

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**DAVID MORRIS AND LING LIU,** )  
 )  
**Petitioners,** )

v. )

**OGC CASE NO. 20-1125  
DOAH CASE NO. 20-3759**

**FEDORA L. CAMPBELL AND DEPARTMENT)**  
**OF ENVIRONMENTAL PROTECTION,** )  
 )  
**Respondents.** )

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**DAR REAL ESTATE ENTERPRISES, LLC,** )  
 )  
**Petitioner,** )

v. )

**OGC CASE NO. 20-1127  
DOAH CASE NO. 20-3760**

**FEDORA L. CAMPBELL AND DEPARTMENT)**  
**OF ENVIRONMENTAL PROTECTION,** )  
 )  
**Respondents.** )

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**RICHARD J. THEIDEL,** )  
 )  
**Petitioner,** )

v. )

**OGC CASE NO. 20-1126  
DOAH CASE NO. 20-3786**

**FEDORA L. CAMPBELL AND DEPARTMENT)**  
**OF ENVIRONMENTAL PROTECTION,** )  
 )  
**Respondents.** )

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**FINAL ORDER**

An Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) on June 7, 2021, submitted a Recommended Order (RO) to the Department of Environmental Protection (DEP or Department) in the above-captioned administrative

proceeding. A copy of the RO is attached hereto as Exhibit A. Petitioners, David Morris and Ling Liu (Morris), Dar Real Estate Enterprises, LLC (DAR), and Richard J. Theidel (Theidel) (collectively the Petitioners) timely filed exceptions on June 21, 2021. The Respondents Fedora L. Campbell (Campbell) and DEP timely filed their responses to the Petitioners' exceptions on July 1, 2021.

This matter is now before the Secretary of the Department for final agency action.

### **BACKGROUND**

On July 25, 2020, DEP issued a coastal construction control line (CCCL) permit to Respondent Campbell to construct a single-family residence and associated structures on Anna Maria Island in Manatee County, Florida. On August 3, 2020, the Petitioners filed three separate petitions challenging DEP's agency action to issue the CCCL permit. Petitioners Graham Hanson and Hazel Hanson (Hanson Petitioners) filed a petition on August 5, 2020. DEP referred the petitions to DOAH. The ALJ consolidated the cases for hearing and issuance of her RO.

DOAH held the final hearing on February 8 through 10, 12, 15, 16, and 18, 2021 by Zoom Conference. Respondent presented the fact testimony of Fedora L. Campbell; the expert testimony of Brett D. Moore (Moore), accepted as an expert in coastal engineering and CCCL permitting; Marc Damon (Damon), accepted as an expert in coastal hydrodynamic modeling; Alec Hoffner (Hoffner), accepted as an expert in coastal ecology; and Doug W. Aarons (Aarons).

Respondent DEP also presented the expert testimony of Doug W. Aarons, accepted as an expert in civil engineering and coastal engineering processes.

The Petitioners presented the fact testimony of Graham Hanson, Steven Hanson, David Morris (Morris), David A. Ridley (Ridley), Richard J. Theidel (Theidel), Tony McNeal

(McNeal), and Rolando Gomez (Gomez) by deposition. The Petitioners also presented the expert testimony of Michael Walther (Walther), accepted as an expert in coastal engineering.

After the final hearing, the Hanson Petitioners sold their home on Anna Maria Island and voluntarily dismissed their petition. On April 30, 2021, the ALJ issued an Order Closing File in DOAH Case No. 20-3788.

All the parties filed proposed recommended orders on May 17, 2021, that the ALJ gave due consideration in preparing her RO.

### **SUMMARY OF THE RECOMMENDED ORDER**

In the RO, the ALJ recommended that the Department issue a final order granting Respondent Fedora Campbell's application for a Coastal Construction Control Line (CCCL) Permit to construct a single-family residence and associated structures seaward of the CCCL on Anna Maria Island in Manatee County, Florida. (RO at p. 25). In doing so, the ALJ concluded that the "preponderance of the evidence demonstrates that all applicable standards, guidelines, and other permitting requirements are met, and clearly justify the issuance of a CCCL permit for the proposed Project." (RO ¶ 107). In addition, the Respondent Campbell seeks an award of attorney's fees against the Petitioners under section 120.595 of the Florida Statutes, which requires a finding of "improper purpose" by the ALJ in her RO. (RO ¶ 108). The ALJ found that the actions of the Petitioners in this proceeding "do not meet the considerations of sections 120.595(1)(c) and (e) that would justify a finding of 'improper purpose' for purposes of an award of attorneys' fees and costs." (RO ¶ 112).

### **STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS**

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of the ALJ "unless the agency

first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence.” § 120.57(1)(l), Fla. Stat. (2020); *Charlotte Cnty. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1082 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm’n*, 955 So. 2d 61, 62 (Fla. 1st DCA 2007). The term “competent substantial evidence” does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, “competent substantial evidence” refers to the existence of some evidence as to each essential element and as to its admissibility under legal rules of evidence. *See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm’n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996); *Nunez v. Nunez*, 29 So. 3d 1191, 1192 (Fla. 5th DCA 2010).

