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Certificate of Need Section
Division of Health Service Regulation
NC Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

RE: Letter of Opposition to Certificate of Need Application for Project ID# J-012055-21

Ms. Faenza and Ms. Pittman:

We are writing on behalf of Chatham Opco, LLC and Chatham Propco, LLC (the "Commenting Parties") to express our opposition to the Certificate of Need application (the "Application") submitted for **Project ID# J-012055-21** (the "Project") by Liberty Healthcare Properties of Chatham County, LLC and Liberty Nursing and Rehabilitation Center of Chatham County, LLC (the "Applicants"). The Applicants propose to develop a new 69-bed adult care home ("ACH") facility in Chatham County. The Application was submitted for the May 1, 2021 review cycle. If approved, the Project proposes to eliminate the 57 ACH bed deficiency for Chatham County identified for the year 2024 in the 2021 State Medical Facilities Plan ("SMFP") as follows:

1. Relocate 30 licensed ACH beds from Hyde County (**Cross Creek Health Care** – NH0515)
   This facility is currently licensed for 30 ACH beds and 50 nursing facility ("NF") beds.[1]
2. Relocate 27 beds licensed ACH beds from Johnston County (**Liberty Commons of Johnston County Nursing and Rehabilitation Center** - NH0606)
3. Move 12 undeveloped, unlicensed beds already approved for development in Chatham County (**Chatham County Rehabilitation Center** – still undeveloped, Project ID# J-11656-19)
   Project ID# J-11656-19 originally proposed to relocate 36 ACH beds from Halifax County (16 ACH beds from *Liberty Commons Nursing and Rehab Center of Halifax County*) and from Columbus County (20 ACH beds from *Liberty Commons Nursing and Rehab Center of Columbus County*) and combine them with 100 NF

[1] It is unclear whether the Application is compliant with Policy LTC-2 because at the time that the Application was submitted, *Cross Creek Heath Care* was licensed for 19 ACH and 61 NF beds (as opposed to 30 ACH beds). This was confirmed to the Commenting Parties by both the Adult Care Licensure Section and the Nursing Home Licensure and Certification Section. Eleven ACH beds had been converted under waiver to NF beds to make them available for COVID-19 patients. Policy LTC-2 permits the relocation of licensed ACH beds from other service areas, yet there were only 19 licensed ACH beds at *Cross Creek Health Care* as of the date of the Applications' submission.

beds to create *Chatham County Rehabilitation Center* – a combined NF. Project ID# J-11656-19 remains to be developed in Chatham County.

Upon completion of the Applicants' proposed Project, and assuming *Chatham County Rehabilitation Center* (Project ID# J-11656-19) is developed as approved and modified by the Application, the end result will be two buildings in Chatham County both located on the same larger parcel:

1. A 69-ACH bed facility (*Kempton of Chatham*)
2. A 100 NF and 24 ACH bed combined facility (*Chatham County Rehabilitation Center*).

If approved, the Applicants would have Certificate of Need ("CON") approvals to develop 93 ACH beds and 100 NF beds in Chatham County. Additionally, there is some evidence in the exhibits to the Application suggesting that the Applicants and/or their affiliates intend to build 150 independent living senior apartments on the same land as the Project.

The Commenting Parties ask the Agency to consider the following issues with the Project during its review of the Application:

I. The history of delayed development by the Applicants (or their related entities);
II. The need for ACH beds in Hyde County (from which 30 ACH beds are proposed for relocation in the Application);
III. The Applicants' reversal regarding the need for 30 ACH beds in Hyde County and the negative impact on Tyrrell County;
IV. Inadequate demonstration of need for ACH beds in Chatham County;
V. Lack of substantive community support;
VI. Unsubstantiated utilization projections;
VII. Unrealistic financial projections; and
VIII. The lack of access and effectiveness.

I. <u>A History of Delayed Development by the Applicants (or their Related Entities)</u>

The Applicants have a history of delayed development and of relocating beds between counties, which erodes public confidence that the Project will be developed as proposed if the Application is approved.

i. The Applicants (or their related entities) have held the CON to develop *Chatham County Rehabilitation Center* since 2013. This project remains undeveloped and has undergone repeated changes in proposed configuration, as follows:

- **Project ID# J-10168-13**: CON granted to develop the currently undeveloped *Chatham County Rehabilitation Center* as a new 90-bed NF.
- **Project ID# J-11378-17 - change of scope for Project I.D. #J-10168-13:** Change of scope granted to relocate 25 NF beds from *Legion Road Healthcare* in Orange County to *Chatham County Rehabilitation Center*, for a total of 115 NF beds upon project completion.

- **November 1, 2018 Material Compliance Determination**: A material compliance determination was made by the Agency reducing the number of NF beds to be relocated from *Legion Road Healthcare* in Orange County from 25 to 15, for a total of 105 NF beds at *Chatham County Rehabilitation Center*.
- **Project ID# J-11656-19 - change of scope for Project ID# J-11378-17:** A CON was granted to relocate 16 ACH beds from *Liberty Commons Nursing and Rehab Center of Halifax County* in Halifax County and 20 ACH beds from *Liberty Commons Nursing and Rehab Center of Columbus County* in Columbus County to *Chatham County Rehabilitation Center*, to create a combination NF with a total of 105 NF beds and 36 ACH beds upon project completion.
- The Application to develop **Project ID# J-012055-21,** as described above, is a **change of scope for Project ID# J-11656-19**.

In short, the Application represents the third change of scope for the original 2013 CON, **Project ID# J-10168-13**, which proposed to develop 90 NF beds in Chatham County. Eight years later, the NF beds have not been developed. In the past eight years, additional NF and ACH beds have been relocated from county to county as outlined above.

ii. The 30 ACH beds that the Applicants propose to relocate from *Cross Creek Heath Care* in Hyde County were only developed in 2020, and now the Applicants seek to remove them from Hyde County, which will leave Hyde County without any ACH beds.

iii. This delay in development and constant relocation of ACH and NF beds does not inspire confidence that the proposed Project will be developed as represented by the Applicants in the Application. The most effective option, per **Criterion E – Criterion (4)**, is undoubtedly one that is likely to be developed in a timely fashion.

II. <u>The Need for ACH Beds in Hyde County (from which 30 ACH Beds are Proposed for Relocation in the Application)</u>

The 30 ACH beds that the Applicants seek to relocate to Chatham County were developed in Hyde County in response to a 30-ACH bed need determination by the Agency for Hyde County in the 2019 SMFP. The Applicants (or their related entities) applied for and subsequently obtained the Conditional Approval to develop these 30 ACH beds in July of 2019, arguing the need for beds in Hyde County. Merely two years later, the Applicants are arguing the exact opposite—that there is no need for these 30 ACH beds in Hyde County and hence they need to be relocated. In the Application, the Applicants conveniently ignore and fail to address the arguments that they themselves (or their related entities) made for the need for ACH beds in Hyde County.

i. A lack of Compliance with **Criterion (3a)**

In the case of an elimination of a health service, including the relocation of an existing health service, **Section D – Criterion (3a)** requires the Applicants to:

> "[…] *demonstrate that the needs of the population presently served will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.*"

The 30 ACH beds at *Cross Creek Health Care* in Hyde County never served any residents. These beds were developed to serve residents of Hyde County in need of ACH services as the Applicants and/or their related entities argued that a projected need existed for 2022. Once developed, however, *Cross Creek Health Care* was unable to utilize them at all. Given that the need for 30 ACH beds was projected for 2022, one might argue that it is premature to suggest that there is no need for the beds in Hyde County in 2021, when the time of the projected need has not yet arrived.

