year 2018

Recommendation 4: The Principal Executive Director, Office of Acquisition, Logistics, and Construction create documented policies and procedures for out leases and Revocable Licenses to govern their use, management, and pricing to ensure fair value is received and negotiations are documented.

Initial Comments: Concur.

VA concurs with the finding that VA lacks sufficient and clear policies and procedures to indicate what type of land use agreement is appropriate under a given set of circumstances. In particular, VA policy must be revised to provide more clarity about when to use a lease, a revocable license (RL), an easement, or some other form of land use agreement, not only to ensure that land uses decisions on the West Los Angeles Campus are made consistent with the West Los Angeles Leasing Act, but also to ensure that such decisions with respect to other VA properties are consistent with the laws that apply to them.

VA also concurs with the finding that VA lacks adequate policy or guidance related to appropriate pricing for out-leases and RLs, including any requirement to document pricing decisions. VA will proceed expeditiously to develop the necessary policies. At completion of this action plan, we will provide documentation of issuance of policy, program guidance and all associated supporting material.

Status:

In Progress

Target Completion Date:

September 2019

Recommendation 5: The Acting Under Secretary for Health in conjunction with the Director, Greater Los Angeles Healthcare System ensure VA's Capital Asset Inventory accurately reflects all land use agreements six months or longer on West LA campus.

Initial Comments: Concur.

VA concurs with the finding that documentation of land use agreements on the West Los Angeles (WLA) Campus in the Department's Capital Asset Inventory (CAI) is not complete or current. This is not due to any intent to under-report third-party land uses, to evade oversight, or to avoid transparency. Rather, it is due to a lack of manpower in the Greater Los Angeles Healthcare System (GLAHS) engineering office, which is responsible for CAI data entry; occasional delays in information-sharing between that office and the GLAHS asset management staff, who have responsibility for initiating,

amending, and terminating land use agreements; and prioritization of CAI data entry for current land uses over updating entries for land uses that are no longer in place.

With respect to OIG's comment, on page 33 of the report, that "to effectively provide transparency over the use of the land at the campus, the land use agreements reported to Congress should reflect the land use agreements reported in the CAI," VA notes that the CAI contains information about all types of land uses – including short-term permits, licenses, and interagency agreements - not just the leases and land-sharing agreements that the Act requires VA to report. VA notes that the West Los Angeles Leasing Act (the Act) is clear as to VA's reporting requirements and that VA has complied with those requirements in full. VA is happy to provide transparency with respect to other land uses at the Campus by sharing all land use records with OIG, by keeping the CAI up to date, and by updating Veterans Community Oversight and Engagement Board quarterly on Campus land use matters. That said, VA does not believe it is fair or accurate for OIG to suggest VA is being less than transparent when it reports to Congress only the leases and land-sharing agreements the Act requires it to report.

VA will work to ensure its CAI entries accurately reflect all land uses on the WLA Campus. At completion of this action plan, we will provide documentation of the actions VHA has taken to correct GLAHS's CAI entries relating to the WLA Campus.

Status:	Target Completion Date:
In Progress	September 2019

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

In a memorandum dated September 14, 2018 (Response), the Department of Veterans Affairs (VA) responded to a draft audit report issued by the VA Office of Inspector General (OIG or the OIG) on “VA’s Management of Land Use Under the West Los Angeles Leasing Act of 2016”. VA’s Response states that ambiguous statutory language resulted in erroneous findings by the OIG for the Breitburn and Caltrans Revocable Licenses (RL or revocable license) and the Brentwood School lease. The OIG disagrees with VA’s arguments and reiterates its findings as to those instruments. VA also states “VA has no choice but to refrain from entering into new enhanced use lease agreements or land sharing agreements until OIG applies the law correctly, or the West LA Leasing Act of 2016 is amended...” The OIG does not address VA’s interpretation of the West LA Leasing Act and the effect of OIG’s adverse findings, especially in light of the pending Department of Veterans Affairs Expiring Authorities Act of 2018.

