STATE OF MARYLAND

MARYLAND HEALTH CARE COMMISSION

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MEMORANDUM

TO: Commissioners

FROM: Kevin R. McDonald
Chief, Certificate of Need

DATE: April 18, 2019

SUBJECT: Atlantic General Surgical Center
Docket No. 18-23-2431

Enclosed is the staff report and recommendation regarding a Certificate of Need ("CON") application filed by Atlantic General Hospital Corporation, which operates Atlantic General Hospital and Health System ("AGH"), a licensed 45 bed acute care hospital located in the City of Berlin in Worcester County on the lower Eastern Shore of Maryland.

AGH plans to establish an ambulatory surgical facility ("ASF") in a medical office building ("MOB") which is currently under construction in Ocean Pines, approximately 3.5 miles and a seven minute drive from AGH. The applicant will fit out 13,101 square feet of shell space located on the first floor of the MOB and upon completion, will consist of two operating rooms and three procedure rooms.

The estimated total cost of constructing the ASF is approximately $8,023,827, with $5.17 million of the construction costs paid by the developer of the MOB. AGH's outlay is $2.85 million, covering equipment and furnishings, as well as CON preparation costs. AGH will lease the space at a cost of $690,863 annually.

Staff recommends that the Commission **APPROVE** the project based on staff's conclusion that the proposed project complies with the applicable standards in COMAR 10.24.11, the State Health Plan for General Surgical Services, and the CON review criteria at COMAR 10.24.01.08.

IN THE MATTER OF	*	**BEFORE THE**
	*	
ATLANTIC GENERAL	*	**MARYLAND HEALTH**
	*	
SURGICAL CENTER	*	**CARE COMMISSION**
	*	
Docket No. 18-23-2431	*	
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Staff Report and Recommendation

April 18, 2019

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I. INTRODUCTION

The Applicant

Atlantic General Hospital Corporation ("AGH") operates Atlantic General Hospital, a 44-bed general hospital in the town of Berlin on the lower Eastern Shore of Maryland in Worcester County. AGH is the only general hospital licensed to operate in this jurisdiction and also serves the seasonal beach crowds that visit Ocean City during the summer. It provides inpatient medical/surgical services and a range of outpatient diagnostic and treatment services at various locations in Ocean City and Worcester County..

The Project

AGH reports ownership and operation of 21 sites at which various types of outpatient services are delivered, including physician offices. The applicant states that this portfolio of locations is both inconvenient for patients and unnecessarily costly for AGH. The applicant states that: "[p]atients, particularly elderly patients, must travel to multiple disparate locations throughout the County and in some cases outside the County to obtain basic primary care and related outpatient services." (DI #3, p. 7).

AGH proposes to address this problem with its network of outpatient care locations by consolidating a substantial portion of the off-campus services it provides in a medical office building ("MOB") that is currently under construction in Ocean Pines, approximately 3.5 miles (a seven minute drive) from AGH. The MOB will be owned by a third party developer and will house a number of primary care and specialty physician practices, including specialists in gastroenterology and orthopedics. Other anticipated facilities and services located at this MOB include an urgent care center, an outpatient medical laboratory, an imaging center, outpatient rehabilitation services, a pharmacy, an infusion center, and a dialysis center. (DI #8, p. 3).

One element of this proposed MOB that requires a Certificate of Need ("CON"), under current law, is an ambulatory surgical facility ("ASF"), which the hospital plans to operate as Atlantic General Surgical Center ("AGSC"). The propoosed ASF includes two sterile operating rooms ("ORs") and three clean procedure rooms. It will be established by fitting out 13,101 square feet (SF) of space on the first floor of the MOB. Under current law, at Health-General §19-120(k)(9), establishment of an ASF or other ambulatory surgical capacity by a hospital requires CON approval. Under legislation adopted in the 2019 session, but not yet signed into law, this restriction will be removed from Maryland law effective October 1, 2019.

The estimated capital cost for AGH to furnish and equip the space it intends to license as an outpatient ASF is approximately $2.85 million. The overall cost estimate for development of the MOB by its owner is $8,023,827 and building the space that will be used by AGH for ambulatory surgery accounts for about 64% of this overall cost. AGH will lease this space at a projected annual cost of $690,863. That rental expenditure will be partially offset by an expected annual savings of approximately $292,000 that AGH expects to reap from staff reductions enabled by the service consolidations resulting from the project.

AGH expects the ASF will open for service within 15 months of obligating the required capital expenditure and reach full capacity within 36 months after first use. (DI #3, p. 10 and Att. 1, Table I). Upon establishing the ASF, Atlantic General plans to take one of the existing ORs at the hospital out of service, reducing the number of mixed use, general purpose ORs at the hospital from four to three. AGH will eventually reconfigure this space, but has no firm plan or timetable for this reconfiguration. (DI #8, p. 3).

The three procedure rooms at the ASF will replace those currently in space AGH leases in a medical office building adjacent to the hospital. Upon completion of the project, AGH will decommission these three existing procedure rooms, with consideration for repurposing the leased suite space for other hospital uses or discontinuation of the lease. (DI #8, p. 3).

Staff Recommendation

Staff recommends that the Commission issue a CON for the proposed ambulatory surgical facility based on staff's conclusion that the proposed project complies with the applicable standards in COMAR 10.24.11, the General Surgical Services chapter of the State Health Plan, and with the Certificate of Need review criteria at COMAR 10.24.01.08G(3)(a)-(f).

Staff concludes that AGH demonstrated that the projected surgical case volume and OR minutes for the proposed ASF in Ocean Pines will represent optimal capacity use for the two general purpose ORs, as defined in the Surgical Services Chapter. AGH forecasts that the project will be financially viable and prove to be a cost-effective option for delivering outpatient surgical services for physicians and residents within its service area. MHCC staff agrees with these conclusions. Staff believes that the project will have a positive impact on patient access, reducing the cost of outpatient surgery for most patients and payers, and that it is not likely to have a significant negative impact on other providers of outpatient surgical services.

II. PROCEDURAL HISTORY

A. Record of the Review

Please see Appendix 1, Record of the Review.

B. Interested Parties

There are no interested parties in this review.

C. Local Government Review and Comment

No comments were received from a local governmental body.

D. Community Support

Atlantic General Hospital submitted letters supporting the establishment of the proposed ambulatory surgical facility. Letters of support for the project were received from: (DI #3, Attachment 10).

- State Delegate Mary Beth Carozza, Legislative District 38C representing Wicomico and Worcester Counties (DI #2)
- State Delegate Charles J. Otto, Legislative District 38A, representing Somerset and Worcester Counties
- State Senator James N. Mathias, Jr., Legislative District 38 representing Somerset, Wicomico, and Worcester Counties
- James C. "Bud" Church, Worcester County Commissioner
- Richard Meehan, Mayor of Ocean CityWm. Gee Williams, III, Mayor of Berlin
- Lee Klepper, M.D., Wadid Zaky, M.D., and Alae Zarif, M.D., Atlantic General Hospital
- Rebecca L. Jones, R.N., Health Officer, Worcester County
- Melanie Pursel, President & CEO, Eunice Q. Sorin Visitor & Conference Center

Each of the letters cited the growth of the active senior and summertime residents and supported the need for outpatient surgical services within a medical office building located in Ocean Pines.

III. STAFF REVIEW AND ANALYSIS

The Commission reviews CON applications under six criteria found at COMAR 10.24.01.08G(3). The first of these considerations is the relevant State Health Plan standards, policies, and criteria.

A. The State Health Plan

An application for a Certificate of Need shall be evaluated according to all relevant State Health Plan standards, policies, and criteria.

The relevant State Health Plan for Facilities and Services ("SHP") chapter in this review is the General Surgical Services chapter, COMAR 10.24.11 ("Surgical Services Chapter").

.05 STANDARDS

A. GENERAL STANDARDS. The following general standards encompass Commission expectations for the delivery of surgical services by all health care facilities in Maryland, as defined in Health General §19-114(d). Each applicant that seeks a Certificate of Need for a project or an exemption from Certificate of Need review for a project covered by this Chapter shall address and document its compliance with each of the following general standards as part of its application

(1) Information Regarding Charges.

Information regarding charges for surgical services shall be available to the public.

(a) A physician outpatient surgery center, ambulatory surgical facility, or a general hospital shall provide to the public, upon inquiry or as required by applicable regulations or law, information concerning charges for the full range of surgical services provided.

(b) The Commission shall consider complaints to the Consumer Protection Division in the Office of the Attorney General of Maryland or to the Maryland Insurance Administration when evaluating an applicant's compliance with this standard in addition to evaluating other sources of information.

(c) Making this information available shall be a condition of any CON issued by the Commission.

AGH states AGSC "will provide information concerning charges for the full range of surgical services" to the public upon inquiry. (DI #3, p. 18). AGH notes that it currently posts the hospital's charges for its most frequently performed outpatient surgeries on its website;[1] and that AGSC will also post its charges for ambulatory surgery on its own website.

Staff concludes that AGH meets this standard.

(2) Information Regarding Procedure Volume.

A hospital, physician outpatient surgery center, or ASF shall provide to the public upon inquiry information concerning the volume of specific surgical procedures performed at the location were an individual has inquired. A hospital, POSC, or ASF shall provide the requested information on surgical procedure volume for the most recent 12 months available, updated at least annually.

AGH states that the proposed ASF "will provide information concerning the volume of specific surgical procedures to the public upon inquiry." (DI #3, p. 18). The ASF will provide this information on surgical procedure volume for the most recent 12 months available, updated at least annually.

