

**DECISION AND FINDINGS OF  
THE DESCHUTES COUNTY HEARINGS OFFICER**

**FILE NUMBERS:** 247-23-000614-CU, 247-23-000615-SP

**HEARING DATE:** March 12, 2024

**HEARING LOCATION:** Videoconference and  
Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97708

**APPLICANT/OWNER:** Applicant: Juniper Institute LLC  
Owners: Pronghorn Intangibles LLC

**SUBJECT PROPERTY:** Map and Tax Lot: 161316D000500  
Account: 251126  
Situs Addresses: 23050 Nicklaus Drive,  
Bend, OR 97701

**REQUEST:** A conditional use and site plan review to establish a psilocybin service center in the Exclusive Farm Use (EFU) Zone, and Destination Resort (DR) Combining Zone.

**HEARINGS OFFICER:** Tommy A. Brooks

**SUMMARY OF DECISION:** This Decision DENIES the Application.

**I. STANDARDS AND CRITERIA**

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance

Chapter 18.16, Exclusive Farm Use Zones (EFU)

Chapter 18.113, Destination Resorts Zone (DR)

Chapter 18.116, Supplementary Provisions

Chapter 18.124, Site Plan Review

Chapter 18.128, Conditional Use

Title 22, Deschutes County Development Procedures Ordinance

Conceptual Master Plan (CMP) for the Pronghorn Destination Resort

Final Master Plan (FMP) for the Pronghorn Destination Resort

## **II. BACKGROUND AND PROCEDURAL FINDINGS**

### **A. Request and Nature of Proceeding**

This matter comes before the Hearings Officer as a request by the Applicant to approve a psilocybin service center (“Service Center”). The Service Center is proposed to be located at Juniper Preserve, a destination resort approved in the Exclusive Farm Use (EFU) Zone (“EFU Zone”), which was originally referred to as the Pronghorn Destination Resort (“Juniper Preserve”). The relevant areas of the Juniper Preserve are within the EFU Zone, and the Subject Property is also subject to the County’s Destination Resort (DR) combining zone (“DR Zone”). The Applicant seeks two land use approvals – a Conditional Use Permit and a Site Plan Review.

As described by the Applicant, the Service Center will operate under a license from the Oregon Health Authority (“OHA”). OHA regulates the production, processing, and use of psilocybin under the Oregon Psilocybin Services Act. The Applicant proposes to conduct activities related only to the use of psilocybin and would conduct the licensed activities in an existing structure on the Subject Property.

The County reviews conditional uses in accordance with the standards and procedures set forth in Deschutes County Code (“DCC” or “Code”) Chapter 18.128 and Title 22. The proposed use must also satisfy the standards of the underlying EFU Zone – set forth in DCC Chapter 18.16 – which in turn requires compliance with the applicable provisions of DCC Chapter 18.116, Supplementary Provisions, and Chapter 18.124, Site Plan Review. Because the Subject Property is in the DR Zone, provisions in DCC Chapter 18.113 are applicable, as are provisions of the Conceptual Master Plan (“CMP”) and the Final Master Plan (“FMP”) for Juniper Preserve.

### **B. Application, Notices, Hearing**

The Applicant submitted the Application on August 8, 2023. On September 7, 2023, staff of the County’s Community Development Department (“Staff”) provided notice to the Applicant that it did not deem the Application to be complete (“Incomplete Letter”). On January 26, 2024, the Applicant submitted supplemental information in response to the Incomplete Letter and requested that the Application be deemed complete at that time.

On February 15, 2024, Staff mailed a Notice of Public Hearing (“Hearing Notice”). The Hearing Notice stated the Hearing would be held on March 12, 2024.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on March 12, 2024, opening the Hearing at 6:00 p.m. The Hearing was held in person and via videoconference, with the Hearings Officer appearing remotely. At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I invited but received no objections to the County’s jurisdiction over the matter or to my participation as the Hearings Officer.

The Hearing concluded at 9:05 p.m. Prior to the conclusion of the Hearing, and at the request of the Applicant, I announced that the written record would remain open as follows: (1) any participant could submit additional materials until March 19, 2024 (“Open Record Period”); (2) any participant could submit rebuttal materials (evidence or argument) until March 26, 2024 (“Rebuttal Period”); and (3) the Applicant could submit a final legal argument, but no additional evidence, until March 29, 2024, at which time the record would close. Staff provided further instruction to participants, noting that all post-Hearing submittals needed to be received by the County by 4:00 p.m. on the applicable due date. No participant objected to the post-Hearing procedures.

### C. Review Period

As noted above, the Applicant submitted additional materials in response to the Incomplete Letter on January 26, 2024, requesting that the Application be deemed complete at that time. Using January 26, 2024, as the date of completeness, the original deadline for a final County decision under ORS 215.427 – “the 150-day clock” – was June 24, 2024. As noted above, however, the Applicant requested a 17-day extension of the written record.

Pursuant to DCC 22.24.140(E), a continuance or record extension is subject to the 150-day clock, unless the Applicant requests or otherwise agrees to the extension. Here, the Applicant requested the extension. Under the Code, therefore, the additional 17 days the record was left open do not count toward the 150-day clock. Adding that time period to the original deadline, the new deadline for the County to make a final decision is July 11, 2024.

### D. Staff Report

On March 5, 2024, Staff issued a report setting forth the applicable criteria and presenting evidence in the record at that time (“Staff Report”).

In the report’s conclusion, Staff requests the Hearings Officer to determine if the applicant has met the burden of proof necessary to approve a conditional use permit and site plan review for the Service Center. The Staff Report does not make a specific recommendation, but the Staff Report does make some specific findings and proposes the imposition of several conditions of approval if the Application is approved.<sup>1</sup>

Because some of the information and analysis provided in the Staff Report is not refuted, portions of the findings below refer to the Staff Report and, in some cases, adopt sections of the Staff Report as my findings. In the event of a conflict between the findings in this Decision and the Staff Report, the findings in this Decision control.

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<sup>1</sup> During the Hearing, Staff acknowledged that some the proposed conditions were erroneously included in the Staff Report. Because this Decision denies the application, I do not address all of Staff’s proposed conditions.

### E. Record Issues

The Applicant’s final legal argument contains new evidence in the form of an “Exhibit A”, which includes a register page from the Bureau of Land Management and an Assignment of Right of Way. The instructions provided to participants at the end of the Hearing included a statement that the Applicant’s final legal argument should not include new evidence. A footnote in the Applicant’s submittal states that the Hearings Officer “may take judicial notice of the BLM Assignment,” but does not offer any citation to the Code or to state law to explain that statement. Because it is not clear from the Applicant’s submittal that there is a legal basis for taking “judicial notice” of this particular document, and because other participants were not afforded an ability to comment on that document, I am excluding it from the record and will not refer to that particular evidence in this Decision.

