

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

JUNIPER INSTITUTE, LLC,  
*Petitioner,*

vs.

DESCHUTES COUNTY,  
*Respondent,*

and

CAREY BRENNAN and  
PRONGHORN COMMUNITY ASSOCIATION,  
*Intervenors-Respondents.*

LUBA No. 2024-077

FINAL OPINION  
AND ORDER

Appeal on remand from the Court of Appeals.

Alex J. Berger represented petitioner.

David Doyle represented respondent.

Intervenor-respondent Carey Brennan represented themselves.

Andrew H. Stamp represented intervenor-respondent Pronghorn  
Community Association.

ZAMUDIO, Board Chair, issued the decision.

BASSHAM, Board Member; WILSON, Board Member, did not  
participate in the decision.

AFFIRMED

09/24/2025

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a board of commissioners decision denying petitioner's applications for a conditional use permit (CUP) and site plan review for a psilocybin service center on property in the Exclusive Farm Use (EFU) Zone and Destination Resort (DR) Combining Zone.

**MOTION FOR ATTORNEY FEES AND COSTS**

Petitioner moves for an award of attorney fees and costs. After the court's decision on review, petitioner is not a prevailing party. Accordingly, petitioner's motion for attorney fees and costs is denied.

**BACKGROUND**

This matter is on remand from the Court of Appeals. *Juniper Institute, LLC v. Deschutes County*, 341 Or App 674, \_\_\_ P3d \_\_\_ (2025) (*Juniper II*). We reiterate the facts from our prior decision that provide useful context for this decision. *Juniper Institute, LLC v. Deschutes County*, LUBA No 2024-077 (Feb 21, 2025) (*Juniper I*).

Petitioner sought to establish and operate a psilocybin services center within Juniper Preserve, a destination resort on private property that is surrounded by public land managed by the Bureau of Land Management (BLM). Vehicular access to the resort and the subject property is via a road that is subject to a right-of-way agreement between the BLM and Juniper Preserve (the BLM ROW). The county denied the CUP based on its determination that petitioner had

1 not demonstrated that the site was suitable based on the adequacy of  
2 transportation access, as required by Deschutes County Code (DCC)  
3 18.128.015(A)(2), because it is illegal to transport psilocybin across federal land.

4 DCC 18.128.015 provides:

5 **“General Standards Governing Conditional Uses**

6 “Except for those conditional uses permitting individual single-  
7 family dwellings, conditional uses shall comply with the following  
8 standards in addition to the standards of the zone in which the  
9 conditional use is located and any other applicable standards of the  
10 chapter:

11 “A. The site under consideration shall be determined to be  
12 suitable for the proposed use based on the following factors:

13 “1. Site, design, and operating characteristics of the use;

14 “2. Adequacy of transportation access to the site; and

15 “3. The natural and physical features of the site, including,  
16 but not limited to, general topography, natural hazards  
17 and natural resource values.

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

21 “C. These standards and any other standards of DCC 18.128 may  
22 be met by the imposition of conditions calculated to ensure  
23 that the standard will be met.”

24 **FIRST ASSIGNMENT OF ERROR**

25 In the first assignment of error, petitioner argued that the county  
26 misconstrued DCC 18.128.015(A)(2). In *Juniper I*, we agreed with petitioner that



1 the county erred by construing “access” in DCC 18.128.015(A)(2) to regulate the  
2 transportation of psilocybin. We reasoned that whether vehicles that access the  
3 site contain objects that violate federal law or the BLM ROW is not plausibly  
4 governed by DCC 18.128.015(A)(2), when read in context of the applicable code  
5 definition of “access” as “the right to cross between public and private property  
6 allowing pedestrians and vehicles to enter and leave property.” DCC 18.04.030.

7 On judicial review, the Court of Appeals concluded that we had  
8 mischaracterized the county’s interpretation of DCC 18.128.015(A)(2) as  
9 regulating the transportation of psilocybin. The court reasoned:

10 “The conditional use provision provides that the factors, including  
11 adequacy of transportation access, are to be used to determine  
12 whether the site is ‘suitable for the proposed use.’ DCC  
13 18.128.015(A). Thus, the adequacy of transportation access to the  
14 site must take into account the proposed use at issue—here, a  
15 psilocybin services center to which [petitioner] will transport  
16 psilocybin. In addition, the definition of ‘access’ is ‘the *right* to  
17 cross between public and private property allowing pedestrians and  
18 vehicles to enter and leave property.’ DCC 18.04.030 (emphasis  
19 added). LUBA narrowed its focus to the use of the words  
20 ‘pedestrians and vehicles’ in that definition. However, the focus of  
21 the definition itself is on ‘the *right* to cross between public and  
22 private property.’ The ‘right’ in that definition, in the context of the  
23 transportation access criteria, plausibly includes the legal right to  
24 use the access for the proposed conditional use, given that DCC  
25 18.128.015(A) requires the county to consider the adequacy of the  
26 transportation access in the context of the proposed use.” *Juniper II*,  
27 341 Or App at 683 (emphases in original).

