



Modifications to the Memorandum of Understanding between M-NCPPC and DPS for Site Plan Enforcement

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Date of Report: 11-30-11

Description

Modifications to the Memorandum of Understanding ("MOU") between the Maryland-National Capital Park and Planning Commission and the Department of Permitting Services

Primary modifications include changes to the timing and processing of information as outlined in the MOU and the corresponding revisions to the flowchart

Summary

Staff recommends approval and adoption of the revisions to the original August 2006 Memorandum of Understanding ("MOU") between the M-NCPPC and the Department of Permitting Services.

The update to the MOU is a requirement of the original agreement between the agencies to account for changes in process and organization, both of which have occurred since the adoption of the document.

The revisions to the MOU provide clarifications to timing, processing of information and clerical changes to the flow charts that provide an increased presence for site plan enforcement in the county.

Purpose

The purpose of this memorandum is to provide you an update of the status of site plan enforcement, the efforts made by both agencies toward enforcement and the modifications and clarifications needed to the Memorandum of Understanding (“MOU”).

Background

The MOU between the Maryland National Capital Park and Planning Commission (“M-NCPPC”) and the Montgomery County Department of Permitting Services (“DPS”) was executed on August 2, 2006, as a result of the Council audit to inspect and monitor elements and features provided as part of a site plan. A decision was made to transfer inspection responsibilities to DPS while leaving responsibility for enforcement with the M-NCPPC. The transition of the enforcement activities became effective April 1, 2007 in order to allow DPS to hire the appropriate staff and organize enforcement efforts between the agencies.

Representatives from our agencies have met regularly to identify potential conflicts with approved site plans and the as-built conditions, clarify inspection responsibilities and work toward efforts to improve the enforcement activities within the County. The MOU requires quarterly meetings which, in time, may be more appropriate but is not presently frequent enough to discuss inspection related activities. In addition to the bi-monthly activity meetings, staff from both agencies continue to meet on active sites to address potential site plan violations and remedial action.

Both agencies have initiated the following steps over the years to assist in communication and coordination:

M-NCPPC

- 1) DPS receives weekly copies of the site plan schedule to inform them of current applications scheduled for the Planning Board and, specifically, amendments to approved plans, including the reason for the amendment;
- 2) Site plans and amendments from approximately 2000 to the present have been scanned into our DAIC (Development Application Information Center) to allow better access to records and application history;
- 3) Daily phone conversations occur between DPS and M-NCPPC building permit technicians to address permits with issues related to plan reviews and conditions of approval;
- 4) Frequent coordination on the site with the inspectors to determine steps that can be taken to prevent enforcement actions;
- 5) Site Plan conditions have been written that allow for more flexibility in the field for minor plan elements such as landscaping, mailboxes and recreation facilities.

DPS

- 1) Maintains the appropriate inspection staff and develops training opportunities when needed;
- 2) Documents site visits and inspection results to share with M-NCPPC;
- 3) Instituted a system for Notices of Non-Compliance (NONC) and Notices of Violation (NONC) to inform the development community that a potential violation has been identified;
- 4) Actively participates in the DRC review of plans to comment on development standards and plan elements;
- 5) Added related site plan, subdivision, record plat and forest conservation information to a building permit application to provide more information on an application to expedite review; and
- 6) Instituted a site plan inspection protocol for commercial building permit Use & Occupancy approvals.

The splitting of site plan enforcement duties was a huge effort on behalf of both agencies due to the lack of adequate inspectors at M-NCPPC and the learning curve by DPS. Although, the time expended for this effort was significant, there was a benefit for both agencies in terms of increasing professional interaction and communication. Communication has been a key success of the enforcement program on both ends and will continue to improve.

Modifications to the MOU

DPS and M-NCPPC have reviewed the current MOU and believe there are clarifications and modifications that need to occur with respect to timing, processing of information and clerical changes to the flow charts. Some of the changes are related to improvements in the manner by which inspections should occur, while other modifications reflect changes that stemmed from the enforcement rules that were approved by the County Council in 2010. Lastly, changes were necessary to account for the reorganization of the M-NCPPC in January of this year as well as changes to the management of DPS. The original MOU anticipated that changes would be reviewed on a three year cycle; however, the changes were delayed based upon the new legislation and change to the structure of the agencies.

An edited copy of the approved MOU and flow chart is appended with a clean copy of the language accepted by both agencies. The edited version has been reviewed by Staff from both agencies and the legal staff that represent each agency.

Recommendations

Staff recommends approval of the textual changes to the Memorandum of Understanding and the modifications to the flowchart outlining the responsibilities of each agency. Once the revisions are accepted by the Planning Board and DPS, the MOU can be finalized.

Attachment A

Original Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
between THE MONTGOMERY COUNTY PLANNING BOARD
and the MONTGOMERY COUNTY DEPARTMENT OF PERMITTING SERVICES

This Memorandum of Understanding ("MOU") is entered into this 2nd day of August, 2006, between the Montgomery County Planning Board ("Planning Board") and the Montgomery County Department of Permitting Services ("DPS") with the acknowledgement of the Montgomery County Council ("County Council").

WHEREAS, the Planning Board is charged with inspecting developments for compliance with Planning Board approvals including height limits, setbacks and other development standards in site plan zones; and

WHEREAS, DPS is charged with inspecting developments for compliance with building permit approvals including height limits, setbacks and other development standards in zones that do not require a site plan; and

WHEREAS, the Planning Board and DPS (collectively referred to as "the Parties") were directed by the County Council to enter into this MOU to provide clarity of responsibility and greater efficiency between DPS and the Planning Board for the inspection of developments for compliance with site plan approvals; and

WHEREAS, the County Council's direction was a result of the findings of the Office of Legislative Oversight ("OLO") in its *Fact-Finding Review of the Clarksburg Town Center Project (Report Number 2006-3)* and the County Council's subsequent hearings on the adoption of a legislative package to address the OLO's findings; and

WHEREAS, for developments that are subject to site plan approval, the intent of this MOU is to assign agency responsibility for 1) the review of building permit applications to ensure compliance with the certified site plan, 2) the inspection of developments under construction to ensure that the construction is proceeding in accordance with the certified site plan, and 3) the investigation of allegations of site plan violations raised by individuals, civic associations, homeowners associations, and others concerned that developments comply with certified site plans; and

WHEREAS, it is not the intent of this MOU to supercede the legally prescribed responsibility of the Planning Board to determine if a development is in compliance with the certified site plan nor to preclude the Planning Board from, among other things, requiring a plan of compliance or assessing penalties against site plan violators.

