STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Application of Silver Pines, LLC, Medically Supervised Withdrawal Treatment Center for Substance Use Disorder in Stowe, VT	)	GMCB-016-19con

STATEMENT OF DECISION AND ORDER

Introduction

In this Decision and Order, we review the application of Silver Pines, LLC (Silver Pines or "the applicant") for a certificate of need to develop a medically supervised withdrawal treatment center for individuals with substance use disorder in Stowe, Vermont. The projected first year annual operating expense is $5,346,225.

For the reasons set forth below, we approve the application and issue the applicant a certificate of need, subject to the conditions set forth therein.

Procedural Background

On November 5, 2019, Silver Pines filed a certificate of need (CON) application and request for expedited review. The Board denied the applicant's request for expedited review on November 18, 2019. The Board asked the applicant to provide additional information regarding the project on December 5, 2019 (Q001), January 6, 2020 (Q002), and January 30, 2020 (Q003). The applicant responded to the Board's requests on December 17, 2019 (Resp. 001), January 21, 2020 (Resp. 002), and February 20, 2020 (Resp. 003). The application was closed on March 5, 2020. On April 13 and April 28, 2020, the Board sent clarifying questions to the applicant via email, which the applicant responded to on April 15 and April 30, 2020, respectively.

The Board did not receive any requests to intervene in the proceedings. However, in February and March 2020, the Vermont Division of Alcohol and Drug Abuse Programs (ADAP) and the Vermont Department of Mental Health (DMH) submitted letters to the Board raising concerns with the proposed project. The Board asked the applicant to address these concerns at the public hearing, which, due to the COVID-19 pandemic and required social distancing measures, was held via Skype on March 25, 2020. The applicant complied with the Board's request.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. §§ 9375(b)(8) and 9434(a)(5).

Findings of Fact

1. Silver Pines proposes to develop a 32-bed (16 double rooms) medically supervised withdrawal treatment center for adults with substance use disorder (SUD) at 3430 Mountain Road in Stowe, Vermont. Application (App.) 4, 13; Hearing Transcript (Tr.) (Mar. 25, 2020), 16. The Stowe Development Review Board unanimously authorized the Stowe zoning administrator to issue a change-of-use permit for Silver Pines to operate a medically supervised withdrawal treatment facility at this location, formerly the North American Hockey Academy. Resp. 002, 9; Tr., 17. If a CON is issued for the project, Silver Pines will seek licensure of the 32 beds from the Department of Disabilities, Aging and Independent Living (DAIL) as Therapeutic Community Residence (TCR) beds. Resp. 001, 28.

2. SUD is a significant problem nationally. In 2018, more than 70,200 Americans died from drug overdoses. App., 9 (citing data from the National Institute on Drug Abuse).[1] An estimated 88,000 people die annually from alcohol-related causes, making alcohol the third leading cause of preventable deaths in the United States. App., 9 (citing data from the Centers for Disease Control and Prevention). Since the late 1990s, the drug overdose rate in the United States has more than tripled. App., 9 (citing National Center for Health Statistics Data Brief). In 2018, approximately 21.2 million people age 12 and older needed SUD treatment in the U.S., with 17.4% (3.7 million people) receiving treatment and 11.3% (2.4 million) receiving treatment in a specialized setting. App., 11 (citing data from the Substance Abuse and Mental Health Services Administration).

3. SUD is also a significant problem in Vermont. For example, in 2015–2017, 54,000 Vermonters aged 12 and older (10%) had a SUD in the past year, which is similar to the regional average of 9.6%. Of these 54,000 Vermonters, in a single day count on March 31, 2017, 7,015 people or 12.9% were enrolled in treatment. App., 11 (citing data from the Substance Abuse and Mental Health Services Administration);[2] *see also* National Survey on Drug Use and Health Vermont Detailed Summary Report 2017-2018 (Dec. 2019), 10-11 (comparing Vermont to the Northeast and the U.S. with respect to several alcohol and drug use measures).

4. The service area for the project will be the U.S. and Canada. The applicant notes that the facility will be a short drive from the Burlington Airport, which is served by direct flights from New York City; Philadelphia; Washington, D.C.; Charlotte, NC; Chicago; and Detroit. By car, it will take 3.5 hours to reach the facility from Boston and 2 hours to reach the facility from Montreal, Canada. App., 13; Tr., 15, 18. Silver Pines will focus on recruiting patients in Vermont, the Northeast and mid-west of the United States, and Quebec, Canada. App., 20; Tr., 15, 18.

5. Dr. William Cats-Baril, Ph.D, will serve as the CEO and Managing Partner of Silver Pines. App., 13-15. Dr. Cats-Baril is an Associate Professor for Information and Decision Sciences in the Grossman School of Business at the University of Vermont. He teaches courses in business strategy, customer orientation and total quality management and implementation of change in

[1] Since the application was filed, new data were released showing that the number of overdose deaths fell slightly in 2018 to over 67,000.

[2] The SAMHSA data cited by the applicant also show a steep increase in the number of individuals enrolled in opioid treatment programs in Vermont who were receiving methadone and buprenorphine, which speaks to the progress the State has made in its implementation of the Hub and Spoke system.

executive development programs in Asia, Europe, and North and Latin America. Dr. Cats-Baril is also a consultant with an international practice in organizational performance assessment, consensus building, and program evaluation. He is also an entrepreneur and developed the Systematic Expert System to Assess Risk of Suicide and is founder and managing partner of WISeR Systems, a company that develops expert system-based risk assessments in health care. App., 13-15.

6. Silver Pines will offer treatment at the American Society of Addiction Medicine (ASAM) Level 3.7[3] and will provide 24-hour supervision and care. Silver Pines staff will assist individuals in safely discontinuing the use of addictive substances and prepare them for treatment in other settings to move toward recovery. App., 4, 18. Silver Pines will provide short-term (7 to 10 days), high intensity, medically supervised withdrawal and residential treatment services to adults with SUD, many of whom will also have subacute medical, emotional, behavioral, or cognitive conditions and require services provided by trained addiction treatment counselors, mental health and medical personnel. App., 18; Tr., 17-18.

7. The applicant intends to make Silver Pines one of the premier facilities in the country offering residential medically supervised withdrawal for multiple SUDs by providing innovative, customized, and compassionate care that is evidence-based and data-informed. Treatment will include comprehensive assessment of substance use, co-occurring mental health disorders, and appropriate ASAM levels of care; individualized treatment planning augmented by a proprietary, neural-network algorithm; supervised withdrawal treatment; evidence-based treatment with appropriate psychotropic medication regimen for co-occurring conditions; individual, family, and group therapy; and comprehensive aftercare coordination and post-discharge outreach. App., 4.

8. Nationwide surveys show that nearly half of individuals with SUDs also have one or more co-occurring psychiatric disorders, such as major depression or generalized anxiety. Resp. 001, 4. Silver Pines' programs will integrate the mental health, SUD and other health care needs of its participants and address how such services will occur on-site during program participation and by referral following discharge. App., 4, 18-20, 36-38.

9. Medical services provided at Silver Pines will include a review of health records and prescribed medications, medical, surgical, psychiatric, SUD, social, and family history; initial symptom and risk assessment; diagnostic evaluation; physical exams; lab tests; medication initiation; diagnostic clarification; and on-going symptom monitoring and medication adjustment. App., 18-20.

10. Clinical services provided at Silver Pines will include cognitive behavioral therapy, dialectical behavioral therapy, trauma-informed care, acceptance and commitment therapy, motivational enhancement therapy, guided mindfulness, validated stress-reduction and resiliency building techniques, emotional freedom techniques, sleep hygiene, 12-step groups, gender-focused groups, Seeking Safety, and the Wellness Recovery Action Plan. App., 19. Other ancillary

[3] The ASAM breaks the continuum of care down into broad levels (0.5, 1, 2, 3, and 4), with Level 1 being "early intervention" and Level 4 being "medically managed intensive inpatient services." The ASAM uses decimal numbers to further express gradations of intensity within these broad levels. *See* American Society of Addition Medicine, About the ASAM Criteria, https://www.asam.org/asam-criteria/about.

services, such as acupuncture, massage, life coaching, and nutritional counseling, will also be offered. App., 20. The first session for each of these services is included in the cost of daily residential treatment. However, after the complementary session, the participant must pay separately out of pocket to continue these ancillary services. Resp. 001, 30; Resp. 003, 13.

