



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



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Completed: 6-1-16

DESCRIPTION

Modifications to the Memorandum of Understanding (MOU) between the Maryland-National Park and Planning Commission (M-NCPPC) and the Montgomery County Department of Permitting Services (DPS).

Primary modifications include:

- Updating sections of the MOU to include the use of ePlans for the review and approval of site plans and building permit applications.
- A new section describing the process for the release of financial sureties.
- Elimination of most flow charts except for the one that addresses processing of complaints and violations.

SUMMARY

Staff recommends approval and adoption of the revisions to the May 2011 MOU between M-NCPPC and DPS. The update to the MOU is a requirement of the original agreement and the second amendment to that agreement. The update allows the participating Agencies to account for changes in processes and organizational structure which occasionally occur. The proposed revisions to the MOU are to provide additional clarifications on timing, processing, and the enforcement of violations. For the most part, the changes are already implemented at DPS and M-NCPPC.

PURPOSE

The purpose of this memorandum is to provide the Planning Board an update on site plan enforcement including the efforts made by both DPS and M-NCPPC toward enforcement, and to discuss the modifications needed to the MOU to reflect current procedures.

BACKGROUND

The MOU between the M-NCPPC and DPS was initially executed on August 2, 2006, as result of a Council audit of site plan inspection and monitoring procedures. Since the adoption of the MOU, DPS has inspected site plans for compliance, but the ultimate responsibility for enforcement is with M-NCPPC. The first amendment to the MOU, on December 22, 2011, was to reflect process and procedural changes that evolved during the first five years after the adoption of the MOU.

Representatives from both agencies meet regularly to identify potential conflicts with approved site plans and the as-built conditions, streamline the building permit application review process, and continually strive to improve efficiency. The MOU requires quarterly meetings, which do occur. In addition, at any time, staff from both agencies can meet to discuss site plan conditions including triggers, site plan surety agreements and cost estimates, and enforcement of site plan conditions.

PROCESS

The MOU has three main aspects which are described in greater detail below. The three aspects have resulted in greater clarity in the roles and responsibilities for DPS and M-NCPPC in terms of the review of new site plans, building permit application reviews, and for the inspection and enforcement of site plans. Each is described below.

Development Review

The DPS zoning section started commenting on new development applications after the signing of the MOU. DPS Site Plan Zoning and Site Plan Enforcement Staff are:

1. Active and regular participants at Development Review Committee meetings.
2. Frequently requested to comment on the functionality of proposed site plan conditions of approval before finalization of a staff reports.

Building Permit Applications

DPS and M-NCPPC have a close working relationship for the release of building permits. The relationship existed prior to the MOU and has been refined over the years. The number of building permit applications forwarded to M-NCPPC by DPS have declined through the streamlining of procedures and a greater understanding by DPS staff on which building permit applications need M-NCPPC review. The current process for the review of building permit applications is outlined below:

1. DPS is using ePlans for the submission and review of new building permit applications. Approximately 70 percent of the building permit applications received by the Planning Department are via ePlans.
2. Planning staff reviews building permit applications to ensure the appropriate conditions of approval have been satisfied prior to recommending approval of a building permit. Planning staff does not review the technical aspects of an application but rather ensures that the Planning Board's conditions of approval are satisfied including but not limited to: plans are certified; financial sureties submitted and accepted by the Associate General Counsel's office; all appropriate agreements are accepted and approved; record plat approved; etc.
3. Both the Planning Department and DPS Zoning and Enforcement staff track the number of building permits released for specific site plans with building triggers. Since DPS releases the building permit they have the final count for tracking triggers. Planning Staff may authorize the release of a building permit but it may be many months before the building permit is actually released, therefore, the data accumulated by staff as they relate to triggers, may be less accurate than the data accumulated by DPS.

Inspection and Enforcement

The main purpose for the MOU is related to the inspection and enforcement of site plans. DPS Zoning and Enforcement staff is the Commission's inspection staff for all site plans. However, the overall enforcement responsibility still is with the Planning Department. The inspection and enforcement process is as follows:

1. The Planning Department forwards one signed certified site plan to DPS for their records.
2. The applicant submits cost estimates for all site plan features to the Planning Department for review. Once the cost estimate is approved, the applicant then submits the financial security and site plan surety agreement to the Planning Department for review, approval and safe keeping.
3. The Planning Department electronically forwards a copy of the site plan agreement to DPS.
4. Applicants request a pre-construction meeting with DPS zoning and enforcement staff.
5. DPS conducts site plan inspections throughout the build out.
6. DPS notifies the Planning Department when site plan financial sureties can be released.
7. DPS provides the Planning Department a copy of Notice of Non Compliance for any site plan that does not comply with the approved or certified site plan.
8. DPS conducts follow-up inspections to determine if the corrective actions identified in the Notice of Non Compliance are complete.

9. If the corrective action is not complete the case is referred to the Planning Department as an enforcement case in which the staff follows the Planning Board's Enforcement Rules.

MODIFICATIONS TO THE MOU

M-NCPPC and DPS have reviewed the current MOU and believe that there are modifications that need to occur with respect to process changes that have already occurred. The MOU anticipates that changes could occur and that the MOU should be reviewed on a three year cycle; however, the last review occurred in 2011. The proposed changes to the MOU include the following:

1. Updates to reflect the use of ePlans for site plan and building permit application reviews and approvals.
2. A reduction in the number of days in which DPS must inspect each active site plan construction site from 30 days to 10 working days.
3. The elimination of the need for the DPS site plan inspector to be present at the onsite pre-construction meeting. DPS has established a procedure in which the initial site plan inspection occurs in their offices with the developer.
4. A new section describing the roles of M-NCPPC and DPS for the partial and complete release of site plan financial securities.
5. A reduction in the number of days in which DPS inspects allegations of site plan violations from 5 business days to 3 business days.
6. An increase in the number of days in which DPS must provide M-NCPPC a copy of all Notices of Non Compliance, or Notice of Violation, from 1 day to 3 days.
7. A decrease in the number of days from 5 business days to 3 business days in which DPS must provide a written finding to a complainant, and M-NCPPC, when there is a finding of no violation.
8. Removal of Attachment One which is a flow chart of the DPS Building Permit Review Process.
9. Removal of Attachment Two which is a flow chart of the DPS Site Plan Inspection Process.
10. Removal of the first part of Attachment Three, but keeping the second half of Attachment Three. The remaining part of Attachment Three, which is now called Attachment 1, is a flow chart of the necessary steps for enforcing site plans.

