

May 19, 2010

Ms. Kathy Lapacek
Vice President – Business Development
Advocate Condell Medical Center
801 South Milwaukee Avenue
Libertyville, Illinois 60048

Re: Vista Lindenhurst FEC Application (the “Application”)
Project No. 10-18 (the “Project”)

Dear Ms. Lapacek:

You had asked that we review the Vista FEC Application above in connection with its compliance with the Illinois Health Facilities Planning Act and associated rules. Our review of the application and other materials submitted disclosed a number of areas where the Application fails to meet the review criterion established by Health Facilities and Services Review Board (the “Board”). Most of the areas of non-compliance relate to substantive review criteria. In the course of the review we also note two additional issues relating to whether the Project should be considered in this form and whether the Application is eligible for consideration.

I. PROCEDURE AND PROCESS ISSUES

A. The Applicant Has Made Multiple Attempts to Modify the Application Although the Rules Allow Only Two Modifications

Review Board Rules allow an Applicant to “modify” an Application only two times. The Applicant appears to have attempted to modify the application multiple times. The Board rules provide:

Section 1130.635 Additional Information Provided During the Review Period

- a) *Requested Information*
As needed to clarify the application, IDPH may request information or data during the review period from the applicant or from other persons in order to conduct its review. Requested information or data furnished to IDPH shall be made part of and included in the project record.

- b) *Supplemental Information*

Supplemental information or data may be provided by the applicant only if the information is due to a modification of the project, is in response to an Intent to Deny, or is in response to a request from HFPB. Supplemental information shall be made part of and included in the project record.

- c) *Public Comment Information*
Public comment information from persons other than the applicant that has been submitted in accordance with the public comment and public hearing provisions of this Part shall not be considered requested or supplemental information. The information shall be made part of and included in the project record.
- d) *Ex Parte Information*
Information submitted by the applicant or by any other person that is not requested information, that is not supplemental information, or that is not public comments or public hearing information is ex parte and will not be considered in the review of the project.

Section 1130.650 Modification of an Application

- c) An applicant can modify a project only twice during the review period; provided, however, an applicant may modify a project at any time if the modification is in conformance with and limited to the comments, recommendations or objections of HFPB.
- d) *If an applicant modifies an application that is not a modification made in conformance with and limited to the comments, recommendations or objections of HFPB, IDPH shall have up to 60 days to review the modification and any supplemental information submitted pursuant to the applicable review criteria, hold a public hearing if requested, and submit its findings to HFPB at the next regularly scheduled meeting that is at least 10 days following the completion of the IDPH review.*

77 Ill.Admin.Code Section 1130.635, 1130.650 (c) (d) (emphasis added)

According to the Review Board's web site the Applicant added information at least six times in addition to the information added before the application was deemed complete.

1. April 8 Safety Net Impact Statement Added. (In original application the Applicant stated a Safety Net Impact Statement was not applicable and did not include the required Statement)
2. April 16 Supplemental Material – Historic Preservation Agency Letter Added.
3. April 19 Supplemental Material - 66 pages of Supplemental Information added rewriting many substantive sections of the Application
4. April 26 Supplemental Information – 31 pages of Supplemental Information rewriting a number of substantive sections of the Application
5. April 29 Amendment to replace Page 7 of the Application
6. May 5 Amendment to Application relative to the existence of a helipad.

The Board's rule limiting the number of modifications serves to avoid duplicative staff review time. In fact, the rules clearly provide that the State Agency may extend the review period by up to 60 days when an application has been modified. The limitations on amending an Application also serve to allow the public ample opportunity to review and make public comment to amendments to an application.

It is often valuable for the Board to have supplemental information. The Board's rules permit supplemental information, but provide that "supplemental information or data may be provided by the applicant only if the information is due to a modification of the project, in response to an Intent to Deny or is in response to a request by HFPB." Even if some of the information was submitted at the request of staff, the majority of the Applicant's submissions constitute modifications and most should be disallowed. If the Applicant wishes to submit supplemental information beyond the 2 modification limit, it should do so in connection with an Intent to Deny or in response to the Board's request, not at the pleasure of the Applicant.

B. Does the Special Legislation for this Application relating to Letters of Intent Require the Applicant to file the Application within the One year letter of intent period (which it did not)?