11. Silver Pines will use machine learning neural-network models and algorithms to customize and augment treatment and aftercare approaches to improve clinical decision-making and create customized aftercare programming and outreach. App., 5-6, 32; Resp. 001, 14-16; Resp. 002, 4-7. The applicant asserts that these models can closely track and learn the patterns of recovery trajectories of very large numbers of patients and can augment the experience and knowledge of health professionals to improve clinical decisions. Resp. 001, 14-16. The types of data inputs to the algorithm include demographic information, age of first substance use, substance(s) used, route(s) of administration, frequency of use, prior treatment outcomes, presence of co-occurring medical and/or psychiatric conditions, family history, social determinants of health, strength of recovery supports, and insight and level of motivation for sobriety. Resp. 002, 5. This information will be obtained during the intake and admission process via phone and in person. Silver Pines staff will gather the information from patient interviews and evidence-based assessment tools, including Patient Health Questionnaire (PHQ)-9, Generalized Anxiety Disorder (GAD)-7, Diagnostic and Statistical Manual (DSM)-5, Cross-Cutting Symptom Measure, and Systematic Expert Risk Assessment of Suicide (SERAS). Resp. 002, 5-6.

12. The treatment algorithm will classify patients during the admission process using diagnostic evaluation, disease severity, and prior treatment responses, and will match individuals with the most effective treatment modalities given their specific profiles. Resp. 002, 6. As individuals complete the program, outcomes will be tracked and added to the experience of the algorithm, which the applicant asserts will increase the consistency of decision-making and care across all health care professionals and staff at Silver Pines. The neural network model underlying the algorithm that will be used by Silver Pines has been in development for two years. The algorithm will be the intellectual property of Silver Pines, LLC. Resp. 001, 14-16.

13. The Vermont Department of Health's Division of Alcohol and Drug Abuse Programs (ADAP) expressed concern that "machine learning and neural network models have not been fully tested on the population [Silver Pines] will be serving." Letter from ADAP (Feb. 20, 2020), 2. The applicant acknowledged that this is true, but explained that the model will not be relied upon as the primary source of care until it has treated a sufficient number of patients and behaves in a way that has been proven to be helpful for clinical staff. *See* Tr., 34-37. Until then, the applicant asserts that the model will merely provide "an extra layer of safety." *See* Tr., 36.

14. Silver Pines will collect data on its patients, including demographic data (i.e., race, ethnicity, gender orientation, marital status, employment status, education, housing, referral source, and insurance type), substances used, date of first use, method of administration, frequency of use, date of last use, number of people who complete the program, and number and percent of people on medication-assisted treatment (MAT). Resp. 001, 20. Following discharge, Silver Pines will also collect data on outcomes, such as treatment initiation, treatment retention, successful completion of program, rates of abstinence and substance use reduction, aftercare follow up, client satisfaction, and reduced ED visits and hospital admissions. Hearing Presentation (March 25,

2020), 22. The applicant offered to share this data with the ADAP and other state agencies that request it. Resp. 001, 20; Resp. 002, 10; Tr., 23.

15. Silver Pines will employ an executive director, a medical director, a clinical director, three physicians, an on-call physician, a nurse manager, ten nurses and one mobile nurse, four counselors, three after care specialists, fourteen direct care staff, and the following administrative staff: a receptionist, five intake coordinators, 0.5 database analysts, 0.5 human resources staff, and an accountant. Resp. 003, 11. The applicant's preference is to hire a medical director who is a board-certified psychiatrist with an addiction fellowship. However, the applicant states that there are not a lot of individuals with that profile and so it may hire a primary care physician with an addiction fellowship. Resp. 002, 6-7; Tr., 87-88. To ensure excellent care, Silver Pines will seek to provide a high clinical staff-to-patient ratio. *See, e.g.,* Resp. 001, 4-5.

16. Silver Pines states that recruitment of staff will be focused primarily in Vermont, New Hampshire and New York using newspapers, online search engines, local job fairs, open houses with on the spot interviews and word of mouth. If needed, Silver Pines will engage recruitment firms specializing in health care staffing and offer sign-on bonuses and relocation fees for new employees. Resp. 001, 5-6; *see also* Resp. to ADAP and DMH Comments (March 20, 2020), 2.

17. As noted earlier, Silver Pines will offer a 7- to 10-day medically supervised withdrawal treatment program. After the 7 to 10 days are completed, individuals will be discharged to seek other inpatient, intensive outpatient, or residential programs. App., 32. With the understanding that addiction is a chronic medical condition and management of withdrawal is only a step in the journey to recovery, Silver Pines staff will work with each individual to develop a thorough continuing care plan. Within the first 24 hours at Silver Pines, Aftercare Specialists will begin work with each participant to develop an aftercare plan. Aftercare Specialists will identify providers and/or collaborate with existing providers in the area where the individual will be residing upon discharge from Silver Pines. Aftercare Specialists will call outpatient providers and schedule appointment dates and times. As individuals with SUD are best treated longitudinally along the continuum of care, aftercare plans will likely include a combination of primary care, mental health counseling, medication management, outpatient or intensive outpatient programs, peer support groups and family support. Resp. 001, 16.

18. With consent from the participant being discharged, the applicant expects to provide up to 12-months of post-discharge support and follow up for each discharged patient via phone, email and video conferencing. Resp. 001, 16, 22.; Resp. 002, 5. The applicant expects that staff will provide approximately five hours of follow-up activities per patient at a cost of approximately $131 per patient. Resp. 003, 4-5; Tr., 69-71. At the hearing, the applicant explained how this estimate was calculated and stated that, because this work is so critical to the effectiveness of its program, the estimate should be viewed as "a floor" because it will spend whatever time is needed to make sure that the discharge and placement of patients is appropriate. Tr., 69-71.

19. ADAP raised a concern about the lack of connection Silver Pines will have to the rest of the specialty treatment system funded through ADAP and the Department of Vermont Health Access. Without this connection, ADAP states that individuals discharging from the program may have inadequate discharge plans for follow-up services. Letter from ADAP (Feb. 20, 2020), 1. The

applicant responded that it will seek to form robust relationships with treatment providers at all levels of care in Vermont to facilitate seamless transitions of care. The applicant expressed a desire to have strong and sustained connections to other treatment providers within Vermont's substance use disorder system of care. Resp. to ADAP and DMH Comments (March 20, 2020), 3.

20. To facilitate appropriate referral and aftercare planning for patients who are Vermont residents, Silver Pines employees will be trained in the Vermont System of Care as part of their onboarding process. This will include making live connections to the providers in this network. Resp. 001, 17; Resp. 003, 3. Learning objectives of the training will include employees being able to identify treatment options available in Vermont at each of the ASAM levels of care, explain Vermont's Hub and Spoke model for opioid use disorder (OUD), describe community resources including Turning Point Centers and the Vermont Recovery Network, and utilize a directory of programs and services by county to facilitate aftercare planning for Vermont residents. In developing the training, Silver Pines will compile a list of resources, including ADAP, contact providers and peer-support services throughout the State of Vermont, establish a close working relationship with North Central Vermont Turning Point Center, and prepare an orientation module with interactive elements for presenting and reinforcing the topics of the training. Silver Pines will also hold regular in-service trainings to provide the latest updates on standards of care in the field and any new developments and resources in Vermont's system of care. Resp. 003, 3.

21. The applicant projects that Silver Pines will serve 365 individuals in year 1, including 39 Vermont residents; 660 individuals in year 2, including 64 Vermont residents; and 921 individuals in year 3, including 90 Vermont residents,[4] which equates to approximately 90% of participants being from out-of-state and 10% being from Vermont annually. Resp. 001, 4. The applicant states that, "among treatment-seeking individuals who meet admission criteria, preference will be given to Vermont residents." Resp. 001, 4.

22. The applicant expects to work with Stowe Emergency Medical Services to transport any participants who need emergency medical services from Silver Pines to Copley Hospital in Morrisville, Vermont. *See* App., 29. Silver Pines projects that up to 9 individuals in year 1, 17 individuals in year 2, and 23 individuals in year 3 and beyond may need to be transported to the Emergency Department (ED) at Copley. Resp. 001, 24.

