

**IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT**

**CLEARWATER LAND AND
MINERALS FLA, LLC,**

Appellant,

v.

**CASE NO.: 1D2025-1719
L.T. Case No. 22-2509
DOAH Case No. 24-4284**

**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
and APALACHICOLA BAY
AND RIVER KEEPER, INC.
d/b/a APALACHICOLA RIVERKEEPER,**

Appellees.

**ANSWER BRIEF OF APPELLEE, STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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GLOSSARY OF BRIEF REFERENCES

The following abbreviations and references will be used in this

Answer Brief:

<u>Abbreviation/Reference</u>	<u>Description of Abbreviation/Reference</u>
Clearwater	Appellant, Clearwater Land and Minerals, LLC
Department	Appellee, State of Florida Department of Environmental Protection
ABARK	Appellee, Apalachicola Bay And River Keeper, Inc.
[R. X at Y]	Citation to the record, with volume and page number, with paragraph numbers when appropriate
ERP	Environmental resource permit (see § 373.414, Fla. Stat.; Fla. Admin. Code Ch. 62-330)
DOAH	Florida Division of Administrative Hearings

Unless stated otherwise, all citations to the Florida Statutes are intended to refer to the Florida Statutes (2025).

STATEMENT OF THE CASE AND OF THE FACTS

This is an appeal from the Final Order by the Department of Environmental Protection (the Department), denying an application for an exploratory drilling permit by Appellant Clearwater Land and Minerals, LLC (Clearwater). [R. 725, 738]. The matters described in this statement are primarily derived from the findings in the Recommended Order, which was incorporated in the Final Order. [R. 737].

Clearwater applied to the Department for a permit to drill a well for the purpose of exploring an oil prospect in Calhoun County, within the 100-year floodplain of the Apalachicola River. [R. 751 ¶ 15]. The Department issued a notice of intent to grant the permit application, and the Apalachicola Bay and River Keeper (ABARK) filed a petition challenging the proposed agency action. [R. 1, 142] ABARK questioned whether the proposed location was appropriate for petroleum exploration, and whether Clearwater had demonstrated a financially viable prospect for exploration. [R. 153-161]. The end result focused on the three-part balancing test in section 377.241, Florida Statutes as well as a Department rules governing applications to drill oil wells in “sensitive areas” (i.e.,

rules 62C-26.003(10) and 62C-30.005, Florida Administrative Code, respectively). [R. 789-791].

Clearwater's proposed location for the drilling site was on an existing well pad, located in disturbed uplands, surrounded by a tree farm. [R. 788 ¶ 150]. Approximately five years before the hearing in these proceedings, the Department had issued an uncontested environmental resource permit and an uncontested exploratory drilling permit at the same location to a nonparty, Cholla Petroleum, Inc. (Cholla). [R. 750 ¶¶ 8, 9]. Cholla built a drill pad, a stormwater containment pond, and a perimeter berm but did not conduct exploratory drilling. [R. 822-823 ¶¶ 8, 9, 12.] As proposed, Clearwater would use the same drill pad. [R. 822 ¶ 9]. As characterized by the ALJ, Clearwater's application was essentially requesting a re-authorization of the Cholla drilling permit. [R. 751 ¶ 12].

Also as characterized by the ALJ, the Department's initial review of Clearwater's permit application did not consider certain factors that ultimately weighed against issuance. The Department's review only considered the "character of the lands" on the well pad itself (i.e., on an upland tree farm) as opposed to the surrounding

lands (i.e., the Apalachicola River and related resources). [R. 789 ¶ 151]. The Department did not require Clearwater to present any information on the financial feasibility of the drilling project. [R. 835 ¶ 65].

The parties signed a joint prehearing stipulation which included a section on issues of fact remaining to be litigated. Those issues included whether the factors in section 377.241 tended to weigh in favor of the application; whether the site area was “sensitive”; and whether rule 62C-30.005, Florida Administrative Code applied to all projects in “sensitive areas” (under rule 62C-26.003(10), Florida Administrative Code) and, if so, whether Clearwater had complied with that rule. [R. 744-745]. As will be seen, the ALJ’s findings on these factors proved to be fatal to Clearwater’s application.

