



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

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

August 2, 2019

Kenneth Burgess
kburgess@poynerspruill.com

No Review

Record #: 3007
Facility Name: Mission Hospital
FID #: 943349
Business Name: MH Mission Hospital, LLLP
Business #: 3045
Project Description: Renovation and expansion of the SECU cancer center building
County: Buncombe

Dear Mr. Burgess:

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 the 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,

Signature of Ena Lightbourne
Ena Lightbourne
Project Analyst

Signature of Martha J. Frisone
Martha J. Frisone
Chief

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





July 26, 2019

Kenneth L. Burgess  
Partner  
D: 919.783.2917  
F: 252.972.7045  
kburgess@poynerspruill.com

VIA EMAIL

Martha Frisone, Chief  
Ena Lightbourne, Project Analyst  
N.C. Department of Health and Human Services  
Division of Health Service Regulation  
Healthcare Planning and Certificate of Need Section  
2704 Mail Service Center  
Raleigh, NC 27699-2704



**RE: *Notice of Exemption for MH Mission Hospital, LLLP Cancer Center Renovation Project, Facility I.D. No. 943349***

Dear Martha and Ena:

I am writing on behalf of our client MH Mission Hospital, LLLP ("Mission") to provide the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section ("the CON Section" or "the Agency") with prior written notice of the renovation and expansion of the SECU Cancer Center building ("the Cancer Center") which is owned and operated by Mission and is located on Mission's main campus ("the Project"), pursuant to N.C. Gen. Stat. § 131E-184(g). The Project is described in more detail below.

**Background: The Cancer Center Renovation Project**

The Cancer Center is an existing 4-story building located on the Mission main campus which is operated as part of the hospital and licensed under the hospital's license. The Cancer Center currently houses procedure rooms, physician offices, physician work spaces, exam rooms and patient areas, all dedicated to the diagnosis and treatment of various types of cancer. The purpose of the Project is to create a true multidisciplinary care center for Mission's cancer patients by renovating the second floor of the Cancer Center. The Project will bring together cancer care physicians (surgical and medical), Advanced Practitioners, Clinical Navigators, Registered Nurses and Medical Assistants in one care delivery location to provide patient and family-centered care in a supportive, therapeutic and healing environment.

When the Project is completed, it will have the capacity to house up to four multidisciplinary clinics, serving up to 17 oncology physicians and surgeons, including surgical oncologists, and physicians/surgeons specializing in cancers affecting the colorectal, hepatobiliary, musculoskeletal, breast, urologic, neurologic, and endocrine systems, among others. In an effort to provide a single point of care for many of Mission's cancer patients, the clinicians working at the Cancer Center will perform procedures under conscious sedation or local sedation that can safely be performed in procedure rooms and which do not require licensed operating rooms. These will include sigmoidoscopies, biopsies, cystoscopies and similar procedures.

The Project will involve reconfiguring and redesigning existing clinical and shelled-in space to house a combination of exam rooms, procedure rooms (up to 3 adult and 2 pediatric procedure rooms), patient and family privacy rooms, multidisciplinary rounds workrooms, physician offices, patient navigator offices, Medical Assistant and Registered Nurse workspaces, patient/family waiting areas and other required support spaces including clean and soiled utility rooms, staff and patient restrooms, storage, and a staff

Martha Frisone - CON Section  
 Ena Lightbourne  
 July 26, 2019  
 Page 2

breakroom. The Project eventually may include physical, speech and occupational therapy services as well. See Attachment 1 (working diagram of planned renovations to and expansion of second floor of existing Cancer Center).

The total costs for the Project are estimated to be \$3,880,000.00. See Attachment 2 (Projected Capital Cost Form for the Project). The total project costs include construction and renovation costs, sales tax, architect and engineering fees, non-medical equipment costs, furniture and interest during construction.

#### **Applicable Legal Authorities**

The CON Law precludes any person from offering or developing a "new institutional health service" without first obtaining a CON. N.C. Gen. Stat. § 131E-178(a). The definition of "new institutional health service" includes, *inter alia*, the following:

- Incurring an obligation for a capital expenditure that exceeds \$2,000,000.00 to develop or expand a health service or health service facility, or which "relates" to the provision of a health service.

