



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

February 12, 2019

Gary S. Qualls
K&L Gates, LLP
430 Davis Drive, Suite 400
Morrisville NC 27560

No Review

Record #: 2865
Facility Name: Rex Healthcare at Panther Creek
FID #: 080825
Business Name: Rex Hospital, Inc.
Business #: 1554
Project Description: Develop laboratory services at a physician office building in Cary
County: Wake

Dear Mr. Qualls:

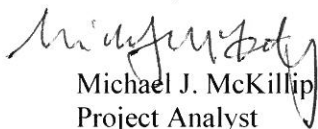
The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in that correspondence is not governed by, and therefore, does not currently require a certificate of need. If the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

You may need to contact the Agency's Construction and Acute and Home Care Licensure and Certification Sections to determine if they have any requirements for development of the proposed project.

This determination is binding only for the facts represented in your correspondence. If changes are made in the project or in the facts provided in the correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office.

Please do not hesitate to contact this office if you have any questions.

Sincerely,


Michael J. McKillip
Project Analyst


Martha J. Frisone, Chief
Healthcare Planning and Certificate of Need Section

cc: Construction Section, DHSR
Acute and Home Care Licensure and Certification Section, DHSR
Melinda Boyette, Administrative Assistant, Healthcare Planning, DHSR

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
MAILING ADDRESS: 809 Ruggles Drive, 2704 Mail Service Center, Raleigh, NC 27699-2704
www.ncdhhs.gov/dhsr • TEL: 919-855-3873

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

February 1, 2019



Gary S. Qualls
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Via Hand Delivery

Martha J. Frisone, Chief
Healthcare Planning and Certificate of Need Section
Division of Health Service Regulation
N.C. Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

RE: Rex Hospital, Inc.'s No Review Request Regarding Laboratory Services at Rex Panther Creek, Wake County

Dear Ms. Frisone:

On behalf of our client, Rex Hospital, Inc. d/b/a UNC REX (“Rex”), we are providing written notice of Rex’s intent to develop laboratory equipment and space at an exempt physician office building being developed at the corner of McCrimmon Parkway and N.C. Highway 55 in Cary, Wake County (“Lab Project” or “Lab Component”). Rex requests a determination that the proposed development of this Lab Project by itself -- and separate from the Panther Creek CON Project -- is not subject to review under North Carolina’s Certificate of Need (“CON”) laws because the Lab Project does not constitute the development of a “new institutional health service” as defined by N.C. Gen. Stat. §131E-176(16)(a)-(v).

Background

The Lab Project was originally part of a larger proposed project to develop a diagnostic center and urgent care clinic with laboratory services pursuant to CON Project ID #J-8263-08 (“Panther Creek Project”). A CON was awarded to Rex to develop the Panther Creek Project by virtue of a settlement agreement between Rex and the Agency, dated July 20, 2010. See Exhibit 1, CON for Panther Creek Project.

As discussed in the Material Compliance Request submitted to the Agency concurrently with this No Review Request by Rex, Wake Radiology Services, LLC (“WRS”), and their Joint Venture entity WR Imaging, LLC (“WR Imaging”), the CON-regulated components of the Panther Creek Project are now proposed to be developed through the WR Imaging Joint Venture pursuant to an updated proposal.

However, Rex and WRS will not be developing the Lab Project as part of the planned joint venture. Instead, Rex will develop the Lab Project independently from Rex's Joint Venture with WRS. The Lab Project will be developed at the same location as originally proposed, although the layout and floorplan of the Lab Project have changed from the initial proposal. See Exhibit 2 (Original Floor Plan) and Exhibit 3 (Revised Floor Plan). As discussed below, now that the Lab Project is developed separately from the Panther Creek Project (which is subject to CON), no part of the Lab Project is subject to CON review.

Analysis

None of the services offered in the Lab Project are "new institutional health services" as that term is defined in N.C. Gen. Stat. § 131E-176(16). The term "new institutional health service" is defined in numerous ways in N.C. Gen. Stat. § 131E-176(16). Among these definitions is N.C. Gen. Stat. § 131E-176(16)(b), which defines a "new institutional health service" to include:

. . . [T]he obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service . .

See N.C. Gen. Stat. § 131E-176(16)(b).

The total capital expense allocated to develop this project is well below the \$2,000,000 capital cost threshold contained at N.C. Gen. Stat. § 131E-176(16)(b) for the development or expansion of new health services not otherwise subject to CON review.