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers v. Dep’t of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep’t of Env’t. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cnty. School Bd.*, 652 So. 2d 894, 896 (Fla. 2d DCA 1995). If there is competent substantial evidence to support an ALJ’s findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622, 623 (Fla. 1st DCA 1986).

The ALJ’s decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See, e.g., Peace River/Manasota Reg’l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State, Dep’t of HRS*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm’n*, 436 So. 2d 383, 389 (Fla. 5th DCA

1983). In addition, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994); *Fla. Power & Light Co. v. Fla. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." *See Barfield v. Dep't of Health*, 805 So. 2d 1008, 1012 (Fla. 1st DCA 2001); *L.B. Bryan & Co. v. Sch. Bd. of Broward Cnty.*, 746 So. 2d 1194, 1197 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140, 1141-142 (Fla. 2d DCA 2001). If an ALJ improperly labels a conclusion of law as a finding of fact, the label should be disregarded, and the item treated as though it were actually a conclusion of law. *See, e.g., Battaglia Properties v. Fla. Land and Water Adjudicatory Comm'n*, 629 So. 2d 161, 168 (Fla. 5th DCA 1994).

However, the agency should not label what is essentially an ultimate factual determination as a "conclusion of law" to modify or overturn what it may view as an unfavorable finding of fact. *See, e.g., Stokes v. State, Bd. of Prof'l Eng'rs*, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007).

Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are "permissible" ones. *See, e.g., Suddath Van Lines, Inc. v. Dep't of Env't. Prot.*, 668 So. 2d 209, 212 (Fla. 1st DCA 1996). The Department is charged with enforcing and interpreting chapters 161, 373 and 403 of the Florida Statutes. As a result, DEP has substantive jurisdiction over interpretation of these statutes and the Department's rules adopted to implement these statutes.

Agencies do not have jurisdiction, however, to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy

considerations,” are not matters over which the agency has “substantive jurisdiction.” See *Martuccio v. Dep’t of Prof’l Regulation*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Heifetz v. Dep’t of Bus. Regulation*, 475 So. 2d 1277, 1281-82 (Fla. 1st DCA 1985). Evidentiary rulings are matters within the ALJ’s sound “prerogative . . . as the finder of fact” and may not be reversed on agency review. See *Martuccio*, 622 So. 2d at 609.

### **RULINGS ON EXCEPTIONS**

In reviewing a recommended order and any written exceptions, the agency’s final order “shall include an explicit ruling on each exception.” See § 120.57(1)(k), Fla. Stat. (2020). The agency, however, need not rule on an exception that “does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” *Id.*

A party that files no exceptions to certain findings of fact “has thereby expressed its agreement with, or at least waived any objection to, those findings of fact.” *Env’t. Coal. of Fla., Inc. v. Broward Cnty.*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); see also *Colonnade Med. Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So. 2d 540, 542 (Fla. 4th DCA 2003). However, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction, even when exceptions are not filed. See § 120.57(1)(l), Fla. Stat. (2020); *Barfield*, 805 So. 2d at 1012; *Fla. Pub. Emp. Council, v. Daniels*, 646 So. 2d 813, 816 (Fla. 1st DCA 1994).

### **RULINGS ON THE PETITIONERS’ EXCEPTIONS**

The Department will address the Petitioners’ exceptions to paragraphs from the Recommended Order in the order presented in the exceptions.

**Petitioners' Exception 1 to RO Paragraph 15.**

The Petitioners take exception to the following finding of fact in paragraph 15 of the RO: “The preponderance of the evidence demonstrated that a frontal dune system exists seaward of the Campbell Property.” RO ¶ 15.

Contrary to the Petitioners' exception, the ALJ's above finding in paragraph 15 is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 1 to paragraph 15 is denied.

**Petitioners' Exception 2 to RO Paragraph 20.**

The Petitioners take exception to the following finding of fact in paragraph 20 of the RO: “The single-family home would be sited as far landward on the Campbell Property as possible without contravening local setback requirements.” RO ¶ 20.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 20 are supported by competent substantial evidence. (Aarons, T. Vol. VI, pp. 535, 577-78, and 589-90).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final

hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 2 to paragraph 20 is denied.

**Petitioners' Exception 3 to RO Paragraph 24.**

The Petitioners take exception to the following finding of fact in paragraph 24 of the RO: "Respondent Campbell demonstrated by a preponderance of the evidence that the project meets all relevant rule criteria of rule 62B-33." RO ¶ 24.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 24 are supported by competent substantial evidence. (Aarons, T. Vol. VI, pp. 535, 548).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 3 to paragraph 24 is denied.

**Petitioners' Exception 4 to RO Paragraph 26.**

The Petitioners take exception to finding of fact paragraph 26 of the RO, which reads in its entirety: "The Project would be constructed in accordance with the applicable Florida



Building Code (FBC) and in a manner to prevent the potential for wind or water-borne debris in the event of a hurricane.” RO ¶ 26.

