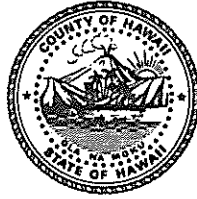


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL

P 101 317 812

JUL 02 1999

Mr. Mitch Barnes
SM Investment Partners
680 Iwilei Road, Suite 700
Honolulu, HI 96817

Dear Mr. Barnes:

Special Management Area Use Permit No. 329

Applicant: SM Investment Partners

Request: Amendment to Condition No. 2 (Secure Final Plan Approval)

Tax Map Key: 9-5-19:11, 15, 26, 30, 31, 33, 35; 9-6-1:1, 2, 3, 6, 11, 12, 13;

9-6-2:6, 8, 37, 38, 41

The Planning Commission at its duly held public hearing on June 18, 1999, voted to accept the applicant's withdrawal request as stated in a letter dated June 16, 1999, to the Commission from R. Ben Tsukazaki. The applicant had requested an amendment to Condition No. 2 (Secure Final Plan Approval) of Special Management Area (SMA) Use Permit No. 329, which allowed renovations to an existing 18-hole golf course, the construction of a 100-room hotel, golf/tennis/spa facilities, commercial center, resort maintenance center, 3 residential enclaves with a total of 120 units, employee housing, infrastructure and related improvements. The project site is located on the makai (southeast) side of the Hawaii Belt Highway at the site of the existing Punalu'u Resort, Ninole, Wailua and Punalu'u, Kau, Hawaii.

The applicant's amendment request to SMA Use Permit No. 329 is hereby withdrawn.

005662

JUL 02 1999

Mr. Mitch Barnes
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Should you have questions regarding the above, please contact Alice Kawaha of the Planning Department at 961-8288.

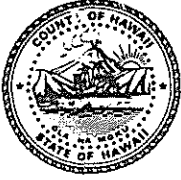
Sincerely,



Leonard S. Tanaka, Chairman
Planning Commission

LSMInv01.pc

cc: R. Ben Tsukazaki, Esq.
Paul H. Achitoff, Esq.
Pele Hanoa
J. Keolalani Hanoa
Sidney J. L. C. Strange
Glen M. Winterbottom
Corporation Counsel
DPW
DWS
Police Department
Fire Department
Real Property Tax Office
DLNR - Land Division
DLNR - SHPD
DOT - Honolulu
Land Use Commission
Office of Planning, CZM Program
Mr. Norman Hayashi



Planning Commission

Lorraine R. Inouye
Mayor

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

CERTIFIED MAIL

March 11, 1992

Punalu'u Development, Inc.
1001 Bishop Street, Suite 740
Honolulu, HI 96813

Dear Gentlemen:

Special Management Area Use Permit Application 91-20
Applicant: Punalu'u Development, Inc.
Request: Various
Tax Map Keys: 9-5-19:11, 15, 26, 30, 31, 33, 35;
9-6-01:1, 2, 3, 6, 11, 12, 13,
9-6-02:8, 37, 38, 41 and Portion of 45

The Planning Commission at its duly held public hearing on February 26, 1992, voted to approve your application, Special Management Area (SMA) Use Permit No. 329, to allow renovations to an existing 18-hole golf course, the construction of a 100-room hotel, golf/tennis/spa facilities, commercial center, resort maintenance center, 3 residential enclaves with a total of 120 units, employee housing, infrastructure and related improvements within the County's Special Management Area. The project site is located southeast (makai) of the Hawaii Belt Highway at the site of the existing Punalu'u Resort, Ninole, Wailau and Punalu'u, Kau, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205-A, Hawaii Revised Statutes, and Rule No. 9, Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and, where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within the area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

The project site is the site of the existing Seamountain at Punalu'u development which includes an 18-hole golf course, clubhouse, resort office and maintenance buildings, the Aspen Institute facilities, a tennis center, restaurant, and related facilities and infrastructure. The improved nature of the

MAR 12 1992

project site mauka of the coastal areas will preclude any adverse visual impact beyond what is currently existing, given that the existing golf course will be renovated to provide even greater opportunities to maintain the open space character of the area. The black sand beaches, rocky shoreline and coastal ponds within the project site create a distinct scenic and recreational resource for its users. The fact that the coastal waters are foraging habitats for the Green Sea and Hawksbill Turtle as well as the nesting site of the Hawksbill Turtle enforces the importance of the coastal areas of Punalu'u as a natural resource. In order to ensure that an open space ambience is maintained along the shoreline as well as to facilitate its protection, it is recommended that a 1000±-foot structural setback from the shoreline be imposed. The additional structural setback will serve to heighten sensitivity toward a public resource that must be preserved. As such, this approval would be consistent with the objective and policies of Chapter 205A and Rule 9 which state:

- * Protect, preserve and where desirable, restore or improve the quality of coastal scenic and open space resources.
- * Ensure that new developments are compatible with the visual environment.
- * Preserve and maintain shoreline open space and scenic resources.