NOW THEREFORE, in consideration of the mutual promises and stipulations set forth herein, including the foregoing recitals which are expressly made a part of this Memorandum, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, their successors and assigns hereby agree to the following terms, conditions, requirements, and limitations:

1. **Definitions:** The following terms as used in this MOU are defined as follows:
- a. **Commission:** The Maryland-National Capital Park and Planning Commission.
 - b. **Commission Inspector:** An Inspector employed by the Commission.
 - c. **DPS Director:** Director of Montgomery County's Department of Permitting Services, or designee.
 - d. **DPS:** Montgomery County's Department of Permitting Services.
 - e. **DPS Inspector:** An Inspector employed by DPS.
 - f. **Planning Board:** Montgomery County Planning Board of the Commission.
 - g. **Planning Director:** Director of the Commission's Planning Department, or designee.
 - h. **FCL:** Chapter 22A of the Montgomery County Code, Montgomery County Forest Conservation Law.
 - i. **District Council:** The Montgomery County Council sitting as the District Council pursuant to Article 28, § 8-101(a).

2. **Review of Building Permit Applications**

- a. The process for DPS review of building permits is set forth in detail in Attachment One, DPS Building Permit Review Process.
- b. The Planning Director must provide one complete copy of all certified site plans and amendments thereto to the DPS Director.
- c. The DPS Director must review building permit applications for conformance to height, setback, FAR and lot coverage standards as established in the certified site plan.
- d. The DPS Director must provide to the Planning Director for review under this provision one copy of the building permit application site plan submitted by the building permit applicant.
- e. The Planning Director must review building permit applications for conformance to the certified site plan and all conditions of approval.

3. **Inspections**

- a. **Routine Inspections.**
 - i. The process for routine inspections of site plans by DPS is set forth in detail in Attachment Two, DPS Site Plan Inspection Process.
 - ii. **DPS:** DPS must inspect each project with a certified site plan for conformance with the approved building permit and the certified site plan at least every 30 days that it is under construction, and must provide a copy of all inspection reports to the Planning Director within 5 business days of the issuance of the inspection report. With respect to inspections for compliance with the certified site plan, DPS Inspectors must inspect the development for compliance

with all elements of the certified site plan located on individual lots (including height, setbacks, FAR and lot coverage) and in the common open space area including, but not limited to, grading, recreation facilities, landscaping, lighting, stormwater management facilities, retaining walls, freestanding walls, and fences.

- iii. Commission: A Commission Inspector must conduct a pre-construction meeting to establish in the field the limits of disturbance and the limits of easements established under the FCL. A DPS Inspector must also attend this pre-construction meeting.

b. Inspections Based Upon Allegations of Violation.

- i. The DPS process for inspections conducted in response to allegations of site plan violation is set forth in detail in Attachment ~~Three~~, DPS Site Plan Complaint Process.
- ii. Authority for the initial processing of complaints rests solely with DPS. The Commission must refer all complaints received immediately to DPS. Upon receipt of a complaint, DPS must send notice to the Planning Director that a complaint has been received and a brief description of the complaint.
- iii. DPS, upon receipt of an allegation of site plan violation from any person, including the Commission, must inspect the site for compliance with the certified site plan within 5 business days of receipt of any such allegation.
- iv. Commission staff must inspect all alleged violations of the FCL.

4. Enforcement

- a. Upon a finding of non-compliance with a certified site plan, DPS must issue a notice of non-compliance under § 8-26(g) of the Montgomery County Code ("Code"), or issue a citation and/or stop work order under the provisions of § 50-41 of the Code (as Planning Director's designee) as appropriate, and must send a copy of the notice to the Planning Director within 24 hours of its issuance.
 - i. If the non-compliance can be brought into conformance with the certified site plan, then DPS must ensure the development is brought into conformance.
 - ii. If the non-compliance cannot be brought into conformance with the certified site plan or the alleged violator refuses to conform the development to the certified site plan, then DPS must refer the matter to the Commission for appropriate action.
- b. If DPS determines that the site is compliant with the certified site plan, it must issue a letter explaining its conclusions, with a copy to the complainant and to the Planning Director, within 5 business days of its finding.

- c. The complainant, the Planning Director or the alleged violator may request in writing that the Planning Board review a DPS finding of compliance or non-compliance, such review to be filed as provided for in the Planning Board's Rules of Procedure. Upon request for such a review, a Commission Inspector may inspect the site to determine compliance or non-compliance with the certified site plan.
- d. Upon receipt of a request for review by the complainant, the Planning Director or the alleged violator, DPS must provide the Planning Director with a copy of all records used in its determination.
- e. If the Planning Board holds a hearing on the alleged non-compliance, the DPS Inspector must appear and testify at the Planning Board hearing as to the DPS Inspector's findings.

5. Inter-Agency Communications

a. Implementation of MOU

At the request of either the DPS Director or the Planning Board, the DPS Director and Planning Board must meet to discuss the implementation of this agreement.

b. Zoning Ordinance Interpretations

The DPS Director and Planning Director must convene appropriate members of their respective staffs no less than quarterly each year to coordinate building permit application review and inspection issues to ensure consistent interpretation and application of the Zoning Ordinance provisions. Each agency must provide copies to the other of any advice memoranda generated interpreting a provision of the Zoning Ordinance. DPS staff and Planning staff will continue discussions, as necessary, regarding measurement of height. Both agencies recognize that the Planning Board has the discretion to assign a point of measurement for height for each building on a site plan.

b. Intra-Agency Communications

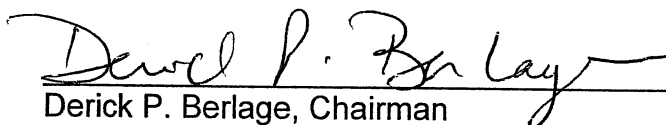
Subject to County Council appropriations, DPS and the Planning Department will have full access to each other's permit database and tracking system (through Hansen or a similar system) to query and approve permits by March 1, 2007.

c. MOU Review and Comment

DPS and the Planning Board agree to submit this MOU, as may be amended from time to time, to the County Council for review and comment every three years.

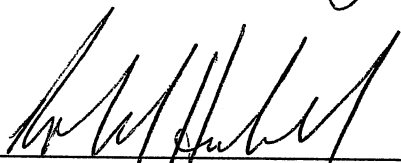
6. **Fines:** Fines collected by each agency must be dispersed in accordance with the policies and procedures of the respective agency.
7. **Modifications and Amendments:** This MOU may be modified or amended only by an instrument duly executed by both DPS and the Planning Board and any modification shall be transmitted to the County Council.

As Chairman of the Montgomery County Planning Board and as DPS Director of the Montgomery County Department of Permitting Services, we respectfully hereby agree to abide by the goals, objectives, terms and agreements as set forth in this MOU.



