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# HARNEY COUNTY

## Planning Department

Brandon M. McMullen, Planning Director

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**August 3, 2012**

**RE: Notice of Decision/Adoption - ORD. 2012-70**

## NOTICE OF DECISION/ADOPTION ORD. 2012-70

In the matter of amending the Harney County Zoning Ordinance Sections 9.030 & Section 9.040 to update appeal procedures, details are as follows:

Ordinance Number 2012-70 was adopted on 8/1/2012.

Ordinance Number 2012-70 will become effective on 10/30/2012.

Ordinance Number 2012-70 is available at the Harney County Courthouse located at 450 N. Buena Vista Ave. Burns, OR 97720. **Ordinance Number 2012-70 can also be viewed by visiting the Harney County website at [www.co.harney.or.us](http://www.co.harney.or.us)**

A copy of Ordinance Number 2012-70 is also available for purchase at a cost of \$.25/page. For additional information concerning Ordinance Number 2012-70 you may call the Harney County Planning Department at 541-573-6655.



Brandon McMullen,  
Harney County Planning Director

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Harney County Planning Director



FORM 2

DLCD

# Notice of Adoption

In person  electronic  mailed

DATE  
STAMP

For Office Use Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **Harney County**

Local file number: **12-08**

Date of Adoption: **8/1/2012**

Date Mailed: **8/3/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: 4/20/2012

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Updates to HCZO Sections 9.030 & Section 9.040 - to update the appeal procedures before the County Court(9.030) and to provide needed details for local notice of appeals (9.040).

Does the Adoption differ from proposal? Yes, Please explain below:

- Added text describing local LUBA Participation (Exhibit A)
- Added Graphic showing appeal process (Exhibit A)
- Added submittal requirements for local appeal notices (Exhibit B)

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>																

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

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Local Contact: Phone: (    ) -                      Extension:  
Address: Fax Number:                      -                      -  
City: Zip: E-mail Address:

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## **ADOPTION SUBMITTAL REQUIREMENTS**

**This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18**

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615 ).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845 ).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615 ).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us).

Certified to be a true and correct  
copy of the original

**MARIA ITURRIAGA**

Harney County Clerk and Recorder

Date August 3, 2012

By [Signature] Deputy

HARNEY COUNTY, OREGON

**CJ2012-47**

08/01/2012 03:00:33 PM

Commissioners' Journal  
Maria Iturriaga - County Clerk

THE COUNTY COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF HARNEY

IN THE MATTER OF AMENDING THE )  
HARNEY COUNTY ZONING ORDINANCE )  
SECTIONS 9.030 & SECTION 9.040 TO )  
UPDATE APPEAL PROCEDURES. )

**ORDINANCE NO. 2012-70**

WHEREAS, Harney County has adopted updates to the land use review procedures which allow the Court the ability to review land use appeals from the Planning Commission in the most appropriate manner; and

WHEREAS, Said updates include a statement relating to the county's participation in land use appeals beyond the local review process.

WHEREAS, Said updates include more descriptive language relating to submitting a notice to appeal Planning Commission decisions; and

NOW THEREFORE, BE IT ORDAINED BY THE COURT OF THE COUNTY OF HARNEY, STATE OF OREGON:

Section 1: ADOPTION OF AMENDMENTS, ADDITION OF EXHIBIT "A" – HARNEY COUNTY ZONING ORDINANCE, SECTION 9.030, APPEALS.

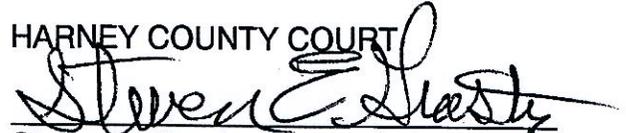
The amendments to the Harney County Zoning Ordinance are presented as described in Exhibit "A" attached hereto and by this reference adopted herein.

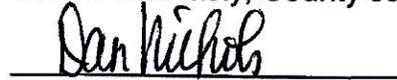
Section 2: ADOPTION OF AMENDMENTS, ADDITION OF EXHIBIT "B" – HARNEY COUNTY ZONING ORDINANCE, SECTION 9.040, FORM OF PETITION, APPLICATION, AND APPEALS.

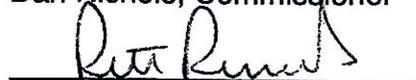
The amendments to the Harney County Zoning Ordinance are presented as described in Exhibit "B" attached hereto and by this reference adopted herein.

