

IN THE SUPREME COURT, STATE OF WYOMING

2026 WY 100

APRIL TERM, A.D. 2026

September 23, 2026

WAGONHOUND LAND &  
LIVESTOCK COMPANY, LLC, a  
Wyoming limited liability company,

Appellant  
(Plaintiff),

v.

LITTLE MEDICINE CREEK RANCH,  
INC., a Wyoming corporation, f/k/a  
BURNETT RANCH, INC.,

Appellee  
(Defendant).

S-25-0303

LITTLE MEDICINE CREEK RANCH,  
INC., a Wyoming corporation, f/k/a  
BURNETT RANCH, INC.,

Appellant  
(Defendant),

v.

WAGONHOUND LAND &  
LIVESTOCK COMPANY, LLC, a  
Wyoming limited liability company,

Appellee  
(Plaintiff).

S-25-0304

***Appeal from the District Court of Albany County***  
The Honorable Misha E. Westby, Judge

***Representing Little Medicine Creek Ranch, Inc.:***

Mitchell H. Edwards, Nicholas & Tangeman, LLC, Laramie, Wyoming. Eric C. Rusnak, Pillsbury Winthrop Shaw Pittman LLP, Washington, D.C. Argument by Mr. Rusnak.

***Representing Wagonhound Land and Livestock Company, LLC:***

William L. Hiser, Kermit C. Brown, Brown & Hiser, LLC, Laramie, Wyoming. Argument by Mr. Hiser.

***Before BOOMGAARDEN, C.J., GRAY, FENN, JAROSH, and HILL, JJ.***

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## **JAROSH, Justice.**

[¶1] Wagonhound Land & Livestock Company (Wagonhound) petitioned the district court to establish a private road across neighboring Little Medicine Creek Ranch (LMCR). Following a bench trial, the district court established a private road in favor of Wagonhound after concluding that the road was necessary for Wagonhound to access an isolated tract known as Parcel 1. The district court also established conditions and restrictions on the private road. Wagonhound appealed and challenges three of the district court's conditions. In its cross-appeal, LMCR challenges the district court's findings on good faith, necessity, route selection, and damages. LMCR also challenges the district court's rejection of an agricultural-use-only restriction on the private road.

[¶2] We affirm the district court's findings on good faith, necessity, route selection, and damages, as well as its rejection of LMCR's proposed agricultural-use-only restriction. Having found two of the district court's restrictions on the private road are not supported by evidence, we reverse Condition 4 (in part) and Condition 6.

### **ISSUES**

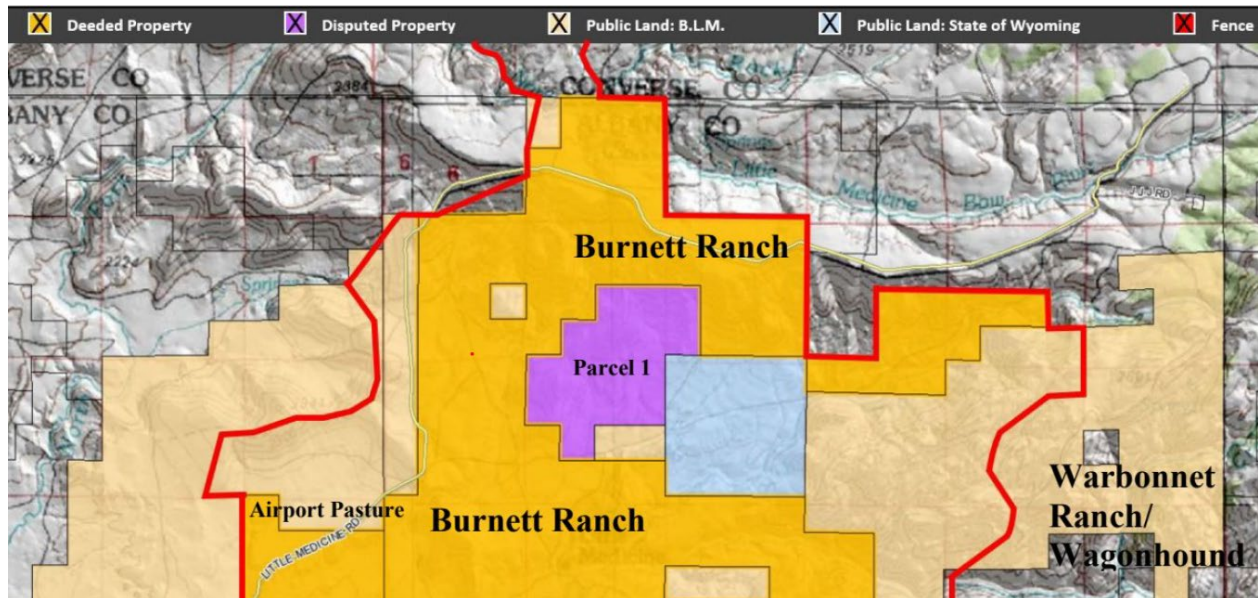
[¶3] These appeals present the following dispositive issues:

1. Did the district court err in finding Wagonhound proceeded with its private road action in good faith?
2. Did the district court err in finding necessity for the private road?
3. Did the district court err in selecting the route for the private road?
4. Did the district court err in its award of damages to LMCR?
5. Did the district court err in ordering Conditions 4, 5, and 6 on the private road when those restrictions were not recommended by the Viewers or supported by the record?
6. Did the district court err when it denied LMCR's request to adopt an agricultural-only use restriction?

### **FACTS AND PROCEEDINGS**

[¶4] Parcel 1 rests in a remote and rugged area of northern Albany County. At approximately 640 acres, Parcel 1 is surrounded almost entirely by deeded land owned by

LMCR and known as the Burnett Ranch.<sup>1</sup> To the east, Parcel 1 adjoins a small tract of land managed by the Bureau of Land Management (BLM) and a section of State trust land. As depicted below and aligned to the north, BLM land is shown in light yellow, State trust land is blue, and LMCR land is orange:



LMCR's BLM grazing allotment falls generally inside the red fenceline depicted in the image above, whereas Wagonhound's BLM grazing allotment is to the east.

[¶5] On April 21, 2023, Wagonhound sent LMCR a letter expressing interest in purchasing legally enforceable access to Parcel 1. It also shared its intent to construct a partition fence around Parcel 1. After Wagonhound's effort to secure access to Parcel 1 proved unsuccessful, it filed a complaint with the district court to establish a private road pursuant to Wyoming's private road statute. *See* Wyo. Stat. Ann. §§ 24-9-101-105 (2026).

### A. Initial Proceedings

[¶6] The district court held an initial hearing to determine the necessity of establishing a private road. The district court found Wagonhound established necessity because it did not have legally enforceable access to Parcel 1. Although Wagonhound has an outlet from Parcel 1 to adjoining BLM land, the court reasoned that Parcel 1 is still "landlocked"