Derick P. Berlage, Chairman
The Maryland National Capital Park and Planning Commission
Montgomery County Planning Board

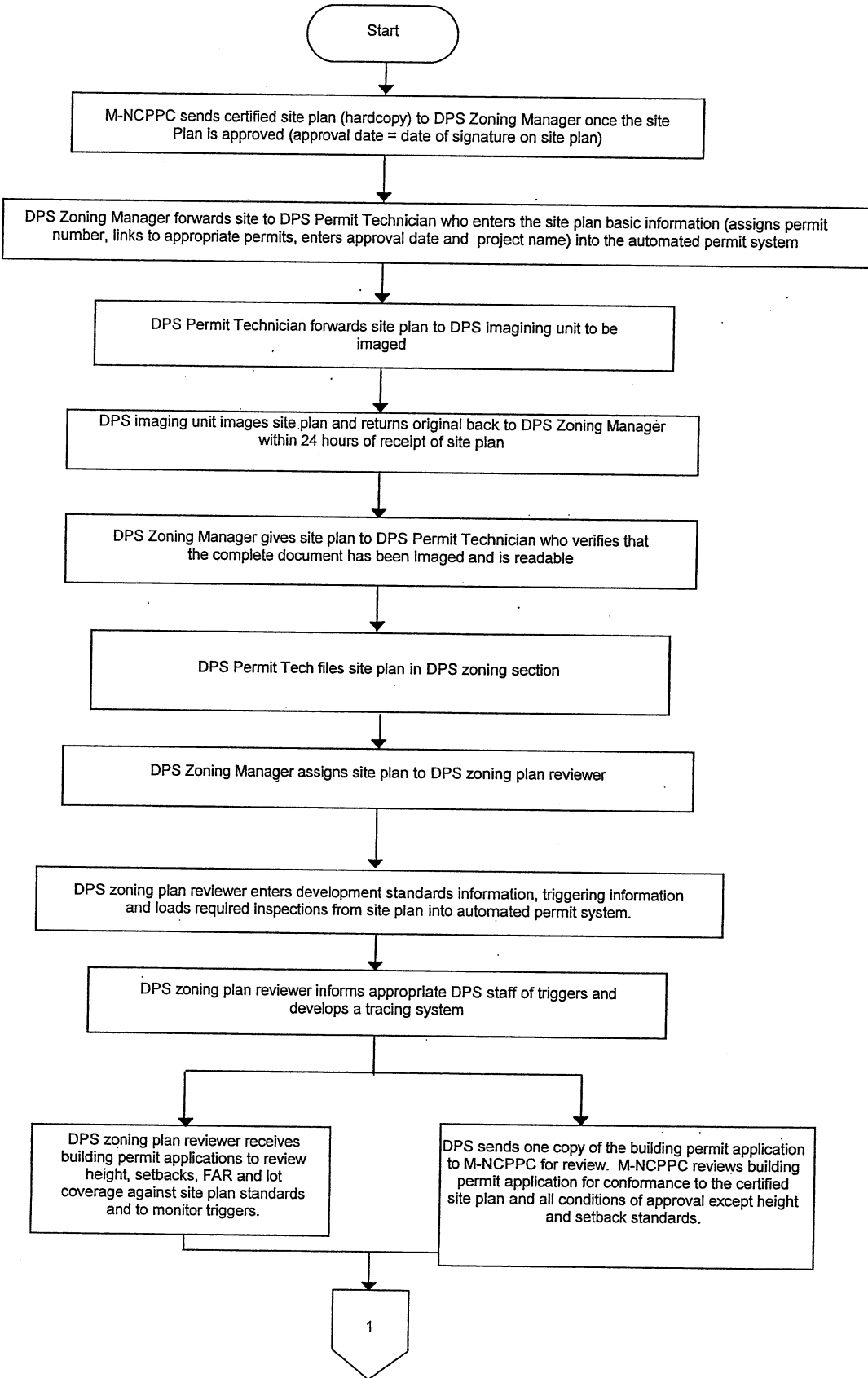
Signed this 27th day of July, 2006



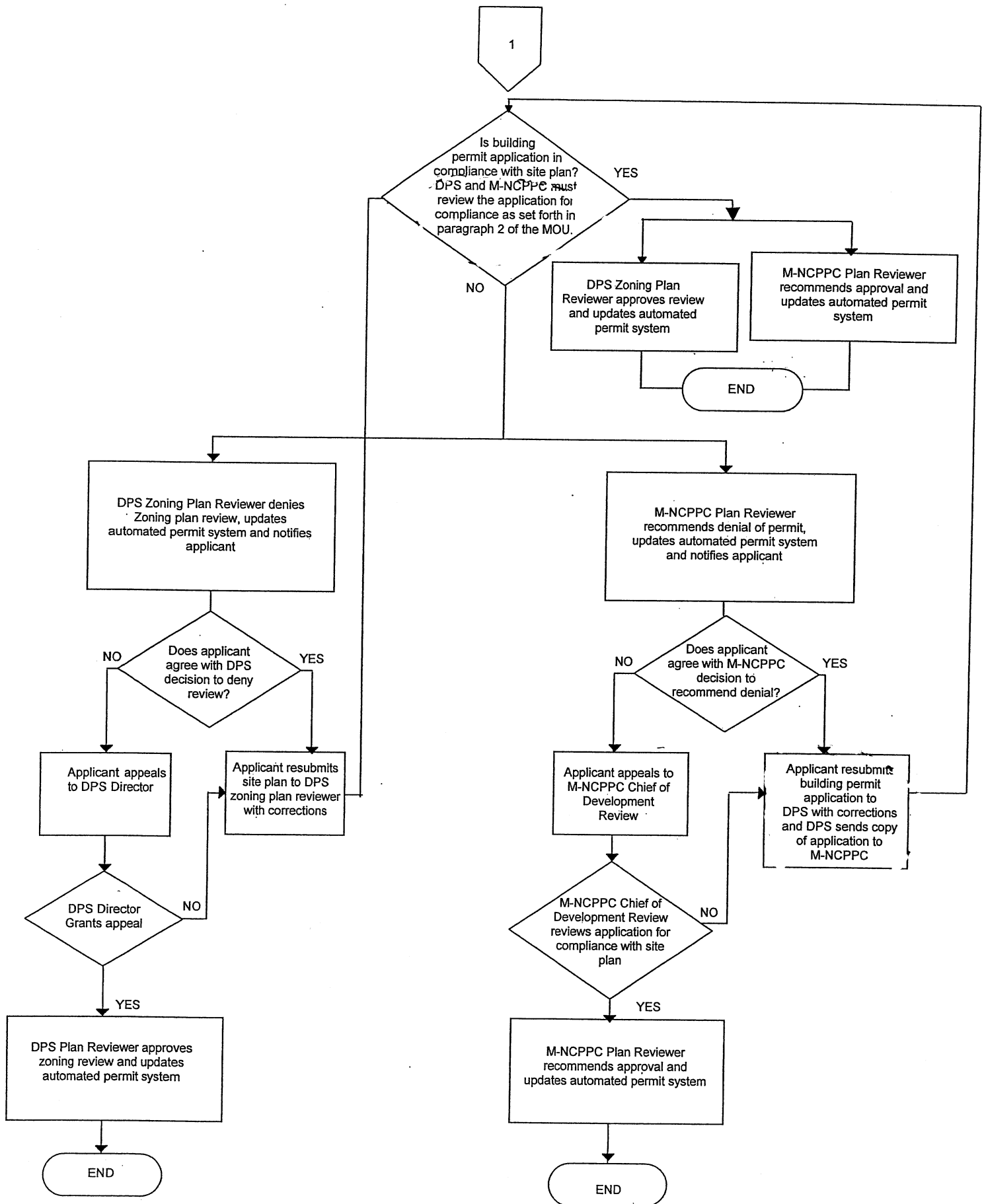
Robert Hubbard, Director
Montgomery County Department of Permitting Services

