IN THE SUPREME COURT, STATE OF WYOMING

2026 WY 117

OCTOBER TERM, A.D. 2026

November 3, 2026

PRONGHORN H2, LLC, Appellant (Applicant/Intervenor) v. STEPHENS LAND AND LIVESTOCK, LLC and MICHAEL STEPHENS, Appellees (Petitioners).	S-26-0031
WYOMING BOARD OF LAND COMMISSIONERS, Appellant (Respondent), v. STEPHENS LAND AND LIVESTOCK, LLC and MICHAEL STEPHENS, Appellees (Petitioners).	S-26-0032

Appeal from the District Court of Converse County
The Honorable F. Scott Peasley, Judge

Representing Pronghorn H2:

Jeffrey S. Pope and Andrea N. Grave, Holland & Hart LLP, Cheyenne, Wyoming. Argument by Mr. Pope.

Representing Michael Stephens and Stephens Land and Livestock:

Patrick J. Lewallen, Chapman Valdez & Lansing, Casper, Wyoming. Thomas W. Shanor, Shanor Law Office PC, Casper, Wyoming. Argument by Mr. Lewallen.

Representing Wyoming Board of Land Commissioners:

Keith G. Kautz, Attorney General; Mackenzie Williams, Deputy Attorney General; James Peters, Supervising Attorney General; Kate Gamble, Assistant Attorney General. Argument by Ms. Gamble.

Before BOOMGAARDEN, C.J., and GRAY, FENN, and JAROSH, JJ; and ROBINSON, DJ.

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BOOMGAARDEN, Chief Justice.

[¶1] Pronghorn H2, LLC (Pronghorn) applied for a wind energy lease with the Wyoming Board of Land Commissioners (the Board). The Board approved Wind Lease No. WL-1620 (the Lease). Michael Stephens and Stephens Land and Livestock, LLC (together Stephens) own property adjacent to the state land subject to the Lease. Stephens sought judicial review of the Board's Lease approval. The district court determined the Board's approval of the Lease was not in accordance with the law and reversed. Both Pronghorn and the Board timely appeal. We conclude Stephens has standing to challenge the Lease approval and affirm the Board's approval on all challenged grounds.

ISSUES

[¶2] We consider three issues:

1. Whether Stephens has standing to challenge the Board's Lease approval.

2. Whether the Board's Lease approval was "not in accordance with law" under Wyo. Stat. Ann. § 16-3-114(c)(ii)(A) because the Lease conflicts with the definition of "Wind Energy Leasing" in the Board's rules.

3. Whether the Court should address Stephens's additional arguments that the Lease is invalid, and if so:

    A. Whether the Board failed to ensure the Lease inures to the greatest long term benefit of the state land trust;

    B. Whether the Board complied with Executive Order 2019-3 when approving the Lease;

    C. Whether the Board adequately considered adverse effects of the Lease on big game land management goals; and

D. Whether the Board obtained adequate financial assurances from Pronghorn.

FACTS

[¶3] Pronghorn is a collaboration of several entities who develop, improve, and operate wind and solar energy projects. Pronghorn sought to develop a new kind of wind project in Wyoming designed to power a clean hydrogen facility rather than transmit energy to the grid (the Project). In 2022, it applied for a wind lease in Converse County from Wyoming's Office of State Lands and Investments (OSLI). Upon submission, it discussed the application with and requested feedback from stakeholders, including surface lessees, affected agencies, and OSLI. Two years later, Pronghorn amended its wind lease application to incorporate stakeholder feedback. In its amended application, Pronghorn modified the proposed lease lands and decreased the number of potential wind turbine generators, among other minor changes.

[¶4] The amended application proposed a "[f]ull suite of site development and infrastructure in support of wind energy generation that will provide electrical power to support an off-site, commercial scale, green hydrogen fuels manufacturing facility. Although the project may maintain a connection to the power grid, it is not essential to operations." Pronghorn listed proposed improvements as "an estimated 39 wind turbine generators . . . access and maintenance paths, substations, and electrical distribution and transmission facilities (above and below ground)." It estimated the facilities' value to be $322,000,000 and predicted the facility would generate approximately 230mw. The Project is to sit on 25 to 30 percent state lands, with the remainder on private lands in western Converse County, south of Glenrock.

[¶5] OSLI received dozens of written public comments in response to the amended application, most of which opposed the Project. OSLI then submitted the proposed wind energy lease to the Board. At a public meeting, Pronghorn presented Project details and the Board heard additional public comments. After adjourning an executive session to obtain legal advice, the Board approved the Lease. OSLI issued a notice of approval to Pronghorn the following day.