Recommendations

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

Attachments

- Attachment 1. 2006 Memorandum of Understanding
- Attachment 2. 2011 Memorandum of Understanding
- Attachment 3. Proposed 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:

Attachment 1

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

Attachment 1

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.

Attachment 1

- 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.

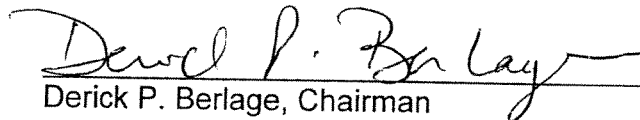
c. MOU Review and Comment

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.

Attachment 1

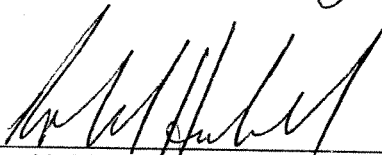
6. **Fines:** Fines collected by each agency must be dispersed in accordance with the policies and procedures of the respective agency.
7. **Modifications and Amendments:** This MOU may be modified or amended only by an instrument duly executed by both DPS and the Planning Board and any modification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



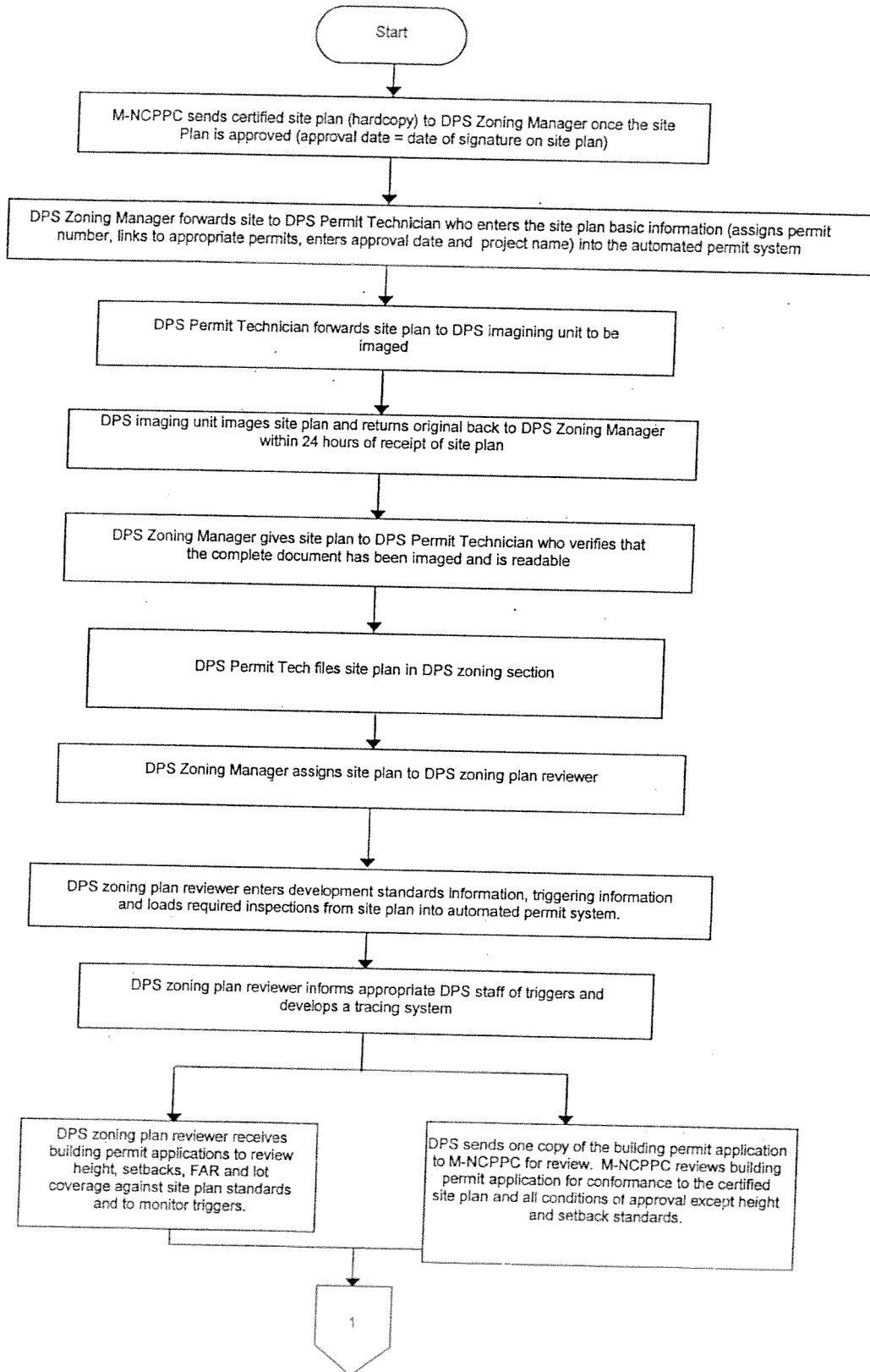
Robert Hubbard, Director
Montgomery County Department of Permitting Services