Signed this 2nd day of AUGUST, 2006

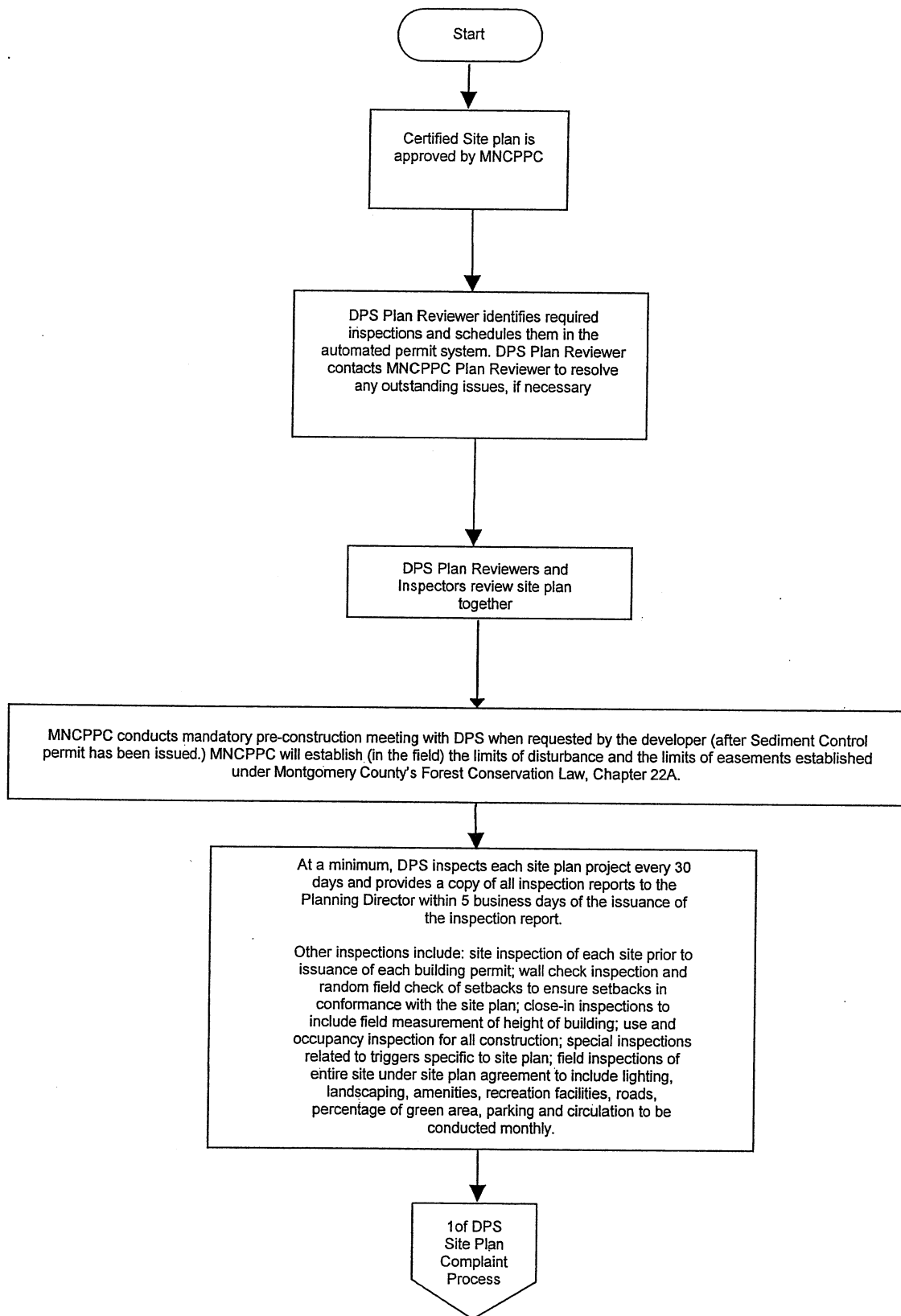
DPS BUILDING PERMIT REVIEW PROCESS



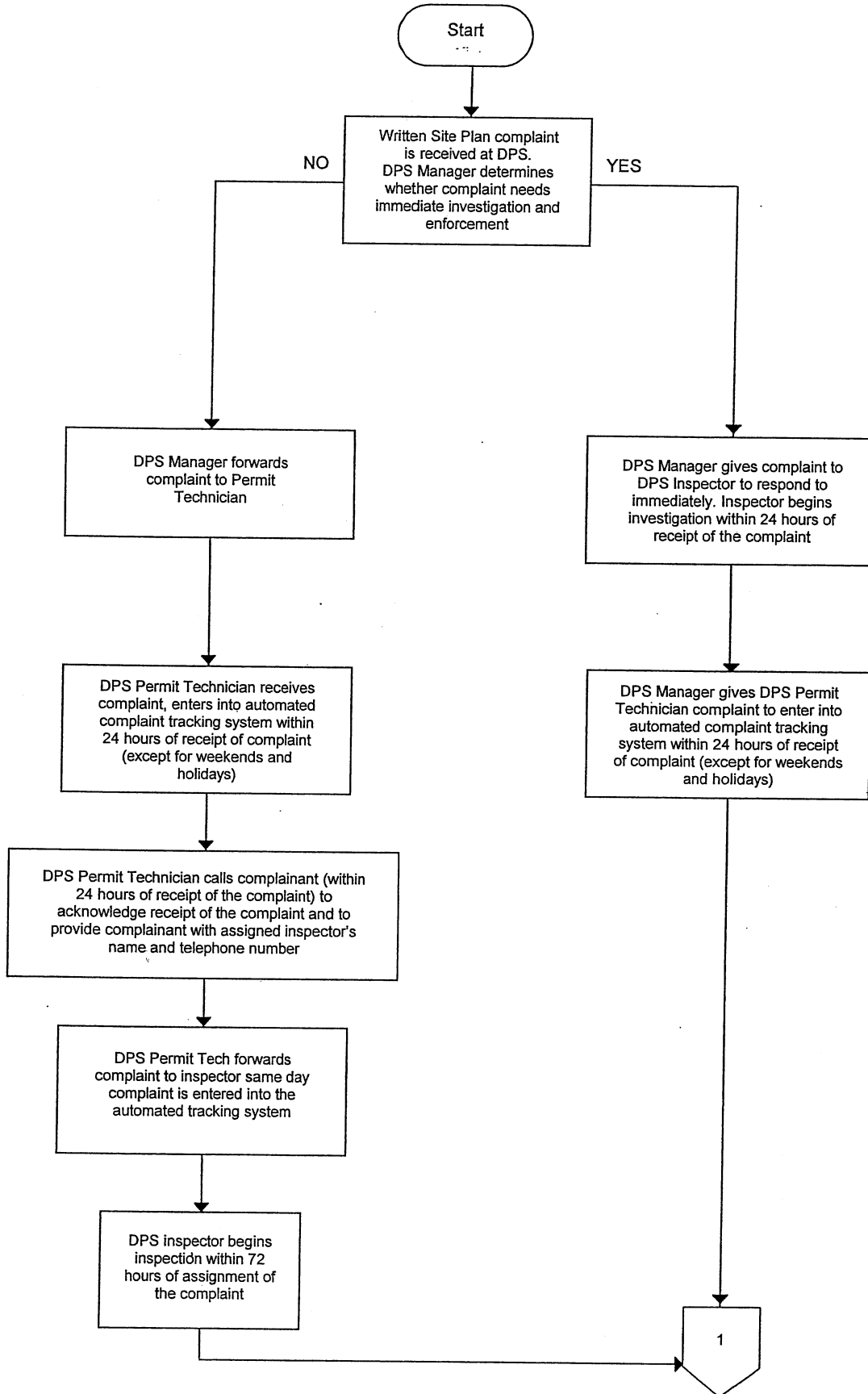
DPS BUILDING PERMIT REVIEW PROCESS (cont'd)



