



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

August 22, 2013

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

No Review

Facility or Business: Southern Piedmont Imaging, LLC
Project Description: Merger of Southern Piedmont Imaging, LLC with Union Medical Services, LLC
County: Cabarrus
FID #: 061206

Dear Mr. Qualls:

The Certificate of Need Section (CON Section) received your letter of August 15, 2013 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 your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that 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.

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.



Certificate of Need Section

www.ncdhhs.gov

Telephone: 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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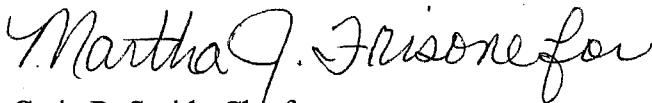
Gary S. Qualls
August 22, 2013
Page 2

Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed.

Sincerely,



Gloria C. Hale, Project Analyst



Craig R. Smith, Chief
Certificate of Need Section

cc: Medical Facilities Planning Branch, DHR
Acute and Home Care Licensure and Certification Section, DHR

K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210
430 Davis Drive, Suite 400
Morrisville, NC 27560
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Received by
the CON Section
AUG 15 2013

August 15, 2013

Via Hand Delivery

Mr. Craig R. Smith
Chief, Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health & Human
Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Corporate Reorganization of Diagnostic Center Under Development
No Review Letter and Good Cause Transfer Request
Southern Piedmont Imaging: Facility ID No. 061206

Dear Craig:

We represent The Charlotte-Mecklenburg Hospital Authority (“CMHA”), Union Medical Services, LLC, and Southern Piedmont Imaging, LLC. The purpose of this letter is to inform the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”) of the following corporate change: the merger of one limited liability company (Southern Piedmont Imaging, LLC), which is wholly-owned by CMHA and has two CON projects under development, with and into another limited liability company wholly-owned by CMHA (Union Medical Services, LLC).

The purpose of this proposal is to streamline the billing and other administrative functions of the one CMHA-controlled facility, Southern Piedmont Imaging, LLC, by merging it into one limited liability company wholly-owned by CMHA (Union Medical Services, LLC), and thereby enable more efficient operations. Union Medical Services, LLC is the owner and operator of Union West MRI, and CMHA became the sole member of Union Medical Services, LLC via the recent merger of Union Memorial Regional Medical Center, Inc. with and into CMHA.

As further explained below, we are requesting that the Agency: (1) confirm that this corporate change is not reviewable as a new institutional health service under the North Carolina Certificate of Need (“CON”) law; or (2) in the alternative, approve a good cause transfer of the two SPI CON Projects under development.

Craig R. Smith, Chief
August 15, 2013
Page 2

I. THE PROPOSAL

Effective October 1, 2013, Southern Piedmont Imaging, LLC (“SPI”) will merge with and into Union Medical Services, LLC. SPI currently holds the following two CONs that are under development (hereafter “the SPI CON Projects”):

- Project ID No. F-7730-06 – Acquire a 64-slice CT scanner, X-ray unit, and digital mammography equipment and develop a diagnostic center/Cabarrus County
- Project ID No. F-7859-07 – Acquire a fixed MRI scanner and install it in the previously approved diagnostic center at the North Carolina Research Campus in Kannapolis/Cabarrus County.

See Exhibits A and B.

Currently, SPI is a wholly-owned subsidiary of CMHA. Therefore, because CMHA is the sole member of Union Medical Services, LLC, this merger does not change the ownership of SPI outside of CMHA wholly-controlled entities.

II. NO REVIEW REQUEST

First, this type of proposed corporate reorganization and merger between or among wholly-controlled entities is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). Pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, those transactions not included in N.C. Gen. Stat. § 131E-176(16) do not require a CON. See, e.g., In re Miller, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003) (stating that “[u]nder the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list”); see also Jackson v. A Woman’s Choice, Inc., 130 N.C. App. 590, 594, 503 S.E.2d 422, 425 (1998) (internal citations omitted) (“[W]here a statute is explicit on its face, the courts have no authority to impose restrictions that the statute does not expressly contain.”). Further, no capital expenditures are being incurred to accomplish this corporate change.