N.C. Gen. Stat. §§ 131E-176(16)(b). However, the CON Law includes a specific exemption for health-related capital expenditures in excess of \$2,000,000.00 where the sole purpose of the capital expenditure is "to renovate, replace on the same site, or expand the entirety or a portion of an existing health service facility located on the main campus." N.C. Gen. Stat. § 131E-184(g). That exemption, where applicable, eliminates the need to obtain a CON before incurring the capital expenditure. The Project which is the subject of this Exemption Notice involves a capital expenditure in excess of \$2,000,000.00. However, the project is exempt from CON Section review based upon the exemption at N.C. Gen. Stat. § 131E-184(g). That exemption is described below.

#### **The Statutory Exemption For Renovation, Replacement Or Expansion Of An Existing Health Facility On The Same Campus**

N.C. Gen. Stat. § 131E-184(g) provides an express exemption from CON Section review for capital expenditures that exceed \$2,000,000.00 where:

1. The sole purpose of the capital expenditure is to renovate, replace on the same site, or expand the entirety or a portion of an existing health service facility located on the main campus;
2. So long as the capital expenditure does not result in:
  - a. A change in bed capacity as defined in G.S. 131E-176(5); or
  - b. The addition of a health service facility or any other new institutional health service other than that allowed by G.S. 131E-176(16)b; and
  - c. The CON Section receives prior written notice of the planned expenditure along with documentation demonstrating that the provider meets the exemption.

#### **The Project Involves The Renovation Of Existing Space In The Cancer Center Located On Mission's Main Campus**

The Project which is the subject of this Exemption Notice is projected to cost in excess of \$2,000,000.00. Please see Attachment 2 which is a Certified Projected Capital Cost Form reflecting that the total project cost is anticipated to be \$3,880,000.00. Of that amount, \$2,744,000.00 will be expended on construction materials and labor related to renovating existing space at the Cancer Center located on Mission's main

Martha Frisone - CON Section  
Ena Lightbourne  
July 26, 2019  
Page 3

campus. The remaining expenditure represents architectural and engineering fees, the purchase of certain non-medical equipment<sup>1</sup> and furniture, sales tax and interest during construction.

The Cancer Center Project qualifies for the statutory exemption at N.C. Gen. Stat. § 131E-184(g) because the sole purpose of the project and related expenditure is to renovate and replace a portion of an existing health service facility on the hospital's main campus. The project consists of taking existing clinical and unused "shelled in" space and renovating it to accommodate Mission's multidisciplinary Cancer Center, as described in detail above. The existing Cancer Center where the Project will occur is located on the hospital's main campus.

The term "campus" is defined at N.C. Gen. Stat. § 131E-176(2c) as "the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health service facility and related health care entities." For the purposes of the exemption at N.C. Gen. Stat. § 131E-184(g), "main campus" is defined as:

- a. The site of the main building from which a licensed health service facility provides clinical patient services and exercises financial and administrative control over the entire facility, including the buildings and grounds adjacent to that main building; and
- b. Other areas and structures that are not strictly contiguous to the main building but are located within 250 yards of the main building.

N.C. Gen. Stat. § 131E-176(14n).

Both the existing Cancer Center and the Mission Memorial Hospital building are part of a single licensed hospital located on grounds that are adjacent and not separated by more than a public right of way. The Mission Memorial Building is the site from which the hospital exercises clinical and administrative control over the entire hospital. See Attachment 3, reflecting the location of the Cancer Center (item 5 on the diagram) and the Memorial Mission Building (item 1 on the diagram). See also, Attachment 4, reflecting that the offices of Mission's clinical and administrative leadership are located at the Mission Memorial Building, and Attachment 5, a diagram of the Mission campus prepared by the Freeman White architectural firm showing the Mission Memorial building, item 8, and all campus buildings encompassed within a 250-yard distance of the main hospital building, which includes the Cancer Center, item 26 on the diagram. Finally, we have recently obtained a determination from the CON Section leadership that the Cancer Center qualifies as part of the Mission Hospital main campus. See Attachment 6 (email with CON Section Chief).