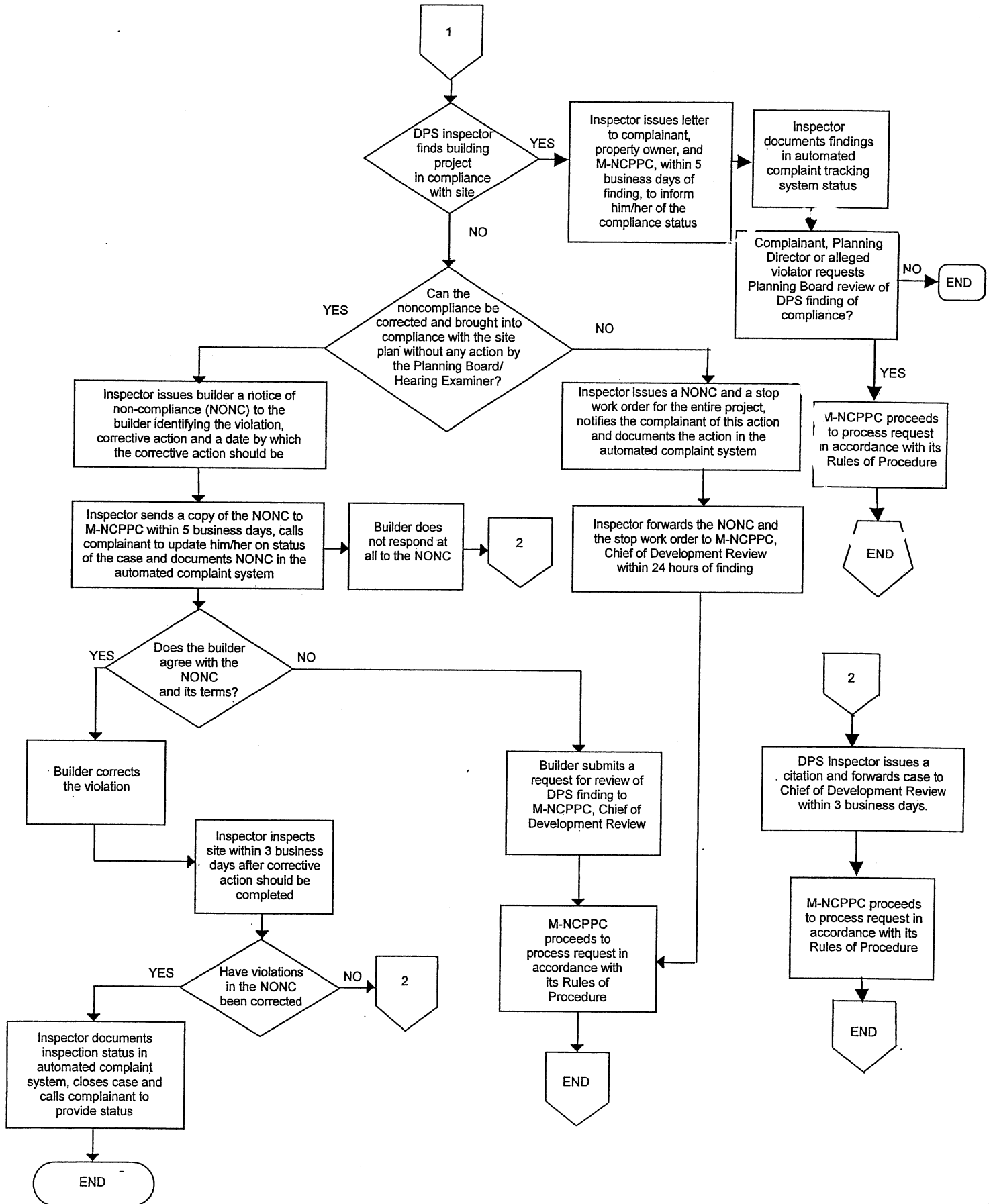
DPS SITE PLAN INSPECTION PROCESS



DPS SITE PLAN COMPLAINT PROCESS



DPS SITE PLAN COMPLAINT PROCESS (cont'd)



Attachment B

Amended Memorandum of Understanding

Amended MOU

Boldface indicates a heading or a defined term.

Underlining indicates text that is added to existing MOU

[Single boldface bracket] indicates text that is deleted from existing MOU.

MEMORANDUM OF UNDERSTANDING

**BETWEEN THE MONTGOMERY COUNTY PLANNING BOARD
AND THE MONTGOMERY COUNTY
DEPARTMENT OF PERMITTING SERVICES**

This Memorandum of Understanding (“MOU”) is entered into this _____ day of _____, [2006] 2011, between the Montgomery County Planning Board (“Planning Board”) and the Montgomery County Department of Permitting Services (“DPS”) with the acknowledgement of the Montgomery County Council (“County Council”).

