



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

August 10, 2021

Kenneth Burgess

kburgess@poynerspruill.com

Exempt from Review

Record #: 3622
Date of Request: July 16, 2021
Facility Name: Mission Hospital
FID #: 943349
Business Name: MH Mission Hospital, LLLP
Business #: 3045
Project Description: Renovate existing space on the main campus to house an outpatient clinic for burn patients
County: Buncombe

Dear Mr. Burgess:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that the above referenced proposal is exempt from certificate of need review in accordance with G.S. 131E-184(g). Therefore, you may proceed to offer, develop or establish the above referenced project without a certificate of need.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Agency. Changes in a project include but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Ena Lightbourne
Project Analyst

Lisa Pittman
Assistant Chief, Certificate of Need

cc: Construction Section, DHSR
Acute and Home Care Licensure and Certification Section, DHSR

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

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

July 16, 2021

Kenneth L. Burgess
Partner
D: 919.783.2917
F: 252.783.1075
kburgess@poynerspruill.com

VIA E-MAIL

Micheala Mitchell, Chief
Lisa Pittman, Assistant Chief
N.C. Department of Health and Human Services
N.C. Division of Health Service Regulation
Certificate of Need Section
809 Ruggles Drive, Raleigh, N.C. 27603
Via email to: micheala.mitchell@dhhs.nc.gov
lisa.pittman@dhhs.nc.gov

With copy to:
Ena Lightbourne
Project Analyst
N.C. Department of Health and Human Services
N.C. Division of Health Service Regulation
Certificate of Need Section
809 Ruggles Drive, Raleigh, N.C. 27603
Via email to: ena.lightbourne@dhhs.nc.gov

RE: **Notice of Exemption: Renovation Of Existing Hospital Space For Outpatient Clinic**

Dear Ms. Mitchell and Ms. Pittman:

I am writing on behalf of our client MH Mission Hospital, LLLP ("Mission") to provide the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section ("the CON Section" or "the Agency") with prior written notice of Mission's intent to renovate existing hospital space to create an outpatient clinic which will be used as a centralized location for the treatment of patients who have experienced burns, and who currently do not require intensive care unit services ("the Project"). We believe the proposed Project is exempt from further CON Section review, and does not require a certificate of need ("CON") pursuant to N.C. Gen. Stat. section 131E-184(g).

Background And Project Description

The Project involves renovating existing space in the G Tower / East Building at Mission Hospital that was formerly used as the hospital's emergency department. The emergency department was relocated as part of a larger renovation project at Mission Hospital which was the subject of a previously-approved 2019 Exemption Notice. *Please see Attachment 1* for a diagram showing the location at Mission Hospital of the G Tower / East Building on Mission's main campus and a more detailed Program-Level Summary depiction of the proposed outpatient burn clinic.

Mission has a long history of providing services to patients in western North Carolina and beyond who have experienced burns through its full array of trauma physicians with burn experience, nurses, anesthesiologists, therapists, mental health professionals, wound care specialists, respiratory care

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professionals and social workers. The new outpatient clinic is part of Mission's ongoing commitment to the treatment of burn patients from western North Carolina and beyond, and will allow Mission to better organize, centralize and deliver outpatient care to burn patients who currently do not require intensive care unit services. Among other burn-related outpatient services, the clinic will provide follow-up wound care for patients and will include a physical therapy room to help patients increase and maximize their mobility.

For the reasons stated below, we believe that the proposed Project is exempt from CON Section review pursuant to N.C. Gen. Stat. § 131E-184(g), and thus Mission is not required to obtain a CON before proceeding with the proposed Project.

Applicable Legal Authorities

The CON Law precludes any person from offering or developing a "new institutional health service" without first obtaining a CON. N.C. Gen. Stat. § 131E-178(a). The definition of "new institutional health service" includes, *inter alia*, the following:

- Incurring an obligation for a capital expenditure that exceeds \$2,000,000.00 to develop or expand a health service or health service facility, or which "relates" to the provision of a health service.

N.C. Gen. Stat. §§ 131E-176(16)(b). However, the CON Law includes a specific exemption for health-related capital expenditures in excess of \$2,000,000.00 where the sole purpose of the capital expenditure is "to renovate, replace on the same site, or expand the entirety or a portion of an existing health service facility located on the main campus." N.C. Gen. Stat. § 131E-184(g). That exemption, where applicable, eliminates the need to obtain a CON before incurring the capital expenditure. As described further below, the Project which is the subject of this Exemption Notice involves a capital expenditure in excess of \$2,000,000.00. However, the Project is exempt from CON Section review based upon the exemption at N.C. Gen. Stat. § 131E-184(g). That exemption is described below.