I. Revocable Licenses

The West LA Leasing Act (WLA Act or the Act) does not include specific language for revocable licenses (RL). Instead, RLs fall under the general category of ‘land use’ mentioned in the Act. Since the OIG was required to report on all land use at the WLA campus, OIG used standards taken directly from VA’s Draft Master Plan (DMP).

A. Revocable Licenses – Standard for Review

The OIG used the following standard of review for evaluating all WLA RLs:

- Whether the instrument was veteran focused. Agreements are veteran focused if they result in additional healthcare, benefits, services, or resources being provided directly to veterans and/or their families on the WLA campus. Monetary proceeds paid to VA alone will not constitute an acceptable agreement. Neither will agreements that only benefit the public at large, versus veterans and their families.
- Whether land use agreements were consistent with the DMP objective to revitalize the campus and provide not only health care and benefits, but education, socialization, recreation, culture/arts, and interaction opportunities with the community.
- Whether the land use agreements violated any federal law besides the WLA Act.

The above standards are clearly consistent with the DMP’s goal to revitalize the WLA campus and to have only veteran focused agreements at WLA. For example, the DMP states that it “is

one of a series of steps toward revitalization of the GLA Campus for Veterans' use..."⁸². Also, on page 16 of the Executive Summary of the DMP, it states "[g]oing forward, VA's efforts to revitalize the campus will only include 'Veteran focused' agreements..."

Nonetheless, Greater Los Angeles Healthcare System (GLAHS, GLA or VA) argues the OIG's findings are erroneous alleging they "are based on an incomplete reading of the DMP..." The basis for VA's statement is that since the Executive Summary was the only portion of the DMP attached to the OIG draft report, the OIG did not read the remainder of the DMP and therefore, our standards taken from the DMP are incomplete. This is an incorrect assumption. Indeed, OIG read the DMP and selected standards key to the DMP that could be consistently applied to the RLs, which made up approximately 60% of the land use on the WLA campus. The above standards were applied to the RLs that OIG found non-compliant and for which VA concurred with the OIG finding, as well as the Caltrans and Breitburn RLs discussed below.

B. Revocable Licenses – OIG Findings that VA finds legally and/or factually erroneous

CALTRANS RL

The OIG found that the 50-year Caltrans RL did not comply with the DMP because it is not veteran focused and the benefits of the work under the RL are to the public at large and not specifically veterans and their families. VA disagrees with this finding and argues that, if the OIG had performed a more complete reading of the DMP, the OIG would have arrived at a different result.

In support of its position that the OIG incorrectly found the Caltrans lease non-compliant, GLA points to a portion of the DMP identified as Figure H-3 *Possessory Use Agreements Veteran Centric to Remain or Logistical to Remain*. Since Figure H-3 lists the Caltrans RL, VA states that the DMP "considers that use at least logistically appropriate to continue."⁸³ Pursuant to the WLA Act, OIG was required to report on the propriety of land use at the WLA campus. Accordingly, the OIG could not deem the list of land use agreements under Figure H-3 as conclusive evidence that the Caltrans RL was appropriate to remain on campus without performing an independent evaluation of the RL.⁸⁴

After finding the Caltrans RL non-compliant, the OIG noted that "it was unclear why VA chose a Revocable License over an easement." GLA focuses on this statement and then proceeds to assess a Caltrans easement that does not yet exist. Although the OIG provided comments on the

⁸² Page 10 of the Executive Summary of the DMP. Examples of references to the DMP goal to revitalize the WLA campus are found on pgs. 2-3, 5, 7 and 16 (Exec. Sum). Additional references are included in different sections of the DMP.

⁸³ VA Response, pg.15.