Clearwater theory under section 377.241(3), that there was a “likelihood of the presence of oil . . . in such quantities as to warrant the exploration” as proposed in the permit application, was somewhat complicated. During the application phase, Clearwater took the position that the drilling of a single well had an indicated likelihood of success. [R. 1686, 1689-1691]. After referral to the

Division of Administrative Hearings, ABARK prepared and presented expert testimony supporting the opposite conclusion. According to ABARK's expert and considering industry standards for the probability of successful exploration, discounted cash flow analysis, and other financial information, a single well was not financially viable as an investment in oil exploration.¹ Changing tack from its application, Clearwater presented expert testimony that if Clearwater were to receive permits for and drill seven wells in the vicinity of the proposed drill site, the project would be economically viable. [R. 764 ¶¶ 68, 69, R. 1487].

Following submission of proposed recommended orders, the ALJ issued his Recommended Order with the ultimate recommendation to deny Clearwater's permit application. The ALJ first evaluated the factors described in section 377.241, citing *Kanter Real Estate, LLC v. Department of Environmental Protection*, 267 So. 3d 483, 488 (Fla. 1st DCA 2019) for the proposition that the subsections in section 377.241, Florida Statutes are to be read

¹ ABARK's expert expressed this opinion in the form of expected present value, where a financially viable prospect was greater than zero. [R. 761 ¶ 61]. According to ABARK's expert, the expected present value of the project was less than zero, negative \$800,000. [R. 762 ¶ 63].

as a list of factors to be weighed, not as a checklist of minimum requirement. [R. 788 ¶ 149].

The ALJ found that the factors in subsections 377.241(1) and 377.241(3) weighed against issuance of the permit. [R. 788 ¶ 150 - 789 ¶ 154]. In support of his findings on subsection 377.241(1), the ALJ relied upon the site's proximity to the Apalachicola River and other natural resources, as well as the "catastrophic consequences" if a spill occurred. [R. 789 ¶ 152]. The ALJ also found that Clearwater failed to demonstrate compliance with rule 62C-30.005, Florida Administrative Code. [R. 789 ¶ 154].²

The ALJ provided a detailed explanation regarding his review of the record evidence on the two dispositive factors, together with compliance with rule. The ALJ rejected the reasoning of Clearwater's expert on the likelihood of financial success, and accepted the testimony of ABARK's expert (to simplify) that

² The rule is titled "Applications to Drill in the Big Cypress Watershed" [R. 3211], referring to an area in Collier County. A separate rule (rule 62C-26.003(10), Florida Administrative Code) expressly requires application of the criteria in rule 62C-30.005 when the application is for a drilling permit is in a sensitive area. The ALJ found the proposed permit to be in a sensitive area and thus applied the 62C-30.005 criteria to the review of the application. [R. 854-855 ¶ 135].

exploration was more likely to yield a loss, rather than a profit. [R. 761 ¶ 60- 63] The ALJ concluded that the proposed site was within a “sensitive” location, thus triggering more stringent permitting requirements. [R. 849-853].

However, and ultimately adding to issues presented in this appeal, the ALJ laced several editorial remarks throughout the recommended order including critiques of the Department and the court reporter. [R. 835 ¶66, 840 n. 10, 820].³ More pertinent to this appeal, the ALJ also added a footnote regarding a then-pending amendment to chapter 377, Florida Statutes. Footnote 17 sets out the ALJ’s sua sponte observation that the Florida House of Representatives had unanimously passed a bill limiting oil exploration in the vicinity of a national estuarine research reserve. [R. 783 ¶ 17].

The ALJ issued his Recommended Order, recommending denial of the permit application. [R. 740]. Clearwater filed timely exceptions to the Recommended Order, which included an argument regarding footnote 17. [R. 666, 678 ¶ 35]. Clearwater did

³ Unlike the Department and the court reporter, Clearwater did not receive similarly pointed editorial remarks.

not contend that the ALJ's central conclusions were unsupported by competent substantial evidence. The Department rejected Clearwater's exceptions, observing that the footnote was one of several editorial remarks that had no substantive effect on the findings, the conclusions of law, or the ultimate recommendation. [R. 731]. The Department denied the permit application, and Clearwater filed a timely notice of appeal. [R. 793].

SUMMARY OF ARGUMENT

ABARK prevailed on a third-party challenge to a proposed agency action granting an exploratory drilling permit on Clearwater's application. ABARK persuaded the ALJ to accept its proposed findings on essential factual issues at DOAH, and the Department adopted the ALJ's Recommended Order in its entirety. Clearwater has provided no legal basis to set aside the ALJ's findings or the ultimate decision to deny the permit application.

