



COMMONWEALTH of VIRGINIA

Karen Remley, MD, MBA, FAAP
State Health Commissioner

Department of Health
P O BOX 2448
RICHMOND, VA 23218

TTY 7-1-1 OR
1-800-828-1120

September 18, 2009

Re: Significant Change Request
COPN No.VA-03931
Northern Virginia Community
Hospital
Loudoun County, Virginia
Establish a 164-Bed General Acute Care
Hospital

Thomas J. Stallings
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219

Dear Mr. Stallings:

In accordance with Part VIII of the *Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (Regulations)*, I have reviewed the significant change and extension request for the project referenced above. The request was received on August 19, 2009.

Certificate of Public Need (COPN) No. VA-03931 was issued on May 13, 2005, with an expected project completion date of January 15, 2007, an authorized capital expenditure of \$167,250,160, and a site at 42700 Broadlands Boulevard, Ashburn, Virginia. On September 19, 2008 the Supreme Court of Virginia rejected Inova Loudoun Hospital's Petition for Rehearing En Banc, concluding the lengthy legal challenge to the validity of the certificate. The judicial review of the COPN affirmed the validity of the COPN awarded to Northern Virginia Community Hospital.

On February 3, 2009 the Loudoun County Board of Supervisors denied a special exception to the zoning of the authorized site in Ashburn. On May 11, 2009, having found

that the delay in completion of the project authorized by COPN Number VA-03931 to this point has been caused by events beyond the control of Northern Virginia Community Hospital, in an exercise of my authority under §§ 32.1-12 and 32.1-20 of the Code of Virginia, I issued a variance to the requirement to show progress in a project, allowing Northern Virginia Community Hospital until September 19, 2009 to explain how it intended to complete its project.

Northern Virginia Community Hospital timely filed a request for a significant change and annual extension of COPN No. VA-03931 on August 19, 2009. Northern Virginia Community Hospital requested a significant change for a \$27,717,636 (16.6%) cost overrun, a time extension for final completion of the project to December 31, 2015, and a change of site to the northwest corner of the intersection of Route 50 and Gum Spring Road in Sterling, Virginia. Pursuant to 12 VAC 5-220-130, the only parties to the administrative review of the significant change request are Northern Virginia Community Hospital and the Health Systems Agency of Northern Virginia.

The staff of the Health Systems Agency of Northern Virginia has recommended denial of this request. Their recommendation is based primarily on the opinion that the proposed site should be rejected. The staff of the Health Systems Agency of Northern Virginia accepts that if the proposed site is authorized the increase in capital cost and an increase in the time schedule should also be authorized. Their recommendation is made with a request that certain conditions be applied to any approval of the request. I do not have the statutory authority to place the conditions recommended by the HSNV on COPN No. VA-03931 or on the significant change to the COPN. Based on the review of the request by the Division of Certificate of Public Need, and after considering the analysis by the staff of the Health Systems of Northern Virginia, I have determined that the project complies with the relevant requirements for the significant changes requested in the August 19, 2009 request and for an annual certificate extension as provided in 12 VAC 5-220-440 of the *Regulations*. Accordingly, I am authorizing a change of site to the requested northwest corner of Route 50 and Gum Spring Road in Sterling, Virginia, an increase in the capital expenditure of the project to \$194,967,796, and an extension of the project completion schedule to December 31, 2015. I am also extending Certificate of Public Need No. VA-03931 to September 18, 2010.

Northern Virginia Community Hospital must file reports of progress requesting an extension of the COPN annually in accordance with 12VAC5-220-440 of the *Regulations*. If the remaining litigation regarding prior extensions is resolved, completion of the project on a timeframe and at the location approved by this letter will be in Northern Virginia Community Hospital's control. If, in reviewing the annual extension requests, I am not satisfied that progress is being made in accordance with the schedule presented in the significant change request for construction of StoneSpring Medical Center at the approved location, and that granting further extension of the COPN will result in completion of the project as scheduled, or earlier, I may permit COPN No. VA -03931 to expire. COPN application and extension forms may be accessed at

Tom Stallings
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<http://www.vdh.virginia.gov/OLC/copn/>. Your next annual extension request for COPN No. VA -03931 is due to be received by the Department and by the Health Systems Agency of Northern Virginia by August 19, 2010.

Sincerely,



Karen Remley, M.D., M.B.A., F.A.A.P.
State Health Commissioner

pc: Erik Bodin, Director
Division of Certificate of Public Need
Matthew M. Cobb, Assistant Attorney General
Office of the Attorney General
Dean Montgomery, Executive Director
Health Systems Agency of Northern Virginia
David Goodfriend, M.D., M.P.H., District Director
Loudoun Health District

**VIRGINIA DEPARTMENT OF HEALTH
Office of Licensure and Certification
Division of Certificate of Public Need**

**Cost Overrun, Site Change and Time Extension Significant Change Request
Report and Recommendation**

September 17, 2009

**COPN No.VA-03931
Northern Virginia Community Hospital
Sterling (Loudoun County), Virginia
Establish a 164-Bed General Acute Care Hospital**

Applicant

The applicant organization is Northern Virginia Community Hospital, LLC (NVCH), a Virginia limited liability company formed in May 2002. Its sole member is Healthserv Acquisition, LLC, whose sole member in turn is Healthtrust, Inc. – The Hospital Company. Healthtrust is a subsidiary of HCA Inc. (HCA), formerly known as Hospital Corporation of America. HCA is a healthcare services company composed of locally managed facilities that include 163 hospitals and 112 outpatient centers in 20 states and England.

HCA is the owner of eleven general, acute care hospitals, one psychiatric hospital, five outpatient surgical hospitals, and five outpatient imaging centers in Virginia. One of the HCA general, acute care hospitals, NVCH (now closed) in Arlington County, and the psychiatric hospital, Dominion Hospital (Dominion) in Fairfax County, are involved in this significant change request.

Background

Certificate of Public Need (“COPN”) No. VA-03931 was issued on May 13, 2005, with an expected project completion date of January 15, 2007. The project, as originally approved, authorized the replacement of NVCH and Dominion through relocating the facilities and combining them into a single facility to be known as Broadlands Regional Medical Center (Broadlands). Broadlands was to be located in Ashburn, Virginia in Loudoun County which is in Planning District (PD) 8 in Health Planning Region (HPR) II.

The case decision awarding COPN number VA-03931 was appealed to Court pursuant to the Administrative Process Act. As it is generally considered by the Department of Health (Department) to be unreasonable to expect a COPN holder to commit and expend the significant

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capital resources needed for a project such as the development of a hospital with the specter of uncertainty as to the ultimate authorization for the project remaining, it has been the practice of the Department to not expect the certificate holder to proceed with a project while the decision is being appealed.