Staff concludes that AGH complies with this standard.

(3) Charity Care Policy.

(a) ***Each hospital and ambulatory surgical facility shall have a written policy for the provision of charity care that ensures access to services regardless of an individual's ability to pay and shall provide ambulatory surgical services on a charitable basis to qualified indigent persons consistent with this policy. The policy shall have the following provisions:***

[1] Available at; http://www.atlanticgeneral.org/For-Patients-Visitors/Billing-Information/Procedure-Pricing.aspx.

(i) Determination of Eligibility for Charity Care. Within two business days following a patient's request for charity care services, application for medical assistance, or both, the facility shall make a determination of probable eligibility.

The applicant's Charity Care Policy describes its process for determining probable eligibility for charity care as follows:

> The determination of probable eligibility will be made on the basis of an interview with the patient and/or the patient's representative. The interview will cover family size, insurance and income. The determination of probable eligibility will be made based on the information provided in the interview. No application form, verification or documentation of eligibility will be requested or required for the determination of probable eligibility to be made. (DI #3, Att. 5, p. 48)

AGH states that it will "make a determination of probable eligibility and communicate the determination to the patient and/or patient's representative" within two business days following a patient's request for charity care services, application for medical assistance, or both." (DI #8, p. 9). A final determination for charity care eligibility will be provided in writing within 2 business days of receipt of a completed application for financial assistance.

(ii) Notice of Charity Care Policy. Public notice and information regarding the facility's charity care policy shall be disseminated, on an annual basis, through methods designed to best reach the facility's service area population and in a format understandable by the service area population. Notices regarding the facility's charity care policy shall be posted in the registration area and business office of the facility. Prior to a patient's arrival for surgery, the facility shall address any financial concerns of the patient, and individual notice regarding the facility's charity care policy shall be provided.

AGH states it makes copies of the following documents that relate to financial assistance available to the general public, in both English and Spanish: the AGH Financial Assistance Policy; the Maryland State Uniform Financial Assistance application; the Credit and Collection Policy; and the Financial Assistance-Plain Language Summary ("Plain Language Summary"). This information is: accessible to the public upon request; is posted in the registration areas, AGH offices, and in the main registration areas, and; downloadable from the hospital website.[2] The Plain Language Summary is included in AGH's Admission packet, inserted into the third patient billing statement, and published annually in the local newspaper. (DI #3, Att. 5, pp. 47-48).

In addition, AGH states that future issues of *Care Together*, an AGH publication distributed three times per year in the service area, will include information about the financial assistance policy. (DI #15, pp. 1-2). Literature explaining the charity care policy will be included among the material stocking a brochure rack at AGSC, and notice of the policy will be displayed in public areas of the ASF as well as published in local newspapers.

[2] Available at: www.atlanticgeneral.org/fap.

The applicant states that AGSC staff will distribute the charity care policy to health care professionals in the AGH service area and relevant stakeholders in the community, including local elected officials, community groups, religious and fraternal organizations, and businesses.

> ***(iii) Criteria for Eligibility. A hospital shall comply with applicable State statutes and Health Services Cost Review Commission ("HSCRC") regulations regarding financial assistance policies and charity care eligibility. An ASF, at a minimum, shall include the following eligibility criteria in its charity care policies. Persons with family income below 100 percent of the current federal poverty guideline who have no health insurance coverage and are not eligible for any public program providing coverage for medical expenses shall be eligible for services free of charge. At a minimum, persons with family income above 100 percent of the federal poverty guideline but below 200 percent of the federal poverty guideline shall be eligible for services at a discounted charge, based on a sliding scale of discounts for family income bands. A health maintenance organization, acting as both the insurer and provider of health care services for members, shall have a financial assistance policy for its members that is consistent with the minimum eligibility criteria for charity care required of ASFs described in these regulations.***

AGH's policy is to provide medically necessary services free of charge to patients whose family income is at or below 200% of the federal poverty guidelines. For family income greater than 200% of the federal poverty guidelines, the applicant will utilize a reduced cost sliding fee scale for "Medically Necessary Care." (DI #8, p. 10). Similarly, it will provide medically necessary services free of charge for "Medical Hardship" cases below 200% of the Federal Poverty Guidelines, and a reduced cost sliding fee scale for those patients up to 500% of Federal Poverty Guidelines. (DI #8, p. 10)

> ***(b) A hospital with a level of charity care, defined as the percentage of total operating expenses that falls within the bottom quartile of all hospitals, as reported in the most recent HSCRC Community Benefit Report, shall demonstrate that its level of charity care is appropriate to the needs of its service area population.***

This application is to establish operating room capacity in an ambulatory surgical facility, not a hospital. However, Atlantic General Hospital's level of charity care provision in both 2016 and 2017 was in the second quartile (see table III-1 below). Comparative data for 2018 is not yet available.

Table III-1: Charity Care, Atlantic General Hospital, FY 2016 and FY 2017

Year	Value of Charity Care	Total Hospital Operating Expenses	Level of Charity Care Provided As Percentage of Total Operating Expenses		Quartile Range for AGH
			AGH	All Maryland Hospitals	
2016	$3,277,824	$112,904,430	2.9%	2.0%	2nd
2017	$2,569,517	$117,342,233	2.2%	1.8%	2nd

Source: HSCRC'S FY 2016-2017 Health Community Benefits Analysis

(c) A proposal to establish or expand an ASF for which third party reimbursement is available, shall commit to provide charitable surgical services to indigent patients that are equivalent to at least the average amount of charity care provided by ASFs in the most recent year reported, measured as a percentage of total operating expenses.[3] The applicant shall demonstrate that:

(i) Its track record in the provision of charitable health care facility services supports the credibility of its commitment; and

AGSC would be a new facility and as such has no track record, but staff review of the hospital's track record for providing charity care is shown in Table III-1, *supra*.

The hospital has provided a level of charity care that placed it in the second quartile, exceeding the percentage of charity care provided by all hospitals in Maryland for FY 2016 and FY 2017. Staff concludes that the applicant's track record demonstrates its commitment to providing charity care.

(ii) It has a specific plan for achieving the level of charitable care provision to which it is committed.

AGSC's projected revenue and expense statement for its first three full years of operation are shown in Table III-2. (DI #3, Attachment 1, Table K, Revenue and Expenses, Inflated, New Facility).

Table III-2: Atlantic General Surgical Center
Projected Value of Charity Care to be Provided
FY 2021 – FY 2023

	FY 2021	FY 2022	FY2023
Charity Care	$ 200,302	$ 250,309	$ 269,024
Total Operating Expenses	$5,539,602	$5,900,051	$5,903,903
% Charity Care	**3.6%**	**4.2%**	**4.6%**

Source: DI #3

Its plan for achieving this level of charity care includes both community outreach and monitoring by management: AGH states that its "leadership will contact all relevant stakeholders to alert them to the ASF's commitment to provide charity care services." It notes that these stakeholders will include local elected officials, health care professionals in the service area, as well as interested community groups, religious and fraternal organizations, and businesses. (DI #15, p. 2). The applicant further states that "the level of charity care at the ASF will be monitored by the administrative staff of AGH as one of ASF's financial performance measures and routinely reported to the AGH Board of Trustees." (DI #19, Table J, Uninflated).

[3] In MHCC's latest Freestanding Ambulatory Surgery Facility Survey (CY 2017), the 38 reporting Maryland ASFs reported providing, on average, a level of charity care valued at 0.42% of total expenses.

As noted above, the proposed facility's projected charity care provision is well in excess of the State average, and the applicant describes a solid plan for achieving that level of charity care. Staff concludes that the applicant has met the requirements of all components of the charity care standard.

Standards .05A(3) Quality of Care, .05A(4) Transfer Agreements, and .05B(4) Design Requirements; and .05B(5), Support Services

Among the remaining applicable standards are several that prescribe policies, facility features, and staffing and/or service requirements that an applicant must meet, or agree to meet prior to first use. Staff reviewed the CON application and confirmed that the applicant provided information and affirmations that demonstrate full compliance with these standards:

.05A(4) Quality of Care
.05A(5) Transfer Agreements
.05B(4) Design Requirements, and
.05B(5) Support Services.

In responding to these standards, the applicant:

- Provided evidence to show that the hospital currently is licensed by the State of Maryland and accredited by The Joint Commission. It states that the proposed ASF will meet or exceed the minimum requirements for licensure enumerated in Regulation .05A(4)(d)(i), and that it will obtain accreditation from the Joint Commission within two years of initiating service.
- States that the proposed ASF shall have a written transfer and referral agreement with AGH that complies with Department of Health regulations and have procedures for emergency transfer of patients from the ASF to AGH.
- Submitted a letter from its principal architect stating that the facility is designed to comply with FGI Guidelines.
- Stated that AGH will provide the necessary laboratory, radiology, and pathology services either directly or through a contractual agreement with the proposed ASF.

The text of these standards and location of the documentation of compliance are attached as Appendix 2.

B. PROJECT REVIEW STANDARDS. The standards in this section govern reviews of Certificate of Need applications and requests for exemption from Certificate of Need review involving surgical facilities and services. An applicant for a Certificate of Need or an exemption from Certificate of Need shall demonstrate consistency with all applicable review standards.

(1) Service Area.

An applicant proposing to establish a new hospital providing surgical services or a new ambulatory surgical facility shall identify its projected service area. An

applicant proposing to expand the number of operating rooms at an existing hospital or ambulatory surgical facility shall document its existing service area, based on the origin of patients served.