Likewise, the development of the Lab Project will not result in the development of a diagnostic center because the total cost of equipment to be utilized by the facility costing \$10,000 or more, in addition to all costs necessary to make the Project operational, does not exceed the \$500,000 threshold at N.C. Gen. Stat. §131E-176(7a). In fact, as the following table illustrates, the Lab Project's total capital costs do not exceed \$500,000, even if all equipment costs are counted, regardless of the costs for each equipment item. Therefore, the development of the Lab Project is not the development of a "health service facility" as defined at N.C. Gen. Stat. §131E-176(9b). The costs for the Project are set forth in the table below:

Lab Project Capital Costs	
Total Construction and Design Costs	\$166,356.12
Total Equipment, Furniture, & Fixture Costs	\$301,622.56
Total Capital Costs	\$467,978.68

Martha J. Frisone, Chief

February 1, 2019

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Also as evidenced by the table above, no single piece of equipment will implicate the \$750,000 threshold contained at N.C. Gen. Stat. §131E-176(14o), and thus no major medical equipment will be acquired in the development of this project. Moreover, none of the equipment in the Lab Project is *per se* reviewable equipment pursuant to N.C. Gen. Stat. §131E-176(16)(f1).

Because no beds are involved, development of the Lab Project does not constitute a “change in bed capacity” under N.C. Gen. Stat. § 131E-176(16)(c). Because no operating rooms are involved, development of the Lab Project does not implicate N.C. Gen. Stat. §131E-176(16)(u). Nor does the Lab Project constitute a “new institutional health service” under any other CON trigger in N.C. Gen. Stat. § 131E-176(16).

Accordingly, development of the Lab Project does not require Rex to obtain a CON pursuant to any provision of the CON statute.

Conclusion

The updated development plan will separate the Lab Project from the CON-approved Panther Creek Project, and will render the Lab Project non-reviewable. We ask the Agency to verify that the Lab Project described above is not subject to review under the CON law, and that Rex does not need a CON to develop this project.

Thank you for your assistance in regard to this matter. If you have any questions or need further information, please feel free to contact me at the number above.

Sincerely,



Gary S. Qualls

Martha J. Frisone, Chief
February 1, 2019
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Exhibits

1. CON for Original Panther Creek Project
2. Original Proposed Floorplan
3. Revised Floorplan

STATE OF NORTH CAROLINA

*Department of Health and Human Services
Division of Health Service Regulation*

CERTIFICATE OF NEED

for

Project Identification Number #J-8263-08

FID #080825

**ISSUED TO: Rex Hospital, Inc. d/b/a Rex Healthcare of Panther Creek
4420 Lake Boone Trail Road
Raleigh NC 27607**

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Rex Hospital, Inc. shall develop Rex Healthcare of Panther Creek, a hospital-based outpatient care center including urgent care and diagnostic services in the Panther Creek area of Cary/ Wake County

CONDITIONS: See Reverse Side

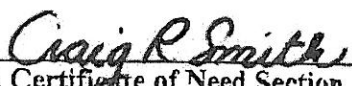
**PHYSICAL LOCATION: Rex Healthcare of Panther Creek
McCrimmon Parkway
Cary, NC 27519**

