

COMMENTS OF WR IMAGING, LLC AND WAKE
RADIOLOGY DIAGNOSTIC IMAGING, INC.

REGARDING PROJECT ID J-012062-21:

A PROPOSAL BY RR WM IMAGING CHAPEL HILL, LLC
TO DEVELOP A NEW DIAGNOSTIC CENTER IN CHAPEL
HILL, ORANGE COUNTY TO INCLUDE
MAMMOGRAPHY, BONE DENSITY, X-RAY, AND
ULTRASOUND SERVICES

In accordance with N.C. Gen. Stat. § 131E-185(a1)(1), WR Imaging, LLC (“WRI”) and Wake Radiology Diagnostic Imaging, Inc. (“WRDI” and, collectively with WRI, the “Commenters”) submit the following comments related to the certificate of need (“CON”) application submitted by RR WM Imaging Chapel Hill, LLC d/b/a Raleigh Radiology Chapel Hill (“RRCH”) to develop a diagnostic center in Chapel Hill with mammography, x-ray, bone density, and ultrasound equipment, identified by Project ID J-012062-21 (the “Application”). The following comments include a “discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with the relevant review criteria, plans and standards.” See N.C. Gen. Stat. § 131E-185(a1)(1)(c). To facilitate the Agency’s review of these comments, the Commenters have organized the discussion by issue, noting the relevant issues rendering the Application non-conforming with the statutory review criteria set forth in the CON law. The Commenters request a public hearing regarding the proposed project to more fully discuss, among other things, the issues set forth herein.

General Issues

Additional reasons that the Application fails to comply with the relevant statutory review criteria are set forth in the sections below. As a general summary, however, the Commenters note that the Application:

- (i) contains multiple inconsistencies, mischaracterizations, and errors;
- (ii) relies on unsupported and unreasonable assumptions regarding projected need and utilization;
- (iii) due to errors and unreasonably assumptions in its methodology to project need and utilization, fails to demonstrate the financial feasibility of the project;
- (iv) fails to demonstrate the need for the proposed project, particularly in the area in which the project would be developed, which is located approximately 1500 feet from the recently approved Duke Coley Hall diagnostic center, within three miles of Commenters’ facility, and in a portion of the proposed service area that is presently served by multiple competing diagnostic service providers;
- (v) fails to reasonably account for the capacity of existing imaging service providers, in the area immediately surrounding the proposed location of the diagnostic center, in

Orange County, and in relatively close areas of adjacent counties, to serve the needs of the population in the proposed service area;

- (vi) fails to demonstrate that the proposed diagnostic center is located in an area that would be conveniently accessible to residents of the proposed service area and, in particular, to underserved residents within the proposed service area;
- (vii) fails to demonstrate support for the project from service providers and referral sources within the proposed service area;
- (viii) fails to demonstrate how the proposed services will be provided in coordination with the existing healthcare system in the proposed service area;
- (ix) fails to show how the proposed project will result in increased competition and lower prices for consumers and payors, and, correspondingly, why the project will not result in an unnecessary duplication of health resources in the service area, which unnecessary duplication “results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of health care services.” *See* N.C. Gen. Stat. § 131E-175(4).

Because of these deficiencies, the Application fails demonstrate that the proposed project is consistent with or does not conflict with multiple statutory review criteria set forth at N.C. Gen. Stat. 131E-183(a), including criteria (3), (4), (5), (6), (8), (13), and (18a). The Agency is required to “review all applications utilizing the criteria outlined in [N.C. Gen. Stat. 131E-183(a), and to] determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.” *Id.* Because the Application fails to meet the requirements of multiple statutory review criteria, the Agency is required by law to deny the Application.