However, even such a conclusion is not premature, the Applicants suggest that because the 30 ACH beds at *Cross Creek Health Care* are completely unutilized, there is no "need" of the population being presently served since the beds are empty. The Commenting Parties take issue with the Applicants' conflation of "need" and "utilization" in making this argument. Just because no residents are utilizing these 30 ACH beds at their current setting does not necessarily mean that the beds are not needed. There are several plausible explanations for poor utilization that do not have to do with need.

The Commenting Parties believe that a reasonable interpretation of "population currently served" would be defined by the service area that the beds were intended to serve and not just actual bed occupants. This interpretation allows the Agency more latitude to determine whether the quality of care, building condition, location, social factors, payor rates, or other factors influencing utilization help explain inadequate utilization or justify relocation of services. Furthermore, such a definition also allows for a population served to be defined and considered where either no beds have previously existed, or where no beds have been in use for some reason.

The relocation of all 30 ACH beds from Hyde County also constitutes an "elimination of a service." The 30 ACH beds that the Applicants wish to relocate to Chatham County currently exist in Hyde County despite the fact that no residents have chosen to utilize them. Therefore, the Commenting Parties believe that the Applicants have failed to explain how the needs of the Hyde

County population are to be met by the proposed relocation or by alternative arrangements. The Applicants merely imply that since there is no utilization of these 30 ACH beds, there is no need for these beds. The Applicants fail to consider any of the several reasonable explanations for the lack of utilization that exist in this case and are considered at length in this document.

ii. Hyde and Tyrrell Counties have the two smallest county populations in North Carolina. Hyde and Tyrrell Counties share a border in a part of the State that is geographically remote from major population centers. Because of their population sizes and remote locations, these counties have historically shared infrastructure and resources. Tyrrell and Hyde Counties themselves do not have the economic means to operate entirely independently. In the 2012 SMFP, neither Hyde County nor Tyrrell County had any licensed ACH beds, but there was a need determination of 30 ACH beds for Hyde County and of 20 ACH beds for Tyrrell County, neither of which were likely to be developed, due to the lack of economic feasibility of building and operating two small facilities. The solution was to combine the two counties into the same service area so that a facility of 50 ACH beds could be built to serve the combined service area.

In July 2012, Meridian Senior Living, LLC, the Hyde County Board of Commissioners, and the Tyrrell County Board of Commissioners jointly petitioned the Agency to have Hyde and Tyrrell Counties combined in the SMFP. The 2013 SMFP combined Hyde-Tyrrell as a single service area and included a need determination of 50 ACH beds for the combined service area. This need determination resulted in a successful application to develop *Tyrrell House*, in Columbia, Tyrrell County. *Tyrrell House* received its initial license to operate 50 ACH beds effective May 24, 2016, and it received its license to operate 24 SCU beds effective September 2, 2016.

The 2018 SMFP showed a projected bed utilization for 2021 of 44 of 50 licensed ACH beds in the combined service area (all out of *Tyrrell House*), which meant a surplus of 6 ACH beds in the combined service area. Despite the projected surplus of ACH beds for 2021, in the summer of 2018, related entities to the Applicants (the "Petitioners") petitioned the Agency to "adjust" the need determination for Hyde County (the "2018 Petition") by creating a need determination for Hyde County of 23 ACH beds.[2] While the 2018 Petition was not approved, the 2019 SMFP separated Hyde and Tyrrell Counties and found a need determination for the year 2022 of 30 ACH beds in Hyde County. Related entities to the Applicants then submitted a CON application to the

[2] The Commenting Parties make note of the fact that there was not a need determination made for Hyde or Tyrrell Counties which could be "adjusted". Instead, the request was to create a need determination for Hyde County where there had been a surplus of 6 ACH beds projected for the combined service area, as noted above.

Agency that proposed to meet the 30 ACH bed need determination by converting unused NF beds at *Cross Creek Heath Care* in Hyde County to ACH beds. This project, therefore, did not require extensive construction[3] and the conversion of NF to ACH beds was primarily a matter of obtaining the correct licensure.

The 30 ACH beds at *Cross Creek Health Care* were licensed on or around January 1, 2020. Unfortunately, the licensure of these 30 ACH beds came shortly before the onset of the COVID-19 global pandemic, which likely significantly contributed to the lack of utilization of these beds. This will be discussed in more detail in Section III below.

In the Application to relocate the 30 ACH beds away from Hyde County and into Chatham County, the Applicants ignore and fail to address the arguments they themselves (or their related entities) made in the 2018 Petition and in the need determination application for the need 30 ACH beds in Hyde County. Specifically, the Applicants (or their related entities) previously argued that the following factors were evidence of a need for ACH beds in Hyde County:

1) There were no licensed ACH beds located in Hyde County;
2) The considerable drive times from Hyde County to ACH facilities in neighboring counties, specifically Tyrrell County; and
3) Hyde County's population of persons aged 65 and older was projected to increase "at an astounding 66% between the 2010 US Census and 2030 projected census".

1) <u>There were no licensed ACH beds located in Hyde County</u>

The Commenting Parties recognize that should the Project be developed, there will once again be no licensed ACH beds located in Hyde County. In the 2018 Petition, the Petitioners argued that maintaining the status quo, which, at the time, was leaving Hyde County residents to find care outside of Hyde County was "quickly dismissed," because it "puts Hyde County at risk of not receiving assisted living services." The Applicants fail to explain how merely two years later a return to the situation in which there are no ACH beds in Hyde County is now acceptable.

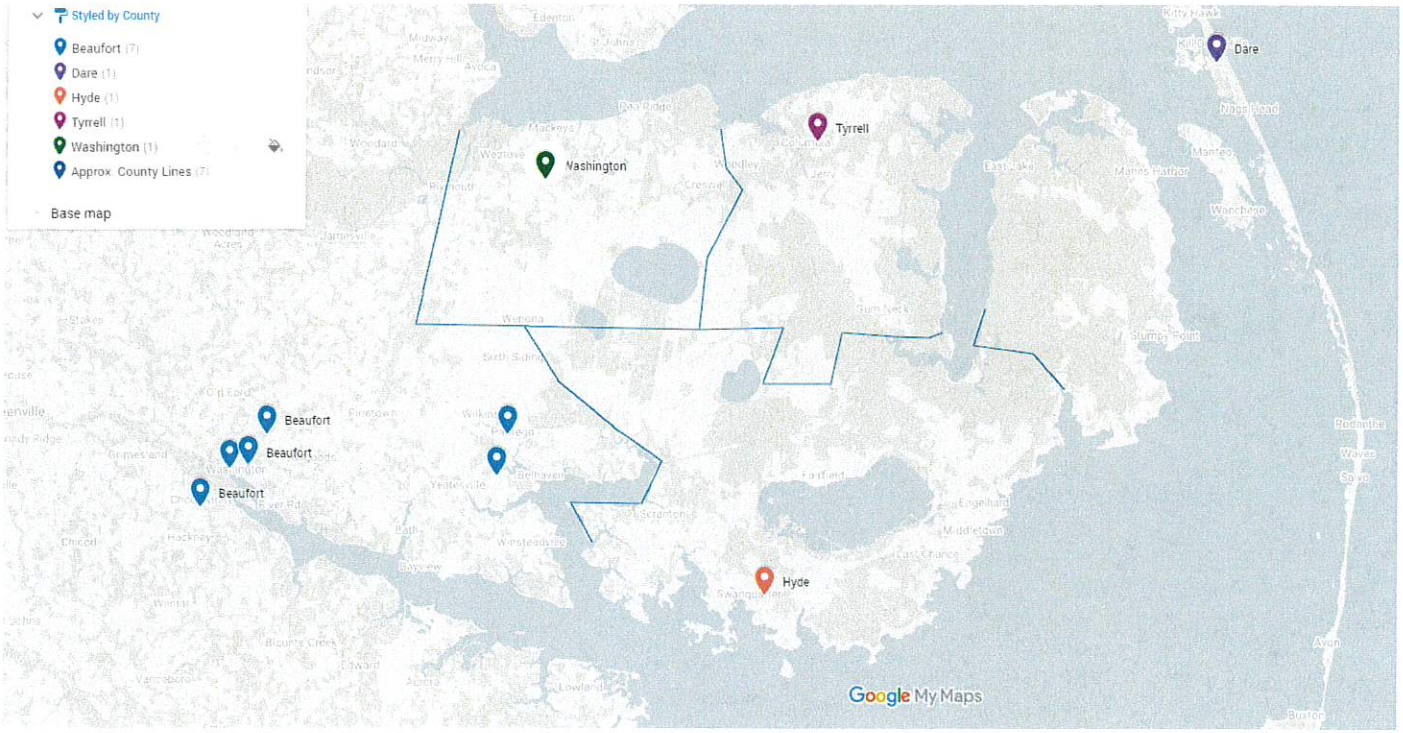
2) <u>The considerable drive times from Hyde County to ACH facilities in other counties, specifically Tyrrell County</u>