#### **The Cancer Center Project Does Not Involve A Change In Bed Capacity**

The Project does not involve a change in bed capacity as defined by N.C. Gen. Stat. § 131E-176(5). That section defines "change in bed capacity" in pertinent part as: (i) any relocation of health service facility beds from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility beds defined in N.C. Gen. Stat. § 131E-176(9c), or (iii) any increase in the number of health service facility beds. The Cancer Center Project involves only the reconfiguration, renovation and expansion of existing clinical and shelled-in space at the Cancer Center, and does not involve any relocation of health service facility beds from one licensed campus to another, any increase in the number of health service beds or any redistribution of health service facility beds among the categories identified at N.C. Gen. Stat. § 131E-176(9c).

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<sup>1</sup> None of the equipment to be acquired and installed as part of the Project constitutes major medical equipment as defined by the CON Statute. We address that issue later in this Exemption Notice.



Martha Frisone - CON Section  
Ena Lightbourne  
July 26, 2019  
Page 4

**The Cancer Center Project Is Not A New Institutional Health Service  
Under N.C. Gen. Stat. § 131E-176(16)u**

N.C. Gen. Stat. § 131E-176(16)u includes as a new institutional health service the construction, development, establishment, increase in the number, or relocation of an operating room or gastrointestinal endoscopy room in a licensed health service facility, other than the relocation of an operating room or gastrointestinal endoscopy room within the same building or on the same grounds or to grounds not separated by more than a public right of way adjacent to the grounds where the operating room or gastrointestinal endoscopy room is currently located. The Cancer Center Project does not involve the development, addition or relocation of operating rooms. No operating rooms are located within the existing Cancer Center and none will be added or relocated to the Cancer Center as part of the Project.

**The Equipment To Be Acquired And Installed As Part Of The Project Does Not Constitute Major  
Medical Equipment Under The CON Statute**

The CON Statute treats as a "new institutional health service" requiring a CON the acquisition of major medical equipment. N.C. Gen. Stat. § 131E-176(16)p. Major medical equipment is defined as "a single unit or single system of components with related functions which is used to provide medical and other health services and which costs more than seven hundred fifty thousand dollars ("750,000)." N.C. Gen. Stat. 131E-176(14o).

The Project includes the acquisition of certain office furnishings and minor equipment, none of which qualifies as "major medical equipment" within the meaning of N.C. Gen. Stat. § 131E-176 (14o). The total equipment budget for the Project is approximately \$355,000.00, all of which is for non-medical equipment. See Attachment 2 (Projected Capital Cost Form reflecting line items for Medical and Non-medical Equipment and Furniture). The CON Statute does not contain a definition of "equipment," other than the definition of "major medical equipment" contained at N.C. Gen. Stat. § 131E-176(14o). The equipment contained in the \$355,000.00 non-medical equipment line item includes items such as exam lights, instrument tables, blood pressure cuffs, glucose meter docking stations, thermometers and so forth. We do not believe such items qualify as "medical equipment" within the meaning of the CON Statute. Regardless of how these items are categorized, the equipment covered by that projected expenditure is spread over multiple procedure rooms, patient areas, exam rooms and staff areas. Neither the total equipment expenditure, nor any single item or single system of components proposed for the Project, comes anywhere close to the \$750,000.00 major medical equipment threshold in terms of cost.

Also, the Cancer Center Project does not include the acquisition of any of the major medical equipment designated at N.C. Gen. Stat. § 131E-176(16)f1 which would require Mission to obtain a CON before acquiring the equipment, regardless of its cost.

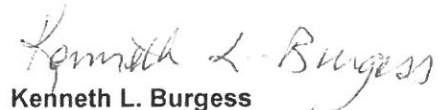
**Conclusion**

For the reasons recited herein, the Cancer Center Project qualifies under the exemption from CON Section review set forth at N.C. Gen. Stat. § 131E-184(g). Please allow this letter to serve as the advance written notice required by N.C. Gen. Stat. § 131E-184(g). We would appreciate the CON Section acknowledging at its earliest opportunity that Mission's Cancer Center Project, as described herein, is not subject to CON Section Review and that Mission may proceed with the project without first obtaining a CON.

Martha Frisone - CON Section  
Ena Lightbourne  
July 26, 2019  
Page 5

Please let me know if you have questions or need further information regarding this notice.