⁸⁴ Notably, two of the instruments on the H-3 list were terminated so while the intent may have been for these instruments to remain on campus, that is not what ultimately happened. Also, three of the instruments have expired but have not yet been replaced with a current agreement. Thus, Figure H-3 is not a reliable indication of the agreements that would remain on the campus.

provisions of law in the WLA Act relating to easements to demonstrate that some of Caltrans activities could have been permissible if executed under the proper instrument, the fact remains that there is no easement in existence. Those comments should not distract from the germane issue, the non-compliance of the Caltrans RL. **The OIG's stands by its finding that the Caltrans RL was non-compliant with the standards from the DMP.**

BREITBURN RL

GLA is correct that the “history behind the oil drilling activities on the Campus is complex, and the documentation permitting that activity equally so.” However, the remainder of VA’s response to the OIG’s finding on the Breitburn RL is inaccurate. Specifically, VA discusses a different RL from the one the OIG found non-compliant.

The Department of Interior, Bureau of Land Management (BLM) entered into a lease for drilling on VA land for federally owned oil in 1969 (Serial No. R 1956). From some of the same surface land covered under the 1969 lease, Breitburn’s predecessors conducted slant drilling to extract non-federally owned oil from neighboring land over which BLM has no authority. Since the late 1960s, the slant drilling has continued under various instruments to include both leases and revocable licenses. From 2002 to 2017, there was no instrument in place to permit the slant drilling, but the activities continued on the site. The last license in place for slant drilling on non-federal property was between VA and a predecessor of Breitburn (Westside Operating Partners Limited) under License No. 691-97-01-1L. On March 7, 2017, License No. 691-97-01-1L was revived in a 10-year agreement between VA and Breitburn. As part of this RL, Breitburn donates a monthly monetary payment to the Disabled American Veterans, Los Angeles Chapter that is equal to 2.5 percent of the value of the total gross production of all oil, gas, and other hydrocarbons produced under the RL. This ‘revived’ RL No. 691-97-01-0L is the one at issue in OIG’s Draft Report and it has no connection to BLM. RL No. 691-97-01-0L covers slant drilling on non-federal property; BLM has authority only on federal mineral lands.

Breitburn does have another RL with VA, No. VA262-17-RL-0007, that is related to BLM Lease No. R 1956 that VA states “is necessary to prevent the United States from breaching the Breitburn-BLM lease.” On December 23, 2016, BLM and Breitburn executed an amendment to BLM Lease No. R 1956 to reflect a replacement drill site, formerly known as the “Fox” parcel, to accommodate new columbaria at the National Cemetery Administration’s request. However, the replacement drill site was scheduled to be occupied by another party until December 31, 2017. On April 17, 2017, VA granted an RL to Breitburn from March 7, 2017 to June 30, 2018 to “provide Breitburn storage space for piping and other oil and gas equipment and materials while the Fox Site [was] encumbered by the other party. This is the RL that VA discusses in the Response, however, the OIG found no issue with this RL, and therefore, did not include it in the

Report.⁸⁵ **The OIG reiterates its finding that the use of the WLA campus under License No. 691-97-01-0L, does not comply with the DMP, which requires all agreements to be veteran focused. VA opined on the incorrect RL; No. VA262-17-RL-0007.**

II. Brentwood School Lease

The Brentwood School Lease (BWS lease, the School, Brentwood School lease) is one of two leases in the universe of OIG's audit that falls under the provisions of Section 2 (b)(2) of the WLA Act.⁸⁶ The OIG found the Brentwood School Lease does not comply with Section 2 (b)(2) because the purpose is not to principally benefit veterans and their families. Instead, the purpose is to provide for the Brentwood School's continued use of its Athletic Facilities. Notably, in the Response, VA does not argue that the purpose of the lease is to benefit veterans and their families. Despite the clear language of Section 2 (b)(2), VA shifts attention to certain legislative history that it suggests shows the intent of Congress was that the BWS Lease would comply with language that is now in Section 2 (b)(2). OIG legal counsel determined that based on applicable law, the in-kind consideration under the BWS lease was unauthorized. VA disagrees with this finding and presents legislative support for its position. VA makes the following allegations regarding OIG's determination that the Brentwood School Lease does not comply with the WLA Act:

- VA states that ambiguous statutory language resulted in erroneous findings by the OIG for the BWS Lease. Although VA does not discuss its interpretation in its Response, VA's Office of General Counsel (OGC) shared the Department's interpretation of Section 2(b) (2) during the audit. Based on general rules of grammar⁸⁷, other tools of statutory interpretation, and the *Valentini v. Shinseki* litigation⁸⁸, OIG legal counsel will demonstrate there is no ambiguity in the provisions of 2 (b)(2);
- VA disagrees with the OIG's determination that the in-kind (non-monetary) consideration provided under the BWS Lease was not authorized alleging that the OIG ignored relevant legislative history. OIG legal counsel will demonstrate that, based on applicable statutes covering money consideration under federal leases and rules of

⁸⁵ Since the WLA Leasing Act only applies to the authority of the Secretary of Veterans Affairs, OIG legal counsel agrees it does not apply to a lease lawfully entered by the Secretary of Interior. This revocable license serves as a temporary addendum to the BLM lease since it prevents the United States from breaching its legally binding contract with the licensee who had rights under its lease with BLM to the "Replacement Drill Site" that was not available when it should have been.

⁸⁶ New Directions is the second lease that falls under Section 2(b)(2). This lease meets the requirements of the Act as it provides transitional and permanent housing and support services of homeless veterans with chronic substance abuse problems.

⁸⁷ *Natural Resources Defense Council, Inc. v. U.S. Food and Drug Admin*, 884 F.Supp.2d 127 (2012).

⁸⁸ *Valentini v. Shinseki*, CV11-04846.

statutory interpretation, provisions regarding monetary consideration apply to the WLA campus; and

- VA suggests that because of statements made by the Committee in the Committee Report for H.R. 3484, a bill with the same language as that in Section 2 (b)(2) of the WLA Act, the OIG should find the Brentwood School Lease compliant with the WLA Act.

The OIG will address each of these allegations.

A. Interpretation of WLA Act §2 (b)(2)

Section 2. Authority to Enter into Certain Leases at the Department of Veterans Affairs West Los Angeles Campus, provides at subparagraph 2 (b) (2) –

(2) Any lease of real property for a term not to exceed 50 years to a third party to provide services that principally benefit Veterans and their families and are limited to one or more of the following purposes:

(A) The promotion of health and wellness, including nutrition and spiritual wellness.

(B) Education.

(C) Vocational training, skills building, or other training related to employment.

(D) Peer activities, socialization, or physical recreation.

(E) Assistance with legal issues and Federal benefits.

(F) Volunteerism.

(G) Family support services, including child care.

(H) Transportation.

(I) Services in support of one or more of the purposes specified in subparagraphs (A) through (H).

The language of Section 2 (b)(2) describes the type of leases that are authorized on the West LA 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 below, Section 2 (b)(2) concerns the Lease of Real Property at the WLA 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.

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 WLA Act, it acknowledges that land use at the West LA 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 WLA.⁸⁹ 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 WLA 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 non-monetary consideration is allowed on the WLA Campus.

Although the Response does not provide VA's interpretation, during the audit VA shared its interpretation of Section 2 (b)(2) and why it believed the Brentwood School lease complied with those provisions. VA's interpretation does not require the underlying lease to provide services that principally benefit veterans, it just requires the Lessee provide services that principally benefit veterans and their families. VA OGC stated "VA can grant leases at West LA for terms of up to 50 years – where the third party provides services that principally benefit Veterans and their families." Therefore, the actual use of the land is secondary to the services received.

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 WLA complied with the WLA Act, other Federal laws relating to leases and land use, and the DMP.⁹⁰ 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

⁸⁹ The Plaintiffs compared the use at the West LA campus with the original purpose of the 1888 Deed.