12 VAC 5-220-130 provides:

[t]he commissioner shall not extend the schedule for completion of a project beyond three years from the date of issuance of the certificate or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater, except when delays in completion of a project have been caused by events beyond the control of the owner and the owner has made substantial and continuing progress toward completion of the project.

As required, NVCH has submitted annual extension requests and the Department recognized that no substantial progress was expected until the final disposition was received from the Courts. Accordingly, the State Health Commissioner (Commissioner) continued to find the delay in completion of the project to be beyond the control of NVCH and has annually extended COPN No. VA-03931 beyond three years from the date the certificate was issued. Except for this request, NVCH timely filed its last Request for a Significant Change/Extension on March 11, 2009.

On September 19, 2008 the Supreme Court of Virginia rejected Inova Loudoun Hospital's Petition for Rehearing En Banc, thus concluding the appeal of the State Health Commissioner's decision granting COPN number VA-03931. Although it can no longer be disputed that COPN number VA-03931 is valid, NVCH still had to obtain a Special Exception to the zoning of the site to proceed with the project and, on February 3, 2009, the Loudoun County Board of Supervisors, for the second time, denied NVCH's request for a zoning Special Exception.

The Court's final affirmation of the validity of the COPN removes the uncertainty created by an administrative appeal that was beyond NVCH's control. With the status of the COPN no longer in doubt, further progress on the project is NVCH's responsibility. In March 2009 when the next annual extension was due NVCH had not yet had a full year since the Supreme Court of Virginia ended all challenges to the validity of the COPN. In keeping with the Department's recognition that no substantial progress was expected until the final disposition of the judicial appeal challenging the issuance of the COPN, NVCH should have had until September 19, 2009, to demonstrate that it meets the requirements demonstrating progress in accordance with the Regulations for further extension of COPN number VA-03931. In consideration of the decision of the Loudoun County Board of Supervisors to deny Northern Virginia Community Hospital's necessary zoning special exception to construct its project, and the March 6, 2009, decision of the Loudoun County Circuit Court rejecting a legal challenge to the extension awarded by the Commissioner, on April 9, 2009 the Commissioner granted a variance on May 11, 2008 to provide

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NVCH a reasonable amount of time to provide a detailed explanation of how it intends to complete its project.

Virginia Code §32.1-12 authorizes the Board of Health to “provide for reasonable variances and exemptions” from its regulations. Pursuant to Virginia Code §32.1-20, the State Health Commissioner is vested with “all the authority of the Board [of Health] when it is not in session.” As the Board was not in session on April 9, 2009, the Commissioner exercised her authority and found that reasonable exemptions to Department regulations were necessary to carry out the provisions of Title 32.1 relating to the COPN program. The Commissioner exempted NVCH from 12 VAC 5-220-460.A and D., and from the requirement in 12 VAC 5-220-130 that it demonstrate “substantial and continuing progress toward completion of the project” in order to receive an extension of its certificate beyond 36 months.

The exemption issued to NVCH applied solely to COPN number VA-03931 and was to remain in effect until September 19, 2009 or until the exemption was revoked. The Commissioner directed NVCH to file an extension and significant change request no later than August 20, 2009, thirty days prior to September 19, 2009. In response to the Commissioner's direction, NVCH filed these significant change requests now under review and which were received by the Division of Certificate of Public Need (DCOPN) on August 19, 2009.

Applicant's Request

The applicant is requesting significant changes for a \$27,717,636 (16.6%) cost overrun, a time extension for final completion of the project to December 31, 2015, and a change of site. The proposed site is located at the northwest corner of the intersection of Route 50 and Gum Spring Road in Sterling, Virginia. The proposed facility, formally known as Broadlands at the original site, would be known as StoneSpring Medical Center (StoneSpring) at the proposed new site.

The Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (Regulations), at 12VAC5-220-10 and 12VAC56-220-130, allow the Commissioner to authorize certain “significant” changes to what was authorized in a project after a COPN has been issued. Specifically, a significant change authorization can be given for any change to a project that “1. Changes the site; 2. Increases the capital expenditure amount authorized by the commissioner on the certificate of public need issued for the project by 10% or more; 3. Changes the service(s) proposed to be offered; 4. Extends the schedule for completion of the project beyond three years (36 months) from the date of certificate issuance or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater”.

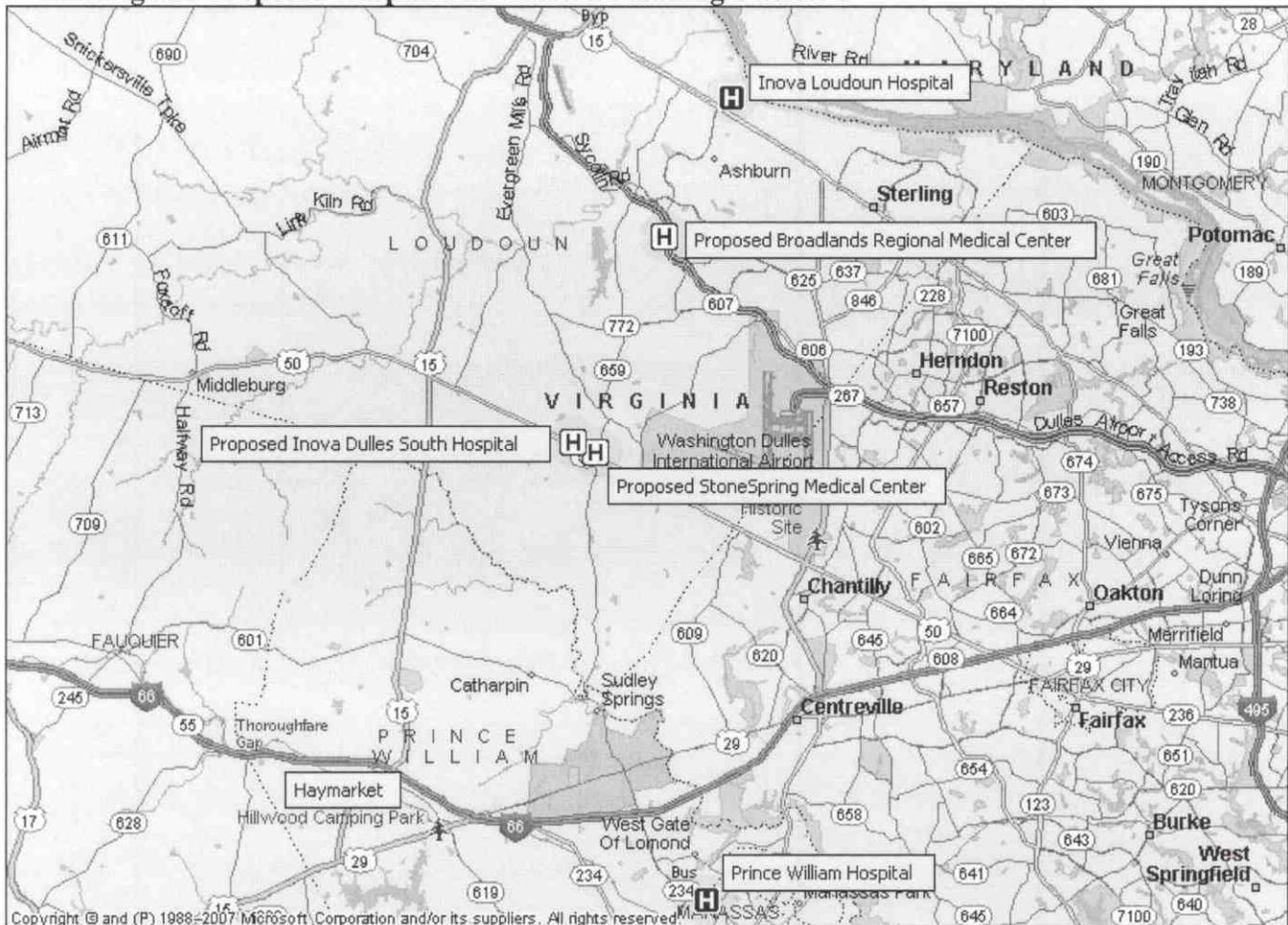
Northern Virginia Community Hospital has requested a significant change of the types allowable under options 1, 2, and 4 of the Regulations. The request is consistent with other COPN significant change requests routinely reviewed by the Department.