The primary service area for the proposed ASF, which is the same as for AGH, includes zip code areas located in Worcester County and in Sussex County, Delaware. (DI #8, p. 13).

AGH identified the projected service area of the proposed ASF, consistent with the standard.

(2) <u>Need – Minimum Utilization for Establishment of a New or Replacement Facility.</u>

An applicant proposing to establish or replace a hospital or ambulatory surgical facility shall:

(a) Demonstrate the need for the number of operating rooms proposed for the facility, consistent with the operating room capacity assumptions and other guidance included in Regulation .07 of this chapter.

(b) Provide a needs assessment demonstrating that each proposed operating room is likely to be utilized at optimal capacity or higher levels within three years of the initiation of surgical services at the proposed facility, consistent with Regulation .07 of this chapter.

As discussed below, staff's review shows that the applicant's modeling of demand for surgical services and needed OR capacity is optimistic and involves a turnaround in the trend of declining demand for inpatient surgery and a much higher rate of growth in demand for outpatient surgery than suggested by recent trends. Despite this, a more conservative approach to forecasting indicates that the combined hospital and ASF capacity, with a total of five operating rooms, is likely to see sufficient demand for an overall level of OR use equivalent to approximately 90% of optimal capacity use, based on the guidance in Regulation .07 of the chapter. Furthermore, there should be sufficient demand for outpatient surgery, if the recently observed trend in growth is experienced, rather than the applicant's much higher growth assumption, such that the proposed ASF's two operating rooms can be utilized at optimal or higher capacity levels within three years of its establishment. The basis for this conclusion is outlined in the review of the balance of this standard.

Subppart (2)(c) is not applicable. It addresses development or replacement of hospital surgical capacity.

(d) An applicant proposing the establishment of a new ambulatory surgical facility shall submit a needs assessment that includes the following:

(i) Historic trends in the use of surgical facilities for outpatient surgical procedures by the proposed facility's likely service area population;

Trends and Projections

There are no ASFs or physician oupatient surgery centers in Worcester County that provide outpatient surgery. Atlantic General Hospital is the only facility that currently provides surgical services on an outpatient basis.

AGH provided comprehensive data showing the historical (2015 – 2018) and projected inpatient and outpatient OR utilization of the members of its medical staff, as well as for two other (plastic) surgeons who are expected to join the staff when the ASF becomes operational. AGH also provided patient origin data showing that about 82% of its patients come from either Worcester County (60%) or Delaware (22%). (DI #19, Table 4, p.5).

Table III-3, below, shows the actual surgery volumes at AGH for 2015-2018, and projections for 2019 and 2023. The total surgical case volume at AGH increased 20% between 2015 and 2018, even as inpatient surgery cases declined. The hospital primarily attributes this decline to the loss of a general and an orthopedic surgeon during this time period.

AGH projects significant growth in surgical volume going forward, stating that it is engaged in a physician recruitment initiative and expects to add five surgeons in FY 2020 and FY 2021.

Table III-3: Surgical Cases and Operating Room Minutes, Atlantic General Hospital
Actual 2015 – 2018 and Projected 2019 and 2023

	Actual				Projected		Change, 2018-2023
	2015	2016	2017	2018	2019	2023	
Inpatient Cases	1,152	1,130	1,131	986	1,075	1,501	52%
Outpatient Cases	2,503	2,584	2,935	3,415	4,068	5,616	64%
Total Cases	**3,655**	**3,714**	**4,066**	**4,401**	**5,143**	**7,117**	**62%**
Total Minutes (includes turnaround time)	336,427	289,567	362,276	370,235	398,090	629,788	70%
Average Minutes per Case	92	78	89	84	77	88	5%

Source: DI #19, Table 1.

*TAT - Turnaround is 24 minutes, as defined by Atlantic General Hospital

In response to MHCC staff's questions concerning its aggressive growth projections and their grounding in evidence of a population need for significant additional surgery, AGH presented data from the Maryland Discharge Data Abstract for FY2015 and the 12-month period ending with the third quarter of 2018 (latest available data). AGH interprets this data as indicating that it had an inpatient surgery market share of 47% in Worcester County (from which 60% of AGH patients originate) in FY2015, and that this had slipped to 44% for the most recent 12-month reporting period.[4] AGH is assuming that growth will come from improving market share in its home jurisdiction and that the addition of surgeons and development of an outpatient facility will be the means for strengthening its market position. AGH also presented data that it states shows the discharge rate for patients receiving inpatient surgery in its home jurisdiction and in contiguous Maryland secondary service area jurisdictions of Wicomico and Somerset Counties (Table III-4

[4] In the absence of reliable outpatient surgery market share data, inpatient data was used as a proxy for outpatient surgery market share.

below). As can be seen, AGH has calculated a declining use rate of inpatient surgery (-12%) over this four-year period for its home jurisdiction, Worcester, and small increases in the use rates of the other two jurisdictions (2% for Somerset and 1% for Wicomico), which account for less than 18% of AGH's total surgical case load, based on the service area information AGH has provided.

Table III-4 : Inpatient Surgical Discharges per Thousand Population
Wicomico, Worcester, and Somerset Counties
FY 2015 and FY 2018 (FYE September 30)

	0-14		15-64		65+		All ages	
	2015	2018	2015	2018	2015	2018	2015	2018
Somerset	3.17	2.87	15.52	13.65	55.56	66.20	19.88	20.26
Wicomico	3.71	2.84	17.41	17.24	62.18	64.55	21.51	21.78
Worcester	3.56	2.84	20.29	17.36	62.89	55.48	28.58	25.11

Source: Maryland Hospital Discharge Database and Maryland Department of Planning (DI#19, p.7).

This information provides little insight into the question of whether there is unmet surgical need in the population of AGH's service area.

(ii) The operating room time required for surgical cases projected at the proposed facility by surgical specialty or, if approved by Commission staff, another set of categories; and

(iii) Documentation of the current surgical caseload of each physician likely to perform surgery at the proposed facility.

Need for OR Time at the Proposed ASF

Table III-5 below illustrates the actual (2015-2018) reported outpatient surgical caseloads for AGH practitioners at AGH and AGH's projections (2019-2023) of outpatient surgical caseloads for the current staff surgeons and the practitioners AGH anticipates recruiting between now and 2023.

The second section of the table shows the outpatient surgical cases and operating room hours that AGH projects will shift to the proposed ambulatory surgical facility when it opens in 2021.

The third section of the table translates the OR hours projection into a projection of ORs needed at the proposed ASF based on the SHP's capacity assumptions for dedicated outpatient ORs. Based on the caseload shift and the number of cases and hours that this projected shift implies for caseload remaining at the hospital, this section of the table also translates the remaining use into a projection of needed ORs at AGH, based on the Surgical Services Chapter's capacity assumptions for mixed-use ORs, which, as previously noted, are higher than the assumed capacity of ORs located in an ASF setting.

Table III-5: Actual (2015-2018) and Projected (2019-2023) Outpatient Surgery Cases and OR Minutes AGH and AGSC

	Actual				Projected				
	2015	2016	2017	2018	2019	2020	2021	2022	2023
Current Surgical Practitioners	2,503	2,584	2,935	3,415	4,068	4,149	4,066	4,129	4,244
Practitioners to be Recruited							948	1,191	1,372
Total Cases	2,503	2,584	2,935	3,415	4,068	4,149	5,014	5,320	5,616
Outpatient Surgical Caseload Projected to Shift from AGH to AGSC									
Current Surgical Practitioners							2,213	2,254	2,333
Practitioners to be Recruited							948	1,176	1,355
Total Cases							3,161	3,430	3,688
Projected Operating Room Hours at AGSC (including OR turnaround time*)									
Current Surgical Practitioners							2,914	2,968	3,072
Practitioners to be Recruited							1,248	1,548	1,784
Total Cases							4,162	4,516	4,856
Operating Rooms Required at AGSC Using State Health Plan Capacity Assumptions for Dedicated Outpatient ORs									
Full Capacity Use							2.0	2.2	2.4
Optimal Capacity Use							2.6	2.8	3.0
Operating Rooms Required at AGH Using SHP Capacity Assumptions for Mixed-Use ORs (based on remaining cases and hours after excluding above projections for AGSC)									
Full Capacity Use									2.4
Optimal Capacity Use									3.0

Source: DI #19, Tables 1, 2, & 3 and MHCC Staff analysis, using projections of overall surgical caseload from Table III-1 in this report (DI #19, Table 1 from application)

*OR turnaround projected at 24 minutes

As can be seen, AGH's planned capacity of five ORs in 2023 (three at the hospital and two new ORs at the proposed ASF) would be very highly utilized (96% of full capacity) at the use projections developed by AGH and would be operating at 120% of optimal capacity, with the proposed ASF's two ORs severely taxed.

Staff believes that the projected surgical volumes and OR hours put forward by the applicant are, at best, highly optimistic, requiring an assumption that recent declining demand for inpatient surgery reverses course and that demand experiences a high rate of growth over the next four years. With respect to outpatient case volume, MHCC staff's analysis of the HSCRC outpatient file indicates that AGH experienced average annual growth in outpatient surgical cases of approximately three percent between 2010 and 2017 but AGH is modeling average annual growth of outpatient surgical case volume in excess of 10% between 2018 and 2023.