The Statutory Exemption For Renovation, Replacement Or Expansion Of An Existing Health Facility On The Same Campus

N.C. Gen. Stat. § 131E-184(g) provides an express exemption from CON Section review for capital expenditures that exceed \$2,000,000.00 where:

1. The sole purpose of the capital expenditure is to renovate, replace on the same site, or expand the entirety or a portion of an existing health service facility located on the main campus;
2. So long as the capital expenditure does not result in:
 - a. A change in bed capacity as defined in G.S. 131E-176(5); or
 - b. The addition of a health service facility or any other new institutional health service other than that allowed by G.S. 131E-176(16)b; and
 - c. The CON Section receives prior written notice of the planned expenditure along with documentation demonstrating that the provider meets the exemption.

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**The Proposed Project Involves The Renovation Of Existing
Space On Mission's Main Campus**

The proposed Project which is the subject of this Exemption Notice is projected to cost in excess of \$2,000,000.00. The total project cost is anticipated to be \$3,252,000.00. Of that amount, \$3,169,030.00 will be expended on construction, including IT expenditures, abatement costs, furniture and fixtures and a contingency allocation related to renovating existing space at the main building at Mission Hospital. The remaining \$83,021.00 will be expended on certain miscellaneous moveable accessories equipment, such as a Pyxis medical supply and inventory system, patient stretchers, a patient extremity whirlpool, patient lifts, a physical therapy casting hood and badge readers.¹ See **Attachment 2 (Statement from Mission's Vice President of Operations)**. Because the statutory exemption applicable to the Proposed Project does not depend upon Mission remaining below any statutorily-designated capital expenditure amount, we have not included a certified Projected Capital Cost Form with this submission and we understand from conversations with the CON Section that such a form is not required where a No Review or Exemption Notice is not dependent on the cost of a proposed project.

Even though total projected costs exceed \$2,000,000.00, the Proposed Project qualifies for the statutory exemption at N.C. Gen. Stat. § 131E-184(g) because the sole purpose of the project and related expenditure is to renovate or expand a portion of an existing health service facility on the hospital's main campus.

The term "campus" is defined at N.C. Gen. Stat. § 131E-176(2c) as "the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health service facility and related health care entities." For the purposes of the exemption at N.C. Gen. Stat. § 131E-184(g), "main campus" is defined as:

- a. The site of the main building from which a licensed health service facility provides clinical patient services and exercises financial and administrative control over the entire facility, including the buildings and grounds adjacent to that main building; and
- b. Other areas and structures that are not strictly contiguous to the main building but are located within 250 yards of the main building.

N.C. Gen. Stat. § 131E-176(14n).

The main hospital building at Mission, where the proposed Project will be located, is the site from which the hospital exercises clinical and administrative control over the entire hospital. Mission Hospital's Chief Executive Officer, Vice-President of Operations, Chief Operating Officer and Chief Financial Officer are all located in the main hospital building. Together, they exercise all financial and administrative control over the hospital and its services. The main hospital building is also the location from which Mission provides clinical patient services. See **Attachment 2 (Statement from Mission's Vice President of Operations)**. As such, the Project will be located in the main hospital building and so clearly is on the "main campus" within the meaning of N.C. Gen. Stat. § 131E-176(14n).

¹ None of the equipment to be acquired and installed as part of the proposed Project constitutes major medical equipment as defined by the CON Statute. We address that issue later in this Exemption Notice.

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Mission's Proposed Project Does Not Involve A Change In Bed Capacity

The proposed Project does not involve a change in bed capacity as defined by N.C. Gen. Stat. § 131E-176(5). That section defines "change in bed capacity" in pertinent part as: (i) any relocation of health service facility beds from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility beds defined in N.C. Gen. Stat. § 131E-176(9c), or (iii) any increase in the number of health service facility beds. The Project involves only the renovation of existing operating space on Mission's main campus, and does not involve any relocation of health service facility beds from one licensed campus to another, any increase in the number of health service beds or any redistribution of health service facility beds among the categories identified at N.C. Gen. Stat. § 131E-176(9c).

The Equipment To Be Acquired And Installed As Part Of The Proposed Project Does Not Constitute Major Medical Equipment Under The CON Statute

The CON Statute treats as a "new institutional health service" requiring a CON the acquisition of major medical equipment. N.C. Gen. Stat. § 131E-176(16)p. Major medical equipment is defined as "a single unit or single system of components with related functions which is used to provide medical and other health services and which costs more than seven hundred fifty thousand dollars (750,000)." N.C. Gen. Stat. 131E-176(14o).