Contrary to the Petitioners’ exception, the ALJ’s findings in paragraph 26 are supported by competent substantial evidence. (Moore, T. Vol. II, pp. 142-44).

The Petitioners disagree with the ALJ’s findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ’s findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners’ exception 4 to paragraph 26 is denied.

**Petitioners’ Exception 5 to RO Paragraph 27.**

The Petitioners take exception to the following findings of fact in paragraph 27 of the RO: “DEP reviewed the Project and determined the Project would minimize the potential for structure-induced scour and wind and water-born missiles.” RO ¶ 27.

Contrary to the Petitioners’ exception, the ALJ’s findings in paragraph 27 are supported by competent substantial evidence. (Aarons, T. Vol. VI, pp. 542-43).

The Petitioners disagree with the ALJ’s findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ’s findings of fact, it is irrelevant there also may be competent substantial

evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 5 to paragraph 27 is denied.

**Petitioners' Exception 6 to RO Paragraph 28.**

The Petitioners take exception to the findings of fact in paragraph 28 of the RO, alleging that the "ALJ made findings of fact presumably referring to an alleged frontal dune seaward of the Campbell Property." Petitioners' Exceptions, ¶ 6, p. 17.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 28 of the RO are supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

Specifically, RO paragraph 28's statement that "The preponderance of the evidence demonstrated that the Project would be sited more than 140 feet landward of the frontal dune" (RO ¶ 28) is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 6 to paragraph 28 is denied.

**Petitioners' Exception 7 to RO Paragraph 29.**

The Petitioners take exception to the following finding of fact in paragraph 29 of the RO: “The preponderance of the evidence demonstrated that the Project, in conjunction with existing structure would not have a significant adverse impact on the frontal dune or on marine life.” RO ¶ 29. Specifically, the Petitioners allege that the RO’s inference in paragraph 29 to a frontal dune seaward of the Campbell Property is not supported by competent substantial evidence.

Contrary to the Petitioners’ exception, the ALJ’s inference in paragraph 29 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 508, 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ’s findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ’s findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners’ exception 7 to paragraph 29 is denied.

**Petitioners' Exception 8 to RO Paragraph 30.**

The Petitioners take exception to finding of fact paragraph 30 of the RO, which reads in its entirety: “ The topography and vegetation of the frontal dune is located sufficiently seaward of the Campbell Property such that construction of the Project would not destabilize the frontal dune.” RO ¶ 30. Specifically, the Petitioners allege that the RO’s reference in paragraph 30 to a

frontal dune seaward of the Campbell Property is not supported by competent substantial evidence.

Contrary to the Petitioners' exception, the ALJ's above finding in paragraph 30 of the RO identifying a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 508, 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 8 to paragraph 30 is denied.

**Petitioners' Exception 9 to RO Paragraph 31.**

The Petitioners take exception to finding of fact paragraph 31 of the RO, which reads in its entirety: "The Project would not remove or disturb in situ sandy soil of the beach and dune system to such a degree that a significant adverse impact would result from either reducing the existing ability of the system to resist erosion during a storm or lowering existing levels of storm protection to upland properties and structures." RO ¶ 31.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 31 are supported by competent substantial evidence. (Aarons, T. Vol. VI, pp. 508, 592-93).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 9 to paragraph 31 is denied.

**Petitioners' Exception 10 to RO Paragraph 32.**

The Petitioners take exception to the following findings of fact in paragraph 32 of the RO: "The Project would not result in an increase in shoreline change rates, nor will it interfere with the frontal dune or dune system's ability to recover if impacted by a major storm." RO ¶ 32. Specifically, the Petitioners allege that the RO's inference in paragraph 32 to a frontal dune seaward of the Campbell Property is not supported by competent substantial evidence.

Contrary to the Petitioners' exception, the ALJ's inference in paragraph 32 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 540, 512-13; Aarons, T. Vol. VI, pp. 535, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial

evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 10 to paragraph 32 is denied.

**Petitioners' Exception 11 to RO Paragraph 36.**

The Petitioners take exception to the findings of fact paragraph 36 of the RO, which reads in its entirety: "The Project would not cause an increase in structure-induced scour of such magnitude during a storm as to result in a significant adverse impact. Scour is caused by water reacting with stationary objects during a storm event and the Project would be constructed in accordance with the FBS, which contains provisions for reducing scour events." RO ¶ 36.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 36 are supported by competent substantial evidence. (Aarons, T. Vol. VI, pp. 542-543).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 11 to paragraph 36 is denied.

**Petitioners' Exception 12 to RO Paragraph 37.**

The Petitioners take exception to finding of fact paragraph 37 of the RO, which reads in its entirety: "Any scour that may result from the Project during a storm event would be localized to the Campbell Property as a result of water interacting with the piles." RO ¶ 37.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 37 are supported by competent substantial evidence. (Aarons, T. Vol. VI, pp. 542, 593, 600-601).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 12 to paragraph 37 is denied.