Signed this 2nd day of AUGUST, 2006

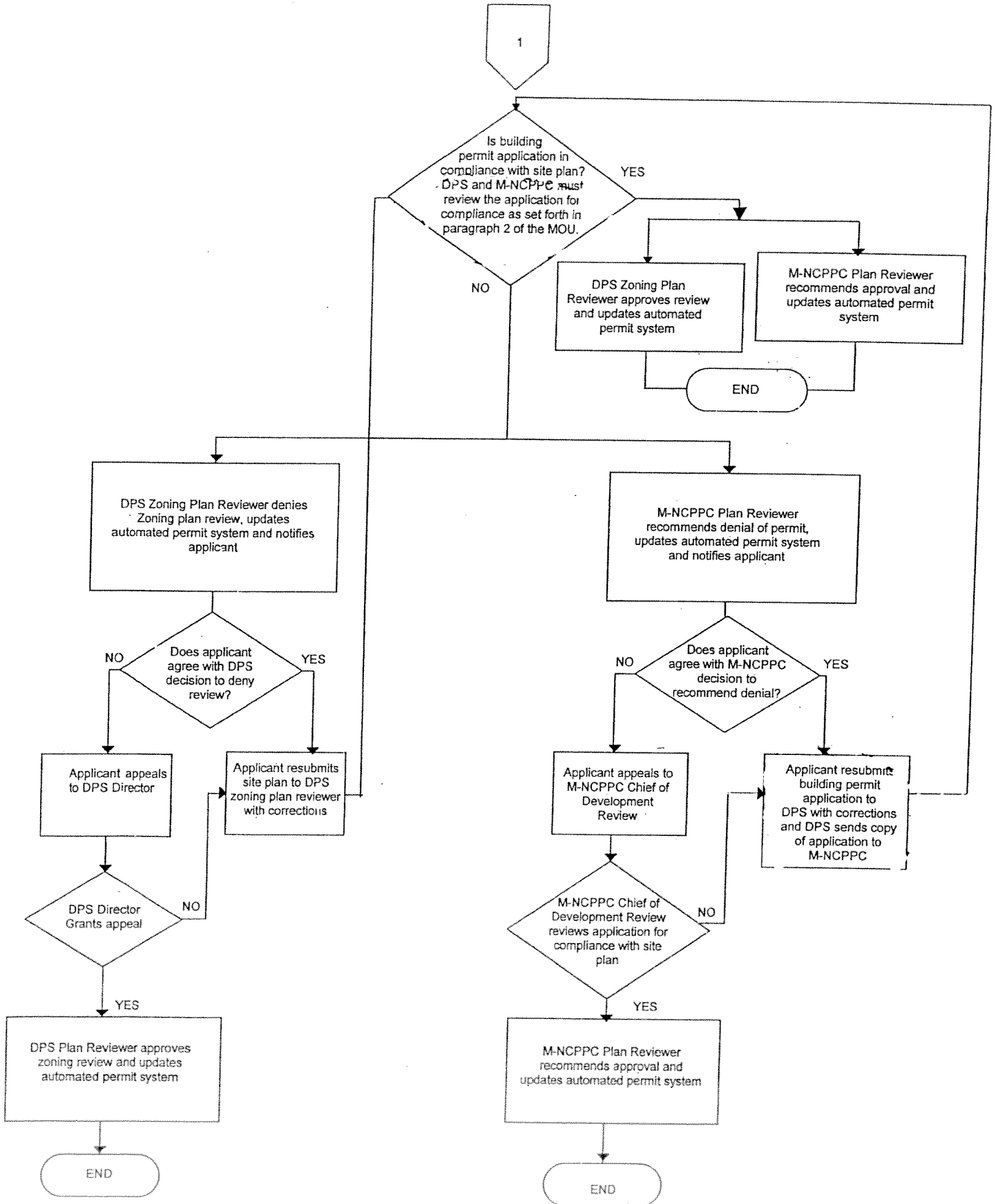
Attachment 1

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DPS BUILDING PERMIT REVIEW PROCESS

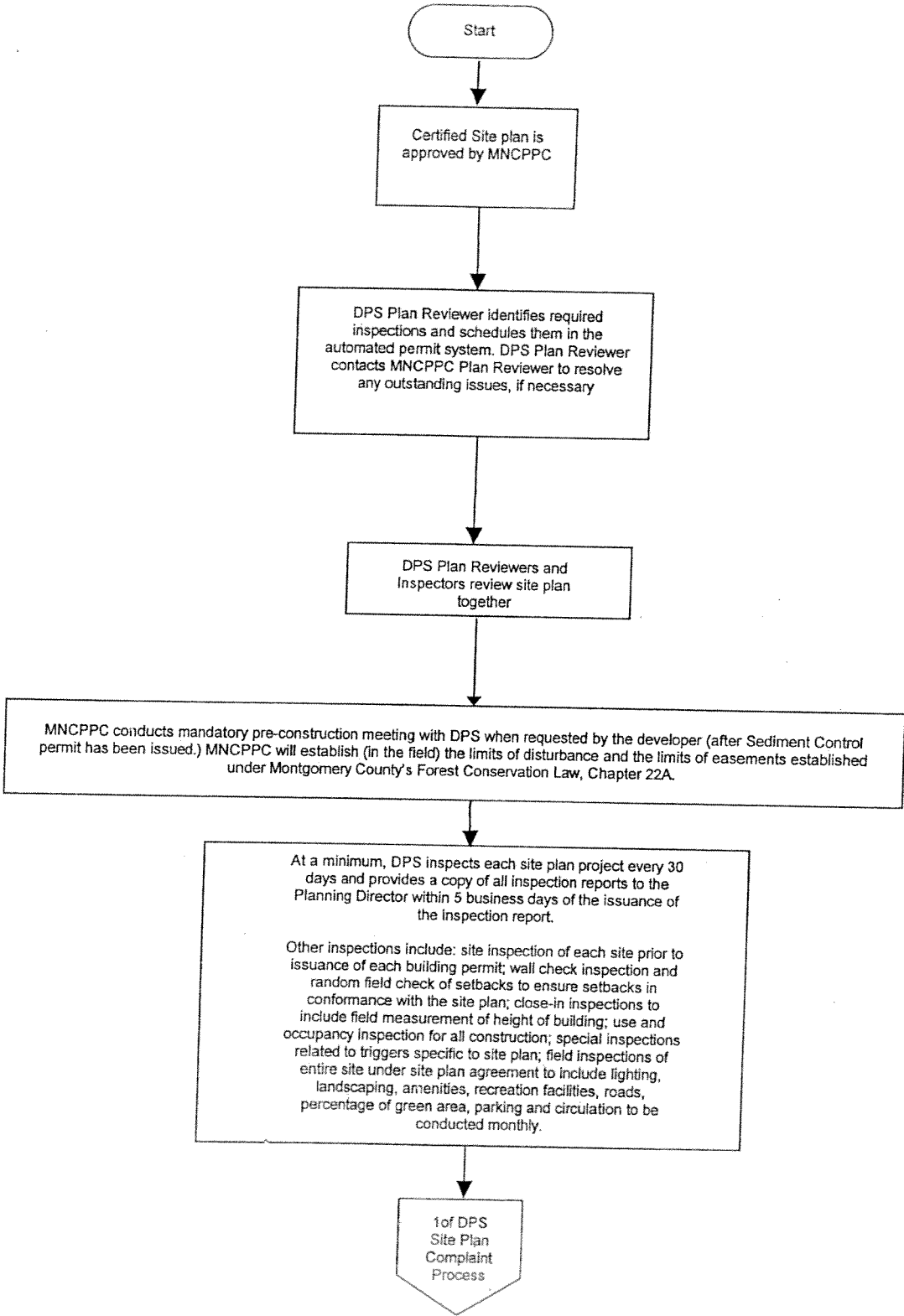


Attachment 1 DPS BUILDING PERMIT REVIEW PROCESS (cont'd)

