



MEMORANDUM

TO: Deschutes County Board of Commissioners
FROM: Tanya Saltzman, AICP, Senior Planner
DATE: December 7, 2022
SUBJECT: Deliberations – Psilocybin TPM Amendments

On December 14, 2022 the Deschutes County Board of Commissioners (Board) will conduct deliberations to consider legislative text amendments for time, place, and manner (TPM) regulations for psilocybin (File no. 247-22-000676-TA).

The initial public hearing was held on November 21, 2022,¹ at which time the Board chose to continue the hearing to November 30 in order to accommodate the cancellation of the planned 6 p.m. reconvening of the hearing on November 21. The written record was held open until December 2 at 4 p.m.

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, 2022.² The initial public hearing was held on September 29, 2022,³ at which time the Planning Commission voted to continue the hearing to October 13 in order to receive additional oral and written testimony.⁴ 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. A summary of the testimony received during the Planning Commission process and of the Planning Commission recommendations was provided to the Board for its public hearings.

The record, which contains all memoranda, notices, and written testimony received, is available 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 for reference. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strike through~~.

¹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-67>

² <https://www.deschutes.org/bc-pc/page/planning-commission-16>

³ <https://www.deschutes.org/bc-pc/page/planning-commission-19>

⁴ <https://www.deschutes.org/bc-pc/page/planning-commission-20>

I. WRITTEN TESTIMONY

During the Board's process, a total of 60 individuals provided written testimony concerning the proposed amendments spanning the timeframe between November 21 and the conclusion of the open record period on December 2, 2022. Individual comments submitted to the record are viewable on the project website. Comments are generally grouped as follows (some comments addressed more than one issue, were duplicates, or were general in nature so total numbers may not exactly reflect the total number of comments received):

20 individuals were against allowing psilocybin service centers in destination resorts, specifically Juniper Preserve (formerly Pronghorn). Concerns included:

- Limited access to emergency services
- Lack of transparency and community engagement between resort ownership and resort residents and property owners discussing this opportunity
- Concern for general safety
- Compatibility with golf and family residential community
- Resort communities to not necessarily provide the peaceful/rural/quiet setting that proponents desire
- Treatment is more suited to medical facilities
- Concerns for loss of property value

27 individuals were in favor of allowing service centers in destination resorts. Reasons included:

- Service centers will be heavily regulated by Oregon Health Authority so concerns for safety are unwarranted
- Destination resorts ensure a level of professionalism, security, and hospitable service to the public
- Destination resorts are rural by nature
- Juniper Preserve will be focused on educating and informing the public
- Noting that service centers would be restricted to the commercial areas of a resort. For Juniper Preserve, this means areas in or near the Juniper Lodge and away from the area of year-round private residences. No person actively experiencing the effects of psilocybin may leave the licensed premises of the service center.

9 individuals expressed concern that the regulations are too restrictive, citing:

- Support for psilocybin as a treatment for PTSD/trauma in general
- Desire for this treatment from the veterans' community
- Too many restrictions will result in fewer service centers and therefore more expensive treatment with longer waitlists for treatment
- County residents have now voted in favor of psilocybin two times

- Request to allow service centers as a conditional use in EFU, Forest, MUA-10 and RR-10; allow service centers as a conditional use as: community center to veterans; room and board facility; guest ranch

One individual testified against psilocybin in general.

Details of testimony pertaining to specific questions for deliberation are cited in the relevant sections below.

Three written comments from the following individuals were received after the close of the public record and therefore cannot be included:

- N. Gould
- J. Klos
- R. Graham

II. HEARING TESTIMONY

Eight individuals testified at the November 21 public hearing, and eight more testified on November 30. The majority of in-person testimony focused on similar themes as the written testimony:

- General support of psilocybin as a treatment option
- Nature-based/rural service centers are critical to a successful experience
- Voters have made clear they would like these services made available
- Concerns for OHA's ability to regulate/enforce licensed businesses, and subsequent recommendation for the county to not accept any psilocybin business applications for one year
- Recommending adoption of the Planning Commission recommendations
- Support for service centers in destination resorts
- Request for service centers in destination resorts to only allow indoor services
- Against psilocybin in general

III. QUESTIONS FOR DELIBERATION

Based on testimony received throughout the public process, staff has highlighted several areas for the Board to consider. After discussing each of these issues, staff, will compile revised amendments and findings to reflect Board direction.