**Petitioners' Exception 13 to RO Paragraph 40.**

The Petitioners take exception to the following findings of fact in paragraph 40 of the RO: "The Project would be constructed in an area primarily covered with non-native, invasive-species vegetation and not increase adverse impact to the beach and dune system." RO ¶ 40.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 40 are supported by competent substantial evidence. (Moore, T. Vol. II, pp. 161-62, 165, 194-95, 197, 209-11; Moore, T. Vol. III, pp. 250-51, 252-53; Moore, T. Vol. IV, pp. 387, 407-408; Aaron, T. Vol. VI, pp. 584-85, 590).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial

evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 13 to paragraph 40 is denied.

**Petitioners' Exception 14 to RO Paragraph 42.**

The Petitioners take exception to the following findings of fact in paragraph 42 of the RO: "The Project is located as far landward as practicable on the Campbell Property considering the local setback requirements." RO ¶ 42.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 42 are supported by competent substantial evidence. (Aarons, T. Vol. VI, p. 590; Aarons, T. Vol. VI, pp. 577-78).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 14 to paragraph 42 is denied.

**Petitioners' Exception 15 to RO Paragraph 44.**

The Petitioners take exception to finding of fact paragraph 44 of the RO, which reads in its entirety: "The preponderance of the evidence demonstrated that the single-family structure sited significantly landward of the frontal dune, would have no impact on the ability of the dune system to provide protection to upland properties, nor would the construction have any impact on neighboring existing structures." RO ¶ 44.



Specifically, the Petitioners allege that the RO's inference in paragraph 44 to a frontal dune seaward of the Campbell Property is not supported by competent substantial evidence.

Contrary to the Petitioners' exception, the ALJ's inference in paragraph 44 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 15 to paragraph 44 is denied.

**Petitioners' Exception 16 to RO Paragraph 45.**

The Petitioners take exception to finding of fact paragraph 45 of the RO, which reads in its entirety: "The engineering/modeling analysis supports a finding that a frontal dune exists seaward of the Campbell Property which spans from south of the Campbell Property to the north beyond the Campbell Property." RO ¶ 45.

Specifically, the Petitioners allege that the RO's reference in paragraph 45 to a frontal dune seaward of the Campbell Property is not supported by competent substantial evidence.

Contrary to the Petitioners' exception, the ALJ's reference in paragraph 45 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent

substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 16 to paragraph 45 is denied.

**Petitioners' Exception 17 to RO Paragraph 46.**

The Petitioners take exception to the following finding of fact in paragraph 46 of the RO: "While it was clear that the modeling supported a finding that the frontal dune not only exists and provides sufficient protective value, this finding is based on more than modeling." RO ¶ 46.

Specifically, the Petitioners allege that the RO's reference in paragraph 46 to a frontal dune seaward of the Campbell Property is not supported by competent substantial evidence.

Contrary to the Petitioners' exception, the ALJ's reference in paragraph 46 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

Additionally, the Petitioners allege that the ALJ's statement that the frontal dune "provides protective value" is not supported by competent substantial evidence. RO ¶ 46.

Nevertheless, this reference in the RO is supported by competent substantial evidence. (Damon, T. Vol. V, pp. 446-47).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 17 to paragraph 46 is denied.

**Petitioners' Exception 18 to RO Paragraph 47.**

The Petitioners take exception to the findings of fact in paragraph 47 of the RO, alleging that the "ALJ referred to a 'frontal dune' presumably in relation to the Campbell Property." Specifically, the Petitioners allege "there is no competent substantial evidence that a frontal dune exists seaward of the Campbell Property." Petitioners' Exceptions, ¶ 18, p. 29.

Contrary to the Petitioners' exception, the ALJ's inference in paragraph 47 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence

to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 18 to paragraph 47 is denied.

**Petitioners' Exception 19 to RO Paragraph 48.**

The Petitioners take exception to the following finding of fact in paragraph 48 of the RO: "Although there are peaks and lower areas in the dune feature, the entire frontal dune has a higher elevation than the areas seaward and landward." RO ¶ 48.

Specifically, the Petitioners allege that the RO's inference in paragraph 48 to a frontal dune seaward of the Campbell Property is not supported by competent substantial evidence.

Contrary to the Petitioners' exception, the ALJ's inference in paragraph 48 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 19 to paragraph 48 is denied.

**Petitioners’ Exception 20 to RO Paragraph 49.**

The Petitioners take exception to the findings of fact in paragraph 49 of the RO, alleging that the “ALJ referred to a ‘frontal dune’ presumably in relation to the Campbell Property.” Specifically, the Petitioners allege “there is no competent substantial evidence that a frontal dune exists seaward of the Campbell Property.” Petitioners’ Exceptions, ¶ 20, p. 29.

Contrary to the Petitioners’ exception, the ALJ’s inference in paragraph 49 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ’s findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ’s findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners’ exception 20 to paragraph 49 is denied.