The Commenting Parties wish to reiterate what was argued by the Applicants and/or their related entities in the 2018 Petition (quoting the SMFP) to create a 23 ACH bed need for Hyde County: "*3. A goal of the planning process is a reasonable level of parity among citizens in their geographic*

[3] Some renovations were done to *Cross Creek Health Care* to support the conversion of 30 NF beds to ACH beds.

access to adult care home facilities." In the 2018 Petition, the Petitioners used Google Earth to find drive times from Hyde County townships to existing ACH providers outside of Hyde County. The drive times to various communities ranged from around 30 minutes to over an hour. The Petitioners argued that "[g]eographical access to adult care home facilities is extremely important. [...] For the families of these residents, stress is already high when dealing with an ill family member, and worrying about the agonizing drive mileage and time should not be a concern of the family." If this was true then, how would it be any less true now? The Applicants do not tell us.

The map below illustrates the geographical distance between ACH beds in Hyde and surrounding counties. The beds at *Cross Creek Health Care* are represented by a red marker.



Patient origin data in the 2020 and 2021 License Renewal Applications for facilities with ACH beds in surrounding counties show that there are Hyde County residents utilizing ACH beds in facilities in Beaufort, Dare, and Tyrrell Counties. Therefore, the Commenting Parties do not agree with the Applicants' argument that there is simply no need for ACH beds in Hyde County. Residents of Hyde County continue to utilize ACH services in other counties. Rather than acknowledging this need, exploring why the ACH beds in Hyde County went unutilized, and arguing that the existing need can be adequately met in other ways, the Applicants summarily dismiss the need for ACH beds in Hyde County as entirely non-existent and propose to relocate all 30 of the ACH beds at *Cross Creek Health Care*.

The 30 ACH beds at *Cross Creek Health Care* were first made available to the public about 18 months ago, at a time when ACH census industry-wide was about to take an enormous hit from COVID-19. As is explained elsewhere in this document, the Commenting Parties firmly believe that looking at current ACH bed utilization alone is not adequate to assess the existence or extent of need for ACH services. Fairness to the population in need of ACH services in an area demands consideration of *why* beds are needed. Fairness also demands understanding why services may be poorly utilized or not utilized at all; and, as the Commenting Parties will explain throughout this document, sometimes those reasons have nothing to do with the existence of need for the service.

3) Hyde County's population of persons aged 65 and older was projected to increase "at an astounding 66% between the 2010 US Census and 2030 projected census."

The Commenting Parties wish to point out that the population of persons aged 65 and older is still projected to increase substantially in Hyde County. The Office of State Budget and Management ("OSBM") projections, while adjusted to reflect more recent data, still show robust growth in the older age categories, most especially those aged 75 plus, who typically use ACH services at higher rates than those in lower age categories.[4]

The two tables below illustrate the growth that OSBM continues to project for Hyde County. The highlighted cells show the years of maximum growth, as a particular cohort of Hyde County's population ages through their 70s, 80s, and 90s. OSBM projects that there will be 188 more people aged 75 to 84 in 2030 and 2035 than there were in 2020. Given that there were 302 people in this age range in 2020, this is significant growth. Note that while the population of the county is expected to decrease overall—by 25% between 2010 and 2050—the population 65+ is expected to grow at an even more rapid rate of 43% over the same period.

HYDE COUNTY POPULATION DATA AND PROJECTIONS 2010 THROUGH 2050

Year	Age 0 to 34	Age 35 to 44	Age 45 to 54	Age 55 to 64	Age 65 to 74	Age 75 to 84	Age 85 to 99	Age 100+	Age 65+	County Total	Median Age
2010	2356	759	868	929	485	275	115	2	877	5811	41.24
2015	2121	748	752	957	561	302	117	2	982	5569	43.09
2020	**1779**	**688**	**732**	**804**	**684**	**302**	**126**	**9**	**1121**	**5119**	**45.20**
2025	1701	566	760	727	718	373	126	4	1221	4975	46.701
2030	1610	535	739	732	616	490	136	3	1245	4853	48.40
2035	1567	518	622	780	563	497	172	4	1236	4729	49.22
2040	1535	484	571	772	595	427	226	3	1251	4609	48.49
2045	1483	497	594	682	633	394	224	4	1255	4487	48.91
2050	1442	498	555	624	625	418	201	6	1250	4363	48.40

[4] LRA data consistently shows actual utilization by those 75+ at significantly higher rates than those of younger ages.

PERCENTAGE CHANGE IN POPULATION 2010 THROUGH 2050

Time Span	Age 0 to 34	Age 35 to 44	Age 45 to 54	Age 55 to 64	Age 65 to 74	Age 75 to 84	Age 85 to 99	Age 100+	Age 65+	County Total
2010 - 2015	-10%	-1%	-13%	3%	16%	10%	2%	0%	12%	-4%
2010 - 2020	-24%	-9%	-16%	-13%	41%	10%	10%	350%	28%	-12%
2010 - 2025	-28%	-25%	-12%	-22%	48%	36%	10%	100%	39%	-14%
2010 - 2030	-32%	-30%	-15%	-21%	27%	78%	18%	50%	42%	-16%
2010 - 2035	-33%	-32%	-28%	-16%	16%	81%	50%	100%	41%	-19%
2010 - 2040	-35%	-36%	-34%	-17%	23%	55%	97%	50%	43%	-21%
2010 - 2045	-37%	-35%	-32%	-27%	31%	43%	95%	100%	43%	-23%
2010 - 2050	-39%	-34%	-36%	-33%	29%	52%	75%	200%	43%	-25%

Note that all of the sustained losses in population in Hyde County are in the youngest age categories of individuals (under the age of 64) and not in any of the age categories above 65. The "astounding growth" in the senior population that the Petitioners once argued would be present in Hyde County is still projected, and ACH beds will not be there to serve them.

