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December 6, 2023

TO: **Board of Directors, HSANV**
Interested Parties

FROM: **Dean Montgomery**

SUBJECT: **Certificate of Public Need Application**
Dominion Plastic Surgery Center, Establish Outpatient Surgical Hospital
(COPN Request VA-8688)

I. Summary of the Proposal

Dominion Plastic Surgery Center (Dominion) seeks Certificate of public need (COPN) authorization to establish an outpatient surgical hospital in Fairfax County, VA. Dominion proposes to convert an unlicensed physician office-based dermatology service to a licensed ambulatory surgery center (ASC).[1] The 1,400 sq. ft. center would have two general purpose operating rooms (GPORs), unlicensed procedure rooms, and support space. Dominion is wholly owned by Vineet Mehan, MD.

Dominion states that "the project has already been completed. No additional financing is required." Assigned project capital costs are $986,000. This includes a three-year related party lease of $540,000 for space the surgery center would occupy in Dominion's offices.[2] No financing expense is anticipated. The proposal states "the project is already done and has already been paid for. Dominion Plastic Surgery will not go into debt, nor did it take out any debt, for the project."[3]

Table 1 shows recent capacity and service volumes of Northern Virginia licensed surgery services. Dominion Plastic Surgery is not a licensed surgery center and does not report surgery volumes to Virginia Health Information (VHI). It is not included in Table 1.[4]

Dominion justifies the proposal on the grounds that:

- Northern Virginia (PD 8) does not have an outpatient surgery center with the expertise and focus on soft tissue reconstruction that Dominion would offer.

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[1] Ambulatory surgery centers (ASCs) are licensed as outpatient surgical hospitals in Virginia. The terms are used interchangeably here.
[2] The sole owner of Dominion Plastic Surgery is also the sole owner of VINARC, LLC, Dominion's landlord.
[3] Dominion COPN Application, Section 5.A, p. 19
[4] Additional information on Dominion Plastic Surgery Center is available at https://dominionprs.com.

- There is a nationwide shortage of the type of service Dominion proposes to develop.
- The capital cost of the center proposed is nil. The facility has been built and furnished.
- Conversion of the medical office to a licensed surgery center, essentially a paper exercise, would permit Dominion to use its assets more efficiently.
- Population growth and aging in northern Virginia (PD 8) are such that the region will benefit from the additional surgery capacity Dominion proposes.
- Converting Dominion's office-based surgery service to a licensed outpatient surgical hospital would not affect demand or service volumes at other surgery services. Many, if not most, of the patients Dominion expects to serve would come from outside the planning region.

If authorized, the surgery center can be opened quickly: Dominion states "The applicant could start providing services within days upon an affirmative COPN decision."[5]

II. Discussion

A. Northern Virginia Surgery Services

Northern Virginia has 31 certificate of public need (COPN) authorized surgery facilities: the 11 acute care community hospitals and 20 ambulatory surgery centers shown in Table 1. More than two-thirds of the freestanding surgery centers (14 of 20) are located near and are affiliated with local medical-surgical hospitals. These services are distributed widely in the region (Map 1).

There are numerous unlicensed physician office surgery services. There is no public record of their number, capacity, or service volumes. Dominion Plastic Surgery is one of these services.[6]

Northern Virginia surgery facilities had more than 260 operating rooms in 2022, the most recent year for which reliable comparable service volumes are available. About three-fourths of these, 199 operating rooms, are "general-purpose operating rooms" (GPORs). The remainder are rooms dedicated (designed, equipped, and staffed) to specific uses, e.g., cardiovascular surgery, endoscopy, cystoscopy and other "special procedures". Of the 200 general purpose operating rooms authorized, 197 were in service in 2022.[7] All of the dedicated special purpose operating rooms are available for use.

[5] Dominion COPN Application, p. 8.

[6] There are also several *de facto* surgery centers medical offices that describe themselves and advertise as outpatient surgery centers but have not sought COPN authorization and licensure.

[7] Six cardiovascular operating rooms (CVORs) at Inova Fairfax Hospital and two cardiovascular operating rooms at Virginia Hospital Center are excluded from this inventory. Two operating rooms designated as trauma rooms (one each at Reston Hospital Center and VHC Health) are included.