The 2007 legislation authorizing new FECs was written to require that licensure must be complete by 2009. Subsequent legislative amendment allowed for three FEC applications pending during that window to be considered. New special legislation contained in PA 96-0883, upon which this application relies, makes a special provision

relative to whether a Letter of Intent had been filed. This new law, effective March 1, 2010, states:

(a-10) Notwithstanding any other provision of this Section, the Department may issue an annual FEC license to a facility if the facility has, by March 31, 2009, filed a letter of intent to establish an FEC and if the facility complies with the requirements set forth in paragraphs (1) through (17) of subsection (a).

The Board's current rules on Letter of Intent provide that "A Letter of Intent shall be valid for a period of one year from the date of receipt by HFPB". Section 1130.620(b)(2). (emphasis added)

Vista's Letter of Intent for the FEC project was received by the Review Board on March 23, 2009. Vista filed its FEC CON application March 25, 2010. As can be seen from the date stamped filings, the new FEC application was filed more than 1 year after the LOI had been received.

SB 1905 effective June 30, 2009, repealed the requirement that a Letter of Intent first be filed before a CON application could be filed and, as you know, LOIs are generally no longer required. The Board's rules on Letter of Intent have not been repealed or amended. PA 96-0883, however, clearly relied upon the Board's rules relative to on the Letter of Intent requirement.

A review of the application suggest Vista rushed the filing of its Application. It may have been that it was trying to beat that date, but did not. We leave to the Board its interpretation of whether the one-year Letter of Intent requirement applies for PA 96-0883, but believe interpretation of this act should be a threshold matter in deciding whether to consider this application.

II. SUBSTANTIVE REVIEW CRITERIA

A. Freestanding Emergency Center Medical Services Review Criterion

A) Criterion 1100.3230(b)(4) - Service Accessibility

The Criterion states:

"4) *Service Accessibility*
The proposed project to establish or expand an FECMS category of service is necessary to improve access for GSA residents. The applicant shall document the following:

A) Service Restrictions

The applicant shall document that at least one of the following factors exists in the GSA:

- i) *The absence of ED services within the GSA;*
 - ii) *The area population and existing care system exhibit indicators of medical care problems, such as high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area, or a Medically Underserved Population;*
 - iii) *All existing emergency services within the 30-minute normal travel time meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100.*
- B) *Supporting Documentation*
The applicant shall provide the following documentation, as applicable, concerning existing restrictions to service access:
- i) *The location and utilization of other GSA service providers;*
 - ii) *Patient location information by zip code;*
 - iii) *Travel-time studies;*
 - iv) *A certification of waiting times;*
 - v) *Scheduling or admission restrictions that exist in GSA providers;*
 - vi) *An assessment of GSA population characteristics that documents that access problems exist;*
 - vii) *Most recently published IDPH Hospital Questionnaire*

One of the most important issues for any Certificate of Need application, obviously, is whether the proposed project is “needed” The Board develops detailed rules for evaluating whether a project fulfills a health care “need” or is just a “want”. As shown in the rule cited above, there are three test for whether a project is needed.

Two of these tests are quickly and definitively dismissed:

- a. *is there an absence of ED services within the area; and*
- b. *whether all existing ED service within the 30 minute travel time meet or exceed the 2,000 visit per room utilization standard.*

Clearly there are multiple facilities providing emergency services within the area and the Project cannot meet the first test. The second test

is whether all of the facilities meet the Board's utilization standard. The application unequivocally fails this test. None of the facilities achieve the Board's target utilization. The table following shows utilization for the three facilities that are within 30-minute travel times and the facilities that are also within 30 minutes until the Board's 1.15 travel factor is applied (these facilities were included in the Applicant's original application). On occasion the Board will approve a project without it entirely meeting the calculated need, but usually only if the need numbers are close to the state standard. Here the numbers are not even close.

Both the Northwestern Lake Forest FEC and the Advocate Condell Medical Center reflect projects recently approved by the Board for which utilization will improve over time as the projects become fully implemented and if a new facility is not added. More striking, however, is that the Applicant's own hospitals so dramatically fail to meet the Board's utilization standard.