Clearwater begins with a provocative factual theory: that the ALJ, perhaps influenced by media coverage of the application, was secretly tracking proposed legislation that if enacted, would restrict oil exploration at the proposed drilling site. Then, after concealing his interest in that legislation, the ALJ revealed his true thinking in footnote 17 of the Recommended Order. Clearwater argues that the ALJ and the Department violated its due process rights by treating that pending legislation as extra-record evidence. The record, particularly the text of the Recommended Order, does not support Clearwater's theory. It was a stray editorial footnote, not a finding of fact. In any case, the ALJ was entitled to take official recognition and judicial notice of the pending legislation referenced in the

footnote. Clearwater has not shown that the addition of footnote 17 was a material error in procedure, and the Court should reject its procedural due process theory.

As to the remaining arguments, Clearwater expounds on the persuasive force of its expert testimony on the underlying factual disputes. Clearwater does not argue that the ALJ's findings are unsupported by competent substantial evidence and provides no legal authority for the Court to re-weigh conflicting testimony on those issues. Clearwater presents no persuasive argument that the ALJ or the Department misinterpreted a rule or a statute. To the contrary, Clearwater argues at best that the ALJ should have placed greater weight on the testimony of its experts. Competent and substantial evidence supported the essential findings. For that reason, the Court should affirm the Final Order.

ARGUMENT

I. CLEARWATER FAILED TO SHOW THAT A FOOTNOTE IN THE RECOMMENDED ORDER WAS A MATERIAL ERROR IN PROCEDURE, OR THAT THE FOOTNOTE MAY HAVE IMPAIRED THE FAIRNESS OR CORRECTNESS OF THE ACTION.

Standard of Review

The Court must affirm the Final Order unless it finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of section 120.68, Florida Statutes. *Robinson v. Comm'n on Ethics*, 242 So. 3d 467, 470 (Fla. 1st DCA 2018). The argument in part I of the Initial Brief must be affirmed unless Clearwater can show a material error in procedure that impairs the fairness or correctness of proceedings. § 120.68(7)(c), Fla. Stat. If Clearwater demonstrates an error, the Court must also consider whether any error is harmless as it would with any similar final order. *Hale v. State Bd. of Admin.*, 360 So. 3d 817, 820 (Fla. 1st DCA 2023).

Argument on Issue

Clearwater argues that the ALJ and the Department violated its right to procedural due process. Clearwater points to the ALJ's footnote 17 to the Recommended Order (regarding HB 1143) and

alleges the footnote constitutes a form of reliance on evidence outside the record. Clearwater represents, in its statement of the facts of the Initial Brief, that the HB 1143 was the only basis for the “legal conclusion” that the project site was a sensitive area. [I.B. 15].

To begin, Clearwater’s statement of the facts distorts the circumstances regarding the ALJ’s drafting of footnote 17. The purpose of providing a statement of the case and of the facts is not to color the facts in one's favor but to inform the appellate court of the case's procedural history and the pertinent record facts underlying the parties' dispute. *Sabawi v. Carpentier*, 767 So. 2d 585, 586 (Fla. 5th DCA 2000). Clearwater alleges that the ALJ was “secretly tracking” HB 1143. [I.B. 5]. Clearwater also alleges that HB 1143 was “the basis for his conclusion” regarding the sensitive character of the lands involved. [I.B. 6]. The record itself does not support either of those alleged facts; the record shows only the footnote itself.

In addition to having no record support, Clearwater's argument overlooks two points. First, the ALJ made lengthy factual findings on the character of the lands, such as its proximity to a national estuarine research reserve, its location in the floodplain, and the potential for impacts to those areas. [R. 849-853, 861]. These factual findings led to the ALJ's ultimate finding that the proposed project was in a sensitive area, which triggered further review under rules 62C-26.003(10) (requiring application of the criteria in rule 62C-30.005 when the application is for a drilling permit in a sensitive area) and 62C-30.005 (establishing additional criteria for certain drilling applications). After making this ultimate finding, the ALJ dropped a footnote noting that the Florida House of Representatives had passed a bill prohibiting drilling in the same area Clearwater wished to drill in. [R. 855 n. 17] The context of the footnote, particularly the sentence it was attached to, shows that the ALJ used the statement rhetorically, not as a finding of fact.⁴

⁴ The passage of a legislative bill would not be logically relevant to describe the characteristics of the land. With or without Bill 1143, and regardless of the vote on the bill, the site would have the same proximity to the Apalachicola River and related resources.