Furthermore, as the General Assembly found in the General Statute establishing the CON law (which will be explored in Section III below), access to health services is critical for the "continued viability of rural communities." Hyde County certainly fits into this category and *Cross Creek Health Care* helps provide jobs and resources for families who do not want to have to leave home to make a living or find care.

Both the CON Section and the Petitioners identified a need for ACH beds in Hyde County just a few years ago. The Commenting Parties believe that several of the reasons cited for establishing that need and justifying the development are still valid because the situation in Hyde County and the forecast for its population remain substantially similar. The Applicants have not adequately explained how they justify their reversal of position on whether Hyde County has a need for ACH beds.

In short, the Applicants (or their related entities) applied for and obtained a CON based on a need determination for ACH beds in Hyde County. Now, the Applicants seek to relocate those ACH beds—that they once argued were heavily needed in Hyde County and for which they petitioned the Agency to create a need determination—to Chatham County, which currently has an ACH bed deficiency. The Commenting Parties believe there is a fundamental problem with applying and receiving approval for a need determination in a specific service area, and then turning around and relocating those beds elsewhere, especially where compelling reasoning has not been provided to justify the reversal.

III. The Applicants' Reversal Regarding the Need for 30 ACH beds in Hyde County and the Negative Impact on Tyrrell County

The Applicants created a genuine problem in northeastern North Carolina that they cannot fix by removing all ACH beds from Hyde County. This problem has compromised the stability of the economically vulnerable region and has negatively impacted other providers in ways that did not meaningfully contribute to better quality and improved access to health services for the local population.

i. The Realities of the ACH Market and the Spirit of the CON Law

Article 9 – Certificate of Need of N.C. Gen. Stat. § 131E-175 states, "*The General Assembly of North Carolina makes the following findings:*

"(3) That, if left to the market place to allocate health service facilities and health care services, geographical maldistribution of these facilities and services would occur and, further, less than equal access to all population groups, especially those that have traditionally been medically underserved, would result.

"(3a) That access to health care services and health care facilities is critical to the welfare of rural North Carolinians, and to the continued viability of rural communities, and that the needs of rural North Carolinians should be considered in the certificate of need review process."

As explained above, *Tyrrell House* was built in response to the need determination in the 2013 SMFP for 50 ACH beds that resulted from the combination of Hyde and Tyrrell Counties into a single service area. This combination of counties into a unified service area was enthusiastically supported by both Hyde and Tyrrell County Boards of Commissioners when they petitioned together for the combination of the two need determinations into one in 2012.

The combination recognized a practical reality of the ACH market, namely that it was highly unlikely that ACH service providers would invest in two smaller facilities in Hyde and Tyrrell Counties. It is very difficult for providers to meet financial targets essential for continued operation of ACH services if they cannot develop enough ACH beds to break even—especially for providers accepting Medicaid and subject to lower reimbursement rates than private payors. Combining the 20 and 30 ACH bed needs that had previously been separated in the two adjacent counties encouraged development of *Tyrrell House*, which brought the first ACH beds to the combined service area.

According to the U.S. Census Bureau, Tyrrell has the smallest population (4,016 persons) and one of the lowest per capita incomes ($19,743) among North Carolina counties. Similarly, Hyde County has an extremely small

population (4,937 persons) and per capita income of just $18,245.[5] In this area with scarce resources and an aging population, the development of *Tyrrell House* has meant jobs, investment in local business, and improved access to healthcare on a comparatively impressive scale given the size of Tyrrell County.

The combined Hyde and Tyrrell service area for CON purposes also recognized the difficulties of effectively serving the area population which is sparse, widely-dispersed, and rural. Lengthy travel to outside jobs, services, and resources is a sometimes harsh reality of rural life. The Tyrrell and Hyde County areas have few major roadways. *Tyrrell House* was built along one of the major traffic arteries in northern Tyrrell County, which, while not going so far as to make it trivial for everyone in Hyde County to reach its newly developed ACH beds, has improved healthcare access overall. Access to care comes down to accessibility to roads or well-traveled waterways. Therefore, it only makes sense to locate major services along the area's few traffic arteries, which is the best way to ensure the best access for the most people. *Cross Creek Health Care* is itself located in the southern part of Hyde County for what may be the same reason—the location allowed the facility to have major road access.

The Commenting Parties believe that the combination of the service areas allowed these two rural counties to overcome, at least in part, the economic, geographical, and population-related challenges of the area that had previously prevented development of health services. They also believe that the combination of service areas was in the spirit of the CON law that recognizes the potential for geographical maldistribution and seeks to consider the needs of rural North Carolinians through the CON process.

ii. Erosion of Local Cooperation and the Negative Impact on Tyrrell County

The process behind the granting of the CON and the subsequent development of the 30 ACH beds in Hyde County created lasting issues in Tyrrell County—a neighboring county with a similarly vulnerable economy. The two counties had previously scraped by through a cooperative sharing of resources. Hyde County was (and remains now) home to all of the NF beds in the two counties, and Tyrrell County later became home to the only ACH beds. Long drives certainly remained for many of the residents of the area in search of NF and ACH services, but the opening of *Tyrrell House* meant that both NF and ACH services were finally available to many far-flung rural North Carolinians closer to home. Notably, the NF beds at *Cross Creek Health Care* and the ACH beds at *Tyrrell House* could all be counted towards meeting the real need for health services in the combined service area.

[5] https://www.census.gov/quickfacts/fact/table/hydecountynorthcarolina,tyrrellcountynorthcarolina/INC910219#INC910219

In the 2018 Petition and the subsequent need determination application, related entities to the Applicants argued that *Tyrrell House*'s excellent ACH bed utilization (as its non-SCU beds were full) was evidence of ACH bed need in Hyde County. The 2018 Petition and 2019 CON application, however, lacked the cooperative spirit and collaboration of the 2012 petition that resulted in the combination of the two counties into one service area. The 2018 and 2019 efforts, however, were unilateral. The result was that ACH beds were shoehorned into a less appealing NF setting from which NF beds had been removed for the purpose. It is possible that those developing the ACH beds at *Cross Creek Health Care* expected mere location to be enough of a draw to attract residents.

The desires of Hyde County residents that go beyond a convenient location were not met by the development of ACH beds at *Cross Creek Health Care*. Rural ACH consumers will be quite used to driving for care, and they will apparently keep doing so if the local options are less appealing. Furthermore, Tyrrell County's needs were not considered in the process, resulting in the erosion of a formerly cooperative spirit between counties, to the detriment of all in the area.

The ACH beds developed at *Cross Creek Health Care* were opened, as is argued elsewhere in this document, at what may have been the worst time to open beds. COVID-19 almost certainly contributed to the lack of desirability of those ACH beds. However, that the residents of Hyde County did not rush to fill the ACH beds at *Cross Creek Health Care* may be explained in several ways that do <u>not</u> imply a lack of need in the greater area, as explored more fully in Section IV.

Giving up on *Cross Creek Health Care* without a plan to replace it means elimination of health services, jobs, and economic engagement in an area that is already economically depressed. The General Assembly of North Carolina in implementing the CON law found that such access is critical to both the "welfare of rural North Carolinians," and to the "continued viability of rural communities." If this centrality of health services to continued viability is true anywhere, it is true in these two counties with some of the smallest economies in the entire state.