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Cost Overrun, Site Change and Time Extension Significant Change Requests

The following map provides a perspective of the geographic dispersal of the existing hospitals (light “H” in a dark background) in Western PD 8 and the relationship of the proposed sites (dark “H” in light background). The town of Haymarket is highlighted as a possible location for development of another hospital as suggested by PWHS.

Existing and Proposed Hospitals in Western Planning District 8



Support/Opposition

There were two letters received by DCOPN regarding these significant change requests. Neither of the authors state that they specifically oppose these significant changes but, upon reading their letters, it is apparent that these facilities do have concerns regarding specific parts of these significant change requests.

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Cost Overrun, Site Change and Time Extension Significant Change Requests

Prince William Health System

The Prince William Health System (PWHS), which is not a party to this significant change, has filed a five-page letter to the commissioner regarding the StoneSpring significant change request. This level of detail in a letter from another facility is unusual and is presented as though PWHS were a party to the Commissioner's decision on these requests and therefore, it should be noted that PWHS is not asserting that it has party status to the Commissioner's decision.

In the letter PWHS states that it does not necessarily oppose StoneSpring Medical Center but that it believes that the approval of StoneSpring through the significant change process is not appropriate. PWHS gives the following as their three primary concerns with the significant change request.

1. The StoneSpring site does not yet have all necessary site approvals from Loudoun County and NVCH is still appealing the negative zoning decision for the Broadlands site.
2. Approval of the new site through the truncated significant change process is appropriate only when the new site meets substantially the same public need underlying the original approval.
3. Approval of StoneSpring through significant change under these circumstances denies other providers, including PWHS, the right to comparative review.

Regarding the first primary concern, there is no requirement that the StoneSpring site obtain all land use approvals prior to the approval of a significant change in site. As the Loudoun County Board of Supervisors has formally stated that the Route 50 corridor is the proper location for the County's next hospital and has encouraged NVCH to locate the new hospital at the StoneSpring location, there is no reason to anticipate any negative zoning decision from the County.

Regarding the second primary concern, PWHS acknowledges that the StoneSpring site is seven miles from the Broadlands site. As was argued by Loudoun Hospital Center with the 1997 six-mile relocation of Loudoun Hospital Center from the Cornwall site to the Lansdown site, this seven-mile relocation of the Broadlands/StoneSpring hospital should not significantly change the primary service area of the acute care hospital, nor should it significantly affect access for the residents of the area. As Loudoun County remains one of the fastest growing counties in the country, the public need for a second hospital in Loudoun County has only increased in the four years since COPN No. VA-03931 was issued in 2005.

The significant change process is the appropriate process for NVCH to seek the relocation of their approved hospital within Loudoun County.

Regarding the third primary concern PWHS states:

"PWHS reiterates that it is not necessarily opposed to StoneSpring. PWHS, rather, is concerned that, due to the planning district ("PD")-wide review of hospital services, approval of StoneSpring through the significant change process will impact PWHS' ability to pursue and gain approval for its own projects, namely the planned application for a hospital at PWHS' Haymarket site in the next hospital review cycle."

On February 17, 2009 Inova Health Care Services filed a letter of intent to file a COPN application seeking authorization to establish a new acute care hospital on Route 50 in Loudoun County. Inova made a public announcement of its intention on February 16, 2009. Other applicants had roughly 3.5 months, until June 1, 2009, to file a competing letter of intent. Inova's application, COPN Request No. VA-7650, was filed on July 1, 2009, showing the proposed new hospital site to be on Route 50, west of the proposed StoneSpring site. If PWHS' concern, stated above, were genuine, PWHS would have a COPN application currently under review and competing with the Inova application, or at the very least would be on the record as opposing the request, which is not the case.

PWHS also expressed concern over the 16.6% cost overrun. This will be addressed later in this report.

Inova Health Care Services and Inova Loudoun Hospital

Inova, which is not a party to this significant change request, has filed COPN Request No. VA-7560 to build a hospital on its Route 50 property in Loudoun County that would include a 24-hour emergency room, outpatient services and physician offices. Inova had indicated that it would drop those plans if NVCH switched the Broadlands project to Route 50. When NVCH filed the significant change request, Inova requested that the review of their COPN application be put on hold.

Inova Health Care Services and Inova Loudoun Hospital (Inova) have indicated that they "do not oppose a genuine relocation of the BRMC project to Route 50." Inova also asserts "any assessment of HCA's request must be undertaken in context and with an understanding of the relevant positions taken as to hospital development there:"

1. Inova has stated publicly on numerous occasions that Route 50 in Loudoun County is the right location for the next hospital in PD 8 to be built.
2. The Loudoun County Board of Supervisors recognized Route 50 as the proper place for the County's next hospital in March 2005 when the *Final Policies of the Countywide Health Care Facilities Plan*, a component of the Loudoun County *Comprehensive Plan*, were adopted.

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3. HCA, however, throughout the BRMC zoning process in Loudoun County, refused to consider their property on Route 50 taking the position adamantly that it could not yet build a hospital there. From January to July 2009, press reports reflect that HCA would not relocate the BRMC project to Route 50 via significant change, and that HCA would or might instead use BRMC as part of its announced plan to undertake a significant expansion at HCA Reston Hospital."