Second, to the extent that the holder of the CONs for the SPI CON Projects is changing, the identity of the holder is changing solely because of a corporate merger between two limited liability companies wholly-owned and wholly-controlled by CMHA. It is not the type of transaction that would trigger CON review. The merger of a wholly-owned subsidiary into another wholly-owned subsidiary does not change control or ownership

Craig R. Smith, Chief
August 15, 2013
Page 3

outside of the ultimate owner, CMHA. Rather, such a merger merely constitutes a corporate reorganization, as contemplated in 10A N.C.A.C. 14C.0502(b)(1).

II. GOOD CAUSE TRANSFER

To the extent that the merger of SPI with and into Union Medical Services, LLC is considered to be a transfer of the SPI CON Projects or their CONs, we are requesting approval for a "good cause" transfer of these CONs under N.C. Gen. Stat. § 131E-189 and 10A N.C.A.C. 14C.0502. We believe that good cause for such transfers exists.

The purpose of this merger transaction is wholly unrelated to any of the pending CON projects, but is in conjunction with a larger corporate reorganization by merging one CMHA wholly-owned limited liability company, SPI, with and into another CMHA wholly-owned limited liability company, Union Medical Services, LLC. Moreover, Union Medical Services, LLC and CMHA will materially comply with the representations in the CON applications under development and the conditions placed on those projects under development. In all material respects, the operations and development of these projects will be the same as represented in the CON applications and in compliance with the issued CONs.

III. CONCLUSION

Based upon the foregoing information, we hereby request that the Agency: (1) confirm that this corporate change is not reviewable as a new institutional health service under the CON law; or (2) in the alternative, approve a good cause transfer of the SPI CON Projects under development.

Thank you for your assistance in regard to this matter. Please let me know if you have any questions.