Hyde County will again be without ACH beds. However, if there is any need determination for Hyde County in the future, the need will again be small enough that it will be impractical—if not impossible—to meet by constructing a new ACH facility. Perhaps the best Hyde County can hope for is the development of one or more family care homes, or to be recombined with Tyrrell County for CON purposes so that it can benefit from the combined population numbers and collaboration.

The 2020 and 2021 SMFPs both included need determinations (80 ACH beds and 50 ACH beds, respectively) for Tyrrell County. There have been, however, no applications to develop these beds. If providers have not jumped at the opportunity to go into Tyrrell County where utilization of ACH beds has historically been strong, why would they wish to invest in Hyde County now?

IV. Inadequate Demonstration of Need for ACH Beds in Chatham County

The Applicants' Application did not adequately demonstrate the need for ACH beds in Chatham County.

In **Section C – Criterion (3)** of the CON application, the Agency requires CON applicants to "identify the population to be served by the proposed project [...] demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, ... persons [with disabilities], the elderly, and other underserved groups are likely to have access to the services proposed."

More specifically, in the event that an applicant is seeking to relocate existing service components, as is the case with the Applicants, the Agency requires the applicant to provide "1) the identify of each facility that would lose service components as part of this proposal; 2) a description of each service component (i.e., specific type and number if applicable) that will be relocated as part of this proposal; and 3) an explanation of why the patients projected to be served need the service components at the facility identified in Section A, Question 4, as opposed to where they are currently located."

The Commenting Parties believe that the Application falls far short in meeting the above noted requirements by the Agency. Specifically, the Commenting Parties believe that the Applicants have failed to explain why the residents projected to be served by the Project in Chatham County need the services the Applicants propose to offer, as opposed to where those services are being currently offered (i.e., Hyde County).

The Applicants point only to growth in the 65+ population in Chatham County and the development of Chatham Park (a master planned community) as factors that are likely to continue the population growth trend in the county. The remaining arguments made by the Applicants do not focus on the need for services in Chatham County, but rather on the lack of utilization of the services in Hyde and Johnston Counties, and the declining population in Hyde County. These arguments are not need arguments per se. Instead, they are reasons why there is a presumed lack of need elsewhere.

Underutilization of beds or even a complete lack of utilization in a service area is <u>not</u> a reason to relocate beds <u>into</u> another service area; at most, underutilization indicates that it may be reasonable to remove the beds from

their current service area. The question asked in Section C of the Application may be summarized as "Why do Chatham County residents need the beds?" Other than pointing to a growing elderly population and population growth in general in Chatham County (driven, in part, by the development of Chatham Park), the Applicants leave this essential question unanswered.

The Applicants focus their efforts on need by reaching the conclusion that ACH beds are not needed in Hyde and Johnston counties due to their lack of utilization in their current settings. However, lack of utilization does not equal lack of need. There are many reasons why these beds may not be utilized at their current settings that have nothing to do with need. In other words, beds may be needed, but potential residents do not want to utilize them because of their setting, attractiveness, affordability, privacy, etc. To comment specifically on the ACH beds proposed for relocation by the Applicants from Hyde County:

- Setting: The 30 ACH beds from Hyde County are currently located in an NF, *Cross Creek Health Care*, rather than in a standalone ACH facility. The Commenting Parties believe that, traditionally, residents seeking to "age in place" prefer a dedicated ACH community rather than a highly clinical setting such as an NF.

- Attractiveness: *Cross Creek Health Care* is a building of older construction and arguably has a more clinical than home-like feel. Photographs available online show clean but institutional-looking rooms. The current ACH market demands a more home-like setting. Because these beds are largely unattractive, even if there is a current need for the beds in Hyde County, potential residents and their families are unlikely to move and utilize these beds and will remain in their current settings.

- Privacy: Almost all the ACH and NF beds at *Cross Creek Health Care* are semi-private (39 semi-private rooms; 2 private).[6] Just two beds could be offered in rooms that are designed to be private, and it is unclear whether those rooms offered NF or ACH beds. Potential residents and their families seeking ACH placement often prefer private room settings rather than semi-private units.

[6] The property card for the physical property includes this room type breakdown. How the NF beds were actually used may not match this precisely, because as the market for long-term-care placements has demanded increasing privacy and has favored private rooms, facilities have often settled on a "functional capacity" that is lower than the actual number of licensed beds at the facility by utilizing multi-bed rooms as private beds, filling only one bed per room. The 2018 Petition, when asking the Agency to create a need for 23 ACH beds in Hyde County, cited the desire to create more private rooms. It seems likely that if the property card is correct, with only 41 resident rooms, the addition 30 ACH beds prevented the creation of additional private rooms as originally planned.

- Effect of COVID-19: The opening of the 30 ACH beds at *Cross Creek Health Care* corresponded closely in time with the inception of the COVID-19 global pandemic. The facility converted 11 of its ACH beds to COVID-19 beds (5 ACH beds on April 13, 2020, and 6 ACH beds on August 17, 2020). While providing COVID-19 care was an important service provided by some NFs, many prospective residents would likely be deterred from seeking placement at *Cross Creek Health Care* if a significant portion of the ACH beds were being utilized as COVID-19 beds.

The Applicants argue that because of an overall population decline in Hyde County, there is no longer a need for the 30 ACH beds in the county. There are several problems with this argument. First, declining overall population in a service area does not necessarily equal a declining need for ACH beds. In fact, the OSBM statistics for Hyde County for the period 2020 to 2035 project that the population segments of ages 75-99 in Hyde County will increase, rather than decrease, even though the overall population of the county may experience a decrease, as explored more fully in Section II above and as shown in the table below:

OSBM Population Projections for Hyde County 2020 to 2035

Year	Ages 0 to 34	Ages 35 to 44	Ages 45 to 54	Ages 55 to 64	Ages 65 to 74	Ages 75 to 84	Ages 85 to 99	Ages 100+	Total
2020	**1779**	**766**	**732**	**721**	**684**	**302**	**126**	**9**	**5119**
2025	1701	639	760	654	718	373	126	4	4975
2030	1610	576	739	683	616	490	136	3	4853
2035	**1567**	**588**	**622**	**716**	**563**	**497**	**172**	**4**	**4729**
	11.92% decrease	*23.24% decrease*	*15.03% decrease*	*0.69% decrease*	*17.69% decrease*	**64.57% increase**	**36.51% increase**	*55.56% decrease*	***7.62% decrease***

Second, it is ironic that the Applicants are using growth in the elderly population (65+) in Chatham County as a reason to demonstrate need for beds in that county, while completely ignoring growth in the elderly population in Hyde County and arguing the complete opposite. Third, in making this argument, the Applicants use non-OSBM statistics (Spotlight Pop-Facts by Environics Analytics), which are not typically preferred by the Agency as true, accurate, and correct projections for North Carolina demographics.

V. Lack of Substantive Community Support

The community support letters in the Application are perfunctory and show only minimal community investment in the project.

Please refer to pages 122 through 137 of in the Exhibits to the Application.

i. Genuine support for a project reflects investment in a relationship and connection between a project and its local community. Support letters should ideally reflect the uniqueness of each supporter's interest in the development of the proposed Project.

ii. The majority of the letters of support provided by the Applicants were identical form letters, onto which individual signers wrote their names and positions. In some cases, the forms had been corrected by hand, including some that had "Durham" scratched out, and "Chatham" written in.

VI. Unsupported Utilization Projections

None of the Applicants' standalone ACH facilities in North Carolina have achieved 92% utilization in recent years,[7] let alone sustained utilization of 90% or higher as projected for the Project in the Application. Some of the facilities have maintained an extremely low census, even prior to the detrimental effects of COVID-19 on long-term care providers. The Applicants, therefore, have not demonstrated the reasonableness of their projected utilization for the Project.