23. The number of individuals at Silver Pines that may be referred for admission to a Vermont inpatient psychiatric care facility is projected to be:

	Year 1	**Year 2**	**Year 3**
Vermont Residents	39 * 1% = less than 1 person	64 * 1% = less than 1 person	90 * 1% = less than 1 person
Non-Residents	326 * 1% = 3.3 persons	596 * 1% = 6 people	831 * 1% = 8.3 people

[4] The applicant estimates that, of the 257 adult residents who were admitted to SUD treatment in Vermont in 2017, who had private insurance or paid cash, and who needed medically supervised withdrawal and/or residential treatment, Silver Pines will treat 15% in year 1, 25% in year 2, and 35% in year 3. Resp. 001, 4.

Resp. 003, 8.

24. The number of non-residents that may be referred to the Vermont Community/System of Care for SUD services is projected to be:

	Year 1	Year 2	Year 3
Non-Residents	326 * 3% = 10 people	596 * 3% = 18 people	831 * 3% = 25 people

Resp. 003, 8.

25. DMH expressed concern about the burden to Copley Hospital and to Vermont's inpatient psychiatric system that could result from the project. *See* DMH Letter (March 5, 2020). In response to these concerns, the applicant notes that the 25 non-Vermont residents at Silver Pines who may require local EMS and hospital services each year represents only 0.1% of Copley Hospital's 13,115 annual ED visits in 2018. The applicant also notes that the University of Vermont Medical Center, which is the closest hospital to Stowe with inpatient psychiatric beds, had 915 inpatient discharges with a high level diagnosis of mental disorders in 2018 and the estimated 8.3 out-of-state Silver Pines participants who may need inpatient psychiatric care each year represent 0.9% of that number. The applicant also argued that "Silver Pines will ultimately decrease demands on emergency departments and inpatient psychiatric facilities around the state by providing Vermont residents with effective treatment for substance use and co-occurring psychiatric disorders and facilitating linkages to ongoing outpatient care." Resp. to ADAP and DMH Comments (March 20, 2020), 6 (emphasis in original).

26. The applicant's business model changed during our review. The application initially stated that Silver Pines will contract with Blue Cross Blue Shield of Vermont and accept payments from other third-party payers. App., 21 ("Silver Pines will accept private payments, contract with Blue Cross Blue Shield (BCBS) of Vermont, and be eligible for additional third-party reimbursement, but it does not plan to become a participating provider for Medicaid or Medicare reimbursement."); *see also* App., 29 (asserting that Silver Pines "will contract with Blue Cross Blue Shield (BCBS) of Vermont, expanding the array of high-quality substance use services available to Vermonters."). However, Silver Pines later stated that it will require 100% payment from all patients prior to admission and will not contract with third-party payers, even though it projects that 43% of program participants will have commercial insurance. Resp. 001, 26, 29; Resp. 002, 10-11. Silver Pines plans to provide commercially insured participants with an itemized bill that they can then use to seek reimbursement from their insurer. Resp. 003, 15; Tr., 40. Silver Pines will not participate in Medicaid or Medicare. App., 21, 28.

27. There is currently only one ASAM level 3.7 facility in Vermont, the Brattleboro Retreat, which is located in the southern part of the state. App., 12, 33; Resp. 002, 2. Noting that Silver Pines will not participate in Medicaid or Medicare and has the maximum capacity of 32 persons, the applicant asserts that the project will not erode volumes or have a negative financial impact on other Vermont facilities that would result in compromising quality. App., 33-34. Furthermore, although the applicant expects that Silver Pines will attract Vermonters who currently go out of state for their treatment, as noted above, most people seeking treatment at Silver Pines will be from out of state. App., 12; Resp. 001, 3-4.

28. ADAP expressed concern that the proposed project will result in staff leaving positions in state-certified addiction treatment providers, which will negatively impact state-certified addiction treatment providers' ability to provide services. Letter from ADAP (Feb. 20, 2020). In response to this concern, the applicant noted that, in its first year of operations, Silver Pines plans to employ three Licensed Alcohol and Drug Abuse Counselors (LADCs) or 0.7% of the 427 LADCs that were actively providing direct care to patients in Vermont in 2019; moreover, in its third year of operation, Silvers Pines plans to employ six LADCs, or 1.4% of the 2019 workforce. Resp. to ADAP and DMH Concerns (Mar. 20, 2020), 2-3; Tr., 30-31. The applicant also noted that it will actively recruit candidates from outside Vermont and provide relocation assistance to hire non-residents. Resp. to ADAP and DMH Concerns (Mar. 20, 2020), 2. The applicant also notes that the program will create 55 new jobs in Vermont by year 3. Tr., 20, 29.

29. The applicant states that it will align with the Department of Health's six goals concerning effective substance use treatment.[5] For example, the applicant states it will conduct screening of sexually transmitted diseases, HIV/AIDS, Hepatitis B and C, and liver functions; promote and offer smoking cessation treatments; provide onsite treatments of each of these conditions and collaborate with individuals' primary care physicians (PCP) or establish a relationship with a PCP; increase capacity and access to MAT services including buprenorphine, naltrexone, disulfiram, and acamprosate; have an electronic health record (EHR) that will be compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Joint Commission (JC), and Commission on Accreditation of Rehabilitation Facilities (CARF); and will hire competent staff, increase understanding of SUD services, and increase health equity. App., 36-37.

30. SUD is associated with a variety of medical conditions and can have a wide range of short- and long-term adverse impacts, including cardiovascular problems, kidney damage, liver damage, and gastrointestinal problems. App., 26 (citing data from the National Institute on Drug Abuse).

31. The applicant anticipates that Silver Pines' comprehensive treatment approach will contribute to decreased downstream health costs, noting that a 2016 study in Vermont and a retrospective claims analysis have both demonstrated decreased total medical costs for individuals with opioid use disorder engaged in ongoing pharmacotherapy. The applicant also cited a 2017 study that found that inpatient addiction consultation for hospitalized patients increases post-discharge abstinence and reduces addiction severity. This study also showed that starting medication-assisted treatment for alcohol use disorder during inpatient treatment led to a statistically significant decrease in inpatient substance-related hospitalizations and a significantly greater reduction in substance-related ED visits. Resp. 001, 27.

32. In response to concerns from ADAP about the efficacy of the program, the applicant cited research that concludes that brief residential treatment may produce lasting effects on substance use when paired with structured, continuing care following discharge. Silver Pines notes that the

[5] The six goals are:1) Effective and integrated public health; 2) Communities with the capacity to respond to public health needs; 3) Internal systems that provide for consistent and responsive support; 4) Competent and valued workforce that is supported in promoting and protecting the public's health; 5) A public health system that is understood and valued by Vermonters; 6) Health equity for all Vermonters. Health Department Strategic Plan Goals 2014-2019, https://www.healthvermont.gov/about-us/reports/strategic-plan.

program aims to have strong and sustained connections to other treatment providers within Vermont's SUD system of care as part of its overall philosophy and acknowledges that aftercare planning is a critical part of recovery. Recognizing the importance of ongoing medication-assisted treatment for individuals with opiate use disorder, Silver Pines will begin work shortly after admission to connect patients with accessible treatment in their respective communities and will explore telemedicine for individuals with limited local options. Resp. to DMH and ADAP Comments (March 20, 2020), 3-4.

33. The applicant does not currently offer any services or programs. App., 28.

34. The building Silver Pines will lease was purchased by Bullrock Corporation for $1,250,000. Tr., 17, 57-58. A separate LLC, 3430 Mountain Road Realty, LLC, will own and fit-up the building. Fit-up is expected to cost $3,600,000. Tr., 57. Silver Pines will lease the building for $50,000 per month or $600,000 annually for the first year, which will increase to $51,375 a month in year 2 and $52,788 a month in year 3 (2.8% annual increases). Resp. 003, Year 1 Proforma P & L and Balance Sheet; Tr., 55.

35. The project's financial model evolved during our review. The applicant explained that it went back and forth between financing the project 100% with equity contributions and financing the project with a blend of equity contributions and long-term debt. The applicant ultimately decided to finance the "early" phases of the project using equity contributions only. Resp. 003, 16.

36. The project will be financed with $2,650,000 in capital contributions from investors. Initially, the $2,650,000 will be used for operations. Resp. 003, 16, Three Year Proforma P & L Balance Sheet; Tr., 55. If additional capital is required, the applicant plans to seek investments from individuals that have backed former projects initiated by Dr. Cats-Baril. Although Dr. Cats-Baril stated that due to COVID-19, he is a little less certain of the amount of additional money he can raise if Silver Pines experiences a shortfall in funding, he expressed confidence that he would be able to get a low-rate loan. Tr., 59-60.

