



# Director's Interpretation Staff Report and Interpretation Case File DI 2023-01

**Date:** May 30, 2023

**Case File:** DI 2023-01 Scott

**Project Contact:** Janice Scott

**Property Owner:** Janice Scott

**Situs Address:** 310 NE East Devils Lake Rd

**Location:** East side of NE East Devils Lake Rd, approximately 1,270 feet north of SE East Devils Lake Rd

**Tax Map and Lot:** 07-11-14-A0-00409-00

**Comprehensive Plan Designation:** No city designation – located in unincorporated Lincoln County

**Zoning District:** No city zoning district – located in unincorporated Lincoln County (county zoning of Timber Conservation)

**Site Size:** 45.76 acres (per Lincoln County Assessor)

**Proposal:** Request for municipal water service for property outside of city limits and urban growth boundary

**Surrounding Land Uses and Zones:**  
North: House; Lincoln County  
South: Houses, Undeveloped; Lincoln County  
East: Forest; Lincoln County  
West: Houses, Undeveloped; Lincoln County

**Authority:** Table 17.76.020-1 of Lincoln City Municipal Code (LCMC) 17.76.020 lists a director's interpretation application as a Type II procedure with the Planning and Community Development Director (Director) listed as the review authority. LCMC 17.76.040.A states that Type II procedures apply to administrative permits and applications and that decisions on administrative applications are made by the Director, based on reasonably objective approval criteria that require only limited discretion.

**Procedure:** The application was received on May 10, 2023. The application was deemed complete on May 11, 2023. On May 12, 2023, pursuant to LCMC 17.76.040.E, the Planning and Community Development Department mailed a notice of application to property owners within 250 feet of the subject property.

<b>Applicable</b>	LCMC Section 13.12.050 Water Service Extensions, Connections and Equipment
<b>Substantive</b>	LCMC Section 17.76.040 Type II Procedure
<b>Criteria:</b>	LCMC Section 17.77.080 Director’s Interpretation
	Oregon Administrative Rule (OAR) 660-011-0065 Water Service to Rural Lands

## **BACKGROUND**

The subject property (site) is addressed as 310 NE East Devils Lake Rd in Lincoln County’s Timber Conservation (T-C) zone. The tax lot number is 07-11-14-A0-00409-00, and the assessed site size is 45.76 acres. The site’s westerly boundary is NE East Devils Lake Road, and the site is approximately 1,270 feet north of the NE East Devils Lake Rd/SE East Devils Lake Rd intersection. The majority of the 45.76-acre site is undeveloped, forested land, with a five-acre area of the site designated as a residential tract and containing a house constructed in 1995. Domestic water for the house is provided via an existing well. The property owner states in the request for use of city water that the well water is “insufficient for household consumption, with low PH levels (acidic), moderate levels of sediment and high levels of iron detected, resulting in pipe corrosion in the residence and other hardships” although the other hardships are not enumerated.

The site is in unincorporated Lincoln County and is outside of both Lincoln City’s city limits and urban growth boundary.

The proposal is to obtain the use of municipal water for the site via a new municipal water service. There is an existing pressurized water main line in NE East Devils Lake Rd.

## **COMMENTS**

No comments were received from the public.

## **ANALYSIS**

*Chapter 13.12 Water and Sewer System Rates and Charges*

*13.12.050 Water service extensions, connections and equipment – Installation and maintenance responsibility*

- A. Water Main Extensions Within the City Limits.*
- B. Service Outside City Limits.*
  - 1. Outside City Limits.*
  - 2. Discontinuation of Service and Guarantee of Supply.*
  - 3. Application and Rates.*
  - 4. Consents to Annexation.*
  - 5. Consents to Annexation for Continued Service.*
  - 6. ... Notwithstanding any other provision of this code, an exception for water service outside the Urban Growth Boundary shall not be permitted by Council, unless the Planning Director has first determined in a properly noticed land use decision (LCMC 17.77.080), that the request for extension of water service does not violate OAR 660-011-0065 (Water Service to Rural Lands).*

**Finding:** As discussed below, this staff report details the properly noticed land use decision of the director’s interpretation that the request for extension of water service does or does not violate OAR 660-011-0065.

*OAR 660-011-0065*

*Water Service to Rural Lands*

- (1) As used in this rule, unless the context requires otherwise:*
  - (a) “Establishment” means the creation of a new water system and all associated physical components, including systems provided by public or private entities;*

- (b) *“Extension of a water system” means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing water system in order to provide service to a use that was not served by the system on the applicable date of this rule, regardless of whether the use is inside the service boundaries of the public or private service provider.*
- (c) *“Water system” shall have the same meaning as provided in Goal 11, and includes all pipe, conduit, pipeline, mains, or other physical components of such a system.*

**Finding:** The site’s property owner desires to install a new water service at the site to connect to the municipal water system and utilize municipal water.