[¶6] Stephens responded with a petition for review of administrative action, challenging the Board's approval of the Lease. Stephens Land and Livestock, LLC owns real property in Converse County adjacent to the state lands and proposed wind facility boundaries. Michael Stephens manages Stephens Land and Livestock, LLC and lives on the LLC's property. Stephens stated the Board's leasing of state lands for the Project adversely affects its wildlife and scenic interests, as well as its landowner interests.

[¶7] Stephens argued the Board's approval of the Lease was "not in accordance with law," was "without observance of procedure required by law," and exceeded statutory authority. Wyo. Stat. Ann. § 16-3-114(c)(ii)(A), (C), (D) (2025). Stephens asserted the Project did not fit within the Board's definition of "Wind Energy Leasing" because the Project would not connect to the transmission grid. Stephens also challenged the Board's Lease approval due to the Board's alleged failure to abide by its own and other applicable rules.

[¶8] The Board countered Stephens lacked standing to challenge the approval, but its Lease approval was nonetheless in accordance with law. Pronghorn intervened, asserting its right to protect its leasehold was distinguishable from the Board's broader interests that the Project "inure to the greatest long term benefit of the state land trust." Wyo. Stat. Ann. § 36-5-114(b) (2025).

[¶9] After reviewing the parties' briefing, the district court determined Stephens had standing and reversed the Board's Lease approval. It concluded the Board's rule defining "Wind Energy Leasing" required transmission grid connection. Because the Project was to power a clean hydrogen facility instead of connecting to the transmission grid, the court determined "the type of leasing approved by the Board . . . is not in accordance with the law." Both the Board and Pronghorn timely appealed. We consolidated the appeals.

DISCUSSION

I. Stephens has standing to challenge the Board's Lease approval.

[¶10] Whether a party has standing presents a question of law, which we review de novo. *Williams v. Bd. of Cnty. Comm'rs of Johnson Cnty.*, 2025 WY 127, ¶ 8, 579 P.3d 1128, 1131 (Wyo. 2025) (quoting *Protect Our Water Jackson Hole v. Wyoming Dep't of Env't Quality*, 2025 WY 36, ¶ 11, 566 P.3d 181, 185 (Wyo. 2025)). Stephens sought judicial review of the Board's Lease approval under the Wyoming Administrative Procedure Act (WAPA). "[W]hether a party has standing to seek judicial review of administrative actions is a question of statutory standing." *HB Fam. Ltd. P'ship v. Teton Cnty. Bd. of Cnty. Comm'rs*, 2020 WY 98, ¶ 21, 468 P.3d 1081, 1088 (Wyo. 2020). Under the WAPA:

> any person ***aggrieved or adversely affected*** in fact by a final decision of an agency in a contested case, or by other agency action or inaction, or any person affected in fact by a rule adopted by an agency, is entitled to judicial review in the district court . . . .

Wyo. Stat. Ann. § 16-3-114(a) (emphasis added). The WAPA defines a "person" as "any individual, partnership, corporation, association, municipality, governmental subdivision or public or private organization of any character other than an agency." Wyo. Stat. Ann. § 16-3-101(b)(vii) (2025).

[¶11] To be "aggrieved or adversely affected," one must have "a legally recognizable interest in that which will be affected by the action." *HB Fam. Ltd. P'ship*, 2020 WY 98, ¶ 21, 468 P.3d at 1089 (quoting *Wyodak Res. Dev. Corp. v. Wyoming Dep't of Revenue*, 2017 WY 6, ¶ 60, 387 P.3d 725, 738 (Wyo. 2017)). The legally recognizable interest "must generally be substantial, immediate, and pecuniary. A future, contingent, or merely speculative interest is ordinarily not sufficient." *HB Fam. Ltd. P'ship*, 2020 WY 98, ¶ 21, 468 P.3d at 1089 (quoting *Wyodak Res. Dev. Corp.*, 2017 WY 6, ¶ 60, 387 P.3d at 738).

