



**MEMORANDUM**

**TO:** Deschutes County Planning Commission

**FROM:** Tanya Saltzman, AICP, Senior Planner  
Will Groves, Planning Manager

**DATE:** October 20, 2022

**SUBJECT:** Deliberations – Psilocybin TPM Amendments

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On October 27, 2022 the Deschutes County Planning Commission will conduct deliberations to consider legislative text amendments for time, place, and manner (TPM) regulations for psilocybin (File no. 247-22-000676-TA).

Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on August 25, 2022. Staff presented the proposed amendments to the Planning Commission at a work session on September 8, 2022.<sup>1</sup> The initial public hearing was held on September 29, 2022,<sup>2</sup> at which time the Planning Commission voted to continue the hearing to October 13 in order to receive additional oral and written testimony.<sup>3</sup> At the conclusion of the October 13 public hearing continuation, the oral record was closed and the written record was left open until October 14, 2022. Background information and a summary of the amendments was provided in the agenda packet for the initial public hearing.

The record, which contains all memoranda, notices, and written testimony received, is available for inspection at the Planning Division and at the following website: <https://www.deschutes.org/cd/page/247-22-000676-ta-psilocybin-time-place-and-manner-tpm-text-amendments>.

Attached to this memorandum are the proposed text amendments and findings. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~.

**I. WRITTEN TESTIMONY**

A total of 32 individuals provided written testimony concerning the proposed amendments, spanning the timeframe between initial 35-day DLCD notice on August 25 to the conclusion of the open record period

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<sup>1</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-16>

<sup>2</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-19>

<sup>3</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-20>

on October 14, 2022. Comments are generally grouped as follows:

20 individuals were in favor of psilocybin as a treatment option for conditions such as PTSD (particularly for veterans), trauma and addiction.

- General support of psilocybin as a treatment option
- Many comments stated the proposed regulations are too restrictive. Specifically:
  - Service centers should be allowed to have overnight/multi-day stays owing to the nature of psilocybin treatment, which ideally involves an initial intake/consultation, a facilitated experience, and then follow-up integration.
  - Service centers should be placed in rural, nature-based settings owing to the sensitivity of clients either from the issues they are seeking to address (i.e. PTSD) and the heightened sensitivity to surroundings/sensations during the treatment itself. The proposed locations of commercial and retail/service zones therefore were not appropriate.
  - Increased access to psilocybin services in general is important, for reasons both financial and societal/cultural (for instance, some veterans prefer maximum privacy)
  - Proposed hours of service centers are too limited and should match OHA guidelines
  - The County should consider allowing service centers in destination resorts
  - The County should consider allowing psilocybin manufacturing in forest zones in addition to EFU zones.

8 individuals were against psilocybin in the rural county:

- Several comments directed the Planning Commission to vote yes to Measure 9-152 (prohibiting psilocybin manufacturing and service centers). It was apparent that many citizens conflated this hearing—which is considering potential zoning if the opt out is overturned—with the opt-out ballot measure in November. During the hearing, staff attempted to clarify this distinction and noted that the voters of the county, not the Planning Commission, will determine if the county opts out of psilocybin altogether.
- Concerns about rural compatibility, orderly growth, safety, and water usage, and a subsequent desire to put psilocybin businesses in cities first.

Additional items from the open record period include:

- Questions and answers regarding the psilocybin program and rulemaking between the Oregon Health Authority (OHA) and the Association of Oregon Counties Planning Directors group (AOC PD).
- Correspondence between Planning Commissioner Altman and Senior Planner Tanya Saltzman concerning more detailed maps of the areas around service center zones as well as discussion regarding options for overnight stays.
- Central Oregon LandWatch (COLW) testified that the proposed amendments should be subject to Goal 5.

In addition to comments from the general public, staff received two written comments from the Department of Land Conservation and Development (DLCD); both were responses to requests from staff concerning DLCD's interpretation of a component of ORS 475A.570, which addresses psilocybin service

centers in relation to farmland.

## **II. HEARING TESTIMONY**

Approximately one dozen individuals testified at the September 29 public hearing, and a dozen more testified on October 13. The majority of in-person testimony focused on similar themes as the written testimony:

- General support of psilocybin as a treatment option, including first-hand testimony from veterans and first responders
- The proposed regulations are too restrictive:
  - Nature-based/rural service centers are critical to a successful experience
  - The more access to the treatment (i.e. not limiting potential locations as much) the better
  - Service centers should allow overnight stays
  - Service center hours should match those of the OHA
  - Given the possible difficulties of siting service centers on EFU land, allowing them in destination resorts could make the most sense
- Opposition to siting any psilocybin businesses in the rural county. Given the uncertainties at this point in time as well as rural and environmental sensitivities, let the cities address these businesses first.

## **III. AGENCY TESTIMONY**

As noted previously, DLCD provided written testimony concerning its interpretation along with that of the Department of Justice, of ORS 475A.570(3), which states “(3) The operation of a psilocybin service center may be carried on in conjunction with a psilocybin-producing fungi crop.” In addition to the agency’s written comments, Hilary Foote, Farm/Forest Specialist from DLCD, provided verbal testimony that further explained the legal mechanisms behind designated uses on Exclusive Farm Use land.