Staff considered an alternative scenario, in which outpatient case volume available to AGH grew at an average annual rate of 3% between 2018 and 2023 and AGH achieved its forecasted growth in inpatient case volume. This would yield a total of 5,459 total surgical cases in 2023. At an average OR time of 88 minutes per case, this alternative caseload forecast would yield a need for just over 8,000 hours of OR time. At the proposed configuration of three mixed-use ORs at the hospital and two dedicated outpatient ORs in the proposed ASF, this would still allow for a capacity use level of 89% overall and approximately 5,800 hours of outpatient OR use. With optimal capacity use of the two-OR ASF at approximately 3,300 hours, AGH would have no problem using the ASF's two operating rooms at the required optimal capacity level by using it to perform approximately 60% of the total outpatient OR demand. This is comparable to the proportion modeled by the applicant, but, as noted above, because of the applicant's aggressive

growth assumptions, this results in a forecast of ASF use that exceeds the facility's proposed two-OR capacity.

Staff concludes that AGH can develop a two-OR ASF and meet the minimal capacity use standard for this project while continuing to make efficient use of its overall surgical capacity if, as proposed, it reduces the OR capacity of the hospital from four to three mixed-use ORs.

(3) Need – Minimum Utilization for Expansion of An Existing Facility.

This standard is not applicable. The proposed project involves establishment of a new ambulatory surgical facility.

(6) Patient Safety.

The design of surgical facilities or changes to existing surgical facilities shall include features that enhance and improve patient safety. An applicant shall:

(a) Document the manner in which the planning of the project took patient safety into account; and

(b) Provide an analysis of patient safety features included in the design of proposed new, replacement, or renovated surgical facilities.

AGH states the proposed ASF will employ the latest programming, planning and design elements to maximize adaptability, efficiency, patient safety and convenience. The design will include the following:

- Appropriately sized ORs that can accommodate a wide range of surgical cases, providing necessary space for instrumentation, equipment and maintaining the integrity of sterile fields;
- Properly zoned facilities that provide necessary dirty to clean to sterile movement for staff, instruments, and supplies;
- Adequately sized equipment storage areas, located to provide quick access to operatories and eliminating cluttering of hallways;
- Mechanical and electrical systems, meeting all current guidelines for air exchanges, temperature and humidity control and emergency power capacity, improved lighting;
- Adequately sized staff areas, both in patient stations and in centralized stations with easy visibility to patient care stations to provide privacy;
- Incorporate best practice and progressive surgical planning strategies, including a variety of private and semi-private pre- and post-operative patient care stations, discharge areas responding to the specific needs of patients; and
- Surface finishes that will maximize the ability to sanitize the space.

(DI #3, p. 25).

Staff concludes that the applicant considered patient safety in its design of the proposed ASF, and meets this standard.

(7) Construction Costs.

The cost of constructing surgical facilities shall be reasonable and consistent with current industry cost experience.

(a) Hospital projects.

Subpart (a) does not apply because this is not a hospital project.

(b) Ambulatory Surgical Facilities.

(i) The projected cost per square foot of new construction shall be compared to the benchmark cost of good quality Class A construction given in the Marshall Valuation Service® guide, updated using Marshall Valuation Service® update multipliers, and adjusted as shown in the Marshall Valuation Service® guide as necessary for site terrain, number of building levels, geographic locality, and other listed factors. This standard does not apply to the costs of renovation or the fitting out of shell space.

(ii) If the projected cost per square foot of new construction exceeds the Marshall Valuation Service® benchmark cost by 15% or more, then the applicant's project shall not be approved unless the applicant demonstrates the reasonableness of the construction costs. Additional independent construction cost estimates or information on the actual cost of recently constructed surgical facilities similar to the proposed facility may be provided to support an applicant's analysis of the reasonableness of the construction costs.

Subsection (b) of this standard requires a comparison of the project's estimated construction cost with an index cost derived from the Marshall Valuation Service ("MVS") guide. To complete this comparison, an MVS benchmark cost is developed for new construction based on the relevant construction characteristics of the proposed project. The MVS cost data include the base cost-per-square-foot for new construction by type and quality of construction for a wide variety of building uses including outpatient surgical centers. The MVS guide also includes a variety of adjustment factors, including adjustments of the base costs to the costs for the latest month, the locality of the construction project, as well as factors for the number of building stories, the height per story, the shape of the building (such as the relationship of floor area to perimeter), and departmental use of space. The MVS guide identifies costs that should not be included in the MVS calculations. These exclusions include costs for buying or assembling land, making improvements to the land, costs related to land planning, discounts or bonuses paid for through financing, yard improvements, costs for off-site work, furnishings and fixtures, marketing costs, and funds set aside for general contingency reserves.[5]

Both AGH and MHCC staff performed independent analyses comparing the applicant's estimated project cost to the MVS benchmark calculated for the proposed project. (See Appendix 4). In this project AGH proposes the construction of 13,101 square feet ("SF") for the ASF located

[5] Marshall Valuation Service Guidelines, Section 1, p. 3 (January 2016).

on the first floor of a 102,124 SF MOB. (DI #15, p. 6). Based on a total project cost of $8,023,827, the applicant and MHCC staff each calculated an adjusted project cost for the construction of the ASF at $272.92 per SF.

The applicant and MHCC staff arrived at slightly differing MVS benchmark values. AGH calculated an estimated benchmark cost of $286.23 per SF, whereas MHCC staff calculated a value of $271.36 per SF, a difference of about 5.5%. While AGH states that the MVS calculator was used to determine its benchmark value of $286.23 per SF, the applicant incorrectly used an Average-type of finish and not the Good-type of construction as prescribed by this standard above in evaluating the appropriateness of construction costs for the proposed ASF. In addition, the hospital did not utilize or take into consideration either the Perimeter or Story Height multipliers, or include the installation of a dry sprinkler system in calculating the benchmark value. MHCC staff utilized the MVS Valuation Service in a manner that has been consistent for a number of reviews regarding the establishment or the renovation of shell space for a new ASF within an existing or newly constructed medical office building. Therefore, the MHCC staff did not utilize the MVS benchmark value reported by AGH, and based the findings from the MVS review on staff's analysis of the MVS benchmark value.

Using the proposed construction cost of $272.92 per SF, AGH estimated its project cost to be $13.31 per SF (about 4.9%) higher than the calculated MVS benchmark, while MHCC staff's analysis found the estimated project cost to be $1.56 per SF (about 0.6%) below the MVS benchmark. The difference between AGH's and staff's MVS values was $14.87 per SF, a difference of about 5.5%.

In either scenario, the projected cost of constructing the ASF did not exceed the calculated MVS benchmark value by 15%. Thus, the project complies with the standard.

(8) <u>Financial Feasibility.</u>

A surgical facility project shall be financially feasible. Financial projects filed as part of an application that includes the establishment or expansion of surgical facilities and services shall be accompanied by a statement containing each assumption used to develop the projects.

(a) An applicant shall document that:

(i) Utilization projections are consistent with observed historic trends in use of the applicable service by the likely service area population of the facility;

The applicant based its projections of OR cases and OR minutes on the historical utilization data for the surgeons on its medical staff, supplemented by estimates of future utilization drawn from a survey of those physicians. (DI #8, pp. 17-18). (DI #19, p. 1). These estimates were supplemented by estimated future volume to come from surgeons who have recently been recruited and from physicians the hospital plans to recruit.

Although the hospital's inpatient surgical volumes decreased between 2015 and 2018 because of insufficient surgical coverage in orthopedic and general surgery, it projects to recoup volume by virtue of a plan to recruit and retain additional surgeons in such specialties as urology,

orthopedic surgery, and general surgery in FY 2020, and a second orthopedic surgeon and a plastic surgeon in FY 2021. (DI #18, p. 4). The hospital expects these recruited surgeons will perform the majority of the surgical volumes at the ASF.

(ii) Revenue estimates are consistent with utilization projections and are based on current charge levels, rates of reimbursement, contractual adjustments and discounts, bad debt, and charity care provision, as experienced by the applicant facility or, if a new facility, the recent experience of similar facilities;

AGH bases its estimates of revenue on the hospital's historical experience with rates of reimbursement, contractual allowances, bad debt, and charity care.

(iii) Staffing and overall expense projections are consistent with utilization projections and are based on current expenditure levels and reasonably anticipated future staffing levels as experienced by the applicant facility, or, if a new facility, the recent experience of similar facilities; and

The applicant based its projected staffing levels for the proposed ASF on its experience with the operating room staffing at the hospital. AGH expects to transfer 18.1 FTEs from the hospital to the ASF, and to add 9.1 FTEs. (DI #8, p. 21).

(iv) The facility will generate excess revenues over total expenses (including debt service expenses and plant and equipment depreciation), if utilization forecasts are achieved for the specific services affected by the project within five years of initiating operations.

(b) A project that does not generate excess revenues over total expenses even if utilization forecasts are achieved for the services affected by the project may be approved upon demonstration that overall facility financial performance will be positive and that the services will benefit the facility's primary service area population.

The applicant projects an excess of revenues over expenses by FY 2022, the first full year of operation, as shown in Table III-6 below. (DI #19, Table 3, p. 3 and Table J).

Table III-6: Atlantic General Surgical Center Revenue and Expense Projections, FY 2021-FY 2023

	FY 2021	FY 2022	FY2023
Operating Room Cases	3,161	3,430	3,688
Net Operating Revenue	$4,828,185	$6,033,564	$6,484,702
Total Operating Expenses	$5,539,602	$5,900,051	$5,903,903
Net Income(Loss)	$(711,417)	$133,513	$580,799

DI #19, Table 3, OR Surgery Volumes -All Surgeons, and DI #19, Table J, Revenues and Expenses, Uninflated.