[¶12] In many cases, we have determined landowners have standing to challenge administrative decisions impacting parcels of land adjacent to their property. For instance, we have determined standing exists when: a landowner "provided photographic proof that the staging site was in their viewshed"; a landowner "owned property bordering the project and the project 'threaten[ed] its scenic views and wildlife habitat and migration'"; an organization had a member who "owned property 'near' land leased for the project and [the member] had concerns about the increased traffic and safety issues the project would cause"; a landowner owned property adjacent to a subdivision whose density approval was doubled; and a landowner owned property near a parcel whose approved increased density application caused "concerns about increased density from greater use of the neighboring property and the effect of that greater use on their property" and "concerns about 'construction noise, increased employee and resident population density, traffic congestion, parking surface impact, noise and light pollution, [and] skyline blight.'" *HB Fam. Ltd. P'ship*, 2020 WY 98, ¶¶ 23–26, 28–29, 468 P.3d at 1089–91 (first quoting and citing *Tayback v. Teton Cnty. Bd. of Cnty. Comm'rs*, 2017 WY 114, ¶ 19, 402 P.3d 984, 989 (Wyo. 2017); then quoting and citing *N. Laramie Range Found. v. Converse Cnty. Bd. of Cnty. Comm'rs*, 2012 WY 158, ¶¶ 27, 33, 290 P.3d 1063, 1074–75 (Wyo. 2012); *Hoke v. Moyer*, 865 P.2d 624, 628 (Wyo. 1993); *Northfork Citizens for Responsible Dev. v. Park Cnty. Bd. of Cnty. Comm'rs*, 2008 WY 88, ¶ 16, 189 P.3d 260, 264–65 (Wyo. 2008)).

[¶13] Stephens's land, where Mr. Stephens and his family reside, abuts the Lease lands. Stephens asserts its scenic views will be hampered by any wind turbines placed on the Lease lands, and the wind turbines will be visible during construction and while recreating on the Lease lands. Stephens also highlights diminished property values, increased traffic, and disruption of its property's residential and ranching uses. These perceptible harms concerning property ownership, enjoyment, and use—stemming from the Board's Lease approval—are substantial, immediate and pecuniary. *See HB Fam. Ltd. P'ship*, 2020 WY 98, ¶ 21, 468 P.3d at 1089; *see also Moose Hollow Holdings, LLC v. Teton Cnty. Bd. of Cnty. Comm'rs*, 2017 WY 74, ¶ 28, 396 P.3d 1027, 1034 (Wyo. 2017).

Stephens therefore has standing under the WAPA to challenge the Board's Lease approval.

[¶14] The Board suggests *Moose Hollow* supports its claim Stephens lacks standing. 2017 WY 74, 396 P.3d 1027. *Moose Hollow* involved a county planning director's determination that an old development permit remained valid, and his related conclusion that the two parcels subject to the old development permit could be separately developed. *Id.*, ¶¶ 6–11, 396 P.3d at 1029–31. Neighboring landowners challenged these determinations, arguing development under the old development permit and on both parcels would impair the market and aesthetic values of their properties. *Id.*, ¶¶ 12–13, 396 P.3d at 1031–32. We concluded the neighboring landowners lacked standing because there existed no planned development and neither of the challenged determinations ***approved*** development. *Id.*, ¶ 27–28, 396 P.3d at 1034. Because any future proposed development under the old development permit would require further planning office review and approval, the alleged harms were "both contingent and speculative." *Id.*

[¶15] Unlike the development uncertainty in *Moose Hollow*, Pronghorn presented extensive development plans at the public meeting—including details regarding the Project's "wind region," water use, and economic impacts. *Id.*, ¶ 28, 396 P.3d at 1034. Pronghorn completed its OSLI application process and received a 40-year wind lease. It has "the exclusive right to use the [state lands] for Wind Energy Development." Though the Project will be subject to industrial siting and other agency review prior to commencing construction, OSLI's review and final Board approval are complete. *See* Wyo. Stat. Ann. § 35-12-106(a) (2025). Accordingly, *Moose Hollow* does not control here.

II. The Lease does not conflict with the Board's definition of "Wind Energy Leasing."

[¶16] Pronghorn and the Board challenge the district court's interpretation of the Board rule defining "Wind Energy Leasing." The definition provides:

> "Wind Energy Leasing" means leasing of state land for the exclusive right to convert wind energy into electrical energy ***including*** collecting and transmitting the electrical energy so converted to the substation from which the electricity will be transmitted from the wind energy development to the interconnection of the transmission grid.

Rules, Wyo. Off. of State Lands & Invs., Bd. Comm'rs, Ch. 6, § 2(e) (Dec. 12, 2023) (emphasis added). This dispute turns on the meaning of "including."

[¶17] "When an appeal is taken from a district court's decision on review of an administrative agency's ruling, we examine the case as if it came directly from the agency, giving no special deference to the court's decision." *Hart v. State ex rel. Dep't of Workforce Servs., Workers' Comp. Div.*, 2022 WY 81, ¶ 9, 512 P.3d 640, 644 (Wyo. 2022). Because the Board approved the Lease following a public meeting and not a more formal contested case proceeding, we review the Board's decision under Wyo. Stat. Ann. § 16-3-114(c)(ii)(A), which permits us to set aside the Board's Lease approval only if it "is '[a]rbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.'" *Tayback*, 2017 WY 114, ¶ 13, 402 P.3d at 988 (quoting § 16-3-114(c)(ii)(A)); *cf. Dale v. S & S Builders, LLC*, 2008 WY 84, ¶¶ 20–22, 188 P.3d 554, 560–61 (Wyo. 2008) (§ 16-3-114(c)(ii)(E)'s substantial evidence standard applies on review of an agency's evidentiary ruling after a contested case hearing).

