

RESPONSE REQUIRED

May 24, 2012

Don Poole, Principal
Dixon Hughes, PLLC
2501 Blue Ridge Road, Suite 500
Raleigh, NC 27607

RE: Conditional Approval/ Project ID #F-8786-12/ Peak Resources Realty-Gaston, LLC (Lessor) and Century Care of Cherryville, Inc. d/b/a Peak Resources-Cherryville (Lessee)/ Relocate 54 nursing care beds and 57 adult care home beds to a new 111-bed replacement facility in Cherryville/ Gaston County
FID #120152

Dear Mr. Poole:

The Certificate of Need (CON) Section, Division of Health Service Regulation, Department of Health and Human Services has conditionally approved the above referenced certificate of need application. This decision was made after a review of the applications submitted for this cycle and after consideration of the Certificate of Need Law, G.S. 131E-175 et. seq., and regulations promulgated thereunder, the State Medical Facilities Plan, and other applicable information. Attached to this letter are the required findings made with respect to your application. The applicant shall not proceed with the construction, offering or development of this project until the certificate of need is issued. Further, the Department shall not issue the certificate of need until all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met pursuant to G.S. 131E-187(a). The conditions are as follows:

1. Peak Resources Realty-Gaston, LLC (Lessor) and Century Care of Cherryville, Inc. d/b/a Peak Resources-Cherryville (Lessee) shall materially comply with all representations made in its certificate of need application.
2. Peak Resources Realty-Gaston, LLC (Lessor) and Century Care of Cherryville, Inc. d/b/a Peak Resources-Cherryville (Lessee) shall construct a replacement nursing facility with a total licensed bed complement of no more than 54 nursing care beds and 57 adult care home beds upon completion of the project.

3. Peak Resources Realty-Gaston, LLC (Lessor) and Century Care of Cherryville, Inc. d/b/a Peak Resources-Cherryville (Lessee) shall provide documentation that the 111 beds at the existing Peak Resources-Cherryville facility are delicensed following completion of the proposed replacement nursing facility.
4. Peak Resources Realty-Gaston, LLC (Lessor) and Century Care of Cherryville, Inc. d/b/a Peak Resources-Cherryville (Lessee) shall submit all patient charges and actual per diem reimbursement for each source of patient payment to the Certificate of Need at year end for each of the first two operating years following licensure of the beds in the new facility.
5. For the first two full federal fiscal years of operation following completion of the project, actual private pay charges shall not be increased more than 5% of the projected private pay charges provided in Section X of the application without first obtaining a determination from the Certificate of Need Section that the proposed increase is in material compliance with the representations made in the certificate of need application.
6. Peak Resources Realty-Gaston, LLC (Lessor) and Century Care of Cherryville, Inc. d/b/a Peak Resources-Cherryville (Lessee) shall receive Medicaid per diem rates allowed by the Division of Medical Assistance, under the NC State Plan Section .0102.
7. Peak Resources Realty-Gaston, LLC (Lessor) and Century Care of Cherryville, Inc. d/b/a Peak Resources-Cherryville (Lessee) shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section, in writing prior to issuance of the certificate of need.

Response to the above conditions should be submitted to the CON Section no later than 35 days from the date of the decision. Failure to respond within this time period may result in the CON Section making a determination not to issue a certificate of need for the project referenced above.

The conditional approval is valid only for a capital expenditure of \$9,582,330. If a cost overrun occurs that exceeds the approved capital expenditure amount, a new certificate of need may be required as determined by G.S. 131E-176(16)(e).

The applicant should be aware that according to the Certificate of Need Law any affected person shall have thirty (30) days after the date of decision to file a petition for a contested case on this approval. Further, if you are aggrieved by the conditions of the decision you may file a petition for a contested case hearing in accordance with G.S. 150B, Article 3, as amended. This petition must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714 within thirty (30) days of the date of this decision. [Note: Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to OAH Clerk's Office (919-431-3000).]

G.S. 150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Emery Milliken

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Department of Health and Human Services,
Office of Legal Affairs,
Adams Building – Room 154
2001 Mail Service Center
Raleigh, North Carolina, 27699-2001

It is requested that a copy of the petition also be served on the Certificate of Need Section.

The certificate of need will not be issued before the completion of this 30 day period ending June 25, 2012. If a contested case request is received within the thirty (30) day period, the certificate will not be issued until the appeal is resolved (10A NCAC 14C .0208).

The timetable for completion of the project is the timetable outlined in the certificate of need application, unless an adjustment has been made by the CON Section because the review period was extended.

The timetable for this project is as follows:

Final Drawings Submitted	
to Construction, DHSR _____	August 15, 2012
25% Completion of Construction _____	February 7, 2013
75% Completion of Construction _____	June 5, 2013
Licensure of Facility _____	July 31, 2013

If the decision is appealed, the timetable set forth in this letter will be adjusted accordingly before the Certificate of Need is issued. Please contact us if any clarification of this decision is required.

Please refer to the Project I.D.# and Facility I.D.# (FID) in all correspondence.

Sincerely,

Michael J. McKillip, Project Analyst
Certificate of Need Section

Craig R. Smith, Chief
Certificate of Need Section

MJM:CRS:vlw

Attachment

cc: Medical Facilities Planning Section, DHSR
Acute and Home Care Licensure and Certification Section, DHSR
Construction Section, DHSR

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing notice of conditional approval on the following person by placing a copy in an official depository of the United States Postal Service in a postage-paid, first class envelope addressed as follows:

Don Poole, Principal
2501 Blue Ridge Road, Suite 500
Raleigh, NC 27607

Project I.D. #F-8786-12

FID #120152

This the 24th day of May, 2012

Michael J. McKillip, Project Analyst