

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Agenda date: June 1, 2006
Agenda Item No. 10

**OFFICE OF
THE GENERAL COUNSEL**

(301) 495-4646
FAX (301) 495-2173
May 30, 2006

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Adrian R. Gardner, General Counsel *ARG*
301.454.1670

FROM: Debra Yerg Daniel, Associate General Counsel *DYD*
301.495.4646

RE: Worksession: Memorandum of Understanding with the Department of
Permitting Services

As part of the District Council's review of legislation related to the site plan review process, the Council discussed whether a Memorandum of Understanding ("MOU") between the Planning Board and the Department of Permitting Services ("DPS") detailing specific responsibilities of the two agencies concerning review of permits and inspections would be the most appropriate way to clarify the roles and responsibilities of the two agencies. The Planning Board and DPS decided to enter into an MOU as a mutually agreeable alternative to additional legislation.

On February 16, 2006, the Planning Board reviewed a draft outline of the MOU. On February 27, 2006, the Planning, Housing, and Economic Development Committee ("PHED Committee") reviewed the same draft outline of the MOU. Attached is a copy of the actual draft MOU along with attachments to the MOU in the form of several flow charts. The attached MOU and flow charts have been drafted in conjunction with DPS staff and incorporate and address, to the extent feasible, the comments received from both the Planning Board and the PHED Committee. Earlier this month, drafts of the MOU and flow charts were sent to County Council Staff for review and no comments have been received to date.

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 field 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, homeowner

associations, and others concerned that developments comply with certified site plans. The MOU is drafted to transfer primary inspection responsibilities to DPS for determining whether developments are in compliance with certified site plans while keeping the ultimate enforcement function with the Planning Board.

Planning Staff and Legal Staff recommend that the Planning Board forward the attached draft MOU and flow charts to the District Council for its review.

Attachments

DYD:cmd

G:\DYD\PLNBOARD\mou.dps.052806.doc

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, 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 has staff that 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 has staff that 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 field 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 shall be defined as follows:

- a. Commission: The Maryland-National Capital Park and Planning Commission.
- b. Commission Inspector: An Inspector employed by the Commission.
- c. 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 Director.
- c. The 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 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, Site Plan Review 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 shall inspect the development for compliance with all elements of the certified site plan located 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.

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, Site Plan Complaint Process.
- ii. The Commission must not accept any allegation of site plan violation. The Commission must refer complainants immediately to DPS.
- 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 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 Planning Director to establish a plan of compliance.
- 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 ask the Planning Board to 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.

- d. Upon receipt of a request for review, 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**

b. **Zoning Ordinance Interpretations**

The 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.

b. **Intra-Agency Communications**

Subject to County Council appropriations, DPS and the Planning Department must work toward full inter-agency communications through Hansen or a similar system by March 1, 2007.

c. **MOU Review and Approval**

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

- 6. **Fines**: Fines collected by each agency shall be dispersed in accordance with the policies and procedures of the respective agency.
- 7. **Modifications and Amendments**: This MOU shall not be modified or amended except by an instrument duly executed by both DPS and the Planning Board.
- 8. **Severability**: The terms and provisions of this MOU are severable and in the event that any term or provision of this MOU is declared to be invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect.
- 9. **Choice of Law**: This MOU shall be construed and enforced in accordance with the laws of the State of Maryland.
- 10. **Counterparts**: This MOU may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same MOU.

As Chairman of the Montgomery County Planning Board and as 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.