I. The Application Contains Inconsistencies, Errors, and Mischaracterizations.

The Application contains multiple inconsistencies, errors, and mischaracterizations. For instance, while the applicant provided no data in form F.1 or elsewhere in the Application related to medical equipment valued at more than \$750,000.00, in its response to C.5.a. and C.7, RRCH stated that the CON rules did not apply to the “major medical equipment” proposed in the Application. Either the applicant did not include the full range of intended services and equipment in the Application or it failed to properly characterize the scope of the proposed project. The

Application also identifies Orange County as the proposed service area, but states that the purpose of the project is to “provide convenient and affordable frequently used outpatient imaging services for residents in the *Chapel Hill service area*.” (See Application, p. 28, emphasis added)

With respect to projected utilization, RRCH states on page 35 of the Application that “population size is a major determinant of imaging need.” It then projects that the population of Orange County will grow by 8,041 people between 2021 and 2026, and that the population of individuals ages 65 and greater will account for 65% of the projected increase. The applicant notes that the demand for diagnostic imaging services is typically greater for older individuals, and states that a new diagnostic center is needed to meet the need an aging population in Orange County. However, in justifying the location of the proposed project in Chapel Hill, the applicant evaluates the estimated population within a five-mile radius of the proposed facility and concludes that the location is justified because two-thirds of Orange County residents (105,000 people in 2021) live within that five mile radius. Notably, however, the census tracts within this five-mile radius includes densely populated portions of adjacent Durham County, which is outside of the proposed service area. In addition, the applicant fails to consider or acknowledge that the five-mile radius around the proposed facility includes the University of North Carolina at Chapel Hill, which had over 30,000 enrolled students in 2020, and also includes considerable housing for students at nearby Duke University (16,977 students in 2020) and N.C. Central University (8,078 students in 2020). As compared to older members of the population, university students and younger individuals are significantly less likely to require diagnostic imaging services. The Application provides County-level data with regard to population demographics and likely demand for services, but then projects that data onto an area of the County with vastly different demographic characteristics. If RRCH was truly interested in serving potentially underserved portions of the population in the proposed service area, a better location for the proposed facility would be northern Orange County, which has no freestanding diagnostic centers, is relatively more rural, has a relatively older population, and is relatively isolated from the health services and resources in southern Orange County due to the lack of interstate access or other major traffic arteries.

The Applicant further states that, within the five-mile radius of the proposed facility, the only freestanding imaging center offering multiple modalities is Wake Radiology UNC Rex Healthcare’s facility at 110 Estes Drive in Chapel Hill. This fails to account for UNC Hospital’s outpatient imaging center at Eastowne, Duke Radiology at Patterson Place, or the recently

approved Duke Coley Hall Imaging, a \$1,720,000.00 diagnostic center. Notably, Duke Coley Hall, if developed, would be situated within approximately **1500 feet** of the applicant's proposed facility in Chapel Hill, a drive of less than 3 minutes. The applicant subsequently, in Section G.1, notes the availability of UNC Eastowne as a freestanding alternative, but again fails to consider the availability of existing and newly approved diagnostic centers in and around the proposed service area. With regard to persons residing in northern and western Orange County, the two existing and two recently-approved diagnostic centers located in Burlington are more conveniently located, while multiple imaging centers in and around Durham are more conveniently accessed by many individuals residing in northeastern Orange County. The applicant relies on population projections in the five-mile radius around the facility, including adjacent areas in Durham County, but then fails to account for imaging services available in those areas of Durham. In short, the applicant presents conflicting data with regard to the scope of the proposed project, the service area, the health and demographic characteristics of the residents in the proposed service area, the convenience of location to individuals who may be underserved within that service area, and the availability of existing resources within and immediately adjacent to the service area to meet the needs of the target population.