Table 1
Northern Virginian Surgery Services Capacity & Use
General Purpose Operating Rooms, 2022

Facility	General Purpose ORs (2023)	Inpatient Cases	Outpatient Cases	Total Cases	Inpatient Hours	Outpatient Hours	Total Hours	Average Time per Case (Hours)
Hospitals								
Inova Alexandria Hospital	11	1,515	5,603	7,118	4,675	13,639	18,314	2.57
Inova Fair Oaks Hospital	12	2,737	8,389	11,126	7,368	17,542	24,910	2.24
Inova Fairfax Hospital	43	11,105	19,472	30,577	38,019	44,613	82,632	2.70
Inova Loudoun Hospital	8	1,921	4,641	6,562	5,770	10,068	15,838	2.41
Inova Mount Vernon Hospital	7	1,124	3,389	4,513	2,924	8,551	11,475	2.54
Reston Hospital Center	16	3,329	6,520	9,849	8,267	11,209	19,476	1.98
Sentara Northern Virginia Medical Center	9	1,010	3,239	4,249	2,693	6,170	8,863	2.09
Stone Springs Hospital Center	4	330	2,095	2,425	739	3,582	4,321	1.78
UVA Health Haymarket Medical Center[1]	4	405	254	659	1,263	555	1,818	2.76
UVA Health Prince William Medical Center[1]	4	252	371	623	585	681	1,266	2.03
Virginia Hospital Center[2]	18	3,839	9,753	13,592	10,715	17,219	27,934	2.06
Total Hospitals	136	27,567	63,726	91,293	83,018	133,829	216,847	2.38
Ambulatory Surgery Centers								
Fairfax Surgical Center	6		8,825	8,825		12,468	12,468	1.41
Haymarket Surgery Center	2		3,724	3,724		5,329	5,329	1.43
HealthQare Services ASC	2		3,209	3,209		2,080	2,080	0.65
Inova Lorton Surgery Center[4]	2		2	2		4	4	2.00
Inova Fairfax Hospital ASC	4		2,064	2,064		5,775	5,775	2.80
Inova Loudoun Asc	5		5,415	5,415		8,580	8,580	1.58
Inova Franconia-Springfield Surgery Cente	5		11,475	4,096		6,821	6,821	1.67
Kaiser Permanente Woodbridge ASC (AKA	4		3,133	3,133		1,462	1,462	0.47
Kaiser Permanente Tysons ASC	8		7,384	7,384		2,079	2,079	0.28
Sentara Lake Ridge ASC	1		977	977		755	755	0.77
McLean ASC	2		1,851	1,851		4,894	4,894	2.64
Northern Virginia Eye Surgery Center	2		4,948	4,948		2,705	2,705	0.55
Northern Virginia Surgery Center	4		4,381	4,381		4,974	4,974	1.14
Pediatric Specialists of Virginia ASC	2		2,228	2,228		2,157	2,157	0.97
Prince William Medical Center ASC	4		5,868	5,868		6,865	6,865	1.17
Reston Surgery Center	6		7,736	7,736		7,459	7,459	0.96
Stone Springs ASC	2		194	194		309	309	1.59
VHC Edison (Authorized 4 GPORs from VHC Health)[1]	0							
Inova Oakview ASC (3 GPORs Being Built)[3]	0							
Total Ambulatory Surgery Centers	61			66,035		74,716	74,716	1.13
Regional Totals	197			157,328			291,563	1.85