The golf holes setback also supports the following goals and policies of the General Plan:

- * Protect and effectively manage Hawaii's open space, watersheds, and natural areas:
- * The shoreline of the island of Hawaii shall be maintained for recreational, educational, and/or scientific uses in a manner that is protective of resources and is of the maximum benefit to the general public.

Viewplanes from the Hawaii Belt Highway will be impacted to a degree given the gentle slope of the land; however, the proposed hotel, condominium, commercial and golf course structures will be no more than three stories in height and constructed a considerable distance from the highway. Moreover, the renovation of the existing golf course will maintain the open space character of the surrounding areas.

One of the objectives of Chapter 205A relating to Coastal Zone Management (CZM) is to protect valuable coastal ecosystems and to minimize adverse impact on all coastal ecosystems. According to a botanical survey of the project site, the flora within the project site is composed largely of exotic species due to the development of residential and recreational facilities. The only portion of the project site where native plants provided the dominant cover is along the coast. The study recommended that improvements within the coastal strand and wetland areas be limited. The survey also identified the coastal region, including the numerous coastal brackish ponds, as potential wetland habitats. The scarcity of such habitats on the Island of Hawaii only adds to the importance of its preservation. As previously mentioned, a marine and coastal baseline survey of the area found that the coastal waters fronting the project site were the foraging habitats of the endangered Green Sea Turtle and the Hawksbill Turtle. In addition, the coastal area fronting the project site is a nesting area for the Hawksbill Turtle. A Shoreline and Pond Management Plan has been prepared by the applicant in compliance with the conditions of the zone change of the project site. The objectives and goals of the management plan are to: 1) Preserve the beauty and uniqueness of the Punalu'u coastline; 2) Protect and enhance the significant natural, scenic, cultural and historic resources of the area; 3) Ensure public access to the shoreline area; 4) Protect the coastal ecosystem; specifically the endangered populations of marine and terrestrial species of the area; 5) Enhance the system of coastal ponds to improve habitats for animal species and increase aesthetic and recreational opportunities for the local community and resort guests; 6) Manage and improve the shoreline area for long term sustainable use by balancing the needs for preservation with increased recreational and cultural opportunities; and 7) Provide a comprehensive overview and guide for future utilization and management of the Punalu'u shoreline. The plan currently proposes that the shoreline area from Ninole Cove to Punalu'u Beach Park and its proposed park expansion area be preserved in its natural state. Vehicular traffic will be restricted from the shoreline areas. The area surrounding Ninole Cove will be enhanced with landscaping and improvements to the pathway system. The primary improvement within the coastal area is the proposed construction of a pedestrian pathway with picnicking and rest areas. The plan states that maximum consideration will be made to protect the Hawksbill

Punalu'u Development, Inc.
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Turtle during its July to December nesting season. The further review and approval of the Shoreline and Pond Management Plan by appropriate agencies and the imposition of the 1000±-foot structural setback from the shoreline will ensure that the objectives of the plan are properly executed. With these considerations, the Coastal Zone Management policy of minimizing disruption of coastal ecosystems will be supported.

Another criteria in reviewing an SMA Use Permit application is that "The development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and elimination of planning options." The proposed development is not anticipated to have any substantial adverse environmental or ecological effects, provided approved management and mitigation plans are implemented. Botanical and terrestrial fauna surveys, conducted by Char & Associates in 1984, indicate that no endangered or threatened plant or animal species will be affected by the proposed development. The applicant's Shoreline and Pond Management Plan states that the habitat for the endangered Hawksbill Turtle and Green Sea Turtle will be maintained in their natural state and maximum consideration will be given to the Hawksbill Turtle during its nesting season. As previously mentioned, further review and approval of the Shoreline and Pond Management Plan will minimize disruption to coastal areas within the project site.

A full archaeological reconnaissance survey of the entire project site was conducted in 1986. The applicant intends to preserve all sites recommended by the consulting archaeologist. Further, to implement a condition of the previously mentioned change of zone ordinance, further review and approval of the applicant's Cultural Resource Management Plan by the affected agencies will ensure that the CZM objective to "protect, preserve and where desirable restore significant historic and cultural resources" will be satisfied.