Second, even if the ALJ cited the House’s passage of the bill as an additional factor in support his “legal conclusion” (as characterized by Clearwater in its Initial Brief [I.B. 15]), his official recognition of the legislation would have been entirely consistent with the requirements of the Florida Administrative Procedure Act. The Administrative Procedures Act only imposes limits on the use of official recognition when it is used to support findings of fact. § 120.57(1)(j), Fla. Stat. Again, the footnote is not a finding of fact. It is reasonable to suppose that when an ALJ writes any order, he or she may rely upon secondary materials to describe the reasoning in the order. It would be ludicrous to ask any judge to disclose secondary sources he or she may rely upon before completing the written order. No authority suggests that the use of secondary materials for the purpose of explaining a judge’s reasoning is procedurally unfair.⁵

Similarly, HB 1143 is a matter that would have been the proper subject of judicial notice. § 90.202(5), Fla. Stat. There is no

⁵ By comparison, some appellate courts (including the United States Supreme Court) have commonly extended their consideration of facts beyond records on appeal, including information taken from the internet. *See generally* Sylvia H. Walbolt & Nicholas A. Brown, *Off the Record or Not?*, Fla. B.J., December 2016.

dispute about the authenticity of the bill. If a party had requested official recognition of the bill, the Administrative Procedure Act would have required the ALJ to provide advance notice of it. § 120.569(2)(i), Fla. Stat. However, the statute does not apply to occasions where the ALJ takes official recognition of matters on his or her own initiative. *Id.* The error, if any, was the omission of the ALJ to advise the parties that he intended to cite HB 1143 in a footnote of his recommended order. Clearwater has presented no argument that the ALJ should have sustained an objection to official recognition of that bill. Any error was harmless. Point I of the Initial Brief does not justify Clearwater's request for vacatur.

II. THE DEPARTMENT AGREES WITH CLEARWATER'S POSITION THAT THE APPEAL IS NOT MOOT.

The Department agrees with Clearwater's point in part II that this appeal is not moot, because of the collateral legal consequences of the Final Order. *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992).

III. CLEARWATER PROVIDES NO LEGAL JUSTIFICATION TO SET ASIDE THE ALJ'S FINDINGS REGARDING THE "SENSITIVE" CHARACTER OF THE LANDS INVOLVED.

Standard of Review

This is a review of the Department's consideration of the ALJ's recommended order. In that endeavor, the Department was required to accept findings of fact which are based on competent substantial evidence. §120.57(1)(l), Fla. Stat. The Department lacked authority to make new, substituted, or supplemental findings of fact. *Id.*; *Gross v. Dep't of Health*, 819 So. 2d 997, 1005 (Fla. 5th DCA 2002); *Lawnwood Med. Ctr., Inc. v. Agency for Health Care Admin.*, 678 So. 2d 421, 425 (Fla. 1st DCA 1996). On review, the Court cannot substitute its judgment on the weight of the evidence on any disputed finding of fact. § 120.68(7)(b), Fla. Stat.

Argument on Issue

As Clearwater recognizes in its Initial Brief, the question of whether a drilling site is "sensitive" is potentially dispositive in two respects. First, as explained above, for "sensitive areas," the Department must apply the environmental standards described in rule 62-30.005, Fla. Admin. Code (which would otherwise apply in all areas of the Big Cypress Watershed). Fla. Admin. Code R. 62C-

26.003(10). Second, the “sensitivity” of the lands involved is relevant in considering whether section 373.241(1) weighs in favor of issuance based upon the “character of the lands involved.” See *Coastal Petroleum Co. v. Florida Wildlife Fed'n, Inc.*, 766 So. 2d 226, 228 (Fla. 1st DCA 1999) (describing occasion where Department applied section 377.241(1) and “then ‘balanced’ the criteria and determined that issuance of a drilling permit was too dangerous to the coastal environment.”) In this appeal, Clearwater does not challenge the existing interpretation of section 377.241(1) which has treated the environmental characteristics or “sensitivity” of the lands involved as a finding of fact. See *Kanter Real Estate, LLC v. Dep't of Env'tl. Prot.*, 267 So. 3d 483, 488 (Fla. 1st DCA 2019) (analyzing and applying a finding of fact regarding the ostensibly “sensitive” characteristics of a proposed drilling site).

Clearwater argues that the ALJ erred by characterizing the lands involved as vulnerable or sensitive. Clearwater does not mention this Court’s prior holding that this question is an issue of fact. *Id.* at 489 (“Here, the ALJ's ultimate finding of fact was that the land in question did not have any qualities that would make it vulnerable to pollution of the land, aquifer or surface waters, a

finding the ALJ supported with examples and facts introduced as evidence. This was a factual finding”) Clearwater does not contend that the ALJ’s findings on that question are unsupported by competent substantial evidence. For that reason, the Court should reject the argument in part II of the Initial Brief.