## III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

The Hearing Notice and Staff Report identified the Code sections listed in Section I above as the applicable standards and criteria governing the Application. Participants in this proceeding were invited to identify other criteria and to explain why those criteria must apply. The findings in this section address the relevant criteria listed in the Staff Report and, where appropriate, additional criteria identified by participants. The Applicant submitted an updated Site Plan as Exhibit A to its submittal dated March 19, 2024. The findings below refer to that document whenever they make a reference to the Site Plan.

### A. DCC Chapter 18.16, Exclusive Farm Use Zones (EFU)

The EFU Zone is the base zone for the Subject Property. DCC 18.16.035 expressly states that destination resorts are allowed as a conditional use in the EFU Zone, subject to all applicable standards of the DR Zone, which are set forth in DCC Chapter 18.113. Pursuant to DCC 18.113.020(B), when the DR Zone provisions are applicable, “they shall supersede all other provisions of the underlying zone.” Because the Subject Property is within an approved destination resort and the DR Zone provisions apply, those provisions supersede the provisions in the EFU Zone. I therefore find it is not necessary to address any of the dimensional or other standards in the EFU Zone as part of the consideration of this Application.

### B. DCC Chapter 18.113, Destination Resorts Zone – DR

#### 1. DCC 18.113.020, Applicability

This Code provision applies DCC Chapter 18.113 to proposals relating to the development of destination resorts. The Subject Property is part of a larger area that has been approved as a destination resort as defined in DCC Title 18. The provisions of DCC Chapter 18.113 therefore apply, and, as noted above, these provisions supersede all other provisions in the underlying EFU Zone.

#### 2. DCC 18.113.025, Application to Existing Resorts

This Code provision states that “[e]xpansion proposals of existing developments approved as destination resorts” must meet certain criteria. The Applicant does not propose an expansion of the Juniper Preserve destination resort and, instead, proposes a specific development within an area already contemplated for

future commercial development as part of Juniper Preserve’s approval. One participant opposed to the Application identified DCC 18.113.025 as being applicable. However, that participant did not explain why this Code provision applies to the Application, much less explain why this Code provision is not satisfied. Based on the foregoing, I find that DCC 18.113.025 is not applicable to the proposal in the Application.

### 3. DCC 18.113.030, Uses in Destination Resorts

This Code provision lists several uses that are allowed in a destination resort, provided that the use is intended to serve persons at the destination resort and is approved in a final master plan. Section (D) of this provision lists various commercial services and specialty shops designed for visitors to the resort, including psilocybin service centers licensed by the OHA, as set forth in DCC 18.113.030(D)(7)(a). Of note, that more specific Code provision provides an exception and states that “[f]or a lawfully established destination resort, the establishment of a psilocybin service center in any area approved for commercial services or specialty shops pursuant to an approved final master plan does not require modification of an approved conceptual master plan or final master plan.”

The Applicant states that the Service Center will be licensed by the OHA. Because the record does not contain evidence that OHA has already issued such a license, I find that this standard can be met only by a condition of approval requiring the Applicant to obtain the OHA license prior to initiation of the use.<sup>2</sup>

The FMP for Juniper Preserve establishes various “areas” of the approved destination resort. The Subject Property is in “Area 1.” The County’s decision approving the destination resort (File No. M-02-1) expressly states that Areas 1-4 may include commercial uses. One participant in this proceeding objected to the Application based, in part, on their assertion that the Service Center cannot be integrated into the “core” commercial facilities of the destination resort, which include a spa, pool, and restaurants. However, the Code does not require new commercial uses to be “integrated with” existing commercial uses and, instead, requires only that the Service Center be in an “area approved for commercial service or specialty shops.” I therefore agree with the conclusion in the Staff Report that the Service Center is in an area approved for commercial services, which is permitted without the need to modify Juniper Preserve’s CMP or FMP, pursuant to DCC 18.113.030(D)(7)(a).

### 4. DCC 18.113.040, Application Submission

This Code provision lists the application submittal requirements for a destination resort. Sections (A) and (B) of this Code provision relate to the initial conceptual master plan and the final master plan. Juniper Preserve has already received approval of its CMP and FMP, and these Code provisions are no longer applicable. Instead, specific development in the approved destination resort must comply with the FMP, which is addressed in more detail below. DCC 18.113.040(C) also states that a specific development must satisfy site plan criteria. The Application seeks approval of the Applicant’s proposed Site Plan, and the standards for site plan review are also addressed in more detail below. Based on the foregoing, I find that

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<sup>2</sup> Although this Decision ultimately denies the Application, these findings identify various conditions of approval that would be necessary to meet specific criteria.

this criterion is met as long as the proposal is consistent with the FMP and as long as the site plan review criteria are satisfied.

### Compliance with FMP

Pages 7-9 of the Staff Report addresses Juniper Preserve’s FMP and whether the Application is in compliance with the FMP (and its associated conditions of approval). I find that the Staff Report’s summary of compliance with the FMP is accurate, and I adopt that portion of the Staff Report as my findings, as modified by the following findings, which also address issues raised by other participants in this proceeding.

The County initially approved the FMP for the destination resort as part of File No. M-02-1 (“Resort Approval”). The Staff Report incorrectly quotes Condition G of the Resort Approval as addressing commercial uses, whereas Condition G actually addresses solar standards, and that condition required the applicant to “document compliance with the applicable solar access standards at the time of site plan review...”. DCC 18.113.060(G)(1) states that any standards in the underlying zone relating to solar access “shall not apply within a destination resort”. Thus, at the time of this Site Plan Review, there are no applicable solar standards to apply as part of Condition G, and the Application remains in compliance with that portion of the FMP.

Condition H of the Resort Approval states that the applicant must “limit commercial uses within the resort to those permitted in the DR Combining Zone and those listed in CMP Exhibit 15.” Some participants in this proceeding objected to the Application on the basis that a psilocybin service center is not listed as one of the contemplated uses in Exhibit 15 of the CMP. I find this objection does not warrant denial of the Application. It is not surprising that the CMP did not list a psilocybin service center as a commercial use, because such uses did not become lawful under Oregon law until the enactment of the Oregon Psilocybin Services Act. Even so, the FMP allows commercial uses listed in Exhibit 15 of the CMP and the uses allowed in the DR Zone. The Applicant does not rely on Exhibit 15 of the CMP and, instead, proposes the Service Center because it is an allowed commercial use in the DR Zone by virtue of DCC 18.113.030(D)(7), and allowed expressly without the need to modify the CMP or the FMP. Based on the foregoing, the Application is consistent with Condition H of the Resort Approval.

#### 5. DCC 18.113.050, Requirements for Conditional Use Permit and Conceptual Master Plan Applications

The provisions in this Code section relate to the application for a conceptual master plan for a destination resort. The County has already issued a CMP and FMP for Juniper Preserve. Further, DCC 18.113.030(D)(7) allows the approval of a psilocybin service center without the need to modify the CMP or FMP.