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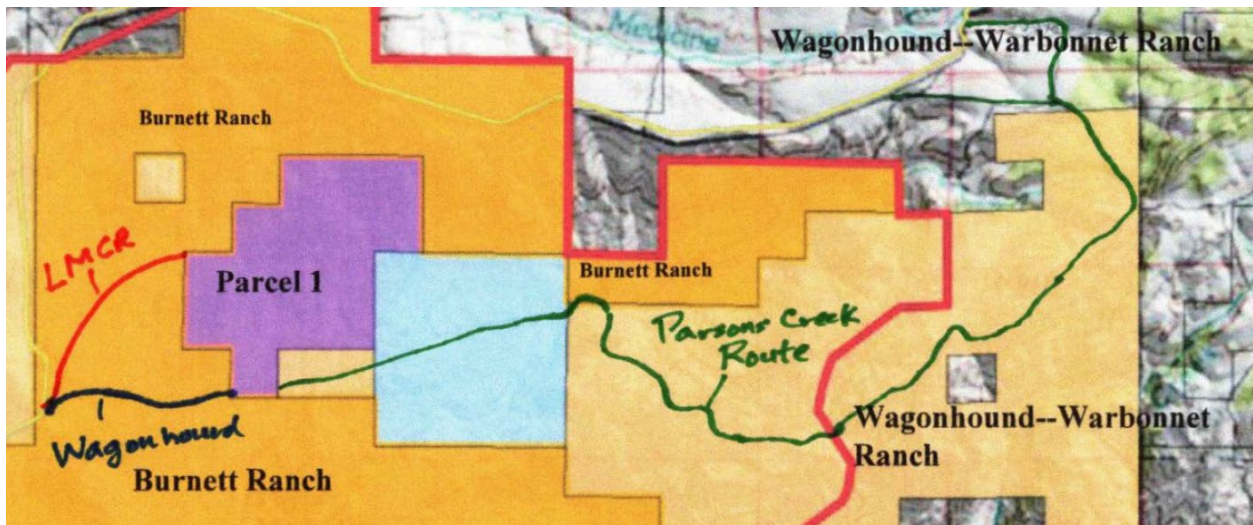
<sup>1</sup> In 2023, this Court affirmed a district court decision to quiet title to Parcel 1 to Wagonhound following an effort by LMCR to claim the parcel through adverse possession. *See generally, Little Medicine Creek Ranch, Inc. v. d'Elia Trustee of the d'Elia Fam. Trust*, 2023 WY 30, 527 P.3d 856 (Wyo. 2023).

because vehicle access is controlled by LMCR. The district court also rejected a claim by LMCR that Wagonhound failed to bring its private road action in good faith.

[¶7] As required by statute, the district court appointed three disinterested viewers and appraisers (the Viewers) to “locate and mark out a private road and alternative routes as they deem appropriate ...” Wyo. Stat. Ann. § 24-9-101(h) (2026). The district court issued its instructions for the Viewers and appointed Don Schramm, Jon Keil, and Professor Alan Romero. Mr. Schramm is a licensed surveyor and former BLM employee once responsible for supervising transportation planning, road construction, road maintenance, and easement acquisition. Mr. Keil is a rancher, outfitter, real estate broker, and licensed attorney. Professor Romero teaches introductory and advanced property law courses at the University of Wyoming College of Law. He also instructs classes on real estate finance, land use law, and agricultural law. Professor Romero’s scholarship similarly focuses on property law, land use, and takings.

## **B. Locating the Private Road**

[¶8] The district court instructed the Viewers to consider the two routes identified by the parties in their pleadings. The map below, aligned to the north, depicts the general location of the potential routes:



### *1. Wagonhound’s Proposed Route*

[¶9] Wagonhound proposed connecting the southern end of Parcel 1 with a county road by relying, in part, on an existing route LMCR uses to access its seasonal headquarters. The first 0.8 miles of this proposed route from the county road is a “marginal road” until the point where LMCR turns off to its headquarters. After that fork, the proposed route is a two-track road until it reaches the southern portion of Parcel 1.

## 2. *LMCR's Alternative Route*

[¶10] The alternative route LMCR recommended joins the county road at the same point as the proposed route but follows a developed road for one mile until arriving at a gravel pit owned by LMCR. From there, Wagonhound would need to construct a new segment of road approximately 1/3 of a mile long to access Parcel 1. However, a rocky ridge separates the gravel pit from Parcel 1. As a result, it would require significant construction to complete the route.

## 3. *The Parsons Creek Route*

[¶11] In addition to identifying its alternative route for the private road, LMCR's answer alleged a private road is not necessary because Wagonhound has an outlet from Parcel 1 to the adjoining BLM parcel.<sup>2</sup> The outlet consists of a rough two-track road across the adjoining BLM parcel which then crosses a State trust section before arriving at LMCR deeded land. That existing two-track must then bisect approximately 1,700 feet of LMCR before returning to a larger tract of BLM land to the east.<sup>3</sup> LMCR maintains the outlet from Parcel 1 constitutes access to a public road because the road is on public land.

[¶12] LMCR also maintains the Parsons Creek Route provides Wagonhound with legally enforceable access to Parcel 1 from the east because it can secure authorization from BLM and the State of Wyoming to construct a bypass around LMCR's deeded land, thereby connecting the two BLM tracts through the State trust section. Such a bypass would allow Wagonhound to travel from east to west several miles from Wagonhound's BLM grazing allotment to Parcel 1.

## C. **The Viewers' Report and Recommendations**

[¶13] After conducting a site visit, the Viewers recommended locating the private road along Wagonhound's proposed route. The Viewers determined the proposed route "is the most reasonable and convenient" and is "shorter and more direct" than the alternative route

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<sup>2</sup> The private road statute requires a defendant's answer to "set forth the location and description" in a specified manner of "any alternative routes proposed by the defendant and the owners of record." Wyo. Stat. Ann. § 24-9-101(b) (2026). LMCR's answer identified the alleged outlet from Parcel 1 in its answer but did not set forth the complete Parsons Creek Route as an alternative route as required by statute. LMCR maintains it did not designate the Parsons Creek Route in its answer because it believes the route is a public road. Later, LMCR asked the district court to consider the Parsons Creek Route at trial, and it did so. Because Wagonhound did not object, and the Parsons Creek Route was a basis for the district court's order, we will consider the matter as an issue tried by consent. *See* W.R.Civ.P. 15(b)(2) (For Issues Tried by Consent).

<sup>3</sup> The record offers conflicting positions as to whether LMCR would grant Wagonhound an easement to cross the 1,700 feet of LMCR land to use the Parsons Creek Route. The bulk of the record, however, reflects LMCR's strong opposition to entertain any easement.

offered by LMCR. The Viewers also expressed doubt about the viability of the alternative route. Although the alternative route would allow Wagonhound to use an established road to reach LMCR's gravel pit, the Viewers anticipated the rocky ridge separating the gravel pit from Parcel 1 would deny Wagonhound winter access to its property.

[¶14] The Viewers also determined the private road along the proposed route would affect 680 acres of LMCR land. They relied on calculations and appraisals from a comparable report, the Lummis Report, used to establish a private road on a property in Albany and Platte County. Unable to find better sales data, the Viewers adopted the value used in the Lummis Report — a \$90 per acre reduced market value for land with a private road easement. The Viewers prepared a “before and after” appraisal and concluded that LMCR suffered \$61,200 in damages from locating the private road along the proposed route.

[¶15] The Viewers made two other recommendations. First, they suggested the private road should not exceed thirty feet in width, with the centerline along the existing ranch road. Second, the Viewers recommended Wagonhound install and maintain culverts and “be responsible for maintaining the road for its use.”

[¶16] While not a proposed route, LMCR asked the Viewers to look at the Parsons Creek Route. The Viewers attempted to traverse the route from the west before turning around halfway due to the steepness and ruggedness of the terrain. One Viewer described the Parsons Creek Route after it leaves the 1,700 feet of LMCR land as “not much more than a trail.” A Wagonhound surveyor similarly attempted to locate the Parsons Creek Route from the opposite direction and reported a similar experience, testifying the route “was more of a trail than a road.”

#### **D. The District Court's Order**

[¶17] Following a two-day bench trial during which the Viewers and the parties' respective witnesses testified, the district court entered an order establishing a private road along the Viewers' recommended route, i.e., Wagonhound's proposed route. It also ordered Wagonhound to pay LMCR the recommended \$61,200 in damages and costs. In adopting the Viewers' damage recommendation, the district court found that “there was no testimony or evidence provided that disputed the viewers' calculations of the 680 acres of affected land, the \$90 dollars per acre of decreased value of the land after the private road is established, nor was there testimony disputing the calculation of the \$61,200 in damages.”