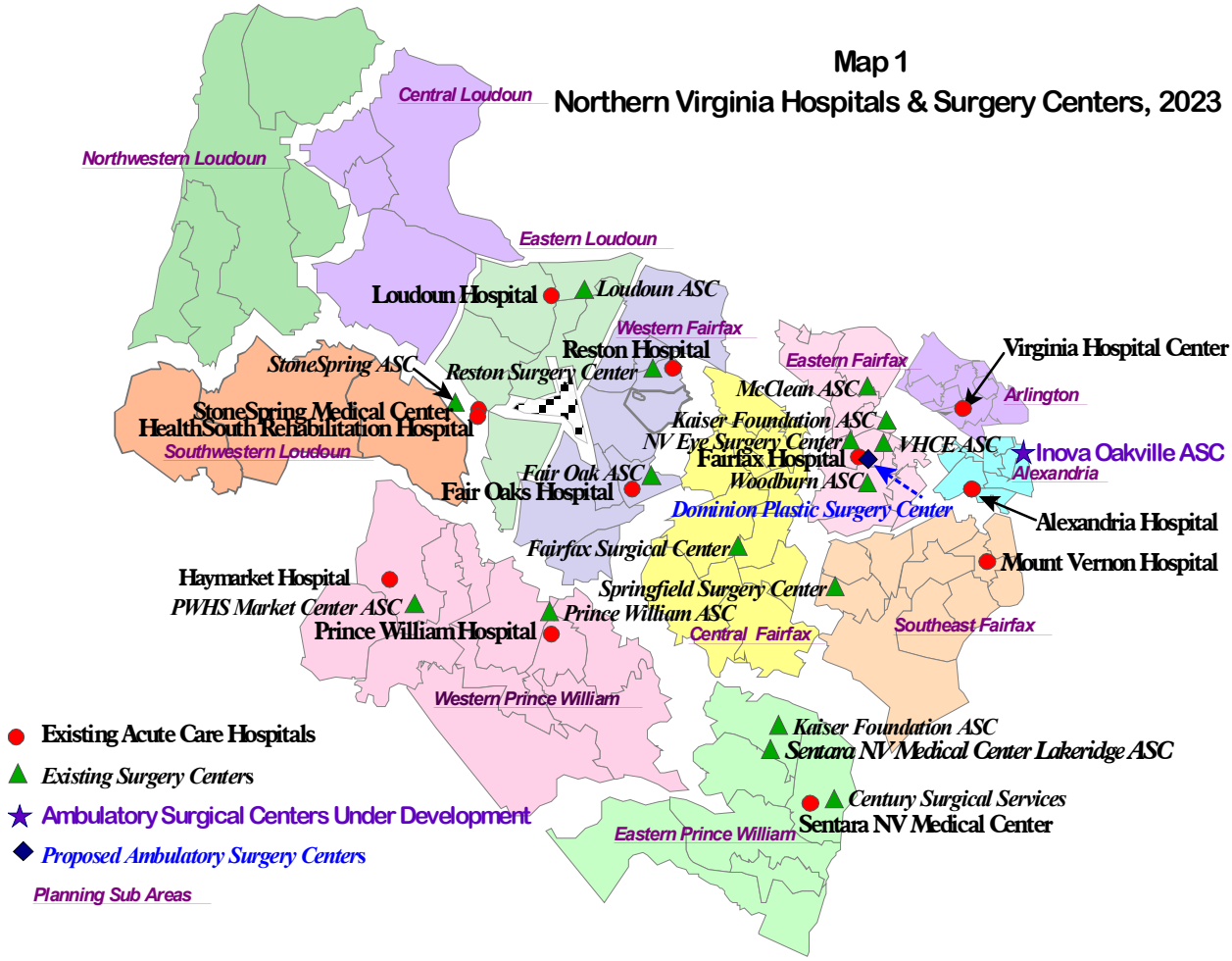
Source: Virginia Health Information, ALSD, 2022; PD8 COPN Applications, 2017-2022.

[1] Service volume (cases) is for the first half of calendar 2022.

[2] VHC Edision opened in 2023 with four general purpose operating rooms "transferred" from VHC Health. With the opening of VHC Edison, the VHC Health licernsed operating room complement decrease to 14.

[3] Authorized three general purpose ooperating rooms in 2021. Project is under development.

[4] Limited service in 2022



Northern Virginia surgery facilities reported 157,328 surgical cases[8] in general-purpose operating rooms in 2022 (Table 1). This represents more than two-thirds of the total surgical volume reported. It is 3.8% higher than the average number of cases reported in 2019, the year before COVID-19 service disruptions in 2020-2021. The compound annual growth rate (CAGR) in surgery cases over the last three years was 1.3%, generally consistent with and reflective of population growth.[9]

[8]The Virginia State Medical Facilities Plan (SMFP) defines surgery service volume in terms of "operating room visits". The definition reads: *"Operating room visit" means one session in one operating room in an inpatient hospital or outpatient surgical center, which may involve several procedures. Operating room visit may be used interchangeably with "operation" or "case."* Virginia SMFP, p. 4. The surgery volume counts, estimates and projections discussed here are surgery cases, not procedure counts.