37. Silver Pines will give investors 80% of profits until they are completely reimbursed and, thereafter, investors will receive 20% of profits. Tr., 61.

38. The cost of the program per person/per day was originally represented to be $2,142. App., 20. Later, the cost per person/per day was revised to $1,460 or $10,220 for seven days. Resp. 003, 16; Tables 6B and 6C. The applicant asserts that this cost is comparable to the Brattleboro Retreat, whose "published rate" is $10,500 per week. App., 42; Tr., 49.; *see also* App. 21 (stating "the other ASAM 3.7 facility in Vermont . . . charges $1,500 - $1,600 per day for medically supervised withdrawal services alone.").

39. Silver Pines projects revenues of $5,600,560 in year 1, $10,132,400 in year 2 (an 81% increase), and $14,126,960 in year 3 (a 39% increase). Resp. 003, Table 6B, Revenue Source Projections. Because it will require 100% payment prior to admission, Silver Pines expects to have no bad debt.

40. Projected expenses are $5,346,225 in year 1, $7,648,369 in year 2 (a 43% increase), and $8,652,316 in year 3 (a 13% increase). The financials show a net loss of $577,101 for the start-up year, a gain of $254,335 in the first full year, a net gain of $2,484,031 in second year (growth of 877%), and a net gain of $5,474,644 in the third year (growth of 120%). The project's operating margin is 5% in year 1, 25% in year 2, and 39% in year 3. The financial documents provided by the applicant regarding the first three years of operation do not reflect CEO compensation or equity distributions to investors. Resp. 003, Year 1 Proforma P & L and Balance Sheet.

41. By year three of the project, the applicant expects that 55 "well-paying jobs" will be created at Silver Pines. Tr., 20.

42. Silver Pines will earmark 1% of its net revenues to financially support local community-based organizations that address SUD. In its first year of operation, Silver Pines will form an independent board of seven individuals who are recognized leaders in the prevention and treatment of addiction in Lamoille County and the State of Vermont. The Board will seek proposals annually and decide how to allocate the funds. If the 1% of net revenues are not awarded to organizations in any given year, they will be rolled over into the next year. Based on Silver Pines' financial projections, the "1% for recovery" will range between $40,0000 up to $100,000 in its first three years of operation. Resp. 001, 24-25. The applicant stated that this will be a "built-in distribution" that is treated as a "cost of doing business."; Tr., 19, 67-68. The applicant also stated that if Silver Pines is very successful, 1% of its net revenues may not be the limit. Tr., 93-94.

43. The applicant considered the need for transportation and understands the barrier to care it can present. Therefore, Silver Pines will offer the option of transportation to individuals seeking treatment. App., 28; Tr., 18.

44. Silver Pines' health care information technology will adhere to privacy standards set by state and federal regulators. Silver Pines will contract with an electronic health record system that adheres to these same standards and have clear policies and procedures for all employees. Silver Pines plans to purchase an electronic health record system from Cellerity, Procentive or AZZLY. App., 28; Resp. 001, 29; Resp. 003, 13.

Standard of Review

Vermont's CON process is governed by 18 V.S.A. §§ 9431-9446 and Green Mountain Care Board Rule 4.000 (Certificate of Need). An applicant bears the burden of demonstrating that each of the criteria set forth in 18 V.S.A. § 9437 is met. Rule 4.000, § 4.302(3).

Conclusions of Law

I.

Under the first CON criterion, an applicant must demonstrate that the proposed project aligns with statewide health care reform goals and principles because the project takes into consideration health care payment and delivery system reform initiatives; addresses current and future community needs in a manner that balances statewide needs (if applicable); and is consistent

with appropriate allocation of health care resources, including appropriate utilization of services, as identified in the Health Resource Allocation Plan (HRAP). 18 V.S.A. § 9437(1).

Vermont All-Payer Accountable Care Organization Model

Vermont is engaged in a multi-year payment and delivery system reform initiative known as the All-Payer Model. The All-Payer Model seeks to reduce cost growth for certain health care services and improve both the health of Vermonters and the quality of care they receive. The quality and population health goals of the All-Payer Model reflect statewide needs and priorities for health system reform and for improving the health of Vermont's population. *In re: Vermont All-Payer Accountable Care Organization Model Agreement* (Oct. 31, 2016), 6.[6] One of the All-Payer Model's goals is to reduce deaths of Vermont residents related to drug overdose. *See* All-Payer Accountable Care Organization Model Agreement, App. 1. To the extent the proposed project will serve Vermont residents (see the discussion of criterion three below), it can help the State meet this goal by providing high quality medically supervised withdrawal services and aftercare planning and support.

To the extent the proposed project will serve Vermont residents (see the discussion of criterion three below), it can also help the State achieve the All-Payer Model's financial targets. SUD is associated with a variety of medical conditions and can have a wide range of short- and long-term adverse impacts, including cardiovascular problems, kidney damage, liver damage, and gastrointestinal problems. Findings, ¶ 30. Effectively treating SUD can help prevent or mitigate these negative impacts, thereby improving population health and lowering health care costs. Furthermore, the data-driven, customized treatment approach Silver Pines will employ has the potential to lead to better patient outcomes—increased long-term abstinence, decreased rates of relapse, and fewer medical and psychosocial complications. This, in turn, can be expected to result in savings for the healthcare system due to fewer adverse events and fewer costly emergency department visits and inpatient admissions. *See* Findings, ¶ 31.

Silver Pines may also be able contribute to improved population health by sharing data with State agencies that will facilitate the design, implementation, and evaluation of effective population-level interventions. Silver Pines' clinical informatics platform will track individuals' characteristics, details of treatment, and outcomes using validated instruments to assess SUDs, psychopathology, wellbeing, and functioning. The applicant has offered to share data with ADAP and DMH to inform ongoing assessment of treatment needs, outcomes, and moderators. Findings, ¶ 14. Through conditions we impose in the CON, we will require that the applicant follow through on this offer.

Hub and Spoke System for Opioid Use Disorder

Another relevant reform initiative is Vermont's Hub and Spoke system for treatment of OUD. The Hub and Spoke system is comprised of regional specialty treatment centers ("Hubs") and office-based opioid treatment settings ("Spokes") located in communities across Vermont that provide medication-assisted therapy and other services to individuals suffering from OUD. The

[6] https://gmcboard.vermont.gov/sites/gmcb/files/documents/APM-FINAL-Justification.pdf.

State of Vermont pays for Hub and Spoke services through Medicaid and provides oversight for the program. *See* State of Vermont, Blueprint for Health, Hub and Spoke.[7]

ADAP, one of the agencies responsible for implementing the Hub and Spoke system, expressed concern about Silver Pines' lack of connection to the rest of the specialty treatment system funded by Medicaid. ADAP cautions that, without these connections, individuals discharged from Silver Pines may have inadequate discharge plans for follow up services. Findings, ¶ 19. We share this concern and appreciate ADAP's input. However, at this stage of the project, we do not expect the applicant to have established formal connections to the SUD treatment system in Vermont. The applicant has expressed an intent to develop these connections following issuance of a CON and it has a strong incentive to do so; Silver Pines' program will be but a link in a larger chain of treatment and recovery and it will be critical for the applicant to develop meaningful relationships with the other links in this chain if it is going to build a reputation as a world-class facility. *See* Findings, ¶ 18-19. Finally, the applicant has described concrete steps that it will take to ensure its employees are knowledgeable about Vermont's SUD system of care and the options for Vermonters who complete the program at Silver Pines. *See* Findings, ¶ 20.

Through the CON, we will require that the applicant seek input from ADAP in developing its training so that information regarding Vermont's system is accurately presented to Silver Pines employees. We will also require that the applicant develop connections to other SUD treatment providers in Vermont, including providers participating in Vermont's Hub and Spoke system.

Health Resources Allocation Plan

As required by 18 V.S.A. § 9437(1), the proposed project is also consistent with the HRAP,[8] which identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis. *See* HRAP Standards 1.2 (applicant must show that services improve health and, to the extent such services have been the subject of comparative effectiveness research, must show that the results of this research support the proposed project); 1.3 (applicant must demonstrate that a collaborative approach to delivering the service has been taken or is not feasible or appropriate); 1.4 (if there is a positive correlation between better quality and higher volume, applicant must show it will be able to maintain appropriate volume and will not erode volume at any other Vermont facility in a way that would compromise quality); 1.6 (applicant must show how it will collect and monitor data relating to health care quality and outcomes); 1.7 (project is consistent with evidence-based practice); 4.4 (applicant must explain how project is consistent with the Department of Health's recommendations concerning effective substance abuse treatment); 4.5 (to the extent possible, applicant must ensure project supports further integration of mental health, substance abuse and other health care); and 4.6 (applicant should demonstrate how integration of mental health, substance abuse and primary care will occur, including whether co-location of services is proposed).