Staff's analysis showed that AGH's utilization projection were not reasonable. (See the Minimal Volume standard above.) However, employing more realistic assumptions concerning future demand, staff has concluded that the ASF can be used at an optimal level of capacity and

this indicates that the facility should be profitable. The demand forecast assumptions used by AGH produced levels of surgical demand that would be expected to overtax the five-OR capacity planned by the hospital More conservative modeling shows that AGH will be able to use OR capacity at reasonable and achievable use levels and this supports a conclusion that the project is financially feasible and the surgical facilities configuration planned by AGH should be viable and sustainable. Thus, staff concludes that the proposed project satisfies the financial feasibility standrd.

(9) Impact.

(a) An application to establish a new ambulatory surgical facility shall present the following data as part of its impact assessment, in addition to addressing COMAR 10.24.01.08G(3)(f):

(i) The number of surgical cases projected for the facility and for each physician and practitioner;

(ii) A minimum of two years of historic surgical case volume data for each physician or practitioner, identifying each facility at which cases were performed and the average operating room time per case. Calendar year or fiscal year data may be provided as long as the time period is identified and is consistent for all physicians; and

AGH submitted two years of historical data and projections of the number of surgical cases and OR time projected for the facility and for each surgeon expected to practice there. In 2017, AGH reported that twenty (20) surgeons performed 4,066 surgical cases, with an average operating room time of 65.1 minutes, which increased in 2018 to 4,401 surgical cases with an average OR time of 60.1 minutes. Between 2017 and 2018, inpatient cases decreased by 145 cases, (almost 13%), while outpatient cases grew by almost 500 (16%). (DI #19, p.2) As previously noted, this single year increase was an outlier when viewed in the context of the longer-term trend in growth of outpatient surgery at AGH (average annual growth in case volume of three percent between 2010 and 2017).

(iii) The proportion of case volume expected to shift from each existing facility to the proposed facility.

AGH provided projections showing that about 52% of the hospital's projected 7,117 surgical cases, and about 44% of the 458,980 total surgical minutes would shift to the ASF by FY 2023. In addition, two plastic surgeons who currently practice at The Center for Aesthetic Surgery and/or Delmarva Surgery Center in Salisbury project to shift about 96 cases to AGSC by 2023 (third full year of operation).

(b) An application shall assess the impact of the proposed project on surgical case volume at general hospitals;

(i) If the applicant's needs assessment includes surgical cases performed by one or more physicians who currently perform cases at a hospital within the defined service area of the proposed ambulatory surgical facility that, in the aggregate, account for 18 percent or more of the operating room time in use at a hospital, then the applicant shall include, as part of its impact assessment, a projection of the levels of use at the affected hospital for at least three years following the anticipated opening of the proposed ambulatory surgical facility.

(ii) The operating room capacity assumptions in Regulation .07A of this chapter and the operating room inventory rules in Regulation .07C of this chapter shall be used in the impact assessment.

Paragraph (b) of the Impact standard requires that an applicant for an ASF provide an assessment of the impact of a new ASF on a hospital, if that hospital would be expected to lose 18% of its operating room time due to physicians who would be shifting cases from that hospital to the new ASF. Specifically, the applicant is required, as part of the impact assessment, to include a projection of the levels of use at the affected hospital for at least three years following the anticipated opening of the proposed ambulatory surgical facility.

In this case, the only hospital likely to be materially affected by the establishment of the ASF is the applicant, Atlantic General Hospital. It projects that the hospital would lose approximately 44% of its total operating room time by FY 2023. This shift, however, is exactly what AGH wants to occur, in order to move surgical volume to a lower cost setting, and with the implementation of this project, the hospital will close one of its four ORs. In addition, AGH considers the ASF to be a linchpin in its effort to recruit surgeons, if that effort is to succeed. (DI #16, p. 1).

Staff concludes that the applicant complies with this standard.

(10) <u>Preference in Comparative Reviews.</u>

Since this review is not part of a comparative review, this standard is not applicable.

B. Need

COMAR 10.24.01.08G (3)(b) The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated unmet needs of the population to be served, and established that the proposed project meets those needs.

This criterion directs the Commission to consider the "applicable need analysis in the State Health Plan." In this recommendation that discussion can be found in the Surgical Services Chapter at COMAR 10.24.11.05B(2), Need – Minimum Utilization for Establishment of a New…Facility.

In its analysis of the need standard, COMAR 10.24.11.05B(2), *supra*, p. 9-13,.staff concluded that, although the applicant's projections may be overly aggressive and optimisitic, an

analysis relying on more conservative assumption, adequately justifies the overall capacity proposed for the hospital and ASF combined, that is, three mixed-use room and two dedicated outpatient rooms, and will allow for efficient use of the two-OR ASF.

Additionally, staff concludes that implementing this proposal would enable providers and consumers to avail themselves of a lower cost alternative for needed surgery. A strong argument could be made for approving this initiative for this reason, even if the projected utilization were to fall somewhat short of the level required by the standard.

Staff recommends that the Commission find that the project is needed.

C. Availability of More Cost-Effective Alternatives

COMAR 10.24.01.08G(3)(c) The Commission shall compare the cost effectiveness of the proposed project with the cost effectiveness of providing the service through alternative existing facilities, or alternative facilities which have submitted a competitive application as part of a comparative review.

AGH states that the plans for the proposed ASF "are part of an initiative for expanding the availability and accessibility of organized outpatient services to residents of its service area." (DI #3, pp. 32-33). The applicant beleives that the establishment of an ASF will allow it to receive reimbursement from private and third-party payers by moving outpatient surgical cases from a rate-regulated hospital setting to a freestanding ambulatory surgical facility. In addition, the applicant states that the development of the ASF would provide greater accessibility and cost-effective care to Worcester County residents, helping those residents who have been forced to travel unnecessarily long distances to obtain needed outpatient surgical services.

AGH states that it considered two locations for the MOB that would serve as a centralized comprehensive outpatient services center ("CCOSC") and location for the proposed ASF. The first was a location on the hospital campus in Berlin and the other is the proposed site at Ocean Pines. The applicant states that both locations were considered suitable, but that the selected Ocean Pines site offered more advantages. One is proximity to the large population of older residents of Ocean Pines. Other advantages include better provider access, sufficient available land for future growth and expansion, and "a visible response to competitive initiatives in the local healthcare marketplace." (DI #3, p. 33).

In addition to considering a range of siting options, the hospital considered four alternative financing options for the CCOSC/MOB. These were:

(1) Direct investment and ownership of the MOB and ASF.
(2) Shared partnership with independent community providers to develop and operate the ASF.
(3) Lease shell space in new construction and take responsibility for the fit-out of the space.
(4) Lease "finished space" suitable for immediate ASF occupancy in the MOB.

Option 1 was rejected because AGH did not want to take on additional debt for the project because of its current debt load. Option 2 was not feasible; because most area surgeons are employed by AGH, there is an insufficient number of community physicians who would be interested in investing in the ASF. Option 4 was selected over the similar Option 3 because the lower lease payment that would accompany Option 3 was not enough to outweigh what AGH saw as a better combination of current and future costs for AGH. The applicant submitted the information contained in Table III-7 below to illustrate the considerations and judgments that led to its choice.

Table III-7: Alternative Financing Options

Alternative Financing Options Considered for Implementation of the ASF				
Alternative	Description	Estimated Cost (ASF Only)	Accepted/ Rejected	Reasons
Direct Investment and Ownership	AGH Corporation would own both the 98,000 GSF MOB and the ASF	$8M	Rejected	Current debt load of AGH Corporation
Shared Partnership with Independent Providers	A new LLC would be formed to establish a joint venture	$8M	Rejected	Insufficient number of community providers available to invest in ASF
Lease: Shell Space Only	Developer would build and rent "shell space" for ASF; AGH would pay for "fitting out and equipment."	Rent: $402,000/year (15 Years); $394,000/year (20 Years) Finishing Cost: $2,035,000 Medical Equipment; $3,250,000 Building	Rejected	Insufficient Savings Compared to Accepted Alternative
"Turnkey" Financing	Developer would build MOB with space for ASF; AGH would purchase and install equipment	Rent: $690,863/year (15 years); $678,000/year (20 years) Movable Equipment Cost: $2,035,000	Accepted	Best combination of current and future costs to AGH Corporation

Source: DI #8, p. 22.

Staff recommends the Commission find that AGH has given adequate consideration to alternatives and selected the most cost effective option.

D. Viability of the Proposal

COMAR 10.24.01.08G(3)(d) The Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.

Availability of Resources to Implement the Proposed Project

The estimated cost of fitting out the ASC within the MOB is approximately $8.0 million,[6] with AGH providing $2.9 million in cash to purchase furnish and equip the space, and the remaining estimated balance of $5.1 million from Sina Companies, LLC ("Sina") to fund the construction costs of the ASC. With regard to the $5.1 million in construction costs, Sina[7] stated

[6] The project budget is attached as App. 5.
[7] From correspondence signed by Robert Sina, Principal, Sina Companies. (DI #3, Att. 12).

in a document to AGH that it will finance the construction costs with a combination of debt and equity.[8] (DI #3, Att. 12 and DI #8, p. 7).