MAXIMUM CAPITAL EXPENDITURE: \$7,294,590

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: January 1st 2011

This certificate is effective as of the 27th day of July, 2010

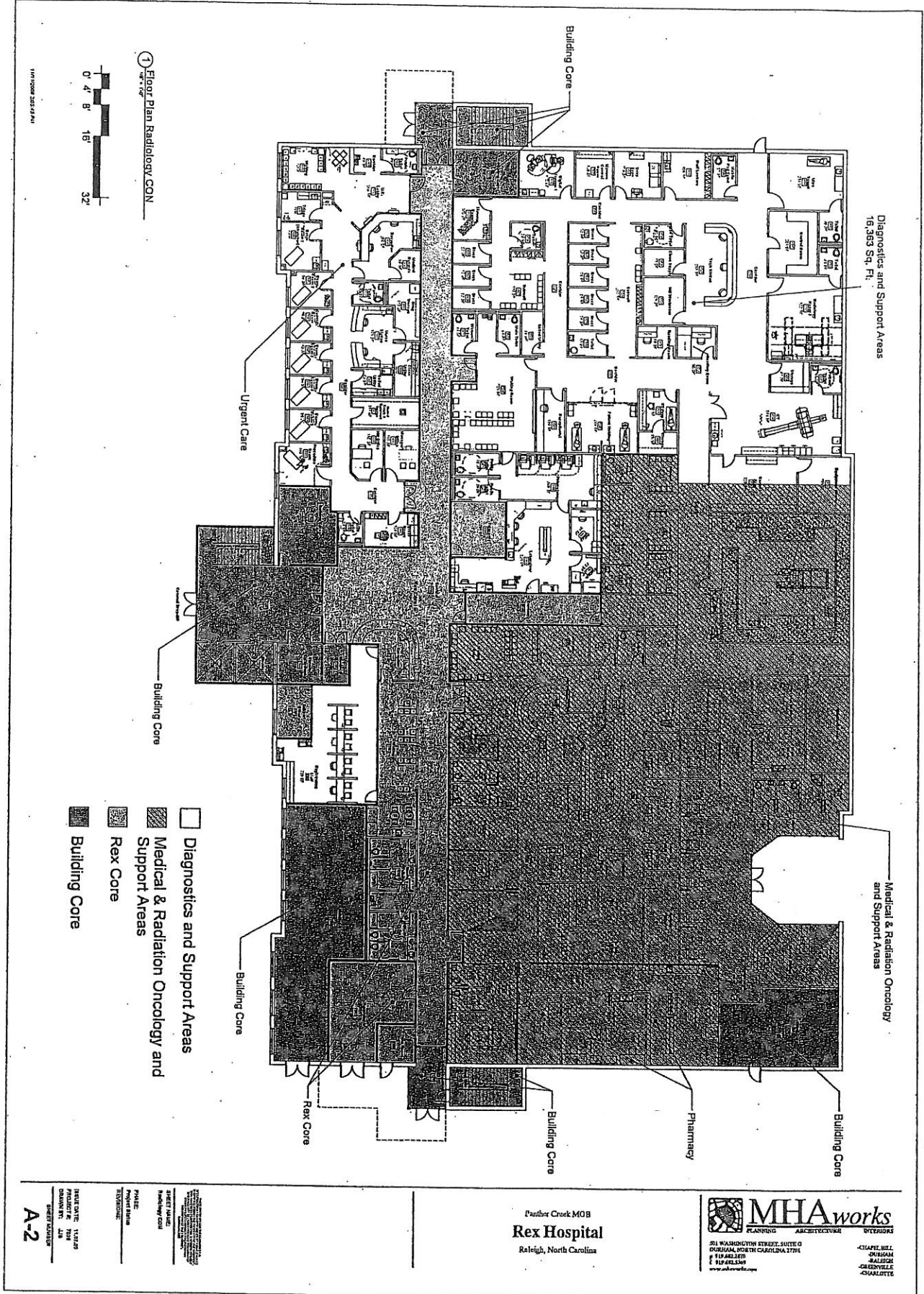

Chief, Certificate of Need Section
Division of Health Service Regulation

CONDITIONS:

1. Rex Hospital, Inc. shall materially comply with all representations made in the certificate of need application, identified as Project I.D. No. J-8263-08, and in the supplemental information provided to the Agency on April 16, 2010 and May 4, 2010. In those instances in which any of these representations conflict, Rex Hospital, Inc. shall materially comply with the last-made representations.
2. Rex Hospital, Inc. shall, as part of this project, develop and operate no more than one hospital based outpatient care center to be located at the site on the southwest corner of McCrimmon Parkway and Highway 55 in Cary, Wake County, as described in the application.
3. Rex Hospital, Inc. shall not acquire, as part of this project or within one year after completion of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application or that would otherwise require a certificate of need.
4. Rex Hospital, Inc. shall relocate and replace one existing CT scanner from Rex Healthcare of Cary to the Rex Healthcare of Panther Creek, removing from service one existing 4-slice CT scanner.
5. Rex Hospital, Inc. shall not relocate, as part of this project, from its other sites, any existing equipment, which costs \$10,000 or more, within one year after completion of this project.

TIMETABLE:

Contract Award	March 1, 2013
50% Completion of Construction	November 1, 2013
Ordering Equipment	January 1, 2014
Completion of Construction	May 1, 2014
Offering of Services	July 1, 2014



Diagnostics and Support Areas
16,363 Sq. Ft.

Medical & Radiation Oncology
and Support Areas

Building Core

Pharmacy

Building Core

Rex Core

Building Core

Building Core

Urgent Care

Building Core

- Diagnostics and Support Areas
- Medical & Radiation Oncology and Support Areas
- Rex Core
- Building Core



1 Floor Plan Radiology CON

HYPOBOND 2002/04/01

MHAworks
PLANNING ARCHITECTURE INTERIOR DESIGN

201 WASHINGTON STREET, SUITE 0
DURHAM, NORTH CAROLINA, 27701
919.286.1111
www.mhaworks.com

CLARENCE
ALEXANDER
MARGARET
SANDERS
CHARLOTTE

Panther Creek MOB
Rex Hospital
Raleigh, North Carolina

SHEET VALUE:
Issued by: CON
Project Name:
Project No.:

DATE DATE: 11/14/09
DRAWN BY: JJA
CHECKED BY: JJA
SHEET NUMBER:
A-2

ASC was proposed in
 Project ID# J-11554-18
 That project was denied
 on 1/28/19 FW

2018 06 22 - BOMA METHOD A REVIEW

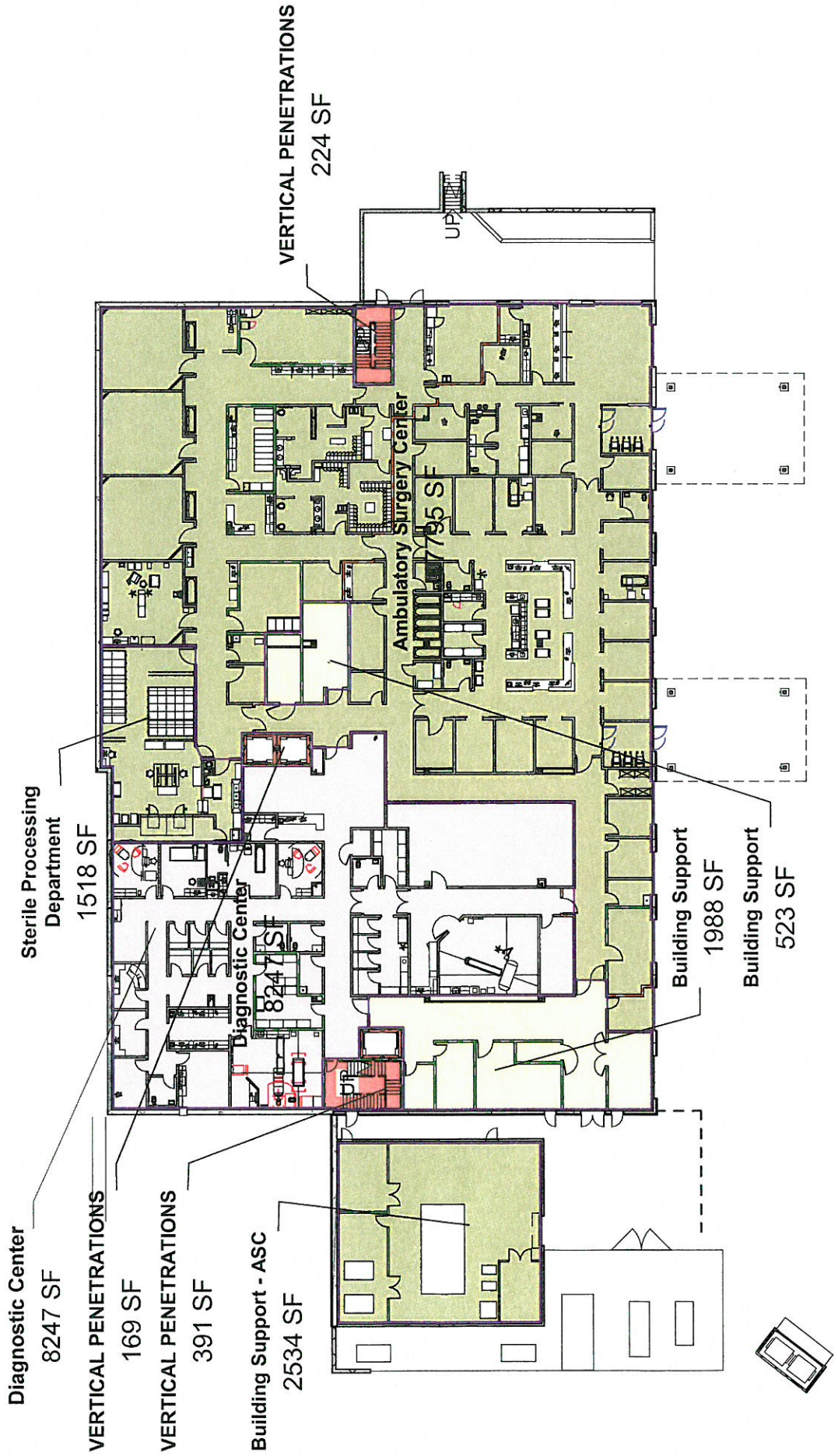
LEVEL 01

OVERALL MOB: 30,855 SF

MEP OUTBUILDING: 2,534 SF

LEVEL 01, SUB-TOTAL: 33,389 SF

□ : Diagnostic Center



2018 06 22 - BOMA METHOD A REVIEW

LEVEL 02

OVERALL MOB: 31,218 SF

□ : Laboratory

■ : Urgent Care