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[7] https://blueprintforhealth.vermont.gov/about-blueprint/hub-and-spoke.

[8] The Vermont Legislature in Act 167 (2018) made several changes to the State's CON law. *See* https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT167/ACT167%20As%20Enacted.pdf. As amended by Act 167, 18 V.S.A. § 9437(1)(C) continues to reference the HRAP, which is in the process of being updated. In the interim, we consider the current HRAP standards.

Based on the above, and with the conditions we impose in the CON, we conclude that the first criterion is satisfied.

II.

Under the second criterion, an applicant must demonstrate that the cost of the project is reasonable because the applicant's financial condition will sustain any financial burden likely to result from completion of the project and because the project will not result in an undue increase in the costs of medical care or an undue impact on the affordability of medical care for consumers. The Board must consider and weigh relevant factors, such as "the financial implications of the project on hospitals and other clinical settings, including the impact on their services, expenditures and charges [and whether such impact] is outweighed by the benefit of the project to the public." Under the second criterion, the applicant must also demonstrate that less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate; and if applicable, that the project has incorporated appropriate energy efficiency measures. 18 V.S.A. § 9437(2).

Applicant's Financial Condition

The applicant has demonstrated that it has adequate resources to sustain any financial burdens likely to result from the project. The project will be financed by equity contributions of $2,650,000. If Silver Pines attains the projected program occupancy for each of the first three years of operation, patient revenues combined with equity contributions will result in a small profit in year 1 and substantial profits in years 2 and 3. Findings, ¶¶ 36, 38-39. If additional capital is required, the applicant anticipates that it will be able to raise it from investors. If that is not possible—and it may not be possible due to the recent financial turmoil resulting from COVID-19—the applicant is confident that it will be able to obtain a low-rate loan to cover its needs. Findings, ¶ 36.

We note that the financial documents provided by the applicant do not include a salary for the CEO or equity distributions to the owners of Silver Pines. Findings, ¶ 40. This information is needed for a complete understanding of the project's finances as the project is implemented. Therefore, while we find that the applicant's financial condition will sustain any financial burden likely to result from completion of the project, we will require the applicant to provide the salary for the CEO and equity distributions to the owners of Silver Pines as part of its implementation reporting on project finances.

Impact of the Project on the Cost and Affordability of Medical Care

The program at Silver Pines will cost approximately $1,460/day, or $10,220 for a seven-day program. Findings, ¶ 38. Despite this cost, we do not anticipate that the project will result in an undue increase in the cost or affordability of medical care in Vermont.

The cost of treatment at Silver Pines will likely be comparable to the cost of treatment at the other ASAM-level 3.7 facility in Vermont. *See* Findings, ¶ 38. Moreover, the integrated, customized program Silver Pines will offer may lead to better outcomes in terms of increased long-term abstinence, decreased rates of relapse, and fewer medical and psychosocial

complications. To the extent the project serves Vermonters (see the discussion of criterion three below), it should help individuals and insurers avoid downstream costs connected to SUD.

Financial Implications for Hospitals and other Clinical Settings

ADAP raised concerns about the financial impacts of the proposed project on state-certified addiction treatment providers in Vermont and the ability of these providers to continue to offer services to those in need. Specifically, ADAP expressed concern that staff will leave state-certified addiction treatment providers for better-paying positions at Silver Pines. Findings, ¶ 28. However, the number of clinical providers employed by Silver Pines will be relatively small. For example, in its first year of operations, Silver Pines plans to employ three Licensed Alcohol and Drug Abuse Counselors (LADCs) or 0.7% of the 427 LADCs that were actively providing direct care to patients in Vermont in 2019. In its third year of operation, Silvers Pines plans to employ six LADCs, or 1.4% of the 2019 workforce. Findings, ¶ 28. While the dissent emphasizes that there is currently a serious shortage of Registered Nurses (RNs) working in Vermont and that Silver Pines will also employ 9.4 RNs, there were a total of 8,457 RNs who reported working in Vermont or with Vermont residents in 2017. Area Health Education Centers Program, *Registered Nurses in Vermont*.[9] Thus, despite the current shortage, the impact of this project is likely to be minimal. Additionally, the applicant will actively recruit from New Hampshire and New York and will offer employees relocation assistance. Findings, ¶ 28. Thus, some of the providers Silver Pines will hire may come from out of state as opposed to other Vermont facilities and add to much needed population and job growth in the state.

We place great value in the insights and opinions of our sister agencies, and we share the concern that ADAP raised and that our fellow Board Members have echoed in their dissenting opinion. However, none of the potentially affected organizations sought to intervene in this case and present evidence regarding how the proposed project will impact them financially. In the absence of such evidence, we do not think the record is sufficient to let these concerns stand in the way of this project, which can benefit the State through potential economic growth, improved health and avoided costs, including costs connected to criminal justice activities, lost productivity, and, more relevant to our review, emergency department visits and inpatient hospital admissions. Furthermore, the applicant has committed to providing data to ADAP and any other state agencies and distributing one percent of its net revenues annually to support local community-based organizations—again, commitments we will ensure the applicant follows through on. Findings, ¶¶ 14, 42.

Based on the above considerations, we conclude that the second criterion is satisfied.

III.

Under the third criterion, an applicant must show that "there is an identifiable, existing, or reasonably anticipated need for the proposed project that is appropriate for the applicant to provide." 18 V.S.A. § 9437(3).

[9] http://contentmanager.med.uvm.edu/docs/ahec_rn_72117/ahec-documents/ahec_rn_72117.pdf?sfvrsn=2.

We agree with the two dissenting Board Members that, because the purpose of Vermont's CON program is to promote the general welfare and protect the lives, health, and property of the people of Vermont, the needs of Vermont residents should be our primary concern when evaluating whether a project meets this criterion. However, a project that meets needs of both Vermont residents and non-residents is not foreclosed by our CON statutes and, with the conditions we place on the CON, we conclude that this criterion is satisfied.

The applicant has demonstrated that SUD is a serious problem in both the U.S. and Vermont. *See* Findings, ¶¶ 2-3. Indeed, as explained above, reducing the number of Vermonters who die from drug overdose is a priority of the State that is reflected in the All-Payer Model. The applicant has also demonstrated that there is a need for individualized, evidence-based SUD treatment to combat this problem. The issue we have, however, is that this need is broader than the rather limited scope of the proposed project. Silver Pines will provide a very specific service—a residential, medically supervised withdrawal treatment program for SUD—to a very specific group of people—adults who are willing and able to pay for services out of pocket. *See* Findings, ¶ 26. While the applicant expects that 43% of its patients will have commercial insurance, Silver Pines will not seek to contract with commercial insurers, meaning that commercially insured individuals will have to seek reimbursement from their insurer. *See* Findings, ¶ 26.

Given the applicant's business model, it is perhaps understandable that Silver Pines will not seek to contract with Medicaid or Medicare. *See* Tr., 43 (describing issues of cash flow and attractiveness to investors). It is much harder, however, to understand why Silver Pines would not seek to contract with the handful of commercial insurers in Vermont. On the one hand, the applicant states that it will give an admissions preference to Vermonters, yet, on the other hand, it plans to erect a significant barrier to access for Vermonters by not taking insurance. Findings, ¶¶ 21, 26. We also note that the applicant initially stated that Silver Pines would contract with Blue Cross Blue Shield of Vermont and other insurers. It even cited this fact as evidence that the project would expand Vermonters' access to high-quality substance use services. Findings, ¶ 26. While the applicant's plan apparently changed during the review process, it is not clear why.

The applicant expects that only around 10% of program participants each year will be Vermont residents. This equates to 39 Vermonters in year 1, 64 Vermont residents in year 2, and 90 Vermont residents in year 3. Findings, ¶ 21. However, if the applicant does not seek to contract with commercial insurers in Vermont, we think it is unlikely that Silver Pines will be able to attract even these modest numbers of Vermonters. The applicant's decision to not engage with Vermont insurers therefore calls into question whether the project will meet the needs of Vermonters and satisfy other CON criteria discussed in this decision. For these reasons, we will require that the applicant negotiate with the major insurance carriers in the state, MVP, Cigna, and BCBS of Vermont.