Inova's items 1 and 2 can be taken as support of the NVCH site change however item 3 suggests doubts as to NVCH's intention to follow through and complete the project. Therefore Inova is requesting that the Commissioner establish conditions in any approval decision that would:

- preclude any further relocation of the project or any "trading" of its capacity in support of another COPN project until an appropriate time after the HCA Route 50 facility is completed, BRMC's regulated capacity is actually put into service there, and the facility commences operations;
- require any relocation or trading of capacity after such time or any other modification to the project be subject to full COPN review and approval, and not just the significant change process; and
- require HCA to notify the other hospital providers in PD 8 of its filings with the Commissioner or DCOPN relative to the project.

The *Code of Virginia* does not authorize the Commissioner to condition approval of a significant change. The Code of Virginia only authorizes the Commissioner to condition approval of a certificate on the agreement of the applicant to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care (*Va Code* §32.1-102.2.2.C). The Commissioner is faced with a legitimate significant change request for a project authorized to meet a public need. There is no indication that Northern Virginia Community Hospital intends anything other than what has been proposed. Absent real evidence to the contrary the Department must review COPN requests, be they requests for a COPN, requests for an extension to a COPN, or requests for a significant change to a COPN, as honest representations of the intentions of the applicant. Any additional changes requested for the project authorized by COPN No. VA-03931 would be reviewed on their own merit and in the context of meeting the need initially established for the project when originally authorized.

The Inova letter also states in part:

"HCA's request reflects that HCA is seeking "an extension of COPN No. VA-03931 to December 2015." August 19, 2009 Extension and Significant Change Request re: COPN No. VA-03931 at 2 (Section III.B.II). Clearly an extension lasting more than six (6) years (which would be unprecedented) cannot be granted

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under the COPN regulations; Section 12 VAC 5-220-430 unambiguously provides that a COPN is only valid for 12 months. In light of the history of this project, HCA's complete lack of progress to date, and the Commissioner's interest in being satisfied that her decision will result in completion of the project, HCA should be required to submit annual extension requests just like any other COPN holder, and review of such annual requests should be based on demonstrated progress toward completion."

DCOPN agrees that an extension of a COPN for more than 12 months cannot be granted and expects that the applicant's intention was to request that the target date for completion of the project be December 2015. As with all COPNs, if the significant change is approved, the applicant will be required to submit annual extension requests that will be reviewed based on demonstrated progress toward completion.

Health Systems Agency of Northern Virginia Recommendation

The staff of the Health Systems Agency of Northern Virginia (HSANV) state that the HSANV does not believe "the NVCH project should be given another extension beyond that granted earlier this year." Effectively this means the staff of the HSANV believe COPN No. VA-03931 should be allowed to expire.

DCOPN Analysis Summary

Time Extension Significant Change

As previously stated it appears to be the intention of the applicant to reset the target date for completion of the project to December 2015, roughly six years from the expected significant change request. That is the way the request was interpreted and reviewed. In addressing the need for six years to complete the project, the applicant states in part:

"Construction of StoneSpring will be scheduled to coincide with demand and population growth culminating in an opening date of December 2015. . . Time is needed to complete the administrative review of the SPEX-2007-0021, to complete the architectural design of the facility at its new location, and to complete construction. . ."

The following is the applicant's timeline for the completion of StoneSpring.

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Cost Overrun, Site Change and Time Extension Significant Change Requests

I. Zoning

Forth Quarter 2009	Submit revised plans for SPEX-2007-0021
First Quarter 2010	Receive and respond to County Staff and agency referral comments
Second Quarter 2010	Respond to additional referral comments/Planning Commission Public Hearing
Third Quarter 2010	Board of Supervisors public hearing and approval
Fourth Quarter 2010-2011	Site Plan approval process

II. Construction

First Quarter 2012	Building permits obtained
Summer 2012	Architectural planning/preliminary architectural drawings
Spring 2013	Working drawings completed
Spring 2013	Construction bids advertised and contractor selected
Summer 2013	Preconstruction site work and construction begin
Fall 2015	Construction completed
December 2015	Opening Date

In their discussion of the time extension change requested by Northern Virginia Community Hospital the staff of the HSANV concedes that if the site change is approved additional time should also be authorized. The staff of the HSANV suggest that three additional years instead of the requested six is sufficient. But in their evaluation of the Countywide Health Care Facilities Plan the HSANV discusses a projection based on “hospital use 16 years in the future” which in 2004 when written would be looking to 2020. Northern Virginia Community Hospital’s schedule for completion in 2015 is not that far removed from essentially what the HSANV was recommending in 2004.

Because the Commissioner has previously determined that the failure of NVCH to initiate the Broadlands project was beyond the control of the applicant, a time extension significant change is warranted. However, most new hospital projects are completed in significantly less than six years. Northern Virginia Community Hospital should reevaluate their estimate of time required to complete the project, but certainly should not rely on the prospect of any additional extension of the schedule beyond 2015. While the schedule for the project at the StoneSpring site does appear to be overly long, the schedule proposed by the applicant is of a sufficient duration that any future delays could reasonably be accommodated without additional significant change modification to the schedule.

Site Significant Change

The HSANV’s primary opposition is with the significant change resulting in the relocation of the authorized hospital to the StoneSpring site, which the HSANV staff does not seem to support but assumes will be approved. This is somewhat at odds with the HSANV’s June 2004 evaluation

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Cost Overrun, Site Change and Time Extension Significant Change Requests

of the CPAM – 2004 – 0017, the Loudoun County Countywide Health Care Facilities Plan in which the HSANV states;

“A hospital in the Dulles south area would have little negative effect on use or demand elsewhere within Loudoun County. It would produce travel time reductions of about 10 minutes for Loudoun residents along the Route 50 corridor, including persons in Middleburg who are about 35 minutes from a hospital. Because there is not a large patient base in the Dulles south area now, a hospital built there would have to be built with an eye toward the future...”

This indicates HSANV’s recognition and agreement with the County’s plan showing that a hospital is needed in the Dulles south area, right where this significant change would place one. Indeed, the HSANV further argues in their evaluation of the County’s plan that local jurisdictions have an element of control in the development of hospitals. The HSANV further noted;

“Rapid population growth makes it likely that there will be multiple proposals to develop additional medical care facilities in Loudoun County. If the County desires to be proactive rather than reactive in order to conserve valuable community resources and guide health care facility development, it would be appropriate and prudent for Loudoun County to develop a health care facilities component of its comprehensive plan.”

So the HSANV supported the concept that local jurisdictions should use local plans to influence, if not outright dictate, where health care resources should be developed and supported the idea that the Route 50 corridor area of Dulles south was the right location for another hospital.