[¶18] The district court also denied LMCR's request to order Wagonhound to pay \$30,000 to \$50,000 per year in alleged “operational damages” because Wyoming Statute, § 24-9-101(j) (2026), does not authorize such damages.

[¶19] Finally, the district court ordered seven conditions on the private road, three of which are disputed in this appeal:

[Condition] 4. Wagonhound is responsible for maintaining the road for its use, including all expenses related to installing culverts, upkeep, and maintenance of the road. Wagonhound is responsible for paying all costs associated with fixing any damage caused to the road, regardless of whether LMCR or Wagonhound, or any associated guests, actually caused the damage.

[Condition] 5. Wagonhound is required to maintain the road so as to minimize extra dust that may affect LMCR's property. Wagonhound shall regularly apply water as a dust suppressant to the road to reduce dust.

[Condition] 6. The only vehicles that will be permitted to use the private road to access Wagonhound's property are vehicles with four or less axels [sic]. Semi-tractor-trailers will not be permitted on the road, unless related to maintenance, repairs, construction, and dust mitigation of the road.

The district court adopted these conditions "to reduce the damage to LMCR's property." It recognized that LMCR requires the gravel operation on its land to use water as a dust suppressant on the gravel pit road and reasoned:

[S]ince LMCR already approves of this dust suppressant method, that is the method the Court will order Wagonhound to perform on the new road. In addition, to decrease dust and any nuisance from extra noises and lights, the Court has determined Wagonhound will not be permitted to use the new road for semi-tractor-trailer traffic in order to mitigate the damage to LMCR's property.

The district court also denied LMCR's request to adopt a condition limiting the private road to only agricultural purposes because LMCR did not provide any evidence that any roads in the area had a similar restriction.

## STANDARD OF REVIEW

[¶20] The district court held a bench trial pursuant to Wyoming Statute § 24-9-103(a) (2026). We therefore review the district court's "findings of fact for clear error, and its conclusions of law *de novo*." *Sharpe v. Timchula*, 2019 WY 121, ¶ 19, 453 P.3d 761, 766 (Wyo. 2019) (citing *Clark v. Ryan Park Prop. & Homeowners Ass'n*, 2014 WY 169, ¶ 6, 340 P.3d 288, 289 (Wyo. 2014)). When reviewing a district court's factual findings for clear error, we have stated:

The factual findings of a judge are not entitled to the limited review afforded a jury verdict. While the findings are presumptively correct, the appellate court may examine all of the properly admissible evidence in the record. Due regard is given to the opportunity of the trial judge to assess the credibility of the witnesses, and our review does not entail reweighing disputed evidence. Findings of fact will not be set aside unless they are clearly erroneous. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. In considering a trial court's factual findings, we assume that the evidence of the prevailing party below is true and give that party every reasonable inference that can fairly and reasonably be drawn from it. We do not substitute ourselves for the trial court as a finder of facts; instead, we defer to those findings unless they are unsupported by the record or erroneous as a matter of law. The district court's conclusions of law are reviewed de novo.

*Boot Ranch, LLC v. Wagonhound Land & Livestock Co., LLC*, 2024 WY 136, ¶ 23, 560 P.3d 887, 893 (Wyo. 2024) (citations omitted).

## **DISCUSSION**

### **I. Wagonhound proceeded with the private road action in good faith.**

[¶21] LMCR maintains the district court erred in finding Wagonhound acted in good faith when it initiated its private road action. According to LMCR, Wagonhound acted in bad faith when it: (1) failed to make a firm offer to purchase a private easement; (2) demanded LMCR share the cost of a partition fence; and (3) bid on an adjoining State trust land lease during the private road proceedings.

[¶22] Proceeding in good faith is a substantive requirement for commencing a private road action. *Lavitt v. Stephens*, 2015 WY 57, ¶ 18, 347 P.3d 514, 519 (Wyo. 2015). “Our definition of good faith is that it encompasses an honest, lawful intent, and actions taken without knowledge of fraud and without any intent to assist in any fraudulent or otherwise unlawful scheme.” *Williston Basin Interstate Pipeline Co. v. Wyo. Pub. Serv. Comm’n*, 996 P.2d 663, 668 (Wyo. 2000) (quoting *Brown v. Avery*, 850 P.2d 612, 617 (Wyo. 1993) (Thomas, J., specially concurring)); see also *Mayland v. Flitner*, 2001 WY 69, ¶ 16, 28 P.3d 838, 845 (Wyo. 2001).

[¶23] LMCR argues Wagonhound did not comply with the good faith requirement because it did not offer a “definite price” for purchasing access to Parcel 1. The statute, in relevant part, requires a complaint for establishing a private road to provide, “[a] description of the plaintiff’s efforts to purchase a legally enforceable access to a public road[.]” Wyo. Stat. Ann. § 24-9-101(a)(iii) (2026).

[¶24] In its complaint, Wagonhound stated it contacted LMCR through written letters and phone conversations inviting negotiations to purchase private road access, and that those conversations were unsuccessful. Indeed, an April 21, 2023, letter to LMCR from Wagonhound identified Parcel 1, described its proposed route for the private road, and stated, “we hereby offer to purchase a thirty-foot (30’) non-exclusive access right-of-way, fifteen feet on either side of centerline of the existing ranch roads and as indicated on the [attached] maps.” That letter also stated Wagonhound was “willing to offer LMCR the difference between the appraised value of its land with and without the proposed easement or a fair price per rod for acquisition.”

[¶25] We find no textual support for the notion that Wyo. Stat. Ann. § 24-9-101(a)(iii) (2026) required Wagonhound to make a sum certain offer to purchase legal access before initiating its private road action. *See, e.g., Adekale v. State*, 2015 WY 30, ¶ 13, 344 P.3d 761, 765 (Wyo. 2015) (stating “we will not add language or choose other words to change the meaning of a statute.”) (citation omitted). Wagonhound’s offer to purchase access was not evasive; it constituted a reasonable effort to start negotiating with LMCR. Because Wagonhound attempted to purchase access, and then described those efforts in its complaint, it satisfied the requirements of Wyo. Stat. Ann. § 24-9-101(a)(iii) (2026).

[¶26] LMCR also argues Wagonhound acted in bad faith because it sought to construct a partition fence around Parcel 1. In its offer to purchase access to Parcel 1, Wagonhound notified LMCR it intended to construct a partition fence around the inholding and seek one-half of the cost for constructing the fence from LMCR. Under Wyoming law, “the owner of any lawful fence which is or becomes a partition fence separating the owner’s land from that belonging to some other person may require the person to pay for one-half (½) of what it would or does actually cost to construct the partition fence.” Wyo. Stat. Ann. § 11-28-106(a) (2026). As the owner of Parcel 1, Wyoming law entitles Wagonhound to construct the partition fence and recover one-half of the cost from LMCR. Absent any argument the proposed fence is unlawful, Wagonhound’s plans to construct a partition fence does not amount to bad faith. *See* Wyo. Stat. Ann. § 11-28-102 (2026) (defining lawful fences generally).

[¶27] Finally, LMCR claims Wagonhound acted in bad faith by filing a conflicting State grazing lease application after filing its private road action. Wagonhound’s conflicting lease application competed with LMCR for access to grazing on State lands adjacent to Parcel 1. LMCR’s argument lacks merit. Any conflicting application for a grazing lease on State trust lands must be filed by a qualified applicant and submitted within a narrow

statutory window. *See, e.g.*, Wyo. Stat. Ann. § 36-5-104(b)(2026) (process for filing a conflicting application to lease grazing and agricultural lands). Although LMCR suggests Wagonhound’s application was filed for unscrupulous reasons, the timing of that application was dictated by the term of the existing lease and Wyoming statute. LMCR also takes issue with acknowledgements and statements Wagonhound made in its application about its access and existing fencing in relation to the State trust land. Considering good faith is a *prerequisite* to commencing a private road action, in this context, LMCR’s argument is unconvincing. *See Mayland*, ¶ 13, 28 P.3d at 843 (“This court has found good faith in bringing the application is an essential prerequisite.”). Otherwise, any allegation against Wagonhound regarding their application for a State grazing lease is best addressed by the State Board of Land Commissioners.