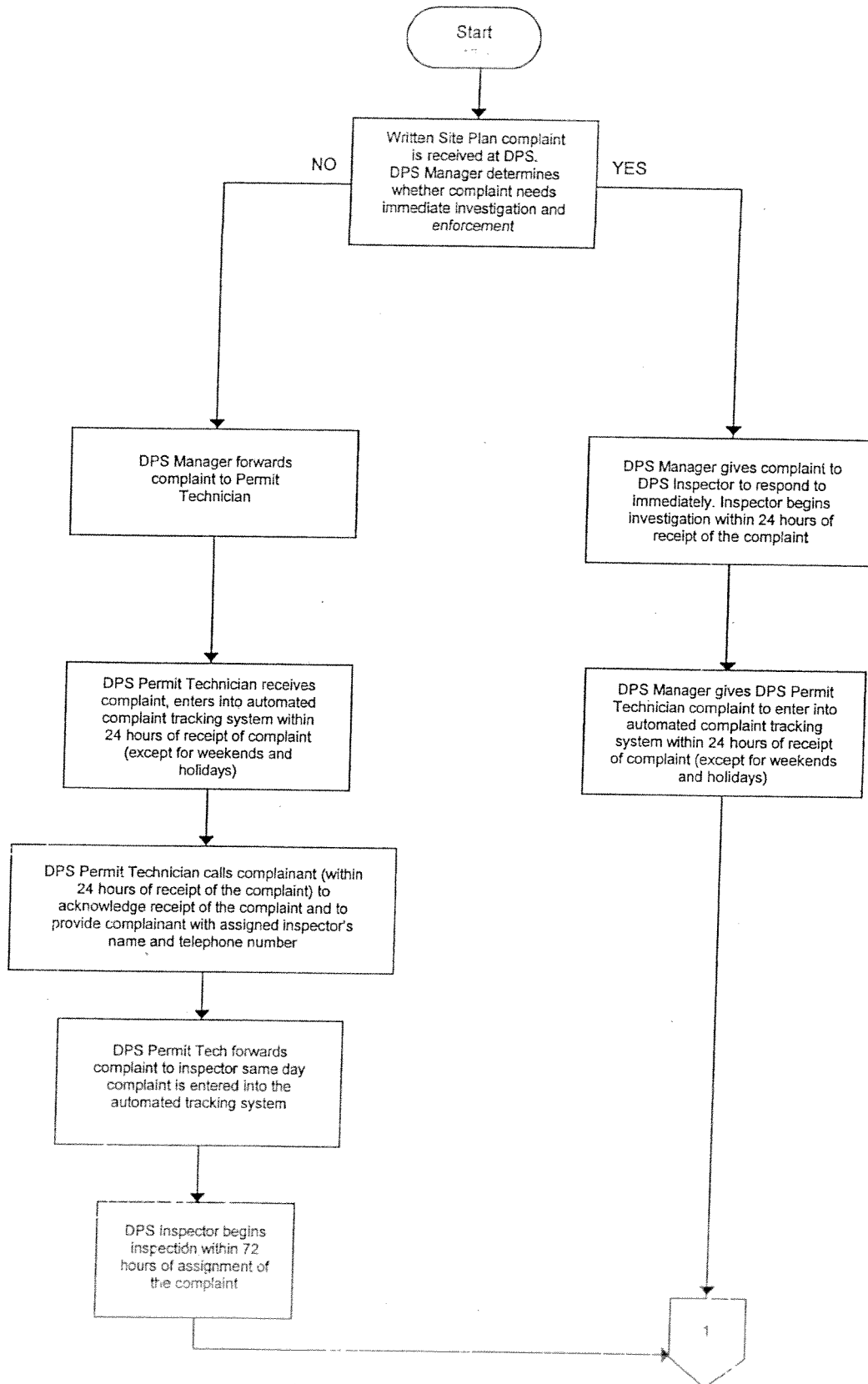


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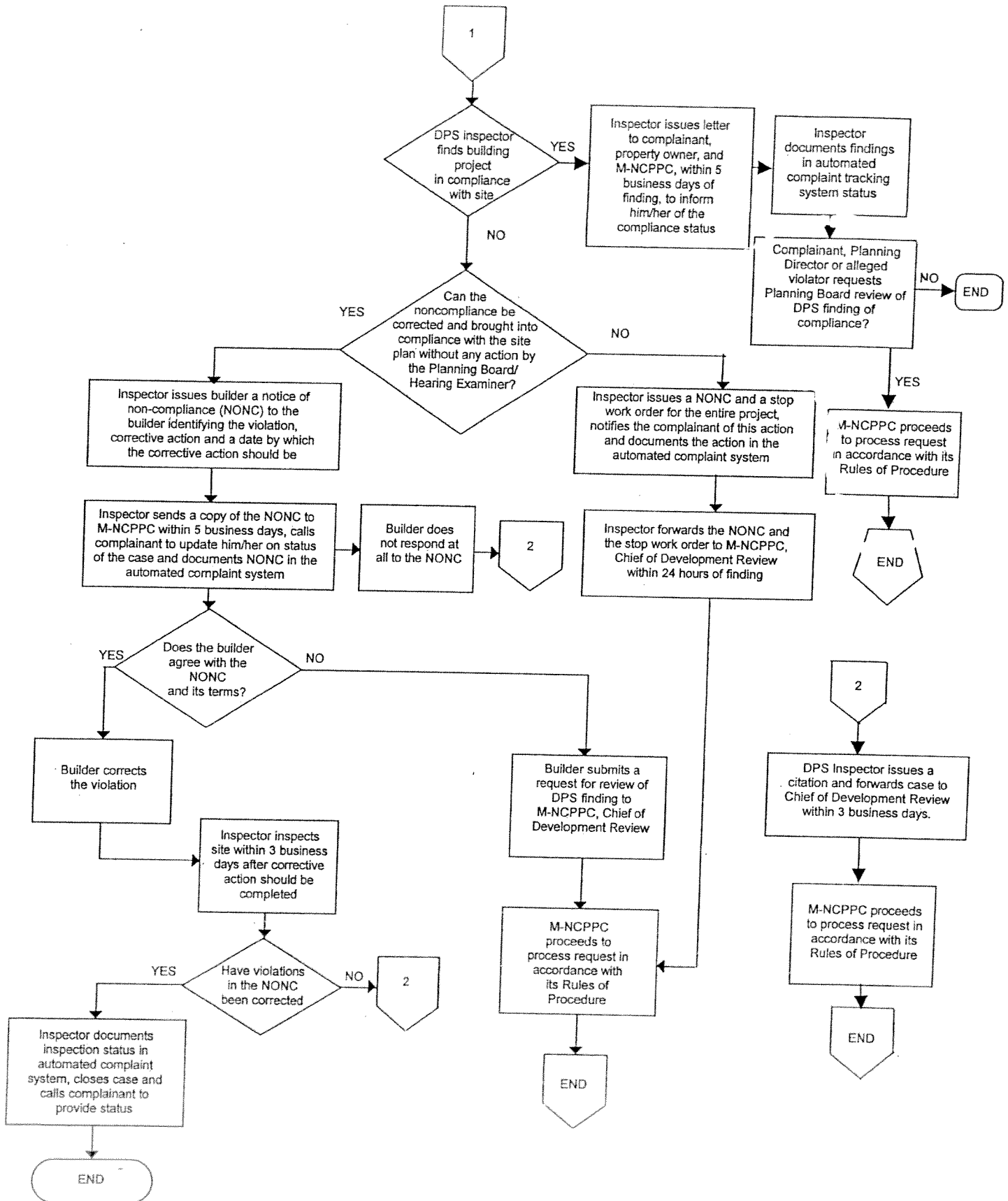
DPS SITE PLAN INSPECTION PROCESS