One participant opposed to the Application identified DCC 18.113.050, and specifically subsections (B)(5)(a-d), (B)(6), (B)(12), and (B)(18), as being applicable. However, that participant did not explain why those Code provisions apply to the Application, much less explain why those Code provisions were not satisfied.

Because DCC 18.113.050 relates specifically to the application for a CMP, and because this Application does not require a new or modified CMP, I find that these provisions are not applicable.

6. DCC 18.113.060, Standards for Destination Resorts

DCC 18.113.060 establishes various minimum standards for the initial approval and phasing of a destination resort. The only portion of this Code section identified in the record as being applicable is DCC 18.113.060(G), and specifically subsections (G)(1) and (G)(2)(a)(1) of that section. Subsection (G)(1) simply states that most dimensional standards of the underlying zone do not apply and, instead, such standards are to be established as part of the CMP approval process. However, that provision does state that, at a minimum, a 100-foot setback must be maintained from all streams and rivers, and that rimrock setbacks must be as provided by other Code provisions. This criterion is satisfied because no streams, rivers, or rimrock are present within the vicinity of the proposal.

Subsection (G)(2)(a)(1) requires an exterior setback of 350 feet from commercial development to the exterior property lines. According to the portion of the Staff Report addressing this standard, which is not refuted by other participants, the Service Center is located more than 350 feet from all exterior property lines.

One participant opposed to the Application identified DCC 18.113.060(L)(2)(F) as being applicable. However, that participant did not explain why that Code provision – which requires a destination resort to maintain records documenting its rental program related to overnight lodging – applies to the proposal in the Application, much less explain why those Code provisions were not satisfied.

Based on the foregoing, I find that the applicable provisions of DCC 18.113.060 are satisfied.<sup>3</sup>

**C. DCC Chapter 18.116, Supplementary Provisions**

1. DCC 18.116.020, Clear Vision Areas

This Code provision requires a clear area (i.e. an absence of visual obstructions) at the intersection of two streets at a property corner. According to the Staff Report, there is a clear vision area for the property located at Nicklaus Drive, a private road that fronts the property. However, the Staff Report does not identify which intersection of two streets is applicable, and the record materials indicate only a single street in the area. Instead, the referenced “intersection” appears to be the area where the parking lot connects to Nicklaus Drive. In that area, the Applicant’s Site Plan shows a clear vision area, based on a 40-foot triangle as allowed by DCC 18.116.020(B), in which there will be only low landscaping. No participant objects to this design or otherwise asserts this Code provision is not satisfied. The Staff Report

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<sup>3</sup> Neither the Applicant, the Staff Report, nor any other participant has asserted that the remaining provisions of this DCC Chapter – DCC 18.113.070 through DCC 18.113.120 – are applicable to the proposal in the Application.

recommends, and the Applicant does not object to, a condition of approval requiring this clear vision area to be maintained.

## 2. DCC 18.116.030, Off street Parking and Loading

DCC 18.116.030 requires the Applicant to demonstrate how required off-street parking and loading will be accommodated. Sections (A) and (C) of that provision simply require compliance with this Code provision as part of the permitting process. These findings address the remaining subsections in detail, and they conclude that the Applicant has not met its burden with respect to DCC 18.116.030(F)(1) or DCC 18.116.030(F)(7).

DCC 18.116.030(B) addresses off-street loading requirements. That Code provision, however, requires off-street loading berths for commercial uses only where the proposed floor area is 5,000 square feet or more. The Service Center is proposed in a building that is 2,940 square feet. No loading berths are therefore required. Subsection (B)(5) of this Code provision does prohibit the use of required parking spaces for loading or unloading activities unless done at a time of day when parking is not required. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with that prohibition.

DCC 18.116.030(D) addresses off-street parking requirements. The Applicant originally stated that it would rely in part on existing parking developed for Juniper Preserve to meet any parking requirements. The Applicant then submitted a transportation analysis indicating that 11 parking spaces would be required, but the Applicant still intended to provide some of those spaces by using existing parking. In subsequent submittals, however, the Applicant provided an update to its transportation analysis, prepared by a transportation engineer, confirming that 14 parking spaces are required. The Applicant's Site Plan shows that all 14 parking spaces will be located on site in a parking area to the east of the primary structure and that the Applicant is not relying on off-site or existing parking to meet that requirement.

The County's Senior Transportation Planner reviewed the Applicant's transportation analysis, including its updates and the parking analysis, and agreed with its assumptions and methodologies. The Senior Transportation Planner also recommended that all 14 parking spaces be included as new stalls on the Subject Property.

One participant to this proceeding disagreed with the Applicant's transportation analysis, specifically objecting to the "discount" to traffic counts based on the engineer's assumption that there would be a high overlap of trips related to the Service Center and trips that are already generated as a result of guests traveling to and from Juniper Preserve. That objection was based on the fact that the transportation engineer based that discount on traffic counts at other destination resorts, which the objecting participant asserted are not relevant because they predate more recent, but unidentified, requirements of Statewide Planning Goal 8. That participant did not attempt to quantify an appropriate amount of trips that should be considered or otherwise identify the number of parking spaces that must be provided.

Having reviewed the expert analysis of the Applicant's transportation engineer, the response of the County's Senior Transportation Planner, and the opposing comments in the record, I find that the Applicant's transportation analysis, as supplemented during the course of this proceeding, sufficiently



establishes the trip generation rates and required parking that must be considered as part of this Decision. Specifically, the Applicant is required to provide 14 new parking spaces. The Applicant's Site Plan demonstrates how those off-street parking spaces will be provided on the Subject Property.

DCC 18.116.030(E) contains several general provisions relating to off-street parking. Subsections (E)(1) through (E)(3) of this Code provision relate to parking when there is more than one use on a parcel, when an applicant proposes to have joint parking facilities, or when an applicant proposes to rely on off-site parking. Because the Applicant proposes to have dedicated parking for the Service Center, and to locate that parking on the same site as the Service Center, these provisions are either not applicable or are satisfied. Subsection (E)(4) of this Code provision prohibits the use of parking facilities for storage or for truck parking. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with that prohibition. Subsection (E)(5) of this Code provision prohibits locating parking spaces in a required front yard setback. The Applicant's Site Plan reflects that its proposal is consistent with that prohibition.<sup>4</sup> Finally, subsection (E)(6) of this Code provision is not applicable, as it relates to parking credits in certain areas where on-street parking may be provided.