It should be noted that any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Negative impacts on the local water quality resulting from soil erosion and runoff during site preparation

and construction phases can be adequately mitigated through compliance with existing ordinances and regulations, as well as proposed conditions of approval. To address any long-term concerns, the applicant has submitted a Water Quality and Marine Life Monitoring and Mitigation Plan as required at the change of zone level. Upon further review, approval and implementation of these precautionary measures, the proposed development is not expected to have any substantial adverse effects on the coastal resources or the environment.

The applicant will be providing two public accesses to the shoreline areas, as well as a lateral shoreline access. The conceptual plan currently indicates public access to the Ninole Cove area and a 20+ stall parking area. The access will then proceed for an additional 700 feet to a drop-off point and 5 to 10-stall parking area near the shoreline. Public access to Punalu'u Beach Park will continue to be provided along Punalu'u Road. This access road will also be extended approximately 600 feet further to the shoreline with parking for 5 to 10 cars. A pedestrian pathway will be provided along the entire shoreline frontage of the project site. Revised access to Kaieie Heiau and Hokuloa Chapel and Cemetary will be provided. The applicant has also proposed the donation of 3 acres of land adjacent to Punalu'u Beach Park for park expansion as well as the renovation or replacement of the existing park pavillion. It is recommended that a public access plan be submitted for review and approval prior to final plan approval of the hotel or residential development, whichever occurs first. While the applicant has agreed to work with the County on access and park improvements, any and all plans must still be reviewed and approved by applicable agencies.

One of the criteria for approving a development within the SMA is that it is consistent with the General Plan. The General Plan is a long range, comprehensive policy document which guides the overall development of the County of Hawaii. As stated in Section 3-16 of the County Charter, the General Plan shall contain a statement of development objectives, standards, and principles with respect to the most desirable use of land within the County for residential, recreational, agricultural, commercial, industrial, and other purposes which shall be consistent with proper conservation of natural resources and the preservation of our natural beauty and historical sites; the most desirable density of population in the several parts of the County; a system of principal thoroughfares, highways, streets,

public access to the shorelines, and other open spaces; the general locations, relocations and improvement of public buildings, the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, sewers, light, power, transmit, and other purposes; the extent and location of public housing projects; adequate drainage facilities and control; air pollution; and such other matters as may, in the council's judgment, be beneficial to the social, economic, and governmental conditions and trends and shall be designed to assure the coordinated development of the County and to promote the general welfare and prosperity of its people. The Charter further states that "The (County) council shall enact zoning, subdivision, and such other ordinances which shall contain the necessary provisions to carry out the purpose of the general plan," and that "No public improvement or project, or subdivision or zoning ordinance shall be initiated or adopted unless the same conforms to and implements the general plan."

The proposed development is consistent with the adopted goals, policies, standards, and courses of action as articulated in the General Plan, as amended. Resort developments are created to satisfy the needs and desires of both visitors and residents. Such areas have basic amenities and attributes which attract the development of visitor accommodations and related facilities. Almost every successful resort area has a harmonious combination of certain characteristics, such as climate, scenery, recreational amenities, level of services, and other man-made facilities. In most instances, such as at Punalu'u, the natural factors have been or are the basis for the development of an area, and the man-made facilities were designed to enhance the area. A resort area should be large enough to provide a concentration of hotel, residential, and recreational amenities which will keep the visitor interested and entertained. It should not be so large, however, as to destroy either the sense of scale or intimacy of leisureliness associated with the area. In light of this, the General Plan does set forth standards for the various types of resort destination areas.

The General Plan identifies the Ninole-Punalu'u area, of which the the site is a part of, as an Intermediate Resort Area. An Intermediate Resort Area is a self-contained resort destination area which provides basic and support facilities for the needs of the entire development. Such facilities include sewer, water, roads, employee housing, recreational facilities,

etc. The maximum visitor units within an area designated Intermediate Resort Area is 1,500 rooms. The concept of a self-contained resort area also includes the provision of residential accommodations and commercial activities for long-term visitors as well as for permanent residents. Such facilities are considered to be an integral part of a resort area. The proposed improvements will be in the direction of creating a self-contained resort destination within the Ka'u District.

A policy of the General Plan's Housing Element states "Large industries which create a demand for housing shall provide employee housing based upon a ratio to be determined by an analysis of the locality's needs." A Course of Action for the Ka'u District mandates that "The County shall require that developments which create a demand for employee housing shall provide for that need." The applicant has prepared and submitted an Affordable Housing Needs Study whose objectives were 1) To estimate resort direct and indirect employment for Hawaii County by source of labor (residents and immigrants); 2) To estimate housing demand for Hawaii County due to direct and indirect employment; 3) To assess housing supply conditions for the Punalu'u Resort housing market; and 4) To estimate the share of housing demand due to resort direct and indirect employment which will not be met by market supply and therefore will require assisted housing supply. While the plan must be further reviewed and approved by the County, it is recommended that the applicant implement mitigative measures prior to issuance of a certificate of occupancy for the hotel development.