DPS SITE PLAN COMPLAINT PROCESS



Attachment 1 DPS SITE PLAN COMPLAINT PROCESS (cont'd)



Attachment 2

**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 22nd day of December, 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").

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 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.

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

Attachment 2

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 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 two complete 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**

- 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.

Attachment 2

- 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 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, fences, parking facilities, roads, hardscape, streetscape, and all other site plan agreements.
 - iii. 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.
 - 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/notice of violation 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/violation can be brought into conformance with the certified site plan, then DPS must ensure the development is brought into conformance.

Attachment 2

- 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**
- 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.
 - c. **Intra-Agency Communications**

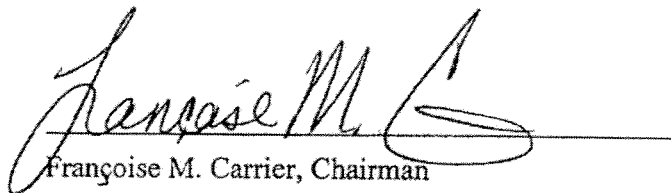
Subject to County Council appropriations, DPS and the Planning Department will have full access to each other's permit database and tracking system (through Hansen or a similar system) to query and approve permits by March 1, 2007.
 - d. **MOU Review and Comment**

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.

Attachment 2

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.

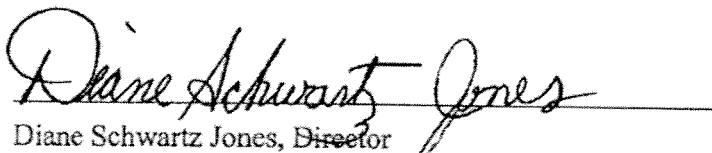
As Chairman of the Montgomery County Planning Board and as DPS Director of the Montgomery County Department of Permitting Services, we respectfully hereby agree to abide by the goals, objectives, terms and agreements as set forth in this MOU.



Françoise M. Carrier, Chairman

The Maryland National Capital Park and Planning Commission
Montgomery County Planning Board