Mission's Project does not involve the acquisition of medical equipment which meets the definition of "major medical equipment" under the CON Statute. The total medical equipment budget for the Project is approximately \$70,179.00. As noted above, the primary equipment to be acquired as part of the Project is a Pyxis scheduling and inventory system, patient stretchers, a patient extremity whirlpool, patient lifts, and a physical therapy casting hood. No single item or single system of components planned for the Project comes anywhere close to the \$750,000.00 major medical equipment threshold in terms of cost.

Also, the Project does not include the acquisition of any of the equipment defined at N.C. Gen. Stat. § 131E-176(16)f1 as a "new institutional health service" which, if listed there, would require Mission to obtain a CON before acquiring the equipment.

Mission's Proposed Project Is Not A New Institutional Health Service Under Any Other Provision Of N.C. Gen. Stat. § 131E-176(16)

The Project does not qualify as a "new institutional health service" under any other provision of the CON Statute, specifically including N.C. Gen. Stat. section 131E1-17(16). The Project does not involve the construction or other development of "burn intensive care services" as that term is defined at N.C. Gen. Stat. section 131E-176(2b) or by the State Medical Facilities Plan. As noted above, the Project does not involve the acquisition of "major medical equipment" as that term is defined in N.C. Gen. Stat. section 131E1-17(14o) and the outpatient burn clinic is not a "diagnostic center" within the meaning of N.C. Gen. Stat. section 131E1-17(7a). Other than the proposed project expenditure which exceeds \$2,000,000.00, and from which Mission qualifies for an exemption pursuant to N.C. Gen. Stat. 131E-184(g), there are no other "new institutional health service" definitional elements that apply to the Project.

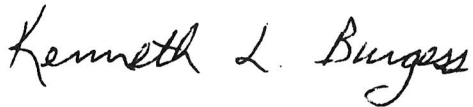
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Conclusion

For the reasons recited herein, the proposed Project qualifies under the exemption from CON Section review set forth at N.C. Gen. Stat. § 131E-184(g). Please allow this letter to serve as the advance written notice required by N.C. Gen. Stat. § 131E-184(g). We would appreciate the CON Section acknowledging at its earliest opportunity that the Project, as described herein, is not subject to CON Section Review and that Mission may proceed with the project without first obtaining a CON.

Please let me know if you have questions or need further information regarding this notice.

