

REVIEWED

LEGAL COUNSEL

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**BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

FILE NUMBERS: 247-23-000614-CU, 247-23-000615-SP, 247-24-000292-A

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: PRONGHORN INTANGIBLES LLC
Map and Taxlot: 161316D000500
Account: 251126
Situs Address: 23050 NICKLAUS DR, BEND, OR 97701

APPLICANT: Juniper Institute LLC

**APPLICANT'S
ATTORNEY:** Corinne Celko, Emerge Law Group

STAFF PLANNER: Audrey Stuart, Associate Planner

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.

I. SUMMARY OF DECISION

In this decision, the County Board of Commissioners ("Board") considers the April 29, 2024, Hearings Officer's Decision in land use file nos. 247-23-000614-CU and 247-23-000615-SP ("Hearings Officer's Decision"). The applicant filed a timely appeal of the Hearings Officer's decision on May 10, 2024, requesting the Board hear the subject application. Pursuant to Deschutes County Code ("DCC") 22.23.035, the Board voted 2-1 to hear this appeal, and a public hearing before the Board was held on July 17, 2024.

On August 21, 2024, following deliberation, the Board voted 2-1 finding the applicant had not met their burden of proof, and moved to uphold the Hearings Officer's Decision denying the Conditional Use Permit and Site Plan Review applications on the subject property.

The Hearings Officer's decision dated April 29, 2024, is hereby incorporated as part of this decision, including any and all interpretations of the County's code, and modified as follows. In the event of conflict, the findings in this decision control.

II. BASIC FINDINGS OF FACT:

The Board adopts and incorporates by reference the code interpretations, findings of fact, and conclusions of law in the Hearings Officer's Decision as set forth in Section I, Applicable Standards and Criteria, and Section II, Background and Procedural Findings. The Hearings Officer's Decision is attached as Exhibit A to the Board's Decision. The following additions are made to the basic findings in the Hearings Officer Decision.

- A. Procedural History:** A public hearing was held before a Hearings Officer on March 12, 2024, and the Hearings Officer's decision was issued on April 29, 2024. The Hearings Officer's decision was subsequently appealed. The Board adopted Order No. 2024-018 on May 29, 2024, initiating review of the Hearings Officer's decision limited to the issues identified in the appellant's appeal application. The Board conducted a limited de novo hearing on July 17, 2024. The Board left the record open until July 31, 2024, for all parties to submit written legal argument, and until August 7, 2024, for the applicant's final rebuttal. A member of public submitted a request to reopen the written record after it had closed and on August 21, 2024, the Board adopted Order No. 2024-032, declining to reopen the public record. The Board rendered its oral decision on August 21, 2024, affirming the Hearings Officer's decision but modifying the findings as described herein.
- B. REVIEW PERIOD:** The applications were submitted on August 8, 2023. The Planning Division deemed the applications complete and accepted them for review on January 26, 2024. On May 10, 2024, the applicant requested in writing that the 150-day clock be extended for a period of 112 days. The 150th day on which the County must take final action is November 21, 2024.
- C. PUBLIC COMMENTS:** The Board established a post-hearing open record period. The time from August 1st through the 7th was the period afforded only to the applicant for final legal argument. The county received an email from C. Brennan dated August 5, 2024. Because this email was received during the period afforded only to the applicant, the Board did not consider this email in its decision-making. The open record period closed on August 7, 2024. Two (2) written comments were received

after the close of the open record period including emails dated August 12th and August 19th from C. Brennan. Consequently, the Board did not consider these submittals in making a decision on the subject application.

III. **FINDINGS**

The findings below address the three issue areas that were the basis for the Hearings Officer's denial.

1. Screening of Parking Area

Section 18.116.030, Off-Street Parking And Loading

- F. Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:
1. Except for parking to serve residential uses, an off-street parking area for more than five vehicles shall be effectively screened by a sight obscuring fence when adjacent to residential uses, unless effectively screened or buffered by landscaping or structures.

Section 18.124.060, Approval Criteria

- G. Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.