[¶18] "An 'agency's own rules and regulations have the force and effect of law, and an administrative agency must follow its own rules and regulations or face reversal of its action.'" *Leal v. State ex rel. Dep't of Workforce Servs., Workers' Comp. Div.*, 2024 WY 86, ¶ 33, 553 P.3d 1181, 1192 (Wyo. 2024) (quoting *HB Fam. Ltd. P'ship*, 2020 WY 98, ¶ 39, 468 P.3d at 1093). Interpretation of agency rules and regulations is a question of law we review de novo. *Richardson v. State ex rel. Wyoming Dep't of Health*, 2024 WY 47, ¶ 8, 547 P.3d 327, 330 (Wyo. 2024).

[¶19] When interpreting agency rules and regulations, we use our well-established rules of statutory interpretation and "first look[] to the plain and ordinary meaning of the words to determine if the [rule] is ambiguous." *SP v. State*, 2025 WY 101, ¶ 16, 576 P.3d 603, 609 (Wyo. 2025); *see also Beckwith v. State*, 2023 WY 39, ¶ 12, 527 P.3d 1270, 1273 (Wyo. 2023); *Tayback*, 2017 WY 114, ¶ 25, 402 P.3d at 990. An unambiguous rule or regulation is one that enables reasonable persons to consistently and predictably agree as to its meaning. *Matter of RTT*, 2026 WY 23, ¶ 9, 584 P.3d 423, 425 (Wyo. 2026). We only determine a rule or regulation is ambiguous if it is "vague or uncertain and subject to varying interpretations." *Id.* (quoting *Bankers Standard Ins. Co. v. JTEC, Inc.*, 2025 WY 51, ¶ 15, 567 P.3d 1183, 1188 (Wyo. 2025)). If a rule or regulation's "language is clear and unambiguous, we give effect to its plain meaning." *Beckwith*, 2023 WY 39, ¶ 12, 527 P.3d at 1273. Unless an agency's interpretation of its own rules and regulations is clearly erroneous or inconsistent with the rule or regulation's plain language, we defer to the agency's interpretation. *Brazinski v. Bd. of Cnty. Comm'rs of Teton Cnty.*, 2024 WY 40, ¶ 30, 546 P.3d 545, 554 (Wyo. 2024).

[¶20] Pronghorn and the Board argue "including," as used in Chapter 6, § 2(e), is an expansive term that does not limit wind energy leasing to projects connected to the transmission grid. Stephens argues "including" is a limiting term that restricts wind energy leasing to projects connected to the transmission grid. Because Pronghorn plans to connect to a clean hydrogen facility rather than the transmission grid, Stephens asserts the Project is not within the Board's "Wind Energy Leasing" definition.

[¶21] Finding "including" as used in Chapter 6, § 2(e) to be ambiguous, the district court agreed with Stephens. We interpret the definition differently.

[¶22] "Including" is plainly, ordinarily, and unambiguously an expansive term that introduces a partial list. Black's Law Dictionary defines "include" as a verb meaning "[t]o contain as a part of something" and "[t]he participle ***including*** typically indicates a partial list."[1] *Include*, Black's Law Dictionary (12th ed. 2024) (emphasis added); *see also Include*, Merriam-Webster, https://www.merriam-webster.com/dictionary/include (last visited Oct. 16, 2026) (include means "to take in or comprise as a part of a whole or group").

[¶23] As we recognized in *Board of County Commissioners of Teton County v. Bassett,* "'includes' generally signifies an intent to enlarge a statute's application, rather than limit it, and it implies the conclusion that there are other items includable, though not specifically enumerated." 8 P.3d 1079, 1083 (Wyo. 2000); *see also Yager v. State*, 2015 WY 139, ¶ 22, 362 P.3d 777, 784 (Wyo. 2015) (quoting *Lyman v. Town of Bow Mar*, 188 Colo. 216, 221, 533 P.2d 1129, 1133 (1975)) ("the word 'include' is ordinarily used as a word of extension or enlargement."). Despite the legislature's omission of specific examples of conduct, we determined its use of "includes" and the general language following that term, signified the legislature's intent to include unenumerated conduct within the statutory definition of "fault." *Bassett*, 8 P.3d at 1083–84 (discussing Wyo. Stat. Ann. § 1-1-109(a)(iv) (1999)). The same reasoning applies here.