Ultimately, DLCD’s interpretation of the statute is that psilocybin service centers would not be permitted as a stand-alone use on EFU land. However, it is possible that a service center could be permitted as a part of another use that is allowed in EFU—namely, a home occupation or a commercial activity in conjunction with farm use. These avenues are not without their own criteria and restrictions, and DLCD noted in its follow-up written testimony that Deschutes County’s current code is more restrictive than state law concerning commercial activity in conjunction with farm use (DCC 18.16.040(B) requires that the commercial activity be related to an on-property farm use).

## **IV. PROHIBITION OF PSILOCYBIN BUSINESSES IN THE RURAL COUNTY**

As noted above, approximately 8 individuals provided testimony stating their opposition to psilocybin businesses in rural, unincorporated Deschutes County; as noted above, the majority of this testimony focused on the upcoming ballot measure to opt out of psilocybin businesses rather than the TPM amendments currently at hand, but some did urge to write TPM to the same effect. Reasons for prohibition included general opposition to psilocybin; the lack of completed rulemaking and therefore a

desire to focus psilocybin in cities first; public safety; land use issues including compatibility, orderly growth, and water usage.

It is important to note that the mechanism to prohibit psilocybin manufacturing and service center businesses is Ballot Measure 9-152. This will allow citizens to vote on an opt out. The proposed TPM amendments are designed to become effective if—and only if—the voters reject Ballot Measure 9-152, thereby overturning the opt out and allowing psilocybin manufacturing businesses to occur on rural lands. As such, the prohibition of psilocybin manufacturing and service center businesses is not a topic for deliberation before the Planning Commission.

Per Measure 109, which enacted the psilocybin program in Oregon, the ballot measure does not include psilocybin testing laboratories. The Planning Commission could potentially recommend prohibiting psilocybin testing laboratories via this TPM process if it chose.

#### **IV. QUESTIONS FOR DELIBERATION**

Based on testimony received throughout the public process, staff has highlighted several areas for the Planning Commission to consider.

##### **1. What hours should psilocybin service centers be permitted to operate?**

The proposed amendments currently allow service center hours as 7:00 am to 7:00 pm. A significant amount of testimony requested that service center hours match those of Oregon Health Authority's: 6:00 a.m. to 11:59 p.m., with allowances beyond this for extenuating circumstances based on the determination of the facilitator.

##### Options:

- a. Keep hours as written;
- b. Change hours to match OHA's;
- c. Change hours to other option

##### **2. Should psilocybin service centers in be permitted in destination resorts?**

The proposed amendments currently do not allow service centers in destination resorts. However, some testimony (C. Celko/Emerge Law Group, 2022-10-13 and 2022-9-29) recommended that service centers are in fact suitable for destination resorts, assuming the use is approved in the final master plan. The testimony noted that siting service centers within destination resorts could potentially be an easier fit with respect to state and local land use law, given its natural setting without potential conflicts. The testimony cited DCC 18.113.010(B), which states the DR zone “will ensure resort development that complements the natural and cultural attractiveness of the area without significant adverse effect on commercial farming and forestry, environmental and natural features, cultural and historic resources and their settings and other significant resources.” The same testimony also noted the existing overnight accommodations and other ancillary uses in destination resorts.

On the other hand, testimony against siting service centers in destination resorts (J. Guild, 2022-10-14) cited the requirement in a destination resort (in this case Pronghorn Resort, where both pieces of testimony are focusing upon) of CCRs requiring HOA Board approval. Concerning compatibility, Guild noted that “Pronghorn has a 3 mile Right of Way across Federal land and is surrounded by BLM land where shooting and hunting is allowed.” Other concerns cited included compatibility, liability, and public safety.

Options:

- a. Keep amendments as written, thereby not allowing service centers in destination resorts;
- b. Recommend allowing service centers in destination resorts and psilocybin manufacturing as an accessory use as long as it is in conjunction with a service center. This would require modifying DCC 18.113.030, Uses in Destination Resorts.

**3. Should psilocybin manufacturing as farm and processing uses be allowed in forest zones (F1 and F2) in addition to EFU?**

Some testimony requested that areas permitting psilocybin manufacturing be expanded to forest uses, citing ORS 475A.571(1), which declares psilocybin-producing fungi as a crop for the purposes of “Farm” use and “farming practice.” ORS 475A.570(4) states “A county may allow the manufacture of psilocybin products as a farm use on land zoned for farm or forest use in the same manner as the manufacture of psilocybin products is allowed in exclusive farm use zones under this section and ORS 215.213, 215.283 and 475C.053.” The proposed amendments currently only allow manufacturing in EFU zones.

Options:

- a. Keep amendments as written, thereby not allowing psilocybin manufacturing in forest zones
- b. Recommend adding F1 and F2 to zones that allow psilocybin manufacturing.