FINDING: DCC 18.116.030(F)(1) and DCC 18.124.060(G) both relate to the screening of the proposed parking area, which is located to the east of the existing building on the subject property. The Hearings Officer found that 18.124.060(G) could not be satisfied unless and until DCC 18.116.030(F)(1) was met. DCC 18.124.060(G) applies to a variety of areas, structures, and facilities, but the Hearings Officer found that the applicant's materials were only deficient regarding screening of the proposed parking area. Therefore, for the purpose of this decision these two criteria are addressed together below.

The applicant submitted a revised site plan dated July 16, 2024, which demonstrates how introduced landscaping will be provided to comply with DCC 18.116.030(F)(1) and 18.124.060(G). There was particular concern regarding visual screening along the south side of the parking area due to the proximity to neighboring residences. The Board finds that the revised site plan and landscaping demonstrates that the

parking area will be sufficiently screened and overturns the Hearings Officer's findings for DCC 18.116.030(F)(1) and DCC 18.124.060(G).

2. Clear Vision Area

Section 18.116.030, Off-Street Parking And Loading

F. Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:

...

7. Service drives shall have a minimum vision clearance area formed by the intersection of the driveway centerline, the street right of way line and a straight line joining said lines through points 30 feet from their intersection.

FINDING: This criterion requires a clear vision area at the intersection of Nicklaus Drive and the service drive, and the Hearings Officer found the application materials did not provide sufficient information to identify the location of this clear vision area and demonstrate how this criterion would be met.

The subject property is irregular in shape and the platted road, Nicklaus Drive, terminates at the southwest property corner and then continues as a service drive through the south portion of the subject property. A question was raised regarding the location of the clear vision area, and whether it needed to be provided at the location that Nicklaus Drive terminates or at the location that customers would turn into the parking area from the service drive.

The applicant submitted a revised site plan on July 16, 2024, illustrating how a clear vision area could be provided in either of these two locations. The applicant's traffic engineer submitted a memorandum dated July 17, 2024, which asserts that the required clear vision area should be located at the entrance to the parking area. The Deschutes County Transportation Planner submitted comments on July 19, 2024, in support of the conclusions reached in this memorandum. The Board agrees with the conclusion that the clear vision area should be provided at the entrance to the parking area, as this is the location where turning vehicles are most likely to have conflicts with pedestrian and vehicle traffic. Providing the clear vision area in this location meets the intent of DCC 18.116.030(F)(7) by providing unobstructed visual clearance for vehicles entering and existing the proposed parking area.

The Board overturns the Hearings Officer's findings regarding DCC 18.116.030(F)(7) and finds the applicant has demonstrated that the required clear vision area will be provided.

3. Transportation Access

Section 18.128.015, General Standards Governing Conditional Uses

- A. The site under consideration shall be determined to be suitable for the proposed use based on the following factors:
- ...
 - 2. Adequacy of transportation access to the site; and

FINDING: The Board adopts the Hearings Officer's findings regarding suitability of the site as it pertains to transportation access. In this case, the subject property and the entire destination resort is accessed via an easement across Bureau of Land Management (BLM) land. Lisa Clark, Field Manager with the BLM, submitted comments dated July 11, 2024, that state psilocybin cannot be transported across federal land. The Board reviewed additional testimony and arguments that were submitted and upholds the Hearings Officer's denial of the subject application on the basis that DCC 18.128.015(A)(2) has not been satisfied.

IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board of County Commissioners hereby **DENIES** the Applicant's application for a Conditional Use Permit and Site Plan Review to establish a psilocybin service center.

Dated this 2nd day of October 2024

BOARD OF COUNTY COMMISSIONERS
FOR DESCHUTES COUNTY

Patti Adair, Chair

Anthony DeBone, Vice Chair

Phil Chang, Commissioner

THIS DECISION BECOMES FINAL WHEN SIGNED. PARTIES MAY APPEAL THIS DECISION TO THE LAND USE BOARD OF APPEALS WITHIN 21 DAYS OF THE DATE ON WHICH THIS DECISION IS FINAL.

EXHIBIT

- A.** Hearings Officer's Decision dated April 29, 2024
- B.** Revised Site Plan dated July 16, 2024