IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

Case No. 3D21-2063

TROPICAL AUDUBON SOCIETY and MICHELLE GARCIA

Appellants,

v.

MIAMI-DADE COUNTY, FLORIDA and STATE OF FLORIDA, ADMINISTRATION COMMISSION,

Appellees.

Appeal from the State of Florida Administration Commission
(Case No. ACC-20-005)

AMICI CURIAE BRIEF OF FRIENDS OF THE EVERGLADES, 1000 FRIENDS OF FLORIDA, and MIAMI WATERKEEPER IN SUPPORT OF APPELLANT TROPICAL AUDUBON SOCIETY and MICHELLE GARCIA

April 7, 2022

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I. IDENTITY AND INTEREST OF AMICI CURIAE

Amicus Curiae Friends of the Everglades is a not-for-profit grassroots environmental and conservation organization with members throughout Florida. Friends of the Everglades' mission is to preserve, protect, and restore the only Everglades in the world.

Amicus Curiae 1000 Friends of Florida is a not-for-profit smart growth advocacy organization with members throughout Florida. 1000 Friends of Florida is focused on building better communities and saving special places in one of the fastest growing states in the nation. 1000 Friends also works to give citizens a meaningful role in shaping the futures of their communities and state.

Amicus Curiae Miami Waterkeeper is a not-for-profit clean water advocacy organization within the Waterkeeper Alliance, focusing specifically on the South Florida coastal community and environment, and has members throughout Florida. Miami Waterkeeper's mission is to ensure swimmable, drinkable, fishable water for all.

Amici Curiae appear in this case to highlight the conflict between the Administration Commission's interpretation of Florida's Community Planning and Administrative Procedure Acts and legislative and constitutional intent to ensure the protection and restoration of the Everglades ecosystem and

natural resources through the Community Planning Act and local comprehensive planning.

II. IMPACTS OF THIS RULING ON EVERGLADES RESTORATION

The Administrative Commission's application of Section 120.57(1)(l), Florida Statutes, ignores the limits the Florida Legislature places on agency review of proposed administrative orders and threatens the State's comprehensive planning structure and the important state priorities protected by that structure.

The priorities at stake include longstanding state, federal, and tribal partnerships, billions of dollars in ecosystem investments and benefits, and natural resources like the Everglades and Biscayne Bay essential for our continued ability to live in Florida. For over 20 years, residents of Florida and the Florida Legislature have made their intent to protect and restore the Everglades and Biscayne Bay clear through a constitutional amendment, a plethora of legislation, and billions of dollars of investment. Comprehensive plans provide a critical mechanism through which these priorities are codified, protected, and implemented. *See, e.g.*, Miami-Dade County Comprehensive Development Master Plan ("CDMP"), Land Use Element Objective LU-3, https://www.miamidade.gov/planning/cdmp-adopted.asp (last visited April 5, 2022) ("The location, design and management practices

of development and redevelopment in Miami-Dade County shall ensure the protection of natural resources and systems . . . by reflecting the management policies contained in resource planning and management plans . . . included in the Comprehensive Everglades Restoration Plan approved by Congress through the Water Resources Development Act of 2000.").

When comprehensive plan amendments are challenged by concerned citizens, the standard of review established in Section 120.57(1)(l), Florida Statutes, for agencies reviewing an Administrative Law Judge's ("ALJ") proposed order reflects the limited power of agencies to advance policy and promulgate rules only when specifically instructed to do so by the Legislature, and the power of citizens to engage in an independent administrative process to ensure governmental decision-making is well-founded and comports with legislative guidance.

In the instant action, this administrative standard of review protects the policies and priorities painstakingly incorporated into a comprehensive plan by empowering an impartial ALJ to evaluate the facts when a local government proposes changes to its plan and providing a high bar for the agency that would overturn the ALJ's factual determinations regarding any

allegedly conflicting comprehensive plan amendment. *See* Fla. Stat. §120.57(1)(l).

