



North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

January 14, 2013

Gary S. Qualls
K & L Gates, LLP
P.O. Box 14210
Research Triangle Park NC 27709-4210

Exempt from Review

Facility: Rex Hospital
Project Description: Roadway, parking and utility improvements at Main Campus
County: Wake
FID #: 953429

Dear Mr. Qualls:

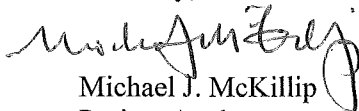
In response to your letter of December 19, 2012, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(4). Therefore, you may proceed to offer, develop or establish the above referenced project without a certificate of need.

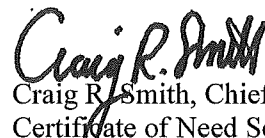
However, you need to contact the Construction Section of the Division of Health Service Regulation to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,


Michael J. McKillip
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section

cc: Construction Section, DHSR

www.ncdhhs.gov • <http://www.ncdhhs.gov/dhsr>

Tel (919) 855-3873 • Fax (919) 733-8139

Location: Edgerton Building, 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

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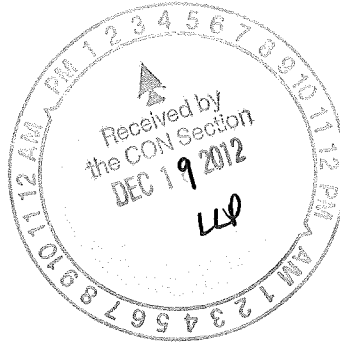


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K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210

430 Davis Drive, Suite 400
Morrisville, NC 27560

T 919.466.1190 www.klgates.com



December 19, 2012

Gary S. Qualls
(919) 466-1182
(919) 516-2072
Gary.qualls@klgates.com

VIA HAND DELIVERY

Craig R. Smith, Chief
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. – Roadway, Parking, Utility Improvements at Main Campus; No Review / Alternative Exemption Letter

Dear Craig:

We are writing on behalf of our client, Rex Hospital, Inc. (“Rex”). Rex is seeking to renovate its parking and roadways on its main campus, as well as upgrade utilities (water, storm, sewer, gas, power, telecommunications, fire hydrants, and fire lines) that are located underneath the parking and roadways to be renovated. The work is being done regardless of any Certificate of Need (“CON”) projects, pending or future. The purpose of this letter is to request that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”) confirm that this parking, roadway and utility renovation is either not reviewable as a new institutional health service under the North Carolina Certificate of Need (“CON”) law or (in the alternative) exempt from review under the CON law’s exemption provisions in N.C. Gen. Stat. § 131E-184.

The renovation will consist of the following:

1. Reconfiguring campus roadways to provide ease of use for visitors entering the campus by improving way findings and accessing destinations with fewer distractions. The work involves adding connectors to the existing loop road that goes around the campus.
2. Providing easily accessible parking to reduce congestion and cross-traffic and improve traffic flow.

3. Adding safety for pedestrians by providing lighted walkways and crosswalks, improved grades and defined building access. The work includes raising the grades of the roads at the front entry to allow easier and safer access.
4. Replacing aging underground utilities (water, storm, sewer, gas, power, telecommunications, fire hydrants, and fire lines) that are located underneath the parking and roadways to be renovated.
5. Replacing low-output, inadequate lighting with LED lighting that will provide greater visibility and public safety.
6. Adding one new parking deck to give Rex a total of four parking decks on its campus. By adding the additional parking deck, Rex will be able to use one of its parking decks solely for employees and physicians.

Overall, this renovation will consolidate isolated changes and additions over the years into a unified system of roads, parking and accessibility. Moreover, because the parking and roadways renovation will involve tearing up the front and back parking lots and associated roadways, it is efficient to proceed with upgrading the aging utilities that lie underneath the parking and roadways renovation.

We believe that the foregoing is not a CON reviewable event for the following reasons. The renovation does not trigger any new institutional health service definition. For instance, it does not entail the construction, development or other establishment of a new health service facility, and does not involve a health service or relate to the provision of a health service. See N.C. Gen. Stat. §§ 131E-176(16)(a), (b). Nor does it constitute the purchase or transfer of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f1). Likewise, the renovation does not include the offering of any *per se* reviewable services. See N.C. Gen. Stat. § 131E-176(16)(f). Accordingly, the renovation does not create a new institutional health service subject to the CON law.

However, even assuming, *arguendo*, that such renovation were the type to constitute a new institutional health service subject to the CON law, it would nevertheless be exempt from CON review under N.C. Gen. Stat. §§ 131E-184(a)(4) and (a)(6). The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including:

- (4) To provide parking, heating or cooling systems, elevators, or other basic plant or mechanical improvements, unless these activities are integral portions of a project that involves the construction of a new health service facility or portion thereof and that is subject to certificate of need review.

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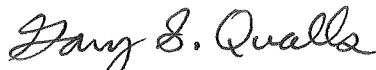
(6) To provide any nonhealth service facility or service.

See N.C. Gen. Stat. §§ 131E-184(a)(4) and (a)(6). This renovation falls within the scope of Subpart (4) because it is to provide parking and other improvements related to parking as well as basic plant or mechanical improvements, which are not related to a project that involves the construction of a new health service facility or portion thereof that is subject to CON review. Likewise, this renovation also qualifies for an exemption under Subpart (6) because the renovation is to provide a nonhealth service (the improvement of parking and roadway areas as well as the underground utilities).

Based upon the foregoing information, we hereby respectfully request that the Agency confirm that the parking, roadway, and utility renovation described herein is not subject to CON review for the following alternative reasons: (1) the renovation does not constitute a new institutional health service; (2) the renovation is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(4); or (3) the renovation is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(6).

Please let us know if you need additional information to consider this request. Thank you for your time and consideration.

Sincerely,



Gary S. Qualls