[9] Northern Virginia is a net importer of surgery patients: more people travel to the region for surgical care than leave the region for surgery. Local surgery rates (cases/surgeries per 1,000 population) are between 30% and 40% lower than national rates and rates elsewhere in Virginia. Annual local surgery caseloads varied considerably over the last decade. The trend has been modestly higher, at a rate roughly equivalent to the population growth rate.

The decades-long shift from inpatient to outpatient cases continues, with inpatient cases dropping from 28% of the total in 2013 to about 20% in 2022, a 29% decrease over the decade. Thus, more than three-fourths (79.9% in 2022) of reported surgical cases provided in licensed general purpose operating rooms in Northern Virginia are outpatient procedures. More than two-thirds (69.8%) of hospital surgery cases were outpatient visits in 2022.

As these data suggest, outpatient surgery is a critical element in local hospital proficiency and economic stability. It is increasingly important that community hospitals offer outpatient surgery efficiently, on and off campus, to maintain economic stability.

B. Need for Additional Operating Rooms

Dominion Plastic Surgery proposes to establish a new freestanding outpatient surgery facility. The surgery capacity requested, two licensed operating rooms, would be licensed as general-purpose rooms. Planning guidance in the Virginia State Medical Facilities Plan (SMFP) addresses the question of community (regional) need for additional surgery capacity. The applicable plan section reads:

> ***"12VAC5-230-500 - Need for new service.***
>
> A. The combined number of inpatient and outpatient general purpose surgical operating rooms needed in a health planning district, exclusive of procedure rooms, dedicated cesarean section rooms, operating rooms designated exclusively for cardiac surgery, procedures rooms or VDH-designated trauma services, shall be determined as follows:
>
> $$\text{FOR} = \frac{((\text{ORV}/\text{POP}) \times (\text{PROPOP})) \times \text{AHORV}}{1600}$$
>
> Where:
>
> ORV = the sum of total inpatient and outpatient general purpose operating room visits in the health planning district in the most recent five years for which general purpose operating room utilization data has been reported by VHI; and
>
> POP = the sum of total population in the health planning district as reported by a demographic entity as determined by the commissioner, for the same five-year period as used in determining ORV.
>
> PROPOP = the projected population of the health planning district five years from the current year as reported by a demographic program as determined by the commissioner.
>
> AHORV = the average hours per general purpose operating room visit in the health planning district for the most recent year for which average hours per general purpose operating room visits have been calculated as reported by VHI.
>
> FOR = future general purpose operating rooms needed in the health planning district five years from the current year.

1600 = available service hours per operating room per year based on 80% utilization of an operating room available 40 hours per week, 50 weeks per year.

B. Projects involving the relocation of existing operating rooms within a health planning district may be authorized when it can be reasonably documented that such relocation will:

(i) improve the distribution of surgical services within a health planning district;
(ii) result in the Virginia provision of the same surgical services at a lower cost to surgical patients in the health planning district; or
(iii) optimize the number of operations in the health planning district that are performed on an outpatient basis." **(VA SMFP, pp. 22-23)**

Surgery volumes and operating room efficiency vary widely by facility and health system (Table 1). Current and projected supply (GPORs available and being built) exceed demand (current and projected surgery cases). The operating room public need determination methodology specified in the Virginia SMFP **(Section *12VAC5-230-500)*** shows a likely surplus of between nine and fourteen operating rooms in 2028 (Table 2).[10]

Table 2. Operating Room Need, Virginia SMFP Calculation

Formula	**FOR = ((ORV/POP) x (PROPOP)) x AHORV / 1600**
Operating Room Visits/Cases (ORV), 2018 - 2022	**736,410**
Population (POP), 2018 - 2022	**12,680,790**
Surgery Use Rate (SUR), Surgery Cases/Visits per 1,000 Population	**58.07**
Projected Population (PROPOP), 2028	**2,763,080**
Average Hours per OR Visit (AHORV), 2022	**1.85**
Nominal Operating Room Time Available, Hours per Room per Year	**1,600**
Future Operating Room (FOR) Need, 2028	**186**
Authorized Capacity, 2023	**200**
Operating Room Need (Surplus -)	**-14**