The Administrative Commission ("Commission") incorrectly applied the Section 120.57(1)(l) review standard by failing to state with particularity its reasons for overturning the ALJ's findings of fact and law and by improperly overturning the ALJ's findings of fact that were based on competent and substantial evidence. *See Id*. This misapplication threatens the State's comprehensive planning framework and critical environmental resources protected by that framework throughout the State, including the Everglades and Biscayne Bay.

A. Everglades and the Comprehensive Everglades Restoration Plan

The Everglades ecosystem runs from the north end of the Kissimmee River watershed to Biscayne Bay, Florida Bay, and the Florida Keys. In its historic natural state, the Everglades encompassed roughly 3 million acres of slow-moving water and biota and created a diverse range of ecosystems dependent on elevation and the specific quantity, quality, and timing of water. Nat'l Acads. of Scis., Eng'g, and Med., *Progress Toward Restoring the Everglades*: *The Eighth Biennial Review—2020*, 23 (2021), https://www.nap.edu/catalog/25853/progress-toward-restoring-the-

everglades-the-eighth-biennial-review-2020 (hereinafter "NAS").[1] "[T]he Everglades ecological system not only contributes to South Florida's water supply, flood control, and recreation, but serves as the habitat for diverse species of wildlife and plant life. The system is unique in the world and one of Florida's great treasures." Fla. Stat. §373.4592(a).

However, in the late 1800s, the Everglades ecosystem began to be drained to create dry land that could be used for agriculture and development. *NAS*, at 23. In doing so, the natural hydrology of the Everglades was destroyed and the ecosystem benefits needed to sustain living in South Florida were decimated. *Id.* at 23–25. "Today, the federal government has listed 78 plant and animal species in South Florida as threatened or endangered, with many more included on state lists." *Id.* at 25. Urban and agricultural development have reduced the Everglades to about one-half its pre-drainage area, and development has contaminated its water with chemicals such as phosphorus, nitrogen, sulfur, mercury, and pesticides. *Id.* at 24–25.

In response to Everglades destruction, "a powerful political consensus developed among federal agencies, Native American tribes, state agencies

[1] "[C]ourts may take judicial notice of official records of administrative agencies without more." *Freimuth v. State,* 272 So. 2d 473, 475 (Fla. 1972).

and commissions, county governments, and conservation organizations" to restore this critical ecosystem. *NAS*, at 25. Their collective solution was the Comprehensive Everglades Restoration Plan ("CERP"), one of the most ambitious restoration efforts ever conceived. *Id.* at 15, 25. This plan encompasses the entire Everglades ecosystem and Biscayne Bay. *See generally Id.*

As stated by the National Academy of Sciences, "[t]his unprecedented project envisioned the expenditure of billions of dollars in a multidecadal effort to achieve ecological restoration by reestablishing the hydrologic characteristics of the Everglades, where feasible, and to create a water system that simultaneously serves the needs of both the natural and the human systems of South Florida." *Id.* at 15. This includes "restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection." Water Resources Development Act of 2000, Pub. L. No. 106-541, § 601(h)(1), 114 Stat. 2572 (2000).

CERP envisioned 68 individual projects to be constructed at a cost of $23.2 billion with a contribution of $200 million of state and $200 million of federal funds annually, but in the recent past these contributions have been exceeded by hundreds of millions of dollars. *NAS*, at 30, 40-41.

Several of these projects are targeted specifically at restoring Biscayne Bay and wetland habitat in Miami-Dade County. *See, e.g.*, September 2020 Biscayne Bay and Southeastern Everglades Ecosystem Restoration Project Management Plan, https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/15573 (last visited April 5, 2022)[2]. For example, the Biscayne Bay and Southeastern Everglades Ecosystem Restoration Plan ("BBSEER") is a combination of several CERP projects designed to "restore wetland and nearshore estuarine habitats," improve flows of "freshwater to Biscayne Bay" and "natural coastal glades habitat," and increase "resiliency of these coastal habitats in response to sea level change." *Id.* at 21. The BBSEER project study area encompasses the areas at issue in this case. The Bird Drive Recharge Project, one of the original CERP projects and identified within BBSEER as the location of a "conveyance concept" to help restore wetlands and reduce water seepage out of the Everglades, lies directly within the impact of the highway at issue in this litigation. *Id.* at 27.