II. The Application Contains Errors and Unsupported and Unreasonable Assumptions Regarding Need and Utilization Methodology.

a. *General Overview.* In validating the need for the proposed services, RRCH stated that it considered population growth and aging in the service area, the health status of residents in the service area, recommendations for diagnostic screening exams, access to imaging services, cost of care for diagnostic services, and the capabilities and capacities of the proposed equipment. While additional information with respect to errors in the applicant's assumptions and need methodology are set forth below, it is worth noting at a high level that any additional need from the projected population growth in the County over the next several years, which by the applicant's own -projections will be only 8,041 people, can and will be easily met by existing health service providers in and around the proposed service area. As is discussed elsewhere in these comments, the overall health status of residents of Orange County compares favorably to that of North Carolina as a whole. In addition, the location of the proposed facility in Chapel Hill is not ideally situated to address the needs of residents in the rural portion of the service area, who are relatively underserved, and unnecessarily duplicates existing and recently-approved health services in the

area. The applicant relies on CMS recommendations for projecting bone density screening rates in women aged 65 or greater, but fails to account for limitations placed on those recommendations with respect to findings of estrogen deficiency, and thus artificially inflates projected need for that service. Further, the applicant states that the need for cancer screenings will increase going forward as patients who delayed such screenings due to the COVID-19 pandemic schedule those screening appointments. However, any short-term demand from rebounding cancer screenings can and will be adequately addressed by existing and recently approved health service facilities in the proposed service area. Finally, the proposed location of the project relative to the defined service area does not increase or promote access to services by underserved individuals within the proposed service area and, in particular, residents of relatively rural and underserved northern Orange County.

b. Step 1: Identification of the Population to be Served by X-ray and Ultrasound. In Step 1 of Section Q, the applicant identifies all of Orange County as its service area, and stated further that it looked narrowly at the five-mile radius around the proposed location of the diagnostic center in Chapel Hill. As is noted above, however, the five-mile radius cited by the applicant includes some of the most densely-populated portions of Durham County, which is clearly outside of the proposed service area. Notwithstanding, the applicant projected that 95% of patients served by the facility would originate from within Orange County, with only a five percent in-migration rate. RRCH stated in its assumptions for Step 1 that using the whole county was reasonable given the lack of freestanding diagnostic imaging options in the northern and western parts of Orange County. While it is true that there are relatively few in-county health service facilities proximate to patients in the northern and western portions of Orange County, situating yet another diagnostic facility in Chapel Hill will not address those deficiencies. Individuals living in northern Orange County have relatively few convenient traffic arteries to access Chapel Hill without encountering significant congestion; this is particularly true for residents north and northwest of Hillsborough, for whom highway 86 and highway 87 remain primary conduits. Individuals in northern Orange County would be far better served by a diagnostic center located in or north of Hillsborough or in or around Mebane. RRCH further stated in its assumptions for Step 1 that nearby housing development, and the availability of public transit and free parking would contribute to patient choice of this site. However, housing development and public transportation in and around Chapel Hill does not address the putative need of residents in rural

Orange County, who have no convenient way of access the facility and for whom public transportation is not an option.

c. Step 2: Projected X-ray Need for RRCH Service Area. With regard to projected x-ray need, RRCH used an adjusted 2019 hospital outpatient x-ray use rate for North Carolina, which it stated was reasonable because it included only hospital patients who received an x-ray on an outpatient basis. This assumption is unreasonable, however, given that the vast majority of hospital outpatient x-rays performed in Orange County are likely to be performed at imaging facilities affiliated with UNC Health or Duke Health.

d. Step 3: Projected X-ray Market Share and Volumes for RRCH Service Area. The applicant assumes that a projected market share of 15% by the third full project year is reasonable based, in part, on letters of support from physicians indicating intent to refer to the RRCH location. However, of the 24 letters of support submitted with the Application, only five are from providers within Orange County, one of which was a Duke Health affiliated practice more likely to refer to Duke's Coley Hall facility. The vast majority are from providers located in Durham and Wake Counties. In addition, as in noted above, the applicant failed to account for the approval of Duke Coley Hall, which will be situated approximately 1,500 feet away from RRCH when developed. The proximity of Duke Coley, and the availability of multiple Duke-Health and UNC-Health-affiliated imaging centers in the proposed service area and in areas immediately adjacent to the proposed area, many of which are more conveniently located for patients in northern and western Orange County, render the applicant's projections unsupportable.