It has become generally accepted, based on the County leadership’s planning process, the HSANV’s discussions of the Countywide Plan and as evidenced by the application (now on hold) by Inova Health Care to build a hospital near the same site proposed in this significant change, that Route 50 is the proper place for Loudoun County’s next hospital. As previously noted the Loudoun County Board of Supervisors formally designated Route 50 as the location for the County’s next hospital by adopting the Loudoun County Comprehensive Plan in March of 2005. The proposed StoneSpring site is approximately 7 miles from the Broadlands site, a distance not so great as to prevent the StoneSpring site from serving much of the same market as the Broadlands site. Given Loudoun County's second denial of NVCH’s request for a zoning Special Exception for the Broadlands site, the County’s accepted plan noting a need for a hospital on the Route 50 corridor and because the StoneSpring site will meet the public need identified in the review of NVCH's Broadlands application, the requested site significant change should be approved.

The public need for the project was established through the application process that resulted in the issuance of COPN No. VA-03931. The validity of the COPN was confirmed through the Courts. The significant change process is not a re-evaluation of the basic determination of need but

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an assessment of the conformance of the changes to the established determination of need. The proposed StoneSpring site remains consistent with the established determination of public need.

Cost Overrun Significant Change

NVCH is requesting approval of a 16.6% overall cost overrun significant change. The major components of the cost increase are Direct Construction Costs (24.5% increase), Equipment Not Included in Construction Contract (22.1% increase), Architectural and Engineering Costs (29.0% increase), Other Consultant Fees (196.0% increase), and Taxes During Construction (55.0% increase).

COPN Request No. VA-6860 was filed in June of 2003. Thus, the initial capital cost estimates for the Broadlands project were made in June of 2003. The initial estimated total capital costs of the NVCH project were \$167,250,160. The current estimates totaling \$194,967,796 were received by DCOPN on August 19, 2009; a little more than six years later. This is only a 2.5% increase per year; less than would have been expected from inflation alone. The cost overrun was caused by the six-year delay in the project, which the Commissioner has previously determined was beyond the control of the applicant, and by the increased legal expenses that resulted from a protracted appeal process initiated by opponents to the project. For these reasons the StoneSpring requested cost overrun significant change should be approved.

In their discussion of the cost overrun change requested by Northern Virginia Community Hospital the staff of the HSANV concedes that if the site change is approved the additional capital expenditure should also be authorized.

Staff Recommendations

DCOPN recommends **approval** of these significant changes; 1) a change of site to Route 50 and Gum Spring Road, Sterling, Virginia; 2) an increase in the authorized capital cost to \$194,967,796 and 3) an extension of the project completion schedule to December 31, 2015. DCOPN further recommends that COPN No. VA-03931 be extended to September 19, 2010. The recommendations are made for the following reasons:

- The delay in the project was beyond the control of the applicant.
- The site change will still meet the identified public need found in the original authorization and will allow the project to proceed.
- The changes will not adversely impact any other existing or approved hospital.

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- The site change conforms to the planning desires expressed by Loudoun County.
- The cost increases are reasonable and are the result of delays which were beyond the applicant's control.

Health Systems Agency of Northern Virginia
7245 Arlington Boulevard, Suite 300
Falls Church, Virginia 22042
Phone: 703-573-3100 Fax 703-573-3103
Email: hsanv@aol.com

September 16, 2009

Karen Remley, MD, MBA
State Health Commissioner
Virginia Department of Health
109 Governor Street, 13th Floor
Richmond, VA 23219

Re: Northern Virginia Community Hospital (COPN VA-03931)
Extension and Significant Change Request: Cost Overrun, Site Change, Time Extension

Dear Dr. Remley:

The August 19, 2009 request filed by Northern Virginia Community Hospital (NVCH) seeking a significant change to COPN VA-03931¹ is multidimensional. Essentially, the filing combines three requests in one. NVCH seeks approval for a change in location, an extension of time in which to develop the replacement hospital, and an increase in the capital outlay authorized to complete the project. The Health Systems Agency of Northern Virginia (HSANV) staff has reviewed the request and submits the following comments and recommendation.

Context

This is not a routine extension or significant change request. The initial NVCH application was filed more than seven years ago. The modified project was first authorized more than five years ago. To date, COPN VA-03931 has been extended four times.² The extensions granted in 2008 and 2009 also constituted "significant changes" to the project which granted NVCH time beyond three years in which to complete the project.

There is no disagreement that no progress has been made toward completion of the project over the last four years. The extensions were granted over the opposition of HSANV and in recent years over the objections of other parties. The most recent extension and significant change approval was based

¹ COPN VA-03931 is the certificate issued to Northern Virginia Community Hospital (NVCH) authorizing the development of a 164-bed acute care hospital in Loudoun County as a replacement facility for NVCH and Dominion Hospital. Both NVCH and Dominion Hospital are owned and operated by Hospital Corporation of America (HCA). HCA closed NVCH in 2006 and has sold the facility and land on which the hospital was located. Although NVCH no longer exists as an operational hospital, the COPN issued is held in the name of Northern Virginia Hospital, LLC. Dominion Hospital, a psychiatric facility, remains in operation.

² See Virginia Commissioner of Health extension letters of May 12, 2006; May 11, 2007; May 8, 2008; and May 9, 2009.

on the holding that "...the delay in completion of the project authorized by COPN number VA-03931 to this point has been caused by events beyond the control of Northern Virginia Community Hospital..."³ In granting the 2009 extension change request the Commissioner of Health required NVCH to file no later than August 20, 2009 a more substantive request that would "demonstrate compliance with the regulations authorizing further extension" and show how NVCH proposes to complete the Broadlands project, "or request authorization to relocate its project to another site."⁴

The current NVCH filing is in response to that requirement.

Site Change Request

NVCH proposes to relocate the Broadlands Regional Medical Center (BRMC) project to a site in southeastern Loudoun County near the intersection of Route 50 and Route 659, approximately six miles southeast of the proposed Broadlands location. The 164-bed medical surgical facility would be known as StoneSpring Medical Center (SSMC). It would contain the same services and service line bed distribution proposed for BRMC.

The NVCH filing contains no data or other information that would justify placing 164-beds in the location proposed or to indicate how this change would affect, or would be accommodated by, the local health care system. This is surprising given the underlying rationale for the Commissioner requiring the August 19 filing and the guidance provided by DCOPN less than a year ago regarding a potential significant change of the nature NVCH has now filed. Following a discussion with NVCH counsel, DCOPN informed NVCH in October of 2008 that

"Regarding a change of site, relocation to a site across the street is one thing, proposing a site which involves a change in service area, a different, potentially smaller service area population, and possible encroachment on the service area of providers who were not impacted by, and who did not take an active role in, the initial COPN, is another matter entirely. In such instances, particularly for a project as large and complex as a new hospital, review by neither the Health Planning Agency nor DCOPN would be expected within the 35-day window. Much of the review that led to the original, site specific, approval would need to be repeated looking at the new site.