B. The Florida Legislature Has Made Clear that Everglades Restoration Is a Top State Priority

The Florida Legislature has long recognized and reaffirmed the importance of prioritizing Florida's natural resources, the Everglades

[2] "[C]ourts may take judicial notice of official records of administrative agencies without more." *Freimuth*, 272 So. 2d at 475.

ecosystem, and Everglades restoration through legislative language, mandates, and actions. *See* Fla. Stat. § 373.616. So much so that it is embedded in our state constitution: "It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources." Art. II, § 7(a), Fla. Const.

The implementation of this constitutional policy through the extensive investment in CERP and Everglades restoration is codified in Florida law:

> The Legislature recognizes that the Everglades ecosystem must be restored both in terms of water quality and water quantity and must be preserved and protected in a manner that is long term and comprehensive.
>
> It is the intent of the Legislature to expedite plans and programs for improving water quantity reaching the Everglades, correcting long-standing hydroperiod problems, increasing the total quantity of water flowing through the system, providing water supply for the Everglades National Park, urban and agricultural areas, and Florida Bay, and replacing water previously available from the coastal ridge in areas of southern Miami-Dade County.

Fla. Stat. § 373.4592(e), (f). As summed up by the Florida Legislature, "Everglades [restoration] represents by far the largest environmental cleanup and restoration program of this type ever undertaken, and the returns from substantial public and private investment must be maximized so that available resources are managed responsibly." Fla. Stat. § 373.4592(h).

C. The Commission's Final Order Threatens the Statewide Comprehensive Planning Scheme and the State Priorities That Comprehensive Plans Protect, Including the Protection and Restoration of the Everglades Ecosystem and Biscayne Bay.

The Community Planning Act acknowledges the importance of "the state role in managing growth under this act to protect[] the functions of important state resources and facilities" and the need for local governments to manage natural resources "consistent with the public interest." Fla. Stat. § 163.3161(3), (4) ("Through the process of comprehensive planning, it is intended that units of local government can . . . conserve, develop, utilize, and protect natural resources within their jurisdictions."). Everglades restoration provides a salient example of how the Community Planning Act is used to incorporate important state priorities into comprehensive plans in accordance with these goals and standards. The Comprehensive Development Master Plan ("CDMP") in Miami-Dade County implements the state's Everglades priorities and contains language expressly protecting these priorities and mandating that all development be consistent with CERP. *See, e.g.,* CDMP, Policy CON-7J ("In evaluating applications that will result in alterations or adverse impacts to wetlands, Miami-Dade County shall consider the applications' consistency with [] CERP objectives.

Applications that are found to be inconsistent with CERP objectives, projects or features shall be denied.").[3]

More broadly, a local government's comprehensive plan, as set forth in the Community Planning Act, "provide[s] the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements." Fla. Stat. § 163.3177(1). The varied elements of the comprehensive plan, including adopted policies, "shall be consistent." Fla. Stat. § 163.3177(2). In addition, "[a]ll mandatory and optional elements of the comprehensive plan and plan amendments shall be based upon relevant and appropriate data and … analysis," and the Legislature explains that "[t]o be based on data means to react to it in an appropriate way and to the extent necessary

[3] *See also, id. at* LU-3C ("Development in the [eastern] Everglades . . . shall be limited to uses, designs and management practices which are consistent with adopted State regulations and policies, the [CERP], and related federal, State or County policies, plans or regulations as may be formulated, consistent with the goals, objectives and policies of this comprehensive plan."); *Id.* at LU-8G (finding that Everglades National Park, Biscayne National Park, Pennsuco Wetlands, and Bird Drive Wetlands, among others, cannot be considered in expanding the urban development boundary); *id.* at p. I-77 (limiting the types of development permitted in certain Everglades ecosystem areas); *id.* at p. I-78 (mandating compatibility in certain areas with environmentally significant lands and CERP).

indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." Fla. Stat. § 163.3177(1)(f).