The applicant states that Sina will build and own the MOB. Sina's website describes its background "in medical real estate development on a national scale."[9] The website states that Sina has helped develop over 4.0 million square feet of healthcare properties and acquired another 1.7 million square feet in over 20 states, working with a variety of medical facility clients from the faith-based, not-for-profit, for profit, and university sectors.

The applicant provided financial statements audited by Dixon Hughes Goodman, L.L.P. that show Atlantic General Hospital Corporation has access to the $2.9 million in cash to fund its portion of the project. (DI #8, Att. 21).

With the completion of construction, the relationship between Atlantic General Hospital Corp. and Sina will simply be that of landlord and tenant. (DI #8, p. 1). AGH will enter into a lease with Sina for the ASF. The expected leasing terms for the ASF is an annual payment of $690,863 for a period of 15 years with an annual increase to the minimum rent of three percent. (DI #8, Att. 16).

Availability of Resources to Sustain the Proposed Project

The proposed ASF is projected to require 27.2 full-time equivalent ("FTE") employees, including one manager, 12.2 registered nurses, 7.3 technicians, and 6.7 support staff). AGH expects that 18.1 FTEs currently on staff at the hospital will transfer to the ASF, and that it will hire an additional 9.1 FTEs upon start of operations at the ASF. (DI #8, p. 21).

AGH's projected operating results for the surgical center were shown earlier, in the Financial Feasibility standard in Table III-6, *supra*, pp 15-17. It shows that AGH projects a loss in excess of $700,000 in the first year of operation, but will begin to generate a positive bottom line by the second year as the projected surgical volume ramps up. (DI #19, p. 4, Tables 3 and J).

Staff recommends that the Commission find that the proposed project is viable.

E. Compliance with Conditions of Previous Certificates of Need

COMAR 10.24.01.08G(3)(e) An applicant shall demonstrate compliance with all terms and conditions of each previous Certificate of Need granted to the applicant, and with all commitments made that earned preferences in obtaining each previous Certificate of Need, or provide the Commission with a written notice and explanation as to why the conditions or commitments were not met.

[8]Loans amounting to 65% - 75% of the cost, either a construction, mini-permanent loan from a traditional bank or private lender. Lenders that Sina has used in the past include: Bank of America, Fifth Third Bank, Wells Fargo, Sunovus, and Comerica. Equity of 25% - 35% funded by the principals/executives of Sina Companies or a combination of Sina and an equity partner, such as public healthcare REITs, private healthcare funds and other individual investors.

[9] Further information on Sina Companies is available at: https://www.sinacompanies.com/about/.

The Commission has not issued a Certificate of Need to Atlantic General Hospital Corporation or its affiliates or subsidiaries over the prior 15 years.

F. Impact

COMAR 10.24.01.08G(3)(f) Impact on Existing Providers and the Health Care Delivery System. An applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region, including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system.

Impact on Other Providers

As described in the Impact standard earlier in this report, *supra*, pp. 17-18, the primary impact is on the applicant hospital. The project will give it an ability to meet payors' demands to provide surgery in a lower cost setting and a facility that will help it recruit needed surgeons. (DI #16, p. 1).

There are no other ambulatory surgical facilities in the jurisdiction, although there is a facility with one procedure room and no operating rooms that provides pain management procedures only. It is unlikely to be affected by the proposed project. The only facilities that are likely to see any impact are two facilities in Salisbury that offer plastic surgery, and the impact on them would be small (96 total cases).

Impact on access to health care services, system costs, and costs and charges of other providers

The proposed ASF in Ocean Pines is expected to enhance and improve the access to outpatient surgical services for patients in this service area, and that the site would be very convenient for the growing senior population residing in the Ocean Pines community. (DI #8, p. 24).

The applicant does not expect the project to result in significant changes to the payer mix at AGH. (DI #3, p. 37). However, AGH maintains that the establishment of the proposed ASF will "provide a more cost-effective alternative setting for providing outpatient surgery services at the ASF than would have otherwise been provided at AGH." (DI #3, p. 37). The project will specifically benefit those patients whose health coverage would refer them to a non-hospital setting. Currently, these individuals have to leave the jurisdiction to receive these services.

Staff concludes that the impact of this project is positive for AGH and that it will not have a substantial negative impact on existing providers or on the cost of care in Worcester County. Staff recommends that the Commission find that the project impact will be positive.

IV. SUMMARY AND STAFF RECOMMENDATION

Based on the review of the proposed project's consistency with the Certificate of Need review criteria (COMAR 10.24.01.08G(3)(a)-(f)) and with the applicable standards in the General

Surgical Services Chapter of the State Health Plan (COMAR 10.24.11), Commission staff recommends that the Commission issue a Certificate of Need to Atlantic General Hospital Corporation to establish Atlantic General Surgical Center with two operating rooms and three procedure rooms. Staff concludes that the applicant demonstrated that the project complies with the applicable standards in the Surgical Services Chapter, is needed, is a cost-effective approach to meeting the project objectives, is viable, will have a positive impact on the applicant's ability to provide outpatient surgery without adversely affecting costs and charges or other providers of surgical care, and will benefit service area residents who will not travel as far to receive ambulatory surgery services.

Accordingly, Staff recommends that the Commission **APPROVE** Atlantic General Hospital Corporation's application for a Certificate of Need authorizing the establishment of a an ASF with two operating rooms and three procedure rooms at a medical office building located at 10592 Racetrack Road in Worcester County.

IN THE MATTER OF	*	**BEFORE THE**
	*	
ATLANTIC GENERAL	*	**MARYLAND HEALTH**
	*	
SURGICAL CENTER	*	**CARE COMMISSION**
	*	
Docket No. 18-23-2431	*	
	*	

* *

FINAL ORDER

Based on the analysis and conclusions contained in the Staff Report and Recommendation, it is this 18th day of Aptil, 2019, by a majority of the Maryland Health Care Commission, **ORDERED:**

That the application by Atlantic General Hospital Corporation for a Certificate of Need to establish an ambulatory surgical facility with two operating rooms and three procedure rooms at 10952 Racetrack Road in Ocean Pines, Worcester County, at an estimated cost of $2,850,444, is hereby **APPROVED.**

MARYLAND HEALTH CARE COMMISSION

MARYLAND HEALTH CARE COMMISSION

APPENDIX 1: Record of the Review

Docket Item #	Description	Date
1	Commission staff acknowledged receipt of Atlantic General Hospital's four letters of intent to file a Certificate of Need.	7/10/2018
2	State Delegate Mary Beth Carozza, Wicomico and Worcester Counties, submitted letter of support for Atlantic General Hospital's CON application.	9/6/2018
3	Atlantic General Surgical Center submits CON application.	9/7/2018
4	Commission acknowledges receipt of CON application.	9/12/2018
5	Commission requests publication of notification of receipt of Atlantic General Surgical Center's proposal in the *Maryland Coast Press*.	9/12/2018
6	Commission requests publication of notification of receipt of Atlantic General Surgical Center's proposal in the *Maryland Register*.	9/12/2018
7	Following completeness review, Commission staff found the application incomplete, and requested additional information.	10/29/2018
8	Commission received responses to the request for additional information.	11/16/2018
9	Commission notified Atlantic General Surgical Center that its application is docketed for formal review on December 7, 2018.	11/20/2018
10	Commission requests publication of the notice of formal start of review in the *Maryland Register*.	11/20/2018
11	Commission requests publication of notice of formal start of review for Atlantic General Surgical Center's proposal in the *Maryland Coast Press*.	11/27/2018
12	Commission sent copy of the application to the Worcester Health Department for review and comment.	11/27/2018
13	Commission receives notification of the formal start of review for Children's National as published in the *Worcester County Times*.	12/13/2018
14	Commission requests additional information.	1/31/2019
15	Commission received responses to the request for additional information.	2/6/2019
16	Atlantic General Surgical Center submits response to request for additional information.	2/13/2019
17	Commission requests additional information.	2/19/2019
18	Atlantic General Surgical Center submits response to request for additional information.	3/1/2019
19	Atlantic General Surgical Center submits additional information to support surgical utilization volume and need for the ambulatory surgery facility.	3/13/2019

MARYLAND HEALTH CARE COMMISSION

APPENDIX 2:

Excerpted CON Standards for General Surgical Services
From State Health Plan Chapter 10.24.11

Excerpted CON Standards for General Surgical Services

From State Health Plan Chapter 10.24.11

Each of these standards prescribes policies, services, staffing, or facility features necessary for CON approval that MHCC staff have determined the applicant has met. Also included are references to where in the application or completeness correspondence the documentation can be found.