[¶28] Wagonhound acted lawfully and complied with Wyo. Stat. Ann. § 24-9-101(a)(iii) (2026) in initiating the private road action. The district court did not err when it concluded Wagonhound proceeded in good faith.

## **II. The district court did not err in finding a necessity for the private road.**

[¶29] “Wyoming’s private road statute was enacted to ensure that a landowner who otherwise has no access to his property is able to use his land for productive purposes.” *Thornock v. Esterholdt*, 2016 WY 63, ¶ 15, 375 P.3d 750, 754 (Wyo. 2016) (citations omitted). The statute outlines the circumstances under which a private road will be considered and the information required to support a private road complaint. *See* Wyo. Stat. Ann. § 24-9-101(a) (2026) (requirements for commencing a private road complaint). “The taking of property for a private road is, however, constitutionally restricted, and any private road applicant must make a threshold showing that the road is a necessity.” *Thornock*, ¶ 16, 375 P.3d at 755 (citing *Reidy v. Stratton Sheep Co.*, 2006 WY 69, ¶ 11, 135 P.3d 598, 604 (Wyo. 2006)); *see also In re Crago*, 2007 WY 158, ¶ 17, 168 P.3d 845, 854 (Wyo. 2007) (“Wyo. Const. Art. I, § 32 mandates that in order to constitutionally justify a private condemnation of property, there must be necessity.”).

[¶30] The district court must hold an initial hearing to determine whether the plaintiff has satisfied the requirements of the statute and that “access is necessary because the plaintiff has no legally enforceable access.” Wyo. Stat. Ann. § 24-9-101(h) (2026). Once a plaintiff proves there is no legally enforceable means to gain access to a public road, the plaintiff has demonstrated the “necessity” for a private road. *In re Crago*, ¶ 6, 168 P.3d at 849 (citing *Pine Bar Ranch, LLC v. Luther*, 2007 WY 35, ¶ 9, 152 P.3d 1062, 1066 (Wyo. 2007)) (citation modified).

[¶31] At the initial hearing, the district court concluded Wagonhound demonstrated necessity by showing Parcel 1 was landlocked. LMCR argues the district court erred in its finding because a two-track road to adjoining BLM land provides Wagonhound with an “immediate” outlet from Parcel 1 and connection to what LMCR considers a public road.

Additionally, LMCR argues the two-track road on BLM land provides Wagonhound with access to a public road via the Parsons Creek Route.

[¶32] LMCR land prevents the two-track road outlet from Parcel 1 from connecting to the Parsons Creek Route. Therefore, we will bifurcate LMCR’s necessity arguments. We will first consider whether the BLM two-track road in and of itself is a public road, then we will determine whether the Parsons Creek Route provides Wagonhound with legally enforceable access to a public road.

**A. The adjoining BLM land does not provide Wagonhound with an outlet to or connection with a public road.**

[¶33] An isolated tract of BLM land adjoins Parcel 1 to the east. A primitive two-track leads from Parcel 1, crosses the BLM land, bisects a section of State trust land, and then reaches LMCR property. Because that route provides Wagonhound with a point of egress from Parcel 1 to a road on public land, LMCR argues Wagonhound has an outlet to and connection with a public road.

[¶34] “The [Wyoming private road] statute does not require connection with a public road that is state or county controlled.” *McGuire v. McGuire*, 608 P.2d 1278, 1287 (Wyo. 1980). As a matter of law, we have held “a road over federal lands may be considered a public road within the meaning of our private road statutes, provided the characteristics of the road indicate it is available to the general public.” *Reidy*, ¶ 19, 135 P.3d at 606. In the absence of a statutory definition, we define a “public road” as “one that the public generally — not merely a portion of the public — is privileged to use.” *Reidy*, ¶ 13, 135 P.3d at 605 (quoting *McGuire*, 608 P.2d at 1287-88).

[¶35] LMCR equates Wagonhound’s legal access to adjoining public land as access to a public road for purposes of the private road statute. But LMCR’s argument requires this Court to conclude that having a point of egress from a landlocked parcel alone is sufficient to demonstrate a lack of necessity for a private road. That argument is inconsistent with the plain language in the statute. Wyoming’s private road statute provides “[a]ny person whose land has no outlet to, **nor** connection with a public road” may commence a private road action. Wyo. Stat. Ann. § 24-9-101(a) (2026) (emphasis added). Because “nor” is a coordinating conjunction meaning “and not” the plain language of the statute requires both an outlet and connection with a public road. *See* *nor*, Webster’s Third New International Dictionary (2023) (“and not – often used with inversion of subject and predicate after an affirmative that is equivalent to or implies a negative”); *and Wyo. Dep’t of Revenue v. PacifiCorp*, 2025 WY 126, ¶ 36, 580 P.3d 491, 501 (Wyo. 2025) (recognizing we “construe each statutory provision *in pari materia*, giving effect to every word, clause, and sentence according to their arrangement and connection.”) (citations omitted). The controlling question, therefore, is whether the two-track road on the adjoining BLM land leading from Parcel 1 possesses the characteristics of a public road.

[¶36] Practical considerations govern our determination as to whether a road is a public road. *See, e.g., McGuire*, 608 P.2d at 1287 (relying on evidence and testimony of actual, longstanding public use of a BLM road); *Reidy*, ¶ 20, 135 P.3d at 606-07 (noting evidence the Forest Service improved and maintained the road); *Thornock*, ¶ 23, 375 P.3d at 757 (evidence the BLM road was open for public recreation and casual use); *see also Pine Bar Ranch, LLC*, ¶¶ 14-15, 152 P.3d at 1068-69 (considering the Bureau of Indian Affairs regulatory definition of a public road and evidence road use was limited to ranch employees). The Court also does not presume a road is public merely because the road is in the public domain. *See Wagstaff v. Sublette Cnty. Bd. of Cnty. Comm'rs*, 2002 WY 123, ¶ 17, 53 P.3d 79, 8384 (Wyo. 2002) (noting the absence of evidence that the public has the privilege to traverse unimproved dirt tracks on State trust and BLM land).

[¶37] Only surrounding landowners or their employees are known to have ever used the two-track road across the isolated BLM tract adjoining Parcel 1. BLM's grazing allotment map indicates the existence of this two-track road and shows all points leading to/from the road blocked by private land – Parcel 1 to the west, LMCR to the south and north, and after crossing the State trust land LMCR to the northeast. At the necessity hearing, a BLM employee expressed doubt as to whether the BLM portion of the road is publicly accessible because private land thwarts any vehicle access. Specifically, the existing two-track road must cross 1,700 feet of private land owned by LMCR before crossing back onto BLM land.

[¶38] LMCR maintains we can rely on *Thornock* to conclude Wagonhound has access to a public road. In *Thornock*, the Court considered whether a two-track road on public land connecting the petitioning landowner's south and north properties was a public road. *Thornock*, ¶¶ 22-28, 375 P.3d at 756-57. There, the petitioning landowner controlled both ends of the two-track road and claimed it was not a public road because he selectively determined which members of the public were allowed to use the road. *Id.*, ¶ 24, 375 P.3d at 756-57. We found the two-track was a public road because the relevant land management agency considered it open to public use, and but for petitioners' gatekeeping, the road provided recreational access to the public. *Id.*, ¶¶ 25-28, 375 P.3d at 757.