When disputes arise as to whether or not a proposed plan amendment is "consistent" with the plan or "based on relevant and appropriate data and … analysis," Sections 120.569 and 120.57 of Florida's Administrative Procedure Act ("APA") provide the process and standards for administrative review. Fla Stat. § 163.3184(5)(a); Fla. Stat. § 120.57(1)(l) (explaining the parameters under which the agency may accept, reject, or modify the recommended order from an ALJ "as the final order of the agency"). The Florida Legislature refined the APA more than 20 years ago to reinforce agencies' accountability to the Legislature. New laws in 1996 and 1999 added language reinforcing and strengthening ALJs' powers to come to independent conclusions of law and act as triers of fact. Fla Stat. § 120.57; *see also* Rigot and DeMeo, *Florida's 1996 Administrative Procedure Act*, Florida Bar Journal 71, at 12 (Mar. 1997) (noting that legislative changes responded to "individual citizens and businesses [who] had become concerned that the balance of fairness of the administrative law system had tilted in favor of the agencies as a result of judicial decisions and agency final orders which had not been appealed."); Sellers, *More APA Reform: The 1999 Amendments to Florida's Administrative Procedure Act*, Florida Bar Journal

73, at 78 (July/Aug. 1999) (detailing additional new constraints on agency rulemaking and noting language "narrow[ing] an agency's authority to reject an administrative law judge's recommended conclusions of law").

The new laws also limited agencies' rulemaking to those contexts in which the Legislature very specifically directed agency rulemaking. Fla. Stat. § 120.536(1); *see also* Rigot and DeMeo, *By the Way, More APA*, Florida Bar Journal 71, at 32 (Oct. 1997) ("As a result of the 1996 APA, agencies are more accountable for their decisions; the kinds of rules agencies are permitted to promulgate are more limited; and the opportunities for substantially affected persons to challenge rules are more numerous."). In keeping with the Legislature's desire to increase and ensure governmental accountability, Section 120.57(1)(l) mandates, among other things, that any changes to an ALJ's findings are explained clearly and unambiguously and expressly protects all findings of fact based on competent and substantial evidence. *Id.*

In the context of review of actions under the Community Planning Act, this standard requires an independent, impartial review to ensure that a local government's move to amend its foundational planning document comports with basic standards of good governance: that any addition is consistent with the existing policies and other plan elements and that it is based on adequate

data and analysis. The standard protects communities' ability to design, commit to, and implement policies and goals through their comprehensive plans—like Everglades restoration—by guarding against the piecemeal introduction of inconsistent, poorly justified changes. Section 120.57(1)(l)'s promise of impartial, careful review of agency action is crucial for protecting the priorities encompassed within comprehensive plans.

Here, the ALJ heard testimony regarding challenges to a plan amendment and found that the proposed amendment was not based on "adequate data or analysis" sufficient to support or allow a finding that the plan amendment was "consistent" with Everglades restoration, as required by the County's policies. RO, ¶111. The Commission's final order overruling the ALJ's findings of fact and conclusions of law disregards the high bar that Section 120.57(1)(l) sets for agencies rejecting ALJ determinations. It sets a precedent that weakens Chapter 120's oversight structure and alters the balance in Florida's growth management structure between local communities' authority to set development priorities in their respective regions and the responsibility to protect and implement statewide priorities and investments. This Court should ensure that its interpretation of Section 120.57(1)(l) does not undermine the Legislature's commitments to evidence-based comprehensive planning and Everglades restoration.

III. LEGAL ARGUMENT

As discussed, the Commission's review of the Recommended Order is governed by Section 120.57(1)(l), Florida Statutes, which states:

> (l) . . . When rejecting or modifying such conclusion of law or interpretation of administrative rule, **the agency must state with particularity its reasons for rejecting or modifying such conclusion of law** or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. . . . **The agency may not reject or modify the findings of fact 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 upon competent substantial evidence** or that the proceedings on which the findings were based did not comply with essential requirements of law. (emphasis added). Fla. Stat. §120.57(1)(l).