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WHEREAS, DPS is charged with inspecting developments for compliance with building permit approvals including height limits, setbacks and other development standards in zones that do not require a site plan; and

WHEREAS, the Planning Board and DPS (collectively referred to as “the Parties”) were directed by the County Council to enter into this MOU to provide clarity of responsibility and greater efficiency between DPS and the Planning Board for the inspection of developments for compliance with site plan approvals; and

WHEREAS, the County Council’s direction was a result of the findings of the Office of Legislative Oversight (“OLO”) in its Fact-Finding Review of the Clarksburg Town Center

Project (Report Number 2006-3) and the County Council’s subsequent hearings on the adoption of a legislative package to address the OLO’s findings; and

WHEREAS, for developments that are subject to site plan approval, the intent of this MOU is to assign agency responsibility for 1) the review of building permit applications to ensure compliance with the certified site plan, 2) the inspection of developments under construction to ensure that the construction is proceeding in accordance with the certified site plan, and 3) the investigation of allegations of site plan violations raised by individuals, civic associations, homeowners associations, and others concerned that developments comply with certified site plans; and

WHEREAS, it is not the intent of this MOU to supersede the legally prescribed responsibility of the Planning Board to determine if a development is in compliance with the certified site plan nor to preclude the Planning Board from, among other things, requiring a plan of compliance or assessing penalties against site plan violators.

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 - b. Commission Inspector: An Inspector employed by the Commission.
 - c. DPS Director: Director of Montgomery County's Department of Permitting Services, or designee.
 - d. DPS: Montgomery County's Department of Permitting Services.
 - e. [DPS Inspector] DPS Site Plan Enforcement (SPE) Inspector: An Inspector employed by DPS.
 - f. Planning Board: Montgomery County Planning Board of the Commission.
 - g. Planning Director: Director of the Commission's Planning Department, or designee.
 - h. FCL: Chapter 22A of the Montgomery County Code, Montgomery County Forest Conservation Law.
 - i. District Council: The Montgomery County Council sitting as the District Council pursuant to Article 2.8, § 8-101(a).

2. **Review of Building Permit Applications**

- a. The process for DPS review of building permits is set forth in detail in Attachment One, DPS Building Permit Review Process.
- b. The Planning Director must provide [one] two complete [copy] copies of all certified site plans and amendments to the DPS Director.
- c. The DPS Director must review building permit applications for conformance to height, setback, FAR and lot coverage standards as established in the certified site plan.
- d. The DPS Director must provide to the Planning Director for review under this provision one copy of the building permit application site plan submitted by the building permit applicant.
- e. The Planning Director must review building permit applications for conformance to the certified site plan and all conditions of approval.

3. **Inspections**

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 - i. The process for routine inspections of site plans by DPS is set forth in detail in Attachment Two, DPS Site Plan Inspection Process.
 - ii. DPS: DPS must inspect each project with a certified site plan for conformance with the approved building permit and the certified site plan at least every 30 days that it is under construction, and [must provide a

copy of all inspection reports to the Planning Director within 5 business days of the issuance of the inspection report.] update the automated permit system within 3 business days. With respect to inspections for compliance with the certified site plan, DPS Inspectors must inspect the development for compliance with all elements/requirements of the certified site plan located on individual lots (including height, setbacks, FAR and lot coverage) and in the common open space area including, but not limited to, grading, recreation facilities,, landscaping, lighting, stormwater management facilities, retaining walls, freestanding walls, [and] fences, parking facilities, roads, hardscape, streetscape, and all other site plan agreements.

- iii. [Commission] Pre-Construction: A Commission Inspector must conduct a pre construction meeting to establish in the field the limits of disturbance and the limits of easements established under the FCL. A DPS-SPE Inspector must also attend this pre-construction meeting.
- iv. DPS SPE inspector must conduct a pre-construction meeting regarding the requirements/enforcement of the site plan.

b. Inspections Based Upon Allegations of Violation

- i. The DPS process for inspections conducted in response to allegations of site plan violation is set forth in detail in Attachment Three, DPS Site Plan Complaint Process.
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 - ii. If the non-compliance/violation cannot be brought into conformance with the certified site plan or the alleged violator refuses to conform the

development to the certified site plan, then DPS must refer the matter to the Commission for appropriate action.

- b. If DPS determines that the site is compliant with the certified site plan, it must issue a letter explaining its conclusions, with a copy to the complainant and to the Planning Director, within 5 business days of its finding.
- c. The complainant, the Planning Director or the alleged violator may request in writing that the Planning Board review a DPS finding of compliance or non-compliance, such review to be filed as provided for in the Planning Board's Rules of Procedure. Upon request for such a review, a Commission Inspector may inspect the site to determine compliance or non-compliance with the certified site plan.
- d. Upon receipt of a request for review by the complainant, the Planning Director or the alleged violator, DPS must provide the Planning Director with a copy of all records used in its determination.
- e. If the Planning Board holds a hearing on the alleged non-compliance, the DPS Inspector must appear and testify at the Planning Board hearing as to the DPS Inspector's findings.

5. Inter-Agency Communications

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c. Intra-Agency Communications

Subject to County Council appropriations, DPS and the Planning Department will have full access to each other's permit database and tracking system (through Hansen or a similar system) to query and approve permits by March 1, 2007.

d. MOU Review and Comment

DPS and the Planning Board agree to submit this MOU, as may be amended from time to time, to the County Council for review and comment every three years.

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7. **Modifications and Amendments:** This MOU may be modified or amended only by an instrument duly executed by both DPS and the Planning Board and any modification shall be transmitted to the County Council.