**Petitioners’ Exception 21 to RO Paragraph 50**

The Petitioners take exception to the findings of fact in paragraph 50 of the RO, alleging that the “ALJ referred to a ‘frontal dune’ in relation to the Campbell Property.” Specifically, the Petitioners allege “there is no competent substantial evidence that a frontal dune exists seaward of the Campbell Property.” Petitioners’ Exceptions, ¶ 21, p. 29.

Contrary to the Petitioners' exception, the ALJ's inference in paragraph 50 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 21 to paragraph 50 is denied.

**Petitioners' Exception 22 to RO Paragraph 53.**

The Petitioners take exception to the findings of fact in paragraph 53 of the RO, alleging that the "ALJ referred to a 'frontal dune' presumably in relation to the Campbell Property." Specifically, the Petitioners allege "there is no competent substantial evidence that a frontal dune exists seaward of the Campbell Property." Petitioners' Exceptions, ¶ 22, p. 30.

Contrary to the Petitioners' exception, the ALJ's inference in paragraph 53 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final

hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 22 to paragraph 53 is denied.

**Petitioners' Exception 23 to RO Paragraph 54.**

The Petitioners take exception to the findings of fact in paragraph 54 of the RO, alleging that the "ALJ referred to a 'frontal dune' presumably in relation to the Campbell Property." Specifically, the Petitioners allege "there is no competent substantial evidence that a frontal dune exists seaward of the Campbell Property." Petitioners' Exceptions, ¶ 23, p. 30.

Contrary to the Petitioners' exception, the ALJ's inference in paragraph 54 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 23 to paragraph 54 is denied.

**Petitioners' Exception 24 to RO Paragraph 55.**

The Petitioners take exception to the findings of fact in paragraph 55 of the RO, alleging that the "ALJ referred to a 'frontal dune' presumably in relation to the Campbell Property." Specifically, the Petitioners allege "there is no competent substantial evidence that a frontal dune exists seaward of the Campbell Property." Petitioners' Exceptions, ¶ 24, pp. 30-31.

Contrary to the Petitioners' exception, the ALJ's inference in paragraph 55 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

Additionally, the Petitioners allege that the ALJ's statement that "[t]he significant net increase in size of the [Anna Maria beach] . . . indicates a growing and stable beach system with a stable frontal dune that provides protection to upland properties" is not supported by competent substantial evidence. RO ¶ 55. Nevertheless, this reference in the RO is supported by competent substantial evidence. (Damon, T. Vol. V, pp. 447, 449; Hoffner, T. Vol. V, p. 511).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 24 to paragraph 55 is denied.



**Petitioners' Exception 25 to RO Paragraph 56.**

The Petitioners take exception to the following finding of fact in paragraph 56 of the RO: "Respondent Campbell minimized potential impacts and provided mitigation so that no significant adverse impact would result." RO ¶ 56.

Contrary to the Petitioners' exception, the above referenced finding in paragraph 56 of the RO is supported by competent substantial evidence. (Moore, T. Vol. II, pp. 190-91; Aarons, T. Vol. VI, pp. 541-42; 542-43; 589-90; 591-94).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 25 to paragraph 56 is denied.

**Petitioners' Exception 26 to RO Paragraph 57.**

The Petitioners take exception to finding of fact paragraph 57 of the RO, which reads in its entirety: "The proposed single-family dwelling is smaller than other structures in the immediate area, including the structures on the DAR and Theidel Properties. The proposed single-family dwelling would be located as far landward as the local governmental setback requirements allow." RO ¶ 57.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 57 are supported by competent substantial evidence. (Moore, T. Vol. II, pp. 137, 204-205; Aarons, T. Vol. IV, pp. 394, 404; Aaron, T. Vol. VIII, p. 843).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 26 to paragraph 57 is denied.

**Petitioners' Exception 27 to RO Paragraph 58.**

The Petitioners take exception to the ALJ's finding that the Project minimizes potential impacts to the beach and dune system and to the following finding of fact in paragraph 58 of the RO: "When structural design plans are submitted with an application for a local government building permit, design of [the] structure will comply with the FBC." RO ¶ 58.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 58 are supported by competent substantial evidence. Campbell's proposed permit requires Campbell to obtain applicable licenses or permits required by federal, state, county, or municipal law. Moreover, Campbell is required to obtain a building permit from the local permitting authorities. In accordance with the local land development code, Campbell's structure must comply with the Florida Building Code to receive a local building permit. (Joint Ex. 1, p. 0006; Moore, T. Vol. II, p. 145).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 27 to paragraph 58 is denied.

**Petitioners' Exception 28 to RO Paragraph 61.**

The Petitioners take exception to finding of fact paragraph 61 of the RO, which reads in its entirety: "The Co-Petitioners' primary argument in opposition to this permit is that Campbell's property is seaward of an established line of construction." RO ¶ 61.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 61 are supported by competent substantial evidence. (Petitioners' Exhibit J, p. 0358, but see Aaron, T. Vol. VI, p. 545; Petitioners' Exhibit J, pp. 0079, 0390; Petitioners' Exhibit P, p. 000759; Petitioners' Exhibit P, pp. 000785; Petitioners' Exhibit P, p. 000803).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 28 to paragraph 61 is denied.

