

NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

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

VIA EMAIL ONLY

October 24, 2019

Trevor Presler  
[tpresler@wyrick.com](mailto:tpresler@wyrick.com)

**Exempt from Review – Acquisition of Facility**

**Record #:** 3091  
Facility Name: Arbor Landing at Ocean Isle  
Type of Facility: Adult care home  
FID #: 150390  
Acquisition by: Ocean Isle Operations, LLC  
Business #: 3123  
County: Brunswick

Dear Mr. Presler:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your representations, the above referenced proposal is exempt from certificate of need (CON) review in accordance with N.C. Gen. Stat. §131E-184(a)(8). Therefore, the above referenced business may proceed to acquire the health service facility identified above without first obtaining a CON. The Agency's determination is limited to the question of whether or not the above referenced business would have to obtain a CON if the current owners of the health service facility do in fact sell it to the business listed above. Note that pursuant to N.C. Gen. Stat. §131E-181(b): "*A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.*"

In the event that the business listed above does acquire the facility, you should contact the Agency's Adult Care Licensure Section to obtain instructions for changing ownership of the existing facility.

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a

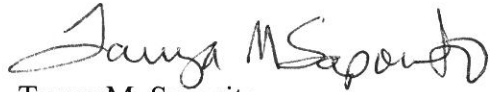
NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION  
HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603  
MAILING ADDRESS: 809 Ruggles Drive, 2704 Mail Service Center, Raleigh, NC 27699-2704  
<https://info.ncdhhs.gov/dhsr/> • TEL: 919-855-3873

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separate determination regarding whether or not a certificate of need would be required. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,



Tanya M. Saporito  
Project Analyst



Martha J. Frisone  
Chief

cc: Adult Care Licensure Section, DHSR

## Waller, Martha K

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**From:** Frisone, Martha  
**Sent:** Tuesday, October 15, 2019 4:51 PM  
**To:** Waller, Martha K  
**Subject:** FW: [External] Exemption Notice/No Review Letter  
**Attachments:** Exemption Notice to M. Frisone Re. Arbor Landing at Ocean Isle.pdf

### Martha J. Frisone

Chief

[Division of Health Service Regulation](#), Healthcare Planning and Certificate of Need  
[NC Department of Health and Human Services](#)

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

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

[Twitter](#) | [Facebook](#) | [YouTube](#) | [LinkedIn](#)

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**From:** Trevor P. Presler <TPresler@wyrick.com>  
**Sent:** Tuesday, October 15, 2019 4:44 PM  
**To:** Frisone, Martha <martha.frisone@dhhs.nc.gov>  
**Cc:** Frank Kirschbaum <FKirschbaum@wyrick.com>  
**Subject:** [External] Exemption Notice/No Review Letter

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Good afternoon Martha,

Thanks for your call to Frank Kirschbaum earlier today. Per your discussion with Frank, please find attached a request for confirmation that the proposed reorganization of our client is exempt from CON review or is otherwise not subject to the CON laws. If you have any questions or concerns please don't hesitate to contact me.

Sincerely,

Trevor

**Trevor P. Presler**  
ATTORNEY

Direct: 919.228.2901  
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[tpresler@wyrick.com](mailto:tpresler@wyrick.com)

**Wyrick Robbins Yates & Ponton LLP**  
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Raleigh, NC 27607  
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Wyrick Robbins Yates & Ponton LLP

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**TREVOR PRESLER**  
[tpresler@wyrick.com](mailto:tpresler@wyrick.com)

October 15, 2019



**Via E-mail and Hand Delivery**

Martha Frisone  
Chief, Healthcare Planning and Certificate of Need  
Department of Health and Human Services  
Division of Health Service Regulation  
Health Planning and Certificate of Need Section  
809 Ruggles Drive  
Raleigh, NC 27603

Bus id 3123  
FID 150390  
NR ID 3091

RE: Transfer of Adult Care Home Facility Certificate of Need Pursuant to Business Reorganization – Exemption Notice or, in the Alternative, No Review Letter Request