DCC 18.116.030(F) contains several provisions relating to the development and maintenance of off-street parking areas. Of note, DCC 18.116.030(F)(1) requires that a non-residential parking area for more than five vehicles must be effectively screened by a fence or landscaping if adjacent to a residential use. The record identifies residential uses adjacent to the proposed parking area (across Nicklaus Drive). The Site Plan does not depict any fence or screening vegetation. To the contrary, the proposed landscaping on the south side of the parking lot is expressly identified as being low and non-obscuring in order to maintain a clear vision area. The Applicant states that this landscaping can achieve both purposes – i.e. that it can be non-obscuring for purpose of the clear vision area but still screen the parking lot from adjacent properties. In the absence of more detailed information or argument from the Applicant with respect to this criterion, I find that the Applicant has not met its burden of proof to demonstrate compliance with this Code provision.<sup>5</sup>

DCC 18.116.030(F)(2) requires lighting for off-street parking to be arranged in a manner that will prevent light from shining directly on adjoining residential properties “in a residential zone.” The record indicates that the Subject Property, and other properties in the Juniper Preserve development, are in the EFU Zone, which is not a residential zone. However, the FMP for the destination resort also indicates that one of the

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<sup>4</sup> See also the findings below relating to DCC 18.124.070(D) concluding that the Subject Property is not subject to any yard requirements.

<sup>5</sup> The Staff Report suggests that this criterion could be satisfied by a condition of approval requiring the Applicant to either show landscaping or a sight-obscuring fence on a revised site plan. However, as noted above, the Applicant and the Staff Report appear to identify this area as needing to remain visually clear to meet the requirements of DCC 18.116.020. While it may be debatable that DCC 18.116.020 applies to the intersection of the parking lot and Nicklaus Drive, the materials in the record do not allow me to resolve these competing proposals in the Application – one that would keep the area clear of visual obstructions and one that would allow the same area to be visually screened. While it may be possible to resolve that discrepancy with a different Site Plan, that burden lies with the Applicant, and the Applicant has not met that burden based on the materials in the current record.

tax lots in Juniper Preserve is in the Multiple Use Agriculture (MUA-10) zone, which it describes as “rural residential.” The Application materials do not state whether the adjoining residential developments are in a residential zone or in a non-residential zone. However, the Site Plan shows the location of a new light for the parking lot, which appears to be distant enough from adjoining residential properties to prevent direct light from shining on those properties, regardless of what those properties are zoned. Even so, the record is not clear that no direct light on adjoining residential properties is possible, and I find that this criterion can be met only through a condition of approval requiring the Applicant to prevent light from projecting directly upon the adjoining residential properties in a residential zone.

DCC 18.116.030(F)(3) requires groups of more than two parking spaces to be designed in a manner that prevents the need to back vehicles into a street or right-of-way. The Site Plan shows all 14 parking stalls using a common parking area, without the need to back vehicles into a street or right-of-way. DCC 18.116.030(F)(4) requires the area of a parking lot used by vehicles to be paved and drained for all weather use. The Site Plan depicts the parking lot area as being paved and drained in compliance with this Code provision. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with the paving and drainage requirements.

DCC 18.116.030(F)(5) governs access aisles. As proposed on the Site Plan, the access aisle for the parking lot is 39 feet wide. Other provisions in the Code indicate that the minimum width of a two-way access aisle should be 24 feet. No participant to this proceeding has asserted that the 39-foot access aisle, which exceeds the minimum provided in the Code, is not sufficient. I therefore find that this Code provision is satisfied based on the Applicant’s proposal.

DCC 18.116.030(F)(6) and (7) govern service drives, which the record indicates are any vehicle maneuvering surfaces that connect to a road or street but that are not immediately adjacent to a parking space. Based on the figures in the record, the portion of Nicklaus Drive between the parking lot and the southwest corner of the Subject Property qualifies as a service drive and, therefore, is subject to this Code provision. The Staff Report does not fully describe the extent of the service drive, but does conclude that a service drive exists in this area. Neither the Applicant nor any other participant disputes that conclusion.

Under DCC 18.116.030(F)(6), the number of service drives must be limited to the minimum number of drives needed to accommodate anticipated traffic. Further, any service drive must be designed to facilitate the flow of traffic and provide maximum safety for vehicles and pedestrians. The Site Plan indicates that Nicklaus Drive, which already exists, is 21 feet wide, sufficient to accommodate traffic. Further, the Applicant has proposed new paths to augment existing paths that will be used for ingress and egress by pedestrians. While some participants in this proceeding questioned the overall safety of the proposal, no participant asserted that this criterion had not been, or could not be, satisfied by the final Site Plan the Applicant proposed. Based on the foregoing, I find that the Applicant has met its burden to show compliance with DCC 18.116.030(F)(6).

I do not arrive at the same conclusion for DCC 18.116.030(F)(7). That Code provision requires service drives to have a minimum vision clearance area as specified in that provision. The Site Plan does not appear to identify that clearance area at all, much less provide any calculations to show that the vision

clearance is adequate and consistent with the language of the Code. I therefore find the Applicant has not met its burden of demonstrating compliance with this Code provision.<sup>6</sup>

DCC 18.116.030(F)(8) requires a parking lot to be designed to prevent a parked motor vehicle from extending over an adjacent property line or a street right of way. As proposed on the Site Plan, no parking stalls would be oriented toward an adjacent property line or street right of way. I therefore find that this Code provision is satisfied.

DCC 18.116.030(G) establishes the specific design of parking stalls. As proposed on the Site Plan, all parking stalls will be 9 feet wide and 20 feet in length, consistent with the requirements of this Code section.

Based on the foregoing, most of the requirements of DCC 18.116.030 are satisfied, or can be satisfied with the imposition of conditions of approval described above. However, because I have concluded that the Applicant has not met its burden with respect to DCC 18.116.030(F)(1) or DCC 18.116.030(F)(7), I find that DCC 18.116.030 is not fully satisfied.

### 3. DCC 18.116.031, Bicycle Parking

DCC 18.116.031 imposes certain bicycle parking requirements for any alteration of a use that requires a site plan review. These Code provisions therefore apply to the proposal in the Application.

DCC 18.116.031(A)(1) and (2), together, impose a minimum requirement of one bicycle parking space for every five required motor vehicle parking spaces for a commercial use like that proposed in the Application. Further, such bicycle parking must include at least two sheltered parking spaces. For purposes of this Application, which requires 14 motor vehicle parking spaces, the Applicant must have a minimum of three bicycle parking spaces, two of which are sheltered. The Applicant proposes five sheltered bicycle parking spaces, which exceeds the required minimum. I therefore find that this criterion is satisfied.

DCC 18.116.031(B) governs the design requirements of a bicycle parking facility. Under subsection (B)(1), sheltered bicycle parking can be provided by racks inside a building, which is what the Applicant proposes. Further, under subsection (B)(2), bicycle parking must be sufficiently separated from motor vehicle parking, and directional signs must be used where bicycle parking is not directly visible or obvious from a public right-of-way. While the Applicant's proposal adequately separates bicycle and motor vehicle parking, the Applicant does not address the signage requirement. The Staff Report recommends, and the Applicant does not object to, a condition of approval to ensure compliance with that portion of the

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<sup>6</sup> It is possible that either the Applicant or Staff intended that the "driveway" from the parking lot to Nicklaus Drive is the service drive, and the Applicant has identified a vision clearance area there. However, Nicklaus Drive is not a private street, on the Subject Property, and appears to function as a service drive. This is consistent with the observation in the Staff Report that a service drive exists on the southwest side of the Subject Property. Without a better explanation from the Applicant regarding the absence or presence of service drives, these findings are based on the information provide in the Staff Report and on the Site Plan.