Sincerely yours,

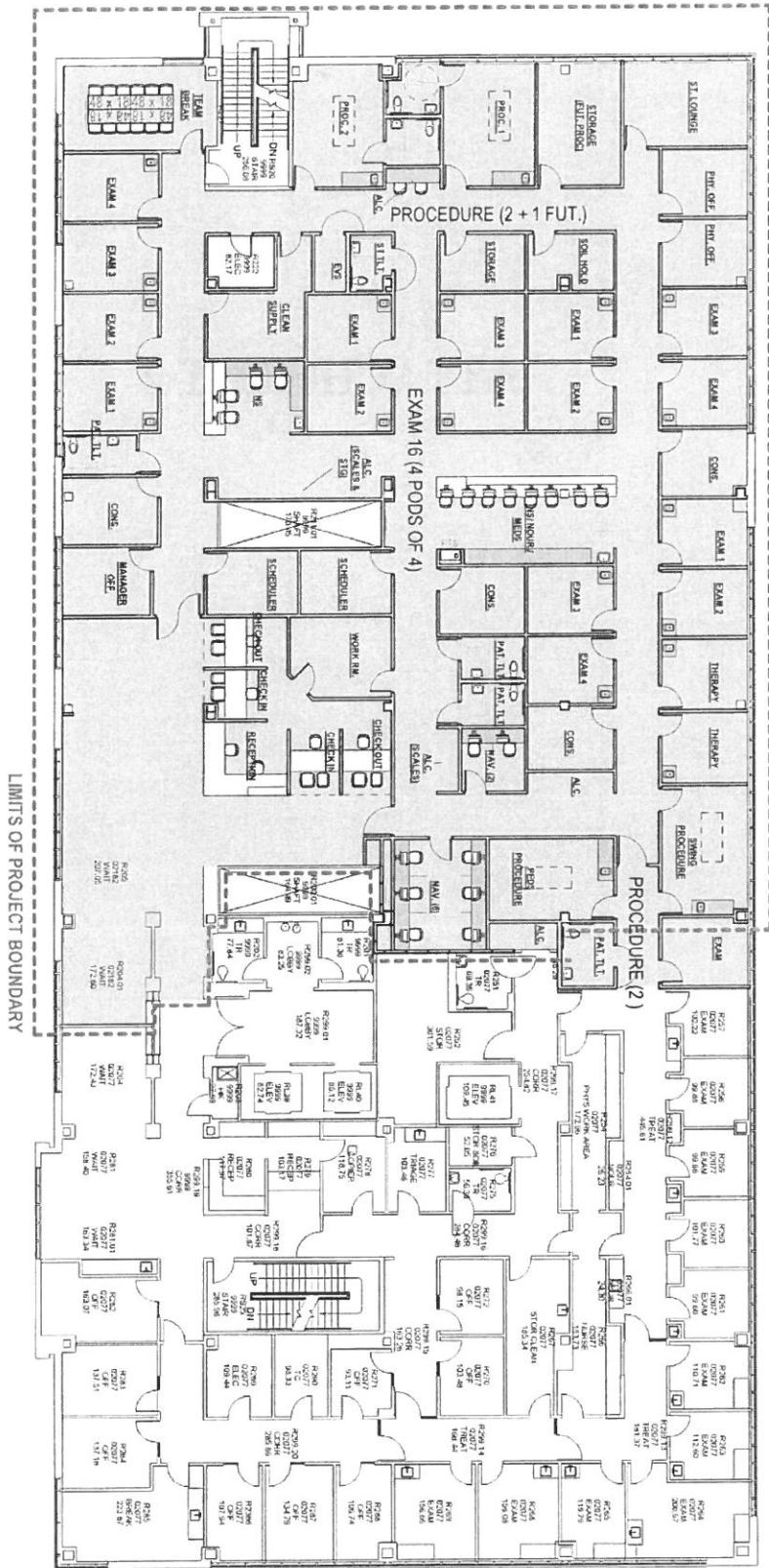
  
**Kenneth L. Burgess**  
*Partner*

cc: Angela Fletcher  
Jonathan Yeatman  
Greg Lowe  
Terence Van Arkel

Attachments

# ATTACHMENT 1





**2nd Floor - Phasing**



**3 of 6**  
SECOND  
FLOOR

# Mission Health Cancer Center

21 Hospital Dr, Asheville, NC 28801 - 19085.00 -  
PRICING DOCUMENT

**ATTACHMENT 2**

**Projected Capital Cost Form**

Building Purchase Price	
Purchase Price of Land	
Closing Costs	
Site Preparation	
Construction/Renovation Contract(s)	\$ 2,744,000
Landscaping	
Architect / Engineering Fees	\$ 176,000
Medical Equipment	
Non-Medical Equipment	\$ 355,000
Furniture	\$ 500,000
Consultant Fees (specify)	
Financing Costs	
Interest during Construction	\$ 105,000
Other (specify)	
<b>Total Capital Cost</b>	<b>\$ 3,880,000</b>

