

Environmental Health Services and Department
of Permitting and Environmental Review
Proviso Response:
Coordination of Services

2015/2016 Biennial Budget Ordinance 17941,
Section 85, Proviso P3 and Section 98, Proviso P3

June 27, 2016

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Executive Summary

The Metropolitan King County Council adopted parallel provisos in the 2015-2016 Budget (Ordinance 17941) for Public Health's Environmental Health Services (EHS) Division (Section 98, P3) and for the Department of Planning and Environmental Review (DPER) (Section 83, P3). These provisos call for coordinating EHS and DPER septic permitting services in cases where they could achieve efficiencies, reduce backlogs, improve agency alignment and increase customer service.

Leadership from Public Health (PH) and DPER met in December 2014 and January 2015 to determine membership on the proviso workgroup. The workgroup convened in March 2015, and met monthly through August 2015. A member of the King County Performance, Strategy and Budget's Continuous Improvement Team joined the group as facilitator in May 2015, after walking through the processes at both sites as a customer in April 2015.

EHS members: Stella Chao, Deputy Division Manager; Dave Koperski, HEI, Onsite Sewage Program; Kate Neville, Business Process Improvement Manager; Darrell Rodgers, Section Manager, Community Environmental Health; Lynn Schneider, Supervisor, Onsite Septic Program

DPER members: John Backman, Permit Integration Project Manager; Jim Chan, Assistant Director for Permitting; Steve Roberge, Product Line Manager - Single Family

Other members: Fariba Fuller, Consultant, Continuous Improvement Team

The proviso workgroup and department leadership from both Public Health and DPER agreed that the intent of the project was to improve customer service. Recommendations made in the report focus on improving the customer experience and customer satisfaction. The proviso workgroup drafted a team charter with input from PH and DPER leadership in April 2015 (Appendix A).

The proviso workgroup identified limited staff resources as the greatest factor responsible for large backlogs and long turn-around times for permit review. EHS cut staff during the 2008 recession and went from a maximum of 15 onsite septic (OSS) inspectors and a staffed drinking water program to three (3) full time employees (FTE) OSS inspectors for the entire county and no drinking water program. Conversely, DPER (then DDES) reduced staffing levels as a result of reduced demand for permitting services and an ongoing annexation process; the most significant reductions in staffing levels occurred in 2012. Between 2010 and 2014, DPER reduced staffing by 43% to a level of 79.4 FTE's in 2014.

EHS and DPER will continue to work together to implement improvement processes identified as low effort in Table 1. The agencies will also work to prioritize and identify funding sources to implement the items identified as high effort that will result in more significant process improvements for customers.

Challenges to inter-agency coordination include data systems that do not communicate with each other, small portion of permits processed with an intersection between the two agencies, and physical distance between agency office locations.

After consideration of intersecting customer service needs, process flow analysis, and a trial co-location with the Eastgate-based EHS lead inspector at DPER's Snoqualmie office, a number of infrastructure and process improvement opportunities were identified:

- Increase capacity in EHS field inspectors;
- Review OSS (PH) and Building Applications (DPER) concurrently;
- Continue monthly inter-agency collaboration meetings;
- Make website enhancements including OSS permit status webpage access;
- Create new educational materials for customers;
- Create communication tools for EHS and DPER to insure accurate referrals between agencies; and when funding is available:
 - Create website enhancements to allow for online applications;
 - Explore options to improve data communication between the two agencies and databases.

EHS and DPER have already made significant progress to improving customer service by implementing standard operating procedures and establishing regular collaboration meetings. Both provisos require a report be transmitted to the King County Council that includes:

- Mapping of EHS septic and related DPER permitting workflows.
- Summary of workload and backlog for the past five years, including total and per FTE annual target and actual counts, turnaround times for design reviews, and other inspector functions for septic and related DPER permits.
- Identification of intersections and chokepoints where one agency's process affects the other.
- Consideration of co-supervising, co-locating and other means of increasing communication and coordination between the agencies.
- Consideration of statutory and code requirements.

- Recommendations for infrastructure and process changes to improve EHS and DPER permitting processes to reduce backlogs, increase efficiency and cross-agency coordination and improve customer service.
- Quantification of the anticipated effect of the recommended changes on permit processing performance and costs of the recommended changes.

A. Limitations of EHS & DPER Intersections

DPER and EHS work intersects in services to residents only in the unincorporated areas of King County. Workflow review identified intersections in the following areas:

DPER products:

- Single Family Residential New Construction
- Single Family Residential Remodels
- Critical Areas Designation
- Code Enforcement
- Initial Boundary Line Adjustment to Determine if OSS are Impacted

EHS products:

- OSS Design Applications and Permits for New Construction
- OSS Health Department Approval of Building Permit
- Boundary Line Adjustments for Properties that would Require an OSS
- Subdivisions for Properties that would Require an OSS
- Code Enforcement

Workflow depictions for New Construction and Building Remodels are shown in the following Figures 1 and 2.