The Commission failed to properly apply this standard throughout the Final Order by failing to state its findings of fact and law with particularity and overturning findings of fact that were based on competent and substantial evidence.

A. The Administrative Commission Did Not State With Particularity Its Reasons For Rejecting the ALJ's Findings of Fact and Conclusions of Law As Required By Section 120.57(1)(l).

As stated, the Commission cannot overturn an ALJ's conclusion of law unless (among other things) it "**state[s] with particularity** its reasons for rejecting or modifying such conclusion of law." *Prysi v. Dep't of Health*, 823

So. 2d 823, 826 (Fla. 1st DCA 2002) (finding that a “Final Order fails to comply with the statutory requirements of Section 120.57(1)(l) because it fails to ‘state with particularity’ its reasons for rejecting the ALJ’s findings of fact and conclusion of law.”) The Commission cannot reject or modify a finding of fact “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 upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.” *Verleni v. Dep't of Health, Bd. of Podiatric Med.*, 853 So. 2d 481, 483 (Fla. 1st DCA 2003) (finding that the agency failed to properly reject the ALJ’s finding of fact when it overturned the ALJ’s recommendations without discussion and thus failed to state with particularity why the findings were not based on competent substantial evidence) (emphasis added).

> “When an agency merely states its conclusion that the ALJ's rejected findings are not supported by competent, substantial evidence, it violates the statutory requirement that it **state valid reasons** for rejecting the findings with particularity. *Hoover v. Agency for Health Care Admin.*, 676 So. 2d 1380 (Fla. 3d DCA 1996). Where an agency's final order **rejects the ALJ's factual findings and simply accepts the factual findings set forth in exceptions to the recommended order**, the order fails to "state with particularity" those findings it rejected. *Kibler v. Dep't of Prof'l Reg.*, 418 So. 2d 1081, 1082 (Fla. 4th DCA 1982).” *Prysi*, 823 So. 2d at 825.

In the Final Order, the Commission repeatedly failed to apply this standard by failing to "state with particularity" its reasons for rejecting the ALJ's findings of fact and conclusions of law. For example, in reviewing County exception 42 related to findings of law in paragraphs 208 of the Recommended Order and Policy CON-1B and TE-1A, the Commission merely transcribes the County's argument before making the conclusory finding—without discussion—that "the Commission determines that the County reached a fairly debatable determination of consistency" with both policies. The Commission's findings related to both Policy CON-1B and TE-1A fail to discuss the counter arguments made by Petitioners, the legitimacy of the County's position, and any record evidence to support its position. This does not "state with particularity [the Commission's] reasons for rejecting or modifying such conclusion of law." *See Prysi*, 823 So. 2d at 826.

Similarly, in addressing County exception 37 relating to a finding of fact in paragraph 201, footnote 17, of the Recommended Order, the Commission reiterates the County's argument in a single sentence before stating "the Commission finds that the finding is not supported by competent substantial evidence." The Commission provides no explanation, no discussion of any absence of evidence in the record, and no reference to Petitioner's position. This does not "state[] with particularity" the Commission's reasons for

overturning what appears to be a valid finding of fact. *See Kibler* , 418 So. 2d at 1082.

Similar conclusory findings of fact and law without sufficient explanation are found throughout the Final Order. Conclusory determinations like this that fail "to state with particularity the reasons for rejecting or modifying such conclusions of law" and fail to "state[] with particularity in the order**,** that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law" violate the Section 120.57(1)(l) standard. If a Commission is tasked with reviewing findings of fact and conclusions of law without the benefit of hearing evidence, they must make these findings and the reasons for their findings clear to ensure the effective continued implementation of the priorities protected within comprehensive plans.