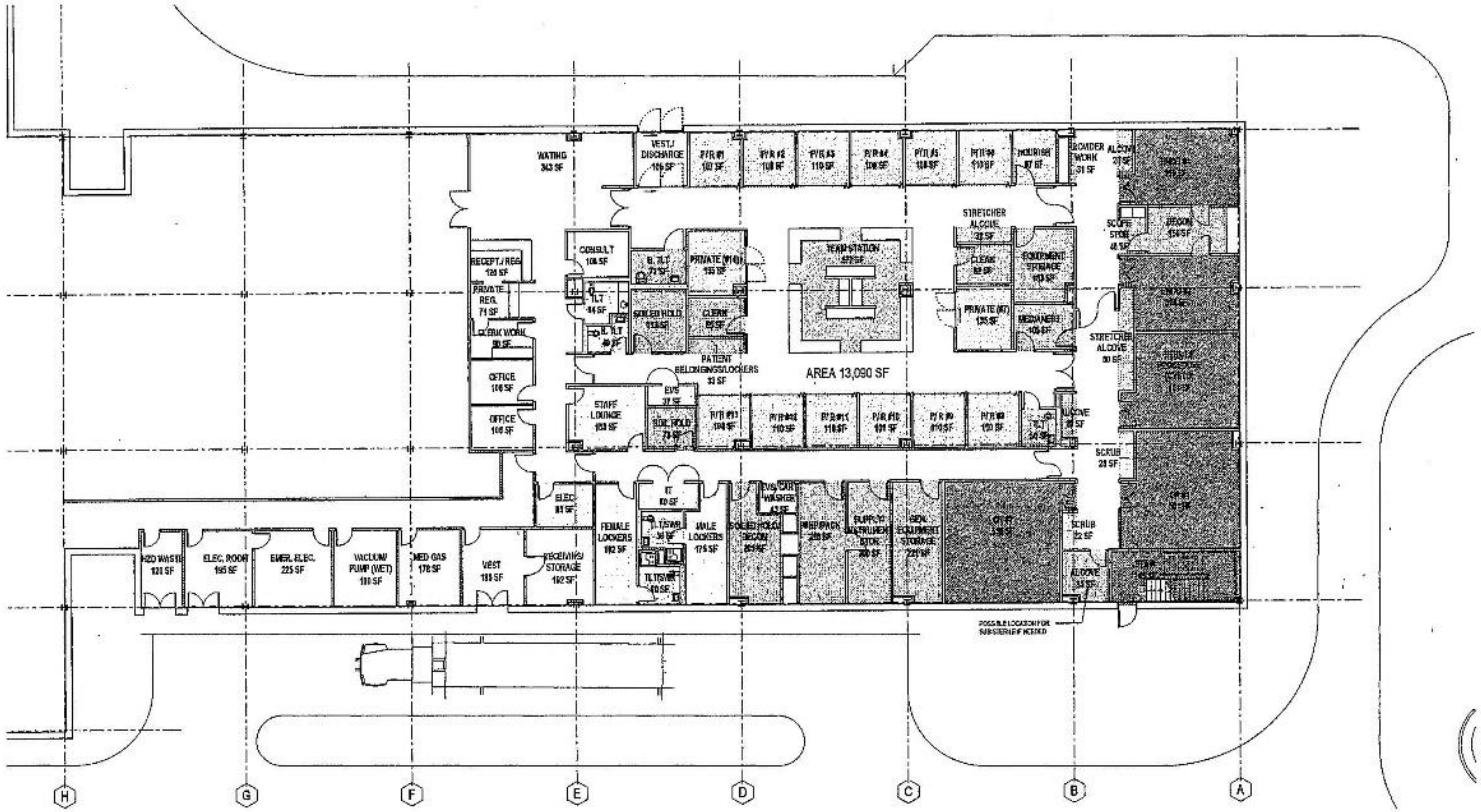
STANDARD	**APPLICATION REFERENCE (Docket Item #)**
.05A(4) Quality of Care A facility providing surgical services shall provide high quality care. (a) An existing hospital or ambulatory surgical facility shall document that it is licensed, in good standing, by the Maryland Department of Health. (b) A hospital shall document that it is accredited by the Joint Commission. (c) An existing ambulatory surgical facility or POSC shall document that it is: (i) In compliance with the conditions of participation of the Medicare and Medicaid programs; (ii) Accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, the American Association for Accreditation of Ambulatory Surgery Facilities, or another accreditation agency recognized by the Centers for Medicare and Medicaid as acceptable for obtaining Medicare certification. (iii) A provider of quality services, as demonstrated by its performance on publicly reported performance measures, including quality measures adopted by the Centers for Medicare and Medicaid Services. The applicant shall explain how its ambulatory surgical facility or each POSC, as applicable, compares on these quality measures to other facilities that provide the same type of specialized services in Maryland. (d) A person proposing the development of an ambulatory surgical facility shall demonstrate that the proposed facility will: (i) Meet or exceed the minimum requirements for licensure in Maryland in the areas of administration, personnel, surgical services provision, anesthesia services provision, emergency services, hospitalization, pharmaceutical services, laboratory and radiologic services, medical records, and physical environment; and (ii) Obtain accreditation by the Joint Commission, the Accreditation Association for Ambulatory Health Care, or the American Association for Accreditation of Ambulatory	DI #3, p. 21 and DI #8, p. 12.

Surgery Facilities within two years of initiating service at the facility or voluntarily suspend operation of the facility. (e) An applicant or a related entity that currently or previously has operated or owned a POSC or ambulatory surgical facility, in Maryland or outside of Maryland, in the five years prior to the applicant's filing of a request for exemption request to establish an ASF, shall address the quality of care at each location through the provision of information on licensure, accreditation, performance metrics, and other relevant information.	
.05A(5) <u>Transfer Agreements.</u> (a) Each ASF shall have written transfer and referral agreements with hospitals capable of managing cases that exceed the capabilities of the ASF. (b) Written transfer agreements between hospitals shall comply with the Department of Health regulations implementing the requirements of Health-General Article, 19-308.2. (c) Each ASF shall have procedures for emergency transfer to a hospital that meet or exceed the minimum requirements in COMAR 10.05.05.09.	DI #3, p. 21, DI #8, pp. 12-13 and Attachment 22.
.05B(4) <u>Design Requirements</u>. Floor plans submitted by an applicant must be consistent with the current Facility Guidelines for Design and Construction of Health Care Facilities (FGI Guidelines): (a) A hospital shall meet the requirements in current Section 2.2 of the FGI Guidelines. (b) An ASF shall meet the requirements in current Section 3.7 of the FGI Guidelines. (c) Design features of a hospital or ASF that are at variance with the current FGI Guidelines shall be justified. The Commission may consider the opinion of staff at the Facility Guidelines Institute, which publishes the FGI Guidelines, to help determine whether the proposed variance is acceptable.	DI #3, Attachment 8
.05B(5) <u>Support Services</u>. Each applicant shall agree to provide laboratory, radiology, and pathology services as needed, either directly or through contractual agreements. .	DI #3, p. 24

MARYLAND HEALTH CARE COMMISSION

APPENDIX 3:

Project Floor Plans



MOB/ASC
OPTION C

ARRAY architects

Scale :
Project No. 5277
Date : 08/20/18

MARYLAND HEALTH CARE COMMISSION

APPENDIX 4:

Marshall Valuation Service Review

Marshall Valuation Service Review

The Marshall Valuation System – what it is, how it works

In order to compare the cost of a proposed construction project to that of similar projects as part of a cost-effectiveness analysis, a benchmark cost is typically developed using the Marshall Valuation Service ("MVS"). MVS cost data includes the base cost per square foot for new construction by type and quality of construction for a wide variety of building uses.

The base cost reported in the MVS guide are based on the actual final costs to the owner and include all material and labor costs, contractor overhead and profit, average architect and engineering fees, nominal building permit costs, and processing fees or service charges and normal interest on building funds during construction. It also includes: normal site preparation costs including grading and excavation for foundations and backfill for the structure; and utilities from the lot line to the structure figured for typical setbacks.

The MVS costs *do not include* costs of buying or assembling land, piling or hillside foundations (these can be priced separately), furnishings and fixtures not found in a general contract, general contingency set aside for some unknown future event such as anticipated labor and material cost increases. Also not included in the base MVS costs are site improvements such as signs, landscaping, paving, walls, and site lighting. Offsite costs such as roads, utilities, and jurisdictional hook-up fees are also excluded from the base costs.[10]

MVS allows staff to develop a benchmark cost using the relevant construction characteristics of the proposed project and the calculator section of the MVS guide. In developing the MVS benchmark costs, the base costs are adjusted for a variety of factors (e.g., an add-on for sprinkler systems, the presence or absence of elevators, number of building stories, the height per story, and the shape of the building. The base cost is also adjusted to the latest month and the locality of the construction project.)

Calculating the Adjusted Project Cost in this Application

AGH states that the proposed 13,101 SF ASF will be located on the first floor of a newly constructed 102,124 SF building that is constructed as a medical office building ("MOB"). (DI #15, p. 6). The cost of constructing the proposed AGSC is, therefore, assumed to be similar to that of renovating shell space in an existing MOB.

AGH and MHCC staff calculated the adjusted project cost per sq. ft. based on the actual costs of renovating 13,101 sq. ft. Table A below shows the calculations of the adjusted project cost made by the applicant and by MHCC.

[10] Marshall Valuation Service Guidelines, Section 1, p. 3 (January 2016).

Table A: Respective Adjusted Project Cost Developed by AGH and MHCC Staff

Cost of New Addition	
New Construction	
Building	$ 3,250,000
Fixed Equipment	
Normal Site Preparation	677,560
Architect/Engineering	300,000
Permits	7,000
Capitalized Construction Interest	0
Financing Fees	0
Total Project Costs	$ 4,234,560
Cost Adjustments - Off-site and On-site Costs*	
Demolition	910
Storm Drains	4,550
Rough Grading	10,400
Paving	109,460
Signs	9,750
Landscaping	19,500
Walls	208,000
Yard Lighting	9,100
Roads	115,700
Utilities	156,000
Jurisdictional Hook-up Fees	15,600
Total Adjustments*	$ 658,970
Project Costs for MVS Comparison	$ 3,575,590
Square Feet of Construction	13,101
Adjusted Project Cost per SF	$ 272.92
MVS Cost/SF	$ 271.36
Over(Under)	$ 0.80

*AGH calculated the off-site and on-site costs using a 12.8% prorate based on total SF of ASF (13,101 SF) compared to total SF for MOB (102,124 SF). The Cost Adjustment Costs for the ASF are calculated as 12.8% of total off-site and on-site costs of $5,148,203, which amounts to $658,970. (DI #15, p. 6).