**CERTIFICATION BY A LICENSED ARCHITECT OR ENGINEER**

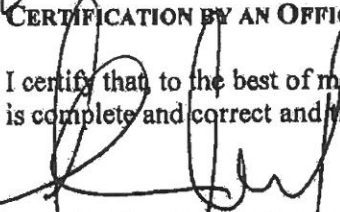
I certify that, to the best of my knowledge, the projected capital cost for the proposed project is complete and correct.

  
 \_\_\_\_\_  
 Signature of Licensed Architect or Engineer

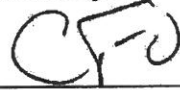
Date Signed: 7.18.2019

**CERTIFICATION BY AN OFFICER OR AGENT FOR THE PROPONENT**

I certify that, to the best of my knowledge, the projected total capital cost for the proposed project is complete and correct and that it is our intent to carry out the proposed project as described.

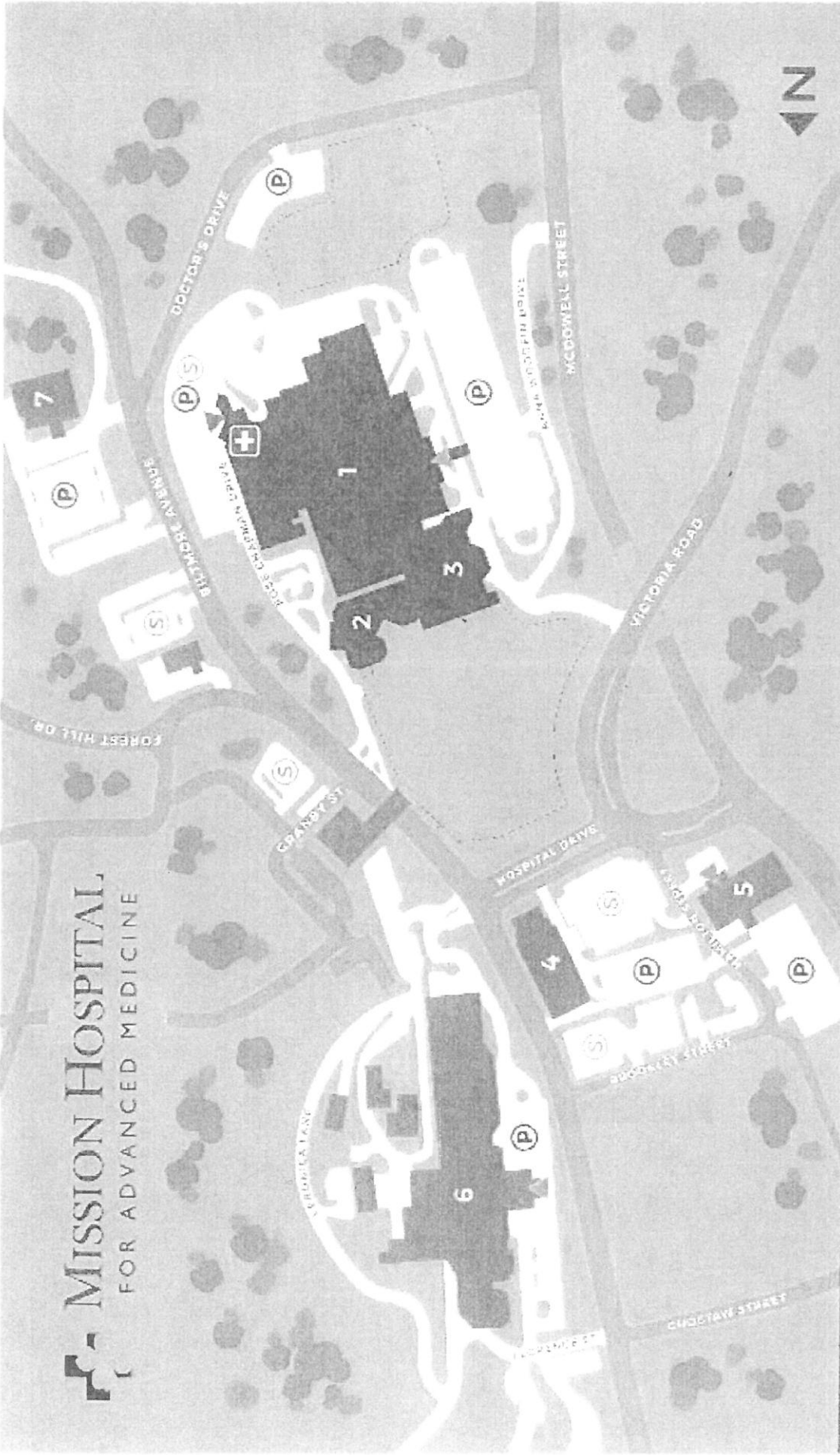
  
 \_\_\_\_\_  
 Signature of Officer/Agent

Date Signed: 7/22/19

  
 \_\_\_\_\_  
 Title of Officer/Agent

## ATTACHMENT 3

# MISSION HOSPITAL FOR ADVANCED MEDICINE

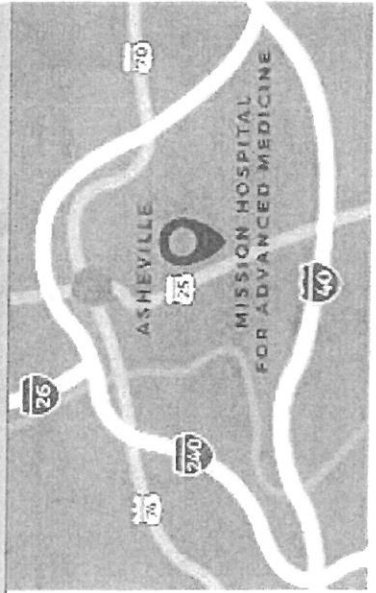


## LEGEND

- In Hospital
- Mission Health Facility
- Main Entrance
- Visitor Parking
- Staff Parking
- Emergency Department

## FACILITIES

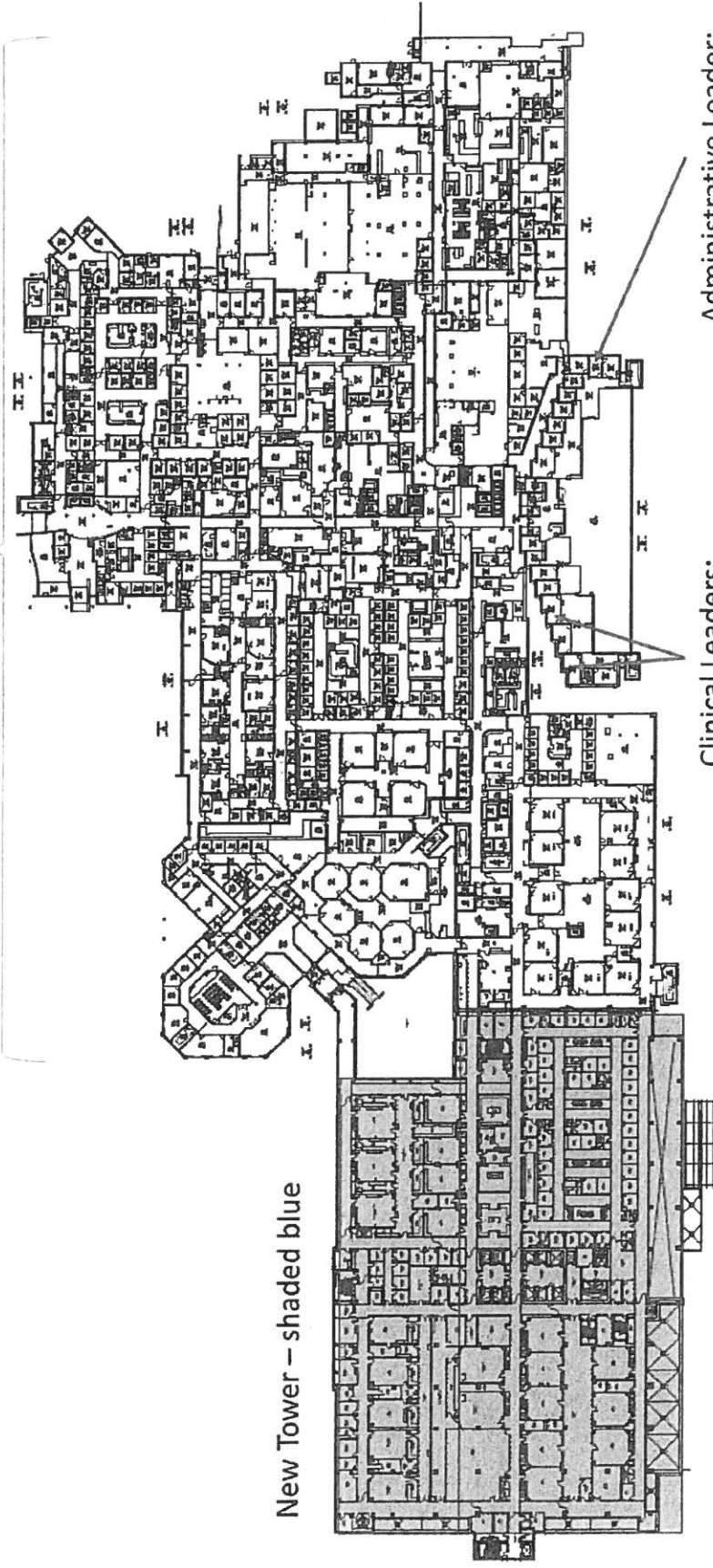
- 1 Memorial Campus
- 2 Owen Heart Center
- 3 Outpatient Services
- 4 Hospital Drive
- 5 SECU Cancer Center
- 6 St. Joseph Campus
- 7 Mission Imaging and Breast Center