Area Emergency Department Utilization

Existing ED Facilities in Area	MapQuest Miles	MapQuest Travel Time	Treatment Rooms	Utilization Standards Volume	2008 ED Volumes	2008 % Capacity	Excess Visit Capacity
Northwestern Lake Forest FEC	7.3 miles	14.95 min	14	28,000	0*	0%	28,000
Vista West	12.2 miles	24.15 min	11	22,000	12,018	55%	9,982
Advocate Condell	14.6 miles	28.75 min	32	64,000	45,944	72%	18,056
Subtotal			57	114,000	57,962	50.8%	56,038

Midwestern Regional Medical Center	16.5 miles	32.20 min	5	10,000	5,244	52%	4,756
Vista East	13.3 miles	32.20 min	31	62,000	36,469	59%	25,531
Northwestern Lake Forest	18.3 miles	32.20 min	17	34,000	33,690	99%	310
Centegra Hospital -	16.7 miles	35.65 min	22	44,000	38,883	88%	5,117

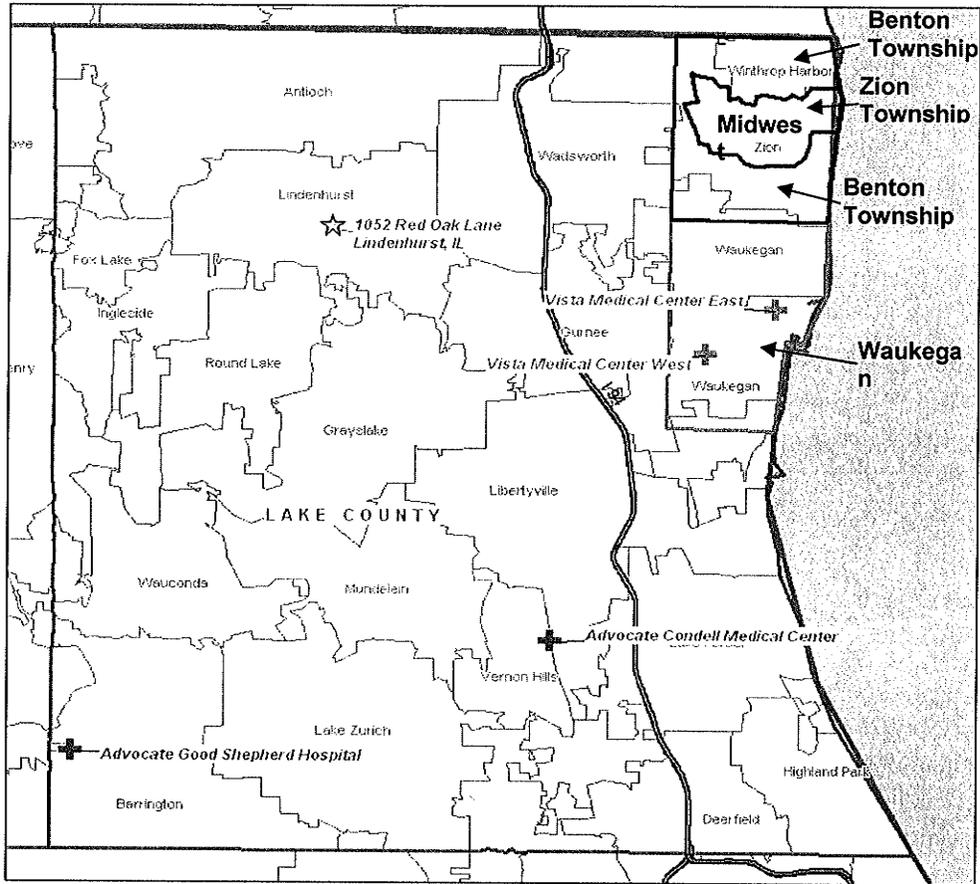
*Began operations in 2009
 Source: IDPH 2008 AHQ

The proposed Project so overwhelmingly fails to meet the two need tests discussed above that the Application does not even try to address those criteria. Instead, the Applicant bases its entire need test on the thinnest of a technical issue—that a very minor area located at the edge of the Geographical Service Area (GSA) shows one of the indicators of medical problem area by being designated as a health professional shortage area (“HPSA”). The attached map shows the location of Zion, Benton and Waukegan Townships, all of which are at the far northeastern or eastern edge of the GSA.