- (2) *Consistent with Goal 11, local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not:*
  - (a) *Allow an increase in a base density in a residential zone due to the availability of service from a water system;*

**Finding:** The site is not located in a residential zone; rather, the site is located in Lincoln County’s Timber Conservation (T-C) zone. The uses permitted outright are listed in Lincoln County Code (LCC) 1.1375(1) and do not include residential uses. Conditional uses are listed in LCC 1.1375(2) and one single-family dwelling on a tract meeting certain qualifications is allowed or one single-family template dwelling is allowed. The site contains one dwelling that was constructed in 1995 (per records of the Lincoln County Assessor). No additional dwellings are allowed under LCC 1.1375. The request is to utilize the municipal water system for the existing dwelling. The request will not allow an increase in the base density allowed in the T-C zone. This criterion is met.

- (b) *Allow a higher density for residential development served by a water system than would be authorized without such service; or*

**Finding:** The site is located in Lincoln County’s Timber Conservation (T-C) zone. The uses permitted outright are listed in Lincoln County Code (LCC) 1.1375(1) and do not include residential uses. Conditional uses are listed in LCC 1.1375(2) and one single-family dwelling on a tract meeting certain qualifications is allowed with conditional use approval or one single-family template dwelling is allowed with condition use approval. The site contains one dwelling that was constructed in 1995 (per records of the Lincoln County Assessor). Regardless of the type of water system, no additional dwellings are allowed under LCC 1.1375 in the T-C zone. This criterion is met.

- (c) *Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system.*

**Finding:** The site is located in Lincoln County’s Timber Conservation (T-C) zone. The uses permitted outright are listed in Lincoln County Code (LCC) 1.1375(1) and do not include residential development. Conditional uses are listed in LCC 1.1375(2) and one single-family dwelling on a tract meeting certain qualifications is allowed or one single-family template dwelling is allowed. The site contains one dwelling that was constructed in 1995 (per records of the Lincoln County Assessor). Regardless of the type of water system, the allowable density of residential development in the T-C zone is one dwelling per tract, with conditional use approval and if certain qualifications are met. Obtaining municipal water service will not change the requirements of LCC 1.1375, nor will it change the site’s zone to something other than T-C. This criterion is met.

- (3) *Applicable provisions of this rule, rather than conflicting provisions of local acknowledged zoning ordinances, shall immediately apply to local land use decisions filed subsequent to the effective date of this rule.*

**Finding:** It is acknowledged that the applicable provisions of OAR 660-011-0065 immediately apply.

*Chapter 17.76 Procedures  
17.76.040 Type II procedure*

- A. General Description. Type II procedures apply to administrative permits and applications. Decisions on administrative applications are made by the director, based on reasonably objective approval criteria that require only limited discretion. Type II procedures require public notice and an opportunity for appeal, but do not require a public hearing or a public meeting.*
- B. When Applicable. Table 17.76.020-1 identifies Type II applications. Applications not listed in Table 17.76.020-1 may be identified as Type II by the director based on the general description in this section.*
- C. Pre-Application Conference. A pre-application conference is not required for Type II procedures.*

**Finding:** A pre-application conference is not required.

- D. Application Requirements. Type II applications shall:*
  - 1. Be submitted on application forms provided by the department and shall include all information, exhibits, plans, reports, and signatures requested on the application forms.*
  - 2. Be accompanied by the required fee as adopted by city council resolution.*
  - 3. Be subject to the completeness review procedure set forth in LCMC 17.76.110(D) and (E).*

**Finding:** The required application forms and materials were submitted, along with the required fee. The application was deemed complete in accordance with LCMC 17.76.110.D and E.

- E. Public Notice of Application and Comment Period. Type II applications require public notice of receipt of a complete application with an opportunity for area property owners and other interested parties to provide written comment prior to issuance of the decision.*
  - 1. After a Type II application has been accepted as completed under LCMC 17.76.110(E), the department shall mail a written public notice to the following:*
    - a. The applicant and applicant's representative;*
    - b. The owners of record of the subject property;*
    - c. Property owners of record within 250 feet of the perimeter property line of the property or properties subject to the application, using the most recently provided property tax assessment roll of the Lincoln County assessor's office as provided to the city to determine property owners of record; and*
    - d. Any neighborhood or community organization or association recognized by the governing body and whose boundaries include the site.*

**Finding:** The Planning and Community Development Department mailed the public notice of a complete application to the parties noted in LCMC 17.76.040.E.1.a through d.