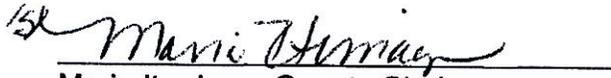
DATED, this the 1<sup>st</sup> day of August 2012

HARNEY COUNTY COURT

  
\_\_\_\_\_  
Steven E. Grasty, County Judge

  
\_\_\_\_\_  
Dan Nichols, Commissioner

  
\_\_\_\_\_  
Pete Runnels, Commissioner

  
\_\_\_\_\_  
Maria Iturriaga, County Clerk

  
\_\_\_\_\_  
Deputy Clerk



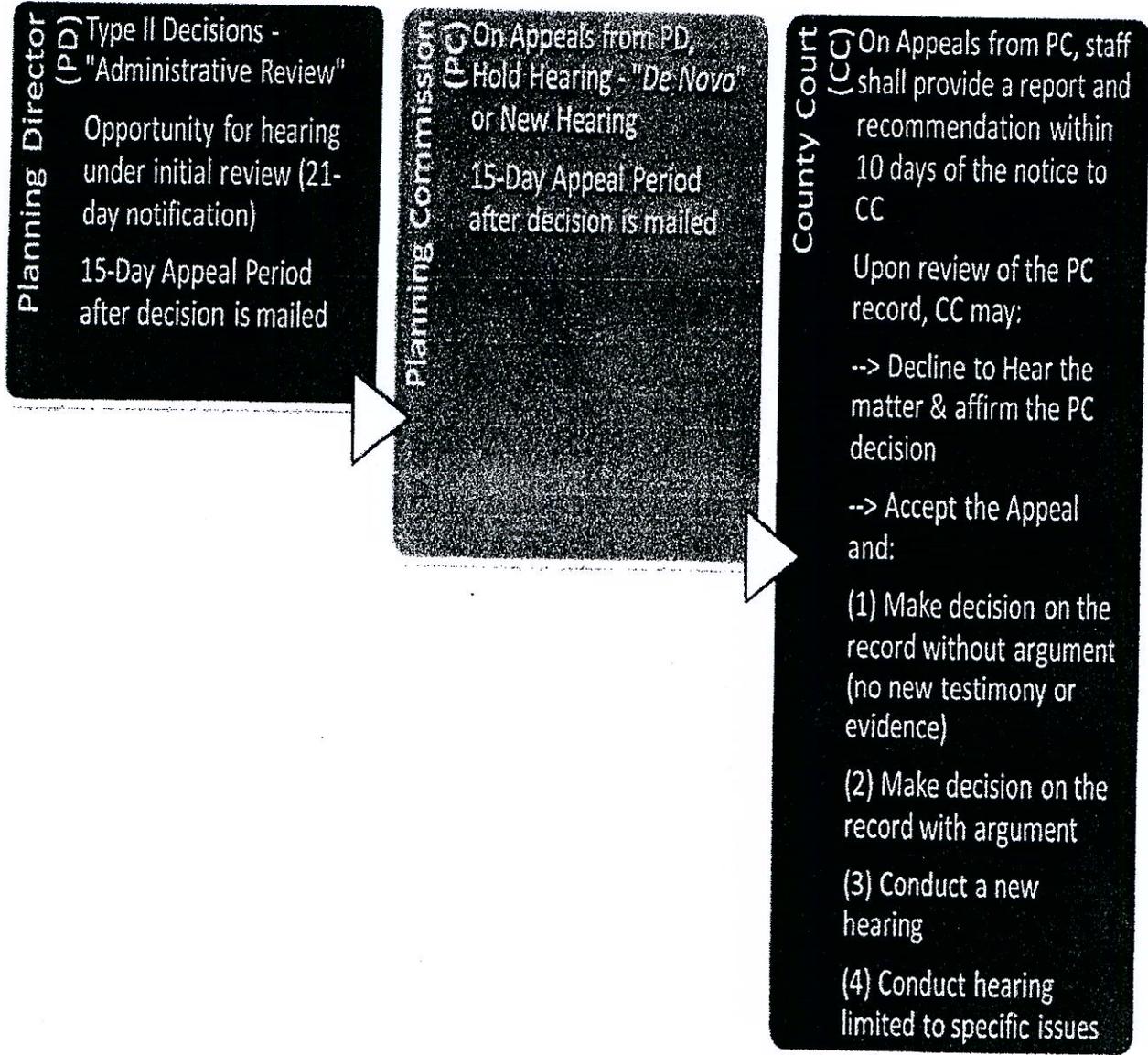
### **Section 9.030. Appeals**

1. An action or decision of the Planning Director pursuant to this Ordinance, as further defined under chapter 2 of the comprehensive plan, may be appealed to the Planning Commission within 15 days after the Planning Director has rendered a decision. Written notice of an appeal shall be filed with the Planning Director. If an appeal is not filed within the 15-day period, the decision of the Planning Director shall be final. If the appeal is filed, the Planning Commission shall conduct a hearing de novo. A de Novo hearing is defined as a new hearing, which can take into account all previous testimony and any new testimony presented by the proponent and/or the opponent to an issue.
2. An appeal from a ruling of the Planning Commission regarding a requirement of the Ordinance may be made only to the County Court.
3. An action or ruling of the Planning Commission pursuant to this Ordinance may be appealed to the County Court within 15 days after the Planning Commission has rendered its decision. Written notice of an appeal shall be filed with the Planning Commission. If an appeal is not filed within the 15-day period, the decision of the Planning Commission shall be final. If the appeal is filed, the County Court shall receive a report and recommendation from the Planning Director within ten days of receipt of the notice of appeal. The Planning Director shall provide the record to the County Court for review. Upon review of the record the County Court may:
  - A. Decline to hear the matter and enter an order affirming the lower decision; or
  - B. Accept the appeal and:
    - a. Make a decision on the record without argument;
    - b. Make a decision on the record with argument
    - c. Conduct a hearing de novo; or