IV.

The fourth criterion requires an applicant to demonstrate that the proposed project will improve the quality of health care in Vermont, provide greater access to health care for Vermonters, or both. 18 V.S.A. § 9437(4).

We believe that the project will improve the quality of health care in Vermont. Silver Pines will employ evidence-based assessment and treatment tools and adjunctive therapies, will have a high staff-to-patient ratio, and will integrate mental health care into its program. *See* Findings, ¶¶ 7-8, 10. The facility will provide 24-hour nursing and physician services and all services will be provided by trained addiction treatment counselors and mental health and medical professionals. *See* Findings, ¶ 6. While in treatment at Silver Pines, Aftercare Specialists will engage each participant in the development of an aftercare plan. Aftercare Specialists will identify providers and set up appointments with a range of providers based on individual need to facilitate the provision of continuing care in an intensive outpatient, residential or other inpatient level of care following discharge from Silver Pines. Aftercare plans will likely include a combination of primary care, mental health counseling, medication management, peer support and family support services. Findings, ¶ 17.

As explained above, through the CON, we will require that the applicant seek input from ADAP in developing its staff training. We will also require the applicant to develop connections to other SUD treatment providers in Vermont. These conditions relate to the first CON criterion, but they also relate to quality. Post-discharge planning and follow-up will be a critical component of the program at Silver Pines and, to effectively provide these services to Vermonters, Silver Pines will need to work within the existing systems of care in the state.

With the conditions we impose in the CON, we believe the project will also provide greater access to health care for Vermonters. The project will provide an additional 32 beds for a residential, medically supervised withdrawal treatment program for SUD at an ASAM 3.7 level. Findings, ¶¶ 1,6. Currently, the only other facility providing this level of care is the Brattleboro Retreat, which is located in the southern part of the state. Findings, ¶ 27. Although Silver Pines anticipates that most program participants will be from out of state, the applicant expects to attract Vermonters who are currently receiving this kind and level of treatment outside Vermont. Furthermore, the applicant states that, "among treatment-seeking individuals who meet admission criteria, preference will be given to Vermont residents." Findings, ¶ 21.

As noted above, we believe the applicant's refusal to engage with commercial insurers in Vermont represents a significant and unjustified barrier to access for Vermonters. Accordingly, we will require that the applicant negotiate with the major commercial insurers in the state.

Finally, we acknowledge the concerns raised by DMH regarding the potential burden the project will place on Vermont's inpatient psychiatric treatment system, which relates to access. However, the numbers at issue are relatively small. *See* Findings, ¶ 25. Moreover, we expect that, to the extent the project serves Vermonters (see the discussion of criterion three above), these increases will be offset by decreased ED and inpatient psychiatric care needs.

For the reasons stated above, we find that this criterion is satisfied.

V.

The fifth criterion requires that an applicant demonstrate that the project will not have an undue adverse impact on any other services it offers. 18 V.S.A. § 9437(5). The project is a new

venture and the applicant does not have any other facilities or offer or provide any other services at this time. Findings, ¶ 33. Therefore, this criterion does not apply to the project.

VI.

The sixth criterion was repealed during the 2018 legislative session. 18 V.S.A. § 9437(6) (repealed).

VII.

The seventh criterion requires that an applicant adequately consider the availability to affordable, accessible transportation services to the facility, if applicable. 18 V.S.A. § 9437(7). As the facility is in a rural setting and lack of transportation can be a barrier to care, Silver Pines will offer transportation to individuals admitted for treatment. Findings, ¶ 43. Accordingly, we find this criterion is satisfied.

VIII.

The eighth criterion requires that the purchase or lease of new health care information technology conform to the Health Information Technology Plan. 18 V.S.A. § 9437(8). The goals of the Health Information Technology Plan are to create one health record for every person (e.g., further real-time exchange of health records to support direct care, care coordinators, and efficient transitions of care and remove barriers to ensure health data follows the person and are not stuck in information silos); improve health care operations (e.g., provide designated health care organizations and programs with high quality, reliable data to support measurement and reporting needs); use data to enable investment and policy decisions (e.g., provide policy makers and health system stakeholders with aggregate data to support evaluation and program decision making). As part of the project, Silver Pines will be purchasing an electronic health record, which will be compliant with privacy standards set by state and federal regulators. Findings, ¶ 44. Silver Pines will emphasize data collection and analysis in its programming and has offered to share data and results with agencies responsible for overseeing state programs and initiatives regarding mental health and substance use. *See* Findings, ¶ 14. We find this criterion is satisfied.

IX.

The ninth criterion requires that an applicant show that the project supports equal access to appropriate mental health care that meets standards of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care, as appropriate. 18 V.S.A. § 9437(9).

Nationwide surveys show that nearly half of individuals with SUDs also have one or more co-occurring psychiatric disorders, such as major depression or generalized anxiety. Findings, ¶ 8. Silver Pines will offer adults with SUD a short-term, intensive, medically supervised withdrawal program with 24-hour nursing and physician services and integrated evidence-based mental health and augmentative services on site. Treatment at Silver Pines will include comprehensive assessment of substance use, co-occurring mental health disorders, and appropriate ASAM levels

of care; individualized treatment planning augmented by a proprietary, neural-network algorithm; supervised withdrawal treatment; evidence-based treatment with appropriate psychotropic medication regimen for co-occurring conditions; individual, family, and group therapy; and comprehensive aftercare coordination and post-discharge outreach. Findings, ¶ 7. Aftercare plans will likely include a combination of primary care, mental health counseling, medication management, outpatient or intensive outpatient programs, peer-support groups, and family support. Findings, ¶ 17. Clinical services provided at Silver Pines will include cognitive behavioral therapy, dialectical behavioral therapy, trauma-informed care, acceptance and commitment therapy, motivational enhancement therapy, guided mindfulness, validated stress-reduction and resiliency building techniques, emotional freedom techniques, sleep hygiene, 12-step groups, gender-focused groups, seeking safety, and the Wellness Recovery Action Plan. Findings, ¶ 10.

Based on the above, we find that this criterion is satisfied.

X.

Finally, an applicant must demonstrate that the proposed project "serves the public good." 18 V.S.A. § 9437. This aspect of our review is broad and necessarily includes our consideration, and the applicant's satisfaction, of the statutory criteria considered above. *See* GMCB Rule 4.000, § 4.402.3.

A primary concern of ours has been the degree to which this project will benefit the people of Vermont and whether these benefits are outweighed by negative impacts that are likely to result from the project. As discussed above, while we are concerned about negative impacts of the project, given the data available to us, we believe the impacts are likely to be small. Furthermore, we impose conditions in the CON that we believe will increase the benefits of the project to Vermonters, including conditions that will ensure the applicant follows through on its commitments to provide a preference to Vermonters who meet admission criteria; to distribute one percent of its net revenues to local community-based organizations; and to share data with Vermont agencies to improve population health interventions. After weighing the potential costs and benefits of the project, we believe that, on balance, and subject to the conditions we impose in the CON, the project serves the public good.

Conclusion

Based on the above, we conclude that the applicant has demonstrated that it has met each of the required statutory criterion under 18 V.S.A. § 9437. We therefore approve the application and issue a certificate of need, subject to the conditions outlined therein.

SO ORDERED.

Dated: June 23, 2020 at Montpelier, Vermont.

s/ Kevin Mullin, Chair)
)

GREEN MOUNTAIN

s/ Jessica Holmes	)	CARE BOARD OF
	)	VERMONT
s/ Maureen Usifer	)	

Lunge and Pelham, dissenting.

Section 9431 of Title 18 establishes the purpose of the certificate of need program that guides our interpretation of the statutory criteria. This section declares that

> the general welfare and protection of the lives, health, and property of the **people of this State** require that all new health care projects be offered or developed in a manner that avoids unnecessary duplication and contains or reduces increases in the cost of delivering services, while at the same time maintaining and improving the quality of and access to health care services, and promoting rational allocation of health care resources in the State; and that the need, cost, type, level, quality, and feasibility of providing any new health care project be subject to review and assessment prior to any offering or development. (emphasis added).

In the discussion that follows, we determine that the project, while potentially a worthwhile endeavor for citizens of other states, does not meet the needs of Vermonters and potentially creates costs and other impacts on this state's health care system.