Figure 1. Integrated DPER and EHS New Construction Workflow

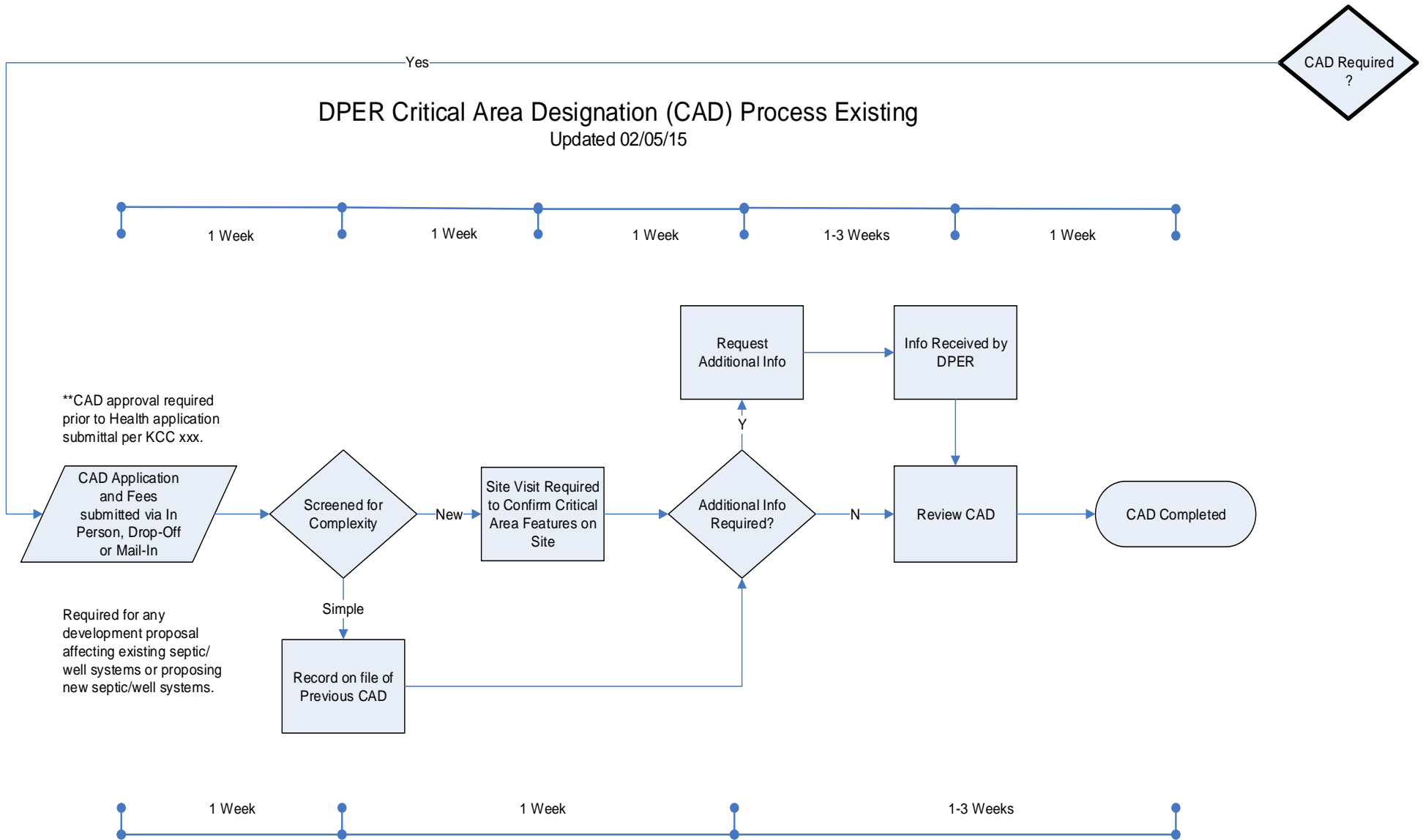


Figure 1. (continued) Integrated DPER and EHS New Construction Workflow

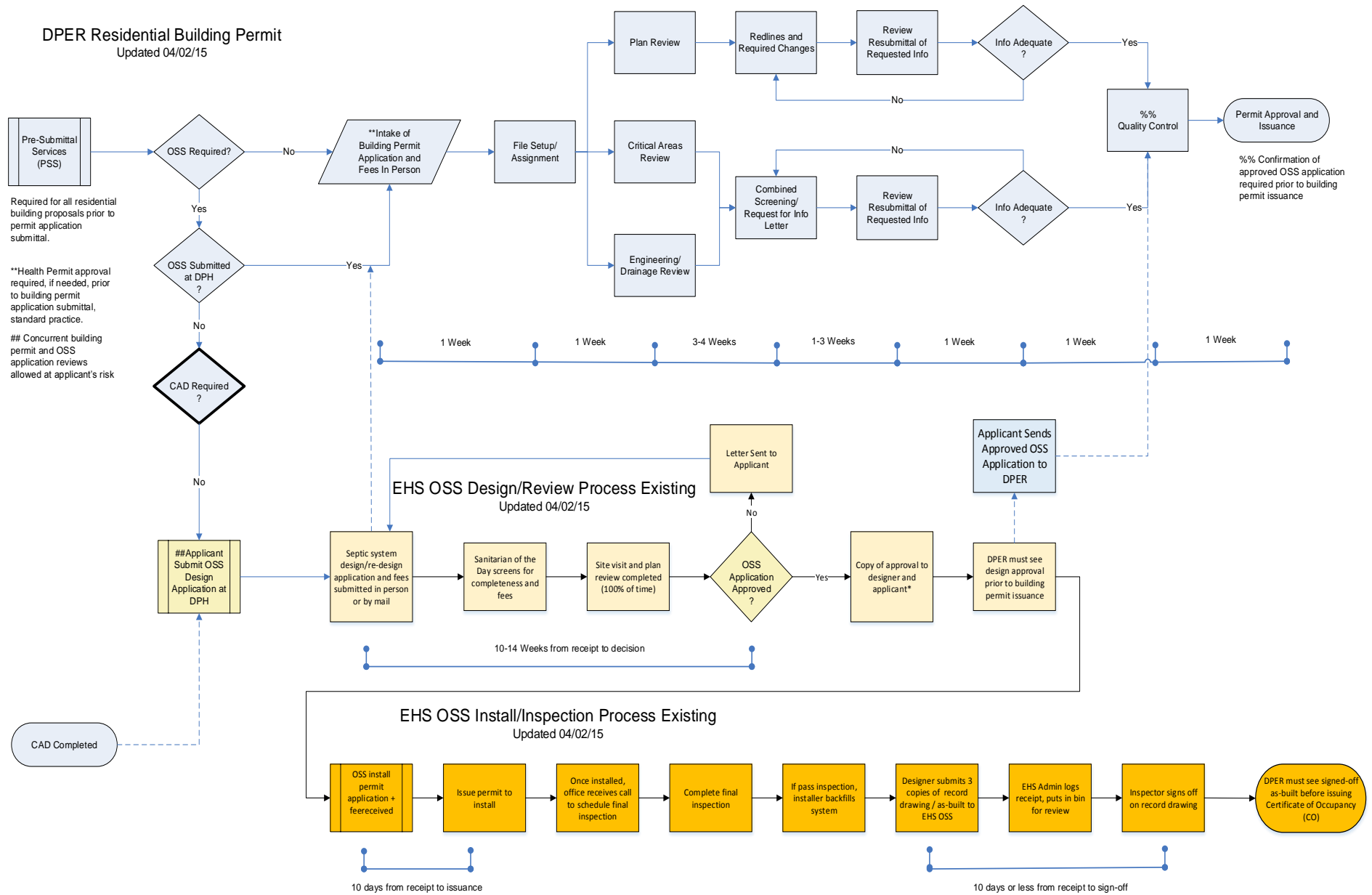


Figure 2. Integrated DPER and EHS Building Remodel Workflow

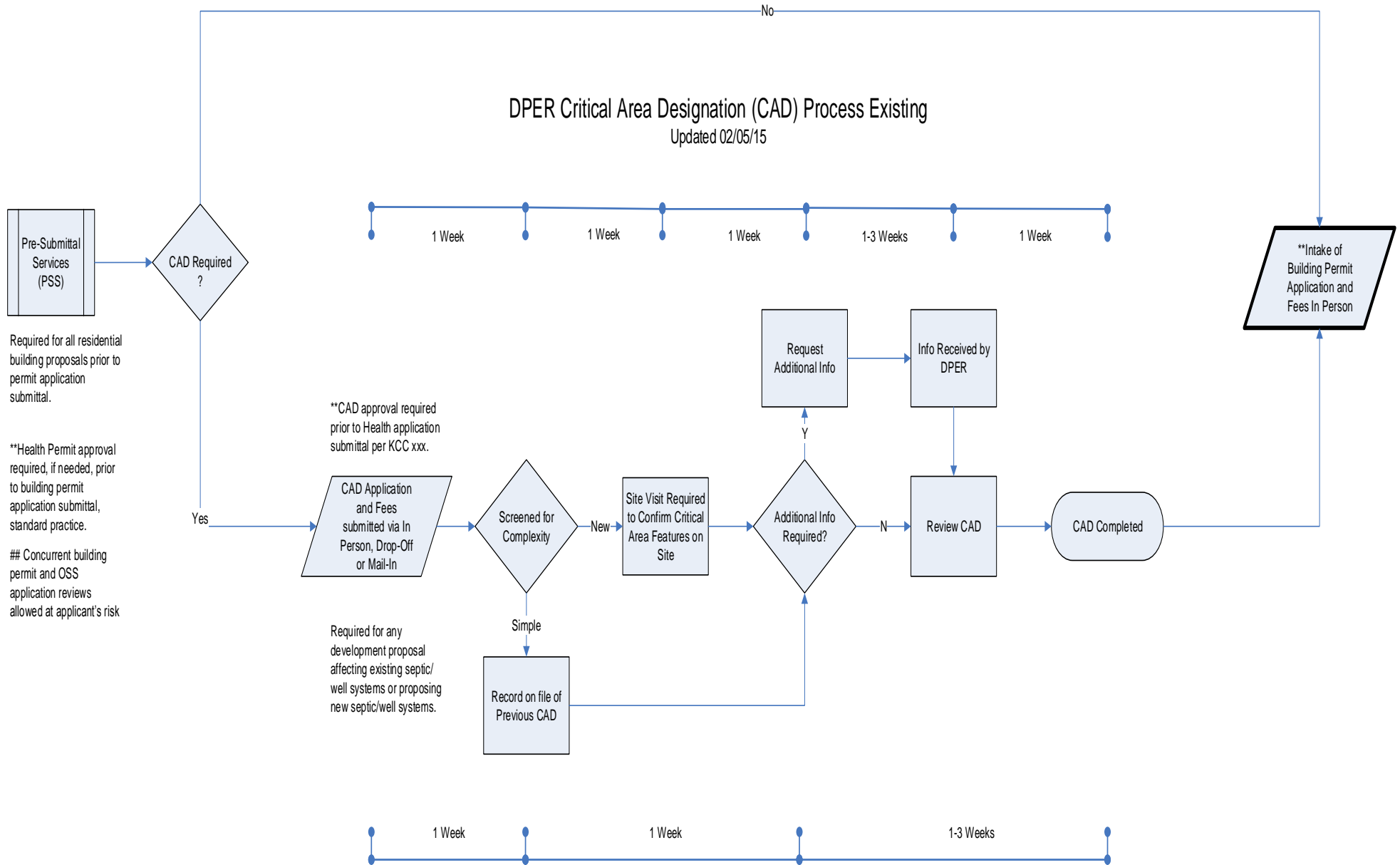
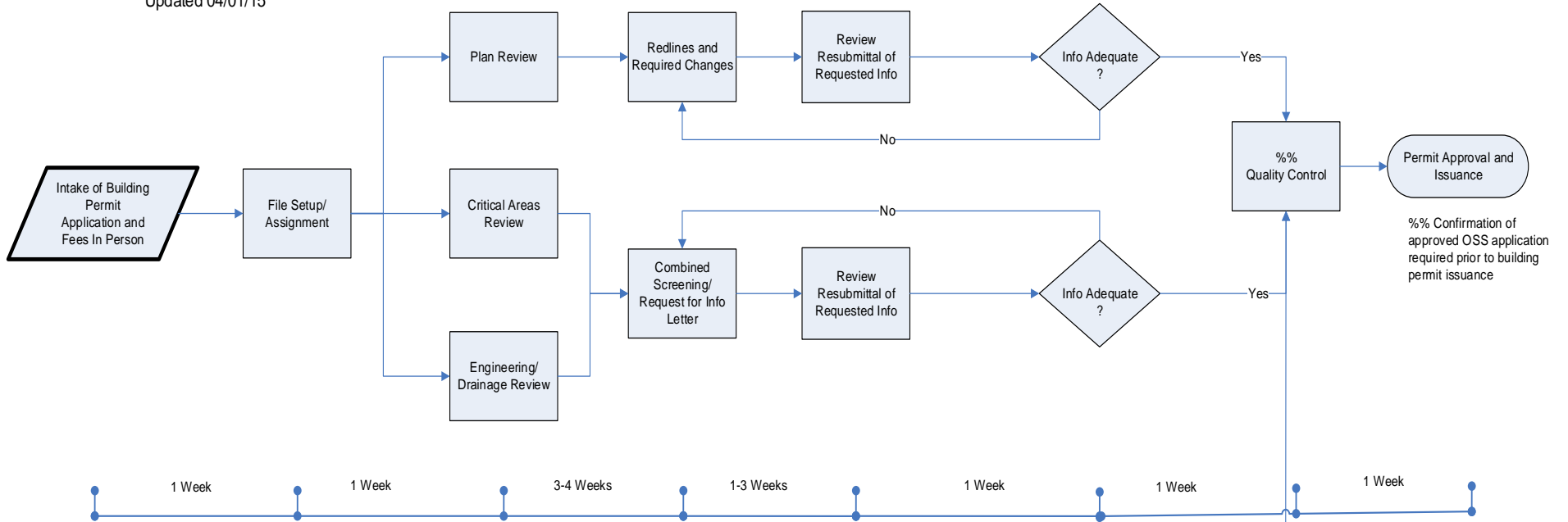
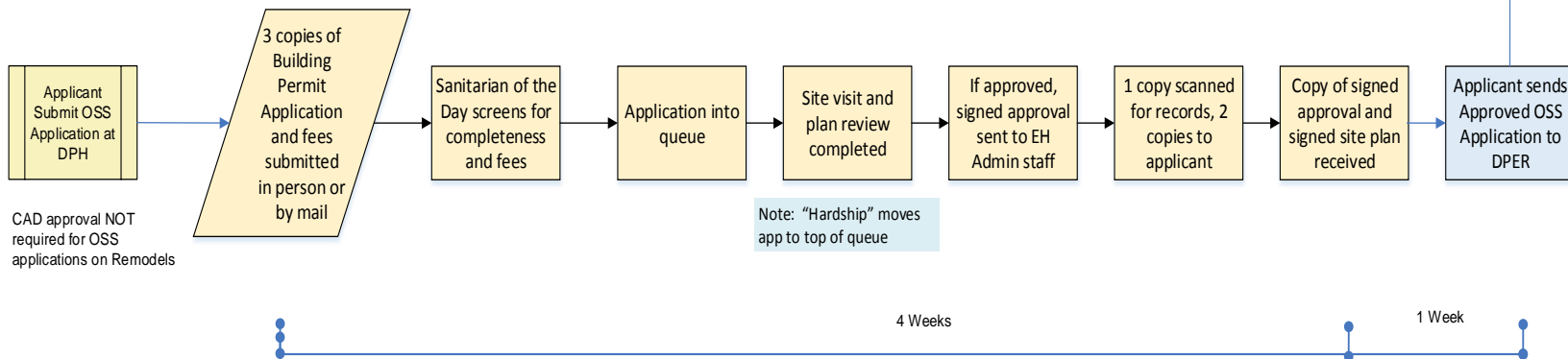