The Land Use and Resort Elements of the General Plan also state that resort uses shall be developed in areas adequately served by essential services and other infrastructure. The area under consideration is or will be provided with all essential utilities and services, including water. Water is currently provided to the project site by two wells located within the project site. These wells have a combined pumping capacity of 3.0 million gallons per day. The applicant proposes the construction of an additional 1 million gallon reservoir in addition to the existing 1 million gallon reservoir currently located mauka of the project site. The combined capacity of 2.0 million gallons will meet the total water demand of the proposed development. The applicant will develop adequate water system facilities meeting with the approval of the Department of Water Supply. Wastewater will be accommodated within an

expanded wastewater treatment facility. The applicant shall also provide necessary improvements to the Hawaii Belt Highway in a manner meeting with the approval of the Department of Transportation. These improvements will include a left turn storage lane at the Punalu'u Road intersection with the Belt Highway.

Based on the above, it is felt that the granting of the subject request would complement the policies of the General Plan Land Use and Resort Elements which state to "promote and encourage the rehabilitation and utilization of resort areas which are serviced by basic facilities and utilities."

The subject request is also consistent with the Economic Element of the General Plan in that the proposed development will provide additional and expanded employment opportunities for residents of the area, as well as the entire island as a whole; will strengthen the existing visitor industry; and will provide residents with opportunities to improve their quality of life.

Through conditions of approval the applicant will be required to install necessary improvements to the Hawaii Belt Highway prior to issuance of a certificate of occupancy for any portion of the hotel or residential development as required by the Department of Transportation (DOT)-Highways Division.

Approval of this request is subject to the following conditions:

1. The applicant, successors, or its assigns shall comply with all of the stated conditions of approval.
2. Plans for the first phase of development, which will include the 100-room hotel and realigned golf course, shall be submitted to the Planning Department and Final Plan Approval shall be secured within two years from the effective date of the Special Management Area (SMA) Use Permit. Plans shall conform to effective zoned districts at the time of submittal. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured.

3. Construction of the first phase of development, including the 100-room hotel and realigned golf course, shall commence within one year from the date of receipt of Final Plan Approval and be completed within four years thereafter.
4. Unless a lesser setback is approved by the Planning Director, as agreed to by the applicant, a 1000±-foot setback area from the certified shoreline shall be established in which the construction of structures shall be prohibited. The 1000±-foot setback line shall be delineated on plans submitted for plan approval review and for the issuance of a building permit.
5. The minimum 40-foot shoreline setback line shall be staked by a registered surveyor prior to any land alterations in the affected area. Written confirmation shall be submitted in conjunction with requested permit(s). No improvements shall be allowed within the 40-foot shoreline setback area unless a Shoreline Setback Variance has been applied for and granted by the Planning Commission.
6. Access to the project site shall comply with the requirements of the State Department of Transportation-Highways Division. Access improvements, which shall include, but not limited to, the provision of left turn storage lanes at the Punalu'u Road intersection with the Hawaii Belt Road, shall be completed prior to issuance of a certificate of occupancy for any portion of the hotel or residential development.
7. All interior access roadways within the proposed development shall be constructed in accordance with the requirements of the Department of Public Works. Curbs, gutters, and sidewalks shall be required to be constructed in areas of likely pedestrian traffic as determined by the Chief Engineer and the Planning Director.
8. A drainage system shall be installed meeting with the approval of the Department of Public Works.
9. All residential/hotel units, golf course facilities, commercial facilities and uses shall be connected to a secondary sewage treatment plant, public or private, meeting with the approval of the appropriate governmental agencies. The secondary sewage treatment plant shall have

a stand-by generator to operate the plant in the event of an electrical power outage.

