

## **Memorandum to the Public Health Council**

**APPLICANT:** New England Surgery Center, LLC  
900 Cummings Center, Suite 122U  
Beverly, MA 01915

**PROJECT NUMBER:** 20072809-AS (Original)  
NESC-22060213-AM (Amendment)

**Filing DATE:** July 18, 2022

### **Introduction**

This memorandum presents, for Public Health Council (PHC) action, the Determination of Need (DoN) Program's recommendation pertaining to a request by New England Surgery Center, LLC, for a Significant Change to its previously approved DoN. The Amendment is for an incremental increase in the maximum capital expenditure of \$1,358,935.00 (86%), resulting in an increase of \$67,946.75 in the community health initiatives (CHI) contribution to DoN#20072809-AS. As described further herein, the Applicant seeks approval for the increase in the Maximum Capital Expenditure without a change in scope.

This Amendment request falls within the definition for Significant Change that includes "Any increase or decrease in the maximum Capital Expenditure less than or equal to 10% of the inflation adjusted originally approved total expenditure. An increase shall be allowed only for contingencies that could not have been reasonably foreseen, that are not reasonably within the control of the Holder, as determined by the Commissioner, and will be reviewed pursuant to 105 C.M.R. 100.635(A), which requires that the proposed change falls within the scope of the Notice of Determination of Need and is reasonable." The Department has received no public comment on this request for Significant Change.

### **Background**

In January 2021, New England Surgery Center, LLC, received approval of a Determination of Need (DoN) application for a Substantial Change in Service to add a second operating room and additional patient support and administrative areas to its existing facility at 900 Cummings Center, Suite 122U, Beverly, MA. The approved capital expenditure for the project was \$1,587,646. Through this Amendment, the Applicant seeks approval for an increase in the capital expenditure for the Project to \$2,946,581.00 (June 2022 dollars).

**Proposed Amendment:**

The Holder states that it does not seek to materially change the scope or gross square feet of the approved Project. The Applicant asserts there are additional unanticipated required repairs/replacements that were not requested in the approved application. The primary basis of the increase in capital expenditure related to the increase in project costs from the time the DoN was developed.

Staff has reviewed the Amendment request to determine whether it falls within the scope of the original Approval. Unanticipated and necessary critical repairs that were not included in the original DoN include: addition of one HVAC roof unit, repair/upgrade/replacement of two original HVAC roof units and upgrading insufficient electrical breakers, and the addition of an electrical room for additional panels. Additionally, labor and construction cost increases attributed to the COVID-19 pandemic contributed to cost increases and the need for the proposed amendment. The COVID-19 pandemic delayed original development of plans and has caused a significant impact on the cost of construction supplies and related labor. The Applicant states that it will have additional interest expense associated with the increase in borrowing required to fund the increased project costs.

These unforeseen circumstances described above lead to additional work that extended the construction timeframe which in turn added further cost increases. The Holder is seeking authorization for these additional requirements and their associated costs as part of this amendment since the increases are not a change in scope. Staff has described them in detail below.

**Impact on Cost**

The regulation requires that a Holder submit a description of the proposed change along with associated cost implications. As the chart below shows, with this Proposed Project, the Applicant seeks to increase its capital expenditures by 86% which is greater than the minimum threshold for filing an amendment of 10%.<sup>1</sup>

The Holder provided the table below of the increases in costs with the percentage increases by line item below.

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<sup>1</sup> A memo issued by the Department on November 9<sup>th</sup> (Section 2) states that an Amendment will not be required for DoN Holders who experience an increase in Capital Expenditure costs above 10% that is solely the result of an increase in construction costs. The increase in costs associated with the Proposed Project exceed 10% of the inflation adjusted originally approved total expenditure and are not solely the result of an increase in construction costs. Therefore, an Amendment to the Notice of Determination of Need is required.

## Comparison of Approved and Requested Capital Expenditures

	Renovation (Previously Approved 2021)	Renovation Increase (June 2022)	New Proposed MCE
<b>Land Costs</b>			
Land Acquisition	\$0	\$0	\$0
Site Survey and Soil Investigation	\$0	\$0	\$0
Other Non-Depreciable Land Development	\$0	\$0	\$0
Total Land Costs	\$0	\$0	\$0
<b>Construction Contract (including bonding cost)</b>			
Depreciable Land Development Cost	\$0	\$0	\$0
Building Acquisition Cost	\$0	\$0	\$0
Construction Contract (including bonding cost)	\$1,178,250	\$652,724	\$1,830,974
Fixed Equipment not in contract	\$125,000	\$613,400	\$738,400
Architectural Cost (Including fee, Printing, supervision etc.) and Engineering Cost	\$75,586	\$92,811	\$168,397
Pre-Filing Planning and Development Costs	\$44,115	\$0	\$44,115
Post-Filing Planning and Development Costs	\$0	\$0	\$0
Other (specify)			
Contingency allowance	\$78,195	\$0	\$78,195
Net Interest Expensed During Construction	\$24,000	\$0	\$24,000
Major Moveable Equipment	\$0	\$0	\$0
Total Construction Costs	\$1,525,146	\$1,358,935	\$2,884,081
<b>Financing Costs</b>			
Cost of Securing Financing (legal, administrative, feasibility studies, mortgage insurance, printing, etc.)	\$62,500	\$0	\$62,500
Bond Discount	\$0	\$0	\$0
Other	\$0	\$0	\$0
Total Financing Costs	\$62,500	\$0	\$62,500
<b>Estimated Total Capital Expenditure</b>	<b>\$1,587,646</b>	<b>\$1,358,935</b>	<b>\$2,946,581</b>