[¶24] The district court presented—and Stephens reiterates—a strained interpretation of *Helvering v. Morgan's, Inc.*, to conclude "including" limits the type of wind energy projects that satisfy Chapter 6, § 2(e).[2] 293 U.S. 121, 125–26, 55 S. Ct. 60, 61–62, 79 L. Ed. 232 (1934). There, the United States Supreme Court, interpreting the Internal Revenue Code, noted "[t]he terms 'means' and 'includes' are not necessarily synonymous" and "[t]he natural distinction would be that where 'means' is employed, the term and its definition are to be interchangeable equivalents, and that the verb 'includes' imports a general class, ***some of whose particular instances are those specified in the definition***." *Helvering*, 293 U.S. at 125 n.1, 55 S. Ct. at 61 n.1 (emphasis added). Chapter 6, Section 2(e) states "'Wind Energy Leasing' ***means*** leasing of state land for the

[1] "Including, but not limited to" and "including" both introduce a partial list. *See Include*, Black's Law Dictionary (12th ed. 2024) ("[t]he participle [of include,] including typically indicates a partial list . . . But some drafters use phrases such as including without limitation and including but not limited to—which mean the same thing.")

[2] The district court also concluded because "the disputed rule is found in the 'definitions' section" of the rules, that placement "lends to a stricter interpretation." None of our rules of statutory interpretation require a shift in the interpretive lens because the term at issue is in the "definition section" of a statute or rule. We do not adopt that new interpretive rule here.

exclusive right to convert wind energy into electrical energy ***including*** . . .” one example of how converted electricity from leased state land may be used. (emphasis added). Even under *Helvering*, the plain and ordinary meaning of “including” in Chapter 6, § 2(e) is expansive.

[¶25] Here, connection to the transmission grid is just one example of how a lessee may use converted electricity from lease lands. The definition’s reference to transmission to the grid interconnection is specific. That specificity, however, does not convert that phrase into a mandatory condition. The Board’s Lease approval for the Project, whose “connection to the power grid . . . is not essential to operations[,]” was thus in accordance with law and does not conflict with the Board’s definition of “Wind Energy Leasing.” *See Rules, Wyo. Off. of State Lands & Invs., Bd. Comm’rs*, Ch. 6, § 2(e).

III. Stephens’s additional arguments that the Lease is invalid lack merit.

[¶26] Stephens advanced several additional arguments before the district court in support of its claim the Board’s Lease approval was not in accordance with law and was arbitrary and capricious: 1) the Board’s Lease approval does not inure to the greatest long term benefit of the state trust land; 2) the Board failed to comply with and observe the requirements of Executive Order 2019-3; 3) the Board failed to consider the adverse effects of its Lease approval on land management plans; 4) the Lease language exceeds statutory authority regarding improvement removal requirements;[3] and 5) the Board failed to obtain adequate financial assurances from Pronghorn.

[¶27] Having reversed based on its interpretation of “Wind Energy Leasing,” the district court did not reach these claims. Though we often remand additional, alternative arguments unaddressed by the district court, our precedent acknowledges there are cases in which the interests of judicial economy are better served when we address those issues on appeal. *See, e.g.*, *Wyoming Pub. Serv. Comm’n v. Hopkins*, 602 P.2d 374, 376–77 (Wyo. 1979) (remanding to the district court to address additional, alternative arguments); *Wells Fargo Bank Wyoming, N.A. v. Hodder*, 2006 WY 128, ¶ 32, 144 P.3d 401, 412–13 (Wyo. 2006) (though the fact finder typically determines a trustee’s good faith, because we had the complete trial transcript and a 28-page decision letter from the trial court, and “for reasons of judicial economy,” we could adequately resolve the unaddressed issue); *Winney v. Jerup*, 2023 WY 113, ¶ 31, 539 P.3d 77, 86 (Wyo. 2023). As is the case here, we have found it prudent to decide unaddressed issues when those issues are fully fleshed out in the record before us and that record contains ample information to enable thorough review. *See Winney*, 2023 WY 113, ¶ 31, 539 P.3d at 86.[4]

[3] Stephens later conceded and withdrew this argument. We therefore do not address it.

[4] Other jurisdictions have similar exceptions. *See Dell v. Citizens Ins. Co. of Am.*, 312 Mich. App. 734, 751 n.40, 880 N.W.2d 280, 290 n.40 (Mich. 2015) (addressing an issue unaddressed by the trial court

Stephens's additional arguments, moreover, focus on legal questions we review de novo, *Hart*, 2022 WY 81, ¶ 9, 512 P.3d at 644, and the parties agree the issues were fully briefed below. We therefore address them here.