Code. Under subsection (B)(3), a bicycle parking space must be at least two feet by six feet in dimension, with a vertical clearance of seven feet. While the Site Plan depicts the lateral dimensions of the bicycle parking spaces, it does not address the vertical dimensions. I therefore find that this portion of the Code can be met only with the addition of a condition of approval requiring the Applicant to maintain the required vertical clearance. Finally, under subsection (B)(5), the Applicant must provide certain security measures, for example by providing racks to which a bike can be locked, and in a manner that accommodates cables and U-shaped locks. The Applicant does not describe the specifics of the proposed racks it will use. I therefore find that this criterion is satisfied only with the addition of a condition of approval that describes the required security measures of the proposed bicycle racks.<sup>7</sup>

4. DCC 18.116.380, Psilocybin Manufacturing, Service Centers, and Testing Laboratories

DCC 18.116.380 imposes additional requirements on psilocybin uses. Pursuant to DCC 18.116.380, these requirements apply to psilocybin service centers in the EFU Zone and, therefore, are applicable to the Application. Of the remaining provisions in this section, only those in DCC 18.116.380 apply to the Service Center, as the others address psilocybin manufacturing and processing, which are not part of the Applicant's proposal.

DCC 18.116.380(D)(1) and (2) are not relevant to the Application, as they address co-location of a psilocybin crop and uses outside of the EFU Zone, respectively, neither of which the Applicant proposes.

DCC 18.116.380(D)(3) and (4) impose certain distance requirements, and the Service Center must be at least 1,000 feet from a school and comply with the setback requirements of the underlying zone. According to the Applicant, there is no school within 1,000 feet of the Service Center, and no evidence in the record indicates otherwise. As relevant to this Application, the underlying zone is the EFU Zone, but also the DR Zone. As noted above, the dimensional standards in the DR Zone supersede similar provisions in the EFU Zone, and those provisions are addressed in more detail in other findings.

DCC 18.116.380(D)(5) limits the hours of operation of a psilocybin service center to between 6:00 a.m. and 11:59 p.m. on the same day, unless a facilitator determines, in accordance with state administrative rules, that a session should go longer. The Applicant has proposed hours of operation consistent with this requirement, specifically limiting hours of operation between 8:00 a.m. and 5:00 p.m. during summer months and between 9:00 a.m. and 5:00 p.m. during winter months, subject to the same caveat that a facilitator acting in accordance with state law may need to extend a session.

Based on the foregoing, I find that the applicable provisions in DCC 18.116.380 are satisfied.

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<sup>7</sup> The Staff Report addresses DCC 18.116.035, which imposes bicycle commuter facility requirements on certain developments, but concludes that these requirements are not applicable to the proposal. I agree, and no other participant has asserted otherwise. I therefore find it is not necessary to address those requirements.

#### **D. DCC Chapter 18.124, Site Plan Review**

##### **1. DCC 18.124.030. Approval Required.**

DCC Chapter 18.124 sets forth the standards and criteria for a Site Plan Review. Pursuant to DCC 18.124.030, Site Plan Review is required for, among other uses, commercial uses that require parking facilities. As discussed in earlier findings, the Applicant's proposed commercial use requires parking and, therefore, this Site Plan Review is required.

##### **2. DCC 18.124.060, Approval Criteria.**

DCC 18.124.060 sets forth the specific approval criteria that must be satisfied for a site plan to be approved. The findings below address the relevant sections of this Code provision and, in general, find that the criteria are satisfied. The findings do, however, conclude that DCC 18.124.060(G) is not satisfied.

DCC 18.124.060(A) requires that a proposed development "relate harmoniously" to both the natural environment and existing development. As the Staff Report notes, prior interpretations of the County's Board conclude that this Code provision requires an applicant to demonstrate that the site plan arranges the development in a way that evaluates the natural environment and existing development in the area, and that by doing so, requires the Applicant to demonstrate that it has minimized visual impacts and reasonably preserved natural features including views and topographic features. In making that interpretation, the County's Board expressly drew a distinction between the analysis of the site plan required by this Code provision and the consideration of the compatibility of the proposed use required by other Code sections. Only the Site Plan is relevant to this Code provision.

To demonstrate compliance with DCC 18.124.060(A), the Applicant relies in part on the fact that it will use an existing building for the Service Center and that no new buildings are proposed. The Application initially proposed accessory uses like a yurt, but those accessory features no longer appear on the Site Plan. The Applicant asserts that the existing building (which is being treated as a new building for purposes of this Application) uses colors that are similar to nearby buildings and the natural environment. The record contains photographs and other information showing the building. The Applicant also asserts that neither the existing building nor the new plantings adversely affect natural features. The Applicant notes that the Subject Property was chosen for the Service Center specifically because of its desire to find a place where patrons of the Service Center would be surrounded by the natural environment in a harmonious way.

Some participants in this proceeding addressed the manner in which the Service Center relates to the surrounding environment. Comments from those participants, however, largely questioned the Applicant's desire or "need" to locate the Service Center in a natural environment, or disputed that the surrounding area actually provides a natural or serene environment (e.g. because of surrounding homes and events that might occur nearby). Other comments in the record object to the approval of the Service Center based on incompatibility with surrounding uses, but not based on an asserted lack of harmonious relation with the natural environment or existing development. The Staff Report states that the existing development and new vegetation are likely to maintain and enhance the natural features of the Subject Property. Having reviewed the arguments of the participants, the Staff Report, the Site Plan, and photos

of the building, I find that the Applicant has met its burden of demonstrating compliance with DCC 18.124.060(A).

DCC 18.124.060(B) requires the Applicant to demonstrate that the landscape and existing topography will be preserved to the greatest extent possible. This Code provision also requires preserved trees and shrubs to be protected. The Applicant proposes additions and augmentations to the existing landscaping, and the only changes to topography are for minor grading relating to stormwater management. This is possible because the Applicant will use an existing building, and the only changes in landscaping will result from new plantings, especially around the new parking area. Based on the foregoing, I find that this Code provision is satisfied. The Staff Report recommends a related condition of approval requiring the Applicant to protect all trees and shrubs not required to be removed by the development. The Applicant does not oppose such a condition.

DCC 18.124.060(C) requires the Applicant to demonstrate that the site plan provides a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces. The Applicant asserts that the site is designed to promote safety because it is bordered on three sides by open space uses (presumably reducing potential conflicts) and that it will have a perimeter fence and be “self-contained” with its own parking. The Site Plan also proposes walking paths to allow entry and exit by pedestrians away from areas used by motor vehicles. The fence and landscaping will help with the transition from private to public spaces. With respect to the psilocybin component of the Service Center, the Applicant notes that its patrons will be required to stay on site and have a transportation plan to and from the site, both of which are required by state law and help maintain the safety of the Service Center use.