Figure 2. (continued) Integrated DPER and EHS Building Remodel Workflow

DPER Residential Building Permit
Updated 04/01/15



EHS On-Site Septic (OSS) Process Existing
Updated 02/05/15



A.1 Potential Improvements for EHS & DPER Intersections

The process maps developed by the EHS/DPER workgroup (Figures 1 & 2 above) were reviewed and improvement opportunities were identified and categorized by effort and impact in Table 1 below. The low effort/high impact actions, many of which are already being implemented, are likely to improve the customer experience, but in absence of additional resources and staffing will not achieve large increases in efficiency in permitting processes. Quantification and cost to implement the recommendations are difficult to calculate based on insufficient information and multiple parameters.

Table 1. Infrastructure and Process Improvement Opportunities for OSS Permitting by EHS & DPER

Topic	Agency/Role	Actions/ Decisions /Timeframe	Quantification and Costs
<p>I. Low Effort/High Impact</p> <ol style="list-style-type: none"> 1. Develop paper information packet for EHS/Septic to be included in DPER’s permit application orientation packet 2. Include information about EHS winter water review requirements; recommendations for pre-application reviews for risk reduction (engage septic designer first or conduct critical area feasibility study) 3. EHS will review and modify where needed the tools that have previous been provided to DPER over the last few years that provide guidance to DPER staff in advising customers if EHS involvement is needed (criteria) 4. Staff training will be reviewed and enhanced at both DPER and EHS (paper/Web/Phone information) for consistency of information given to the public 5. Test use of scanned documents for quality and legibility for inclusion in the DPER electronic record 6. Design and test information flow to reduce the number of office visits for the customer 7. Incorporate remote communication (Lync), document scanning and email to share information and electronic document processing/routing 8. As the agencies think about enhancements and redesigns to EHS and DPER databases, the agencies should be thinking about how the system documents external reviews and requirements. 9. Customer outreach and education 	<p>EHS will develop customer-friendly information sheets for DPER to provide to applicants:</p> <ul style="list-style-type: none"> • Updated information will also be posted to the EHS website • DPER staff will be briefed on the materials to provide accurate referrals • DPER will provide a link or button on their website to the updated EHS information <p>Once materials are updated, DPER and EHS can develop joint outreach and education plans for delivery of services to help guide the overlapping customers to our respective processes and requirements.</p>	<p>EHS will begin updating materials in August 2016.</p> <p>Homeowner remodel pamphlet completed</p> <p>EHS provided DPER with an updated guidance for DPER to use in deciding if EHS review is required.</p>	<p>There is insufficient information available and too many parameters to quantify the extent of the recommendations and related costs.</p>

II. High Effort/High Impact

1. Web Site – post new information packets; create more clear pathways for customers to get to the information they need (more visual?)
2. Explore unique identifier for shared clients for easy electronic information sharing
3. Online application and review process
4. Explore posting the consultant (septic designers, other) approvals/disapproval rate status on line for customer/clients convenience
5. Increase staffing resources for EHS and DPER
6. Revise DPER’s pre-submittal services to include both DPER’s and EH’s feasibility, screening, and completeness evaluations.
7. Explore opportunities for cross-training to improve customer service.
8. Co-locate one EH OSS employee at DPER’s Snoqualmie office.

1. The workgroup identified an interactive website where applicants can see the process impacts of the kinds of designs they submit and what steps to take as a tool that may help peopling interested in developing an undeveloped parcel. This would entail a project to create the interactive software.
2. EH and DPER think that if they can develop a way for our two systems to share unique identifiers the agencies will be able to better track an application and expedite certain parts of that review. This will mean working with KCIT on the specific ways that EHS’s Envision software and DPER’s Accela software can interact. Recent acquisition of Envision (Decade) by Accela gives us hope that the company will be developing this capacity for the two software packages to better interact. Ideally the agencies would want this to also integrate with the Assessor’s office databases. Another option would be to transition all OSS permits to the Accela system, which likely could be done without an initial purchase cost but would entail costs for configuration and licenses. A third option would be to enter the DPER permit into an existing field in the current OSS data system. DPER and EH will explore these various technology options over the next year or two as Accela examines changes to its systems. Any significant technology integration will require at least a modest amount of funding, which would be challenging for both DPER and EH because of their limited resources.
3. EHS’s Pet Business program is currently working with KCIT develop online plan review submissions, as a pilot project. Once the agencies have the system framework developed the agencies can adapt for the Food Program and then the On-site Sewage System Program. Each of these projects involves intense work with EH and KCIT.
4. EHS is interested in developing a format to post information on our website so that the public can view the success rates of first-pass approvals for various septic system designers. Many projects are held up due to the quality of the submissions, and in that way they reduce efficiency for our staff as well as increase wait times for the customer.
5. Work with management to evaluate staffing levels and propose increases when appropriate.

<p>III. High Effort/Low Impact</p> <ul style="list-style-type: none"> • Outreach to professionals – ARCA, MBA, Designers, Architects, Cities, Real Estate Industry 	<p>DPER has various professional organizations with which they cooperate to get information out. Education packets and presentations can be made to these organizations’ members to further educate the public and therefore have more efficient submissions.</p> <ol style="list-style-type: none"> 6. EH and DPER staff will work together to revise existing documents and processes. This work will occur faster if EH obtains additional staff through fee changes. 7. EH and DPER will convene discussions so staff better understand each other’s roles and responsibilities. It is unlikely that staff in the two agencies would be able to do each other’s work, but greater awareness would lead to improved coordination and clearer communication with customers. 8. EH will assign one staff person to DPER’s office on a regular basis if EH is successful in obtaining additional funding that allows it to add staff. EH does not have sufficient staffing today to make this possible. 	
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The agencies also discussed the possibility of having all OSS staff housed at DPER’s Snoqualmie office. EH believes this would be detrimental to its operations because of the location. OSS staff serves the entire county and the current Eastgate location is reasonably central to their work requirements. Moving much further east would significantly increase travel times and reduce productivity.

