

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION
RALEIGH, NORTH CAROLINA**

IN RE: REQUEST FOR DECLARATORY)	
RULING BY THE HERITAGE)	
PROPERTIES OF UNION COUNTY, INC.)	DECLARATORY RULING
AND THE HERITAGE OF UNION)	
COUNTY, LLC)	
Project I.D. No. F-8071-08)	

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

The Heritage Properties of Union County, Inc. and The Heritage of Union County, LLC (collectively “Heritage”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. F-8071-08 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by Heritage in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Colleen M. Crowley of K&L Gates, LLP has requested this ruling on behalf of Heritage and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Heritage filed a certificate of need (“CON”) application (the “Application”) to develop a new 90-bed nursing home facility in Union County, which was conditionally approved on August 28, 2008.

The approved site was located at Sikes Mill Road and Tome Helms Road in Unionville, Union County (the “Original Site”).

On April 29, 2010, Heritage received a Declaratory Ruling permitting them to develop the nursing home facility on Potters Road in the Sandy Ridge Township (“Quintessa Site”).

Heritage later became aware that the Quintessa Site would not be permitted for the 10,000 gallons per day water and sewage capacity required to operate the facility. Also, a sub-surface site assessment on the Quintessa Site revealed that proposed property is unsuitable for construction of the proposed project.

Heritage has now identified another site located on Hwy 74 close to the intersection of Hwy 74 and Kempars Lane in Monroe, Union County (the “Hwy 74 Site”). The Hwy 74 Site is mid-way between the Original Site and the Quintessa Site. The Hwy 74 Site is less than seven miles from the Original Site.

Heritage also seeks to make changes to the number of private rooms projected for the project. Heritage wants to change the number of private rooms from 22 to 62.

ANALYSIS

The CON law would require a full review of the Applicants’ site relocation from the Quintessa Site to the Hwy 74 Site if that relocation were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site relocation

does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The Hwy 74 Site is in between the Original Site and the Quintessa Site, and less than seven miles from the Original Site.

Heritage will be developing its project in a manner consistent with the representations made in its Application and with any conditions that were placed on its CON.

The change in site will not increase Heritage's capital or operating costs as compared to the Quintessa Site or the Original Site.

Access to the medically underserved will be equivalent because the population to be served is the same due to the proximity of the two sites.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw the Applicants' CON if the Applicants fail to develop the service in a manner consistent with the representations made in the application or with any conditions that were placed on the CON. The Applicants will not be developing its project in a manner that is materially different from the representations made in its application, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were placed on its CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the site relocation from the Quintessa Site to the Hwy 74 Site for Project I.D. No. F-8071-08 will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

The request to increase the number of private rooms from 22 to 62 private rooms is not typically addressed by a declaratory ruling so it will be addressed by the CON Section as a request for material compliance determination.

This the _____ day of April, 2012.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

K&L Gates, LLP
Colleen M. Crowley, Esquire
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of April, 2012.

Jeff Horton
Chief Operating Officer