[¶28] Again, we review the Board's conclusions of law de novo and will affirm only if its conclusions are in accordance with the law. *Wyoming Dep't of Revenue v. PacifiCorp*, 2025 WY 126, ¶ 21, 580 P.3d 491, 498 (Wyo. 2025) (quoting *Leal*, 2024 WY 86, ¶ 11, 553 P.3d at 1185); *see also* Wyo. Stat. Ann. § 16-3-114(c).

A. The Board complied with its state land trust mandates.

[¶29] Citing Wyo. Stat. Ann. § 36-5-114(b),[5] Stephens argues the Board did not consider whether the Lease provides the greatest long term benefit for the state land trust because, as drafted, the operating fee Pronghorn must pay for energy delivered to the transmission grid is higher than the base rate Pronghorn pays if no energy is delivered to the transmission grid. In other words, because Pronghorn doesn't contemplate connecting to the transmission grid, Stephens asserts the revenue generated from the Lease will always be less than that from a wind project that delivers energy to the transmission grid. Stephens also argues the Lease departs from the normal Wyoming practice of subordinating the surface estate to the mineral estate by limiting mineral exploration and production on the Lease lands. The record demonstrates the Board ignored neither its statutory mandate nor its regulatory requirements when it negotiated and approved the Lease with variable operating fees, and the Lease does not improperly limit mineral exploration and production.

[¶30] The Board's rules instruct it to determine the annual rental for wind energy leases "on an individual lease basis." *Rules, Wyo. Off. of State Lands & Invs., Bd. Comm'rs*, Ch. 6, § 7(a) (Dec. 12, 2023); *see also* Ch. 6, § 7(b) (setting minimum annual rental). The Board did so here. OSLI negotiated the Lease fees with the Project's clean hydrogen facility nuance in mind. That nuance resulted in the Lease's variable operating fees. And because Pronghorn's amended application does not wholly foreclose transmission grid connection, either type of operating fee may apply at any given point during the Lease term. The Lease is therefore not contrary to Board rules or statutory mandate. *Rules, Wyo. Off. of State Lands & Invs., Bd. Comm'rs*, Ch. 6, § 7(a); Wyo. Stat. Ann. § 36-5-114(b).

"because it concerns a legal question and all of the facts necessary for its resolution are present."); *Panhandle Baptist Found., Inc. v. Clodfelter*, 54 S.W.3d 66, 70 (Tex. App. 2001) (citing *Cincinnati Life Ins. Co. v. Cates*, 927 S.W.2d 623, 626 (Tex. 1996)) ("The appellate court may, in the interest of judicial economy, consider any summary judgment grounds presented to but on which the trial court did not rule, and which are preserved for review."); *Lincoln v. BNSF Ry. Co.*, 900 F.3d 1166, 1199 (10th Cir. 2018).

[5] Specifically, "[t]he board may lease state lands for purposes which shall bring about the compatible use of the surface area and shall inure to the greatest long term benefit of the state land trust." Wyo. Stat. Ann. § 36-5-114(b).

[¶31] The record further demonstrates the Board did not impermissibly subordinate future mineral development on Lease lands.[6] The Lease not only honors existing mineral interests, it also manages for concurrent surface and mineral development by prohibiting future mineral lessees from "unreasonably interfer[ing]" with the Project. The Lease does not preclude future mineral leases. Thus, the Lease in no way renders the minerals underlying the Lease lands "valueless." The Board heard and addressed mineral development concerns, including concerns regarding Project infrastructure. Stephens has failed to show the Board acted arbitrarily or contrary to law.

B. The Board complied with Executive Order 2019-3.

[¶32] Stephens asserts the Board violated Executive Order 2019-3 because OSLI and Pronghorn did not resubmit Pronghorn's amended application to the Wyoming Game and Fish Department (WGFD) for additional review. But Stephens has failed to show OSLI was legally required to do so. Executive Order 2019-3 aims to protect Wyoming's Greater sage grouse population and requires state agencies, including OSLI, to "prioritize the maintenance and enhancement of Greater sage-grouse habitats and populations inside Core Populations Areas" and other areas, by following outlined review procedures. Wyo. Exec. Order 2019-3 (Aug. 21, 2019) at 2. Executive Order 2019-3 designates WGFD as the "first point of contact for addressing ***Greater sage-grouse Core Population Area issues*** for state permit application[s.]" Exec. Order 2019-3 at App. E, 2 (emphasis added).