Sincerely,

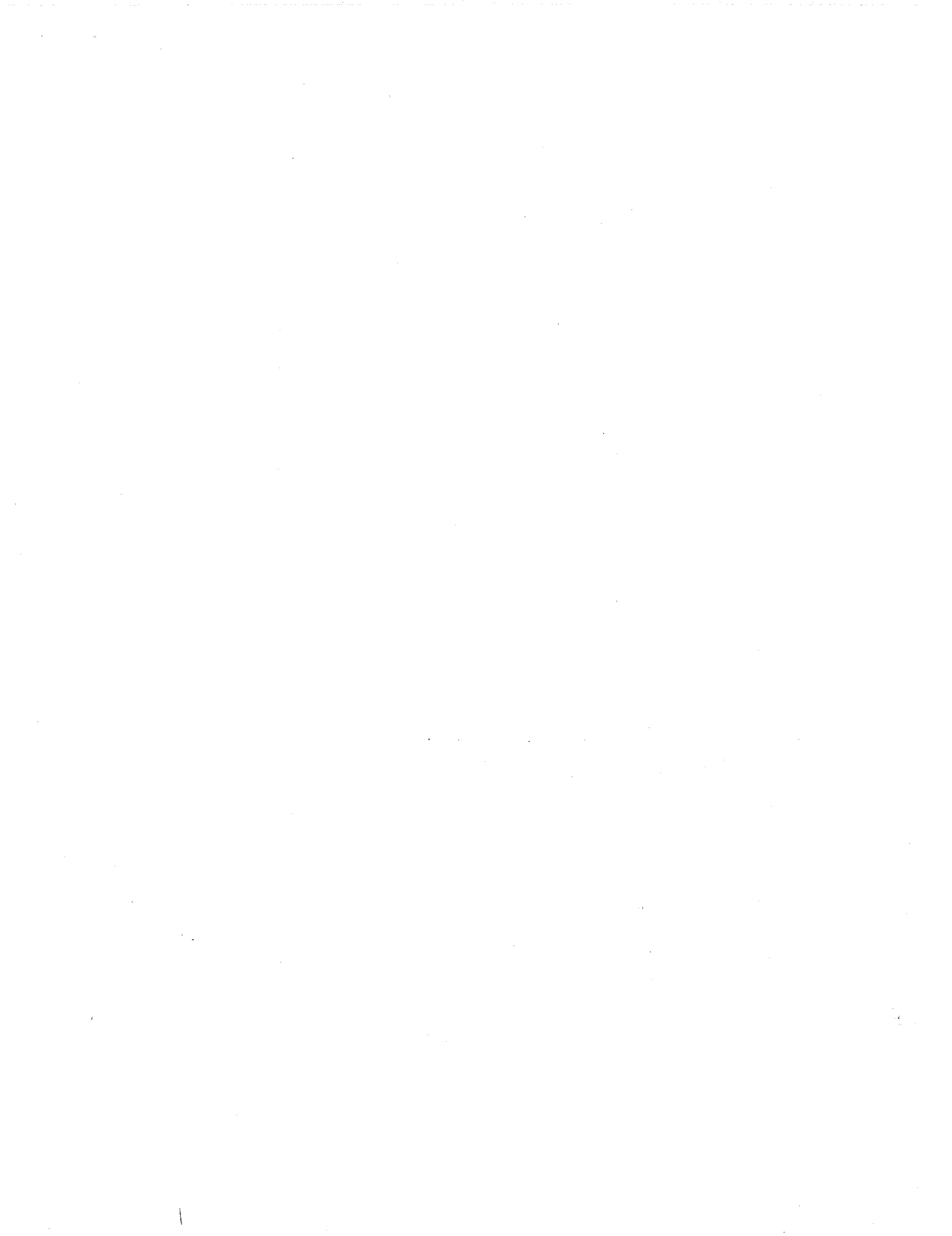


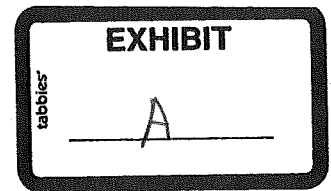
Gary S. Qualls

Craig R. Smith, Chief
August 15, 2013
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Exhibits

- A. CON for Project ID No. F-7730-06
- B. CON for Project ID No. F-7859-07





**North Carolina Department of Health and Human Services
Division of Facility Services
Certificate of Need Section**

2704 Mail Service Center ■ Raleigh, North Carolina 27699-2704

Michael F. Easley, Governor
Carmen Hooker Odom, Secretary

<http://facility-services.state.nc.us>

Lee Hoffman, Section Chief
Phone: 919-855-3873
Fax: 919-733-8139

May 10, 2007

Carol Lovin, Vice President
Strategic Planning & Market Development
Cabarrus Memorial Hospital
920 Church Street, North
Concord, NC 28025

RE: Transmittal of CON/ Project I.D.#F-7730-06/ Southern Piedmont Imaging, LLC/ Proposal to develop a diagnostic center and add mammography, CT scanner, ultrasound, dexascan, and x-ray imaging services/ Cabarrus County
FID # 061206

Dear Ms. Lovin:

We are happy to transmit your certificate of need for the above referenced project. At this time, you should contact the Construction Section and the Licensure and Certification Section, regarding their procedures and requirements for the development of this project. The Certificate of Need Section will notify the other Sections that the certificate of need has been issued. However, please note that it is the responsibility of the holder of the certificate of need to contact these Sections concerning the next steps to follow in the development of the approved project.

Please be aware that pursuant to General Statute 131E-181(b), you are required to materially comply with the representations made in your application for a certificate of need, or with any conditions the department placed on the certificate of need. If you operate a service which materially differs from the representations made in your application for a certificate of need, or with any conditions the department placed on the certificate of need, including any increase in per diem reimbursement rates/charges, the department may bring remedial action against the holder of the certificate of need pursuant to General Statutes 131E-189 and 131E-190.

The holder of a certificate of need is obligated to submit progress reports to this Agency as required by 10A NCAC 14C .0209. The applicant shall notify the Agency of any variations from the schedule or the projected capital cost of the project. During the development of the project, the Agency may request any additional information pertinent to the project, including additional progress reports, to determine: 1) if the timetable specified on the certificate is being met; 2) if the amount of the capital expenditure obligated under the certificate has exceeded or can be expected to exceed the maximum amount under the certificate; 3) if the terms and conditions of the approval are being met; and 4) if the project is progressing as proposed in the application. The first progress report on this project is

Location: 701 Barbour Drive ■ Dorothea Dix Hospital Campus ■ Raleigh, N.C. 27603
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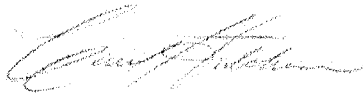
Ms. Lovin
May 10, 2007
Page 2

due September 1, 2007. Forms for the submittal of these reports are enclosed. Failure to submit any scheduled or requested progress report in a timely manner may result in the agency withdrawing the certificate pursuant to G.S.131E-189 (a). If after reviewing the status of the project, the Certificate of Need Section determines that the holder of the certificate is not meeting the timetable and is not making a good faith effort to meet it, the Agency may withdraw the certificate in accordance with G.S. 131E-189.