Accordingly, we respectfully dissent from the majority decision and would deny the certificate of need because we conclude that the applicant has failed to meet several of the statutory criteria in 18 V.S.A. 9437, specifically criteria 1, 2, 3, and 4. We do not analyze criteria 5 (impact on applicant's existing services), 7 (transportation), or 8 (HIT) as these are less or not relevant.[10]

Criteria (1) and (3): The project does not address a current and future community need for Vermonters.

The applicant failed to demonstrate that the project addresses a need for Vermonters, as required by the first statutory criterion, subdivision (B) and the third statutory criterion, which we analyze together. "Need" is not defined in the CON statutes. In evaluating need, we look to the purpose of Vermont's CON program, which is to promote the general welfare and protect the lives, health, and property of the people of Vermont by ensuring that all new health care projects are offered or developed in a manner that avoids unnecessary duplication and contains the cost of delivering services, while at the same time maintaining and improving the quality of and access to health care services, and promoting rational allocation of health care resources in the State. While the needs of non-residents are not irrelevant to our analysis, our primary concern is with

[10] Criterion 6 has been repealed.

the needs of Vermonters. The applicant has not demonstrated that this project will meet a need for Vermonters.

Silver Pines will be a 32-bed facility with 16 double occupancy rooms that provides medically supervised withdrawal treatment services and high-intensity residential services to adults with SUD, many of whom will have subacute medical and emotional, behavioral, or cognitive conditions. Findings, ¶¶ 1, 6. The length of stay is anticipated to be 7 to 10 days. Findings, ¶ 17. The applicant projects that 90% of patients will be non-Vermont residents. Findings, ¶ 21. Silver Pines will not accept any insurance, including Medicaid and Medicare. Prior to admission, program participants will be responsible for paying 100% of the cost of a 7-day program, approximately $10,220. Findings, ¶ 26. facility will provide invoices for commercially insured participants to seek reimbursement from insurers, even though the applicant estimates that 43% of participants will have commercial coverage. *Id.* Because Silver Pines will be out of network, however, there is no guarantee that commercial insurers will reimburse individuals for the program at Silver Pines.

Based on national data, the applicant assumes that of the 9,634 patients 18 years and older in SUD treatment in Vermont, 14.8% or 1,426 had private insurance or paid cash. Of these 1,426 patients, the applicant estimates that 18% or 257 need residential treatment. Finally, of these 257 individuals, the applicant assumes that 15% (39 people) will seek treatment at Silver Pines in Year 1, 25% (64 people) will seek treatment at Silver Pines in year 2, and 35% (90 people) will seek treatment at Silver Pines in Year 3. Findings, ¶ 21; Resp. 001, 3-4. When fully up and running in Year 3, these 90 Vermonters represent only 9.8% of the expected 921 admissions. Hearing Presentation (March 25, 2020), 16. Clearly, Silver Pines is designed to attract and serve non-Vermonters with policies that restrict access by Vermonters. While the applicant characterized its estimates as "conservative," we find that they are speculative. Resp. 001, 4. In particular, the applicant's projected "market share" does not seem to be based on any data or communications with providers in the state.

There are currently three facilities that provide withdrawal management and/or residential SUD services in Vermont: 1) Valley Vista, an ASAM 3.5-level facility; 2) Serenity House, and ASAM 3.5-level facility; and 3) Brattleboro Retreat, an ASAM 3.7-level facility. Resp. Q001, 26. Because there is only one ASAM 3.7 facility in the southern part of the state, the applicant concludes that individuals in need of such services outside of Southern Vermont are using EDs and inpatient hospitalizations at a significant cost. App., 12. The applicant concludes that the proposed project will provide greater access to health care for these individuals. App., 28. The applicant did not provide specific quantitative data to support this assertion, however. The applicant asserted that current residential treatment programs in Vermont often operate near capacity, but, again, did not provide data to support the assertion. Resp. Q001, 3. The applicant also did not undertake a market study or feasibility analysis that could have perhaps provided data on the asserted need. Resp. 002, 2.

We acknowledge that substance use disorder treatment is a need of Vermonters. This facility, however, is not structured in such a way to serve Vermonters and is designed to primarily attract out of state visitors from the United States and Canada with a national

reputation. Hearing Presentation (March 25, 2020), 15. As stated by the applicant, this facility is designed to draw wealthy people from urban areas within a 2-hour flight radius, including Montreal, Chicago, Boston and Albany. *Id.* As noted above, when fully up and running in Year 3, these 90 Vermonters represent only 9.8% of the expected 921 admissions. *Id.* at 16. In addition, by using a financial structure which requires up front, cash payment, the facility will not be accessible to most Vermonters, 2/3 of which are insured by Medicaid or Medicare. Vermont Department of Health, 2018 Vermont Household Insurance Survey, 5.[11] Accordingly, we conclude that the applicant has not demonstrated that Silver Pines meets a need in Vermont due to the limited numbers of Vermonters expected, and able, to access its services.

Criterion 1: The project does not align with health care payment and delivery system initiatives.

The applicant failed to demonstrate that the project takes into consideration Vermont's health care payment and delivery system reform initiatives as required by the first statutory criterion, subdivision (A).

As noted by the majority, Vermont is engaged in a multi-year payment and delivery system reform initiative known as the All-Payer Model. The All-Payer Model seeks to reduce cost growth for certain health care services and to improve both the health of Vermonters and the quality of care they receive. One of the All-Payer Model's quality measures is to reduce deaths of *Vermont* residents related to drug overdose over a five-year period. As we explained above, the applicant designed the program primarily to attract and serve non-Vermonters.

For the most part, Silver Pines will operate outside of Vermont's substance use disorder treatment system, including the Hub and Spoke system. The Vermont Division of Alcohol and Drug Abuse Programs (ADAP), one of the state agencies involved in implementing the substance use disorder treatment system, expressed concern about Silver Pines' "lack of connection to the rest of the specialty treatment system funded through ADAP and the Department of Vermont Health Access (DVHA)." ADAP wrote that, "[w]ithout this connection, individuals discharged from the new program may have inadequate discharge plans for follow-up services." Letter from ADAP (Feb. 20, 2020), 1.

The applicant acknowledges that follow-up care is critical for the patients Silver Pines will treat; withdrawal is only one part of a broader course of treatment and recovery, which is necessary to ensure success for the patient. However, the applicant failed to provide convincing evidence regarding concrete steps it has taken or will take to truly integrate with the existing SUD care delivery system in Vermont, including the Hub and Spoke system. In addition, the applicant's budget only allocates approximately $131.60 per patient for follow up care, which is not robust and seems insufficient to ensure continuity of care. Resp. 003, 5. Given that only 10% of the patients at Silver Pines are projected to be from Vermont and that the applicant asserts that it will ensure all patients are connected to follow up care throughout the 800 mile radius from

[11] https://www.healthvermont.gov/sites/default/files/documents/pdf/VHHIS_Report_2018.pdf.

which they plan to draw, we find these efforts are unlikely to be effective and are not sufficient to create a seamless system of care.

On this record, we find that the applicant has not established that the proposed project takes into consideration health care payment and delivery system reform initiatives.

Criterion 1: HRAP Standards

HRAP Standard 1.7 requires that new facilities use evidence, where available. The first three months following initial treatment and discharge of a patient presents the highest risk of reuse, overdose, and suicide. Accordingly, a detoxification center would need to ensure appropriate referrals to the full range of programs and services needed by each individual in order to ensure recovery.

Given the 800-mile radius from which the applicant is expecting to recruit patients, ensuring appropriate follow up care will be challenging. It will require the Silver Pines staff to know and have connections with SUD treatment programs in many states to ensure necessary follow-up services and integration into disparate systems of care crossing several states and two countries. Given the small amount budgeted for this follow up at approximately $131.60 per patient, we conclude that the applicant has not demonstrated that the treatment is evidence based.

Criterion 2: The limited benefits to Vermonters is not outweighed by the negative impacts on other Vermont providers.

The second statutory criterion requires that the project will not result in an undue increase in the costs of medical care, considering the financial implications on other providers and whether those are outweighed by a benefit to the public. We find the warnings of ADAP and the Department of Mental Health persuasive and share their concern that the project would likely have a negative impact on the ability of existing facilities and systems of care to meet the needs of Vermonters. As a result, we conclude that the applicant failed to demonstrate that the financial implications of the project on other clinical settings are outweighed by the benefits of the project to the public and failed to adequately address the financial impacts the project on existing SUD treatment providers in the state.