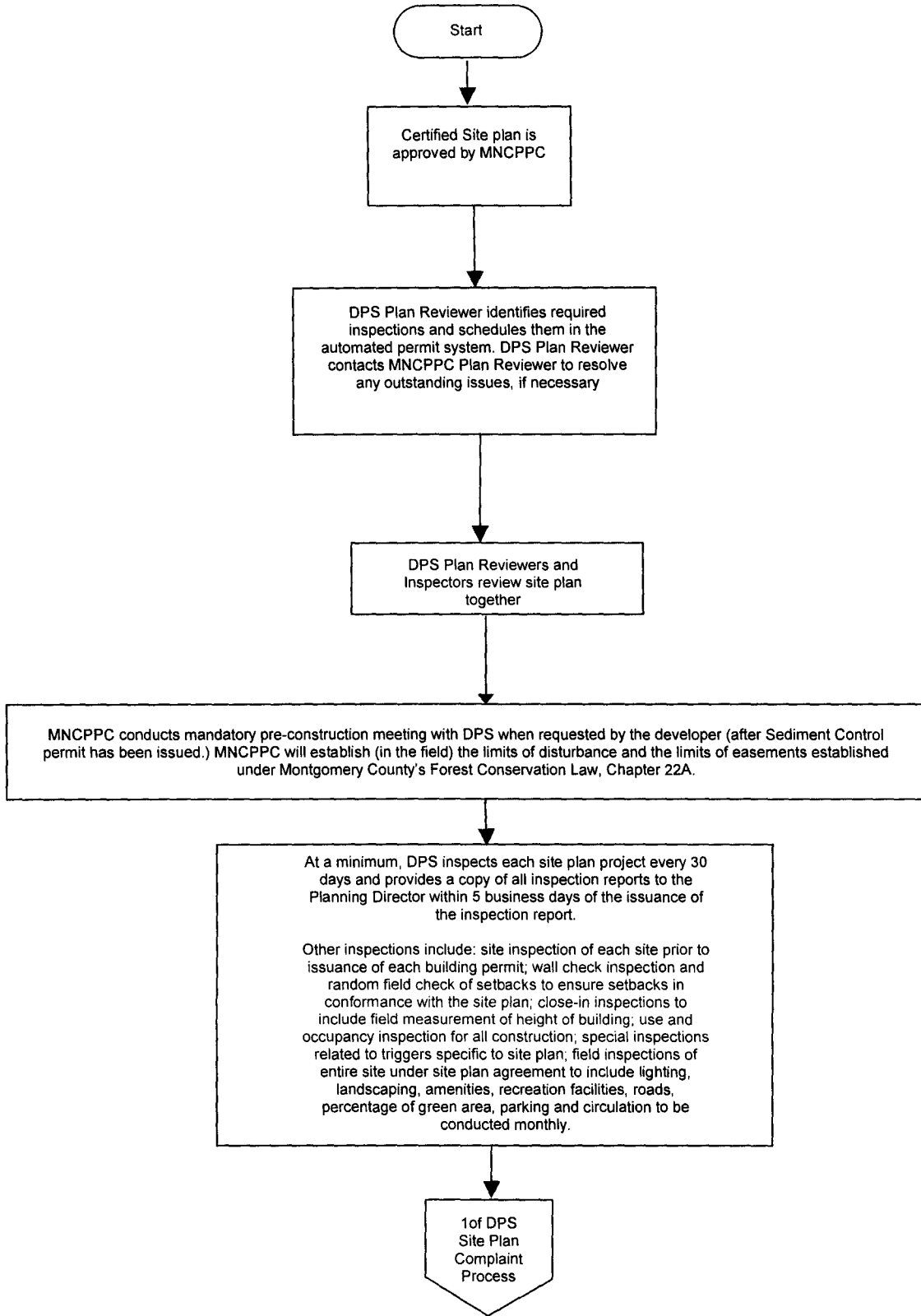
Derick P. Berlage, Chairman
The Maryland National Capital Park and Planning Commission
Montgomery County Planning Board