Multiple participants provided comments relating to safety. Those comments largely address a concern that a patron of the Service Center will somehow impact the safety of neighbors once they leave the Service Center. Those comments, however, do not tie that concern to any specific part of the Site Plan. One comment that is potentially relevant, however, is a concern that the site could be unsafe if there are conflicts with other users of nearby foot and cart paths. The Applicant responds that the location of the Service Center is separated from the main lodge and the recreational Trailhead Center, and even farther from a playground area, where such conflicts might occur.

Having reviewed and weighed the arguments and evidence of the participants and the Site Plan, I find that DCC 18.124.060(C) is satisfied.

DCC 18.124.060(D) requires the Applicant to demonstrate that, when appropriate, the site plan shall provide for the special needs of disabled persons. The Application states that the Applicant will meet this criterion through the building permit process, which requires compliance with the Americans with Disabilities Act (“ADA”). The Staff Report similarly states that other considerations for disabled persons are determined as part of the issuance of building permits. No participant disputes that statement or otherwise asserts that the Site Plan does not comply with this Code provision. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(E) requires the Applicant to demonstrate that the location and number of points of access, the interior circulation patterns, the separation of pedestrians from vehicles, and the overall parking

arrangement is harmonious with buildings and structures. The Applicant relies on the location of the driveway and parking areas as evidence that this criterion is met, because any conflicts with bicycles, pedestrians, and motor vehicles should be minimal. The proposed parking and circulation are distant from neighboring buildings and structures, which supports the Applicant's position. The size of the parking lot and availability of paths for pedestrians allow for adequate circulation patterns. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(F) requires the Applicant to demonstrate that surface drainage systems are designed to prevent adverse impacts on neighboring properties, streets, and water quality. The Applicant relies on a report from an engineer to demonstrate the adequacy of the drainage system, and no participant disputes the information in that report. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(G) requires the Applicant to demonstrate that areas and facilities for storage, machinery, and equipment, and loading and parking are buffered or screened to minimize adverse impacts on the site and on neighboring properties. The Applicant relies on existing screening and vegetation around the existing building to minimize the impact of all on site uses on neighboring properties, as well as the additional vegetation that will be planted. The Staff Report agrees that the barrier fence is adequate to screen the one piece of equipment proposed (an electrical panel). This screening criterion, however, also applies to parking areas. As explained in earlier findings, the Applicant has not met its burden of demonstrating the vegetation screening the parking area is adequate. Based on the foregoing, I find that this Code provision is not satisfied unless and until the Applicant also demonstrates compliance with DCC 18.116.030(F).

DCC 18.124.060(H) requires the Applicant to demonstrate that above ground utility installations will be located to minimize visual impacts. The only above-ground utility installation proposed is an electric panel. As noted above, that panel, which already exists, is screened with existing vegetation and will be further screened by a barrier fence. Based on the foregoing, I find that this Code provision is satisfied.

DCC 18.124.060(I) does not impose any additional criteria and, instead, incorporates any specific criteria imposed by the underlying zone, such as setbacks. Those criteria are addressed in other findings in this Decision.

DCC 18.124.060(J) requires exterior lighting to be shielded so that it does not directly project off site. The Applicant states that any exterior lighting will be fully shielded to prevent glare or light leakage and that specific fixtures will be "dark sky" compliant. Staff recommends, and the Applicant does not object to, a condition of approval requiring the Applicant to implement that proposal. Based on the foregoing, I find that this Code provision is satisfied with that condition.

DCC 18.124.060(K) requires the Applicant to show adequate transportation access to the site. If necessary, the Applicant must implement mitigation measures for transportation impacts. The Applicant asserts that the existing transportation system provides adequate access to the site, and notes that access is from Pronghorn Club Drive to Nicklaus Drive, both of which are paved to the standard required in the FMP. The Applicant also submitted a transportation study, prepared by a transportation engineer, documenting the adequacy of transportation access. The County's Senior Transportation Planner reviewed and provided comments on the transportation analysis. Neither the Applicant's engineer nor the County's Senior

Transportation Planner identified a need for specific improvements to the transportation system. As noted above, one participant did object to the methodology in the transportation analysis, but did not offer an alternative methodology, and that participant did not suggest that any mitigation measures are required. Based on the foregoing, I find that this Code provision is satisfied.<sup>8</sup>

### 3. DCC 18.124.070, Required Minimum Standards

DCC 18.124.070 contains additional minimum standards applicable in various scenarios, many of which are not relevant to the Application. I adopt the findings in the Staff Report as my findings relating to DCC 18.124.070, except for the specific subsections of this Code provision discussed in this section, which replace the findings relating to those same subsections in the Staff Report.

DCC 18.124.070(B)(1)(a) requires that commercial uses subject to site plan approval must have a minimum of 15 percent of the lot area landscaped. The record indicates the Subject Property is approximately 8.4 acres in size. The Site Plan provides the dimensions of the various new landscaping and also states that the total landscape coverage is 29% of the lot, in excess of the minimum in the Code. No participant addresses the Applicant's calculation. Based on the foregoing, I find that DCC 18.124.070(B)(1)(a) is satisfied.

DCC 18.124.070(B)(2) imposes landscaping requirements specific to parking areas. Under Subsection (B)(2)(a), the parking area must have defined landscaping totaling no less than 25 square feet per parking space. For this Application, the Applicant is therefore required to have at least 350 square feet of defined landscaping in the parking lot area. The Site Plan identifies more than 1,000 square feet of defined landscaping around the parking lot area. Subsections (B)(2)(b) through (B)(2)(e) require the parking area to be separated from a lot line adjacent to a roadway by a landscaped strip at least 10 feet in width (with appropriately spaced trees, low shrubs, or vegetative ground cover), and from any other lot line by a landscaped strip at least 5 feet in width, with all landscaping being at least 5 feet in width and in defined, uniformly distributed areas. The Site Plan shows that the parking area has 10-foot wide landscaped beds on the side adjacent to Nicklaus Drive (with low shrubs), and 5-foot wide landscaped strips on all other sides. The landscaping is in defined areas and uniformly distributed. No participant has asserted that these landscape configurations are inadequate. Based on the foregoing, I find that DCC 18.124.070(B)(2) is satisfied.

DCC 18.124.070(C)(2)(c) imposes certain requirements relating to pedestrian access and circulation. Under that Code provision, walkways must be paved and at least 5 feet wide. The Applicant's proposed paved walkways are at least 10 feet wide. This Code provision also requires walkways bordering parking spaces to be at least 7 feet wide, with some exceptions. The Site Plan does not include any walkways that border a parking space. Finally, this Code provision requires walkways to be as direct as possible. The

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<sup>8</sup> Multiple other participants provided comments arguing that the transportation system is not adequate based on an assertion that the Applicant is not authorized to use the portion of the transportation system that crosses BLM property to the extent that uses involves the transport of psilocybin, which is a federally controlled substance. Those arguments are addressed below in separate findings.



walkways on the Site Plan do include some curves, but those curves match grades that accommodate drainage swales. Based on the foregoing, I find that DCC 18.124.070(C)(2)(c) is satisfied.