e. Step 5: Projected Ultrasound Need for RRCH Service Area. To project the need for ultrasounds, RRCH evaluated several national studies to project the number of ultrasounds per 1,000 people, and ultimately calculated a calculated a rate using a 2016 National Ambulatory Medical Care Survey ("NAMCS") that presented patient-recall data related to services provided in physician offices. The applicant then increased this number by 25% between 2016 and 2022 to project 101.72 ultrasounds per 1,000 population. However, RRCH did not state why a 25% increase in the NAMCS rate would be reasonable, nor why this national data would be applicable to Orange County North Carolina, which has demographic and health-related characteristics that substantially deviate from the national average.

f. Step 6: Projected Ultrasound Market Share and Volumes for RRCH Service Area. RRCH assumes that a projected market share of 15% by the third full project year is reasonable

based, in part, on letters of support from physicians indicating intent to refer to the RRCH location. However, of the 24 letters of support submitted with the Application, only five are from providers within Orange County. One referring provider accounted for over fifty percent of projected mammography referrals in the letters of support, and over 20 percent of DEXA referrals. However, this provider, affiliated with Duke Primary Care Meadowmont, is more likely to refer to Duke's Coley Hall, Patterson Place, or Southpoint facilities. The vast majority of the letters of support are from providers located in Durham and Wake Counties. In addition, as in noted above, the applicant failed to account for the approval of Duke Coley Hall, which will be situated approximately 1,500 feet away from RRCH when developed. The proximity of Duke Coley, and the availability of multiple Duke-Health and UNC-Health-affiliated imaging centers in the proposed service area and in areas immediately adjacent to the proposed area, many of which are more conveniently located for patients in northern and western Orange County, render the applicant's projections unsupportable.

g. *Steps 8-9: Identification of Population to be Served by Bone Density Equipment and Projection for Bone Density Scan Need in Service Area.* RRCH projects bone density scan need based on the 65 and older female population located in the same service area used for projecting x-rays and ultrasounds, and divides that population by two based on the CMS recommendation for bone density scans in this population. However, the applicant states that CMS approves bone density scans every two years for women in this age demographic when their physician has determined that they are estrogen deficient. Not every woman in Orange County over the age of 65 will have received such a diagnosis, and not all women in this age cohort who are estrogen deficient will actually receive a bone density scan every two years. This is an important distinction, and one that is noted in QC Radiology's (an affiliate of Raleigh Radiology) application to develop a new diagnostic center in Raleigh known as Raleigh Radiology Midtown and identified by project ID J-11988-20. In the Raleigh Radiology Midtown application, Raleigh Radiology noted on page 52 of the application that the United States Preventative Services Task Force ("USPSTF") recommends DEXA screening for women aged 65 or greater and who are not estrogen deficient only once every six years. The applicant's methodology is therefore not a "conservatively reasonable proxy for all bone density users in any North Carolina county", as the applicant itself appears to understand based on its application to develop Raleigh Radiology

Midtown. Rather, it significantly overstates and artificially inflates the need and the likely demand for these services.

h. Step 10: Projected Bone Density Market Share and Volumes for RRCH. As is noted above, RRCH's projection of market share is unsupported by its letters of support and is undermined by the applicant's failure to account for diagnostic centers within and immediately adjacent to the proposed service area. In addition, the applicant's projection of market share is based on unsupported projections of need, as is addressed above. The applicant's assumptions with respect to this factor are simply not supported by the reasonable evidence or credible fact.

i. Step 14: Projected Mammography Market Share and Volumes for RRCH Service Area. As is noted above, RRCH's projection of market share is unsupported by its letters of support and is undermined by the applicant's failure to account for diagnostic centers within and immediately adjacent to the proposed service area.