Very truly yours,

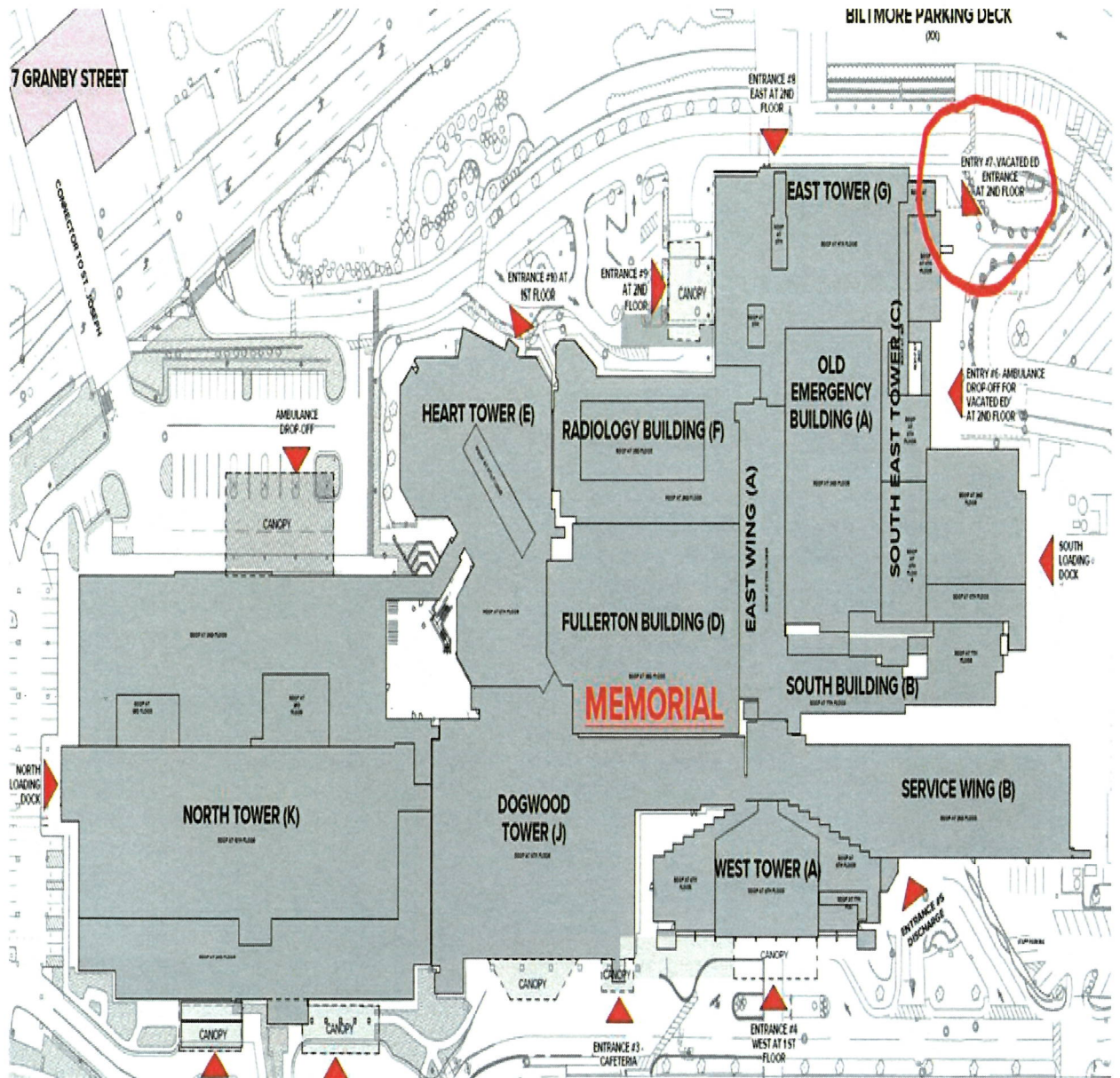
A handwritten signature in black ink that reads "Kenneth L. Burgess". The signature is written in a cursive style with a large, prominent "K" and "B".

Kenneth L. Burgess
Partner

cc: Joe Rudisill
Jason Desai
Sondra Smith
Cathi Durham

Attachments

ATTACHMENT 1





MISSION HOSPITAL
 MISSION HOSPITAL
 OB RENOVATION
 HCA HEALTHCARE
 Date of Issue:
 05/06/2021

PW PROJECT #:147356.000

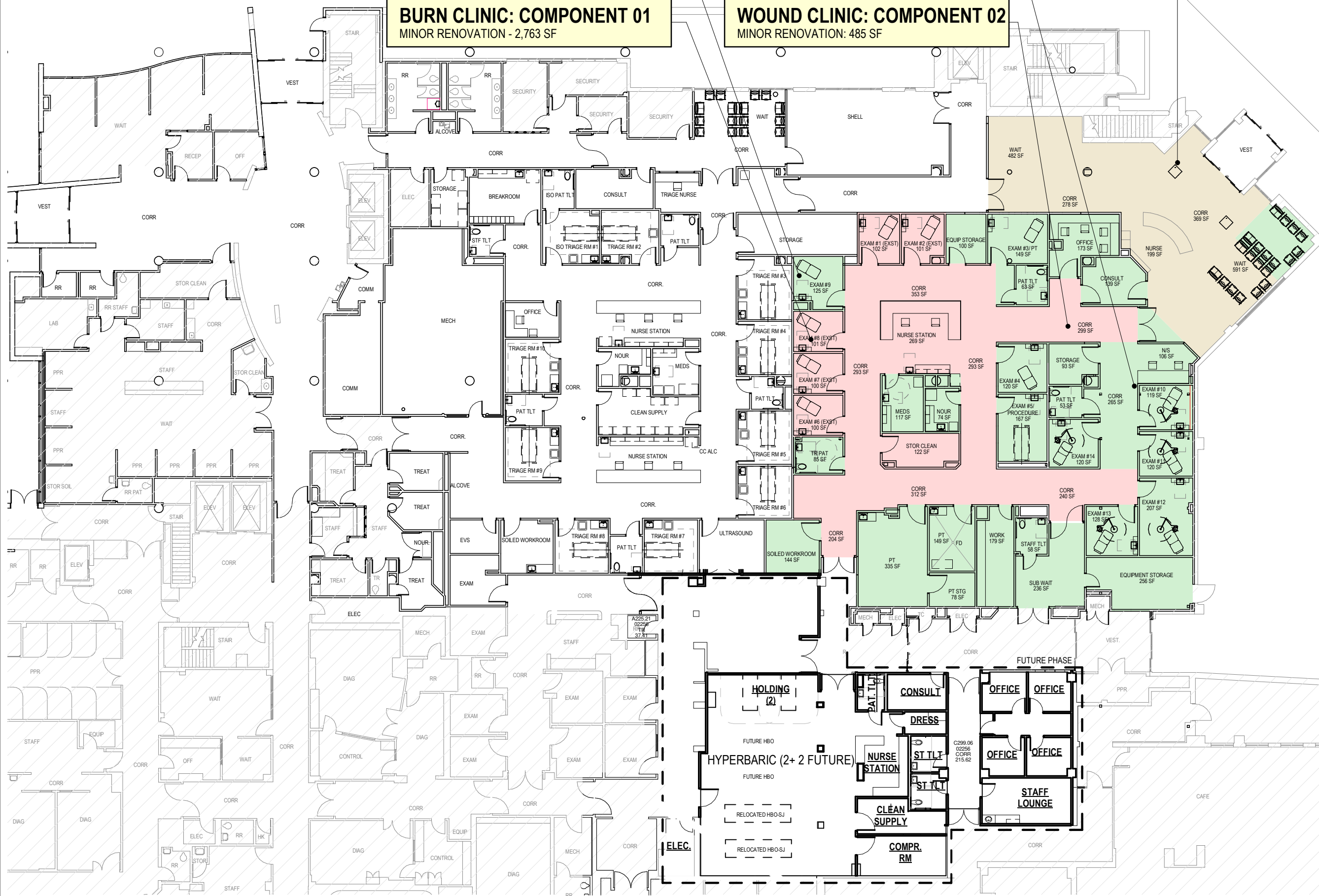
BURN CLINIC: COMPONENT 01
 MAJOR RENOVATION - 3,004 SF