The HPSA argument fails for several reasons. First, the application itself contradicts that these areas are significantly within the GSA. In one of the Applicant’s first amendments, Vista modified its application to remove several hospitals from what it originally considered to be in the GSA, including its Vista East hospital in Waukegan and Midwest Regional hospital in Zion. Vista East hospital falls squarely within Waukegan Township and Midwest Regional hospital squarely within Zion Township. The Applicants now claim that these hospitals are outside the 30-minute GSA. The Applicants cannot have it both ways—if the hospitals within those townships are more than 30 minutes away, than a significant portion of the population in that township is also more than 30 minutes away. A MapQuest analysis was performed to determine the travel time between the proposed facility and the three townships as measured to the Township Hall. MapQuest shows both Waukegan and Zion Township to be in excess of 30-minute travel time. Any portion of northern Benton Township would also appear to be outside the 30-minute travel time.

Secondly, these townships are not even located in what the applicants say is its “targeted” area of service. (Application page 127) Further, even if these townships are fully included in the GSA, the proposed FEC does nothing to address any professional shortage in that area. According to the Application, the stated Purpose of the Project is to “improve accessibility to emergency services for the residents of north-central and northwestern Lake County.” (Application page 105) While these townships may indeed have a shortage of primary care, this shortage and the primary care needs of the people in these communities will not be served by a FEC located in Lindenhurst. To approve a project as “needed” with no expectation that the project would address such a perceived need would be the antithesis of sound health facilities planning.

Health Professional Shortage Areas



Average Distance for Health Professional Shortage Areas

	Lindenhurst FEC		Vista West		Vista East	
	Miles	Minutes	Miles	Minutes	Miles	Minutes
Zion Township Hall	17	33.35	9	19.55	5	12.65
Benton Township Hall	14.5	25.3	6.3	12.65	6.4	16.10
Waukegan Township Hall	13	31.05	2.4	9.2	1	2.30
Average	14.8	29.86	5.9	13.8	4.1	10.35

Source: MapQuest

B. Criterion 1100.3230(c) - Unnecessary Duplication/Maldistribution

The criterion reads as follows:

- "1) *The applicant shall document that the project will not result in an unnecessary duplication. The applicant shall provide the following information:*
 - A) *A list of all zip code areas (in total or in part) that are located within 30 minutes normal travel time of the project's site;*
 - B) *The total population of the identified zip code areas (based upon the most recent population numbers available for the State of Illinois population); and*
 - C) *The names and locations of all existing or approved health care facilities located within 30 minutes normal travel time from the project site that provide emergency medical services.*
- 2) *The applicant shall document that the project will not result in maldistribution of services. Maldistribution exists when the identified facilities within the Normal Travel Time have an excess supply of ED treatment stations characterized by such factors as, but not limited to:*
 - A) *Historical utilization (for the latest 12-month period prior to submission of the application) for existing ED within 30 minutes travel time of the applicant's site that is below the utilization standard established pursuant to 77 111. Adm. Code 1100; or*
 - B) *Insufficient population to provide the volume or caseload necessary to utilize the ED services proposed by the project at or above utilization standards.*

The proposed Project clearly and unequivocally creates a maldistribution of services under the Board's rules. As the Table on page 7 shows, not a single facility in the area meets the historical utilization standard of 2,000 visits per emergency treatment room.

- 3) *The applicant shall document that, within 24 months after project completion, the proposed project:*
 - A) *Will not lower the utilization of other GSA providers below the utilization standards specified in 77 111. Adm. Code 1100; and*
 - B) *Will not lower, to a further extent, the utilization of other GSA hospitals or FECs that are currently (during the latest*

12-month period) operating below the utilization standards.

Section 3(A)(B) of the above rule requires that the applicant document that the Project will not lower utilization of existing provider below the utilization standard or further below the utilization standard. Northwestern Lake Forest FEC and Advocate Condell, as well as Centegra, all operate below utilization targets all and filed impact letters showing that the proposed project would further lower utilization. The unnecessary duplication of services is at the core mission of the planning process. The Board's rule on duplication of services is clear and the effect is clear – this project duplicates services and creates a maldistribution. The Application at hand did not even attempt to address this issue or the details of the Board's rules in its application (See Attachment pp. 130-131).

The Board's rule requiring an applicant to document effect on utilization applies not only to competing facilities but to the Applicant's own facilities as well. Although the Application does not disclose this fact, Vista West has 2008 Emergency Department utilization of only 55%. Similarly, Vista East has an Emergency Department utilization of only 59% of what is required by the Board. As part of its application Vista must document the impact the proposed facility would have in exacerbating its own already low utilization.