B. Historical Summary of Workload

Table 2. Summary of Workload, Backlog, and Turnaround Days Averaged per Year¹

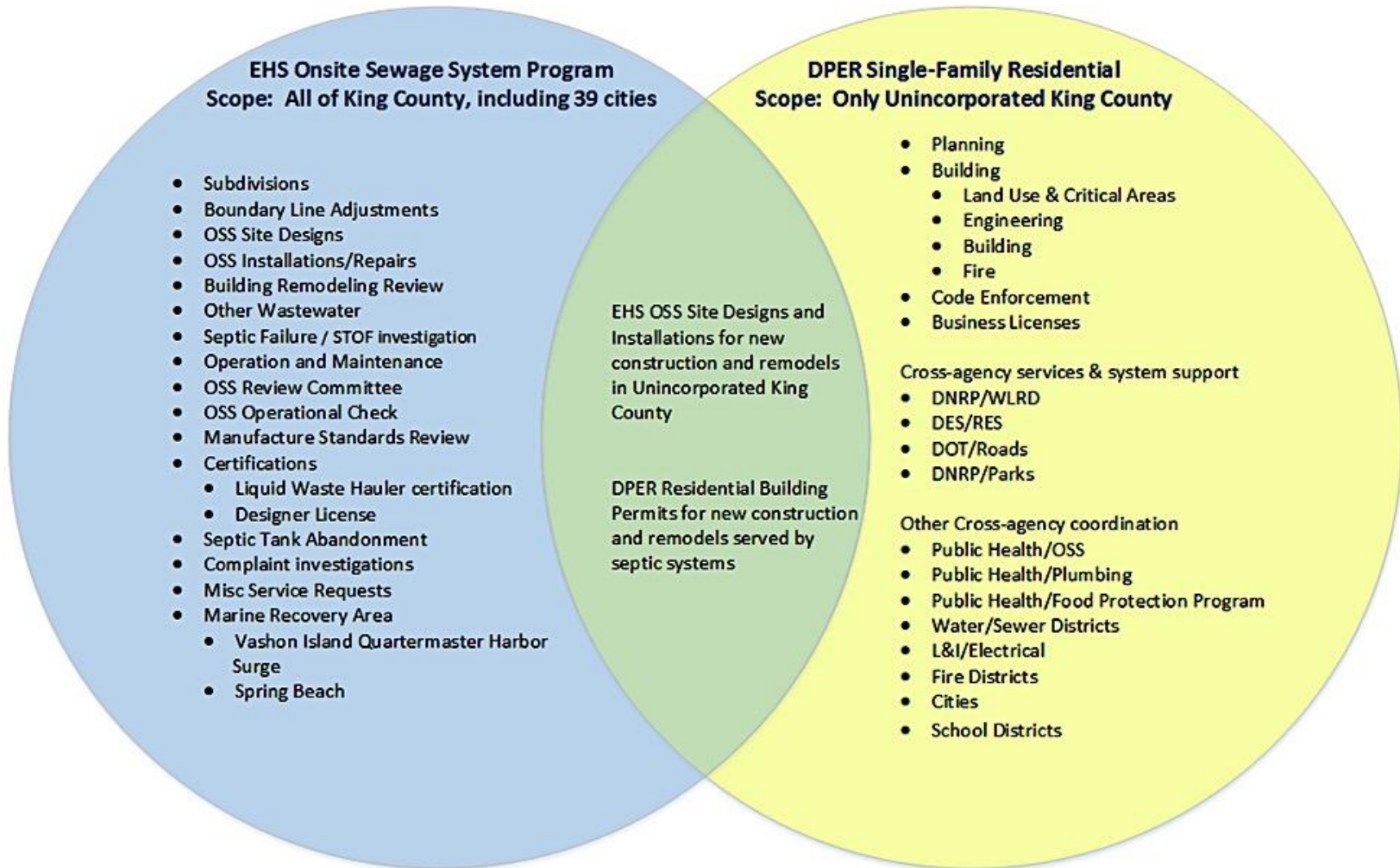
Agency	2010	2011	2012	2013	2014	Total	Average per Year
EHS unincorporated area only							
Site application reviews	560	294	278	391	379	1902	380
Building remodel reviews	388	268	301	277	322	1556	311
FTE for permit review	3	3	3	3	3		
Permit reviews per FTE	316	187	193	223	234		
Backlog - Historic information not available	Data not tracked						
Average turnaround, Approved New Site Reviews							49
Average turnaround, Disapproved New Site Reviews							56
Average turnaround, Building Remodels							63
DPER							
Critical Area Determinations (CAD)	118	150	139	284	340	1,031	
Single Family Custom Building Permits	263	194	194	200	250	1,101	
Single Family Improvement & Remodel Permits	573	510	504	486	562	2635	
FTE & TLT for CAD and permit reviews	140.50	109.67	87.63	79.63	79.44		
Average turnaround for CAD	Unk	Unk	Unk	33	30		
Average turnaround for Single Family Custom Permit	Unk	Unk	61	66	82		
Average turnaround, Single Family Improvement & Remodel Permit, Counter Review	Unk	Unk	1	1	1		
Average turnaround, Single Family Improvement & Remodel Permit, Building Only Review	Unk	Unk	19	16	16		
Average turnaround, Single Family Improvement & Remodel Permit, Multiple Reviews	Unk	Unk	66	58	58		

¹ A summary of workload and backlog for the past five years, including total and per FTE annual target and actual counts and turnaround times for design reviews and other inspector functions for septic and related DPER permits.

C. Detailed Services and Processes Review

Each department offers a wide variety of services, most of which operate independently and do not intersect. Figure 3 shows the scope of EHS and DPER's permits. The intersection of EHS and DPER permits is presented in the graphic below. The permits listed in the green area represent permits that touch both agencies.

Figure 3. Scope of EHS and DPER permit responsibilities



36% of EHS OSS records for new construction and remodels matched DPER records from 2010-2014 on parcel number. Approximately 80% of OSS applications for new construction and remodels are located in Unincorporated King County, but account for only 10% of the entire OSS body of work.

Updated: 7/30/2015

Figure 3 highlights the responsibilities and separation of duties between the two departments:

- EHS provides OSS services across King County including unincorporated areas, Seattle and the 39 incorporated cities, whereas DPER provides services exclusively for the unincorporated areas.
- EHS provides an average of 4,500 units of service each year, shown on the left side of figure above.
- 8.3% of EHS work intersects with DPER.
- In 2014, DPER provided 6,215 service units shown on the right side of the figure above.
- 6% of DPER work intersects with EHS.
- Approximately 374 properties in the unincorporated area are served both by EHS and DPER annually.
- Some OSS reviews do not lead to a permit request at DPER. Conversely, some projects reviewed by DPER do include a need for an OSS review.

C. 1 Chokepoints

The workgroup identified two permits that intersect with EHS and DPER during the review process as the permits that have the greatest chokepoints. The two identified were the undeveloped site and building remodel permits.

A contributing factor to the delay in application approval is that new construction proposals require review by both agencies. The current practice is for the reviews to happen sequentially rather than concurrently. For example, DPER typically reviews a property for critical area designation (CAD) prior to EHS's OSS design review. Another example is the building remodel process in which DPER evaluates a building remodel proposal first to determine if the project may affect the OSS which is then reviewed by EHS to determine if the project will require an OSS upgrade or harm the OSS. These decisions may, or may not, require approval by one department prior to processing by the other.

The workgroup found that current communication and educational materials for customers, including paper pamphlets and handouts, and the EHS and DPER websites, could be improved to help the public better understand and more effectively navigate the complicated process to obtaining a permit.

D. Results of Co-location Pilot Period

An expenditure restriction directed the co-location of one EHS septic inspector with DPER permit review staff for a pilot period to determine if additional efficiencies could be realized by working in the same office. The results of the pilot, in which the EHS inspector spent six hours a week at DPER's Snoqualmie offices, were mixed.

During the pilot, the co-located EHS inspector assisted an average of four customers per week (see Figure 4), spending six hours a week (plus an hour each day of travel time) at DPER. The public appreciated the opportunity to have access to an EHS inspector while visiting DPER and made comments such as, "He was incredibly helpful, very informative, knowledgeable and just really nice."

Because a majority of clients are shopping for vacant land, the consultations did not result in application submissions. For building remodel applications, the EHS inspector's guidance did result in applications that contained the required documentation, rather than incomplete applications.

A negative consequence of the EHS inspector's time spent at DPER was a reduction in his available time for reviewing OSS/well permit applications, conducting field inspections, and providing customer service related to his non-DPER related OSS work. Prior to the pilot, the EHS inspector spent approximately 32 hours a week conducting OSS related field inspections and customer assistance. During the co-location, only 24 hours of the inspector's time was available to conduct field inspections. This reduction in non-DPER-related OSS work resulted in an additional, OSS site applications, building applications per week added to the backlog over the pilot period (see Figure 5).

Additionally, the workgroup identified a list of challenges related to EHS and DPER collaboration for properties served by OSS and individual wells. See Table 3 for more detailed information.

D. 1 Alternatives to co-location

EHS's OSS permit fees are not sufficient to support non-permit related consultation under a permit fee-for-service model without raising those fees. EHS offers the public access to OSS inspectors for consultation at the Eastgate office six hours per week. The customers that visited with the EHS inspector at DPER have the option of using the services provided at EHS Eastgate office either in-person or via telephone. To support OSS questions raised at DPER, available technology (scanning documents, emails, and telephone calls) can address this need. The

scanning technology available via printers allows DPER to turn paper copies into PDFs; these documents are easy to email between offices. It is anticipated that an increase in customer access and expediency can be achieved using this method. It is also anticipated that the need for in-person consultation may decrease when online applications are offered in the future.

D.2 Long-term solution planning

EHS is currently working with stakeholders and the Board of Health to explore new sustainable funding for an enhanced septic Operation and Maintenance program. Success of this effort can position EHS to locate a staff person permanently at DPER for customer support.