WOUND CLINIC: COMPONENT 02
 MAJOR RENOVATION: 1,609 SF

BURN CLINIC: COMPONENT 01
 COSMETIC RENOVATION - 1,881 SF

BURN CLINIC: COMPONENT 01
 MINOR RENOVATION - 2,763 SF

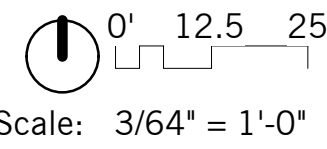
WOUND CLINIC: COMPONENT 02
 MINOR RENOVATION: 485 SF



SCOPE LEGEND:

- NEW CONSTRUCTION
- MAJOR RENOVATION
- MINOR RENOVATION
- COSMETIC RENOVATION
- OUT OF SCOPE

**PROGRAM SUMMARY PLAN -
 LEVEL 02 BURN &
 WOUND CLINIC**



ATTACHMENT 2

STATEMENT OF JASON DESAI

1. I am a Vice-President of Operations for MH Mission Hospital, LLLP ("Mission"). I am personally familiar with Mission Hospital's Proposed Project which involves renovation of existing Mission Hospital space for the development of an outpatient burn clinic for patients who do not currently need an ICU level of care. I make this statement in support of Mission's Notice of Exemption to the N.C. Certificate of Need Section.

2. As Vice-President of Operations, my responsibilities include oversight of several lines of clinical care and operations for Mission Hospital, including burn services.

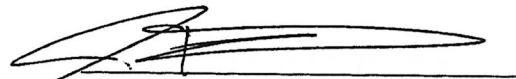
3. I am personally familiar with the proposed project which involves renovating part of the former emergency department in the G Tower/East Building at the hospital's main campus at 509 Biltmore Avenue, Asheville, N.C.

4. The hospital's main building at 509 Biltmore Avenue in Asheville, N.C. is the site from which Mission Hospital exercises clinical and administrative control over the hospital and its operations, and the hospital's main building houses the offices of Mission Hospital's Chief Executive Officer, Vice-President of Operations, Chief Operating Officer and Chief Financial Officer.

5. Under pain of perjury I certify that the total costs of the project are approximately THREE MILLION, TWO HUNDRED AND FIFTY-TWO THOUSAND DOLLARS (\$ 3,252,000.00).

6. Furthermore, as part of this project, Mission Hospital will not acquire any new major medical equipment, increase total bed capacity, increase total operating room capacity or develop any other new institutional health services described in N.C. Gen. Stat. §131E-176 (16).

This the 14th day of July, 2021.



JASON DESAI
Vice-President of Operations
MH Mission Hospital, LLLP