ATTACHMENT 4



Existing Campus – unshaded



New Tower – shaded blue

Clinical Leaders:  
Ruth Zyry, COO  
Karen Olsen, CNO

Administrative Leader:  
President

ATTACHMENT 5

# MISSION HOSPITAL CAMPUS MAP & SURROUNDING PROPERTIES

03.23.2016

## LEGEND

-  MISSION PROPERTY OWNED
-  FACILITY FOOTPRINT
-  250 YARD FACILITY OFFSET

KEY	ADDRESS	PARCEL	ACRES	OWNER
1	888 McDowell St	9648815810	0.89	Little Pig, LLC
2	50 Doctors Dr - Lot B	9648530061	3.04	MMH
2	50 Doctors Dr - Lot A	9648537847	3.38	MMH
3	1 Doctors Dr	9648522849	0.69	CCP
4	275 McDowell St	9648932079	1.24	Lease to them by Mission Hospital
5	273 McDowell St	9648932433	0.85	C.C. Dickson
6	267 McDowell St	9648933631	0.39	MMH
7	257 McDowell St	9648932533	1.08	257 McDowell St Partnership
8	509 Biltmore Ave	9648438750	27.78	MMH
9	538 Biltmore Ave	9648536533	2.17	MMH
10	532 Biltmore Ave	9648538757	2.57	MMH
11	528 Biltmore Ave	9648534803	0.38	MMH
12	Forest Hill Dr	9648537800	0.93	MMH
13	Forest Hill Dr	9648535917	0.94	MMH
14	524 Biltmore Ave	9648534915	0.67	MMH
15	520 Biltmore Ave	9648530335	0.83	MMH
16	2 Forest Hill Dr	9648542422	0.30	MMH
17	500 Biltmore Ave	9648540337	0.18	Habitat for Humanity
17	504 Biltmore Ave	9648540364	0.17	Habitat for Humanity
17	506 Biltmore Ave	9648541300	0.17	Habitat for Humanity
17	508 Biltmore Ave	9648541225	0.79	Habitat for Humanity
18	476 Biltmore Ave	9648495254	1.60	MMH
19	495 Biltmore Ave	9648484576	1.46	MMH
20	86 Victoria Rd	9648433912	1.18	MMH
21	100 Victoria Rd	9648433538	1.11	Leased by Mission Hospital
22	93 Victoria Rd	9648337732	2.79	Buncombe County
23	91 Victoria Rd	9648339839	2.21	Ashville Property Investment LLC
24	75 Victoria Rd	9648441286	1.21	Aycosh
25	Hospital Dr	9648441421	0.16	MMH
26	29 Hospital Dr	9648497923	3.05	MMH
27	15 Hospital Dr	9648442864	2.45	MMH
28	3 Hospital Dr	Multiple P.L.N.s	0	MMH
29	34 Granby St	9648498300	0.52	GMR Asheville, LLC
30	428 Biltmore Ave	9648457138	11.99	MMH
31	435 Biltmore Ave	9648452090	1.04	MMH
32	6 Brooklet St	9648440991	0	Leased by MMH
32	8 Brooklet St	9648440953	0.58	8 Brooklet Street Condo Owners
33	20 McDowell St	9648356287	2.14	MMH
34	39 Choctaw St	9648397556	0.18	2012 Robertson GST Trust
34	23 Hamilton St	9648357487	0.10	Timothy & Wendy Voral
34	15 Hamilton St	9648357492	0.10	Ricardo Fernandez & Isabel Vora
34	23 Hamilton St	9648358325	0.30	Rosepat Properties, LLC
34	39 Hamilton St	9648358271	0.22	Rosepat Properties, LLC
34	41 Hamilton St	9648359204	0.11	Julia & Ray Living Trust
34	43 Hamilton St	9648359029	0.12	Laurel Mamez/Robert Wasilman
34	Humiron St	9648358249	0.10	Rosepat Properties, LLC
35	45 Hamilton St	9648359054	0.19	MMH
36	1 Doctors Pk	9648453221	0.63	AJA Holding Company
37	Doctors Pk	Various	Various	Various