Figure 4. Number of customers served by EHS inspector located at DPER

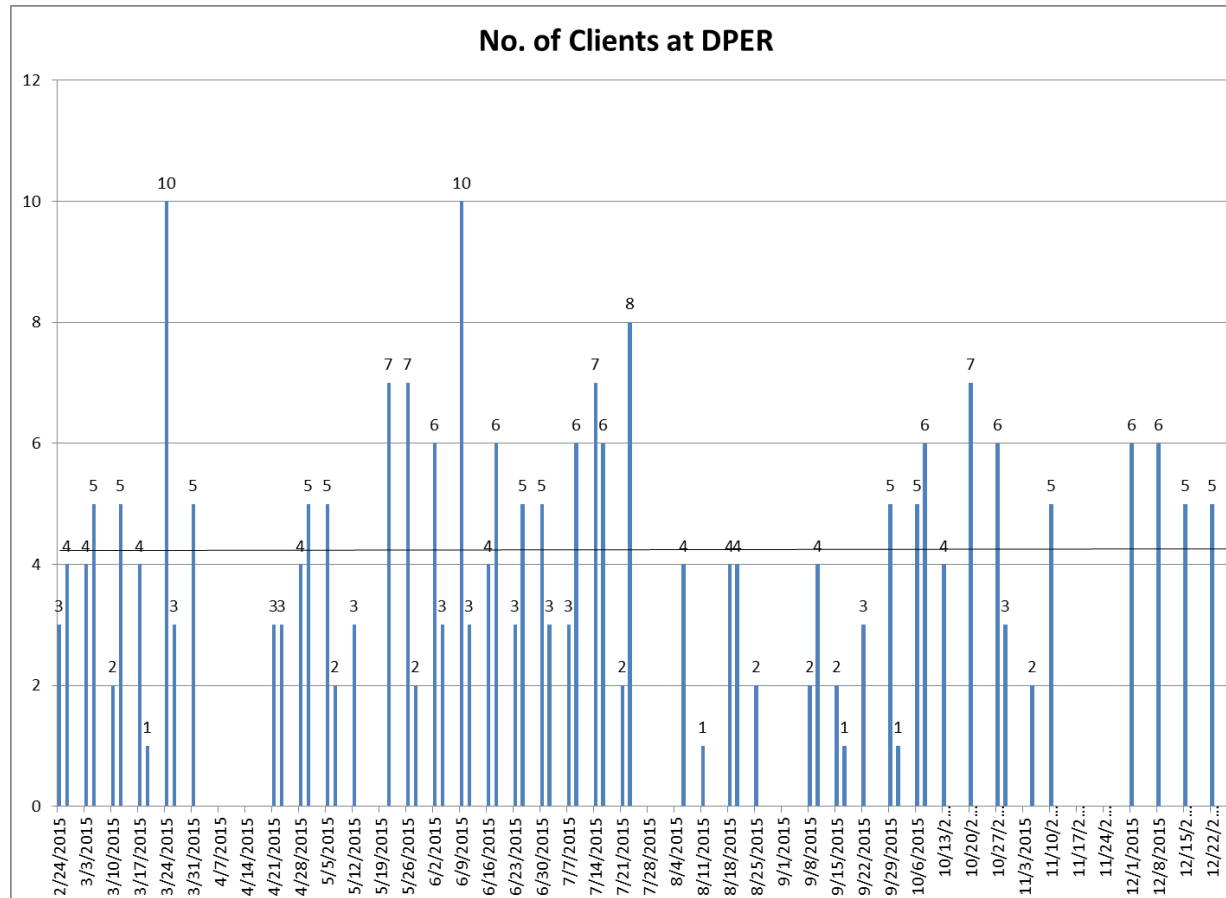


Figure 5. Number of Backlogged OSS Site and Building Remodel Applications

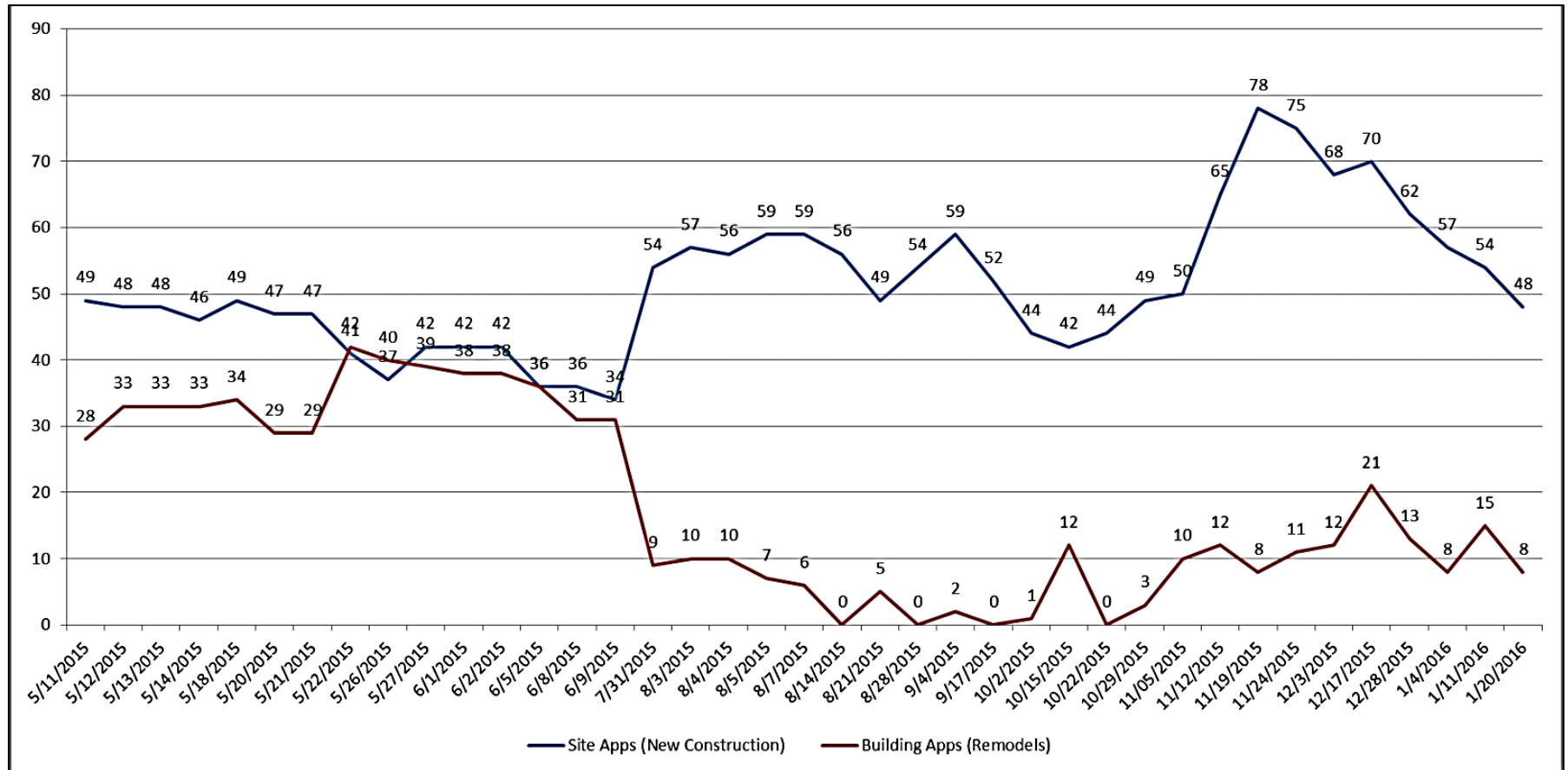


Table 3. Challenges and Comments on Collaboration

Challenge	Comment
There is not a 1:1 relationship between building permit and septic design applications and installation permits.	Many property owners process a site application without applying for a building permit from DPER. EHS processes hundreds of site applications each year that do not move to DPER for a building permit. Online site applications and communication between databases will reduce this challenge.
DPER serves unincorporated King County exclusively while EHS OSS serves all of King County, including 39 cities.	The workflow processes that are dependent on joint approval by EHS and DPER are mainly site applications and remodel projects. These account for a small percentage of the total services provided by both agencies.
Different electronic systems for completing inspections and issuing permits; the systems do not communicate with each other at this time.	The company that owns Accela (DPER database) purchased Decade's Envision (EHS database). They plan to develop mechanisms for communication between the databases. Timeline for this?
13 miles between EHS OSS in Bellevue and DPER at Snoqualmie Ridge	Minimized by good communication such as regular staff joint staff meetings, strong understanding and application of each of other department's codes, good publications including the list of situations when health review is not necessary, the remodel pamphlet, video communication, and newly identified items.

E. Consideration of statutory and code requirements

The permit reviews completed by each department have different requirements and goals such as protecting the public's health, limiting impacts to the environment, and promoting responsible and sustainable development among others. As described earlier under Section C, for most building remodel applications, EHS must review and approve the proposed project prior to DPER issuing a building permit. For most new site construction, DPER must process the critical area determination (CAD) designation prior to the completion of the site application review by a state licensed on-site sewage system designer and the EHS state licensed OSS inspector.