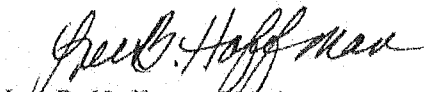
Moreover, please be advised that this Agency may assess a civil penalty not to exceed \$20,000 against any person who violates the terms of a certificate of need which has been issued each time the service provided is in violation of this provision (G.S. 131E-190(f)). If for some reason, the holder of a certificate of need determines it necessary to request an increase in a per diem charge or reimbursement rate over that which was stated in the application for the certificate of need, then the holder must first contact the Certificate of Need Section to obtain proper instructions for initiating such a request. The request for the increase will be considered by the department pursuant to G.S. 131E-181(b).

Please keep us informed of the progress in the development of this project. Please refer to the Project I.D.# and Facility I.D.# (FID) in all correspondence.

Sincerely,



Carol L. Hutchison, Project Analyst



Lee B. Hoffman, Chief
Certificate of Need Section

CLH:LBH:ly
Enclosures

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

STATE OF NORTH CAROLINA

Department of Health and Human Services

Division of Facility Services

CERTIFICATE OF NEED

for

Project Identification Number #F-7730-06

FID# 061206

ISSUED TO: Southern Piedmont Imaging, LLC
North Main Street
Kannapolis, NC 28081

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: Acquire a 64-slice CT scanner, X-ray unit, and digital mammography equipment and develop a diagnostic center/ Cabarrus County

CONDITIONS: See Reverse Side

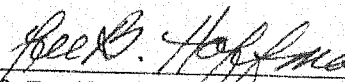
PHYSICAL LOCATION: Southern Piedmont Imaging, LLC
North Main Street
Kannapolis, NC 28081

MAXIMUM CAPITAL EXPENDITURE: \$7,661,838

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: September 1, 2007

This certificate is effective as of the 1st day of May, 2007



Chief, Certificate of Need Section
Division of Facility Services

CONDITIONS:

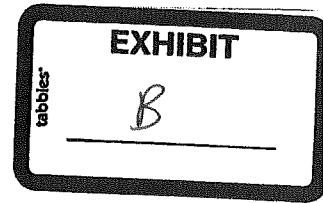
1. Southern Piedmont Imaging, Inc. shall materially comply with all representations made in its certificate of need application.
2. Southern Piedmont Imaging, Inc. shall develop and operate no more than one diagnostic center to be located at North Main Street, Kannapolis in Cabarrus County.
3. Southern Piedmont Imaging, Inc. shall acquire no more than one new CT scanner, one new mammography unit, and one new x-ray unit and relocate from North East Medical Center one existing ultrasound machine and one existing bone densitometry machine.
4. Southern Piedmont Imaging, Inc. shall not acquire by purchase or lease, within one year after completion of this project, any equipment including replacement equipment, which costs or has a fair market value of \$10,000 or more that was not included in the capital expenditure in Section VIII.1 of the application.
5. Southern Piedmont Imaging, Inc. shall lease and upfit no more space than is color highlighted for the diagnostic center on the drawings in Exhibit 8 of the application.
6. Southern Piedmont Imaging, Inc. 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.

TIMETABLE:

Completion of final drawings and specifications -----	July 15, 2007
Contract Award (Notice to Proceed -----	December 1, 2007
50% Completion of construction -----	May 1, 2008
Completion of Construction -----	September 1, 2008
Occupancy/Offering of service -----	October 1, 2008

B





**North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section**

2704 Mail Service Center v Raleigh, North Carolina 27699-2704

Michael F. Easley, Governor
Dempsey Benton, Secretary

www.ncdhhs.gov/dhsr

Lee Hoffman, Section Chief
Phone: 919-855-3873
Fax: 919-733-8139

October 31, 2008

Carol Lovin, VP, RN, MN
Southern Piedmont Imaging
Strategic Planning & Market Development
920 Church St., North
Concord, NC 28025

RE: Transmittal of CON/ Project I.D. #F-7859-07/ Southern Piedmont Imaging, LLC/ Proposal to acquire a fixed MRI scanner and install in approved diagnostic center at the NC Research Campus in Kannapolis, NC/ Cabarrus County
FID #061206

Dear Ms. Lovin:

We are happy to transmit your certificate of need for the above referenced project. At this time, you should contact the Construction Section and the Licensure and Certification Section, regarding their procedures and requirements for the development of this project. The Certificate of Need Section will notify the other Sections that the certificate of need has been issued. However, please note that it is the responsibility of the holder of the certificate of need to contact these Sections concerning the next steps to follow in the development of the approved project.