Signed this _____ day of _____, 2006

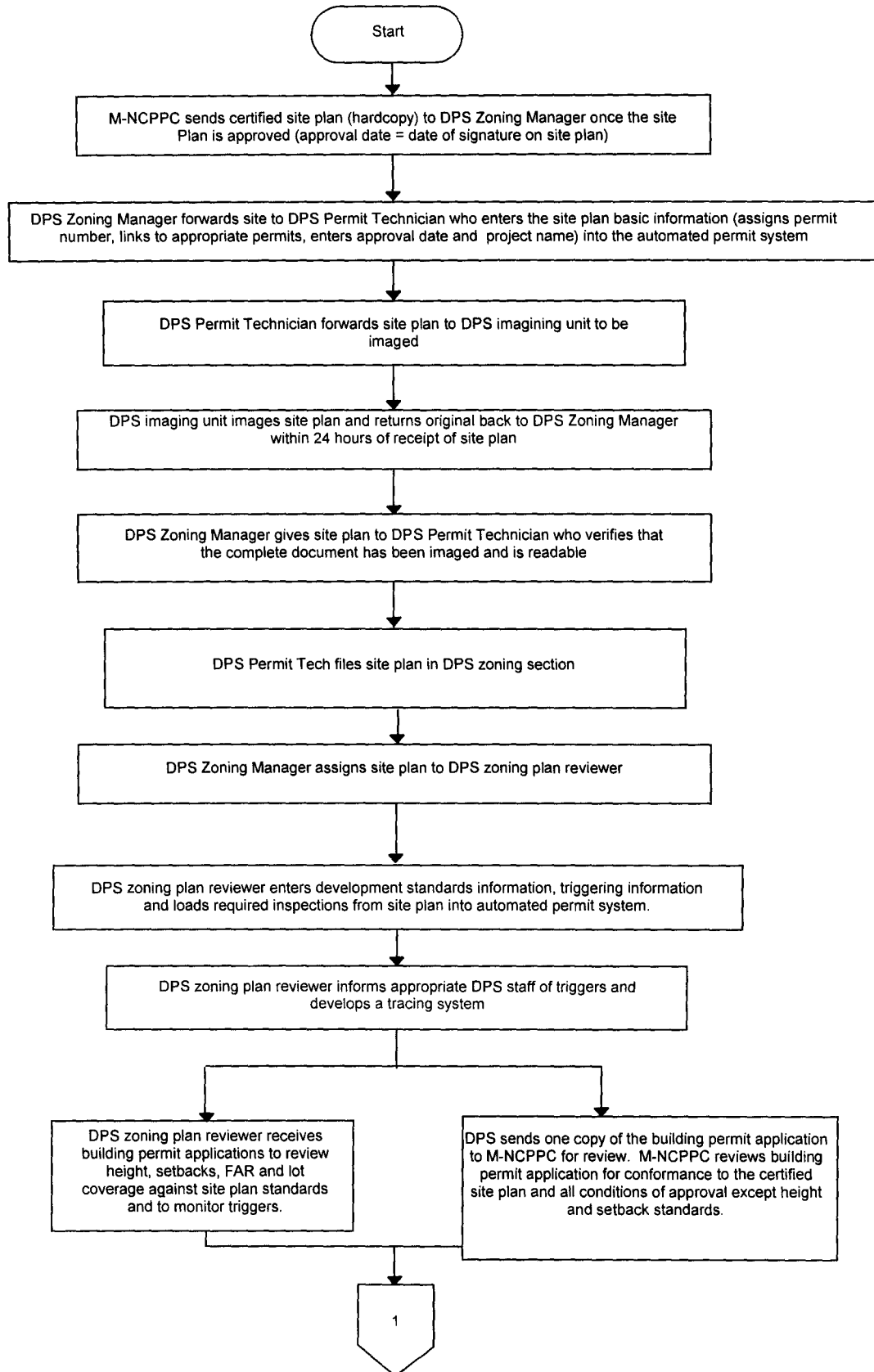
Robert Hubbard, Director
Montgomery County Department of Permitting Services