State code, chapter 246-272A WAC, requires the local health officer, or representatives authorized by and under the direct supervision of the local health officer, to complete OSS permit review and approval. The law also states that the local health officer shall not delegate the authority to issue permits. The health officer's representative must be a registered

sanitarian and maintain a state license required by chapter 18.210.190 RCW. Washington State's attorney general provided an informal opinion as to whether non-public health employees can approve OSS permits. This opinion is included in Appendix A, along with a list of comments from local health jurisdictions with experience related to co-location of OSS Programs and building departments.

EHS considered whether changes to local statutory and code would improve the coordination of permitting processes. As a result of agencies' different statutory requirements, goals and competencies, the workgroup did not identify any statutory or code requirement changes that would likely result in an improvement of the customer experience in getting OSS and DPER permits.

F. Recommendations for Efficiency and Customer Service

The workgroup explored a variety of avenues for coordination in King County's building permit process. A list of identified items includes:

- The 16-week or longer permit review time frame is predominantly caused by insufficient staff levels. Increased staffing levels will reduce EHS OSS review times and DPER CAD and building review times.
- Because the EHS site review and the DPER building review take place at the same time, each agency needs to reduce review times for the overall time frame to be reduced.
- A joint Lean project is not recommended for the two agencies.
- The workgroup found that the root cause of the 8-week cycle time for EHS OSS Site review is due to limits in staff capacity. To make an impact on the 8 week time, additional FTE, or a policy shift in the way onsite activities are prioritized will have to occur.
- A formal Lean project was completed in 2011 for the EHS OSS Program with a professional Lean Consultant and the driving opportunities for improvement were identified and implemented. Performing a Lean event now would not warrant the resources and financial costs for the minimally available impact.
- DPER may benefit from a separate Lean project focusing on how to streamline Critical Area Designation (CAD).

The main opportunities for improvement and streamlining are:

- Increased capacity for EHS for field inspectors and DPER staff,
- Explore a DPER only Lean project for CAD,
- Continued monthly co-agency collaboration meetings,
- Website enhancements,
- OSS system Permit Status web page capability.

Appendix A

Health Officer Delegation and Local Health Department Supporting Documentation



11/16/90

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

November 14, 1990

TO: Directors of Environmental Health

FROM: *Karen A. VanDusen* Karen A. VanDusen, Office Chief
Community Environmental Health Programs

SUBJECT: INFORMAL AG OPINION PERTAINING TO HEALTH OFFICER
DELEGATION OF ON-SITE SEWAGE PERMITTING AUTHORITY

In several counties, most or all of the on-site sewage program is administered by someone other than the local health jurisdiction. A variety of administrative schemes are used. However, WAC 248-96 (State Board of Health On-site Sewage System Regulations) states that the authority to issue permits shall not be delegated by the health officer. The health officer is defined as "... the health officer of the city, county, or city-county health department or district or a representative authorized by and under the direct supervision of the health officer."

Recently, the legal counsel for the Cowlitz-Wahkiakum Health District requested an opinion on the consistency between the health district's current practice of delegating the regulation of on-site sewage regulations and the mandates of WAC 248-96. We requested and obtained an informal opinion from our assistant attorney general. Because the question has applicability statewide, a copy of the opinion is attached for your perusal and files. It is our plan to conduct meetings with the health officers in the counties most impacted by this opinion in the near future.

Attachment

cc: Kris Gebbie
Mimi Fields
Eric Slagle
Local Support

ATTORNEY GENERAL OF WASHINGTON

M E M O R A N D U M

September 5, 1990

TO: KAREN VAN DUSEN, Office Chief
Local Environmental Health Support

FROM: MARGARET GILBERT *MG*
Assistant Attorney General

SUBJECT: Delegation of on-site sewage program

You have asked several questions concerning the ability of a Health Officer to delegate authority for the on-site sewage program, with special reference to the delegation presently implemented in the Cowlitz-Wahkiakum Health District. It is my opinion that the Health Officer may delegate some activities of the on-site sewage program under certain conditions, that the Health Officer cannot delegate ultimate authority to issue permits, and that the Health Officer remains ultimately responsible for conduct of the program in compliance with all applicable laws and rules regardless of who performs the activities.

WAC 248-96-080(1) creates the permit requirement and assigns to the Health Officer the responsibility for issuance of permits for all on-site sewer systems except "larger" systems which are authorized directly by the Secretary of the Department of Health.

No person shall install or cause to be installed a new on-site sewage system, nor perform any alterations, extensions, or relocations or connections to an existing system without a valid permit issued by the health officer. Larger on-site sewage systems approved by the department are exempt from permit requirements. . . . The authority to issue permits shall not be delegated by the health officer. (emphasis added)

The final sentence of WAC 248-96-080(1) was added in 1983 (WSR 83-13-014). Prior to the amendment, delegation of the permitting process was arguable permissible; after the amendment, delegation is expressly forbidden. I suspect that this amendment is the source of any problems since some of the Health Officers had delegated responsibilities before that date and may not have changed the program to comply with the amendment.

Of course, the fact that the Health Officer cannot delegate authority to issue permits does not mean that the Health Officer cannot delegate some permitting activities. For example, the Health Officer may employ inspectors and other staff as "persons authorized by and under the supervision of the Health Officer." WAC 248-96-020(9). Because of the supervision, the Health Officer retains authority and responsibility for any permits issued.

Another exception arises from WAC 248-96-140, which allows a certified designer to make final inspection of on-site sewer projects installed by certified installers. In this case, the Health Officer retains authority to issue the permit, but bases his/her decision on information provided by an individual (the designer) who is not under the direct supervision of the Health Officer.

Failure to retain exclusive permitting authority may expose the Health Officer to personal liability, should any of the permits issued by other, unauthorized individuals result in harm to an individual. (An example of harm would be contamination of the property or adjacent property as a result of substandard system which should have been denied a permit.) The prohibition of delegation is express. There is no discretion involved: the Health Officer may not delegate authority to issue permits. Failure of a public officer to comply with an express obligation in statute or rule is grounds for personal liability. This alone suggests that the Health Officers may wish to review their programs to assure full compliance with statute and rule.

I cannot comment fully on the application of these legal principles to the Cowlitz County situation without additional information. However, the 1976 letter sounds like a total transfer of the on-site sewer program to the County Department of Community Development. As discussed above, a total transfer is not legal, even if the county employee is certified. I recommend that the situation be reviewed by your office and by the Health Officer.

Hopefully this analysis addresses your concerns. Please feel free to call me if you want to discuss future applications. Please also keep in mind that this is not a formal Attorney General's Opinion, but is the opinion of the author only.

MG:rz



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

Olympia, Washington 98504

July 9, 1990

TO: Margaret Gilbert
Assistant Attorney General

FROM: Karen VanDusen, Office Chief
Local Environmental Health Support

SUBJECT: QUESTION FROM COWLITZ-WAHKIAKUM HEALTH DISTRICT

The Cowlitz-Wahkiakum Health District is one of several health jurisdictions around the state that has delegated the authority for administering the on-site sewage program to another department apparently not under the jurisdiction of the health officer. Within Cowlitz County, this arrangement has existed since 1976. WAC 248-96 (State Board of Health regulations for on-site sewage systems) specifies that the health officer is responsible for issuing permits for on-site systems, as well as other activities. Health Officer is defined in WAC 248-96-020(9) as "the health officer of the city, county, or city-county health department or district or a representative authorized by and under the direct supervision of the health officer."

Presently, this arrangement is being questioned by the Health District. Mr. Patrick L. Brock, attorney for the Health District, has sent a letter (attached) asking for an informal opinion on this matter. He appears to be asking whether the delegation that has occurred is proper and in keeping with WAC 248-96.

This question has been asked every time another county was pursuing this kind of delegation. The Department of Social and Health Services opposed the proposals, but some counties still implemented the delegation. The Department did not initiate any legal action, although it did whatever else it could to prevent, what was deemed to be, improper delegation of authority.

I looked through our legal opinion files and found only the documents that are attached. They pertain to a similar proposal in Grant County. That proposal was not implemented.

Please give an opinion on the following questions, and other questions you may feel Mr. Brock was asking:

1. Under what conditions, if any, can the Health Officer delegate authority for the on-site sewage program? If delegation is legally possible, does the program and any individual working in it have to be under the direct supervision of the health officer?
2. If there is sufficient information to make a determination, is the arrangement in Cowlitz County consistent with the RCWs and WACs?

Thank you for your assistance.

JOHN SPELLMAN
Governor



STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Olympia, Washington 98504

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January 20, 1982

TO: Local Health Officers
FROM: John A. Beare, M.D., M.P.H.
Director
Division of Health LJ-18 *[Signature]*
SUBJECT: DELEGATION OF FUNCTIONS

In several local health jurisdictions the delegating of certain health department functions to other elements of local government has taken place. Questions have arisen from a variety of sources regarding the legality of such actions.

This department recently became involved when Grant County submitted an agreement for transfer of the sewage program from the Health District to the Building Department. They requested the approval of this agency. As a result, we asked for an Attorney General's opinion which has now been received. A copy is attached for your information and an appropriate action as it may pertain to your jurisdiction.

Please let me know if you have any questions regarding this issue.