B. The Commission Incorrectly Applied the "Competent and Substantial Evidence" Standard

As mandated by Section 120.57(1)(l), "an administrative agency . . . may not reject or modify an ALJ's findings of fact '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 upon competent substantial evidence** or that the proceedings on which the findings were

based did not comply with essential requirements of law." *Yerks v. Sch. Bd. of Broward Cnty.*, 219 So. 3d 844, 848 (Fla. 4th DCA 2017) (citing Fla. Stat. 120.57(1)(l)) (emphasis added). Stated another way, "neither an administrative agency nor a reviewing court may reject an administrative hearing officer's findings of fact, as long as those findings are supported by competent, substantial evidence in the record." *Id.* (citing *Maynard v. Fla. Unemployment Appeals Comm'n*, 609 So. 2d 143, 145 (Fla. 4th DCA 1992)). "The term 'competent and substantial evidence' does not relate to the quality, character, convincing power, probative value or weight of the evidence but refers to the existence of some evidence (quantity) as to each essential element and as to the legality and admissibility of that evidence." *Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996).[4]

"The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Yerks*, 219 So. 3d at 848 (citing *Heifetz v. Dep't of Bus.*

[4] "Competency of evidence" refers to its admissibility under legal rules of evidence. "Substantial" requires that there be some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, "tending to prove") as to each essential element of the offense charged." *Id.* (citing *Dunn v. State*, 454 So. 2d 641, 649, n. 11 (Fla. 5th DCA 1984)

Regulation, Div. of Alcoholic Beverages & Tobacco, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)). "If the ALJ's factual findings 'are supported by competent substantial evidence, the agency cannot reject them even to make alternate findings that are also supported by competent substantial evidence.'" *Id.* (citing *Resnick v. Flagler Cty. Sch. Bd.*, 46 So. 3d 1110, 1112-13 (Fla. 5th DCA 2010)); *See also Garcia v. State*, 46 Fla. L. Weekly D2334, *6 (Fla. 4th DCA October 27, 2021). Factual issues susceptible to ordinary methods of proof not infused with policy considerations are the prerogative of the ALJ as the finder of fact. *Yerks*, 219 So. 3d at 848 (citing *Heifet*, 475 So. 2d at 1281). An agency's improper rejection of an ALJ's findings is an abuse of discretion. *Id.*

The Commission's failure to appropriately apply this standard is clear throughout the Final Order. For example, in granting County Exception 9, the Commission improperly rejected the ALJ's findings of fact made in paragraph 74 of the Recommended Order that was based on competent and substantial evidence, in favor of an argument by the County. Paragraph 74 states in its entirety:

> "In an effort to demonstrate compliance with the requirements to 'protect the water management systems that recharge' the regional wellfield, Respondent points to new policy LU-1W, which requires that alignment of the new corridor remain 'outside and to the east of the boundary of the 10-day travel time contour' of the West Wellfield area." RO ¶74.

The County took exception to "the ALJ's finding in Paragraph 74, *that the only other evidence* the County presented to show consistency with Policy CON-3B is the part of new policy LU-1W." FO, pp. 20 (emphasis added). The Commission simply accepted this argument and rejected the ALJ's finding of fact and stated:

> "Because Paragraph 74 finds that the County relied on a single piece of evidence when the record evidence demonstrates that the County relied on numerous pieces of admitted evidence and authority—none of which were excluded or found to lack credibility—the Commission finds that Paragraph 74 is not supported by competent and substantial evidence."

This is simply a misreading of Paragraph 74 and adds language into the ALJ's finding that does not exist. Paragraph 74 does not find that "the County relied on a single piece of evidence." To the Contrary, the ALJ simply found that, based on all of the testimony presented to her, one of the ways that the County attempted to demonstrate compliance with the CDMP was by using new policy LU-1W. RO, ¶74.

Even the County acknowledges that LU-1W was one of the pieces of evidence the County presented to "demonstrate compliance with the requirements to 'protect the water management systems that recharge' the regional wellfield." RO, ¶74; FO, pp. 20 ("The County presented other material evidence on this issue, including new Policy LU-1W. . . ."). There is

thus competent and substantial evidence in the record that the County relied on LU-1W "in an effort to demonstrate compliance with the requirements to 'protect the water management systems that recharge' the regional wellfield." RO, ¶74. "If the ALJ's factual findings 'are supported by competent substantial evidence, the agency cannot reject them even to make alternate findings that are also supported by competent substantial evidence.'" *Yerks*, 219 So. 3d at 848.