DCC 18.124.070(D) imposes additional site plan standards on commercial development. The primary requirement in that Code section is subsection (D)(1), which requires that a commercial development be sited at the front yard setback line where the lot has one frontage. Subsection (D)(3) provides a process for increasing the front yard setback. The Applicant initially asserted that this Code provision does not apply because the building is an existing building. The Applicant later asserted that this Code provision does not apply because no setback requirements of the underlying zone are applicable where the DR Zone applies. The Staff Report, however, asserted that the building is being treated as a new building (because it was originally approved to be a temporary structure), that the setback requirement applies, and that the building is not at the front yard setback. The Applicant responded by requesting an increase in the front yard setback. I find that one of the Applicant's initial assertions is the correct one. Under DCC 18.113.060(G), yard requirements in the underlying zone do not apply to structures in the DR Zone. Thus, the front yard requirement of DCC 18.16.070(A) does not apply and, unless a front yard setback is identified in the CMP or FMP, there are no front yard setbacks to consider for purposes of applying DCC 18.124.070(D)(1). Neither the CMP nor the FMP appears to establish a specific front yard setback, and no participant has identified the source of a specific front yard setback. Based on the foregoing, I find that DCC 18.124.070(D)(1) is not applicable to the specific proposal in this Application because there is no front yard setback to consider.

#### **E. DCC Chapter 18.128, Conditional Use**

##### **1. DCC 18.128.010, Operation**

DCC 18.128.010 confirms the applicability of the County's conditional use criteria, noting that a conditional use listed in DCC Title 18 shall be permitted, altered, or denied in accordance with the standards and procedures of DCC Title 18, DCC Title 22, the Uniform Development Procedures Ordinance, and the County's Comprehensive Plan ("Plan"). Pursuant to 18.113.030(D)(7), a psilocybin service center is allowed in the DR Zone subject to the conditional use criteria in DCC 18.128.015. The Application is therefore being reviewed in accordance with the procedures of DCC Title 18, DCC Title 22, the Uniform Development Procedures Ordinance, and the Plan.

Although no participant identified other specific procedures that apply to the consideration of the Service Center as a conditional use, or disputed the applicability of the procedures in DCC Titles 18 and 22 identified in the Staff Report, one participant did provide comments indicating that the County should invoke its Code enforcement provisions. The basis of that comment relates to the existing building on the Subject Property, which was originally permitted as a temporary structure that was to be removed after 18 months. I find that it is not necessary to address the Code's enforcement process as part of my consideration of the Application. As noted in the Staff Report, the existing building can be permitted as a new building as part of this process. That is, the Application is being reviewed as if the building did not exist and, as a result, is being considered under current regulations. If the Application is ultimately approved, the building will conform to the Code and any current Code violation is essentially cured. If the Application is not approved, the County still has the ability to initiate Code enforcement proceedings.

Either way, resolution of any alleged Code violation is not necessary as part of considering the proposal in the Application.

## 2. DCC 18.128.015, General Standards Governing Conditional Uses

This Code provision sets forth specific standards for uses other than single family dwellings that apply in addition to the standards of the underlying zone. The applicable provisions of this Code section are set forth below in *italics*.

- A. *The site under consideration shall be determined to be suitable for the proposed use based on the following factors:*
- 1. Site, design and operating characteristics of the use;*
  - 2. Adequacy of transportation access to the site; and*
  - 3. The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.*

This Code provision requires an analysis of the suitability of the site for the proposed use based on the listed factors. The Applicant asserts that the site is suitable for the Service Center. In support of that assertion, the Applicant notes that the site allows it to implement the safety and other operating measures required by OHA for a psilocybin service center, and that the physical features of the site already accommodate the type of building it wishes to permit. For example, the site can accommodate a perimeter fence that helps control access, a building where facilitated sessions can occur, and landscaping that employs materials, foliage, and colors that blend with the surrounding and contribute to a natural setting the Applicant wishes to market to its patrons.

With the exception of the adequacy of transportation access to the site, which is addressed in more detailed findings below, no participant asserts that the site itself is not suitable for the proposed use, or otherwise specifically asserts that this Code provision is not satisfied. One participant, however, did imply that the site is not as suitable as the Applicant states because of the potential for loud noises from residents and nearby events that are likely to occur. The Applicant, however, does not assert that the use requires a complete absence of noise and, rather, juxtaposes the level of activity at the resort (with some noise) relative to what is experienced in an urban area (with more noise). Having weighed the arguments of the participants, and based on the foregoing, I find that the site is suitable for the proposed use based on factors relating to the site, design, operating characteristics, and natural and physical features. However, as discussed below, I do not find that the site is suitable based on the adequacy of transportation access and, therefore, DCC 18.128.015(A) is not satisfied.

- B. *The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A).*

This Code provision is similar to DCC 18.128.015(A) but focuses on the proposed use's compatibility with surrounding properties rather than on the suitability of the site itself.

The Applicant provides an analysis of this Code provision largely by focusing on the operational characteristics of the site, which is subject to the regulatory controls applicable to the Service Center and the patrons of the Service Center, by virtue of OHA regulations. The Applicant's analysis essentially concludes that there are no offsite impacts from its proposed use because "psilocybin clients cannot simply drop into a service center, consume psilocybin, and then leave the licensed premises, while under the effects of psilocybin." Instead, a facilitated session at the Service Center will require a patron to first meet with a licensed facilitator to determine if a psilocybin treatment will be administered. If a session does occur, OHA regulations require the patron to remain on site until the facilitator determines the patron is no longer under the effects of psilocybin. Because the psilocybin component of the use is required to be contained, and the site is designed to accommodate that requirement, the Applicant asserts the site design is compatible with surrounding uses.

The vast majority of comments in the record opposing the Service Center address general concerns about the use of psilocybin, or even the efficacy of psilocybin. I agree with the Applicant that these comments are largely irrelevant to the approval criteria unless, for example, they identify something unique about the psilocybin use that relates to the design of the site. Having weighed the arguments and information provided by all participants, I find that the proposed use is compatible with surrounding properties when considering: (1) the site itself, which is in a commercially-designated area; (2) the operating characteristics described above; (3) transportation access (based on the findings below); and (4) the natural and physical features of the site, which will largely remain unchanged except for the addition of landscaping, and which will enhance compatibility with surrounding uses. DCC 18.128.015(B) is therefore satisfied.