4) The applicant shall document that a written request was received by all existing facilities that provide ED service located within 30 minutes travel time of the project site asking the number of treatment stations at each facility, historical ED utilization, and the anticipated impact of the proposed project upon the facility's ED utilization. The request shall include a statement that a written response be provided to the applicant no later than 15 days after receipt. Failure by an existing facility to respond to the applicant's request for information within the prescribed 15-day response period shall constitute an assumption that the existing facility will not experience an adverse impact in utilization from the project. Copies of any correspondence received from the facilities shall be included in the application."

The Board rules require the Applicant to notify affected area providers and inquire about the impact the proposed project may have on those providers. Area providers have only 15 days to respond and the Applicant must include responses it receives in its application. In a curious move, the Applicant filed its application before even waiting for

the 15 day period to expire (particularly because the rules require the Applicant to document that other facilities received the letter, not that it had been mailed). Three facilities, Centrega, Advocate Condell, and Northwestern Lake Forest all provided data and quantifiable information that should have been addressed in the Application, suggesting that the Applicant was unconcerned about any impact its Project may have on other providers, and indifferent about addressing this information in its Application. The Applicant's analysis of this information is necessary component of the Application intended to benefit the Board in its deliberation. To not wait for the impact letter responses would certainly seem to be a breach of the intent of the planning process.

C. Criterion 1110.230(a) - Background of Applicants

The criterion states:

"The applicant shall demonstrate that it is fit, willing and able, and has the qualifications, background and character to adequately provide a proper standard of health care service for the community. [20 ILCS 3960/6] In evaluating the fitness of the applicant, the State Board shall consider whether adverse action has been taken against the applicant, or against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application."

Section 1110.230(b)(3)(A)(B) of the criterion further provides

3) The applicant shall submit the following information:

A) A listing of all health care facilities currently owned and/or operated by the applicant, including licensing, certification and accreditation identification numbers, as applicable;

B) A certified listing from the applicant of any adverse action taken against any facility owned and/or operated by the applicant during the three years prior to the filing of the application.

(emphasis added)

According to the SEC Form 10-K statement filed as part of the application, Community Health Systems Inc. ("CHS") states that it is "the largest publicly traded operator of hospitals in the United States in terms of number of facilities and net operating revenues", and that it includes 115 hospitals in 27 states. (See Application page 174). Pages 87-93E of the application contains a

listing of facilities, but does not include the required licensing, certification and accreditation identification numbers.

The Application does contain a listing of adverse actions taken against two of its Illinois hospitals relative to CMS and IDPH compliance matters (Application page 103-103A). The Review Board's rules applicable to the filed application require disclosure of any adverse action by any facility owned, not just ones in Illinois. The certification appears not to address whether there are any adverse actions against CHS facilities in other states. Given that the Applicant has been subject to adverse action at two of its Illinois facilities it is possible that other facilities in the other 26 states in which it operates may also be subject to adverse action. The Application should clarify for the State Agency that it has fully disclosed all adverse action in all states or disclose that adverse action as part of this application.

D. Criterion 1110.230(b) – Purpose of the Project

b) Purpose of the Project – Information Requirements

The applicant shall document that the project will provide health services that improve the health care or well-being of the market area population to be served. The applicant shall define the planning area or market area, or other, per the applicant's definition.

1) The applicant shall address the purpose of the project, i.e., identify the issues or problems that the project is proposing to address or solve. Information to be provided shall include, but is not limited to, identification of existing problems or issues that need to be addressed, as applicable and appropriate for the project. Examples of such information include:

A) The area's demographics or characteristics (e.g., rapid area growth rate, increased aging population, higher or lower fertility rates) that may affect the need for services in the future;

B) The population's morbidity or mortality rates;

C) The incidence of various diseases in the area;

D) The population's financial ability to access health care (e.g., financial hardship, increased number of charity care patients, changes in the area population's insurance or managed care status);