With regard to a change in the BRMC site to Route 50, if a request was received [sic], we would review it against the same current criteria used to determine need for any new hospital placement, including population, geographic access, impact on existing providers, etc..."⁵

³ Karen Remley, MD, MBA, Virginia Commissioner of Health, to Thomas Hancock, Counsel, NVCH, May 9, 2009, p. 3. Based on this finding, the Commissioner exempted NVCH from certain regulations governing extensions of, and significant changes to, COPNs. The exemptions granted were the provisions of 12 VAC 5-220-460.A and D and 12 VAC 5-220-130.

⁴ Ibid.

⁵ Email message: Erik Bodin, Director DCOPN,VDH to Thomas Hancock, Counsel, NVCH, October 15, 2008. A full copy of the email message and the HSNV response is available on request.

This guidance was used by NVCH locally during the review of their zoning application in Loudoun County to assert that BRMC could not be relocated, as now proposed, by means of a significant change request.

Apparently, DCOPN now holds a different position on the question of whether a significant change extension request is an appropriate way to seek authorization to move the NVCH project from Ashburn to the proposed Route 50 location. Regarding the current NVCH filing, a DCOPN spokesman is reported to have concluded that the NVCH request “is an allowable approach to the proposed change.”⁶

HSANV appreciates that DCOPN now acknowledges that the option of relocating the NVCH project to the Route 50 location, or to any other location consistent with the Loudoun County comprehensive plan, is a standard request, one that has been available to NVCH throughout the last four years. Much misunderstanding, confusion, and delay could have been avoided had this reality been acknowledged when the question first arose.

Accepting the reality that any applicant can file a significant change request to relocate an authorized project does not suggest that the review of that request, when properly filed, should be limited or otherwise superficial. All of the planning and related public interest considerations that apply to locating a major medical facility and sanctioning a large capital outlay should be examined closely.

HSANV has had occasion to examine hospital and related health service needs in the area that would be served by the relocated NVCH replacement facility. Our findings relevant to the NVCH request may be summarized as follows:

- As was the case in 2002 when the initial NVCH COPN application was filed, and in 2005 when the second NVCH application was approved on remand to the Commissioner of Health, there is no identifiable need for a new hospital in the region or in Loudoun County.

The large increase in demand that some assumed would come from population growth has not materialized. Population growth in Northern Virginia and Loudoun County has been substantial, more than 8% region wide and about 37% in Loudoun County between 2002 and 2007.

There has been no comparable increase in demand for, or use of, hospital care by residents of Northern Virginia. Hospitalization rates have decreased substantially during the same period, and aggregate demand has increased much more slowly than population growth. The hospital discharge rate decreased about 6% region wide and about 15% among Loudoun County residents between 2002 and 2007. Inpatient hospital day rates decreased about 5% region wide and nearly 22% among Loudoun County residents. None of this

⁶ Quoted in “HCA back with plan for U.S. 50 hospital: Things change,” *Loudoun Times-Mirror*, August 25, 2009. (Copy of full article available on request)

decrease in use rates is a function of the recent economic downturn. Aggregate demand and use rates have decreased from 2007 levels over the last 18 months.

These patterns, which may seem incongruous to those not familiar with the demographic dynamics that underlie demand for hospital care, were predicted by some. They reflect the underlying reality that the rapid population growth in Loudoun County consists largely of young families that have comparatively low hospital use rates.

The assumption underlying the authorization of addition hospital capacity in Loudoun County—that population growth would lead to large increases in demand—was (is) unfounded. Local use rates are low and will continue to be low for many years.⁷

- The immediate service area of a Route 50 hospital would be far smaller than the local service area of any other hospital in the region, far too small to support a 164-bed acute care hospital, now or in 2015.
- The patient load, and associated occupancy levels, NVCH projects for a Route 50 facility are not realistic. No explanation or rationale is offered for the demand projections presented in the extension request. The demand (and associated hospital use) projected by NVCH in 2002 and 2003 has not materialized. NVCH's current projections for 2015 and beyond will prove equally erroneous.
- The inpatient caseload NVCH projects for the Route 50 facility could be reached only by taking substantial market share from nearby facilities: Inova Fair Oaks Hospital, Reston Hospital, Inova Loudoun Hospital, Prince William Hospital, and Fauquier Hospital. This is neither likely nor desirable. A hospital placed at or near the site proposed by NVCH would be expected to have low use for many years.
- The NVCH filing fails to take into account natural medical trade patterns in the region and their implications for a hospital located in southeastern Loudoun County. As illustrated on the attached map (Attachment 1), there is substantial net patient flow from west to east and south to north in Northern Virginia. This flow occurs along several transportation corridors. The proposed NVCH relocation site near the west end of one of these patient flow corridors, the point at which Route 50 becomes a divided highway. This will make it is even more difficult than usual for SSMC to meet projected service volumes.
- The reality and implications of the small service area population that any acute care hospital located on Route 50 in Loudoun County would necessarily have is reflected in the caseload projections contained in the pending Inova Health System application to develop an 80-bed facility near the site proposed by NVCH. Inova projects fewer than 3,500 medical surgical discharges by 2017, compared with the more than 7,200 projected by NVCH.

⁷ See attached table (Attachment 2) for recent Northern Virginia and Loudoun County hospital use rates.

Though less than half the NVCH projections, the Inova projections are likely to be optimistic. For either NVCH or Inova to achieve their projected caseloads, patients would have to be diverted from nearby facilities (i.e., Inova Fair Oaks Hospital, Reston Hospital, Inova Loudoun Hospital, Prince William Hospital, and Fauquier Hospital).

These and related market considerations formed the basis of the HSANV recommendation that the NVCH COPN applications be denied. All of the factors and considerations that led to these negative recommendations remain in force today, as strongly as ever. They are not likely to change soon.

Although approval of the NVCH application is no longer at question, the passage of time has shown conclusively that the 164 beds represented by the NVCH project are not needed, not when originally proposed, not when originally scheduled to open, not today. Nor will they be needed in 2015, when NVCH proposes that SSMC become operational.

These considerations suggest that permission to relocate 164 surplus beds needs to be weighed carefully—to ensure that minimum damage is done to existing services in accommodating any change authorized.

Extension of Time

NVCH seeks an extension of more than six years in which to complete the project. This would move the opening date of SSMC to the end of 2015. It would extend the overall development schedule for the project, which was authorized in early 2005, to more than a decade.