1 The court concluded that the county's interpretation plausibly accounted  
2 for all the express language in the applicable code provisions and we erred in  
3 failing to defer to that interpretation as required by ORS 197.829(1).

4 Consistent with the court's decision, the first assignment of error is  
5 denied.<sup>1</sup>

#### 6 **FOURTH ASSIGNMENT OF ERROR**

7 In the fourth assignment of error, petitioner argued that the county  
8 exceeded its authority by applying and interpreting federal law to deny the  
9 applications. We agreed with petitioner that the county's interpretation of DCC  
10 18.128.015(A)(2) as prohibiting psilocybin transport across federal land  
11 constituted an unreasonable limitation on where a licensed psilocybin business  
12 "may be located," in violation of ORS 475A.530(1)(e). We also concluded that  
13 the county improperly applied the federal Controlled Substances Act to deny the  
14 applications. We agreed with petitioner that either the county impermissibly  
15 applied the federal Controlled Substances Act, based on the interpretations  
16 provided by BLM employees, or the county impermissibly relied on its own  
17 interpretation of the BLM ROW, which we observed is ambiguous and disputed.

18 The court concluded that we misapplied ORS 475A.530(1)(e) because the  
19 the court rejected our conclusion that the county interpreted DCC

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<sup>1</sup> The court's decision does not require us to revisit the portions of the first assignment of error that we denied in *Juniper I*.

1 18.128.015(A)(2) to regulate the transportation of psilocybin. In other words, the  
2 court reasoned, because the county's interpretation of the CUP criteria was not a  
3 de facto regulation of where a licensed psilocybin business "may be located," the  
4 county's decision did not implicate, let alone violate ORS 475A.530(1)(e) and  
5 we erred in concluding otherwise. The court concluded that the county had not  
6 applied the federal Controlled Substances Act or interpreted its regulation or the  
7 BLM ROW to prohibit transport of psilocybin across federal land.

8 Consistent with the court's decision, the fourth assignment of error is  
9 denied.

## 10 **SECOND ASSIGNMENT OF ERROR**

11 Petitioner's second assignment of error is that the county's decision is  
12 unsupported by adequate findings and substantial evidence. More specifically,  
13 petitioner's second assignment of error challenged the county's finding that  
14 "[petitioner] acknowledges that its proposed use is not allowed by the express  
15 terms of the BLM ROW." Record 32. The hearings officer made that finding and  
16 the board's decision incorporated it.

17 In a letter to the board during the local appeal, petitioner challenged the  
18 hearing officer's finding as inaccurate and unsupported by the record.

19 "The findings also rely on inaccurate facts. Without citing to any  
20 evidence in the record, the Hearings Officer states, '[petitioner]  
21 acknowledges that its proposed use is not allowed by the express  
22 terms of the BLM ROW [Grant].' However, [petitioner] made no  
23 such acknowledgment, and, as described in this letter, [petitioner]  
24 does not acknowledge that the Proposed Use is 'not allowed' by the



1 BLM ROW Grant, and, in fact, asserts the opposite.” Record 183.

2 In *Juniper I*, we agreed that the board erred in not adopting findings  
3 addressing that challenge. However, because we reversed the challenged  
4 decision, we did not remand on that basis. We also concluded that the challenged  
5 finding was not supported by substantial evidence. We ultimately agreed with  
6 petitioner that the county’s finding that the BLM ROW on its face unambiguously  
7 prohibits the proposed use is not supported by substantial evidence or substantial  
8 reason.

9 On judicial review, the county argued, and the Court of Appeals agreed,  
10 that, by concluding that the BLM ROW is ambiguous with respect to whether it  
11 may be used to transport psilocybin, we improperly excused petitioner from  
12 meeting its burden of proof that it *does* have a *right, i.e.*, legal authority, to do so.  
13 The court reasoned that the county properly concluded that petitioner had failed  
14 to meet its burden to prove that it met the transportation access criteria because  
15 petitioner had not established that the BLM ROW, on its face, permitted it to  
16 transport psilocybin across federal land. The court concluded that our analysis  
17 “failed to appropriately consider [that petitioner] bore the burden of proof to  
18 demonstrate that the transportation access criteria was satisfied.” 341 Or App at  
19 687.

20 Consistent with the court’s decision, the second assignment of error is  
21 denied.



1   **THIRD ASSIGNMENT OF ERROR**

2           In the third assignment of error, petitioner argued, in the alternative, that,  
3   even under the county's interpretation of DCC 18.128.015(A)(2), the county's  
4   conclusion that the site does not have adequate transportation access is incorrect  
5   and unsupported by substantial evidence. In *Juniper I*, we did not reach or resolve  
6   the third assignment of error.

7           Petitioner argued that the BLM ROW grant on its face provides adequate  
8   transportation access to the proposed site. The Court of Appeals concluded that  
9   the county properly determined that petitioner had not established that the BLM  
10   ROW, on its face, permits it to transport psilocybin across federal land to the site,  
11   and properly denied the CUP on that basis.

12          Consistent with the court's decision, the third assignment of error is  
13   denied.

14          The county's decision is affirmed.