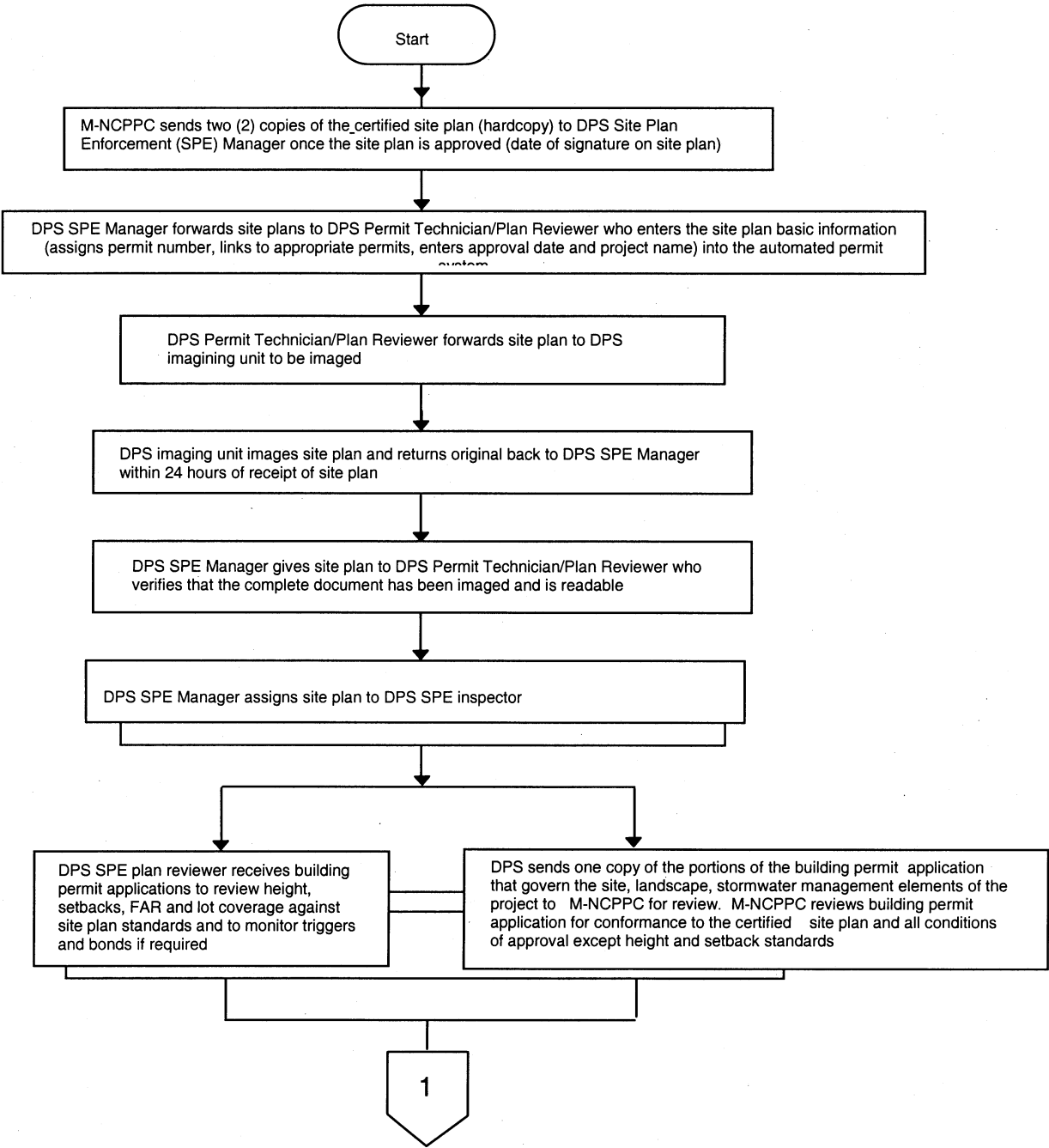
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[Derick P. Berlarge] Francois Carrier, Chairman
The Maryland National Capital Park and Planning Commission
Montgomery County Planning Board

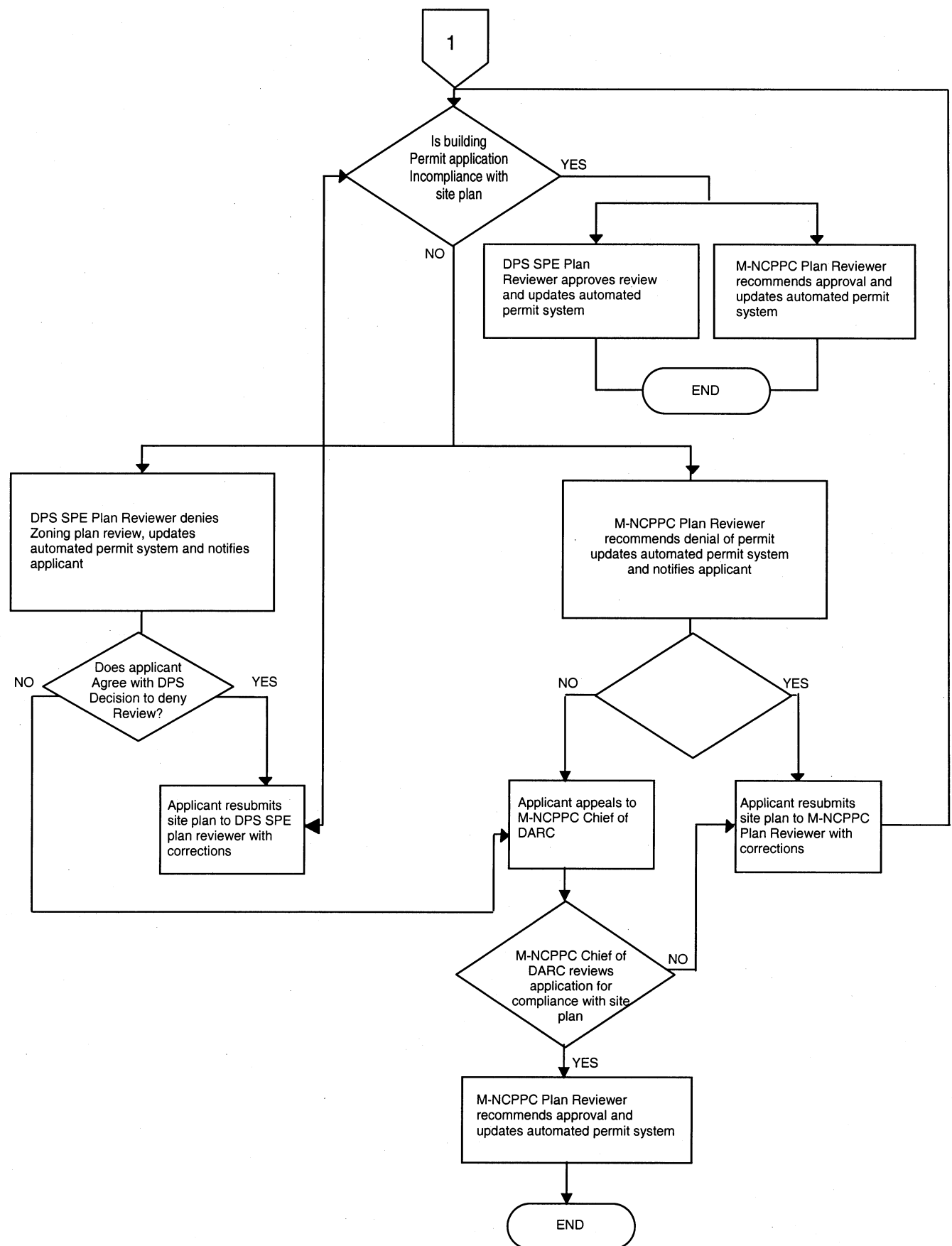
Signed this _____ day of _____, [2006] 2011

[Robert Hubbard] Diane Schwartz Jones, Director
Montgomery County Department of Permitting Services
Signed this _____ day of _____, [2006] 2011