DI #3, Attachment 1, Table D and DI #8, Attachment 17, Table C & E

As previously mentioned above, the off-site and in-site costs[11] are not included in developing the MVS benchmark for AGH's proposed ASF. In calculating the Off-site and On-site Cost Adjustments, the applicant prorated the cost of such expenses based on the percentage of

[11] These include costs for site preparation such as demolition, storm drains, and rough grading, and for costs of site improvements such as paving, signs, landscaping, walls, yard lighting, roads, utilities, and jurisdictional hook-up fees.

total square footage for the ASF compared to the total square footage for the MOB. Therefore, the prorated amount for the off-site and on-site costs is 12.8% (based on 13,101 SF for ASF and 102,124 SF for the MOB). With a total of $5,148,203 for the off-site and on-site costs, the prorated amount for the ASF would be $658,970. (DI #15, p. 6).

AGH and MHCC did not differ in the adjusted project costs used for the MVS comparison, and both arrived at an adjusted project cost of $272.92 per SF.

Developing an MVS Benchmark for This Project

AGH calculated the MVS benchmark to be $286.23 per sq. ft. The hospital states that it used the Marshall Valuation Service to calculate a base cost for an *Average* quality Class A-B construction of an outpatient surgical center ("OSC") of $278.00 per sq. ft. (DI #3, pp. 26-27 and DI #15, p. 6). The applicant used the following assumptions:

1. The applicant used the base cost for an **Average** Quality Class A-B outpatient surgical center. COMAR Regulation .05B8(b) states that an ambulatory surgical facility use a "benchmark cost of **Good** quality Class A construction in the MVS guide." (DI #15, p. 6). The most current version of the MVS Guide only provides cost values for a Class A-B facility and not a Class A facility; conversely, the applicant used values for "average" type of construction materials and finish, and not for "good" type of ASF, as stated in this regulation.
2. In supporting the use of "average" type of construction materials and finish, the applicant states that the cost value for average as reported by the MVS is $278.00 per SF,[12] whereas for good type it would increase to $379.00 per SF. AGH states the lower value of $278.00 per SF is more applicable to the projected costs of construction for the proposed ASF, whereas the good value of $379.00 per SF would provide premium interior finishes at a higher cost standard that would be "in excess of Sina Company estimates for building the ASF." (DI #15, p. 6)
3. The applicant did not report using or include the Perimeter Multiplier; Height Multiplier; and Sprinkler costs in the calculations for the ASF/OSC. The applicant states "no adjustments were made for the first floor location of the ASC, the overall shape of the MOB, two public elevators in the MOB, or building story height." (DI #3, pp. 26-27). Staff assumes the applicant uses a value of one (1.0) for each of the two multipliers and zero costs for the sprinkler system.
4. Since the proposed ASF/OSC and the MOB are no higher than two stories, the applicant used a Multi-Story Multiplier of one (1).
5. The applicant reported using the current value[13] for the Update (Current Cost Multiplier) as 1.04 and for the Local Multiplier for the Eastern Shore of Maryland as 0.99.

MHCC staff calculated an MVS benchmark of $271.36 per sq. ft. by adjusting the MVS base cost ($379.00 per sq. ft. as of November 2017) for outpatient surgical centers used by the

[12] As reported in the most current version of the Marshall & Swift MVS for the period November 2017 as of the date of the staff review.

[13] Staff assumes Atlantic General Hospital Corp. used the Current Cost and Local Multipliers reported by MVS when the CON application was submitted to MHCC on September 7, 2018.

applicant as follows:

1. Use of a departmental cost factor of 1.00 for an operating room suite that includes the construction of supporting spaces such as a nursing station, preparation and recovery rooms, and equipment storage as well as two new operating rooms.
2. Since the ASF includes the fit-out of 13,101 sq. ft. with the perimeter size for the construction site of 484' 11" linear feet, MVS calculates the Perimeter Multiplier is 0.941.
3. With the height for the ASF at 14 ft., MVS indicates the Height Multiplier is 1.046.
4. The cost of installing a wet sprinkler system for the entire 102,124 sq. ft. MOB is estimated at $3.01 per sq. ft.
5. Staff used the Current Cost Multiplier of 1.08 for a Class A-B health care building, as reported by MVS for January 2019.
6. Staff then adjusted the cost to the location of the project by applying the MVS Local Multiplier for Eastern Shore (0.99) as of January 2019 (the most current available) to arrive at an initial benchmark square foot cost of $399.05 per sq. ft. if this project was for a totally new construction in this space.
7. As a last step to account for the fact that the project involves the fit-out for an ambulatory surgery facility in a newly constructed medical office building, staff subtracted a benchmark for the construction of outpatient surgical shell space ($126.93 per sq. ft. from the initial benchmark of $399.05 per sq. ft.) for a final benchmark for this project of $271.36 per sq. ft. Staff calculated the benchmark for constructing the shell space by applying the hospital departmental cost factor for vacant space (0.5) to the base cost for an outpatient surgical center and then applying the same multipliers as used in calculating the initial benchmark.

The following table identifies select building characteristics, the MVS base cost and the adjustments and calculations made by AGH and MHCC staff for this analysis:

Table B: Marshall Valuation Services Benchmark - Atlantic General Surgical Center and MHCC Staff's Calculations

	AGSC	MHCC	
Class	A-B	A-B	
Type	Average	Good	
Perimeter (ft.)	484'11"	484'11"	
Wall Height (ft.)	14'	14'	
Stories	1	1	
Average Area Per Floor (sq. ft.)	13,101	13,101	
As Outlined in Section 1, Page 11	AGSC	ASC	MOB
Net Base Cost	$ 278.00	$ 379.00	$ 235.00
Adjusted Base Cost	$ 278.00	$ 379.00	$ 235.00
Departmental Cost Diff.	1	1	0.5
Gross Base Cost	$ 278.00	$ 379.00	$ 117.50
Perimeter Multiplier	1	0.941	0.941
Story Height Multiplier	1	1.046	1.046

Multi-story Multiplier	**1**	**1**	**1**
Multipliers	**1.000**	**0.985**	**0.985**
Refined Square Foot Cost	**$ 278.00**	**$ 373.23**	**115.71**
Sprinkler Add-on (dry system)	**0**	**0**	**3.72**
Adjusted Refined Square Foot cost	**$ 278.00**	**$ 373.23**	**119.43**
Current Cost Modifier	**1.04**	**1.08**	**1.08**
Local Multiplier Eastern Shore	**0.99**	**0.99**	**0.99**
CC & Local Multipliers	**1.030**	**1.069**	**1.069**
MVS Building Cost Per Square Foot	**$ 286.23**	**$ 399.05**	**127.69**
AGSC MVS Building Cost Per Square Foot	**$ 286.23**	**$**	**271.36**

Source: DI #8, pp. 26-27 and DI #15, pp. 6-7).

The difference in the MVS Benchmark values calculated by the applicant and MHCC staff is $14.87 per sq. ft., about 5.5% difference. While AGH states that the MVS calculator was used to determine its benchmark value of $286.23 per SF, the applicant incorrectly used an **Average-**type of finish and not the **Good-**type of construction as prescribed by this standard in evaluating the appropriateness of construction costs for the proposed ASF. In addition, the hospital did not utilize or take into consideration either the Perimeter or Story Height multipliers, or include the installation of a dry sprinkler system in calculating the benchmark value. MHCC staff utilized the MVS Valuation Service in a manner that has been consistent for a number of reviews regarding the establishment or the renovation of shell space for a new ASF within an existing or newly constructed medical office building. Therefore, the MHCC staff did not utilize the MVS benchmark value reported by AGH, and based the findings from the MVS review on staff's analysis of the MVS benchmark value.

Comparing Estimated Project to the MVS Benchmark

MHCC staff's analysis found the estimated project cost to be $1.56 per sq. ft. (about -0.6%) below the calculated MVS benchmark, while AGH calculated the project costs to be $13.31 per sq. ft. (about 4.9%) over the MVS benchmark. Therefore, the cost of establishing AGH's two operating room ASF within a newly constructed MOB complies with this standard.

MARYLAND HEALTH CARE COMMISSION

APPENDIX 5:

Atlantic General Surgical Center's Projected Budget

Atlantic General Surgical Center's Project Budget

Use of Funds	
New Construction	
Building	$ 3,250,000
Site and Infrastructure	677,560
Architect/Engineering Fees	300,000
Permits	7,000
Subtotal	$ 4,234,560
Other Capital costs	
Moveable Equipment	$ 2,035,000
Contingency Allowance-equipment	203,500
Contingency Allowance-construction	688,823
Other (IT, Furnishings, Telecomm Equipment)	611,944
Subtotal	$ 3,539,267
Total Current Capital Costs	$ 7,773,827
Inflation Allowance	200,000
Total Capital Costs	$ 7,973,827
Financing Cost and Other Cash Requirements	
CON Application Assistance	50,000
Subtotal	$ 50,000
Total Uses of Funds	**$ 8,023,827**
Source of Funds	
Cash	2,850,444
Other (MOB Developer Financing)	5,173,383
Total Source of Funds	**$ 8,023,827**

DI #8, Attachment 17, Table E