[¶39] However, LMCR conceded at oral argument *Thornock* is distinguishable. Unlike that case, all access to the isolated BLM two-track is controlled by LMCR. The two-track road, therefore, is a dead end for Wagonhound — after leaving Parcel 1, vehicles can only access the adjoining BLM tract or State trust lands until reaching LMCR property. Likewise, LMCR's land prevents vehicle traffic from accessing the two-track road in the opposite direction. Accordingly, *Thornock* is not persuasive here.

[¶40] Because no evidence was offered at trial showing the public has ever used the BLM two-track road, our reasoning in *Wagstaff* controls. *See Wagstaff*, ¶ 17, 53 P.3d at 83-84 (noting the absence of any evidence that the public generally has the privilege to traverse

the unimproved dirt tracks on federal and State trust land). In that case, we found the unimproved dirt tracks crossing BLM and State trust lands were not a public road because BLM did not maintain it, the route was only slowly passable during summer months, and it was only used occasionally by hunters. *Id.*, ¶¶ 15-20, 53 P.3d at 83-84. None of the practical considerations we typically consider are present, and trial testimony reveals only adjoining landowners or their employees are known to have accessed the adjoining BLM tract. *Id.*; see also *Pine Bar Ranch*, ¶ 15, 152 P.3d at 1069 (finding the access road in question was not a public road based on the limited class of individuals (e.g., employees, former employees, and family members) allowed to access the road).

[¶41] Given the physical isolation of the two-track segment, and the lack of evidence that the public has ever accessed it, the outlet is not to a public road. See *Reidy*, ¶ 13, 135 P.3d at 605 (reiterating “[a] public road is one that the public generally—not merely a portion of the public—is privileged to use.”). The district court did not err when it concluded Wagonhound satisfied the necessity requirement of the private road statute.

**B. The Parsons Creek Route does not provide Wagonhound with an existing outlet to or connection with a public road.**

[¶42] Alternatively, LMCR challenges the district court’s necessity finding by arguing that Wagonhound has access to a public road because it can secure BLM authorization to construct a new road around LMCR, thereby connecting the two-track road with the Parsons Creek Route. That argument is unconvincing and inconsistent with the private road statute.

[¶43] We have held that the “no outlet to, nor connection with” language in Wyoming Statute § 24-9-101(a) means “no legally enforceable, **existing** outlet to nor connection with a public road.” *Reaves v. Riley*, 782 P.2d 1136, 1137 (Wyo. 1989) (citing *McGuire*, 608 P.2d at 1286) (emphasis added). The bypass LMCR wants Wagonhound to use does not physically exist; therefore, the Parsons Creek Route does not provide Wagonhound with a legally enforceable connection to a public road.

[¶44] In lieu of constructing its own public land bypass, LMCR maintains Wagonhound can obtain a permit to trail livestock with dirt bikes across the roadless section of BLM land. An authorization to trail livestock across open range is not the type of “outlet” or “connection” contemplated by Wyo. Stat. Ann. § 24-9-101 (2026). See *Reaves*, 782 P.2d at 1137 (noting a legal right to cross a property alone, is not an “outlet” for purposes of the private road statute). LMCR’s open range trailing suggestion also tacitly concedes the very point it seeks to refute – Parcel 1 is landlocked and only accessible by vehicle across LMCR land.

[¶45] Even if a bypass road connecting the BLM two-track road and the Parsons Creek Route existed, the district court concluded the Parsons Creek Route was not a reasonable,

convenient, or practical option. *See Tilden v. Jackson*, 2025 WY 57, ¶ 13, 568 P.3d 1197, 1202 (Wyo. 2025) (recognizing courts must also “inquire into the convenience of using the available public road.”) (citing *Thornock*, ¶ 18, 375 P.3d at 755). LMCR claims the district court lacked evidence to weigh the inconvenience of the Parsons Creek Route. We disagree; the record unequivocally supports the district court’s findings.

[¶46] The Parsons Creek Route does not appear on the BLM master plat or the Parsons Creek grazing allotment map. A BLM employee expressed doubt at the necessity hearing about the existence of the Parsons Creek Route and testified he could not locate it using aerial imagery. He also confirmed no BLM rights-of-way existed within the grazing allotment, which typically would indicate the existence of a road. A second BLM employee, a range specialist, confirmed his colleague’s conclusion.

[¶47] The Wagonhound surveyor, Mr. Neumiller, mapped the Parsons Creek Route during an effort to find access to Parcel 1 from the east. That effort proved difficult and required extensive route finding. Mr. Neumiller testified the Parsons Creek Route “was more of a trail than a road” by the time he reached the BLM grazing allotment boundary. As the route narrowed, Mr. Neumiller was forced to exchange his side-by-side for an ATV to navigate the remaining few miles of terrain. Mr. Neumiller ended his survey where the Parsons Creek Route met and continued onto LMCR land. When the Viewers attempted to traverse the Parsons Creek Route from the opposite direction, they abandoned their efforts halfway through after concluding it was not a reasonable route, also describing it as “not much more than a trail.”

[¶48] LMCR land prevents the Parsons Creek Route from connecting with the two-track outlet from Parcel 1. The evidence presented at the necessity hearing and trial also shows the Parsons Creek Route does not provide vehicle access to Parcel 1. Whether we consider the two-track road leading from Parcel 1 in isolation, or the Parsons Creek Route in its entirety, neither route offers Wagonhound legally enforceable access to a public road. The district court’s finding that a private road was necessary for Wagonhound to access Parcel 1 was not clearly erroneous.

### **III. The district court did not err in selecting the route for the private road.**

[¶49] The Viewers recommended locating the private road along the route proposed by Wagonhound. The district court then adopted the Viewers’ recommendation, concluding it was the most reasonable and convenient route. LMCR argues the Viewers and district court clearly erred in selecting this route because it is “more damaging” to LMCR than LMCR’s alternative route. Because the proposed route and LMCR’s alternative route meet the public road at the same point, LMCR also asserts the district court should have found both routes equally convenient.

**A. The Viewers’ statutory requirement to recommend “the most reasonable and convenient route” is distinct from their duty when locating and marking out a private road.**

[¶50] Section 101(h) establishes statutory requirements for both locating and determining the route for a private road. Wyo. Stat. Ann. §§ 24-9-101(h) (2026). With respect to route selection, “[t]he viewers must recommend to the court, and the court must select, the most reasonable and convenient route, provided that access shall be along section and boundary lines whenever practical.” *Sharpe*, ¶ 22, 453 P.3d at 767 (citing Wyo. Stat. Ann. §§ 24-9-101(h), -103(a)) (internal quotations omitted). LMCR’s argument that the Viewers erred in “selecting a more damaging route” is inconsistent with the statute because it suggests the Viewers were required to select the least damaging route.

[¶51] The plain text of Section 101 requires Viewers to “recommend to the court the most reasonable and convenient route . . . .” Wyo. Stat. Ann. § 24-9-101(h) (2026). Correspondingly, Section 103 requires the district court to “select the most reasonable and convenient route for the access, . . . .” Wyo. Stat. Ann. § 24-9-103 (a) (2026).

[¶52] The Viewers’ statutory requirement to recommend “the most reasonable and convenient route” is distinct from their duty to physically “locate and mark out” a private road. Wyo. Stat. Ann. § 24-9-101(h) (2026). This court has discussed, at length, the series of amendments to the private road statute. *See Whaley v. Flitner Ltd. P’ship*, 2017 WY 59, ¶¶ 16-23, 395 P.3d 653, 659-61 (Wyo. 2011) (comparing 2011 enactments with the 1985 revision); *Sharpe*, ¶ 31, 453 P.3d at 770, n.9 (discussing 2013 amendment to vest district courts with authority to adjudicate private road actions). The requirement that a proposed road, “shall be located so as to do the least possible damage to the lands through which the private road is located” has not changed since 1985.<sup>4</sup> *Compare* 1985 Session Laws ch. 88, §§ 1-3; *with* Wyo. Stat. Ann. § 24-9-101(h) (2026). Notably, the 1985 statute gave significant weight to the petitioner in proposing the route for a private road. *Whaley*, ¶ 18, 395 P.3d at 659-60; *see also Goodman v. Voss*, 2011 WY 33, ¶ 31, 248 P.3d 1120 (Wyo. 2011) (recognizing under the 1985 statute the petitioner had the right to choose any “reasonable and convenient” route for the proposed private road), *superseded by statute on other grounds*.