§120.57(1)(l), Fla. Stat.

If the Court were to accept the ALJ’s findings on section 377.241(1) and the character of the lands involved, it would be unnecessary to consider the ALJ’s additional finding that rule 62C-26.003(10) requires the denial of the permit application.

Furthermore, Clearwater does not provide a basis to set aside the ALJ’s findings on whether the proposed drilling location was within a sensitive area.

The restrictions in rule 62C-30.005 apply to “sensitive areas.” Fla. Admin. Code R. 62C-26.003(10). Clearwater attempts to conflate the term “sensitive area” in rule 62C-26.003(10) with the rule definition of “sensitive environment” that applies generally to the Department’s oil and gas rules. Fla. Admin. Code R. 62C-25.002(44). The text of the rule does not suggest that a sensitive

area is the same as a sensitive environment.⁶ The usage of the term “sensitive area” implies a different meaning than the defined term “sensitive environment.” *Compare Lab. Corp. of Am. v. Davis*, 339 So. 3d 318, 325 (Fla. 2022) (“It would indeed be a very odd choice for the Legislature to use the term ‘reimbursement’ in a sense in the exclusive jurisdiction provision different from the word's meaning throughout the WCL. If the Legislature had meant to say ‘payment,’ that term was readily available.”)

Clearwater also argues that competent substantial evidence does not support the ALJ’s finding regarding compliance with rules 62C-30.005(2)(b)6 (addressing height of well pads) and 62C-30.005(2)(b)7 (addressing height and impermeability of protective levees). Clearwater failed to present this point in its exceptions to the Recommended Order [R. 666], and has thus failed to preserve the argument. *Couch v. Comm'n on Ethics*, 617 So. 2d 1119, 1124 (Fla. 5th DCA 1993); *see also Pullen v. State*, 818 So. 2d 601, 602

⁶ The term “sensitive environment” is used in a rule regarding applications for geophysical studies, a separate rule in the Department’s oil and gas program.” Fla. Admin. Code R. 62C-26.007(6)(b). The definition is thus not without meaning. Clearwater does not argue that the difference in phrasing between “sensitive area” and “sensitive environment” is based upon a clerical error.

(Fla. 1st DCA 2002) (“The existence of the preservation requirement has been acknowledged in the more narrow context of challenges to the sufficiency of the evidence in an administrative case.”) In any case, those findings are supported by competent substantial evidence including a report prepared by ABARK’s expert, a joint exhibit admitted into evidence without objection. [R. 3215 (Joint Exhibit 10)].

Furthermore, Clearwater does not contest the findings that the application did not comply with rule 62C-30.005(2)(b)1 (addressing minimization of “negative impacts”) and 62C-30.005 (2)(a)6 (addressing the height of roads for purposes of flood control.) See R. 780 ¶¶127, 128]. Clearwater did not preserve its argument on the sufficiency of evidence, and the argument is not supportable. The Court should reject Clearwater’s argument in part III of the Initial Brief.

IV. THE ALJ DID NOT MISINTERPRET SECTION 377.241(3) OF THE FLORIDA STATUTES, AND CLEARWATER PROVIDES NO LEGAL JUSTIFICATION TO SET ASIDE THE ALJ'S FINDINGS REGARDING THE INDICATED LIKELIHOOD OF OIL IN QUANTITIES AS TO WARRANT EXTRACTION

Standard of Review

Again, the Court cannot substitute its judgment on the weight of the evidence on any disputed finding of fact. § 120.68(7)(b), *Fla. Stat.* The ALJ has the authority, as the fact finder, to determine whether a given set of facts constitutes a violation of a rule or statute. *Bush v. Brogan*, 725 So. 2d 1237, 1240 (Fla. 2d DCA 1999); *Langston v. Jamerson*, 653 So. 2d 489,491 (Fla. 1st DCA 1995).