The Applicant provided a description of the cost increases that resulted in the filing of this Significant Amendment. Staff has summarized each expense category in sequence.

### 1. Fixed Equipment

Resulting in \$613,400 in additional costs not originally accounted for in the initial submission.

a. **HVAC.** The existing two roof units were found to be at the end of their operational lives

and not capable of the added requirements of servicing the new space. A new roof unit to cover the additional OR, central sterile, post anesthesia care unit (PACU), and office area will need to be added which will require new duct risers through the second and third floors of the building.

- b. Electric.** The Applicant states that replacing and upgrading electrical systems were not a part of the previously approved DoN; however, engineers identified insufficient available electrical breakers and the lack of sufficient room in the electrical equipment room to mount additional circuit expansion. Increased electrical costs are due to an increase in supply costs, and the need to replace an existing 800Amp distribution Panel to provide increased circuit expansion capabilities.

## **2. Architectural/Engineering Fees**

The original quote for architectural costs was \$75,586 however, the original architect is no longer available. New architects were contacted and bids received which resulted in an increase in costs in the range of \$92,811 to \$168,397.

## **3. COVID Related Construction Costs**

The Applicant reported higher than projected construction costs since the time the DoN was developed and submitted in August 2020 to the date the construction estimate was received in October 2021. Citing recent reporting, the Applicant notes that increases in labor, material, and equipment costs attributed to the COVID-19 pandemic were not feasible noting the following factors that affected construction costs: increase in steel mill prices (108.6% over the past twelve months and 87.6% in 2021 alone), increase in lumber prices (112%), import tariffs and government policies, supply and manufacturing material shortages (i.e. copper and crude oil), and significant increases in labor costs.<sup>2,3</sup> The total construction increase is \$652,724.

## **Impact on Community Health Initiative Funding**

This Amendment is for an increase in the maximum capital expenditure, and results in an increase of \$67,946.75 in the Community Health Initiative (CHI) contribution to DoN#20072809-AS. There will be no change in scope, and pending approval, the Holder will submit payment for the CHI increase to the Statewide Community Health Funds.

## **Staff Summary and Findings**

Staff reviewed the 2021 Staff Report and Decision Letter of Approval to determine whether the request falls within the scope of that Approval. Staff determined that there are no additional gross square feet, service or programmatic changes that would change the scope of the project.

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<sup>2</sup> Steel Prices Causing Construction Pain Point. <https://www.enr.com/articles/52267-steel-prices-causing-construction-pain-point>

<sup>3</sup> Thinking of a new wooden deck for spring? It may bust your budget. <https://www.cnn.com/2021/02/10/lumber-prices-skyrocket-pushing-up-housing-costs.html>

Staff also finds that the proposed changes could not have been reasonably foreseen given the well documented impact of the COVID-19 pandemic on the health care industry and also on the costs of materials and labor in the construction industry. Therefore, Staff finds that the Holders changes to the Approved DoN fall within the scope of an Amendment and Staff recommends approval of this request.

Based upon the information submitted, with additional staff analysis, Staff finds that the “the proposed change or modification falls within the scope of the Notice of Determination of Need as previously approved by the Department, and ... is reasonable” 105 CMR 100.635(A) and recommends that the Department approve this request for Amendment, with the necessary update to the amount of the CHI contribution, as outlined below as an additional Other Condition.

The total approved capital expenditure is increased to \$2,946,581 (June 2022 Dollars) and the total approved CHI is increased to \$147,329.05.

#### **Other Conditions to the DoN**

1. The total CHI contribution of \$67,946.75, will be directed to the Statewide Community Health Funds.
2. To comply with the Holder’s obligation to contribute to the Statewide Community Health Fund, the Holder must submit payment to Health Resources in Action (the fiscal agent for the CHI Statewide Initiative) within 30 days from Notice of Approval.

Payment should be sent to:  
Health Resources in Action, Inc., (HRiA)  
2 Boylston Street, 4th Floor  
Boston, MA 02116  
Attn: Ms. Bora Toro