In the instructions for the CON application forms, applicants are instructed to describe the assumptions and the methodology used to complete the forms. *"The applicant has the burden to demonstrate in the application as submitted that the projected utilization is based on reasonable and adequately supported assumptions. Forms C.1a, C.2a, C.3a, and C.4a only request one year of historical data. However, an applicant may need to provide more years of historical data in its assumptions and methodology in order to meet its burden."*

The table below is taken from the Application and shows the projected ACH bed utilization for the Project. The Commenting Parties find the reasonableness of the utilization projections in the Application to be inadequately demonstrated given the utilization data available for the Applicants' existing ACH facilities. Further, the Commenting Parties were unable to find enough information about methodology in the

[7] The Commenting Parties have chosen to focus on utilization data from annual LRAs only through 2020 (which include data collected through July 31, 2019) because ACH census industry-wide has been profoundly impacted by COVID-19, beginning in the first half of the calendar year 2020. Many facilities experienced census losses that are reflected in the utilization statistics in 2021 LRAs (which include data collected through July 31, 2020) due primarily to the detrimental effects of COVID-19. As such, the Commenting Parties assume in this section that utilization data in 2021 LRAs are not a fair representation of facilities operated by the Applicants (or their related entities) operating at their standard capacities.

Application to test this theory. However, the Commenting Parties have used data that is publicly available to test the assumptions for reasonableness.

Form C.1b Projected Health Service Facility Bed Utilization upon Project Completion Kempton of Chatham	1st Full FY F: 10/1/2026 T: 9/30/2027	2nd Full FY F: 10/1/2027 T: 9/30/2028	3rd Full FY F: 10/1/2028 T: 9/30/2029
Adult Care Home - All Beds			
Total # of Beds, including all those in a SCU	69	69	69
# of Admissions or Discharges (Admissions)	30	75	80
# of Patient Days	9492	22624	23360
Average Length of Stay	316.40	301.65	292.00
Occupancy Rate	37.7%	89.8%	92.8%

In Form C.1b, the Applicants project that they will achieve 37.7% occupancy rate during the first FFY. While the form assumes a shorter stay and more admissions, another way to think about what a particular utilization rate means is to divide the total patient days by 365, which yields an equivalency. In this case, 9,492 / 365 is 26.005, which translates to having 26 beds utilized for the entire 365-day calendar year. For the Second FFY occupancy rate of 89.8%, the equivalent is 62 beds. For the third FFY occupancy rate of 92.8%, the equivalent is 64 beds.

The Applicants state that their projection uses data from a variety of sources, including out-of-state assisted living facilities and data for ACH beds in NF settings in North Carolina. The Commenting Parties believe that using the aforementioned sources of data is not the most accurate way to project utilization.[8] The Commenting Parties are also concerned that the Applicants did not provide any methodology by which the reasonableness of their projections may be tested.

Using data from LRAs from 2017 to 2021, it is possible to determine whether the utilization rates of the Applicants' other ACH facilities in North Carolina justify the proposed Project's utilization projections. The available data does not support the reasonableness of the projections. This is true even when data from 2021 LRAs is omitted (which reflect census losses the Commenting Parties are willing to attribute to COVID-19). Even though the Applicants did not themselves show any adjustment for COVID-19, in order to put the Applicants in the fairest and strongest light, the Commenting Parties will focus only on data from 2017 through 2020 LRAs.

The Commons at Brightmore (New Hanover) 201 ACH/35 SCU: In 2016 (2017 LRA), the facility had an occupancy of 50.28%. By 2019 (2020 LRA) the occupancy had dropped to just 39.17%. The facility achieved an average occupancy of just 43.27% in 2017 through 2020 LRAs.

[8] The Commenting Parties believe that ACH beds in NF settings and ACH facilities in other states, while certainly a better basis for making a projection than having no data at all, is not comparable because of the different purposes and potentially vastly different markets and market conditions in other states. Are the other facilities in CON states where development is influenced by a CON process? Are the facilities of comparable size? Are the ACH beds used the same way (i.e., for a "permanent" placement, rather than a step-down or step-up situation)? There is no way to determine the answers to these questions with the information provided in the Application.

The Kempton at Brightmore (New Hanover) 84 ACH/0 SCU: Data for this facility is incomplete,[9] but in 2017 (2018 LRA) the facility had 72.13% utilization. By 2019 (2020 LRA), that had dropped to 63.06%. The average utilization for 2018 and 2020 LRAs is 67.59%.

These two underutilized facilities are both in New Hanover County, which is a growing county, as evidenced by the table below. [10]

County	April 2010 Estimate Base	July 2020 Projection	Numeric	**Percent Growth**	Births	Deaths	Natural Increase	Net Migration
New Hanover	202,683	235,231	32,548	**16.1**	22,886	19,502	3,384	29,164

Kempton of Jacksonville / Liberty Commons Assisted Living (Onslow) 79 ACH /22 SCU: In 2016 (2017 LRA) this facility had a high of 74.68% utilization. By 2019 (2020 LRA) utilization had dropped to *60.76%*. The facility achieved an average utilization of 70.25%.

Onslow County is also growing, as evidenced by the table below:[11]

County	April 2010 Estimate Base	July 2020 Projection	Numeric	**Percent Growth**	Births	Deaths	Natural Increase	Net Migration
Onslow	177,801	210,056	32,255	**18.1**	42,478	10,985	31,493	762

The Terrace at Brightmore of South Charlotte (Mecklenburg) 30 ACH/0 SCU: This is the only well-utilized ACH of the four. It filled to *87.48%* in 3 years and dropped only to *85.22%* for 2020 LRA (2019 data). This is the only facility to have started at zero and to have filled for 3 years. It does have relatively good growth, and the best utilization of all of the Applicants' (or their related entities') facilities, but it does not justify the projected utilization in form C.1b.

Mecklenburg County is also in a growing county, and has a large surplus projected for 2024 of 1,085 in the 2021 SMFP. This facility, however, is the best performing of the four in the Applicants' North Carolina ACH facility portfolio.

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[9] The 2019 LRAs for both Brightmore facilities seemed to have erroneous ACH bed days data, based on comparisons to other years. In the 2019 LRA, *The Commons of Brightmore* shows all but 295 of its ACH bed days as Medicaid bed days. This seems highly unlikely, as the facility was between 98% and 99.5% private pay in all other years for which data is available. In the 2019 LRA, *The Kempton at Brightmore* shows 100% utilization for all of 2019 – with private pay bed days equaling the total possible bed days. This seems unlikely to be accurate, given that the facility achieved 72.13% utilization in the 2018 LRA and 63.06% utilization in the 2020 LRA. The Commenting Parties were unable to obtain a 2017 LRA for this facility.

[10] https://files.nc.gov/ncosbm/demog/countygrowth_2020.html

[11] https://files.nc.gov/ncosbm/demog/countygrowth_2020.html

County	April 2010 Estimate Base	July 2020 Projection	Numeric	**Percent Growth**	Births	Deaths	Natural Increase	Net Migration
Mecklenburg	919,664	1,118,775	199,111	**21.7**	146,576	61,890	84,686	114,425

In 2 out of 3 counties, the Applicants' ACH beds have not filled, and have subsequently lost utilization, even with the population growth. Furthermore, the one facility with good utilization only filled to a high of 87.48%, reflected in the 2019 LRA, before losing some ground in the 2020 LRA, before COVID-19 made it more difficult to fill ACH beds.