**4. Should psilocybin service centers be prohibited as home occupations or as commercial activities in conjunction with farm use?**

It’s staff’s understanding based on the testimony provided by the Department of Land Conservation and Development (DLCD) that psilocybin service centers could not be a stand-alone use in EFU zones, but could potentially be allowed on EFU land through two paths: home occupations and commercial activity in conjunction with farm use (H. Foote, 2022-10-14, 2022-9-28, and verbal testimony). Each of those uses are subject to their own regulations and criteria in Deschutes County Code. Specifically:

- Commercial activities that are in conjunction with farm use are conditional uses subject to DCC 18.16.040, Limitations On Conditional Uses, and 18.128.015 and
- Home Occupations are conditional uses subject to DCC 18.16.0030(M), Limitations On Conditional Uses, and DCC 18.116.280, Home Occupations.

Some individuals testified that they did not believe EFU lands are appropriate for psilocybin service centers for various reasons noted above. The Planning Commission could choose to specifically preclude psilocybin service centers from utilizing these two pathways for being sited on EFU land.

Options:

- a. Keep amendments as written, maintaining the potential option of service centers utilizing either home occupations or commercial activities in conjunction with farm use as a way to be sited on EFU land;
- b. Recommend prohibiting psilocybin service centers as either home occupations or commercial activities in conjunction with farm use;
- c. Recommend placing limitations on the service centers approved as home occupations or commercial activity in conjunction with farm use (for instance, prohibit home occupations but allow commercial activity in conjunction with farm use or prescribe additional TPM regulations specific to service centers beyond those generic to these use categories.).

**5. Should overnight accommodations be allowed as an accessory use to psilocybin service centers?**

A significant amount of testimony—as well as Planning Commissioners’ clarifying questions—focused on the possibility of allowing psilocybin service centers to allow overnight/multi-day stays due to reasons ranging from safety concerns to promoting a better, more complete therapeutic experience.

If the Planning Commission is interested in pursuing this aspect of service centers, Oregon state land use law presents challenges when trying to achieve this, as discussed in some written testimony as well as during the hearing. Currently there remains significant uncertainty, as expressed in testimony between Oregon Health Authority (OHA) and Association of Oregon Counties Planning Directors (AOCPD) dated October 5. This testimony consisted of a collection of questions from planning directors across the state for OHA. The first question sought to address overnight stays:

*Q: Can patients stay overnight at a service center?*

*A: This will be determined by the definition of licensed premises. Most likely guests will not be allowed to stay overnight at a licensed premises, but we may license the service center portion of a building while allowing the guest rooms and other areas to remain unlicensed under M109. Again, we are still in the rulemaking process so final rules have not yet been adopted.*

Given the above testimony, staff finds that it is unable to provide guidance at this time regarding overnight accommodations. However, if the Planning Commission supports overnight accommodations as accessory uses to service centers, the Commission may make a recommendation to the Board of County Commissioners stating such, and that overnight accommodations be explored further as additional information is received.

**6. Should ancillary uses be allowed as an accessory use to psilocybin service centers?**

Similarly, some testimony focused on the potential for ancillary uses with psilocybin service center. Testimony regarding this was provided by OHA in the same document noted above:

*Q: Are ancillary uses (mediation, yoga, etc.) allowed at a service center?*

*A: Yes. We will not necessarily license the entire building or property. Ancillary uses on the licensed portion of the property are an open question. If these activities are included as part of an*

*administration session they will definitely be allowed. Again, we are still in the rulemaking process so final rules have not yet been adopted.*

As for the previous item above, given the above testimony, staff finds that it is unable to provide guidance at this time regarding ancillary uses, but the Commission may choose to recommend to the Board that staff continues to explore this topic as OHA rulemaking continues.

## **7. Are the proposed amendments subject to Goal 5?**

Testimony received from Central Oregon LandWatch (R. Isbell, 2022-9-29) suggested that the proposed amendments must demonstrate compliance with Goal 5. Given the proposed uses and their locations staff currently maintains that the proposed uses for psilocybin will not be subject to Goal 5:

- Psilocybin manufacturing is considered a farm crop/farm/use/farming practice per ORS 475A.570
- The areas in which service centers are currently proposed (retail/commercial zones) are not subject to the current WA combining zone
- Service centers on EFU may be allowed not as new conflicting, stand-alone uses but under existing uses within EFU (home occupations/commercial activity in conjunction with farm use)

Staff will amend the findings document to reflect these explanations for the Board public hearing process.

## **V. NEXT STEPS**

At the conclusion of the meeting, the Commission can:

- Continue deliberations to a date certain;
- Close deliberations and propose a recommendation during this meeting.

Ultimately, the Planning Commission will provide a recommendation to the Board of County Commissioners. Options include:

- Recommend approval of amendments as drafted;
- Recommend approval of amendments with suggested edits or recommendations;
- Recommend denial of amendments;
- Other.

### Attachments:

1. Proposed Text Amendments and Findings