⁹⁰ Section 2 (h), 2 (j)(3).

legislative history, the Congressional visits to the campus, and the long history of the Brentwood School on campus. This would be contrary to our 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 WLA 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 view that actual use of the land is secondary to the services received could result in a scenario where a third party has a lease with VA that does not primarily benefit veterans. Notwithstanding the use (purpose) underlying the lease, in VA’s view, the lease could be deemed to principally benefit veterans and their families if the lessee provided money and services that primarily benefited veterans and their families in the categories listed under 2 (b)(2), subparagraphs (A) – (I). For example, a bookstore leases space at the campus and offers free vocational training to veterans on the weekends. While the principal purpose of the weekend class may be to benefit veterans, the principal purpose of the lease is to sell books to the public. The lease, therefore, does not principally benefit veterans and their families and is inconsistent with the language of the WLA Act.

B. In Kind Consideration

The OIG determined that in-kind consideration under the Brentwood School Lease was prohibited under 40 U.S.C. § 1302 unless it fell under the limited exception in 38 U.S.C. § 8122. Section 1302 states “[e]xcept as otherwise specifically provided by law, the leasing of buildings and property of the Federal Government shall be for *money consideration only*...” (Emphasis added.) The specific exception provided in 38 U.S.C. § 8122 states “notwithstanding section 1302 of title 40, or any other provision of law, a lease made...to any public or *nonprofit organization may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease.*” (Emphasis added.)

VA’s Interpretation of In-Kind Consideration

VA states that the OIG’s finding regarding the non-monetary 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*.”⁹¹: VA argues:

⁹¹ VA Response, pg. 11.

- “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 WLA 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 WLA 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.” *Miccosukee Tribe of Indians of Florida v. U.S. Army Corps of Engineers*, 619 F.3d 1289 (2010). It is “a cardinal principle of statutory construction that repeals by implication are not favored.” *United States v. United Continental Tuna Corp.*, 425 U.S. 164 (1976). In fact, the Court in *Rodriguez v. United States*, 480 U.S. 522, 524 (1987) went further stating that “[r]epeals by implication...will not be found unless an intent to repeal is clear and manifest.” (citations omitted). Although the WLA Act does not state that 40 U.S.C. § 1302 and 38 U.S.C. § 8122 do not apply, GLAHS 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 WLA 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 WLA Act (General): All statutory interpretation starts with the plain language of the statute. The WLA Act does not include provisions stating that the WLA Act overrides, repeals, or replaces all provisions of 40 U.S.C. § 1302 and 38 U.S.C. § 8122. Congress is “presumed to have knowledge of its previous legislation when making new laws.” *Leech v. 3M Company*, 278 F. Supp. 3d 933, 943 (2017). Since Congress was aware of 40 U.S.C. § 1302 and 38 U.S.C. § 8122, it could have included language stating that these statutes did not apply, in whole or in part, to the WLA campus. This was done previously in the Homeless Veterans Comprehensive Service Programs Act of 1992 which stated “[n]otwithstanding Section 8122(a)(1) of Title 38, United States Code...the Secretary of Veterans Affairs may lease to a representative of the homeless...any real property at the West Los Angeles Veterans Affairs Medical Center...” Section 1302 provides “[e]xcept as otherwise specifically provided by law, the leasing of buildings and property of the Federal Government shall be for money consideration only...” Thus, the plain language of 40 U.S.C. § 1302 makes it clear that non-monetary consideration cannot be accepted under Federal Government leases unless there is a law that permits it. While 38 U.S.C. § 8122 specifically allows an exception, the WLA Act does not add any further exception.

•Plain Language WLA Act (All Federal Laws): OIG legal counsel agrees with VA that the WLA Act is a new authority for leasing at the West LA 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 WLA Act to be the only law applicable to leases and other land use at the WLA campus as stated by GLAHS, 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 WLA, so they were considered by OIG legal counsel.

•The WLA 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 WLA campus. Section 2 (d) changes the requirements of Sections 1302 and 8122 relating to where revenue received under leases should go. Therefore, VA reaches the conclusion that ‘no’ aspects of 40 U.S.C. § 1302 and 38 U.S.C. § 8122 apply. 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.’” *Miccosukee Tribe*,

at 1299 (quoting *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1266 (11th Cir.2006)). See also, *Angelica Textile Services, Inc. v. U.S.*, 95 Fed. Cl. 208, (2010). Also, although provisions in a later enacted statute, such as the WLA 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.” *Miccosukee Tribe*, 619 F.3d 1289 (2010) (citing *Nguyen v. United States*, 556 F.3d 1244, 1252–53 (11th Cir.2009)). (Emphasis added).