Arbor Landing at Ocean Isle, LLC – Project ID#: O-11056-15; FID#: 150390

Dear Ms. Frisone:

We represent Arbor Landing at Ocean Isle, LLC (“Arbor Landing”) and Ocean Isle Operations, LLC (“Operations”) in making this request to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the “Agency”). The purpose of this letter to provide prior written notice of an upcoming business reorganization, pursuant to which certain adult care home assets currently held by Arbor Landing, including the associated Certificate of Need (“CON”), will be transferred to Operations (the “Reorganization”). As will be described below, we ask the Agency to confirm that the Reorganization is: (i) exempt from review under the exemption provisions in N.C. Gen. Stat. § 131E-184(a)(8); or, in the alternative, (ii) is not reviewable under the CON law.

**I. The Proposed Reorganization.**

Arbor Landing is a North Carolina limited liability company that owns the real property and building located at 5490 Arbor Branch Drive in Shallotte, North Carolina (the “Premises”). On July 12, 2016, the Agency issued a CON to Arbor Landing to develop a new 40-bed adult care home facility (the “Facility”) on the Premises by renovating existing space for 16 adult care home beds and constructing new space for a 24-bed special care unit. A copy of the CON for project ID



number O-11056-15 is attached hereto as Exhibit A. Arbor Landing further obtained a license (number HAL-010-009) to operate the Facility from the North Carolina Division of Health Service Regulation Adult Care Licensure Section (the "Licensure Section"). Arbor Landing owns the Premises; however, it has contracted with Ridge Care, Inc. ("Ridge Care") to manage the Facility.

As part of a corporate restructuring, Arbor Landing, and its current owners, intend to be in the business of owning the building in which the Facility is located and to lease the building to an adult care home operator. To that end, and as part of the Reorganization, Arbor Landing intends to transfer to Operations the adult care home assets utilized to operate the Facility, along with any liabilities related to those assets. Pursuant to the Reorganization, the following events will occur: (i) Arbor Landing and Operations will enter into a purchase agreement, pursuant to which Arbor Landing will transfer the adult care home assets and associated liabilities, including the CON, to Operations; (ii) Arbor Landing (lessor) will enter into a lease agreement with Operations (lessee), which has the same ultimate owners as Ridge Care; and (iii) Operations will apply to the Licensure Section for a license to operate the Facility.

## II. Exemption Notice.

Please accept this letter as the required notice for an exemption as set forth in N.C. Gen. Stat. § 131E-184(a)(8) and 10A NCAC 13F.0207. N.C. Gen. Stat. § 131E-184 delineates certain activities that are statutorily exempt from CON review by the agency if the agency is provided prior written notice from the entity proposing the new institutional health service, including the acquisition of an existing health service facility. Under N.C. Gen. Stat. § 131E-176(9b), adult care homes are "health service facilities."

Upon consummation of the Reorganization, Operations will acquire from Arbor Landing the assets needed to operate the existing adult care home. Following the Reorganization, Operations will continue to operate the health service facility as an adult care home at its current location. The proposed Reorganization does not entail the acquisition of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f1). Likewise, the Reorganization does not include a capital expenditure exceeding Two Million Dollars (\$2,000,000) or the offering of any *per se* reviewable services under N.C. Gen. Stat. § 131E-176(16)(f). Accordingly, given that the proposed Reorganization involves an existing health service facility, it is exempt from review by the Agency under the CON statutes.

## III. No Review Request.

For the reasons stated above, and in the alternative, we believe the Reorganization qualifies for an exemption under N.C. Gen. Stat. § 131E-184(a)(8). In the event that the Agency does not agree that the Reorganization is exempt from review, we respectfully request confirmation from the Agency that the Reorganization is not a reviewable event under the CON law.