Signed this 22nd day of December, 2011



Diane Schwartz Jones, Director

Montgomery County Department of Permitting Services

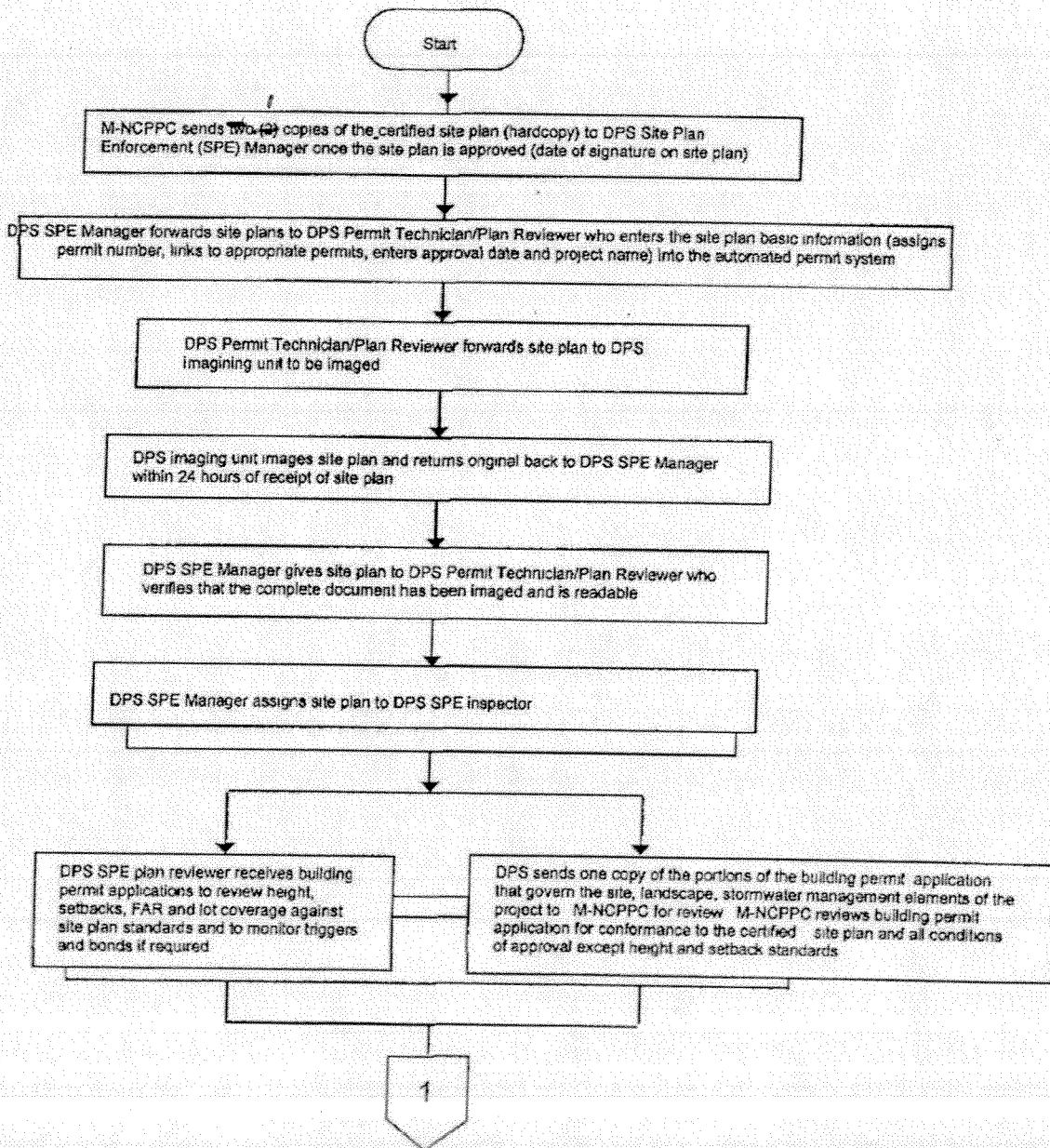
Signed this 22 day of December 2011

Approved as to form and legality