Extension of time to develop the project is necessarily contingent on approval of the significant change request to relocate BRMC to the site proposed for SSMC. Assuming approval of the site relocation request, there is no justification for extending the project beyond the customary three years that applied to the original application and that applies to other COPN applications. Assuming, the customary three-year development period is applied, the approval should incorporate the requirement that NVCH file annual extension requests and meet all development milestones during the next two to three years.

Given that the site proposed for SMCC is already available, that the location is compatible with local land use plans, that NVCH has been making preliminary preparations to develop a facility at the Route 50 location for some time, and that there is no local opposition to the SSMC project, there is no justification for permitting to NVCH to extend the development period beyond three years from the 2009 extension request filing date.

Fixing and adhering to a firm development schedule and opening date is important. The destabilizing effect that the authorization and continuing pendency of the NVCH project has had, and continues to have, on the Northern Virginia health care system cannot be overstated. Permitting entities to purchase local health care facilities and move them from less profitable to more profitable locations represents a clear and present threat to the economic viability of many, if not all, local services. As summarized below, this has been a recurring local pattern with Hospital Corporation of America (HCA), NVCH's parent corporation, operations in the region.

Hospital Corporation of America is the largest owner and operator of hospitals in the U. S. and Virginia. HCA has been active in Northern Virginia since 1972, when it purchased Circle Terrace Hospital from local developers. In the intervening 37 years it has bought, sold, managed, or otherwise controlled a larger number of local hospitals than any other entity. HCA has proven unusually successful at acquiring and disposing of facilities, and of repositioning assets, as market conditions and organizational interests dictate.

Facilities HCA has controlled include:

<u><i>Facility</i></u>	<u><i>Location</i></u>	<u><i>Date, Action</i></u>
Circle Terrace Hospital (CT)	Alexandria	1972, Purchased
Dominion Hospital ⁸	Fairfax County	Purchased, 1981
Virginia Hospital Center ⁹	Arlington County	1996, Purchase/Merger
Virginia Hospital Center	Arlington County	1999, Divested
Pentagon City Hospital	Arlington County	1997, Purchased
Pentagon City Hospital	Arlington County	1999, Closed (Abruptly)
Reston Hospital Center	Fairfax County	1986, Built to Replace CT
Fairfax Surgery Center	Fairfax City	1996, Purchased
Fairfax Imaging Center	Fairfax City	1990, Purchased
Fairfax Imaging Center	Fairfax City	1998, Sold
Northern Virginia Doctors Hospital	Arlington County	1981, Purchased
Northern Virginia Doctors Hospital	Arlington County	1987, Sold
Northern Virginia Community Hospital	Arlington County	2002, Purchased
Northern Virginia Community Hospital ¹	Arlington County	2006, Closed

⁸To be replaced by a Loudoun County Facility.

⁹ HCA controlled Arlington Hospital and Pentagon City Hospital as subsidiaries of Columbia-Arlington Healthcare System [CAHS], which was formed in November 1996 as a proprietary joint venture between Columbia-HCA Healthcare Corp. [CHCA] and Arlington Health Foundation, which was the parent company of Arlington Hospital. CAHS was a limited liability corporation controlled by a Board of Directors appointed by Columbia-HCA and Arlington Health Foundation. Formation of CAHS involved the conversion of Arlington Hospital from not-for-profit to proprietary status and the formation of a charitable foundation [AHF] to control and manage the public assets that became available as a result of the transaction. The joint venture was dissolved in early 1999 when the governance arrangement of the charitable foundation [AHF] set up by CAHS could not gain clearance as a bona fide charitable foundation controlled by a nonprofit organization. With the divestment, Arlington Hospital, now known as Virginia Hospital Center, reverted to nonprofit status.

At one time or another, HCA has controlled seven (7) hospitals in Northern Virginia (6 medical-surgical and one psychiatric). With the exception of Reston Hospital, which was built as a replacement for Circle Terrace Hospital, all were purchased. At one time or another, HCA has sought to acquire virtually every other local acute care hospital in the region.

Given this pattern, which the NVCH project fits well, there is considerable local concern that the proposed relocation of the BRMC authorized beds will not be the final change to the project requested. It is difficult to find anyone knowledgeable about the local health care system who believes that a 164-bed hospital is needed, or can be used efficiently, at the site proposed. NVCH is certainly aware of the problematic aspects of placing a hospital at the site proposed for SSMC. Given the lengthy (6+ years) development schedule proposed in the request, earlier suggestions of combining NVCH with Reston Hospital, and HCA's history of repositioning assets as markets and organizational interests change, many see the current significant change request as a necessary move to preserve the COPN and gain time in which to explore other alternatives.

Prudent health facility management must necessarily take steps to reduce the uncertainty posed by the availability of 164 surplus medical surgical beds controlled by NVCH that could be moved on relatively short notice into the immediate service area of a local hospital. The continuing uncertainty incentivizes existing services to act peremptorily, to try to maintain a share of the local market to ensure their viability. The most striking indication of the power of this threat is the rapid consolidation of local hospitals that were (are) most vulnerable. Subsequent, to the approval of the relocation of NVCH into the immediate primary service area of Loudoun Hospital Center, three of the region's four independent hospitals (Loudoun Hospital Center, Prince William Hospital, and Potomac Hospital) have been agreed to be acquired by larger outside entities.

Service provider equity and the public interest require that the continuing uncertainty created by the NVCH project be resolved. Any extension granted should be limited to no more than three years and should establish a firm development schedule that must be met.

Cost Overrun

NVCH notes that, with the delay in implementing the project, estimated capital costs have increased by more than \$27.0 million, about 17%. This exceeds the 10% permitted under applicable regulation.

There is little reason or basis to question NVCH's representation on this point. The projected cost is about \$1.2 million per bed. This is high, but not at variance with some recent projects authorized to develop new hospitals.

The principal concern with the proposed capital outlay is that it is now abundantly clear that the facility is not needed. Hence, the \$195 million expenditure proposed is not necessary. It will become an unnecessary cost that will be borne by everyone.

The capital cost overrun is ancillary to the significant change request to relocate the hospital. Should the latter be approved, the increase in capital cost should be authorized.

General Observations

The saga of the NVCH project illustrates as well as anything can that permitting developers to purchase and replace and relocate health care facilities, when there is no clearly demonstrated public need for the facility, is fraught with problems, some easily predictable, others unforeseen. It undermines a rational planning process, is inherently unfair to community oriented service providers, and is inconsistent with the public interest.