In the event that the Agency determines that the Reorganization does not constitute an acquisition of a health service facility, then the proposed Reorganization is not an Agency-reviewable event under the CON law because the Reorganization does not involve the



development or acquisition of a new institutional health service, as defined in N.C. Gen. Stat. § 131E-176(16), or any *per se* reviewable equipment or services. The transfer of an entity's assets pursuant to a purchase agreement is not included in the list of activities that constitute the development of a new institutional health service requiring a CON. North Carolina courts have held that transactions not included in N.C. Gen. Stat. § 131E-76(16) do not require a CON. See, e.g., In re Miller, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003) (stating that “[u]nder the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list”). While the Agency may withdraw a CON if the certificate holder transfers the CON before completion of the project or operation of the facility, transfers made after a facility has opened are not grounds for withdrawal of the CON provided that the transfer is “subject to the requirement that the service be provided consistent with the representations made in the application and any applicable conditions the [Agency] placed on the certificate of need.” See N.C. Gen. Stat. § 131E-189(c). Operations will operate the Facility and provide the services consistent with the representations made in the application and any conditions placed by the Agency on the CON.

#### IV. Conclusion.

Based on the foregoing, we hereby request confirmation from the Agency that: (i) the Reorganization is exempt from CON review under N.C. Gen. Stat. 131E-184(a)(8); or, in the alternative, (ii) that the proposed Reorganization is not subject to CON review by the Agency.

Thank you for your assistance with regard to this request, and please feel free to contact me if you have any questions or need additional information.

Sincerely,



Trevor Presler

Attachments

Martha Frisone  
October 15, 2019  
Page 4

**EXHIBIT A**

**July 12, 2016 Certificate of Need  
Project ID#: O-11056-15  
FID#: 150390**



# STATE OF NORTH CAROLINA

Department of Health and Human Services  
Division of Health Service Regulation

## CERTIFICATE OF NEED

for

Project ID #: O-11056-15

FID #: 150390

ISSUED TO: Arbor Landing at Ocean Isle, LLC  
853 Old Winston Road, Suite 118  
Kernersville, NC 27284

Pursuant to G.S. 131E-175, the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein, as documented by the periodic progress reports required by 10A NCAC 14C .0209. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by G.S. 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in G.S. 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to G.S. 131E-189 for any of the reasons provided in that law.

SCOPE: Develop a new 40-bed adult care home facility by renovating existing space for 16 adult care home beds and constructing new space for a 24-bed special care unit/ Brunswick County

CONDITIONS: See Reverse Side

PHYSICAL LOCATION: Arbor Landing at Ocean Isle  
5490 Arbor Branch Drive  
Shallotte, NC 28470

MAXIMUM CAPITAL EXPENDITURE: \$3,081,900

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: November 30, 2016

This certificate is effective as of the 12<sup>th</sup> day of July, 2016



Martha Frisone, Assistant Chief

**CONDITIONS:**

1. Arbor Landing at Ocean Isle, LLC shall materially comply with all representations made in the certificate of need application and in the supplemental materials submitted in accordance with the terms of the Agency Settlement Agreement for 16 DHS 02085. Where representations made in the certificate of need application and the supplement materials differ, Arbor landing at Ocean Isle, LLC shall materially comply with the representations made in the supplemental materials.
2. Arbor Landing at Ocean Isle, LLC shall develop no more than 40 new adult care home beds.
3. Arbor Landing at Ocean Isle, LLC shall provide care to recipients of State/County Special Assistance with Medicaid, commensurate with representations made in the application or set forth in the supplemental materials, deemed acceptable by the CON Section.
4. For the first two years of operation following completion of the project, Arbor Landing at Ocean Isle, LLC shall not increase actual private pay charges more than 5% of the projected private pay charges provided in Section X of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.

**TIMETABLE:**

Contract Award	_____	March 2, 2018
50% Completion of Construction	_____	September 25, 2018
Completion of Construction	_____	February 6, 2019
Occupancy/Offering of Service	_____	March 1, 2019