Montgomery County, Md. County Attorney's Office

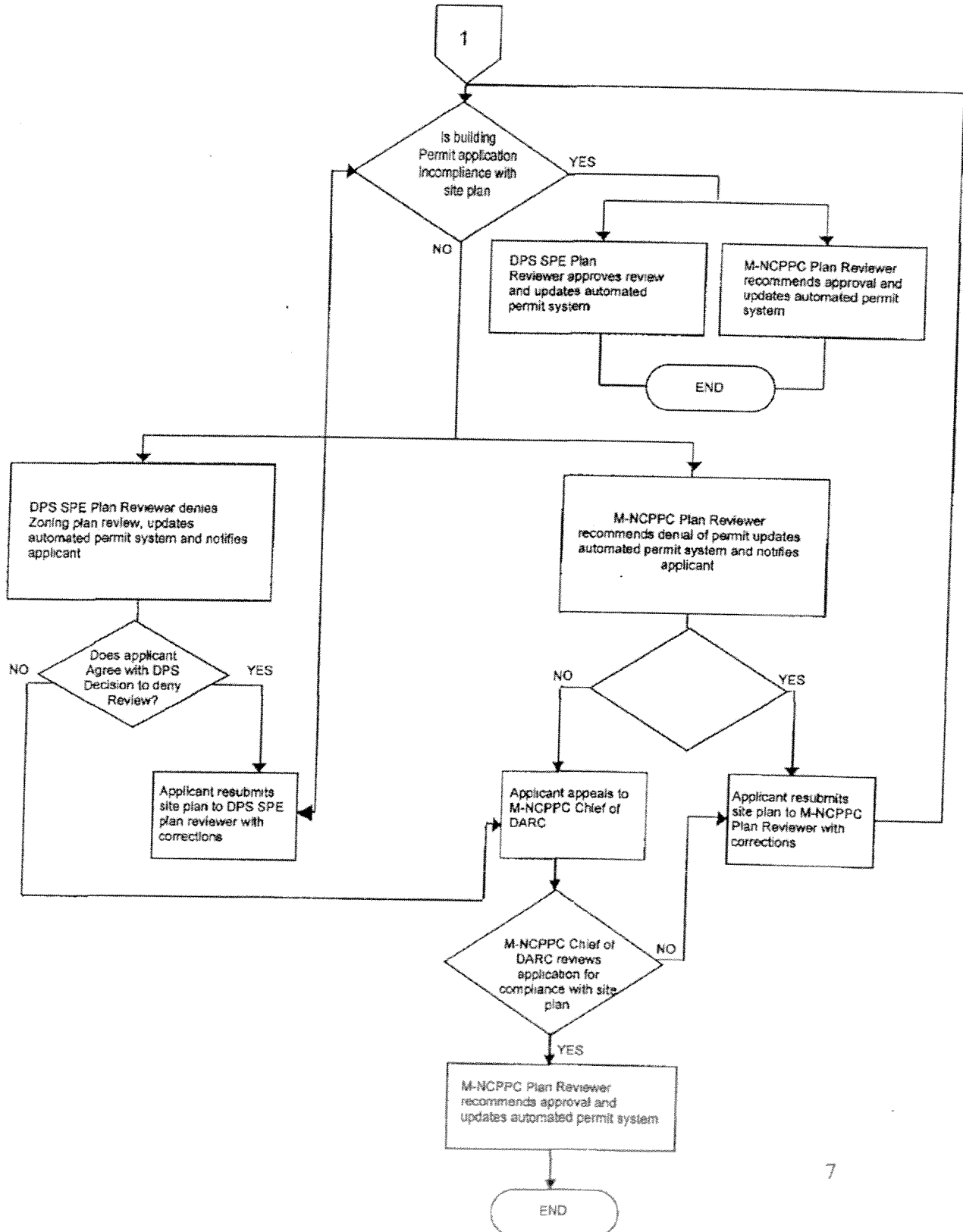


By: Melinda Jones

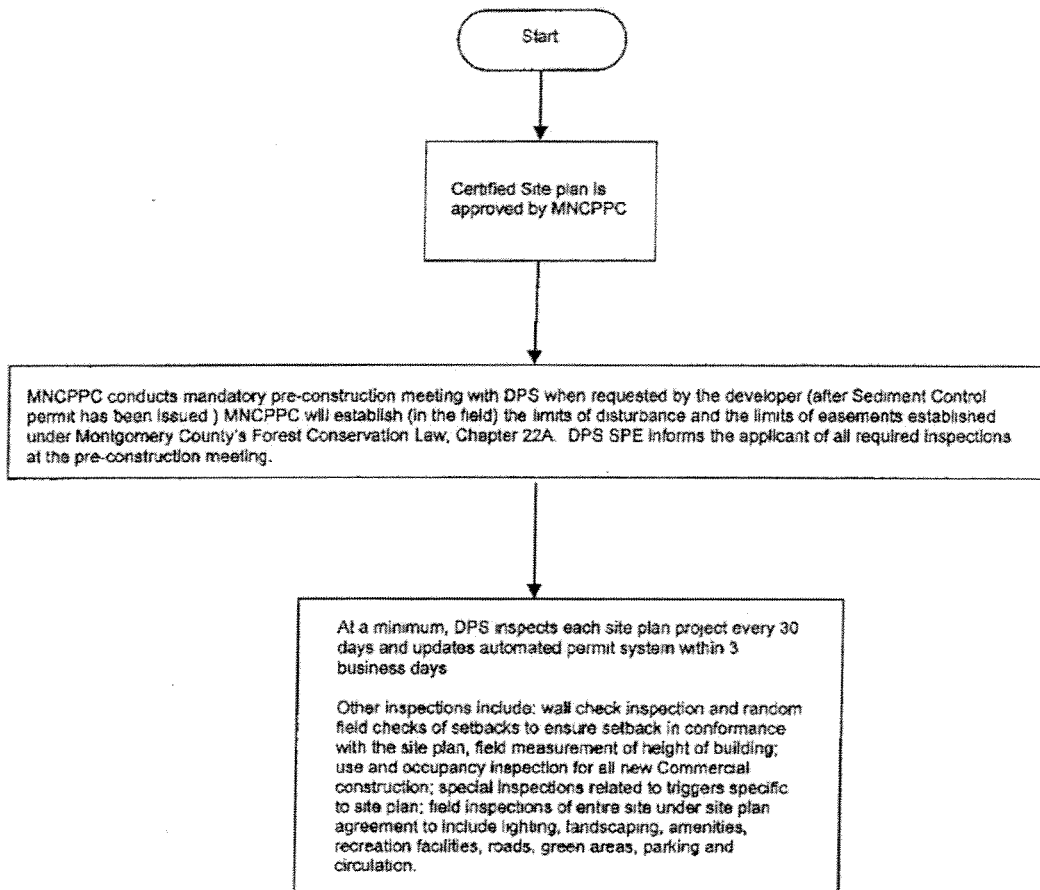
DPS BUILDING PERMIT REVIEW PROCESS



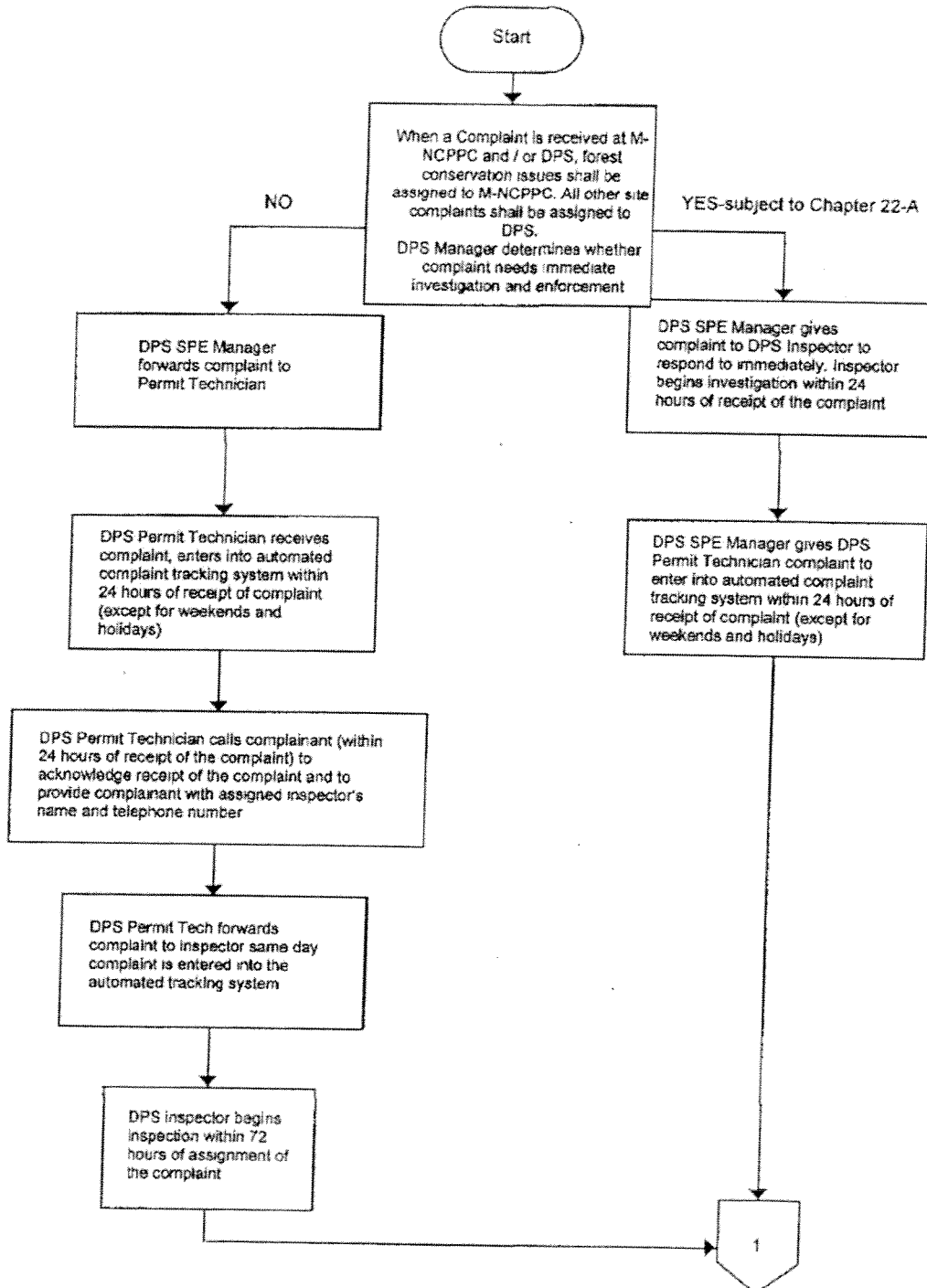
DPS BUILDING PERMIT REVIEW PROCESS (cont'd)