[¶53] We have interpreted the phrase “least possible damage” in the context of the Viewers’ obligation to locate and mark “the exact location of the road so that it will do the least possible damage to the land through which it passes.” *Dunning v. Ankney*, 936 P.2d 61, 65 (Wyo. 1997); *see also Whaley*, ¶ 18, 395 P.3d at 660 (stating the statute requires Viewers to “locate and mark a private road in accordance with the [petitioners] application or in such other manner and location as they deem appropriate.”) (citing 1985 Session Laws

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<sup>4</sup> We note, however, this language was reorganized into a new subsection (h) in 2000 when Section 101 was restructured. 2000 Session Laws Ch. 88, *codified at* Wyo. Stat. Ann. § 24-9-101(h).

ch. 88, §§ 1-3). And unless otherwise altered by the Legislature, our precedents of this statute hold. *See* Wyo. Stat. Ann. § 24-9-105(b) (“The legislature further intends that the precedents established with respect to the creation of private roads prior to the July 1, 2013, amendments to this article should continue to be followed to the extent they are not inconsistent with the provisions of this article.”).

[¶54] The most recent 2013 amendments to the private road statute vested district courts with the authority to adjudicate private road actions. *Sharpe*, ¶ 31, 453 P.3d at 770, n.9. But those amendments did not alter the Viewers’ obligation to locate the road to do the least possible damage to the land through which the private road is located. 2013 Session Laws ch. 99, § 2.

[¶55] Viewers have a duty to locate a road to do the least possible damage to the lands through which the private road is located. Wyo. Stat. Ann. § 24-9-101(h). For example, viewers may need to physically locate the private road around existing infrastructure, crop lands, or structures to avoid needless damage. And we remain confident in our interpretation because adopting LMCR’s position would result in a potentially incongruent outcome where the Viewers would have to adopt a route with the least possible damage, but the district court would not. *See* Wyo. Stat. Ann. § 24-9-103(a) (only requiring the district court to “select the most reasonable and convenient route”); *see also PacifiCorp*, ¶ 48, 580 P.3d at 503 (stating we consider “every word in the statute so as to make it harmonious and reasonable in its operation”) (citation omitted).

[¶56] On the other hand, route selection must provide for “the most reasonable and convenient route.” Wyo. Stat. Ann. §§ 24-9-101(h), -103(a). While the amount of damage a particular route might cause to the burdened estate is a factor in the reasonableness of a route, it is not conclusive. *See, e.g. Whaley*, 2017 WY 59, ¶ 41 (affirming route selection where several factors including “which road would cause the least damage to property over which it passes” were used in assessing the reasonableness and convenience of a private road). Neither the Viewers nor the district court erred in recommending and selecting Wagonhound’s proposed route for the private road.

#### **B. The proposed route is the most reasonable and convenient route.**

[¶57] The Viewers recommended selecting Wagonhound’s proposed route because it is shorter and more direct than LMCR’s alternative route. This recommended route follows an existing marginal road that transitions into a two-track road. Although Wagonhound’s proposed route will require it to perform moderately more improvement than LMCR’s alternative route, the last portion of the alternative route would require an entirely new segment of road. As a result, the Viewers determined Wagonhound’s proposed route provided more reasonable access than LMCR’s alternative route.

[¶58] Specifically, the alternative route identified by LMCR follows a well-built, developed road until it reaches a gravel pit. As the Viewers explained, Wagonhound would need to build a new segment of road across a rocky ridge to access Parcel 1.

[¶59] LMCR does not offer any legal authority to support its argument that both routes are equally convenient because they meet the public road at the same point. The plain text of the statute, however, dispels that notion because Viewers and the district court must select “the most reasonable and convenient **route** for the access” which indicates the entire course of travel, not just the point of egress. Wyo. Stat. Ann. §§ 24-9-101(h); -103(a) (emphasis added); *see also route*, Webster’s Third New International Dictionary (2023) (defining “route” as a “traveled way” in the context of a road or highway).

[¶60] The record supports the district court’s conclusion that the proposed route is the most reasonable and convenient route for the private road. The alternative route traverses a longer distance across LMCR land and Wagonhound would face a difficult and costly construction effort to build a road over a rocky ridge to reach Parcel 1. Moreover, the Viewers doubted Wagonhound could access Parcel 1 during winter conditions via the alternative route. This Court has declined to second guess a private road designation where the alternative route was technically “doable” but “came in second” with respect to its reasonableness and convenience. *Sharpe*, ¶ 31, 453 P.3d at 769 (citing *Whaley*, ¶ 40, 395 P.3d at 665; *In re Crago*, ¶ 18, 168 P.3d at 855). We find no error in the district court’s selection of the proposed route as the course for the private road.

#### **IV. The district court did not err in awarding LMCR damages.**

[¶61] The district court adopted the Viewers’ damage recommendation after finding LMCR did not provide any evidence or testimony at trial disputing the \$61,200 calculation. LMCR argues the district court erred when it adopted the Viewer’s recommendation because it afforded too much credibility to the Viewers’ Report and did not consider LMCR’s spoliation testimony. LMCR also asserts that the district court ignored evidence supporting its claims for operational damage associated with the private road.

[¶62] LMCR asks this Court to reweigh the evidence presented at the bench trial. Under the applicable standard of review, “[w]e do not reweigh disputed evidence[.]” *In re J. Kent Kinniburgh Revocable Tr.*, 2023 WY 56, ¶ 21, 530 P.3d 579, 586 (Wyo. 2023) (citation omitted). We instead, “defer to [the district court] findings unless they are unsupported by the record or erroneous as a matter of law.” *Tilden*, ¶ 18, 568 P.3d at 1204 (citation omitted).

##### **A. The record substantiates the Viewers’ Report calculation of damages.**

[¶63] LMCR argues the record contains no evidence about why the Lummis Report is relevant to the damage assessment in this case. We read the record differently. The

Viewers explained that the Lummis Report identified four sales of comparable ranch properties, two sold without private road easements and two sold with private road easements. Much like this case, the Lummis Report involved an appraisal for a private road action in a similar setting and area of Wyoming. Because the Viewers “were unable to find better comparable sales with and without private road easements” they used the data and assumptions from the Lummis Report. At trial, each Viewer confirmed his general agreement to use the Lummis Report data and analysis. While Mr. Keil, who served as a viewer on the Lummis Report, noted the comparison was not perfect, he considered it the best option under the circumstances.

[¶64] LMCR also asserts the district court should not have relied upon the Viewers’ Report because the Viewers could not explain the Lummis Report methodology at trial. The Viewers’ inability to recall how the Lummis Report arrived at its inputs during the trial is not a source of clear error because the record contains sufficient evidence of the Viewers’ methodology. *See, e.g., Winter v. Pleasant*, 2010 WY 4, ¶ 28, 222 P.3d 828, 839-40 (Wyo. 2010) (affirming district court’s damage calculations under the clear error standard where sufficient evidence existed in the record to support the disputed calculation, even if that evidence is drawn from various sources in the record). The Viewers’ Report states that the Viewers relied on the \$90 per acre reduced value resulting from a private road easement because they were unable to find better comparable sales. Mr. Keil testified the Lummis Report included work prepared by a professional appraiser. Accordingly, the Viewers attached the Lummis Report to their findings because it showed the assumptions used to produce the \$90 per acre adjustment.