In relation to what happens to revenues received under leases on the WLA campus, Section 2 (d) of the WLA 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 WLA 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 WLA Act.

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

C. Committee Report for H.R. 3484

In a May 2016 Committee Report on H.R. 3484, the Los Angeles Homeless Veterans Leasing Act of 2016, which contained language identical to that in the West LA Act of 2016, the Committee stated that “the envisioned future lease arrangement between the VA and Brentwood School meets the criteria laid out in this legislation.” The Committee stated further in the Report on H.R. 3484 that –

[t]he Brentwood School is uniquely positioned to offer Veterans and their families on the West LA campus *substantial opportunities* for physical recreation, health and wellness, education, and vocational training as well as direct community service and increased 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*.

Emphasis added.

Relying on the above comment, VA states that the OIG’s finding that the Brentwood School Lease does not comply with the WLA Act “conflicts with this clear indication of the Act’s legislative intent.”⁹² While the OIG considered the Committee’s comments, the statement alone is not sufficient to conclude that Brentwood School’s lease principally benefitted veterans and

⁹² VA Response, pg. 11.

their families as required by the clear language of the WLA Act. The WLA Act required OIG to evaluate the land use instruments.

The OIG notes that VA's lease with Brentwood School was executed six months after the Committee report and there was no way for the OIG to determine whether the final lease was consistent with what was 'envisioned' in May 2016. More importantly, while the Committee states that the Brentwood School is in a unique position to provide "substantial opportunities" for recreation, health, education, and vocational training, GLAHS did not provide records that would allow a determination of whether BWS has actually provided substantial benefits. The information provided concerning activities for Veterans was anecdotal. A document entitled "VA/BWS Partnership" provided examples of BWS activities for veterans or that veterans could attend for the period of November 2016 to October 2017. These activities included a clothing drive, jazz performance, and a Heroes garden program with middle school students. Agreements are veteran-focused if they result in additional healthcare, benefits, services, or resources being provided directly to veterans and/or their families on the WLA campus. Monetary proceeds paid to VA alone will not constitute an acceptable agreement, nor will agreements that only benefit the public at large. The OIG could not conclude from these examples that the events provided substantial benefits without information about attendance, number of veterans served, how these benefits were valued, frequency of events, etc.

Brentwood School also provided information to the OIG about scholarships provided to children of veterans to attend a summer camp at the School, but VA did not collect or retain the records necessary for the OIG to verify that dependents of veterans received those scholarships. The OIG received 67 names from BWS of veterans who were approved to use the BWS Athletic complex, but neither VA nor the Brentwood School provided documentation of specific services rendered to the 67 veterans, the frequency of such services, or how these services were valued. When comparing 67 veterans who have access to the BWS athletic complex with about 1,100 Brentwood School Students⁹³ for whom the athletic complex is primarily available, the OIG could not conclude that was a substantial benefit.⁹⁴

The OIG stands by its finding that the Brentwood School Lease does not comply with the WLA Act: the lease does not comply with Section 2 (b)(2); non-monetary consideration is not authorized; and the limited legislative history referenced by VA does not supersede the plain language of the Act and other laws.

III. Land Use Agreements not addressed in VA's Response

⁹³ Lower School, Middle School, and Upper School totals.

⁹⁴ Brentwood School provided sign-in sheets showing over 1,300 handwritten names including veterans and staff. However, it is very difficult to determine the number of different veterans the signatures represent. Many of the handwritten signatures are not legible.

The OIG found the 1887 RL non-compliant with the WLA Act and found that the use of the Barrington Parking Lots was not consistent with the DMP. VA did not mention either of these land use instruments in its Response.

OIG Contact and Staff Acknowledgments

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