#### Adequacy of Transportation Access to the Site

One area where the opposing comments do directly tie psilocybin to the approval criteria relates to the adequacy of transportation access to the site. This factor is relevant to both DCC 18.128.015(A) and (B). The former requires consideration of this factor for assessing the suitability of the site to accommodate the use, and the latter requires consideration of this factor for assessing compatibility of the use with surrounding uses.

Multiple participants commented that access to the site is not adequate because it relies, in part, on the use of a road over BLM property. Specifically, access to Juniper Preserve occurs over the BLM property, and BLM has issued a "Right of Way Grant" for that purpose ("BLM ROW"). The Applicant notes, as supported by its transportation analysis, that the BLM ROW is sufficient based on its size, structure, and design, and that no improvements to the BLM ROW are required. The opposing comments do not dispute the physical adequacy of the BLM ROW and, instead, assert that the Applicant is prohibited from using the BLM ROW because it intends to transport psilocybin over the BLM ROW, which those comments claim would be a violation of federal law and in violation of BLM's approval for use of the BLM ROW.

These Code provisions expressly require consideration of the "adequacy of transportation access to the site." The record does not indicate that the County's Board of Commissioners has interpreted this Code provision with respect to its geographic scope, or with respect to the interplay of each of the factors in DCC 18.128.015(A)(1) through (3). That is, this Code provision could be interpreted narrowly to apply only to the access to the site from other areas of Juniper Preserve, or it could be interpreted more broadly to apply to any access to the site, the use of which could affect the site or surrounding properties. Similarly,

the Code could be interpreted such that suitability based on one of the factors in DCC 18.128.015(A)(1) through (3) is sufficient, or it could be interpreted such that suitability must be based on all three factors. In the absence of such interpretations, and because the Applicant and other participants appear to agree that the Applicant must rely on the BLM ROW in some manner (indeed, it was included in the Applicant's transportation analysis), I conclude that the BLM ROW is part of the access to the site that must be considered. Because all parties address the adequacy of transportation and assume it is necessary to consider, I also conclude it is necessary to consider transportation access even though I have already found the site is suitable based on other factors in DCC 18.128.015(A)(1) through (3).

With one exception, the opposing comments in the record do not claim that the Applicant's use of the BLM ROW would have any impact on other uses. Instead, most comments are better characterized as addressing DCC 18.128.015(A) and whether the site itself is suitable if the BLM ROW cannot be used for the Applicant's intended purpose. The exception is a comment in the record that if the Applicant violates the terms of the BLM ROW, BLM could revoke the BLM ROW altogether, thereby preventing anyone from accessing Juniper Preserve, which would therefore be incompatible with all other uses at this destination resort.

Turning to DCC 18.128.015(A) first, it is undisputed that some of the transportation access to the site the Applicant contemplates is acceptable under the BLM ROW approval. For example, there is no dispute in the record that guests of the resort can use the BLM ROW to access the resort and, therefore, get to the Service Center. The question therefore arises whether a particular component of transportation access the Applicant contemplates (transporting psilocybin across the BLM ROW) renders the entirety of the transportation access to the site inadequate if the BLM ROW cannot be used for that purpose. I find, based on this record, that it does.

The Applicant argues that the opposing comments require the Hearings Officer to resolve a private dispute under the BLM ROW. Specifically, the Applicant asserts that the BLM may or may not enforce the precise terms of the BLM ROW; essentially that it is speculative to determine now whether the Applicant will or will not be allowed to transport psilocybin across the BLM ROW. The Applicant characterizes this issue as a dispute between the various parties to the BLM ROW instrument, and argues that such disputes are not appropriate for resolution as part of the land use process.

I agree with the Applicant that a land use approval is typically not the correct venue for resolving the rights of parties to a specific agreement. But such an exercise is not necessary here. Instead, the Hearings Officer must look to the evidence in the record and make findings based on the preponderance of the evidence in the record to determine if a criterion is satisfied. The evidence in this record is that: (1) use of the BLM ROW requires compliance with federal law; (2) federal law prohibits transportation of psilocybin across federal lands; and (3) the Applicant intends to use transportation access to the site across federal land to transport psilocybin. The Applicant acknowledges that its proposed use is not allowed by the express terms of the BLM ROW. Whether or not BLM ultimately enforces the requirements of the BLM ROW is therefore not relevant; on the face of the documents alone, the Applicant has not established that it can do what it proposes to do. I do not agree with the Applicant's assessment that denial of the Application on this basis amounts to enforcing federal law or somehow jeopardizes psilocybin use across the state. My analysis looks only to the evidence in the record. A different record may result in a different

conclusion, for example where transportation access does not rely solely on crossing federal lands, or where the transportation of psilocybin is not required because it is grown on site.

Based on the foregoing, I find that the Applicant has not met its burden of demonstrating that the site is suitable for the proposed use pursuant to the transportation access factor of DCC 18.128.015(A)(2). I conclude the opposite, however, with respect to DCC 18.128.015(B). That Code provision more directly addresses the extent to which the proposed use could impact surrounding uses in terms of transportation access. I have already concluded that the Applicant's transportation analysis adequately demonstrates that the transportation system is adequate and that no physical upgrades to the system are required for its use, meaning that surrounding uses will also be able to rely on that same transportation system without being impacted by the Service Center. The sole risk to surrounding users identified in the comments is the potential that BLM could somehow revoke the BLM ROW approval if the Applicant's use is unlawful. Here, the Applicant's argument is relevant, and this opposing comment invokes a potential dispute between BLM and those granted access to use the BLM ROW. Whether BLM chooses to pursue such a remedy under the BLM ROW, and the rights other users may be able to retain or lose in that situation, is speculative. Further, the Applicant has also proposed a condition of approval that would require it to suspend operations if BLM determines the Applicant's use violates the BLM ROW. Such a condition would reduce the potential for conflicts with other uses, thereby rendering the Applicant's use compatible.

C. *These standards and any other standards of DCC 18.128 may be met by the imposition of conditions calculated to ensure that the standard will be met.*

As explained in prior findings, I find it appropriate to identify several conditions of approval that could be imposed if the Applicant's request were granted. I identify those solely to determine whether or how the Applicant can meet a criterion. Because this Decision ultimately denies the Applicant's request and there is not approval of the proposal, however, the conditions of approval are not actually being imposed.

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#### **IV. CONCLUSION**

Based on the foregoing findings, I find the Application does not meet the applicable standards for a Conditional Use Permit and Site Plan Review. Specifically, I find that the Applicant has not met its burden with respect to the following Code provisions:

- DCC 18.116.030(F)(1), relating to the screening of the parking lot
- DCC 18.116.030(F)(7), relating to clearance areas for service drives
- DCC 18.124.060(G), relating to the screening of the parking lot
- DCC 18.128.015(A)(2), relating to the suitability of the site based on the adequacy of transportation access

The Application is therefore DENIED.

Dated this 26th day of April 2024.

A handwritten signature in blue ink, appearing to read 'Tommy A. Brooks', is positioned above the printed name.

Tommy A. Brooks  
Deschutes County Hearings Officer