JAB:jc

Attachment

82-1-8

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OFFICE OF THE ATTORNEY GENERAL

Inter-office Correspondence

Date: January 13, 1982

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HEALTH SERVICES DIV.
DIRECTOR'S OFFICE

DSH HEALTH SERVICES
ENVIRONMENTAL

To: John A. Beare, M.D., M.P.H.
Director, Division of Health, LJ-18
From: Robert V. Jensen, Assistant Attorney General
DSHS, PY-13
Subject: INQUIRY AS TO VALIDITY OF DELEGATION OF FUNCTIONS
OF LOCAL HEALTH OFFICERS

RMJ

Your November 16, 1981, memorandum asks several questions regarding the validity of the delegation of the on-site sewage program, outside of the local board of health. I have paraphrased and reduced your questions to the following:

Does Article 11, Section 11 of the State Constitution prohibit the delegation by a county government of its on-site sewage program, outside of the local health department?

In my opinion, which may not necessarily be that of the attorney general, the answer to this question is positive.

Article 11, Section 11 of the State Constitution provides:

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

This provision accomplishes two things: It constitutes a direct delegation of the state's police power to local governments. In addition, it provides the basis for supremacy, in the appropriate circumstances, of local law by state law. Deputy Sheriff's Guild v. Commissioners, 92 Wn.2d 844, 849, 601 P.2d 943 (1979). The test of whether or not supersedure occurs is basically whether the local law conflicts with the state law of general applicability.¹

¹The examples you have provided do not involve specific local ordinances. One appears to be based on a proposed agreement between various local governmental entities. The ultimate problem, however, remains the same. Any local entity which attempts to enforce the local health laws by personnel other than that under the direct supervision of the local health department, will have to show some basis for authority. The only basis, other than state law, would have to be a local ordinance. If there is no local ordinance, as is shown from the analysis contained in this memorandum, there is no authority. Deputy Sheriff's Guild v. Commissioners, *supra* at 849-852. If there is such an ordinance, the question is whether the ordinance conflicts with a general state law.

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Stephanus v. Anderson, 26 Wn.App. 326, 332-333, 613 P.2d 533 (1980);
Department of Ecology v. Pacesetter Construction Company, Inc.,
89 Wn.2d 203, 214, 571 P.2d 196 (1977).

The laws governing the formation and powers of local health authorities (including chs. 70.05 and 70.46 RCW) are general laws of the state, for the purposes of Article 11, Section 11. Snohomish County Builders v. Health District, 8 Wn.App. 589, 595, 508 P.2d 617 (1973). As such, local laws cannot conflict therewith.

RCW 70.05.030 provides that the board of county commissioners of each county in the state shall, with limited exceptions, constitute a local board of health for the county. The exceptions are where the county is part of a health district, or where the county is purchasing health services from any local health department, pursuant to RCW 70.05.150.

The powers of the local board of health are spelled out in RCW 70.05.060. The statute is explicit in directing the local board of health to:

- (1) Enforce through the local health officer the public health statutes of the state and rules and regulations promulgated by the state board of health.

In addition to this mandate there are specific requirements for local health officers. To qualify for this position, one must be an experienced physician licensed to practice medicine and surgery or osteopathy and surgery; and either: (1) hold the degree of master of public health or its equivalent; or (2) as of August 11, 1969, have been employed in this state as a local health officer and recommended in writing by the secretary of the department of social and health services; or (3) have completed three years of service as a provisionally qualified health officer.

RCW 70.05.053 allows those who meet the above-stated medical license requirements, but do not meet the other requirements, to be appointed to serve provisionally as local health officers for a maximum of three years, subject to: (1) participation in a public health, in-service orientation conducted by the department of social and health services, and (2) satisfaction of the secretary of the department, pursuant to periodic interviews, that the official has successfully completed the in-service orientation, and is conducting a program of good health practices.

These rather rigorous provisions appear designed to ensure that the matters of public health be supervised, at the local level, by experienced, qualified, technical personnel. This scheme also ensures that local administration will adequately enforce the state board of health regulations.

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RCW 43.20.050 directs the state board of health to adopt state regulations for the:

. . . prevention, control, and abatement of health hazards and nuisances related to the disposal of wastes, solid and liquid, including but not limited to sewage, garbage, refuse, and other environmental contaminants; adopt standards and procedures governing the design, construction, and operation of sewage, garbage, refuse and other solid waste collection, treatment, and disposal facilities.

RCW 43.20.050.

In addition, the board of health is empowered to enforce the laws of the state and its regulations when an emergency exists and when the local board of health has failed to respond adequately, or when no local board has been established. *Id.* This provision also directs all local boards of health, health authorities and state or local employees to enforce the state board of health regulations.

These provisions of RCW 43.20.050 are not designed to provide an option to local board of health enforcement; rather they are designed to ensure the fullest form of enforcement. They do not detract from the obligation of the local health district, but rather add to the enforcement responsibilities of all state and local officials.

The statutory scheme provides for a clearly identifiable and responsible entity charged with the enforcement of local health laws.

In your memorandum you cite the example of health departments which have delegated all or part of the on-site sewage program to other branches of government. In one of these the transfer has been to the county public works department. You state that under this arrangement: "In practice the health officer has little, if any, say in what is being done by the Public Works Department."

Such transfers of authority do not appear consonant with either the letter or the spirit of the state laws governing local health authorities. The statutes authorize a county to contract for its health services from a local health district or other local health department. They do not, however, provide authority for the contracting for services from other county departments, such as public works, community development, or building departments. Until or unless the state statutes are amended, such transfers should be treated as invalid.

The proposed Grant County agreement would appear to fail for these reasons. Under that agreement, the county would assume

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direct control over the health officer and the staff of that officer. There is no indication that the county intends to contract with another health district for health services. Rather it appears that the county staff, subject primarily to the control of the county, as opposed to that of the health officer, would be responsible for the program. The statute contemplates a health officer who is the administrative officer for the local health board. Although the expenditures of that board are funded by the county, the health board is a separate, independent agent of local government. This would clearly not be the case in the Grant County proposal.

There is a second legal problem with the Grant County proposal. If implemented it would amount to a de facto withdrawal by the county from the county health district, in a manner inconsistent with RCW 70.46.090. That law precisely prescribes the steps necessary to accomplish withdrawal. One of these is that no withdrawal may be effective

. . . except at the end of the calendar year in which the county, city or town gives at least six months notice of its intention to withdraw at the end of the calendar year.

RCW 70.46.090.

Secondly, there is no proof that, even if withdrawal were properly accomplished, the county would comply with the following proviso to that statute. That proviso reads as follows:

Provided, That any county, city, or town which withdraws from membership in said health district shall immediately establish a health department or provide health services which shall meet the standards for health services promulgated by the state board of health.

Reading this statute in pari materia with the other health statutes compels the conclusion that, upon proper withdrawal from a health district, the county would constitute, as a matter of law, a local board of health (RCW 70.05.030), unless it contracted with another local health department for health services pursuant to RCW 70.05.150.

In conclusion, the state statutes establishing county boards of health are general state laws. The State Constitution prohibits enactment of any local law that may conflict therewith. It is my opinion that a transfer of authority of part or all of the on-site sewage program from the local board of health or the health department to another department, branch or arm of local

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government, other than to another health department, is inconsistent with the state statutory scheme governing local health departments.

RVJ:sh

cc: Lloyd W. Peterson
Lee Dreisbach



County	On-site reports to Health Officer/BOH	Co-Housed with the Building dept	Comments	Comments Provided By
Cowlitz	Yes	No	<p>The Environmental Health Unit in Cowlitz County reported up through the Building and Planning Department for many years. In July of 2013 we moved back under the Health Department. This was done, in part, as an acknowledgement that Health programs should report through the Health Department and Health Officer. Cowlitz County has had a history of problems resulting from the former reporting relationship and also successes in streamlining the building and permitting processes. It can make the building process feel very seamless, in relation to OSS. It also presents a problem when staff aren't supervised correctly or unqualified staff are performing health duties.</p> <p>Cowlitz County has seen both sides and paid out a significant number of claims as a potential result of poor performance in the past. The chief issue, in my mind, is that those health programs can suffer due to the political expediency often found in Building Departments.</p>	<p>Chris Bischoff, RS/REHS Environmental Health Manager</p>
Grays Harbor	Yes	Located in the Public Services Division	<p>The Environmental Health Division for Grays Harbor County is part of the Public Services Department. The division was separated from the Health Department in 1995. The division contracts with the Health Officer and maintains its DOH contracts through the Health Department. Administrative control is split between the Director of Public Services and the Health Officer.</p> <p>Essentially our permitting authority remains under the authority of the Health Officer via direct contract with the EH division, i.e. without direct oversight from the Public Health Administrator.</p>	<p>Jeff Nelson Environmental Health Director</p>
Kitsap	Yes	No	OSS has always been housed under public health	<p>Keith Grellner Environmental Health Director</p>