Please be aware that pursuant to General Statute 131E-181(b), you are required to materially comply with the representations made in your application for a certificate of need, or with any conditions the department placed on the certificate of need. If you operate a service which materially differs from the representations made in your application for a certificate of need, or with any conditions the department placed on the certificate of need, including any increase in per diem reimbursement rates/charges, the department may bring remedial action against the holder of the certificate of need pursuant to General Statutes 131E-189 and 131E-190.

The holder of a certificate of need is obligated to submit progress reports to this Agency as required by 10A NCAC 14C .0209. The applicant shall notify the Agency of any variations from the schedule or the projected capital cost of the project. During the development of the project, the Agency may request any additional information pertinent to the project, including additional progress reports, to determine: 1) if the timetable specified on the certificate is being met; 2) if the amount of the capital expenditure obligated under the certificate has exceeded or can be expected to exceed the maximum amount under the certificate; 3) if the terms and conditions of the approval are being met; and 4) if the project is progressing as proposed in the application. The first progress report on this project is due February 15, 2009. Forms for the submittal of these reports are enclosed.



Carol Lovin
October 31, 2008
Page 2

Failure to submit any scheduled or requested progress report in a timely manner may result in the agency withdrawing the certificate pursuant to G.S.131E-189 (a). If after reviewing the status of the project, the Certificate of Need Section determines that the holder of the certificate is not meeting the timetable and is not making a good faith effort to meet it, the Agency may withdraw the certificate in accordance with G.S. 131E-189.

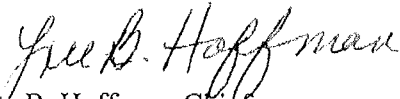
Moreover, please be advised that this Agency may assess a civil penalty not to exceed \$20,000 against any person who violates the terms of a certificate of need which has been issued each time the service provided is in violation of this provision (G.S. 131E-190(f)). If for some reason, the holder of a certificate of need determines it necessary to request an increase in a per diem charge or reimbursement rate over that which was stated in the application for the certificate of need, then the holder must first contact the Certificate of Need Section to obtain proper instructions for initiating such a request. The request for the increase will be considered by the department pursuant to G.S. 131E-181(b).

Please keep us informed of the progress in the development of this project. Please refer to the Project I.D.# and Facility I.D.# (FID) in all correspondence.

Sincerely,



Tanya S. Rupp, Project Analyst



Lee B. Hoffman, Chief
Certificate of Need Section

TSR:LBH:se

Enclosures

cc: Medical Facilities Planning Section, DHSR

STATE OF NORTH CAROLINA

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

CERTIFICATE OF NEED

for

Project Identification Number #F-7859-07

FID #061206

ISSUED TO: Southern Piedmont Imaging, LLC
North Main Street
Kannapolis, NC 28081

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: Acquire a fixed MRI scanner and install it in the previously approved diagnostic center at the North Carolina Research Campus in Kannapolis/ Cabarrus County

CONDITIONS: See Reverse Side


PHYSICAL LOCATION: Southern Piedmont Imaging
North Main Street
Kannapolis, NC 28081

MAXIMUM CAPITAL EXPENDITURE: \$ 2,091,794

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: February 15th, 2009.

This certificate is effective as of the 29th day of October, 2008



Chief, Certificate of Need Section
Division of Health Service Regulation

CONDITIONS:

1. Southern Piedmont Imaging, LLC, shall materially comply with all representations made in its certificate of need application.
2. Southern Piedmont Imaging, LLC shall acquire no more than one fixed magnetic resonance imaging (MRI) scanner.
3. Southern Piedmont Imaging, LLC shall not acquire, as part 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. Southern Piedmont Imaging, LLC shall obtain accreditation from the American College of Radiology for magnetic resonance imaging services within two years following operation of the fixed MRI scanner.
5. Southern Piedmont Imaging, LLC 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.

A letter acknowledging acceptance and compliance with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on November 15, 2007.

TIMETABLE:

Approval of Final Drawings and Specifications by the Construction Section, DHSR	March 1, 2009
50% Completion of Construction	June 1, 2009
Occupancy/Offering of Service(s)	October 1, 2009