The current NVCH filing makes evident what was denied for several years, namely that ultimately the delay in the project has always been within the control of NVCH. NVCH has always had the option of moving the hospital to a location sanctioned in the Loudoun County comprehensive plan. As is the case with nearly all purchase, replace and relocate hospital ventures in mature health services markets, the success of the NVCH project is to a substantial degree dependent on moving into the immediate service area of an existing service provider and dividing the market. It is difficult to see how this can result in lower costs, better care, or more efficient operations. Similarly, moving facilities from low income communities to high income communities, though understandable in economic and business development terms, is not consistent with prudential community based planning or in the public interest.

Recommendation

After several years of considerate treatment, HSANV does not believe the NVCH project should be given another extension beyond that granted earlier this year. The project is the product of a calculated business decision. Virginia's COPN planning and regulatory process should not be used to guarantee that such ventures do not fail. If NVCH cannot complete the project as proposed, the COPN issued should be permitted to lapse.

Should the significant change request be authorized, HSANV's recommendation notwithstanding, it should specify that the location proposed by SSMC may not be changed again, that the facility and services offered remain as now proposed, and that the project be completed within the three year development cycle normally applicable to COPN projects.

Sincerely,

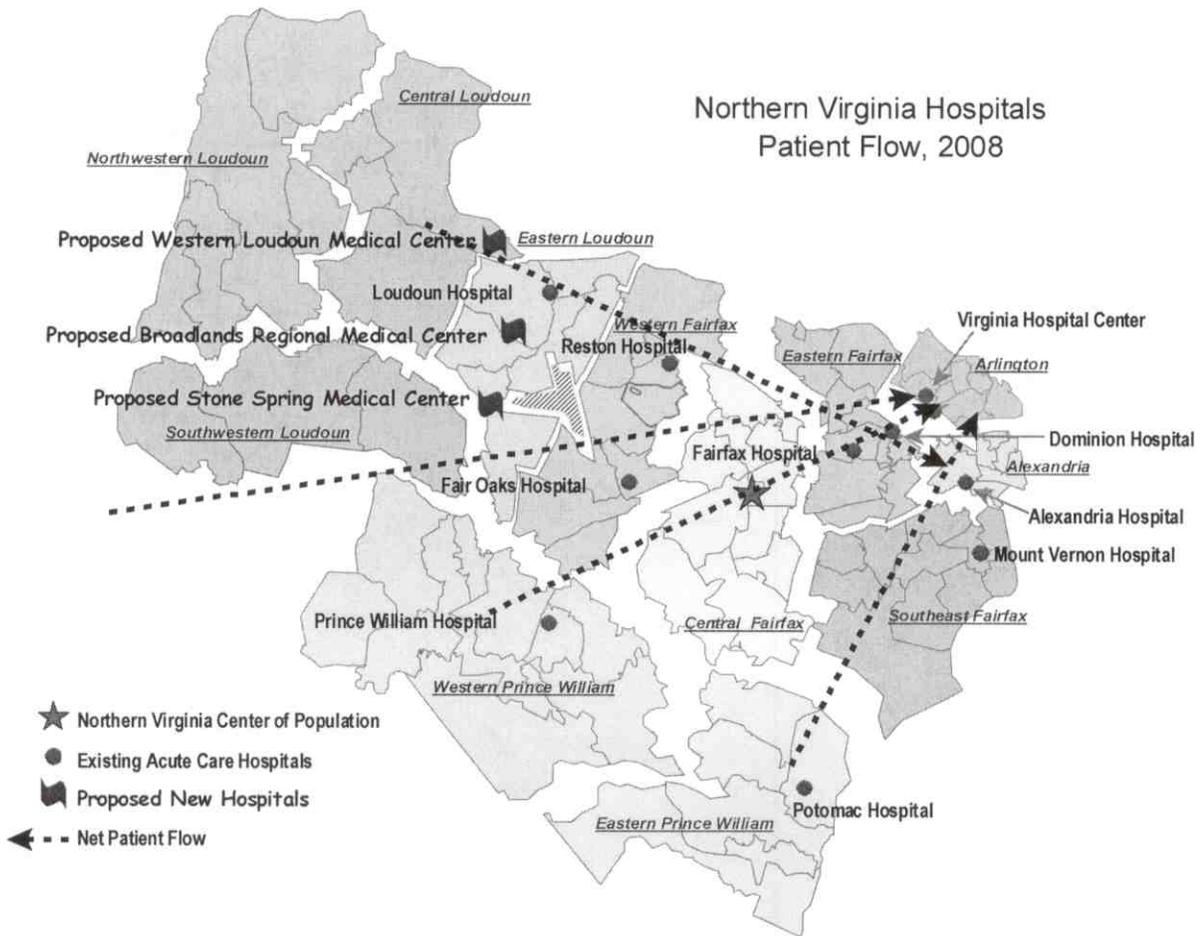


Dean Montgomery
Executive Director

cc: Erik Bodin, Director, DCOPN
Thomas Stallings, Counsel, NVCH
Lee Draznin, Chairperson, HSANV

Attachment 1

Northern Virginia Hospitals Patient Flow, 2008



Attachment 2

Northern Virginia Inpatient Hospital Utilization 2000 - 2007 Patient Days & Discharges for Northern Virginia Residents

Northern Virginia Total Days & Discharges									
	2000	2001	2002	2003	2004	2005	2006	2007	
Discharges	122,713	127,304	130,860	133,016	133,666	133,127	134,066	133,615	
Population	1,829,434	1,880,594	1,919,211	1,954,919	1,995,480	2,034,767	2,055,014	2,075,176	
Discharges/1,000	67.1	67.7	68.2	68.0	67.0	65.4	65.2	64.4	
Northern VA									
Days	578,091	601,758	611,008	623,394	623,834	625,034	624,055	627,801	
Population	1,829,434	1,880,594	1,919,211	1,954,919	1,995,480	2,034,767	2,055,014	2,075,176	
Days/1,000	316.0	320.0	318.4	318.9	312.6	307.2	303.7	302.5	
Loudoun County Days & Discharges									
	2000	2001	2002	2003	2004	2005	2006	2007	
Discharges	12,088	13,569	14,911	16,092	16,918	17,671	17,569	17,698	
Population	173,994	190,169	203,948	221,170	239,613	256,417	268,817	278,797	
Discharges/1,000	69.5	71.4	73.1	72.8	70.6	68.9	65.4	63.5	
Loudoun County Days & Discharges									
	2000	2001	2002	2003	2004	2005	2006	2007	
Days	50,775	56,740	64,786	70,288	70,325	74,605	74,681	72,700	
Population	173,994	190,169	203,948	221,170	239,613	256,417	268,817	278,797	
Days/1,000	291.8	298.4	317.7	317.8	293.5	291.0	277.8	260.8	

Source: VHI Patient Level Data Files 2000 - 2007; US Census postcensal estimates for July 1, 2000-July 1, 2007. Calculations & tabulations HSNV staff, 2009.