Given this history of underutilization, how do the Applicants justify growth to 92.8% at the rate of 4 net residents per month (See page 90 of the Application)? None of their existing ACH facilities have achieved that utilization at all in the past 5 years, let alone filling to that point from zero admissions over only 3 years, with the majority of that growth in the first year and a half. If the Applicants cannot show that it is reasonable to expect growth to 92.8% at all, then growing to 89.8% utilization in the second FFY seems even less likely to be reasonable.

VII. Unrealistic Financial Projections

The Applicants have provided financial projections that are inadequately supported and are likely unrealistic. The assumptions and methodology provided were not sufficient to explain how the Applicants arrived at several of their projections. The Commenting Parties are concerned that the financials for the Project do not consider the realities of operating a successful standalone ACH facility.

Section F – Criterion (5) requires that the financial and operational projections for the projects demonstrate *"the immediate and long-term financial feasibility of the proposal, based on reasonable projections of the costs of and charges for providing health services [...]"*

Staffing Types and Staffing Ratios

- Projected staffing positions more closely track typical staffing at a skilled nursing facility than that of an ACH facility. For instance, MDS nurses are not required for State-regulated ACH communities; this is a position required for Skilled Nursing Facilities by applicable regulations.

- Based on FTE count provided for the CNA and Med Techs, the Project will require 28 FTE care staff at target occupancy. This translates to a 1 to 7 care-staff-to-resident ratio. This ratio is significantly high for the industry. While having more staff and a lower care-staff-to-resident ratio could have many advantages, industry experience suggests that it will be extremely challenging to fully staff the community at the projected rate, especially given the below-market pay rates discussed in

the next paragraph. The Commenting Parties are concerned that these optimistic projections may not in practice comply with **Criterion (7)** which provides that the Applicant shall show "evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided."

Staff Pay Rates

- The projected pay rates for a Registered Nurse ($23 per hour), LPNs ($18.55 per hour), CNA/PCA ($9.40 per hour), Business Office ($12.03) per hour, and Med Tech ($11.23 per hour) are significantly lower than the current 2021 local market pay rate and is likely to be even further below market rates by 2026.

- MDS Nurse wages are calculated at $18.05 per hour. This rate is significantly lower than the market rates, since MDS Nurses are typically RNs.

Resident Rates

- It appears that private pay rates are projected to be approximately $8,711 at stabilization. Market research indicates that these rates are significantly higher than the current market rates in Chatham County.

- Medicaid/State Assistance rates are projected at $1,323, which is higher than the standard Medicaid/Special Assistance ACH room and board rate of $1,182. It is unclear whether this is assuming the awarding of any PCS hours, or whether PCS hours have been assumed anywhere in the financial forecast.

Bad Debt

- The provided bad debt expectation of 0.1% is extremely low. This assumes a collection rate of 99.9%. It would be more typical to assume bad debt rate of 1-2%. The Commenting Parties are concerned that this Project may come in at the higher end of the more typical range because the projected Resident Rates are high; high rates can often mean more difficulty collecting rents.

- The Applicants have failed to account for unrecovered costs relating to personal care services provided that are not recovered when a resident in "Medicaid pending" status fails to qualify or fails to be awarded PCS hours sufficient to pay for the care.

Operating Expenses

- Housekeeping: The calculation is assuming a $0.15 per resident day costs for all residents. The cost is also charged back to the residents and recognized as revenue. This sort of chargeback will not be allowed for Medicaid residents.

- Marketing/Public Relations: The Applicants have allowed only $250 per month for marketing. Combined with high private payor rates and utilization projections of a net move in of 4 residents per month, this appears to be an unrealistically low expenditure.

- Insurance: $400 per month is an unrealistically low figure for general liability, professional liability, workers' compensation, property, and other insurance costs of a project of the size and type of the proposed Project.

- Rental Expense: Relative to the project cost of $18,689,700.00, the monthly rent amount of $45,000 is artificially low (even if it is an internal rent amongst affiliates or related entities).

- Transportation: It is unclear how transportation will be provided, as there did not appear to be vehicle or driver-related expenses included in the provided financials for the Project.

VIII. The Lack of Access and Effectiveness

Access is about more than geography—it is also about affordability. Being able to do more than break even financially is essential to the continued function of a health care provider, but high private pay rents that translate primarily into profits do not improve the true availability of health services. A significant portion of North Carolinians in need of long-term care services will be neither wealthy enough to pay high private pay rates, nor lacking assets and income such that they would qualify for Medicaid. These individuals will not be well served by a facility that caters to the wealthy and defines "low income" as Medicaid qualified. The Applicants are not required to provide charity care, as they rightly point out. However, Chatham County already has a number of high-end facilities with higher rents. Chatham County needs more ACH beds in affordable settings. The Application projects significant profits for FFY3 of over $1.2 million dollars, while not significantly improving access to services or providing more livable wages to area workers. The Commenting Parties are concerned that the Applicants may have a financial model that is unsustainable and makes ACH beds unattainable for many Chatham County residents.

Section E – Criterion (4) states:
"Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed."

When applicants apply to develop a service component, they will not necessarily have knowledge of any competitor's intention to develop the same service component in a service area. This lack of knowledge makes it impossible to compare costs and other factors in advance of an application submission. However, when building a high-cost project, it is more than reasonable to consider a more cost-effective building model as an alternative that should be ruled out. The Applicants did not consider this option. Since it is now possible in the comment period for this review period to compare competing applications side by side, it is possible to see an example of what such a more modestly-priced alternative might look like. A lower priced project would certainly be "available to the applicant," even if it is not the option chosen.

The Commenting Parties are concerned that the following attributes of the Application make this Project a less effective option than the other option available to the Applicants—a less costly and more effective option. For the sake of making a lower-priced and more effective option concrete and non-theoretical, the competing application submitted by the Commenting Parties will be used as an example of such an alternative throughout this section.

- High private payor rates – High payor rents are easy to find at existing facilities in affluent Chatham County. Most existing ACH providers have been capitalizing on the concentration of wealth in the northeastern quadrant of the Chatham County by developing ACH beds in high-end settings with price tags to match. What is harder to find is an ACH placement in an attractive new facility that has affordable rates for those who are neither wealthy nor able to qualify for Medicaid. Making ACH beds truly accessible to private payors as well as Medicaid recipients means setting rates that do not shut out all but those at the income extremes and that do not unduly burden the private payors with the cost of operating. Aiming for a lower price point does not necessarily mean sacrificing profits either, because it is often easier to fill beds when rates are more reasonable. The private payor rates selected by the Applicants are in fact higher than current Chatham County local market high rates per research conducted by the Commenting Parties. By contrast, the competing application has chosen private pay rent rates below the current local market average. [12]

[12] The Commenting Parties have calculated effective private payor rent rates of approximately $8,711 per month based on the proforma provided by the Applicants. Even assuming that this is a high estimate, and using the number provided by the Applicants as the base rent rate, the private payor rate of approximately $7,620 (FFY 1 rate of $254 x 30 days)

- Lack of experience with Medicaid – The ACH facilities that are currently operated by the Applicants or their related entities seem to have very little or no experience of Medicaid. Two facilities have not served any Medicaid residents. The remaining two facilities have served the equivalent of 3 of fewer Medicaid residents per 365-day period in the past 4 reporting years.[13] While the Commenting Parties see the value in serving Medicaid residents, they also understand how important it is to accurately forecast the costs and revenues associated with Medicaid (State/County Assistance) and personal care services.