The deficiencies, errors, and unsupported assumptions in the applicant's need methodology undermines the applicant's forecasts of need for the proposed services in the service area defined in the Application, and undermines the applicant's projections with respect to long-term financial feasibility of the project. As result, the applicant fails to demonstrate that the project is consistent with and/or does not conflict with statutory review criteria (3), (4), (5), (8), and (13).

III. The Application Contains Errors Regarding Patient Origin Methodology and Assumptions.

Exhibit C.3 of the Application, which sets forth RRCH's patient origin methodology and assumptions, contains multiple inconsistencies and errors. Step 1, for instance, estimates the total general diagnostic radiology procedures for x-ray, ultrasound, DEXA, and mammography procedures. The sources and notes for this step, however, refer to incorrect portions of the methodology tables set forth in Section Q of the main Application. More importantly, however, the applicant's patient origin and methodology assumptions are predicated on the need and utilization methodology set forth in Section Q, which are undermined by the foregoing errors and inconsistencies. In addition, in Step 2 of the patient origin methodology and assumptions, the applicant assumes that the average number of procedures per patient will be 1.54. This assumption is based on existing referral patterns to Raleigh Radiology. However, the applicant does not explain or support why relying on these referral patterns in Wake County would be reasonable for

this imaging location given that the proposed service area is Orange County and that 95% of the patients are projected to be Orange County residents. These errors render the remainder of the applicant's patient origin methodology and calculations unsupportable. As result, the Application fails to demonstrate that the project is consistent with statutory review criteria (3), (4), and (5).

IV. The Application Fails to Consider Alternative Methods of Meeting the Need Projected in the Application, to Demonstrate that it Proposed the Least Costly Alternative, to Demonstrate that it will not Unnecessarily Duplicate the Services of Existing Providers, to Demonstrate Integration with Existing Health Service resources in the Service Area, or to Demonstrate that the Project will Increase Competition and Reduce Prices Rather than Result in Unnecessary and Inefficient Duplication of Health Services that will Increase Prices.

RRCH stated in Section E that there are no available alternative methods for meeting the putative need for additional imaging services in Orange County. This was an error or a mischaracterization, which the applicant seems to recognize by virtue of the multiple alternatives that the applicant subsequently "considered" and rejected. The alternatives identified by the applicant included: maintaining the status quo, developing the project in a different area, and acquiring different quantities of medical diagnostic equipment. All were based on a faulty underlying predicate that there is need for diagnostic imaging services in Orange County, and particularly in and around the Chapel Hill area of Orange County, that is not being met or capable of being met by existing service providers and recently approved service providers.

a. *Maintain the Status Quo.* RRCH rejected this alternative on the basis of population growth in the proposed service area and community health risk factors. The applicant did not state what community health risk factors so afflict the population of Orange County residents, and in particular the residents in and around Chapel Hill. The applicant cites the North Carolina Institute of Medicine ("NCIOM") County Health Data when noting that 12.2 percent of Orange County residents are uninsured, that breast cancer rates are 181 per 100,000 residents, that 14 percent of adults are current smokers, and that 15.3% of the population are age 65 or older. Notably, however, the NCIOM data does not contain the incidence of breast cancer by county, only the incidence of all cancers. For each of these factors, Orange County compares favorably to state averages, and it

is likely that the more heavily populated area within Orange County that RRCH identifies with a five-mile radius around the proposed facility compares more favorably still.

RRCH further justifies rejecting this alternative because patient wait times “could also increase” at existing facilities as population grows, but fails to account for existing resources in and around the proposed service area with capacity to meet the needs of a growing population. Even assuming that the need projections in the Application are accurate, which commenters reject for the reasons set forth herein, RRCH utterly failed in its Application to consider the extent to which existing providers of mammography, x-ray, DEXA, and ultrasound services located within or proximate to the proposed service area have the capacity to meet that need. In addition, the applicant did not consider the capacity of newly-approved Duke Health’s Coley Hall diagnostic center, which will be located approximately 1,500 feet from the proposed RRCH facility, or multiple newly-approved diagnostic centers in Eastern Alamance County, which are more conveniently accessed by patients residing in western and northwestern Orange County.