[¶65] The district court found “there was no testimony or evidence provided that disputed the viewers’ calculations of the 680 acres of affected land, the \$90 dollars per acre of decreased value of the land after the private road is established, nor was there testimony disputing the calculation of the \$61,200 in damages.” The record supports the district court’s finding. While Mr. Shane Cross testified on behalf of LMCR, his damages testimony focused on indirect operational damages and did not challenge the Viewers’ calculations.

[¶66] At a bench trial, the district court is “free to make credibility determinations, draw inferences, and assign weight to evidence in any manner supported by the record.” *Little Medicine Creek Ranch, Inc. v. D’Elia*, 2019 WY 103, ¶ 43, 450 P.3d 222, 234 (Wyo. 2019). Here, the district court agreed with the recommendation to award \$61,200 to LMCR after considering the Viewers’ Report and supporting testimony. Because the Viewers’ findings are supported by the record, the district court’s award of damages was not clearly erroneous.

**B. The Wyoming private road statute does not require an appraisal to consider indirect operational damages.**

[¶67] LMCR maintains the Viewers’ appraisal failed to consider its demand for future operational damages. As a result of the private road, LMCR argues it will suffer livestock losses from dust-induced pneumonia, increased staffing expenses, and loss of hunting opportunities.

[¶68] The private road statute establishes a straightforward “before and after” test for calculating damages associated with a private road:

In determining any damages to be suffered by a defendant, the viewers and appraisers shall appraise the value of the property affected by the road before and after the road is in place. Damages also may include reasonable compensation for any improvements on the lands over which any private road is to be granted which were not paid for and will be used by the plaintiff.

Wyo. Stat. Ann. § 24-9-101(j) (2026); *see also Sharpe*, ¶¶ 36-37, 453 P.3d at 771 (discussing the Legislature’s incorporation of the “before and after” test). The use of the word “shall” in the statute means viewers and appraisers must use this method to calculate damages. *Id.*, ¶ 38, 453 P.3d at 771 (citing *Stutzman v. Office of Wyo. State Eng’r*, 2006 WY 30, ¶ 17, 130 P.3d 470, 475 (Wyo. 2006)). In other words, the plain language of the private road statute sets forth “one, and only one, method by which damages may be calculated—a ‘before and after’ appraisal—and then allows damages to include reasonable compensation for any improvements on the lands.” *Id.*

[¶69] The term “before and after” appraisal is a “phrase of art in the appraisal business.” *In re Crago*, ¶ 20, 168 P.3d at 855 (citations omitted). For the purposes of the private road statute, we recognize a before and after appraisal should be conducted as follows:

[V]iewers and appraisers must: first, determine the value of the property over which the road crosses before the private road is established; second, determine the value of the property over which the road crosses after the private road is established; and third, subtract the “after” value from the “before” value, which equals the damages due the owners of land over which the road crosses. In applying this formula, the viewers and appraisers are to determine the “before” and “after” value only of those lands over which the private road crosses; not ... the “before” and “after” value of all surrounding lands affected by the proposed road.

*Sharpe*, ¶ 36, n.13, 453 P.3d at 771 (citing *Mayland*, ¶ 35, 28 P.3d at 850-51). The Viewers’ Report detailed their calculations which, as the district court acknowledged, followed the

before and after appraisal process outlined above. Nonetheless, LMCR maintains its future operational losses should have been considered using this method.

[¶70] The plain language of Section 101(j) is unambiguous. *Sharpe*, ¶ 38, 453 P.3d at 771. The statute authorizes damages for the actual property affected when it uses the phrase “the value of the property affected by the road before and after the road is in place” and “reasonable compensation for any improvements on the lands over which any private road is to be granted which were not paid for and will be used by the plaintiff.” Wyo. Stat. Ann. § 24-9-101(j) (2026).

[¶71] LMCR offers no statutory support for the notion that Section 101(j) provides for the recovery of indirect business-related damages. We have also found no instance where the “before and after” method included indirect damages in an appraisal. In the absence of any textual support for awarding LMCR its claimed operational damages, we find future business losses fall outside the plain language of Wyoming Statute § 24-9-101(j) (2026). *See State Highway Comm’n v. Scrivner*, 641 P.2d 735, 739 (Wyo. 1982) (“Loss of business is not compensable in a condemnation case.”); *see also Mayland*, ¶ 39, 28 P.3d at 852 (discussing Wyo. Const. art. 1, § 33 and concluding just compensation “is only for the fair market value of the property or property right lost or taken. Compensation for the owner’s personal loss is not allowable.”) (citation omitted).

[¶72] The district court did not err when it denied LMCR’s request for operational damages associated with the establishment of the private road.

## **V. The district court erred in adopting Conditions 4 and 6.**

[¶73] Wagonhound challenges three of the conditions the district court imposed on the private road. Specifically, Wagonhound appeals (1) the requirement that Wagonhound maintain the road and fix any damage regardless of who causes the damage; (2) the limitation on vehicles with four or less axles on the road; and (3) Wagonhound’s obligation to suppress dust on the road.

[¶74] Viewers may “recommend specific conditions that the court place on the private road, including provisions for maintenance and limitations on the amount and type of use.” Wyo. Stat. Ann. § 24-9-101(h) (2026). The private road statute then authorizes the district court to “accept, reject or modify the report and recommendations” made by the viewers. Wyo. Stat. Ann. § 24-9-103(a) (2026). The district court must “specify” any conditions it is imposing in its final order. *Sharpe*, ¶ 32, 453 P.3d at 770 (citing Wyo. Stat. Ann. § 24-9-103(a)).

### **A. The district court erred when it ordered Wagonhound is responsible for fixing any damage to the private road regardless of who caused the damage.**

[¶75] The district court ordered Wagonhound to pay “all costs associated with fixing any damage caused to the road, regardless of whether LMCR or Wagonhound, or any associated guests, actually caused the damage.” Wagonhound argues this condition is not supported by evidence, violates public policy, and is punitive considering LMCR has unrestricted access to its portion of the private road.<sup>5</sup>

[¶76] The district court did not make any findings regarding its requirement that Wagonhound pay for any road damage regardless of who caused the damage. As a general matter of law, “the owner of the servient estate may use the land burdened by the easement as long as the use does not interfere with the easement holder’s rights.” *Mueller v. Hoblyn*, 887 P.2d 500, 504 (Wyo. 1994) (citing *Wilkoske v. Warren*, 875 P.2d 1256, 1258 (Wyo. 1994)). “This rule is subject to the qualification that an owner of an easement may not overburden the servient estate.” *Testolin v. Thirty-One Bar Ranch Co.*, 2024 WY 6, ¶ 24, 541 P.3d 455, 463 (Wyo. 2024); *see also Bard Ranch Co. v. Weber*, 557 P.2d 722, 731 (Wyo. 1976) (“A principle which underlies the use of all easements is that the owner of the easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden.”). “Whether a use overburdens the servient estate is a question of fact.” *Id.* (citing *Goodman v. Voss*, 2011 WY 33, ¶ 37, 248 P.3d 1120, 1130 (Wyo. 2011), *superseded on other grounds by statute*).

[¶77] We have found no evidence in the record indicating Wagonhound’s use will overburden the private road. In fact, the record indicates the contrary. Wagonhound’s business interests are consistent with existing uses in the area including grazing, outfitting, and gravel mining. Both parties will also share at least a portion of the private road because LMCR uses the first 0.8 miles to access its seasonal “headquarters” down the draw. Although the Viewers’ Report recommended Wagonhound maintain the private road, the Viewers deferred to general easement law where each party would “have an obligation not to unreasonably interfere with the enjoyment of an easement.” Accordingly, the Viewers did not recommend any additional restrictions on the private road.