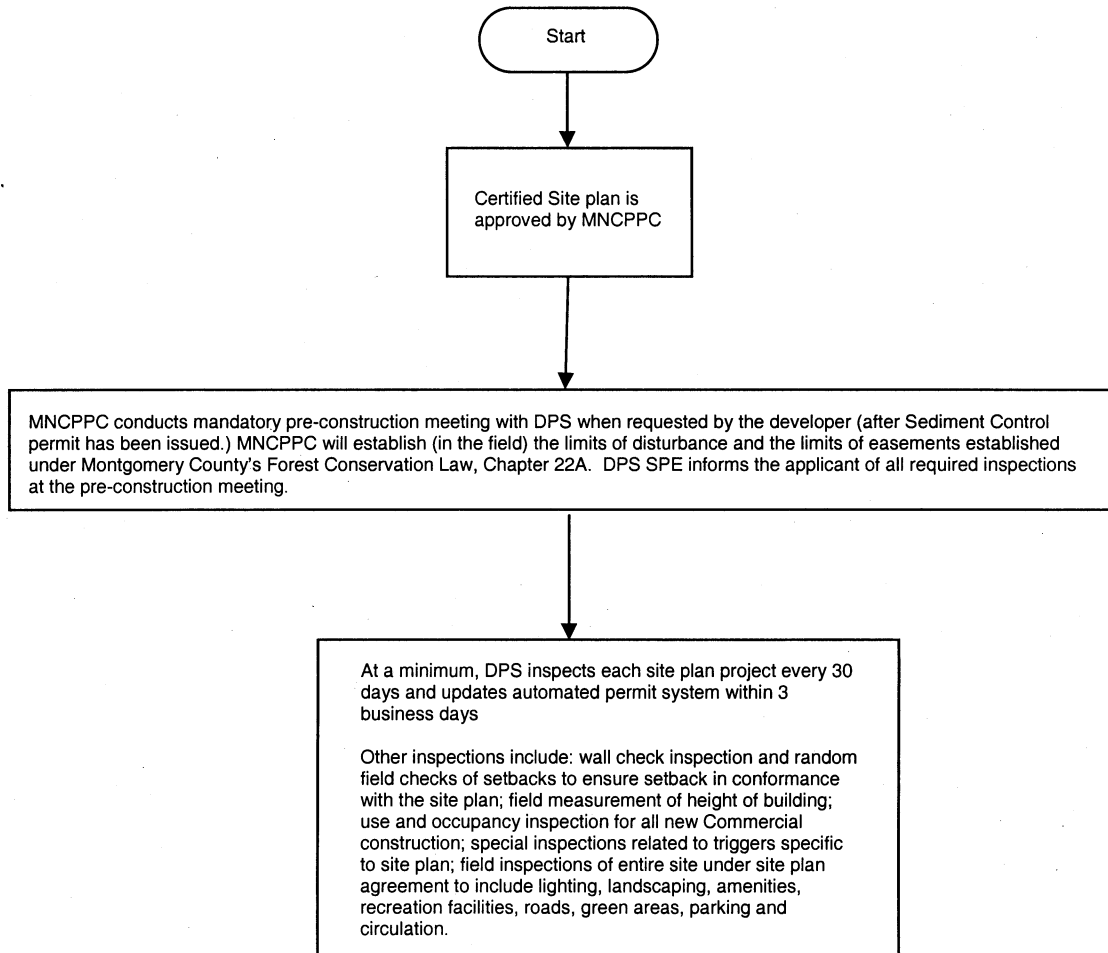
DPS BUILDING PERMIT REVIEW PROCESS



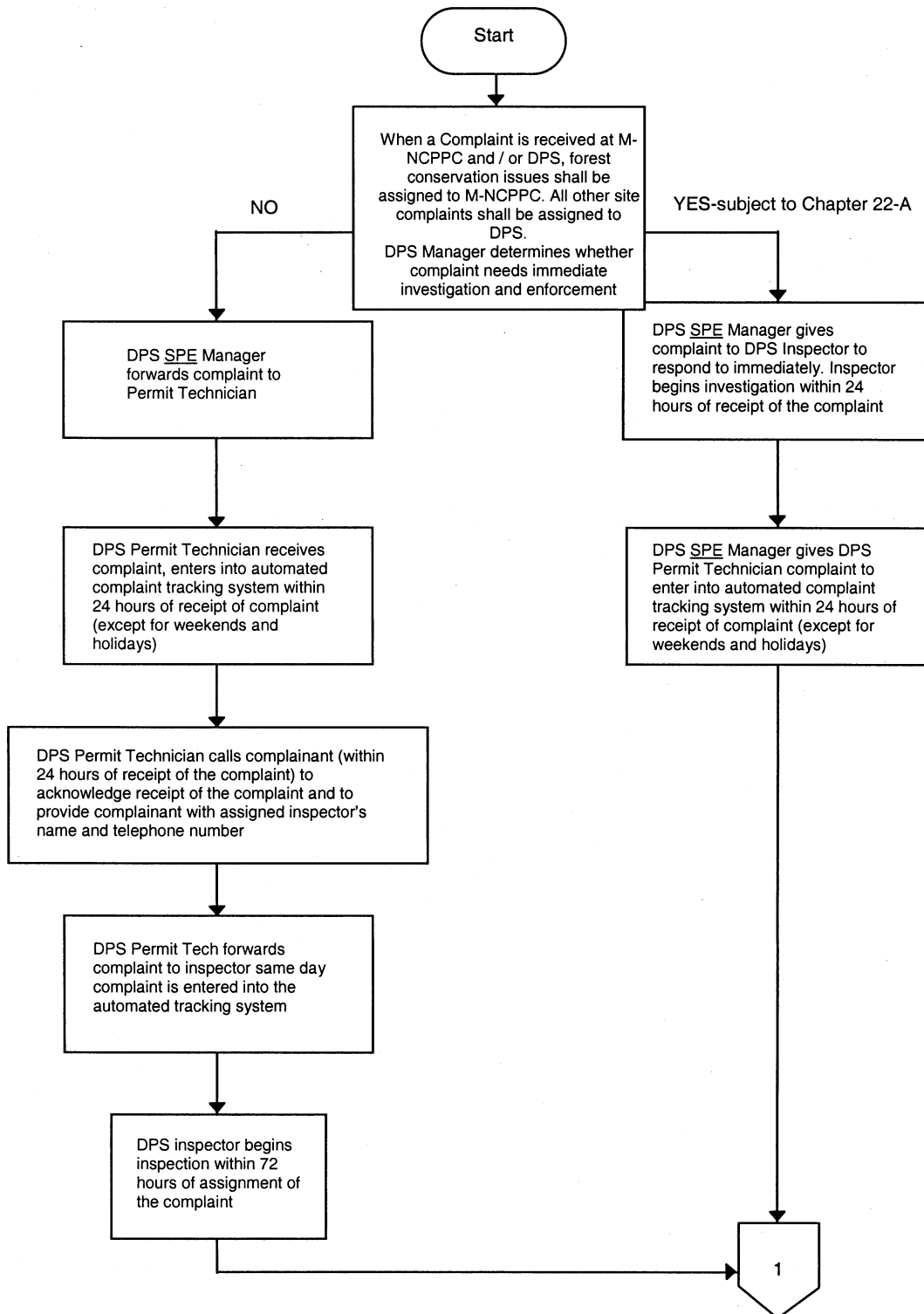
DPS BUILDING PERMIT REVIEW PROCESS (cont'd)



DPS SITE PLAN INSPECTION PROCESS



DPS SITE PLAN COMPLAINT PROCESS



DPS SITE PLAN COMPLAINT PROCESS (cont'd)