Source: VHI ALSD, 2018-2022, Surgery service volumes; U.S. Census Bureau, Population Data; HSANV, Tabulations and Calculations

The most recent five-year period for which Virginia Health Information (VHI) has published surgery service is 2018 - 2022. The reported average time per case in 2022 was 1.85 hours (Table 1 & Table 2).

[10] The nine to fourteen range is a function how the abnormally low demand/use of 2020 is treated in the calculation. Including year 2020 data decreases the use rate and, consequently, yields the higher surplus (14 ORs), excluding the 2020 data results in the lower surplus (9 ORs).

Average use of authorized surgery capacity in 2022 was about 74% of the nominal 2,000 hours per room per year, well below the 80% (1,600 hours) planning standard. Three of the operating rooms authorized (Inova Oakview ASC) were not in service in 2022. The average number of cases per authorized room in 2022 was 799 per GPOR in service. The regional average service volume was about 3.2 cases per room per workday.[11]

Use of the specified 2018-2022 service volume data and population data called for by the SMFP operating room need determination formula yields a projected regional need for 186 general purpose operating rooms five years hence (in 2028), fourteen fewer than the 200 now authorized (Table 2). If the recent COVID-19 induced low use in 2020 is excluded from the calculation, the projected need in 2028 is 191 GPORs, nine fewer than the 200 now authorized.

There is a more than adequate licensed surgery capacity to meet regional demand over the planning horizon, by 2028 (Table 2).[12] There is no public need for additional surgery centers or operating rooms.

C. Access Considerations

Dominion proposes to convert part (1,400 sf) of its office to a licensed surgery center. There would be no change in location. It is likely that the area and population that would be served locally by an onsite licensed surgery center would be essentially the same as Dominion's current service area and population. Dominion proposes to develop an expanded service area. In discussing its current northern Virginia service area population, the applicant cautions that it is "important to note that this is not representative of the population that we are targeting with this project. As mentioned in other areas of the application, the intent is to drive revenue with patients located outside of this planning district."[13] If authorized, Dominion proposes to market its services widely outside of northern Virginia.

The *pro forma* budget makes clear Dominion's operational orientation and its expectation of serving few Medicare, Medicaid, and medically indigent patients. Projected Medicare, Medicaid, and charity care caseloads are respectively 1.25%, 0.50%, and 0.25%, of its total caseload. Dominion expects a private pay (out of pocket) caseload of 50% and a commercially insured caseload of 38%, a total of 88%. The skew to private payment, and away from public payment and charity care, is notable. It would be much greater than that of any other local surgery service. The project would not facilitate or insure access for large segments of the population.

[11] This calculation assumes all cases are handled in a five-day work week. Cases handled on weekends and after normal hours as emergency or urgent cases are treated as if they occurred during the regular 40-hour work week. Consequently, the average number of cases per day within normal working hours is less than the calculated 3.2 cases per room per day.

[12] It is worth noting that Virginia SMFP operating room need determination formula overestimates demand relative to supply because it treats demand (cases/visits/procedures) as if all of it occurs within a 2,000-hour work year, 40 hours per week for 50 weeks a year. At many facilities between five and ten percent of cases are handled outside the standard work week. The assumed 2,000 hours per operating room per year is discounted by 20% to 1,600 hours, the number used in the formula to indicate the number of hours an operating room is assumed to be available for use each year.

[13] Dominion Application, Response to Section IV.B.2

Dominion argues that conversion of its procedure rooms licensed operating rooms would enhance access to care locally by permitting its surgeons to offer better and more efficient care and compete more effectively. No evidence for this claim is presented. Dominion is in the Merrifield area of Fairfax County, near multiple surgery services (Map 1). There is no shortage of surgery services or operating rooms in the area.