10. The applicant, its successors or assigns shall be responsible for satisfying an affordable employee housing requirement by providing or causing the provision of affordable employee housing units to meet the direct and indirect resort hotel employee housing demands generated by the resort development. An affordable housing need study shall be prepared and submitted within two years of the effective date of this permit. Prior to commencing construction of the first hotel, the manner in which the required affordable employee housing units are to be provided shall be reviewed by the Planning Director and meet with the approval of the Hawaii County Housing Agency. The affordable employee housing requirement may be implemented concurrently with the completion of units developed as part of the resort. The affordable employee housing units, in lieu of fee, or in-kind services, must be provided prior to the issuance of occupancy permits for the resort units;
11. A job training program for the operating phase of the hotel shall be developed and submitted to the Planning Department prior to submission of the construction permit application for the first hotel development. Timely and continued in-service training shall follow the operating phase of the hotel and focus on upgrading job skills and reclassification when earned or deserved.
12. A construction housing mitigation plan shall be submitted to and approved by the Planning Department prior to submission of the construction permit application for the first hotel development. The plan shall include a regular reporting schedule to allow the Planning Department to monitor the construction housing impact.
13. An emergency preparedness and response plan shall be submitted to the Planning Director and the Civil Defense Agency for review and approval prior to issuance of a certificate of occupancy for any portion of the hotel development.
14. A water quality and marine life monitoring and mitigation plan shall be submitted to and approved by the Planning Department prior to the issuance of a grading permit and/or prior to any land preparation activity being conducted on the project site.

15. A Shoreline and Pond Management Plan, including a public shoreline access and recreational plan shall be submitted to and approved by the Planning Department prior to the submittal of plans for Final Plan Approval review. The shoreline access plan shall include, but not be limited to, accesses as described as follows: 1) parking and access shall be provided to Ninole Cove; 2) access shall be provided to the existing jeep trail that leads across Ninole Stream to the State lands; 3) pending State Board of Land and Natural Resources approval and any other required agency approvals, a vehicular access road to the shoreline area on the east side of the Ninole Cove area shall be provided along with a parking area; 4) pending State Board of Land and Natural Resources approval and any other required agency approvals, a vehicular access road to the shoreline area at the west end of the expanded park shall be provided; 5) access to Punalu'u Beach Park and parking lot shall be relocated west of the private lands adjacent to the park; 6) vehicular access to the boat launch ramp shall be maintained, with the exception that a realigned access route may ultimately be provided ; and 7) a series of lateral shoreline and beach trails shall be established where appropriate to direct public access to those areas that are outside of ecologically sensitive wildlife habitats and to improve lateral shoreline access along the entire shoreline.
16. A cultural resource management plan shall be submitted for the review of and approval by the Planning Department, in consultation with the Department of Land and Natural Resources-Historic Preservation Division, prior to the submittal of plans for Final Plan Approval review. The recommendations of the cultural resource management plan shall be implemented prior to the issuance of a grading permit and/or prior to any land preparation activity being conducted within the project site.
17. The applicant shall submit a viewplane analysis and mitigation plan of the project site for the review and approval of the Planning Director, prior to the submittal of plans for plan approval review. The viewplane analysis and mitigation plan shall address the maintenance of viewplanes from the Hawaii Belt Highway, surrounding properties and coastal region of the project site.

18. In the design of the golf course, the County of Hawaii Planning Department's Guidelines for Golf Course Design (November 1989, as amended) shall be utilized. The Planning Department shall determine appropriate setback requirements (i.e. building and property line) at the time of plan approval review. Easements for golf course purposes over and across abutting lots, either existing or proposed, shall not be permissible.
19. The applicant shall submit an Integrated Pest Management (IPM) program, which includes compliance with the applicable conditions and/or regulations of the appropriate governmental agencies, including the Department of Health.
20. Prior to renovation of the existing golf course, the applicant shall demonstrate to the satisfaction of the Planning Department that all proposed off-site construction material such as topsoil or sand are being supplied from an approved quarry or resource site.
21. The applicant shall give consideration to a tiered fee schedule in golf and tennis favoring local residents. A copy of the tiered fee schedule shall be submitted to the Planning Director for review.
22. Should any unanticipated archaeological sites be uncovered during land preparation activity, work within the affected area shall cease and the Planning Director shall be immediately notified. Work within the affected area shall not resume until clearance is obtained from the Planning Director.
23. During construction, best effort measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such best effort measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
24. All utility lines within the project site shall be underground.
25. Comply with all affected conditions imposed by the Hawaii County Council, Ordinance No. 88-121 (Change of Zone).

26. Comply with all other applicable laws, rules, regulations, and requirements, including those of the Department of Public Works and the State Department of Health.
27. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of the SMA Use Permit. The report shall address the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
28. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the General Plan or Zoning Code; c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Punalu'u Development, Inc.
March 11, 1992
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Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,

mike luce

Mike Luce, Chairman
Planning Commission

7142d
jdk

xc: George I. Atta
Alan Suwa
Mayor
Planning Director
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
OSP, CZM Program w/background
DLNR
DLNR-Historic Sites
Department of Transportation-Highways
Department of Health
Civil Defense Service
Office of Housing & Community Development
Plan Approval Section