**Petitioners' Exception 29 to RO Paragraph 63.**

The Petitioners take exception to the following finding of fact in paragraph 63 of the RO: "Mr. Aarons persuasively testified that he could not identify a reasonably continuous and uniform line of construction relative to the Campbell Property." RO ¶ 63.

Contrary to the Petitioners' exception, the ALJ's findings in paragraph 63 are supported by competent substantial evidence. (Aaron, T. Vol. VI, pp. 545, 575; Campbell Demonstrative Exhibit 1; DEP Demonstrative Exhibit 2).

The Petitioners disagree with the ALJ's findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 29 to paragraph 63 is denied.

**Petitioners' Exception 30 to RO Paragraph 64.**

The Petitioners take exception to the findings of fact in paragraph 64 of the RO, alleging that the "ALJ referred to a 'frontal dune' presumably in relation to the Campbell Property." Specifically, the Petitioners allege "there is no competent substantial evidence that a frontal dune exists seaward of the Campbell Property." Petitioners' Exceptions, ¶ 30, p. 44.

Contrary to the Petitioners' exception, the ALJ's inference in paragraph 64 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent

substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 540, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

Specifically, RO paragraph 64 finds that “Mr. Hoffman testified that marine turtles nest near the frontal dune and do not traverse over the frontal dune to nest in areas landward of the dune system.” RO ¶ 64. The above cited finding is supported by competent substantial evidence. (Hoffman, T. Vol. V, pp. 508, 509; Aarons, T. Vol. VI, pp. 543-44).

The Petitioners disagree with the ALJ’s findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ’s findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners’ exception 30 to paragraph 64 is denied.

**Petitioners’ Exception 31 to RO Paragraph 65.**

The Petitioners take exception to the findings of fact in paragraph 65 of the RO, alleging that the “ALJ referred to a ‘frontal dune’ presumably in relation to the Campbell Property.” Specifically, the Petitioners allege “there is no competent substantial evidence that a frontal dune exists seaward of the Campbell Property.” Petitioners’ Exceptions, ¶ 31, p. 44.

Contrary to the Petitioners’ exception, the ALJ’s reference in paragraph 65 of the RO that the Campbell Property will be constructed landward of a frontal dune is supported by competent substantial evidence. (Hoffner, T. Vol. V, pp. 512-13; Aarons, T. Vol. VI, pp. 535, 590; Joint Ex. 1, pp. 0037, 0079-0088, 0089-0095, and 0133-0134).

Specifically, RO paragraph 65 finds that “Campbell’s property is significantly landward of the frontal dune such that it will have no impact on marine turtles’ ability to nest. The Petitioners presented no evidence to dispute this testimony.” (RO ¶ 64). Moreover, the above cited finding is supported by competent substantial evidence. (Hoffman, T. Vol. V, pp. 506-507, 508, 509; Aarons, T. Vol. VI, pp. 543-44).

The Petitioners disagree with the ALJ’s findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ’s findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners’ exception 31 to paragraph 65 is denied.

**Petitioners’ Exception 32 to RO Paragraph 70.**

The Petitioners take exception to finding of fact paragraph 70 of the RO, which reads in its entirety: “Any effects from the construction associated with the proposed Project would be localized. The Co-Petitioners’ properties are far enough away so they will not be adversely impacted by the Project.” RO ¶ 70.

Contrary to the Petitioners’ exception, the ALJ’s findings in paragraph 70 are supported by competent substantial evidence. (Aarons, T. Vol. VI, pp. 542, 593, 600-601).

The Petitioners disagree with the ALJ’s findings and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g.,*

*Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception 32 to paragraph 70 is denied.

**Petitioners' Exception 33 to RO Paragraph 77.**

The Petitioners take exception to conclusion of law paragraph 77 of the RO, which reads in its entirety: "Respondent Campbell demonstrated by a preponderance of the evidence that a permit for the Project is clearly justified because it meets all applicable requirements of part I of chapter 161 and the rules promulgated in chapter 62B-33." RO ¶ 77. The Department concludes that paragraph 77 of the RO is a mixed statement of law and fact.

The Petitioners disagree with the ALJ's findings and conclusion that the Project meets all applicable requirements of part I of chapter 161 and the rules promulgated in chapter 62B-33, and seek to have DEP reweigh the evidence. However, DEP is not authorized to reweigh evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of a witness. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. If there is competent substantial evidence to support the ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Contrary to the Petitioner's exception, the ALJ's findings in support of conclusion of law paragraph 77 are supported by competent substantial evidence. The Campbell property was platted in 1922 prior to the effective date of Section 161.053. (Moore, T. Vol. II, pp. 133-34, 209). Ms. Campbell does not own any other parcel of land immediately adjacent to, landward or

seaward of the Project site. (Moore, T. Vol. II, pp. 133-34, 209). The proposed single-family dwelling will be located landward of the frontal dune structure. (Moore, T. Vol. II, pp. 133-34, 209; Joint Exhibit 1, pp. 0037, 0079-0088). The proposed single-family dwelling will be constructed as far landward on its parcel as is practicable without being located seaward of or on the frontal dune. (Aarons, T. Vol. VI, pp. 589-90).