38	373 Biltmore Ave	9648452666	0.21	Hospice of Henderson County
39	5 Rockhill Place	9648450501	1.02	Rockhill Place Partners
40	30 Choctaw St	9648358776	1.40	30 Choctaw Complex Condo Owners
41	5 Frederick St	9648357991	0.51	MMH
42	345 Biltmore Ave	9648461002	4.42	MMH
43	336 Biltmore Ave	9648464095	2.70	Buncombe County
44	324 Biltmore Ave	9648464336	0.78	DJR Enterprises
45	319 Biltmore Ave	9648460425	4.13	Duke Energy
46	Biltmore Ave	9648461623	1.36	Duke Energy



**ATTACHMENT 6**

**Burgess, Kenneth L.**

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**From:** Frisone, Martha <martha.frisone@dhhs.nc.gov>  
**Sent:** Tuesday, July 09, 2019 10:55 AM  
**To:** Burgess, Kenneth L.  
**Cc:** Faenza, Julie M; Pittman, Lisa; Hale, Gloria; Wilson, Fatimah  
**Subject:** RE: [External] MH Mission Hospital Question

After reviewing the map, the Cancer Center is located on the main campus.

**Martha J. Frisone**

Chief

Division of Health Service Regulation, Healthcare Planning and Certificate of Need  
NC Department of Health and Human Services

Office: 919-855-3879  
[martha.frisone@dhhs.nc.gov](mailto:martha.frisone@dhhs.nc.gov)

809 Ruggles, Edgerton  
2704 Mail Service Center  
Raleigh, NC 27699-2704

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**From:** Burgess, Kenneth L. <KBurgess@poynerspruill.com>  
**Sent:** Monday, July 08, 2019 3:44 PM  
**To:** Frisone, Martha <martha.frisone@dhhs.nc.gov>  
**Subject:** [External] MH Mission Hospital Question

**CAUTION:**

Martha, I'm working with Mission Hospital on a project that I think qualifies under the 131E-184(g) exemption for renovation on the same site of all or part of a health service facility and I'm hoping you can take a look at the attached main campus map and give me your reading of the following – the Cancer Center, which is where the renovation will occur, is building 5 on the diagram. The main hospital is building 1. The two are separated by a greenway and Victoria Road which you cross twice but it's the same road based on my recent trip to Mission. I'm obtaining precise distance measurements but it looks like it's probably more than 250 yards away from the main hospital building but I know that in the past, the Agency has viewed the St. Joe's building, which is building 6 on the map, as "main campus" and it's about equidistant from the main hospital building and also separated by one road (Biltmore Avenue). Those buildings are clearly all part of the big main Mission campus but I want to ensure they qualify technically in the eyes of the Agency. Please advise if you need more information. Thanks, Ken Burgess

\*\*\*\*\*

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