- d. Conduct a hearing limited to specific issues.
4. If the County Court elects to apply the review procedure listed under 9.030 (3)(B), the record before the County Court shall include only the evidence and argument submitted on the record before the Planning Commission (including all testimony, all materials submitted at any previous stage of the review, staff reports, and minutes of the public hearing). New evidence may not be entered into the record.
  5. An action or ruling of the County Court pursuant to this Ordinance may be appealed to the Land Use Board of Appeals, by filing a "Notice of Intent to Appeal" within 21 days of the date of the final decision (ORS 197.625(1)).
  6. An appeal may be filed only by a person/s who participated either orally or in writing, who filed a "Notice of Intent to Appeal" and is aggrieved or has interests adversely affected by the decision.
  7. An appeal on a Quasi-Judicial decision may be filed if the person/s filed a "Notice of Intent to Appeal", appeared before the local government, special district, or state agency orally or in writing and was entitled to a notice and hearing prior to the decision being reviewed or is aggrieved or has interests adversely affected by the final decision (ORS 197.830).
  8. A decision to not adopt a legislative amendment or a new land use regulation cannot be appealed (ORS 197.620).

LUBA Participation. The county shall not generally participate in appeals filed with the LUBA. The response to an appeal shall be left to the party whose interests are, or may be, affected by a modification, reversal, or remand upon appeal. Only in those cases that represent a significant issue to the entire county, or establish a precedent that may be detrimental to county interests, will the court and the county legal counsel consider participating in a response.

# Harney County Land Use Appeal Process



Ordinance 2012-70, Adoption of amendments to the Harney county Zoning Ordinance sections 9.030 & section 9.040 to update appeal procedures

## **Section 9.040. Form of Petition, Application, and Appeals**

Petitions, applications, and appeals provided for in this Ordinance shall be made on forms prescribed by the County. Applications shall be accompanied by plans, and specifications, drawn to scale, showing the actual shape and dimensions of the lot to be built upon; the sizes and locations on the lot of all existing and proposed structures; the intended use of each structure; the number of families, if any, to be accommodated there-on; the relationship of the property to the surrounding area; and such other information as is needed to determine conformance of this Ordinance.

The Planning Department staff is available to provide assistance regarding application or appeal preparation and/or questions.

Energy Facilities. For proposed facilities under Oregon Energy Facility Siting Council (EFSC) jurisdiction, an abbreviated summary of the EFSC application is required. For facilities not under EFSC jurisdiction, an application containing information on each subject called for in EFSC applications is required.

Appeals. All appeals of a Planning Commission decision shall:

1. Be submitted in writing to, and received, by the Planning Department within the 15-day appeal period as listed under HCZO 9.030;
2. Be accompanied by the necessary fee to help defray the costs of processing the appeal;
  - A. In the event more than one party files separate appeals on the same decision, the Planning Director shall require separate fees from each separate filing/appellant.
3. Be completed on the form provided by the Planning Department, or one substantially similar thereto, and shall contain the following information:
  - A. The name, address and telephone number of the person filing the appeal;
  - B. A reference to the Planning Department filing number for the application being considered with the appeal;
  - C. How the person filing the appeal qualifies as a party, as listed under HCZO 9.030;
  - D. How the comprehensive plan, zoning ordinance, or other applicable federal, state or local law or rule, or evidence, was incorrectly interpreted or applied in the decision;

- E. What information in the record of decision was pertinent to the decision, but was not considered by the reviewing body. This may include the comprehensive plan, zoning ordinance, applicable state law, or other evidence;
- F. Each ground or reason for appeal must be separately numbered and explained as "assignments of error";
  - a. The assignments of error for the appeal must have been raised before the review or hearing body with sufficient specificity to allow the review or hearing body an opportunity to respond to the issue.

Director Review. Within two working days of the date that the appeal is received by the Planning Department, the Planning Director shall review the written appeal to determine if it was received within the 15-day appeal period and if it contains the contents required by section 9.040 above. If it was not received within the appeal period or does not contain the required contents, within this same two day period, the Planning Director shall reject the appeal and mail to the appellant the appellant's notice of appeal contents and a disclosure in writing identifying the deficiencies of content. The appellant may correct the deficiencies and resubmit the appeal if still within the 15-day appeal period. Appeals which are not so rejected by the Planning Director shall be assumed to have been accepted.