



MEMORANDUM

TO: Board of County Commissioners

FROM: Audrey Stuart, Associate Planner

DATE: May 22, 2024

RE: An appeal of a Hearings Officer’s decision denying a psilocybin service center; Land use file nos. 247-23-000614-CU, 247-23-000615-SP.

On May 29, 2024, the Board of County Commissioners (“Board”) will consider hearing an appeal of the Hearings Officer’s decision denying a Conditional Use Permit and Site Plan Review to establish a psilocybin service center.

I. PROCEDURAL HISTORY

A public hearing before a Hearings Officer was held on March 12, 2024. The Hearings Officer issued a decision denying the subject applications on April 29, 2024. The applicant filed a timely appeal of the Hearings Officer’s decision on May 10, 2024.

II. PROPOSAL

The Applicant requests a Conditional Use Permit and Site Plan Review to establish a psilocybin service center at Juniper Preserve (formerly Pronghorn) destination resort. The subject property is zoned Exclusive Farm Use and Destination Resort Combining Zone and is located in the core area of Juniper Preserve. The applicant proposes to administer psilocybin to clients within an existing structure, under licensing from the Oregon Health Authority.

A Hearings Officer decision denying the applications was mailed on April 29, 2024, and the Hearings Officer’s denial was based on the following criteria:

- 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 applicant appealed this Hearings Officer's decision on the basis that the parking area is effectively screened and buffered, there are competing provisions in Deschutes County Code regarding clear vision areas, the Hearings Officer went beyond the scope of their review by ruling on a Bureau of Land Management (BLM) access easement, and the Hearings Officer incorrectly interpreted the BLM access easement.

III. PUBLIC COMMENTS

Staff received 153 comments in advance of the March 12th hearing, and these comments included those both in support of and in opposition to the subject applications. Key issues raised by those in opposition included:

- The proposal's compatibility with existing Resort uses and functions;
- The Resort's existing access across BLM land;
- The proposal's compatibility with the Resort's Final Master Plan;
- The Resort's distance from emergency services;
- Impact to property values.

Key issues raised in support included:

- Appropriateness of the proposed location;
- Community benefits of psilocybin treatment;
- The proposed use is permitted in the zone and does not require a modification to the Resort's Final Master Plan.

IV. BOARD OPTIONS

There are two Orders attached to this memo; one to hear the appeal and one to decline to hear the appeal. In determining whether to hear an appeal, the Board may consider only:

1. The record developed before the Hearings Officer;
2. The notice of appeal; and
3. Recommendation of staff¹

In addition, if the Board decides to hear the appeal, it may consider providing time limits for public testimony. The applicant has requested the Board conduct a limited *de novo* review of the appeal pursuant to DCC 22.32.027(B)(4). If the Board decides to hear the appeal, they may decide upon a review on the record, a *de novo* review or a limited *de novo* review, where deliberations are limited to specific issue areas.

Reasons not to hear

¹ Deschutes County Code 22.32.035(D)

Members of the public were notified of the subject application through a mailed Notice of Application, posted land use sign, mailed Notice of Public Hearing, project webpage, and posting in the Bend Bulletin. All parties were given the opportunity to provide evidence and testimony. The Hearings Officer decision provided a thorough analysis and could be supported, as the record exists today, on appeal to the Land Use Board of Appeals (LUBA).

Reasons to hear

A significant number of public comments and testimony were received. Over 150 written comments were submitted, and 36 members of the public signed in at the Hearings Officer hearing. Holding a hearing before the Board would allow additional opportunities for public testimony and allow the Board to respond to concerns raised in public comments.

The Board may want to take testimony and make interpretations relating to the Hearings Officer's decision. The Board may also want to reinforce or refute some or all of the decision findings/interpretations prior to LUBA review. The appeal issues are primarily related to local Code provisions and are not an interpretation of state statute. Therefore, the Board is likely to be given deference on how to interpret these Code provisions if the subject applications are appealed to LUBA.

If the Board decides the Hearings Officer's decision shall be the final decision of the county, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. The decision on the land use application and associated appeal becomes final upon the mailing of the Board's decision to decline review.

V. STAFF RECOMMENDATION

Staff is amenable to whichever option the Board chooses, and notes there is enough time on the 150-day land use clock to conduct a public hearing before the Board.

VI. 150-DAY LAND USE CLOCK

The 150th day on which the County must take final action on this application is October 31, 2024.²

VII. RECORD

The record for File Nos. 247-23-000614-CU, 247-23-000615-SP are as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-23-000614-cu-247-23-000615-sp-psilocybin-service-center-juniper-preserve>

Attachments:

1. Hearing's Officer Decision for file nos. 247-23-00614-CU, 247-23-000615-SP

² In the Notice of Intent to Appeal the applicant requested to toll the clock from May 10, 2024, to August 30, 2024, which is a period of 112 days. Prior to this toll the 150-day clock was set to expire on July 11, 2024.

2. Draft Board Order Accepting *De Novo* Review of the Hearings Officer's Decision.
3. Draft Board Order Accepting Limited *De Novo* Review of the Hearings Officer's Decision.
4. Draft Board Order Declining Review of the Hearings Officer's Decision.