

May. Without further planning funds, UVMMC anticipates it will need to cease all planning work pending the outcome of its CON application, resulting in the addition of three months to the construction schedule and \$1,442,722 in additional costs. UVMMC requests that the Board amend the CCON to authorize an increase in expenditures of \$1,456,001. If permitted, the total expenditures allowed by the CCON would be \$6,800,664.

B. Standard of Review

The Board provided for potential amendments to the CCON in the CCON itself: “If [UVMMC] contemplates or becomes aware of a potential or actual . . . material change as defined in 18 V.S.A. § 9432(11), to the scope or cost of the project described in its Application and as designated in this Certificate of Need, [UVMMC] shall file a notice of such change immediately with the Board. The Board shall review the proposed change and advise [UVMMC] whether the proposed change is subject to review.” CCON § III.E. The proposed amendment is “material” because it would yield “a change in project cost that exceeds 10% of the total approved cost of the project.” 18 V.S.A. § 9432(11)(B), GACB Rule 4.600(2).

C. Discussion

UVMMC states that it must incur additional expense because it predicated its project budget on issuance of a CON by May 1, 2015. According to UVMMC’s analysis, a delay of two months could add \$1,442,722 to the costs of the total project. Request to Amend (4/13/15) at 1. The Board recognizes that the time needed to properly review a CON application—especially for a project of this size—is difficult to predict and control, and therefore can affect costs for the overall project.

The conceptual development phase of a given project is limited to “expenditures for architectural services, engineering design services, or any other planning services.” 18 V.S.A. § 9434(c). UVMMC’s request to amend the CCON describes preconstruction services and expenditures that had been scheduled to begin after the project CON was issued. Request to Amend (4/13/15) at 2; Exhibit 2. In other words, UVMMC initially categorized the proposed work as part of the project’s construction phase, to be completed *only* if UVMMC received a CON authorizing the project. Indeed, the request for this amendment makes clear that UVMMC seeks approval to “transfer” activities and expenditures to the conceptual phase that had otherwise been earmarked for the project itself. *Id.* at 2 (“UVMMC is simply requesting that it be allowed to transfer \$1.45M from the Project budget . . . to the budget of the CCON”). Given

the explicit distinction in statute and rule between CCON and CON expenses, the Board must be extremely vigilant when work and expenditures initially classified as “project” expenses have been reclassified as “conceptual.”

The Board must maintain this distinction between conceptual and project expenditures to ensure that the authorization of planning expenditures under the CCON process does not thwart the cost containment purpose at the heart of CON review. 18 V.S.A. § 9437(2). If this amendment were granted, UVMMC would make expenditures it had otherwise committed to delay until such time as it began construction, based on its assumption that the Board will issue a CON by a particular date. At best, the \$1,456,001 once earmarked for the project straddles a line between planning and project expenses. Accordingly, the Board declines to allow the requested expenditures under the CCON at this time.

Order

The proposed change is a material change subject to review by the Board. Upon review of the proposed change, the Board denies approval of the amendment to the CCON.

SO ORDERED.

Dated: April 30, 2015
Montpelier, Vermont

s/ Alfred Gobeille, Chair)
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s/ Cornelius Hogan)
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s/ Jessica Holmes)
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s/ Allan Ramsay)
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s/ Betty Rambur)

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