Even with a limited focus on only findings related to consistency with CERP, the Commission inappropriately "weigh[s] … evidence," "judge[s] the credibility of witnesses," and "interpret[s] evidence to fit its desired ultimate conclusions." *See Id*. For example, in granting County Exception 23 to paragraph 109, Footnote 11, in the Recommended Order, the Commission flatly disagrees with the ALJ's assessment of a County witness, Mr. Woerner, striking the words, "Mr. Woerner's testimony was hedging, at best."

To similar effect, the Commission's findings related to County Exception 20 addressing paragraph 105 of the Recommended Order effectively weigh evidence in rejecting the ALJ's extensive factual findings grounded in competent and substantial evidence. Leading up to paragraph 105, the ALJ discusses how "[a]s part of the required review of the Plan Amendment, the District commented on the proposed Plan Amendment." In

its comment letter the District noted land within the Plan Amendment area had proposed uses for Everglades restoration projects and advised that the County had not supplied enough information to the District "that would help the District evaluate the proposed project's compatibility with the CERP project." The ALJ's finding in paragraph 105 then states in its entirety:

> "The County did not provide additional information to the District and **did not receive any determination from the District** regarding the Plan Amendment's consistency with CERP." RO, ¶105. (emphasis added).

The Final Order discusses paragraph 105 as follows:

> "[t]he County contends that the District letter was a determination regarding the Plan Amendment's consistency with CERP. The County notes that, after the County sent its written response to the District Letter, the County never received a further response from the District, but nothing in Chapter 163 or the CDMP required the District to obtain a further response. Because the ALJ's finding of fact is that certain evidence did not exist, **but the record shows that the evidence did exist**, the Commission finds this finding is also not supported by competent substantial evidence." FO, pp. 26. (emphasis added).

Paragraph 105 does not make any finding that "evidence did not exist." Rather, it very clearly makes a substantive finding that the District Letter *did not make a determination regarding the Plan Amendment's Consistency with CERP*. Just because some evidence to the contrary allegedly "did exist," as the Commission states when accepting the County's counterargument, does not mean that the ALJ's finding about the letter was not based on competent

and substantial evidence. Rather, the Commission merely restates the County's argument, summarily accepts it, and uses that as a basis to overturn a legitimate finding of fact—that is, it "interpret[s] evidence to fit its desired ultimate conclusions." *See Yerks*, 219 So. 3d at 848. That is not the standard set by Section 120.57(1)(l) and Florida law does not allow legitimate findings of fact made by a judicial officer present at a hearing to be threatened by the mere existence of a counterargument. To the contrary, the impartial administrative review process embodied in Section 120.57(1)(l) protects the integrity of Florida's comprehensive planning scheme and critical state resources and priorities—like Biscayne Bay and Everglades restoration—enshrined and protected in those comprehensive plans.

IV. CONCLUSION

Because the Administration Commission failed to apply the correct standard, Amici Curiae, Friends of the Everglades, 1000 Friends of Florida, and Miami Waterkeeper, respectfully request that this Court rule in favor of Tropical Audubon Society's position and reverse the Administration Commission's findings that the Plan Amendment is consistent with the Miami-Dade Comprehensive Management Plan.

Respectfully submitted this 7th day of April, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed using the Florida Courts E-Filing Portal and served by Electronic Mail to all counsel listed below this 7th day of April, 2022.

/s/ Elizabeth Fata Carpenter
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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.045(b), counsel for Amici Curiae hereby certifies that the foregoing brief complies with the applicable font requirements because it is written in 14-point Arial font. Pursuant to Florida Rule of Appellate Procedure 9.045(e), counsel for Appellant further certifies that the foregoing brief contains 4999 words, excluding the parts of the brief exempted from the word count by Rule 9.045(e).

Dated: April 7, 2022

/s/ Elizabeth Fata Carpenter
Elizabeth Fata Carpenter, Esq.

Counsel for 1000 Friends of Florida, Friends of the Everglades, and Miami Waterkeeper