[¶33] After submitting its initial application, OSLI and Pronghorn consulted with WGFD. WGFD informed OSLI and Pronghorn the initial application lands included portions of the Greater sage grouse Core Protection Area, where commercial wind development is not recommended. WGFD also noted the initial application lands were within the quarter-mile buffer areas of non-core occupied sage grouse leks and within the two-mile buffer of additional non-core occupied sage grouse leks. WGFD stated to comply with Executive Order 2019-3, there could be no infrastructure within the Core Protection Area, or within a quarter mile radius of the non-core area leks, and it limited human activity around occupied leks. Pronghorn then amended its application to remove all state lands within the Greater sage grouse Core Protection Area. When submitting the

[6] In support, Stephens cites the Split Estate Act. *See* Wyo. Stat. Ann. § 30-5-402(a) (2025). That specific provision states "[a]ny oil and gas operator having the right to any oil or gas underlying the surface of land may locate and enter the land for all purposes reasonable and necessary to conduct oil and gas operations" and "[t]he oil and gas operator shall first comply with the provisions of this act and shall reasonably accommodate existing surface uses." § 30-5-402(a). The Lease states Pronghorn's "use of the Property for Wind Energy Development, including, without limitation, its installation and operation of Windpower Facilities, shall not unreasonably disturb any Existing Uses of the Property" which include "all existing mineral leases." The Lease's existing use and future development provisions are not in conflict with § 30-5-402(a)'s subsurface development protections.

Lease to the Board, OSLI's Director noted "[i]t has been determined that this wind energy lease application site is not in sage grouse habitat core area" and recommended the Board approve the Lease. WGFD's initial comments and recommendations stand, and Stephens has failed to demonstrate further WGFD review is legally required. The Board did not violate Executive Order 2019-3 by not resubmitting Pronghorn's amended application to WGFD.

[¶34] Stephens also claims the Board violated its own rules by failing to include any WGFD sage grouse feedback in the Lease. Chapter 6, Section 3(b) requires the Board "determine that the proposed lease does not adversely affect its management goals on the land proposed for lease and on the adjacent state lands during the term of the lease." *Rules, Wyo. Off. of State Lands & Invs., Bd. Comm'rs*, Ch. 6, § 3(b) (Dec. 12, 2023). We review the Lease's lack of express sage grouse provisions under our arbitrary and capricious standard. Wyo. Stat. Ann. § 16-3-114(c)(ii)(A); *see also Tayback*, 2017 WY 114, ¶ 13, 402 P.3d at 988. Under this standard, we "give deference to the agency decision and [] affirm if the agency reasonably could have made its findings and order based upon all the evidence before it." *Monaghan Farms, Inc v. Bd. of Cnty. Commissioners of Albany Cnty.*, 2023 WY 31, ¶ 44, 527 P.3d 1195, 1212 (Wyo. 2023) (quoting *N. Laramie Range Found.*, 2012 WY 158, ¶ 46, 290 P.3d at 1078–79).

[¶35] The omission of sage grouse stipulations from the Lease was not unreasonable. The record illustrates the Board knew about WGFD's comments and recommendations as well as the changes in Pronghorn's amended application. The Board therefore did not act arbitrarily or capriciously in determining neither Executive Order 2019-3 nor Chapter 6, § 3(b) required any express sage grouse directive in the approved Lease.

C. The Board properly considered possible adverse effects on big game management goals for the Lease lands and adjacent state lands.

[¶36] WGFD feedback on Pronghorn's initial application stated some of the Lease lands were mule deer and antelope "crucial winter yearlong range" and recommended avoiding development from November to April in those areas. Because the Board approved the Lease without making any express finding regarding big game crucial winter range, Stephens argues the Board did not make the necessary land management considerations under Chapter 6, § 3(b).[7] We conclude the Board was not required to make express findings.

[7] The Rule provides, in relevant part: "[t]he Board shall determine that the proposed lease does not adversely affect ***its*** management goals on the land proposed for lease and on the adjacent state lands during the term of the lease." *Rules, Wyo. Off. of State Lands & Invs., Bd. Comm'rs*, Ch. 6, § 3(b) (emphasis added).

[¶37] It is unclear whether Pronghorn's amended application excludes big game crucial winter range. The approved Lease does not discuss the big game crucial winter range identified by WGFD or its recommended development restrictions. But the Board's rules do not require adoption of WGFD recommendations in the Lease. Chapter 6, § 3(b) focuses on the Board's management goals, not WFGD's management goals. Nonetheless, OSLI's Director concluded the Lease lands are not in any designated migration corridors.[8] *See Rules, Wyo. Off. of State Lands & Invs., Bd. Comm'rs*, Ch. 6, § 3(b); Ch. 1, § 9(e) (May 16, 2017); *see also Monaghan Farms, Inc*, 2023 WY 31, ¶ 44, 527 P.3d at 1212 (quoting *N. Laramie Range Found.*, 2012 WY 158, ¶ 46, 290 P.3d at 1078–79) (on arbitrary and capricious review, we "give deference to the agency decision and [] affirm if the agency reasonably could have made its findings and order based upon all the evidence before it.").