D. Economic Considerations

Dominion emphasizes that the project does not entail a capital expenditure. The application states that the facility, which is already built and furnished, has been operated as a cosmetic surgery center with two procedure rooms and associated support space since 2015. The conversion of an outpatient surgical hospital requires no facility changes and no additional capital expense. The assigned capital cost of the project ($986,000) consists largely of ongoing operational costs, with or without COPN approval and licensing of the facility.

Development costs (from 2014-2015) are not specified. In this regard, the application states, "there will be no pass-throughs to the patient for the costs of the facility as the project has already been completed with cash already on hand" and that "initial start-up and overhead can also be funded using existing assets." Dominion "will not go into debt, nor did it take out any debt, for the project."[14]

These circumstances and claims notwithstanding, there are no indications, or reason to believe, that charges would be lower than at other freestanding surgery services. Dominion notes that it would "set fees as dictated by the market."[15] Moreover, unlike other local surgery services, the project is distinct in that its focus is on developing a private pay market serving patients residing outside the planning region (PD 8). In response to questions about the types of surgery that would be performed in the licensed operating rooms, Dominion states its "goal is to drive this part of the business with patients located outside of this planning district rather than patients relying upon commercial insurance, Medicare/Medicaid, or workers compensation, among other things."[16]

The *pro forma* budget is opaque but informative, nonetheless. The applicant acknowledges that projected revenue and expenses are "not based on a specific number of surgeries that we expect to complete."[17] The application indicates that the second-year caseload could range between three and six cases per day. Assuming a 50 week, five days a week, work schedule, these estimates equate to between 1,500 and 3,000 cases per year. These service volumes would be higher than those of most similarly sized freestanding surgery centers. No data or other information is offered to support these assumptions. Dominion would need to obtain many patients from outside the planning region to achieve these caseloads.

Dominion has no history of providing charity care. The *pro forma* budget contemplates a charity care caseload of less than one percent.

[14] Dominion Application, Response to Section V.G.
[15] Dominion Application, Response to Section V.H.1.
[16] Dominion Application, Response to Section III.G.
[17] Dominion Application, Response to Section V.H.3.

The *pro forma* budget makes clear Dominion's operational orientation and expectation of serving few Medicare, Medicaid, and medically indigent patients. As noted earlier, Medicare, Medicaid, and charity care caseloads total 2.0% of Dominion's caseload. The skew to private payment, and away from public payment and charity care, is extraordinary.

E. Health System Considerations

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If licensed as an ambulatory surgery center Dominion suggests it would serve between 1,500 and 3,000 surgery patients annually. Many of these are likely to be those who now (and in the future would) obtain care in the procedure rooms that Dominion would like to redesignate as licensed operating rooms. Dominion expects most of the new (additional) patients to come from outside the planning region. Given these considerations, the project would be likely to have few, in any, notable local health systems effects.

There is no near-term public need for additional surgery facilities or capacity (operating rooms). The proposal appears to flow from a corporate desire to expand the business by rebranding and marketing itself to the private pay market, locally and elsewhere. There is a noticeable aversion to public insurance and medically indigent populations.

There are several problematic aspects to the Dominion proposal that the application does not address. First, authorization of specialty medical facilities in the absence of a clear, compelling need or other justification, essentially to permit a service provider to enhance its revenue stream and profitability, conflicts with the principles that underlie Virginia COPN regulation and is not in the public interest. Second, authorization of a nonessential, economically motivated project incentivizes similarly situated service providers to seek similar benefits. There are numerous office-based surgery facilities (operatories) in the region that would benefit from conversion to licensed surgery centers.

Though the applicant has not provided service volume data and related information that would permit reliable assessment of the potential magnitude of the surgery case loss at other surgery services, in terms of measurable local health system effects, the Dominion project is not likely to affect demand noticeably.

III. Conclusions and Alternatives for Agency Action

A. Conclusions

The Dominion proposal is distinguishable from most surgery service development proposals in that it is a facility conversion project, the conversion of an office-based operatory to an ambulatory surgery center. It appears to be motivated by a focused desire to rebrand and expand the service. The project entails no change in the facility and no capital investment. If successful, revenue and profitability should increase significantly.