County	On-site reports to Health Officer/BOH	Co-Housed with the Building dept	Comments	Comments Provided By
Lewis	Yes	Housed in Community Development	I understand a very similar thing happened here in Lewis County years ago, with exception it was under control of our Community Development Director. It didn't work well and eventually came back to PH control for the same reasons Corinne mentioned. Just like Skagit County, we now house our EH section with the Community Development to be a 'one stop' permit center for all development needs including On-site, Code Enforcement and Water.	Bill Teitzel Supervisor at Lewis County Public Health & Social Services
Lincoln	Yes	No	In Lincoln County, on site is part of the health department. There was a time when commissioners looked to put on site under public works and I think that there are a couple LHJ's that have done that. My commissioners tried but we fought it and our public works director didn't support it at the time. We are still whole.	Ed Dzedzy Lincoln County
Northeast Tri County Health District	Yes	No	At NETCHD, the OSS program has always been administered by Public Health and under the authority of the health officer. I would point to the same provision in WAC that Corinne did as to the permitting authority under the health officer. This particular section (WAC 246-272A-200(7)) was added to the state rule in 1983 to help counter delegation of OSS permitting authority to someone other than the health officer. This delegation issue has come up periodically over the years and I'm attaching information from an AAG opinion from the 1990's that may provide some background information. Hope it helps.	Matt Schanz, R.S. Environmental Public Health Director

County	On-site reports to Health Officer/BOH	Co-Housed with the Building dept	Comments	Comments Provided By
Pacific	Yes	Combined with Planning, Building, and Environmental Health	<p>We have a unique model in Pacific County in that environmental health is not housed with Public Health. I am the Director of Planning, Building, and Environmental Health, so we provide our citizens with “one stop shopping” when it comes to getting their permits. I’m not sure how this would work in a larger county, but for a smaller county such as ours, it is a good fit. All of the EH Programs are under us (i.e. food, OSS, pools, schools, solid waste, water quality, etc).</p> <p>Hope this is helpful.</p> <p>Second email from Faith: Just to clarify, even though we aren’t under Public Health, they are an entity separate from us, we still are under the authority of the Health Officer and Board of Health for our Environmental Health Programs.</p>	Faith Taylor-Eldred Community Development Director/Environmental Health Director
Skagit	Yes	Staff housed in permitting department	<p>In the early 80’s, our OSS program was taken out of health and placed with the planning department. It was an unmitigated disaster. The focus became how fast can a permit be issued rather than protecting public health. We did not get the program back into health until 1997 or 1998.</p> <p>We’ve had a model where we have health staff housed in the permitting department so they are readily available to answer questions, but still under the direction of the health department.</p> <p>Also, WAC 246-272A-200(7) states that the local health officer may not delegate permitting authority.</p>	Corinne Story, Environmental Public Health Manager Skagit County Public Health and Community Services

County	On-site reports to Health Officer/BOH	Co-Housed with the Building dept	Comments	Comments Provided By
Spokane	Yes	No	Our onsite program has always been a part of public health.	David Swink Spokane Regional Health District
Thurston	Yes	Co-located with other programs	<p>Our on-site, land use and drinking water programs are co-located with other permit departments at our Permit Assistance Center. While share a single permit counter that is staffed by PAC staff, our permit review staff and programs are part of the health department and they report to the Board of Health and the Health Officer.</p> <p>This arrangement came about over 20 years ago in an attempt to provide better customer service and to provide a more transparent permit process. While provides some benefits for the public, it is challenging at times for us. The permit counter staff work for another department. We sometimes have difficulties when they accept and route incomplete and erroneous permit applications, etc. Often we have to put applications on hold while we get information that should have been provided with the original application, which often angers the applicant (Why didn't you tell me this before? I turned the permit in X weeks ago!). There have been follow up and accountability problems when we asked PAC supervisors to address staff problems. I think in part the jobs too complex and time consuming for the staff to do with the time they have available. We went through a LEAN process for part of the permit processes earlier this year and hope to make some improvements soon.</p>	Art Starry Thurston County Environmental Health Director

Appendix B

Health Department Building Permit Exemption List

Building Project Checklist for Properties with Septic Systems or Private Individual Water Systems

Note: The HD’s authority is: “**13.04.030 Scope.** The provisions of this title shall apply to the **location, design,** installation, alteration, addition, repair, relocation, replacement, maintenance, monitoring and use of all on-site sewage systems (OSS).” If any proposed project MAY impact the OSS (**if the house is improved, the OSS may also need to be improved**), including the reserve area, **HD review is required.** HD does **NOT** have the authority to determine if a review is needed or not.

If the OSS and reserve area will NOT be impacted, HD review is NOT needed.

Item #	Permits Required by Incorporated Cities	HD Review w/fee Required	HD Consultation Required * (with verification letter from HD)	HD Consultation Recommended
1	Carports (Exempt w/as built if over existing impervious surface)	Yes		
2	Decks more than 30” above grade	Yes, unless exempted by King County DPER	Yes	
3	Dock repairs and additions	No	No	No
4	Exterior doors, windows and skylights that require a new opening	No	No	No
5	Electrical circuits and services	No	No	No
6	Fireplaces, wood-burning stoves, and inserts	No	No	No
7	ADU (accessory dwelling units) Garage conversions Garages Shops	Yes		
8	Home-business Conversions	Yes, unless exempted by King County DPER	Yes	
9	Interior Remodels	Yes – unless the remodel is very simple		
10	<ul style="list-style-type: none"> • Mother-in-law apartments • Accessory Living Quarters • Medical Hardship cases 	Yes		
11	Furnaces	No	No	No
12	Water heaters	No	No	No
13	New hose bibs or drinking	Depends	Yes	

	fountains			
14	Irrigation systems	Depends	Yes	
15	Gas piping	No	No	No
16	Rockeries over 4' in height	Depends	Yes	
17	In-ground or above ground swimming pools and swim spas 2' deep, or above ground Prefabricated pools over 5,000 gallons	Yes - Always		
18	Tree and vegetation removal	No	No	No
19	Spas and Saunas	Yes		
20	Residential re-roof overlay (Bothell and Kenmore only)	No	No	No
21	Re-roof involving structural elements, including but not limited to sheathing, skylights, change of roof pitch, addition or relocation of mechanical units, and change of roof material where the total weight exceeds 10 psf. (pounds per square foot)	Depends if associated with remodel/addition	Yes	
22	ABC (already built construction) Code Enforcement issues	Yes		
23	Projects requiring a grading Permit	Depends	Yes	
	Permits Not Required by Incorporated Cities (Building or other) (Common examples)	HD Review w/fee Required	HD Consultation Required	HD Consultation Recommended
24	<ul style="list-style-type: none"> • Decks less than 30" above grade • Patios • Sports courts 	Depends	Yes	
25	One-story detached accessory structures used as tool and storage sheds, tree-supported play structures, playhouses, and similar uses not exceeding 200 sq.ft.	Depends on location	No	Yes
26	Fences not over 6ft high (for Bellevue: fences not over 8ft high)	No	No	Yes
27	Retaining walls or rockeries which are not over 4ft in height measured from the bottom of the footing to the top of the wall unless supporting a surcharge or sloped ground	Depends	Yes	
28	Sidewalks, decks and driveways not more than 30" above grade and	Depends	Yes	

	not over a basement or story below.			
29	In-kind re-roofing provided sheathing is not removed or replaced	No	No	No
30	Replacement of decking on docks and decks without replacement of any other structural members	Maybe – check the OSS record drawing – decks can be located over the drainfield – If no record drawing, Yes	Maybe – check the OSS record drawing – decks can be located over the drainfield – If no record drawing, Yes	No
31	Painting, nonstructural siding, papering, tiling carpeting, cabinets, countertops, and similar finish work	No	No	No
32	Swings, slides, and other playground equipment	No	No	Yes
33	Window awnings supported by an exterior wall which do not project more than 54” and do not require addition support	No	No	No
34	Maintenance of existing landscaping	No	No	Yes
35	Bathroom and kitchen fixture replacements without plumbing line modifications such as sinks and toilets	No	No	No
36	Appliance replacement in the same location without modification to gas, plumbing lines, or electrical circuits such as dishwashers, ranges, ovens, gas logs, washers and dryers	No	No	No
37	Residential re-roof overlay if limited to 2 total layers of roofing material. (Note: Permit required in Bothell and Kenmore)	No	No	No
	Additional Projects Requiring review by Public Health, Title 13 On-Site Sewage Code	HD Review w/fee Required	HD Consultation Required	HD Consultation Recommended
38	Commercial buildings change of use	Yes		
39	Time of Sale, O&M requirement	Yes		
40	Location of well site (new and replacement)	Yes		
41	Location of infiltration or	Yes		

	dispersion trenches for storm water			
42	Subdivisions	Yes		
43	BLA (boundary line adjustments)	Yes		
44	Repair of failing septic systems	Yes		
45	Use of composting or incineration toilets	Yes		
46	Any new construction requiring use of On-site systems up to 3500gpd	Yes		
	Post Issuance Revisions	HD Review w/fee Required	HD Consultation Required	HD Consultation Recommended
47	Adding Bedrooms	Yes		
48	Adding Bathrooms	Depends	Yes	
49	Adding kitchen	Yes		
50	Adding additional rooms	Depends	Yes	
51	Upgrading existing kitchen w/o footprint expansion	No	No	No
52	House or out building location changes	Yes		
53	Modifications to driveway	Depends on if near drainfield or reserve	Depends	Yes
54	Modification to any septic system components or drainfield or reserve area	Yes		
55	Well location changes	Yes		
56	Replacing or adding a Mobile Home in a Mobile Home Park	Yes		