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

The Planning Commission recommended 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 to match OHA's hours (6:00 a.m. to 11:59 p.m.);
- b. Change hours to other option

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

The Planning Commission recommended that areas permitting psilocybin manufacturing include forest zones, 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.”

Options:

- a. Uphold Planning Commission recommendation, thereby allowing psilocybin manufacturing in forest (F1 and F2) zones
- b. Do not allow psilocybin manufacturing in F1 and F2 zones.

3. Should psilocybin service centers in be permitted in destination resorts?

The Planning Commission recommended allowing service centers in destination resorts. This topic was the most commented upon—both for and against—in the Board public process.

A summary of general testimony for and against allowing service centers in destination resorts is provided above.

Options:

- a. Do not allow service centers in destination resorts;⁵
- b. Allow service centers in destination resorts and psilocybin manufacturing as an accessory use if it is in conjunction with a service center,
- c. Allow service centers in destination resorts and psilocybin manufacturing as an accessory use as a conditional use subject to DCC 18.128.015.⁶

⁵ According to the record, Juniper Preserve did not notify resort residents or property owners of their amendment to allow psilocybin service centers subject to site plan review. None of the three other destination resorts (Caldera Springs, Eagle Crest, and Tetherow) nor their residents/property owners submitted testimony, likely because they were unaware of Juniper Preserve’s proposal. If the Board adopts narrow TPM amendments without a provision relating to destination resorts, upon acknowledgment Juniper Preserve can apply for a legislative amendment. While this requires a land use fee and a separate legislative process, notification of the proposed amendment would be sent to every destination resort property owner in Deschutes County.

⁶ Given the concerns expressed by resort residents and property owners, the Board could require destination resorts to obtain a conditional use permit for psilocybin service centers. Deschutes County Code 18.128.015(B) requires an applicant to demonstrate the proposed use is compatible with existing and projected uses on the surrounding properties based on site design and operating characteristics of the use; adequacy of transportation to the site; and natural and physical features of the site.

Staff notes that written testimony received from C. Celko/Emerge Law Group (2022-11-21)⁷ has recommended several refinements to the destination resort code from the version presented for the Board public hearings. Specifically, the testimony recommends that “an existing destination resort approved for a "wellness" use, such as a spa or fitness center pursuant to its approved final master plan, may establish a psilocybin service center in an area approved for the "wellness" use(s) without being required to undergo the lengthy and expensive conceptual/final master plan modification process. Any new destination resort applicant or existing destination resort with no approved "wellness" uses (as determined by the Planning Director) would submit to a Hearing Officer's determination regarding the master plan modification question per the Staff Report.”

The testimony notes that the previous iteration of the code left significant uncertainty as to whether a resort would have to modify its master plan, stating “At best, a destination resort psilocybin service center applicant would have to expend time and funds on the hearing process to obtain a decision allowing the site plan review without a conceptual and/or final master plan modification. At worst, the Hearings Officer would determine that the applicant must undergo the costly and complex conceptual and/or final master plan modification process after the expensive hearing process. Such uncertainty and additional administrative hurdles would only serve to further delay and inhibit a resort's ability to provide psilocybin services, contrary to the spirit of Measure 109 and County residents' desire for service centers in natural settings, as expressed in the Planning Commission's hearing records.”