Based on the foregoing reasons, the Petitioners' exception 33 to paragraph 77 is denied.

**Petitioners' Exception 34 to RO Paragraph 84.**

The Petitioners take exception to conclusion of law paragraph 84 of the RO, which reads in its entirety: "Respondent Campbell proved by a preponderance of the evidence that the CCCL standards, guidelines, and other applicable requirements were met by the permit application and the evidence adduced in the final hearing." RO ¶ 84. The Department concludes that paragraph 84 of the RO is a mixed statement of law and fact.

Contrary to the Petitioners' exception, the ALJ's ultimate findings in paragraph 84 are supported by competent substantial evidence. The findings of fact support this ultimate finding. (Moore, T. Vol. II, pp. 190-91; Aarons, T. Vol. VI, pp. 541-42; 542-43; 589-90; 591-94).

Based on the foregoing reasons, the Petitioners' exception 34 to paragraph 84 is denied.

**Petitioners' Exception 35 to RO Paragraph 90.**

The Petitioners take exception to the following conclusion of law in paragraph 90 of the RO: "The preponderance of the evidence demonstrates that the Project satisfies the criteria in section 161.053(5)(c)." RO ¶ 90. The ALJ recites in paragraph 90 of the RO the four ultimate findings of fact that support her position that the Project satisfies the criteria in section 161.053(5)(c), Florida Statutes. Paragraph 90 of the RO recites that "The Project is a single-family residential dwelling. The dwelling would be located on a parcel platted well before the



effective date of the statute. Respondent Campbell does not own the parcel immediately adjacent to and landward of the Campbell Property. The Project would be located as far landward on the parcel as is practicable without being located seaward of or on the frontal dune.” RO ¶ 90.

Contrary to the Petitioner’s exception, the ALJ’s findings in support of conclusion of law paragraph 77 are supported by competent substantial evidence. The Campbell property was platted in 1922 prior to the effective date of Section 161.053. (Moore, T. Vol. II, pp. 133-34, 209). Ms. Campbell does not own any other parcel of land immediately adjacent to, landward or seaward of the Project site. (Moore, T. Vol. II, pp. 133-34, 209). The proposed single-family dwelling will be located landward of the frontal dune structure. (Moore, T. Vol. II, pp. 133-34, 209; Joint Exhibit 1, pp. 0037, 0079-0088). The proposed single-family dwelling will be constructed as far landward on its parcel as is practicable without being located seaward of or on the frontal dune. (Aarons, T. Vol. VI, pp. 589-90).

Based on the foregoing reasons, the Petitioners’ exception 35 to paragraph 90 is denied.

**Petitioners’ Exception 36 to RO Paragraph 94.**

The Petitioners take exception to conclusion of law paragraph 94 of the RO, which reads in its entirety: “Respondent Campbell demonstrated that the impacts associated with the Project were minimized and would not result in significant adverse impacts.” RO ¶ 94.

Contrary to the Petitioners’ exception, the ALJ’s ultimate findings in paragraph 94 are supported by competent substantial evidence. The findings of fact from the hearing testimony support this ultimate finding. Specifically, Mr. Aaron and Mr. Moore’s testimony supports that Campbell minimized potential impacts and provided mitigation so that no significant adverse impact would result. (Moore, T. Vol. II, pp. 190-91; Aarons, T. Vol. VI, pp. 541-42; 542-43;

589-90; 591-94). Moreover, DEP reviewed the Project and determined the Project would minimize the potential for structure-induced scour and wind and water-borne missiles. (Aarons, T. Vol. VI, pp. 542-43).

Based on the foregoing reasons, the Petitioners' exception 36 to paragraph 94 is denied.

**Petitioners' Exception 37 to RO Paragraph 95.**

The Petitioners take exception to conclusion of law paragraph 95 of the RO, which reads in its entirety (excluding the rule citation): "A preponderance of the evidence demonstrates that any other impacts associated with the Project will be offset by proposed mitigation actions." RO ¶ 95. The Department concludes that paragraph 95 is an ultimate finding of fact.

The findings of fact from the hearing testimony support this ultimate finding. Specifically, Mr. Aaron and Mr. Moore's testimony supports that mitigation impacts associated with the Campbell Project will be offset by proposed mitigation actions. (Moore, T. Vol. II, pp. 190-91; Aarons, T. Vol. VI, pp. 541-42; 542-43; 589-90; 591-94).

Based on the foregoing reasons, the Petitioners' exception 37 to paragraph 95 is denied.