Commenters, for instance, operate a diagnostic imaging center in Chapel Hill offering screening and diagnostic mammography services, ultrasound, MRI, CT, bone density, and other imaging services. Commenters’ Chapel Hill center is located less than three linear miles from the proposed location of RRCH, and has two mammography units, two general ultrasound units, and one breast ultrasound unit. Commenters’ Chapel Hill diagnostic imaging center experienced the following procedure volumes between 2017 and 2020.

Mammography and Ultrasound Volumes				
Commenters’ Chapel Hill Diagnostic Imaging Center, 2017-2020*				
	2017**	2018**	2019**	2020**, ***
Screening Mammography	5,915	6,079	6,293	5,717
Diagnostic Mammography	1,316	1,363	1,439	1,493
Mammography Total	7,232	7,442	7,732	7,210
Ultrasound	4,106	4,129	4,292	4,103
X-ray	3217	2774	2864	2171
Bone Density	1096	1312	1417	1129

*Note, prior to February 2019, this facility was operated by Wake Radiology Diagnostic Imaging Inc. only and not as a joint venture with WR Imaging, LLC.

**Prior to the COVID-19 Pandemic, this facility was open on Saturdays from 8:00am to 1:00pm. Because of the pandemic, Commenters' facility is no longer open on Saturdays. Petitioners anticipate returning to pre-pandemic hours in the future.

*** In 2020, the diagnostic center was closed for approximately 6 weeks due to the pandemic.

On a daily basis, Commenters' Chapel Hill diagnostic imaging facility is able to perform up to 53 mammography studies (consisting of up to 11 diagnostic mammography studies and 42 screening mammography studies), 35 ultrasound studies, 35 x-ray studies, and 16 bone density studies. Based on these figures and Commenters' current hours of operation (8:00am to 5:00pm, Monday-Friday, 262 days per year), which have been scaled back during the pandemic to eliminate the provision of services on Saturdays, the daily and annual capacity for Commenters' Chapel Hill facility are provided below.

Mammography and Ultrasound Daily and Annual <u>Capacity</u> Commenters' Chapel Hill Diagnostic Imaging Center		
	Daily Capacity	Annual Capacity*
Screening Mammography	42	11,004
Diagnostic Mammography	11	2,882
Mammography Total	53	13,886
Ultrasound	35	9,170
X-ray	35	9,170
Bone Density	16	4,192

*Note, the facility is presently open Monday-Friday, 262 days per year. Prior to the COVID-19 Pandemic, this facility was open on Saturdays from 8:00am to 1:00pm. Because of the pandemic, Commenters' facility is no longer open on Saturdays. Petitioners anticipate returning to pre-pandemic hours in the future.

Comparing the average procedure volumes from 2017-2020 with actual capacity, Commenters' Chapel Hill diagnostic imaging facility alone has sufficient capacity to fully accommodate the 2,690 ultrasound studies, 2,047 mammography studies, 2,683 x-ray studies, and 774 bone density studies that RRCH projects it will perform at RRCH by 2025, which inflated

volumes rely on unsupported projections of need in the service area and market share for the applicant.

Additional Capacity for Mammography and Ultrasound Studies			
Commenters' Chapel Hill Diagnostic Imaging Center			
	Average Volume 2017-2020	Annual Capacity	Additional Capacity
Screening Mammography*	6,001	11,004	5,003
Diagnostic Mammography*	1,403	2,882	1,479
Mammography Total*	7,404	13,886	6,482
Ultrasound	4,158	9,170	5,012
X-ray	1,769	9,170	7,401
Bone Density	1,239	4,192	2,953

*Note that Petitioners operated the Chapel Hill facility with one mammography scanner prior to 2019, when a second mammography unit was added. For that reason, the average volume of scans from 2017-2020 may be skewed slightly lower than the actual present volume. If so, these differences are likely to be small and the facility's capacity with respect to mammography services is certainly well above the "need" projected in the RRCH Application.