[¶78] The district court did not specify why it was necessary to deviate from the general rule of law and to burden Wagonhound, the easement owner, with the exclusive duty of paying for all road damage regardless of who may have damaged the road. Because the district court did not make a factual finding to support this condition, it clearly erred when it adopted the second sentence of Condition 4. *See, e.g., Testolin*, ¶¶ 22-23, 541 P.3d at 462 (finding clear error when no evidence supported the district court’s finding that an easement was restricted).

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<sup>5</sup> Wagonhound does not challenge the first sentence of Condition 4 which provides “Wagonhound is responsible for maintaining the road for its use, including all expenses related to installing culverts, upkeep, and maintenance of the road.”

**B. The district court committed no error when it required Wagonhound to suppress dust.**

[¶79] Condition 5 mandates Wagonhound “minimize extra dust” by requiring it to regularly apply water on the private road as a dust suppressant. Wagonhound objects to this condition because other users of roads in the area, including the gravel pit operator on LMCR’s land, are not required to mitigate dust.

[¶80] Mr. Cross testified the gravel operator applied water on the road leading to LMCR’s gravel pit at peak times to reduce dust. The gravel operator also uses water to suppress dust at the operation site. At trial, LMCR presented evidence about the impact dust had on cattle, its efforts to treat dust induced pneumonia in livestock, and the need for dust suppression. Other witnesses, including the Wagonhound ranch manager, generally corroborated Mr. Cross’ testimony about the impact of dust and cattle pneumonia.

[¶81] The district court found LMCR’s evidence persuasive and concluded it was necessary for Wagonhound to “use dust suppressant methods to reduce extra dust that may occur from increased travel on the road.” Condition 5 is supported by the record; therefore, the district court did not clearly err when it required Wagonhound to minimize extra dust that may result from increased traffic on the private road.

**C. The district court erred when it restricted the private road to vehicles with four axles or less.**

[¶82] Condition 6 states “[t]he only vehicles that will be permitted to use the private road to access Wagonhound’s property are vehicles with four or less axles. Semi-tractor-trailers will not be permitted on the road, unless related to maintenance, repairs, construction, and dust mitigation of the road.” Wagonhound argues the restriction on heavy trucks is not supported by the record.

[¶83] The district court determined it was necessary to prohibit the use of semi tractor-trailer traffic “to decrease dust and any nuisance from extra noises and lights.” We have “adopted the principle that the matter of a nuisance is determined by the effect an annoyance has on ordinary persons and businesses.” *Sheridan Drive-In Theatre, Inc. v. State*, 384 P.2d 597, 600 (Wyo. 1963). Put differently, “[t]he test is not what effect the matter complained of would have on persons who use their land for purposes which require exceptional freedom from deleterious influences, but what effect it would have on persons who use their land for ordinary purposes.” *Id.* (citations omitted).

[¶84] The district court would have us assume any heavy truck traffic across the private road is a *per se* nuisance. But that is not the case. Whether noise and light constitute a nuisance is usually a question of fact. *See Sheridan Drive-In Theatre*, 384 P.2d at 600 (acknowledging “disturbing noises” may constitute a nuisance and stating “light is not

inherently harmful and it does not unreasonably or substantially interfere with the ordinary use and enjoyment of property”); *see also Monaghan Farms, Inc. v. Bd. of Cnty. Comm’rs of Albany Cnty.*, 2023 WY 31, ¶ 59, 527 P.3d 1195, 1215 (Wyo. 2023) (recognizing “lighting impacts, [and] noise impacts” involve questions of fact).

[¶85] Neither the district court nor LMCR cite evidence showing that light or noise from the road will impair LMCR’s ability to use or enjoy its property. Notably, the district court concludes that such “annoyances” already exist because the proposed route is “already consistently traveled and already causes annoyances such as dust and lights from vehicles.” It is also difficult to reconcile the district court’s heavy truck restriction considering that semi-trucks are allowed to use similarly developed roads on other portions of LMCR’s property.

[¶86] The record also suggests vehicle traffic on the private road will not affect LMCR’s headquarters. At the time of trial, nobody lived in the headquarters, but LMCR employees and hunters are known to stay there on occasion. Mr. Cross testified that the house sits below the hill and is not visible from the private road. A Viewer confirmed that fact. Additionally, nothing in the record indicates that heavy trucks would compromise the design or construction of the private road.

[¶87] Although LMCR requested the restriction at trial, there is no evidence in the record to suggest that it was necessary to impose a four-axle limit on trucks using the private road.

[¶88] The district court clearly erred when it ruled Wagonhound would be prohibited from using semi-trucks to address “any nuisance” from extra noises and lights.

**VI. The district court properly rejected LMCR’s request to impose an agricultural-use-only limitation on the private road.**

[¶89] LMCR asked the district court to adopt an agricultural-use-only limitation on the private road. The district court denied LMCR’s request because it lacked evidence showing similar use restrictions in the area. LMCR argues the district court’s reasoning was “not legitimate.” LMCR’s objection is misplaced because this Court has already considered that argument.

[¶90] In *Sharpe*, we affirmed the denial of a similar restriction using nearly identical reasoning. *See Sharpe*, ¶¶ 32-35, 453 P.3d at 770-71 (finding no clear error where the district court rejected a proposed agricultural/residential use restriction on a private road). There, the servient estate sought to prevent the dominant estate from using the private road to support a subdivision. *Id.*, ¶ 10, 453 P.3d at 764. The district court declined the condition, in part, because there was not “sufficient evidence as to why such conditions should be imposed” and because the servient estate was not subject to the same use restriction. *Id.*, ¶ 11, 453 P.3d at 765. The present case is no different in that LMCR

offered no evidence at trial explaining why an agricultural-use-only condition should exist on the private road. The district court correctly relied on the fact that LMCR is not subject to the same limitation in rejecting the proposed limitation.

[¶91] The district court also explained it rejected the proposed condition because “Wagonhound has not had easy access to Parcel 1” and “it would be unfair to hold Wagonhound to a specific, limited use” of the property at this time. LMCR argues this line of reasoning was similarly inappropriate. We find no error in the district court’s reasoning for two reasons. First, there is no dispute that Wagonhound historically has not enjoyed any road access to Parcel 1. Second, Wagonhound cited a range of potential uses consistent with its existing business interests that it might consider for Parcel 1. The district court’s reasoning, therefore, is supported by the record.

[¶92] Limiting a private road to a single lawful use is extraordinary and the district court must have sufficient evidence to warrant imposing such a condition. *See Hulse v. First Am. Title Co. of Crook Cnty.*, 2001 WY 95, ¶ 34, 33 P.3d 122, 133 (Wyo. 2001) (recognizing that the public’s interest in promoting “the productive use of land” is furthered by giving individuals access to the road network); *see also Sharpe*, ¶ 11, 453 P.3d at 765 (discussing district court’s rejection of proposed restriction because it did not offer sufficient evidence). Because LMCR offered no evidence to justify the proposed restriction, the district court did not clearly err when it rejected LMCR’s proposed agricultural-use-only condition.

## CONCLUSION

[¶93] Wagonhound made an offer to purchase access to Parcel 1 and did not act in bad faith in initiating its private road action. The district court did not err when it found necessity for a private road because Parcel 1 is only accessible by vehicle through LMCR land. Similarly, the district court did not err in adopting the Viewers’ recommendation to establish the private road along Wagonhound’s proposed route. LMCR offered no evidence to dispute the “before and after” appraisal prepared by the Viewers and its claim for operational damages is not supported by law.

[¶94] The district court, however, erred when it imposed Conditions 4 (second sentence only) and 6 on the private road because those restrictions were not supported by the record. We find no error in the district court’s adoption of Condition 5 or its denial of LMCR’s request for an agricultural-use-only restriction on the private road.

[¶95] Affirmed in part and reversed in part.