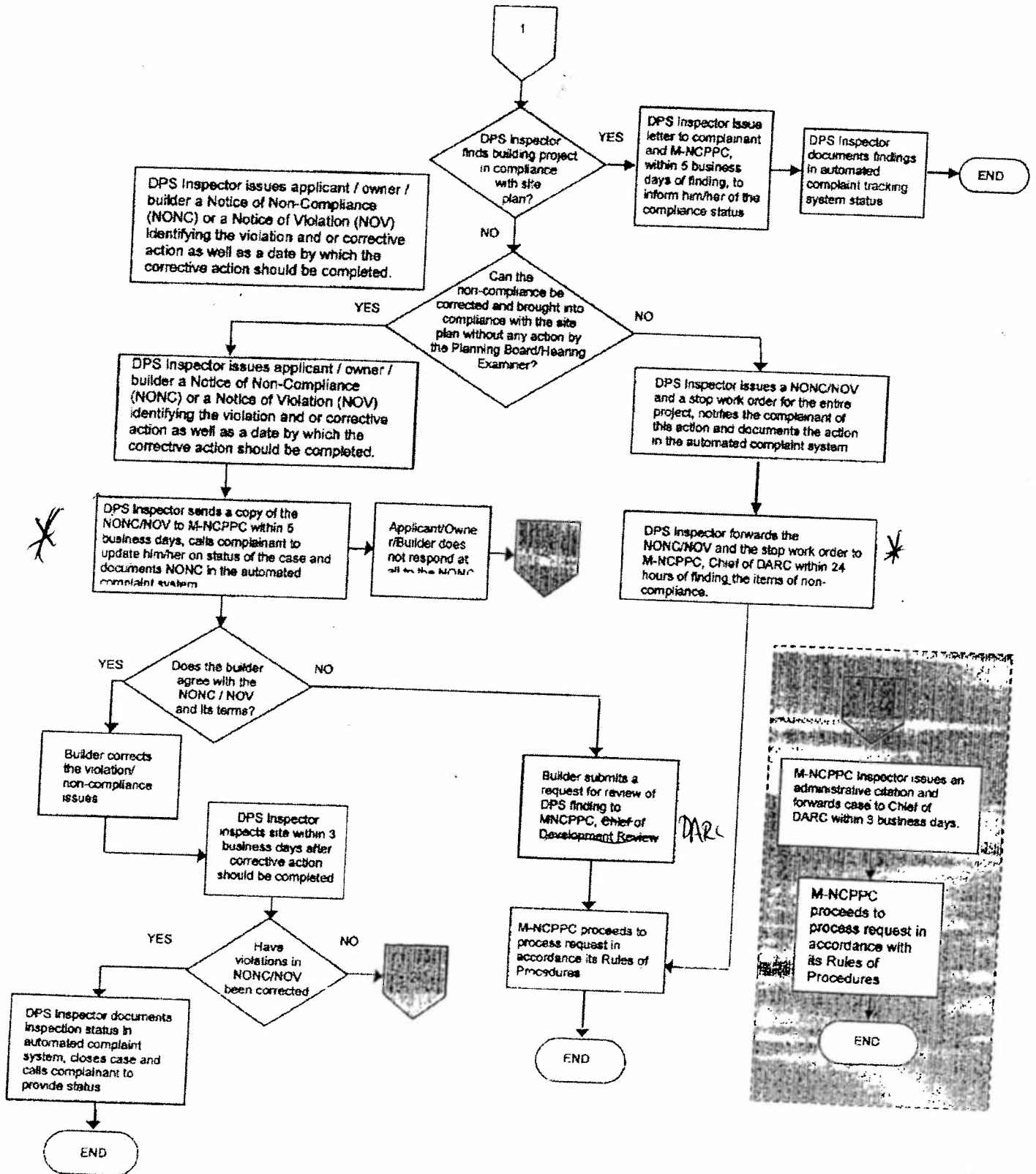
DPS SITE PLAN INSPECTION PROCESS



DPS SITE PLAN COMPLAINT PROCESS



DPS SITE PLAN COMPLAINT PROCESS (cont'd)



Attachment 3

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 _____ ~~22nd~~ day of ~~December~~ June, 2016 ~~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”).

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 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 the other things, requiring a plan of compliance or assessing penalties against the site plan violators.

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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~~ 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 Zoning & Site Plan Enforcement (ZSPE) Inspector: An Inspector employed by DPS.
- f. Planning Board: Montgomery County Planning Board of the Commission.
- g. Planning Director: Director of the Montgomery County 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)~~ Section 22-101 of the Land Use Article in the Annotated Code of Maryland.

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.~~ DPS must review building permit applications for conformance to the certified site plan and conditions of approval.
- 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 or a task in ePlans submitted by the building permit applicant.
- e. The Planning Director must review building permit applications for conformance to the certified site plan and all appropriate conditions of approval.

3. Inspections

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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~~ DPS must develop a process to conduct routine inspections of all active site plans.
- 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~~ 10 working days that it is under construction, and 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, fences, parking facilities, roads, hardscape, streetscape, height, setbacks, FAR, lot coverage, and all other site plan agreements.
- iii. Pre-Construction: A Commission Inspector must conduct a pre-construction meeting and walk the to establish in the field the limits of disturbance and the and conservation limits of easements established under the FCL. ~~A DPS SPE Inspector must also attend this pre-construction meeting.~~
- iv. DPS ZSPE inspector must conduct a pre-construction meeting regarding the requirements/enforcement of the site plan. This may or may not occur with the Forest Conservation Inspector.

b. Interim Landscaping/ Site Features Inspection

- i. At the request of the Developer/Applicant and upon successful installation of the landscape materials/ site features identified on the certified site plan, DPS must notify the Planning Department that up to 50 percent of the financial surety for landscaping/site features can be released.
- ii. Upon receipt of DPS acceptance of the landscaping/site features, the Planning Department will notify the property owner that up to 50 percent of the financial surety attributed to landscaping/site features can be released upon submission and approval of a replacement financial surety or a rider that reduces the amount of the original surety.

c. Final Inspection

- i. Upon successful completion of all site features, including 1 year after acceptance of the landscaping, DPS must notify the Planning Department that the property owner has satisfied the specific requirements of the site plan and that any financial surety retained can be released.

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- ii. Upon receipt of a completion notice from DPS the Planning Department must release all outstanding financial sureties submitted by the property owner, for that phase of the development or the entire property, whichever is relevant.

d. Inspections Based Upon Allegation of Violation

- i. DPS is required to investigate all allegations of site plan violations (see Attachment 1). ~~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's ~~designee~~ designee DRC Chief and appropriate Area Chief that a complaint has been received and a brief written 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~~ 3 business days of receipt of any such allegation.
- iv. If there is a potential violation to the FCL, DPS must refer the complaint to Commission Inspection staff for all alleged violations to the Commission's enforcement staff 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/notice of violation under § 8-26(g) of the Montgomery County Code ("Code"), or issue a citation and/or stop work order under the provision 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~~ DARC Chief within ~~24~~ 72 hours of its issuance.
 - i. If the non-compliance/violation 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/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 DARC Chief ~~Commission~~ for appropriate action.

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- 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~~ DARC Chief, within ~~5~~ 3 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/Planning Director, the DPS Director and Planning ~~Board~~ Director 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.

- c. Intra-Agency Communication

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.~~

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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.

- 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.

~~Francoise M. Carrier, Chairman~~

Casey Anderson, Chairman

The Maryland National Park and Planning Commission
Montgomery County Planning Board

Signed the _____ day of _____ 2016 ~~2011~~

Diane Schwartz Jones, Director
Montgomery County Department of Permitting Services

Signed the _____ day of _____ 2016 ~~2011~~

ATTACHMENT 1: SITE PLAN COMPLAINT/ENFORCEMENT PROCESS