Signed this _____ day of _____, 2006

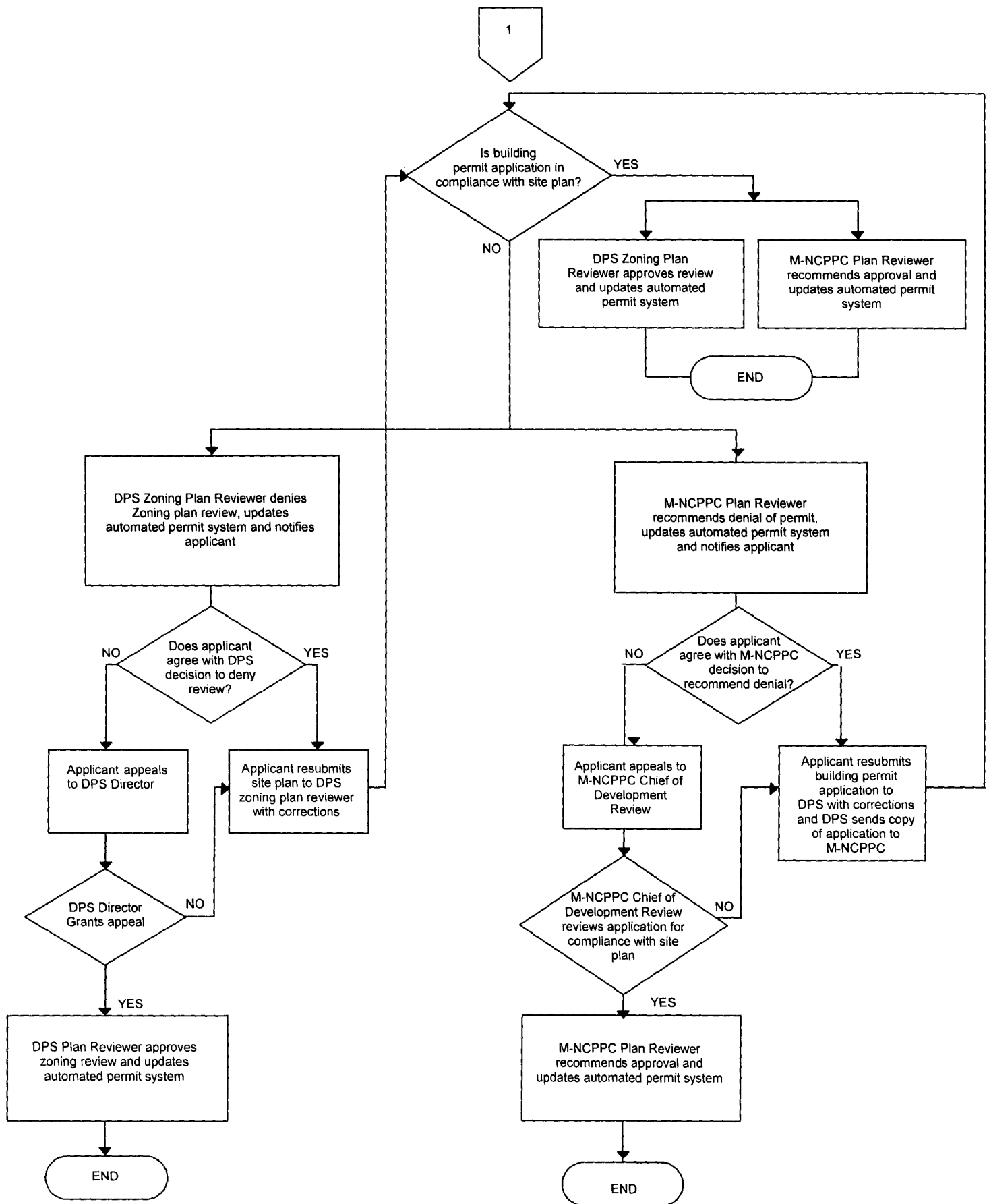
DPS SITE PLAN INSPECTION PROCESS



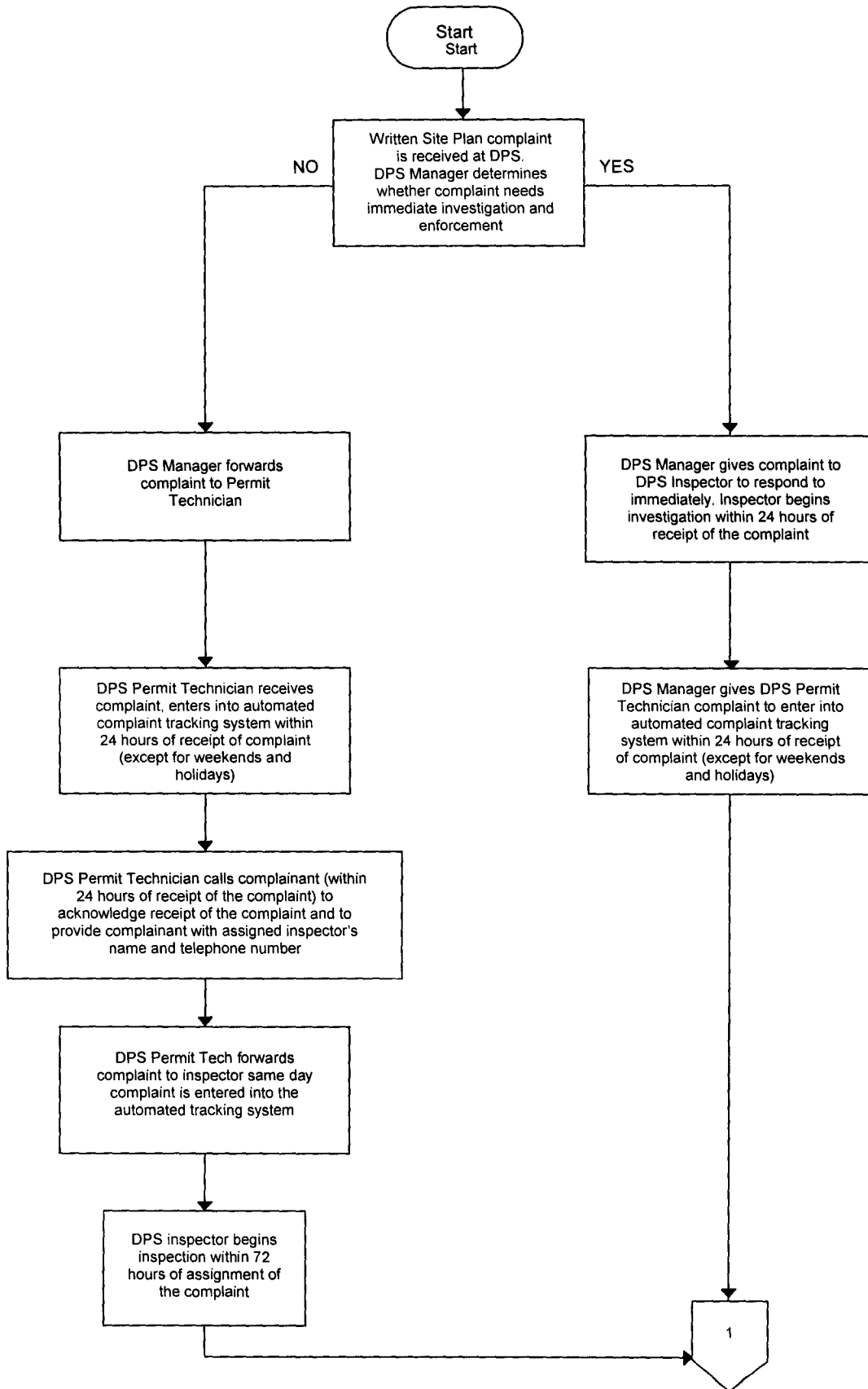
DPS BUILDING PERMIT REVIEW PROCESS



DPS BUILDING PERMIT REVIEW PROCESS (cont'd)



DPS SITE PLAN COMPLAINT PROCESS



DPS SITE PLAN COMPLAINT PROCESS (cont'd)