- 2. The written public notice shall include the following:*
  - a. A brief description of the request;*
  - b. The applicable criteria from the ordinance and the comprehensive plan that apply to the application at issue;*
  - c. The street address or other easily understood geographical reference to the subject property;*
  - d. Statement that failure of an issue to be raised in writing prior to the expiration of the public comment period, or failure to provide statements or evidence sufficient to afford the review authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA);*

- e. *The name of a department staff member to contact and the telephone number where additional information may be obtained; and*
  - f. *Statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.*
3. *The failure of a property owner to receive notice does not invalidate the land use action if the notice was sent.*
  4. *Public notices for receipt of complete Type II applications shall include a written comment period of 14 days from the date the notice was mailed for the submission of written comments before the decision is issued.*

**Finding:** The written public notice contained all the information required in LCMC 17.76.040.E.2.a through f. The written public notice included the written comment period of 14 days.

*F. Review Authority. The review authority for Type II applications shall be the director.*

**Finding:** The Director reviewed the submitted Type II application.

*G. Decision.*

1. *Based on the criteria and facts contained within the record, the director shall approve, approve with conditions, or deny the request. The decision shall address all relevant approval criteria and consider written comments submitted before the close of the comment period.*

**Finding:** The relevant approval criteria are addressed in detail throughout this staff report. Consideration of the written comments received, if any, is given at the beginning of this report.

2. *The decision is considered final for purposes of appeal on the date the notice of the decision is mailed. Within seven days after the director has issued the decision, a notice of the decision shall be sent by mail to the following:*
  - a. *The applicant and applicant's representative;*
  - b. *The owners of record of the subject property;*
  - c. *Any person, group, agency, association, or organization who submitted written comments during the comment period; and*
  - d. *Any person, group, agency, association, or organization who submitted a written request to receive notice of the decision.*

**Finding:** Within seven days after the Director has issued the decision, the notice of that decision shall be mailed by the Planning and Community Development Department, pursuant to LCMC 17.76.040.G.2.

3. *The notice of the decision shall include the following:*
  - a. *A brief description of the request;*
  - b. *A statement of the decision and the applicable approval criteria used in making the decision;*
  - c. *The street address or other easily understood geographical reference to the subject property;*
  - d. *A statement that the decision is final, unless appealed as provided in LCMC 17.76.180;*
  - e. *The requirements for filing an appeal of the decision, including a statement of the date and time by which an appeal must be filed;*
  - f. *A statement that the complete file is available for review; and*
  - g. *The name of a department staff member to contact and the telephone number where additional information may be obtained.*

**Finding:** The Planning and Community Development Department will issue the notice of decision that shall contain all the information noted in subsection 17.76.040.G.3.a through g.

Chapter 17.77 Applications  
17.77.080 Director’s Interpretation

- A. Purpose.
- B. Director’s Authority to Initiate an Interpretation.
- C. Director’s Authority to Decline an Application.
- D. Procedures. A director’s interpretation not specific to a particular property or circumstance is subject to the Type I procedure, as described under LCMC 17.76.030. A director’s interpretation for a particular property is subject to the Type II procedure, as described in LCMC 17.76.040.

**Finding:** The request is for a specific site, so the request is subject to the Type II procedure.

- E. Submittal Requirements. Type I application submittal requirements are set forth in LCMC 17.76.030. Type II application submittal requirements are set forth in LCMC 17.76.040. More specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.110.

**Finding:** The required documents and completed application forms were submitted.

- F. Standards for Assignment of a Use.

**Finding:** This is not specifically applicable. The site is located outside of city limits and the urban growth boundary. LCMC 13.12.050 requires the director’s interpretation of violation of OAR 660-011-0065.

- G. Standards for Interpretation.

**Finding:** This is not specifically applicable. The site is located outside of city limits and the urban growth boundary. LCMC 13.12.050 requires the director’s interpretation of violation of OAR 660-011-0065.

- H. Limitations on Director’s Interpretation.

**Finding:** The decision is not a legal opinion or interpretation of case law. The decision does not establish precedent and does not bind any review authority in current or future decisions regarding the site or application or similar properties or applications. The decision does not run with the land unless the development is substantially consistent with the description in the director’s interpretation.

- I. Expiration of a Decision. A director’s interpretation does not expire unless superseded by a subsequent director’s interpretation, comprehensive plan amendment, or ordinance amendment.


**Finding:** A director’s interpretation does not expire as noted above.

- J. Appeal of a Decision. Refer to LCMC 17.76.180.

**Finding:** The required notice of decision was given as required by LCMC Chapter 17.76.

**DECISION**

Based upon an analysis of the submitted application against applicable criteria, the Director concludes that the request for municipal water service to 310 NE East Devils Lake Rd does not violate OAR 660-011-0065.

Approved by:  Digitally signed by  
Anne Marie Skinner  
Date: 2023.05.30  
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Anne Marie Skinner, Director Date  
Planning and Community Development