**Petitioners' Exception 38 to RO Paragraph 102.**

The Petitioners take exception to the following conclusion of law in paragraph 102 of the RO: "A preponderance of the evidence demonstrates that Respondent Campbell submitted all the required plans and surveys, signed and sealed by registered professionals pursuant to rule 62B-33.008(1), to meet all the applicable rule requirements." RO ¶ 102. The Department concludes that paragraph 102 of the RO is a mixed statement of law and fact.

Contrary to the Petitioners' exception, the ALJ's ultimate findings in paragraph 102 are supported by competent substantial evidence. The findings of fact support this ultimate finding. Specifically, the testimony demonstrates that Campbell submitted all the required plans and

surveys, signed and sealed by registered professions to meet rule 62B-33.008. (Moore, T. Vol. II, pp. 190-91; Aarons, T. Vol. VI, pp. 541-42; 542-43; 589-90; 591-94).

Based on the foregoing reasons, the Petitioners' exception 38 to paragraph 102 is denied.

**Petitioners' Exception 39 to RO Paragraph 105.**

The Petitioners take exception to conclusion of law paragraph 105 of the RO, which reads in its entirety, excluding the case citation: "The evidence adduced at hearing suggests that historically, the purpose of determining a line of construction was to allow new owners subject to CCCL restrictions to align with structures that existed prior to establishment of the CCCL. Prior case law is clear that a line of construction is not a line of prohibition." RO ¶ 105.

The Department concludes that RO paragraph 105 is a mixed finding of fact and conclusion of law. The first sentence in paragraph 105, which states that "[t]he evidence adduced at hearing suggests that historically, the purpose of determining a line of construction was to allow new owners subject to CCCL restricts to align with structures that existed prior to establishment of the CCCL" is a finding of fact supported by competent substantial evidence. (Moore, T. Vol. II, pp. 179-180).

The Petitioners cited to a prior administrative hearing RO and agency final order in which the ALJ found there was a line of construction at 107 Elm Avenue immediately adjacent and landward of the Campbell Property. *Ronnie E. Young and Pamela C. Young v. Steven Hanson and Dep't of Env't Prot.*, (DOAH Case No. 09-4908, January 11, 2011). Nevertheless, prior findings of fact in other administrative hearings are not binding on future administrative hearings, including cases involving subsequent permit applications for a project previously denied. *See Thomson v. Dep't of Env't Regulation*, 511 So. 2d 989, 991 (Fla. 1987) and *Peoples Gas Systems, In. v. Mason*, 187 So. 2d 335, 339 (Fla. 1966); *see also*, Rule 62B-33.005(3)(a),

Fla. Admin. Code (2020) (“Each application shall be evaluated on its own merits in making a permit decision; therefore, a decision by the Department to grant a permit shall not constitute a commitment to permit additional similar construction within the same fixed coastal cell.”). The nature of administrative decisions involves ever changing conditions such that a finding by the Department in one permitting application may not apply in a future permitting application. Moreover, in accordance with prior case law, a line of construction is not a line of prohibition. *See, e.g.*, RO ¶¶ 28 and 61 in *Kelly Cadillac, Inc. v. Fla. Dep’t of Env’t Prot.*, DOAH Case No. 97-0342 (Recommended Order, Jan. 30, 1998; DEP Final Order March 16, 1998).

Based on the foregoing reasons, the Petitioners’ exception 39 to paragraph 105 is denied.

**Petitioners’ Exception 40 to RO Paragraph 107.**

The Petitioners take exception to conclusion of law paragraph 107 of the RO, which reads in its entirety: “A preponderance of the evidence demonstrates that all applicable standards, guidelines, and other permitting requirements are met, and clearly justify the issuance of a CCCL permit for the proposed Project.” RO ¶ 107. The Department concludes that paragraph 107 of the RO is a mixed statement of law and fact.

Contrary to the Petitioners’ exception, the ALJ’s ultimate findings in paragraph 107 are supported by competent substantial evidence. The ALJ’s conclusion of law in RO paragraph 107 is supported by the above cited findings of fact and conclusions of law identified throughout this final order. Moreover, the Department concurs with the ALJ’s ultimate conclusion of law in Paragraph 107 of the RO.

Based on the foregoing reasons, the Petitioners’ exception 40 to paragraph 107 is denied.

## **CONCLUSION**

Having considered the applicable law and standards of review in light of the findings and conclusions set forth in the RO, and being otherwise duly advised, it is

ORDERED that:

A. The Recommended Order (Exhibit A) is adopted, except as modified by the above rulings on Exceptions, and incorporated by reference herein; and

B. The final order granting Fedora L. Campbell's application for a Coastal Construction Control Line (CCCL) Permit to construct a single-family residence and associated structures seaward of the CCCL on Anna Maria Island in Manatee County, Florida is APPROVED, subject to the general and specific conditions set forth within the permit.

## **JUDICIAL REVIEW**

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the

appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 20<sup>th</sup> day of July 2021, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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SHAWN HAMILTON  
Interim Secretary

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.



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CLERK

July 20, 2021  
DATE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by

electronic mail to:

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This 20<sup>th</sup> day of July, 2021.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

*Stacey D. Cowley*

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