Argument on Issue

Finally, Clearwater challenges the ALJ's finding that section 377.241(3), Florida Statutes, weighs against issuance of the permit application. Part IV of the brief sets out a strident argument on how Clearwater would prefer that the statute be applied, with extensive record citations to expert testimony and policy arguments on the permitting of oil wells. Lacking, however, is any citation for the proposition that the Court should set aside the ALJ's findings. Clearwater argues that its expert testimony was persuasive, but

does not provide any legal argument that the ALJ erred in rejecting that testimony or in accepting the testimony of ABARK's expert. See *Tolley v. Dep't of Health & Rehab. Services*, 667 So. 2d 480, 482 (Fla. 5th DCA 1996) ("The trier of fact may accept or reject all or any part of an expert's testimony"); *Dep't of Agric. & Consumer Services v. Bogorff*, 35 So. 3d 84, 88 (Fla. 4th DCA 2010) ("Moreover the finder of fact is free to determine the reliability and credibility of expert opinions and, if conflicting, to weigh them as the finder sees fit. Even when expert testimony is unchallenged, the finder of fact is free to weigh the opinion, just as it does with any other witness, and reject such testimony.") Clearwater has not provided a reason to set aside the ALJ's findings on section 377.241(3), Florida Statutes.

Clearwater does not make an overt argument regarding interpretation of subsection 373.241(3). Clearwater implies, however, that probability of encountering oil in some quantity should be enough to weigh in favor of issuance. The statute, describing a factor for consideration, reads: "[1] The proven or indicated likelihood of the presence of oil, gas or related minerals [2] in such quantities as to warrant the exploration and extraction of

such products on a commercially profitable basis.” § 377.241(3), Fla. Stat. (numbering added). Clearwater cannot justify taking out part [2] of the text. *Robinson v. Comm'n on Ethics*, 242 So. 3d 467, 474 (Fla. 1st DCA 2018) (“We have a duty to construe statutes in a manner that gives effect to all of their provisions.”) The ALJ did not err in considering testimony on the likelihood of commercial profitability.

Clearwater closes with the argument that the ALJ erred in weighing the three balancing criteria in section 377.241, Florida Statutes because it failed to give overwhelming weight to the second statutory factor, i.e. section 377.241(2).⁷ Clearwater does not argue that the text of the statute itself required the ALJ or the Department to do so and instead, resorts to a broad statement regarding legislative intent. Clearwater concedes that the intent of the permitting program is to balance oil exploration with surface owner protections and environmental considerations. [I.B. 48]. The text of

⁷ “The nature, type and extent of ownership of the applicant, including such matters as the length of time the applicant has owned the rights claimed without having performed any of the exploratory operations so granted or authorized.” § 377.241(2), Fla. Stat.

the statute does not provide a basis for the factor in subsection (2) to be given any greater weight than the factors in subsections (1) and (3). As argued above, competent substantial evidence supports the ALJ's findings on subsections (1) and (3). The intent of a statute is to be derived from the text of the statute itself. Words of the governing text are of paramount concern; what they convey, in their context, is what the text means. *E.g., Steele v. Comm'r of Soc. Sec.*, 385 So. 3d 587, 590 (Fla. 2024). Clearwater has shown no error in the balancing of the three factors in section 377.241, Fla. Stat.

The ALJ found that the factors in subsections (1) and (3) weighed against issuance, but that Clearwater "satisfied" subsection (2). Clearwater contends that the finding regarding factor in subsection (2), which addresses the ownership rights of the applicant and an applicant's potential delay in exploration, trumps the contrary findings regarding subsections (1) and (3). Clearwater's argument would turn the balancing test in section 377.241 into a binary test regarding the ownership of the proposed drilling site. Such an interpretation would render subsections (1) and (3) meaningless. *Cf. Robinson v. Comm'n on Ethics, supra*. The character of the lands involved and the probability of success must

mean something in the balancing test. Clearwater offers no coherent argument that in this case or in any other case, a finding regarding subsection (2) favoring the applicant should be given more weight than contrary findings on subsections (1) and (3).

In sum, there is no reason to set aside the ALJ's findings, based on competent substantial evidence, that the indicated presence of oil did not justify exploration on a "commercially profitable basis." If the Legislature intended for the Department not to consider likelihood of commercial profits, it would not have included that phrase in the statute. Clearwater has provided no logical argument to reverse findings on the balancing of statutory factors. Part IV of the Initial Brief does not support reversal or modification of the Final Order.

CONCLUSION

The Court should affirm the Final Order.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

JUSTIN G. WOLFE
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CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing has been furnished via Florida Courts E-portal to the following on this 8th day of July 2026:

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CERTIFICATE OF COMPLIANCE

I HEREBY certify that the foregoing complies with the font and word count requirements of rule 9.045, *Florida Rules of Appellate Procedure*.

/s/ Jeffrey Brown

JEFFREY BROWN

Office of General Counsel