  In the absence of any additional information, the proforma provided by the Applicants appears not to have taken into account the real costs and revenues associated with accepting a significant number of Medicaid recipients and helping them receive the personal care service hours they deserve. Personal care services absolutely must be provided by the ACH, whether or not the ACH is reimbursed for that care. The table below illustrates the Applicants' limited history of serving Medicaid recipients at their North Carolina ACH facilities.

per month is $3,120 higher than the private payor rate of $4,500 all-inclusive rate proposed by the Commenting Parties in the competing application. Additionally, the $4,500 rate in the competing application is for private rooms.

[13] The Medicaid resident equivalent is calculated by dividing the actual number of Medicaid bed days by 365. An equivalency of 3 would mean that the bed days reported by the facility for Medicaid bed days would be roughly equivalent to having 3 Medicaid beds filled on every day of a 365-day year. The 2017 LRA for *Liberty Commons Assisted Living / Kempton of Jacksonville* showed an equivalency of 5 Medicaid Residents. Such a high rate, however, has not been repeated since that time.

MEDICAID HISTORY AT ACH FACILITIES OPERATED BY APPLICANTS

Facility Name	Source	ACH Beds	SCU	Total Possible Bed Days	Actual Medicaid Bed Days	Actual Private Pay Bed Days	Total Average Occupancy Rate	Medicaid Bed Days as a Percentage of Total Actual Bed Days	Medicaid Resident Equivalent
The Commons at Brightmore	2021 LRA	201	35	73,365	366	27,498	37.98%	1.31%	**1**
	2020 LRA	201	35	73,365	153	28,583	39.17%	0.53%	**0**
	2019 LRA[14]								
	2018 LRA	201	35	73,365	482	32,184	44.53%	1.48%	**1**
	2017 LRA	201	35	73,365	732	35,743	49.72%	2.01%	**2**
The Kempton at Brightmore	2021 LRA	84	0	30,660	0	17,217	56.15%	0.00%	**0**
	2020 LRA	84	0	30,660	0	19,333	63.06%	0.00%	**0**
	2019 LRA								
	2018 LRA	84	0	30,660	0	22,116	72.13%	0.00%	**0**
	2017 LRA								
Liberty Commons Assisted Living / Kempton of Jacksonville	2021 LRA	79	22	28,835	730	16,790	60.76%	4.17%	**2**
	2020 LRA	79	22	28,835	730	16,790	60.76%	4.17%	**2**
	2019 LRA	79	22	28,835	365	20,440	72.15%	1.75%	**1**
	2018 LRA	79	22	28,835	1,095	20,075	73.42%	5.17%	**3**
	2017 LRA	79	22	28,835	1,825	19,710	74.68%	8.47%	**5**
The Terrace at Brightmore of South Charlotte	2021 LRA	30	0	10,950	0	8,572	78.28%	0.00%	**0**
	2020 LRA	30	0	10,950	0	9,332	85.22%	0.00%	**0**
	2019 LRA	30	0	10,950	0	9,579	87.48%	0.00%	**0**
	2018 LRA	30	0	10,950	0	8,141	74.35%	0.00%	**0**
	2017 LRA	30	0	10,950	0	2,029	18.53%	0.00%	**0**

- Low wages, and high staffing ratios: As previously mentioned, the wages proposed for staff of the Project are low for the market. The Commenting Parties noted that their own application has allowed for greater staff pay in every category that their application has in common with the Application. In fact, in most categories, the Commenting Parties' application showed significantly higher staff pay rates.[15]

[14] Lines with gray indicate that either no LRA was available to the Commenting Parties or that the available data appeared to be flawed and was therefore omitted.

[15] Percentages were calculated by comparing year one FTE salary equivalents for positions that both applications and performing a percentage difference formula. Percentage difference = (Absolute difference / Average) x 100. The Commenting Parties recognize that due to differences in operational models, the descriptions of these positions may not be the same across providers, so this may not be a one-to-one comparison. However, it seemed significant that every category for which both applications provided a FTE annual salary, the Applicants had projected lower wages.

AVERAGE ANNUAL SALARY FOR 1 FULL TIME EMPLOYEE

Position (As provided in the CON form)	Applicants' wages are LOWER by:
Registered Nurses	16%
Certified Nurse Aides / Nursing Assistants	26%
Activities Director	35%
Laundry & Linen	21%
Housekeeping	10%
Maintenance/Engineering	31%
Administrator / CEO	3%
Business Office	35%
Average across all substantially similar positions:	**22%**

As was discussed in Section VII above, not only do low wages make it difficult to attract and retain staff, but given the high staffing ratio that the Applicants appear to be pursuing, there are likely to be even more difficulties achieving the desired staffing levels. As such, the Commenting Parties question the effectiveness of the Project.

- Not the most efficient or effective option. The Application projects tremendous development costs for the project. With a total project cost of $18,689,700.00, one can calculate a theoretical total development cost per bed of $270,865.72.[16] These high costs are being passed on to private pay residents as explained above. By contrast, the competing application will incur a development cost of just $179,631.58 per bed, which saves over $91,000 per bed, which in turn allows the Commenting Parties to offer considerably lower rents, reducing cost to the public and increasing access to health care to a wider segment of the Chatham County population.

  Another way to consider the overall costs and the effectiveness of the Project is to divide the total project cost by the number of resident rooms. The Applicants propose to spend $381,422.45 per resident bedroom, of which 29 will be private and 20 will be semi-private.[17] The competing application proposes to develop 57 resident rooms, all of which will be private, at a cost of $179,631.57 per resident room. For perspective, the cost of developing a resident room in the Project is nearly $100,000 greater than the value of the median owner-occupied home value in Chatham County for 2015-2019.[18] The competing project

[16] $18,689,700 / 69 beds = $270,865.72

[17] The Applicants propose to develop 40 semi-private ACH beds (in 20 semi-private rooms) and 29 private ACH beds in private rooms.

[18] U.S. Census Bureau. Quick Facts, Chatham County lists the median home value in Chatham County as $281,700. $381,422.45 - $281,700.00 = $99,722.45. $281,700.00 - $179,631.57 = $102,068.43. https://www.census.gov/quickfacts/fact/table/chathamcountynorthcarolina,US/PST045219

proposes developing resident rooms for approximately $100,000 less than the median home value in Chatham County.

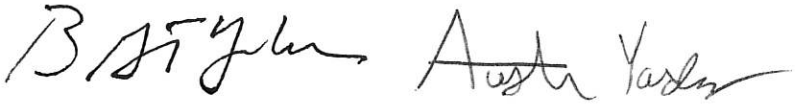
Additionally, considering the delays Chatham County has experienced waiting for the development of the NF project for which the Application is again changing the scope, it is questionable as to whether the Project will prove to be most effective. Delayed bed development, while sometimes unavoidable because of factors outside of applicant control, is not effective service development.

Conclusion

The Commenting Parties respectfully request that the Agency carefully review the Application for the potentially serious issues elaborated upon above. It will be critical, with a competitive review, to determine whether the Applicants have met the Agency's requirements and are acting within the spirit of the CON law.

On behalf of the Commenting Parties, I thank you for your review of these comments, your time, and your careful consideration.

Sincerely,



B. Grant Yarber / Austin Yarber
Authorized Representatives
Chatham Opco, LLC and Chatham Propco, LLC