Staff notes that C. Celko/Emerge Law Group has proposed draft code under DCC 18.113.030(D)(7)(a) to address this concern. However, the proposed draft code includes a “wellness” determination by the Planning Director. Staff instead recommends, to the extent the board wants to remove ambiguity regarding the necessity of modification of the resort’s Conceptual Master Plan and/or Final Master Plan, the following draft code, which removes the Planning Director’s “wellness” determination (changes to original testimony indicated by strikethrough/underline):

D. Commercial services and specialty shops designed to provide for the visitors to the resort:
* * *

7. Psilocybin Service centers licensed by the Oregon Health Authority;
 - a. For a lawfully established destination resort, the establishment of a psilocybin service center in any area approved for ~~a spa, physical fitness center, or other use deemed by the Planning Director to enhance a person's wellness~~ 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.

Options:

If the Board chooses to allow service centers in destination resorts or to allow service centers in destination resorts as a conditional use (Options b or c above), additional options are as follows:

- d. Adopt language in DCC 18.113.030(D)(7) **with** the C. Celko/Emerge Law Group revisions proposed (including the “wellness” provision);

⁷ <https://www.deschutes.org/cd/page/247-22-000676-ta-psilocybin-time-place-and-manner-tpm-text-amendments>

- e. Adopt language in DCC 18.113.030(D)(7) **with** the C. Celko/Emerge Law Group revisions proposed, modified to remove the “wellness” determination as noted above;
- f. Adopt language in DCC 18.113.030(D)(7) **without** the revisions proposed in testimony cited above, as it appeared in the Board hearing package;⁸

Note: Due to the attention to this issue, if the Board chooses to allow service centers in destination resorts in any iteration, staff recommends adopting this provision in a separate ordinance from the rest of the psilocybin TPM amendments. This will ensure that in the event of an appeal, the baseline TPMs would remain unaffected if they are not separately appealed.

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

The Planning Commission recommended that service centers potentially be allowed as home occupations and as commercial activities in conjunction with farm use.

It is staff's understanding based on the testimony provided by the Department of Land Conservation and Development (DLCD) during the Planning Commission process 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. Each of those uses are subject to their own regulations and criteria in Deschutes County Code (DCC), and any applicant would have to meet those standards. 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.

New testimony from 1000 Friends of Oregon (D. Kesner, 2022-12-02) countered this position, stating that the County should prohibit service centers from being authorizable as commercial activities in conjunction with farm use or as home occupations stating that “the application of either of these permitted uses on EFU land to psilocybin service centers is questionable.”

Concerning home occupations, the testimony cited the potential conflict between the requirement to permit a home occupation within a dwelling or other buildings normally associated with a permitted use in the zone, and exclusions in 1) ORS 475A.220 of a primary residence for a service center premises, and 2) OHA draft rules prohibiting service centers from sharing overlapping space with a “bed and breakfast” or a “residence.”

Concerning commercial activities in conjunction with farm use, the testimony noted the interpretation of the courts of the requirements of this use wherein the commercial activity must “enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity

⁸ It is unclear whether a destination resort in this scenario could immediately apply for a site plan review. Modifying the conceptual and/or final master plan may be required.

relates.” The testimony also cited the need for commercial activities to be incidental and subordinate to the farm use, maintaining that service centers would “quickly eclipse any production of psilocybin occurring on the property and run awry of the incidental and subordinate limitation for commercial activities in conjunction with farm use.”

Lastly, this testimony cited general policy considerations concerning agricultural land, maintaining that service centers are most similar to a medical clinic, without a need to use the County’s “valuable and shrinking” farm 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. Prohibit psilocybin service centers as either home occupations or commercial activities in conjunction with farm use;
- c. Place limitations on 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).

IV. NEXT STEPS

Once the Board has directed staff as to its preferred direction for each of the deliberation questions asked above, staff will return with an ordinance or ordinances with text amendments reflecting this on either December 19. The Board may then vote on that ordinance(s).

If the vote is unanimous, the ordinance may be adopted by emergency, effective immediately. If the vote is not unanimous, the Board will hold first and second readings at least 14 days apart, and then the amendments will be effective 90 days after second reading.

Attachment:

Proposed Text Amendments and Findings – Board Public Hearing Version