[¶38] "Formal findings are only required in informal administrative proceedings . . . 'if a statute or regulation requires' such findings to be made." *Monaghan Farms, Inc.*, 2023 WY 31, ¶ 20, 527 P.3d at 1205 (quoting *Wilson Advisory Comm. v. Bd. of Cnty. Comm'rs*, 2012 WY 163, ¶ 40, 292 P.3d 855, 866 (Wyo. 2012)). Stephens supplies no statute or rule requiring the Board's determination regarding adverse effects on land management goals be written in an approved lease or otherwise. And Chapter 6, Section 3(b) does not require written findings. *Rules, Wyo. Off. of State Lands & Invs., Bd. Comm'rs*, Ch. 6, § 3(b) ("The Board shall determine . . ."). The Board's rules only require findings of fact and conclusions of law to support a Board decision following conflicting application appeals or lease cancellation proceedings. *Rules, Wyo. Off. of State Lands & Invs., Bd. Comm'rs*, Ch. 1, § 9(e).

[¶39] OSLI collaborated with WGFD concerning big game migration and hunting on the initially proposed Lease lands and later informed the Board about WGFD's feedback. The Director confirmed the Lease lands are not in any designated migration corridors and recommended the Board approve the Lease. By approving the Lease in the form in which it was presented, and with the record before it, the Board reasonably concluded the Lease did not adversely affect its land management goals for the Lease lands or adjacent state lands. The Board did not violate Chapter 6, § 3(b) when it approved the Lease.

[8] As for Stephens's challenge to the Lease's hunting access provision, we find no issue. WGFD recommended OSLI continue to provide public access for hunting on publicly accessible portions of Lease land. The Lease states Pronghorn "may apply to [OSLI] for closure of the [Lease lands] to hunting during construction and maintenance and repairs to roads, infrastructure, or" improvements on the Lease lands. This provision limits Pronghorn's ability to restrict public access for hunting ***and*** requires approval to do so. The challenged provision is therefore not in tension with WGFD recommendations.

D. The Lease contains adequate financial assurances.

[¶40] Stephens claims the Board failed to fulfill its duty to lease state lands in a manner creating the greatest long term benefit for the state land trust because the Lease relies on the Department of Environmental Quality (DEQ) for bonding and additional financial assurances. Wyo. Stat. Ann. § 36-5-114(b). We agree with the Board that as one of several state agencies involved in the wind energy development process, the Board's role is to give the lessee an opportunity to develop on state trust land. In doing so, it need only obtain the financial assurances required by its rules.

[¶41] The Board's rules require lessees provide financial assurances "sufficient to assure compliance" with lease terms. *See Rules, Wyo. Off. of State Lands & Invs., Bd. Comm'rs*, Ch. 6, § 13(a) (Dec. 12, 2023). The Lease requires that Pronghorn put financial assurances in place before commencing construction. It also outlines the Board's methods for calculating the financial assurance amount and considers collaboration between OSLI and DEQ "[i]n the event the Project is required to be permitted by the Wyoming Industrial Siting Council[.]" The Project is subject to the Industrial Siting Council (ISC) permitting process. The ISC rules contain "additional application requirements for wind energy facilities," including decommissioning plans, reclamation plans, financial assurances and related cost estimation for decommissioning and reclamation. *See Rules, Wyo. Dep't Env't Qual., Industrial Siting Council,* Ch. 1, § 9 (Aug. 9, 2018).

[¶42] The Board retains "sole discretion" to determine when final reclamation is achieved and financial assurances may be released, thereby retaining continual oversight over the Lease lands. The Board's approval of the Lease, with its financial assurances provision, is in accordance with law and followed the applicable procedures.

CONCLUSION

[¶43] We conclude Stephens has standing to challenge the Board's Lease approval. We further conclude the Board's Lease approval was in accordance with the law because the term "including" in the Board's "Wind Energy Leasing" definition is expansive. The "Wind Energy Leasing" definition thus permits wind energy leasing for projects that are not connected to the transmission grid. The Project fits that definition.

[¶44] We also conclude the Board complied with its duty to create the greatest long term benefit for the state land trust as reflected in the Lease's alternative operating fee provisions. The Board's Lease approval also did not improperly subordinate future mineral interests, nor did it violate Executive Order 2019-3 or that Order's procedures. In addition, the Board reasonably omitted sage grouse stipulations in the Lease. Because the Board was not required to make express findings regarding adverse effects on big game

land management goals and the Board reviewed big game concerns, the lack of express written findings regarding big game in the Lease did not violate any of the Board's rules. Finally, the Lease contains adequate financial assurances that satisfy the law and follow applicable procedure.

[¶45] We therefore affirm the Board's approval of Wind Lease No. WL-1620.