Dominion proposes no material change in services offered or in access to care. It is not submitted in response to an identified public need or to cure a known system deficiency. Rather, it is indicative of, and responsive to, an institutional desire to rebrand to permit more effective marketing to the private pay population, locally and elsewhere. The applicant shows no interest in serving the medically indigent or in improving economic access to the services it offers.

Regional surgery service capacity exceeds current and projected demand. There is no near-term public need for additional surgery facilities or operating rooms.

Though the Dominion project would be likely to have few measurable health systems effects, it is problematic in several respects. The proposal ignores and conflicts with longstanding planning requirements and standards.

B. Alternatives for Agency Action

1. The HSANV Board of Directors may recommend to the Commissioner of Health that a Certificate of Public Need authorizing the project be granted.

A favorable recommendation could be based on concluding that 1) though there is no near-term regional need for additional surgery services or operating rooms, there is precedent locally and statewide for the authorization of small dedicated specialty surgery centers that are likely to be used efficiently, 2) surplus operating rooms in the region are not a realistic alternative to the Dominion project, 3) no additional capital investment is required, and 4) other than supporting and thereby reinforcing a problematic precedent surgery centers in the presence of surplus surgery capacity, there is no indication that the project would have significant negative health system effects.

2. The HSANV Board of Directors may recommend to the Commissioner of Health that a Certificate of Public Need not be granted.

An unfavorable recommendation could be based on concluding that 1) there is no indication of a current or near term regional need for an additional ambulatory surgery center, 2) there is substantial unused surgery capacity in local outpatient surgery facilities, 3) approval of additional capacity should be deferred until the operating rooms being developed are in service and have significant caseloads, 4) and a Dominion ambulatory surgery center is not required or otherwise needed to meet a health system deficiency or a documented public need.

IV. Checklist of Mandatory Review Criteria

1. Maintain or Improve Access to Care

Northern Virginia residents have ready access to surgical services, inpatient, outpatient, and office based. Given the size, location, and nature of the Dominion project, it would not alter this circumstance meaningfully.

Dominion asserts that the project will improve access to care by reducing demand at nearby hospital emergency departments and at hospital surgery services. It provides no data or cogent argument to support this claim.

Dominion does not have established or discernible charity care policies. The *pro forma* budget indicates little interest in serving the medically indigent.

2. Meet Needs of Residents

Dominion has served residents of northern Virginia in its present location for several years. The focus of the proposal is to expand by rebranding as an ambulatory surgery center and attracting patients beyond the planning region.

3. Consistency with Virginia State Medical Facilities Plan (SMFP)

Contrary to the applicant's claims, the project is not consistent with the applicable provisions of the Virginia State Medical Facilities Plan. The proposal conflicts directly with the surgical services determination of public need provisions of the plan

Authorized surgery capacity exceeds current and projected surgery demand. There is no regional need for additional surgery capacity.

4. Beneficial Institutional Competition while Improving Access to Essential Care

Plastic surgery services, including the treatments and procedures routinely and frequently provided by Dominion Plastic Surgery, are available widely in Northern Virginia. They are offered in three settings, medical offices, ambulatory surgery centers, and community hospitals. An additional licensed surgery center is not needed to improve or maintain access to care.

Dominion argues that the project would facilitate competition by offering another surgery service choice. Competitive effects, if any, of ambulatory surgery centers are difficult to discern. There is no indication that the project is needed to stimulate, or would facilitate, competition among surgery service providers.

5. Relationship to Existing Health Care System

The Dominion project would be likely to have few, in any, direct health systems effects. There is no current or near-term need for the additional surgery capacity proposed.

6. Economic, Financial Feasibility

The project does not entail an additional capital expenditure. The Dominion *pro forma* budget projects an operating margin of about 66% during the second year of operations. The implied return on investment is extraordinarily high. The project is financially feasible and economically viable.

7. Financial, Technological Innovations

The project appears economically motivated. It does not entail innovative technologies, practices or economic elements distinct from those now incorporated in the surgery services offered regionwide. Comparable services are widely available within the planning region and in neighboring jurisdictions.

8. Research, Training Contributions and Innovations

The project does not have significant research or training elements that warrant special consideration.