Notably, this does not include additional capacity that will occur when Petitioner returns to pre-pandemic working hours on Saturdays, nor does it include any projections of additional capacity at other diagnostic imaging facilities in or near the service area, including at the Duke Health Patterson Place and Southpoint facilities, the UNC Health Eastowne facility, or the UNC Burlington and Alamance Regional Imaging facilities in Burlington, which are more conveniently located for patients in western and northwestern Orange County. Further, the applicant failed to consider or account for the recently-approved Duke Coley Hall diagnostic center in Chapel Hill or the recently-approved Kernodle Clinic Burlington and DRI Burlington facilities in Alamance County. In conclusion, the Applicant simply failed to acknowledge the ample availability of resources within the proposed service area or those near the proposed service area that are more conveniently accessed by residents in outlying areas of the service area for whom travel to Chapel Hill is relatively inconvenient. As result, the Application is nonconforming with statutory review criteria (3), (4), (5), (6), (8), and (13).

b. Develop the Project in a Different Area. RRCH stated that it considered developing the project elsewhere in Orange County, but ultimately chose the Chapel Hill site due to its location near Interstate-40 and public transportation lines. However, the applicant's chosen site, in addition to being located near multiple existing imaging service providers, will be located less than a third of a mile from the recently-approved Duke Coley Hall Imaging Center. The proposed location does nothing address the relative inconvenience faced by residents of northern and northwestern Orange County when accessing imaging services. In particular, while the applicant states that an aging population is a primary consideration in determining the overall need and demand for imaging services of the type proposed, it fails to recognize that the area immediately surrounding the proposed location, located near three major public universities with a combined student population of over 50,000 individuals, is relatively young as compared to the more rural areas of Orange County. To the extent that there is unmet need in the proposed service area, which the commenters reject for the reasons stated herein, the project would be more ideally developed in northern Orange County. Again, the Application should be found non-conforming with statutory review criteria (4) and (6).

c. The Proposed Project Would Increase Cost by Unnecessarily Duplicating Existing and Approved Health Service Capabilities, is not the Least Costly Alternative, and does not Demonstrate Coordination with Existing Health Services in the Service Area.

RRCH states in its application that the presence of another freestanding diagnostic center in the area will increase competition, "organically containing the price of care." With regard to this argument, however, the General Assembly has concluded typical free-market competition does not operate to contain costs with regard health service facilities. On this basis, it has concluded that that "the proliferation of unnecessary health service facilities results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of health care services" and that "the financing of health care, particularly the reimbursement of health services rendered by health service facilities, limits the effect of free market competition and government regulation is therefore necessary to control costs, utilization, and distribution of new health service facilities and the bed complements of these health service facilities" See N.C. Gen. Stat. 131E- 175(1),(4)

The proposed project, rather than containing costs, would result in unnecessary duplication of existing health services. As is shown above, Commenters' facility alone has the capacity to

serve the need projected by the applicant, and there multiple existing and newly-approved within and immediately adjacent to the proposed service area that are available and have the capacity to serve the residents of Orange County. Further, the applicant failed to demonstrate support from likely referring physicians within the proposed service area, with 19 of its 24 letters of support coming from providers located outside of Orange County. This unnecessary duplication of existing and recently approved health services within the proposed service area will result in “costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of health care services.” See N.C. Gen. Stat. 131E- 175(4) This is precisely the outcome the General Assembly sought to avoid.

For these reasons, the Application fails to demonstrate that the proposed project is consistent with statutory review criteria (4), (5), (6), and (8), and 18(a).