- E) *The physical accessibility to necessary health care (e.g., new highways, other changes in roadways, changes in bus/train routes or changes in housing developments).*
- 2) *The applicant shall cite the source of the information (e.g., local health department Illinois Project for Local Assessment of Need (IPLAN) documents, Public Health Futures, local mental health plans, or other health assessment studies from governmental or academic and/or other independent sources).*
- 3) *The applicant shall detail how the project will address or improve the previously referenced issues, as well as the population's health status and well-being. Further, the applicant shall provide goals with quantified and measurable objectives with specific time frames that relate to achieving the stated goals.*
- 4) *For projects involving modernization, the applicant shall describe the conditions being upgraded. For facility projects, the applicant shall include statements of age and condition and any regulatory citations. For equipment being replaced, the applicant shall also include repair and maintenance records.*

(Emphasis Added)

The "Purpose" section of the application requires the applicant to identify the purpose of the project and to "identify the issues or problems that the project is proposing to address". In its Purpose section the Application does not appear to identify any problems that need to be addressed. This Application section includes no discussion, and certainly no documentation, of any problem to be fixed. This section states that its purpose is to improve accessibility to emergency services for residents in north-central and northwestern Lake County. The application provides no discussion of long wait times, no discussion of rapid growth, and no discussion of access problems for patients. The only factual statement is one that is empirically false "Patients in need of emergency care, as approved to urgent care, are most often transported to an emergency room by rescue squad or ambulance." There is no documentation for this claim, in fact evidence shows the contrary. At the public hearing on this project, Dr. Maloney, Medical Director for the Advocate Condell Medical Center, testified that only 22% of its Emergency Department patients arrive via ambulance. Condell is the sole Level 1 Trauma Center in Lake County and it is likely that far fewer FEC patients would arrive by ambulance -- certainly much less than the "most" asserted in the application.

The "Purpose" criterion also requires the applicant to set out "quantifiable and measurable objections with specific time frames that relate to achieving the stated goals." No problems are identified or quantified and consequently no solutions or measurable outcomes are provided. We believe the Purpose criterion does not meet the review criterion.

E. Criterion 1110.230(c) - Alternatives

The Criterion states:

"The applicant must document that the proposed project is the most effective or least costly alternative. Documentation shall consist of a comparison of the proposed project to alternative options. Such a comparison must address issues of cost, patient access, quality, and financial benefits in both the short and long term. If the alternative selected is based solely or in part on improved quality of care, the applicant shall provide empirical evidence including quantifiable outcome data that verifies improved quality of care. Alternatives must include, but are not limited to: purchase of equipment, leasing or utilization (by contract or agreement) of other facilities, development of freestanding settings for service and alternate settings within the facility."

The best alternatives are also the simplest and lowest cost. The best alternative is that patients continue to use existing facilities that presently have excess capacity. Virtually every facility in the area has excess capacity, particularly Vista's own hospitals. Building a new facility is more expensive, duplicates services, and is not needed. Vista rejected this alternative, in part, arguing that they alone would have an FAA helipad and that this would be important in taking serious codes away from the FEC. This is factually incorrect. Northwestern Lake Forest FEC does have a helipad, which the Applicant subsequently acknowledged. This correction removes much of the argument the Applicant used in refuting this alternative and no additional rationale has been supplied. Even so, a helipad's primary use would be to remove patients in serious condition that arguably should have instead gone to a full service hospital emergency department initially.

The Applicants also omit another important alternative. The Applicant's sole argument for satisfying the need criterion is that a tiny portion of service area has three townships designated as health professional shortage area. These areas are core services of the Vista hospitals. It would seem that if the health professional shortage designation is the true need, the Applicant could best address that need by providing a clinic, and in the area where there is a need for health professionals. This would be another good alternative and one not even

considered by the Applicant. This project cannot satisfy the "Alternatives" review criterion.

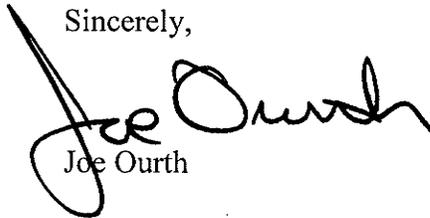
F. Review Criteria - Financial Feasibility

In addition to the Section 1110 review criteria, the Application also fails to meet the review criteria for Section 1120. Several of the financial ratios are not disclosed and many that are disclosed do not meet the state standard. Similarly, not all project cost criteria meet the state standards.

Conclusion

There is no need for this Project under the Board's rules and the Project unnecessarily duplicates existing services. This Application fails to meet the Review Boards requirements.

Sincerely,



Joe Ourth

JRO/eka