ADAP raised concerns about the financial impacts of the proposed project on state-certified addiction treatment providers in Vermont and the ability of these providers to continue to offer services to those in need. Specifically, ADAP warned that the project "will result in staff leaving positions in state-certified addiction treatment providers for positions [at Silver Pines] that pay more." ADAP explained that "[d]ue to the existing workforce shortage, this will likely result in state-certified addiction treatment providers having insufficient staff to provide services." Letter from ADAP (Feb. 20, 2020). In addition to affecting the supply of labor, the underfunding of follow-up services noted earlier may leave Vermont's system having to fund associated follow-up for Silver Pines' patients.

The applicant sought to allay this concern by noting that the number of LADCs Silver Pines will employ represents a small fraction of all LADCs working in Vermont (0.7% in Year 1

and 1.4% in Year 3, assuming Vermont's LADC workforce remains the same). Responses to ADAP and DMH, 2 (citing VDH, *Health Care Workforce Census Licensed Alcohol and Drug Abuse Counselors, 2019*). However, LADCs work in a variety of settings (e.g., hubs, general hospitals, psychiatric hospitals, mental health clinics, private practices, and schools). Approximately 36.8%, for example, serve military populations. VDH, *Health Care Workforce Census Licensed Alcohol and Drug Abuse Counselors, 2019.* It is not clear that it is appropriate to compare the number of LADCs to be employed at Silver Pines with the number of LADCs working in all these different settings across Vermont.

More importantly, however, LADCs are not the only providers that Silver Pines will employ. Silver Pines will also employ 9.4 FTE registered nurses. App., 17. This may seem like a small number compared to the number of RNs who reported working in Vermont or with Vermont residents - 8,457 in 2017. Area Health Education Centers Program, *Registered Nurses in Vermont*. However, only 21 RNs (0.2%) of the RNs surveyed reported working in substance use disorder treatment clinics. In addition, a workforce study recently conducted by the Rural Health Services Task Force determined that there are currently at least 4,860 nursing vacancies in the state. Rural Health Task Force Workforce Subcommittee Report (Jan. 10, 2020), 1-2.[12] Given this context, comparing LADC's and RN's relative to statewide levels dilutes the potential relocations of staff to Silver Pines from more local providers serving the Stowe/Morrisville area, as evidenced by the applicant's expectations to use local and regional media to attract candidates for employment.

In addition, self-pay and commercially insured patients are typically the most profitable patients for a practice. If Silver Pines quickly captures 35% of the self-pay and commercially insured Vermont population in need of residential SUD treatment services, the project will have a material negative impact on existing residential treatment settings in the state, particularly the Brattleboro Retreat, which is the only other ASAM 3.7 level facility in Vermont and which has experienced serious financial difficulties in recent years.

The applicant asserts that the remuneration it will offer to its Registered Nurses and LADCs is in line with the "market" or the industry standard in Vermont. Resp. to ADAP and DMH Comments (March 20, 2020), 3. The data the applicant provided, however, was limited and insufficient to support this conclusion. For example, the applicant stated that Silver Pines will offer nurses $80,000/yr. and that the Blueprint for Health provides $85,000/yr. for one full-time equivalent Registered Nurse Care Coordinator. *Id.* (citing Department of Vermont Health Access (2012), Vermont Hub and Spoke Health Homes Program Overview). We are not convinced it is appropriate to use this as a benchmark for a market or industry standard statewide. For example, the workforce study cited above noted that the mean hourly wage across all RNs working in Vermont in 2018 was $33.25. Rural Health Task Force Workforce Subcommittee Report (Jan. 10, 2020), 5. This equates to around $69,160/yr., materially lower than the $80,000/year the applicant plans to offer.

[12] https://gmcboard.vermont.gov/sites/gmcb/files/documents/Rural%20Health%20Services%20Report-%20Workforce%20White%20Paper%20FINAL%201.23.20.pdf.

The applicant projects that approximately 1% of patients may be referred to a Vermont inpatient psychiatric facility (hospital inpatient psychiatric unit, Brattleboro Retreat, or Vermont Psychiatric Care Hospital) each year, or approximately 3.7 individuals in year 1, 6.6 individuals in year 2, and 9.2 individuals in year 3. *See* Findings, ¶ 23. In addition, the applicant projects that 2.5% of patients will require EMS and hospital services due to an acute medical or psychiatric condition, or approximately 9 individuals in Year 1, 17 individuals in Year 2, and 23 individuals in Year 3. Resp. Q001, 24.

The applicant projects that approximately 3% of out-of-state residents who seek treatment at Silver Pines (i.e., 10 in year 1, 18 in year 2, and 25 in year 3) may seek additional treatment in Vermont's Community System of Care for substance use disorder. Findings, ¶ 24. DMH raised the concern that "the anticipated increase in utilization of local medical and psychiatric emergency department and inpatient services by non-Vermonters . . . will result in unexpected burden to not only the local ED, Copley Hospital in Morrisville, but for Vermont's inpatient psychiatric system." DMH Letter (March 5, 2020).

The applicant argued that numbers at issue are small. However, as DMH noted, "[e]ven small increases in ED and inpatient psychiatric bed utilization will further overwhelm our system, resulting in longer ED wait times and lower inpatient psychiatric bed availability for Vermonters." *Id.* In addition, Copley Hospital, the closest hospital to Silver Pine's location, has incurred operating losses over the past four years, totaling $4.8 Million, which will only be acerbated by this potential influx. GMCB, Fiscal Year 2019 Vermont Hospital Budgets, Year-End Actuals Reporting (Feb. 26, 2020), 12.

The applicant did not establish that the benefit of the project will outweigh the financial impacts to other clinical settings. While the applicant asserts that the project will ultimately decrease demands on emergency departments and inpatient psychiatric facilities in the state and result in cost savings by providing Vermonters with effective treatment for substance use and co-occurring psychiatric disorders, we believe this is speculative. The applicant assumes that some percentage of Vermonters are going out of state for these services and that it will be able to capture some of these individuals. But if these individuals are already receiving treatment, there will only be cost savings to Vermont if the treatment Silver Pines provides is more effective at reducing downstream costs or will be cheaper. We cannot conclude that either is the case based on the evidence before us.

Criterion 4: The project will not improve the quality of health care or provide greater access to health care for Vermont's residents, or both.

Even assuming the care will be high quality, given the small number of Vermonters estimated to be served, we cannot conclude that the applicant has shown a significant improvement in access for in-state residents and therefore, the quality of care is immaterial.

Criterion 9: The project does not support equal access to appropriate mental health care as part of an integrated, holistic system of care.

The applicant will be providing substance use detoxification services, not specifically mental health care, however, the applicant projects that approximately 1% of patients may be referred to a Vermont inpatient psychiatric facility (hospital inpatient psychiatric unit, Brattleboro Retreat, or Vermont Psychiatric Care Hospital) each year, or approximately 3.7 individuals in year 1, 6.6 individuals in year 2, and 9.2 individuals in year 3. *See* Findings, ¶ 23. The applicant projects that 2.5% of patients will require EMS and hospital services due to an acute medical or psychiatric condition, or approximately 9 individuals in Year 1, 17 individuals in Year 2, and 23 individuals in Year 3. Resp. 001, 24.

The applicant has allotted only $131.60 per patient for coordination of care services. This does not seem sufficient to ensure that those with mental health care needs are treated as part of an integrated, holistic system of care. Accordingly, we do not find sufficient evidence to determine that this criterion is met.

On balance, the proposed project does not serve the public good.

In addition to what we have already stated above, we also acknowledge that the applicant intends to donate 1% of profits to local community organizations. Findings, ¶ 42. This, however, is only a small token to offset the burdens on Vermont's provider system. In year 3 of the project, this would only amount to $60,000 out of expected profits of $6.46 million. Resp. Q001, 28. The projected cashflows indicate that the applicant could have chosen a more balanced approach, either by giving Vermonter's greater access at a more affordable cost or by reimbursing local providers for the costs shifted onto Vermont's existing network.

We applaud the applicant's entrepreneurial spirit and desire to assist in the fight for quality substance use disorder treatment, however, when we weighed the small number of Vermonters served and the potential harms to Vermont providers, we were not able to conclude that the project was in the public good.

Dated: June 23, 2020 at Montpelier, Vermont.

s/ Robin Lunge	)	GREEN MOUNTAIN
	)	CARE BOARD OF
s/ Tom Pelham	)	VERMONT

Filed: June 23, 2020
Attest: Jean Stetter, Administrative Service