STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

LISA MATTIA,

Petitioner,

v.

OGC CASE NO.: 24-1925
DOAH CASE NO.: 25-1379

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.
_____/

FINAL ORDER

On December 12, 2025, an administrative law judge (ALJ) with the Division of Administrative Hearings (DOAH) issued a Recommended Order in these proceedings. Petitioner challenged the Notice of Proposed Agency Action for Formal Determination of the Landward Extent of Wetlands and Other Surface Waters, File No. 43-205490-002-FD (Formal Determination), issued by the Department of Environmental Protection (the Department). In the Formal Determination (as proposed agency action), the Department had identified jurisdictional wetlands on Petitioners' five-acre parcel at 6608 Southwest 33rd Street, Palm City, Florida 34990 (the Property). Petitioners contended that none of the property is correctly delineated as a jurisdictional wetland. The ALJ recommended that the Department enter a final order determining that the Property is not, in whole or in part, a wetland.

The Recommended Order fully describes the proceedings before DOAH. A transcript of the proceedings is in the record, and was available to the ALJ when he prepared the Recommended Order. The deadline for filing exceptions to the Recommended Order has expired, and no party filed exceptions.

CONCLUSION

Having considered the applicable law and the Recommended Order, and otherwise being duly advised, it is ORDERED:

A. The Recommended Order (Exhibit A to this Final Order) is adopted and incorporated herein by reference, in its entirety.

B. The Department concludes that Petitioner's five-acre parcel of property at 6608 Southwest 33rd Street, Palm City, Florida 34990 is not, in whole or in part, a wetland.

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; or by electronic mail to Agency_Clerk@dep.state.fl.us 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 20th day of January 2026, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

ALEXIS A. LAMBERT
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.

Lea Crandall Digitally signed by Lea Crandall
Date: 2026.01.20 09:55:53 -05'00'

Clerk

January 20, 2026
Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent by electronic mail to the following on this 20th day of January 2026.

Nicholas M. Gieseler Ethan J. Loeb Bartlett, Loeb, Hinds, Thompson & Angelos 819 SW Federal Highway, Suite 300 Stuart, FL 34994 NicholasG@BLHTLaw.com EthanL@BLHTLaw.com MariaC@BLHTLaw.com HeatherW@BLHTLaw.com KerriR@BLHTLaw.com *Attorneys for Petitioner*	John Ryen Morgan-Ring Assistant General Counsel Rachel S. Earlywine Assistant General Counsel Department of Environmental Protection 3900 Commonwealth Boulevard, MS 35 Tallahassee, Florida 32399-3000 Ryen.MorganRing@FloridaDEP.gov Rachel.Earlywine@FloridaDEP.gov Adrienne.Kidder@FloridaDEP.gov Jacqueline.Gardner@FloridaDEP.gov *Attorneys for Respondent*

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

/s/ Jeffrey Brown
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LISA MATTIA,

Petitioner,

vs. Case No. 25-1379

DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 7 and 8, 2025, by Zoom conference, before E. Gary Early, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Nicholas M. Geisler, Esquire
Bartlett Loeb Hinds Thompson & Angelos
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Stuart, Florida 34994

Elliott P. Haney, Esquire
Bartlett Loeb Hinds Thompson & Angelos
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Tampa, Florida 33602

For Respondent: John Ryen Morgan-Ring, Esquire
Rachel S. Earlywine, Esquire
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether the Notice of Proposed Agency Action for Formal Determination of the Landward Extent of Wetlands and Other Surface Waters, File No. 43-205490-002-FD (Formal Determination), issued by the Department of Environmental Protection (DEP) pursuant to section 373.421, Florida Statutes, and Florida Administrative Code Rule 62-330.201, accurately identifies jurisdictional wetlands on Petitioner's property.

PRELIMINARY STATEMENT

On February 12, 2024, Petitioner filed a Petition for a Formal Determination of the Landward Extent of Wetlands and Other Surface Waters (Petition for Determination). The Petition for Determination asked that DEP perform a determination of the extent of wetlands on her five-acre parcel of property at 6608 Southwest 33rd Street, Palm City, Florida 34990 (the Property).

On May 30, 2024, DEP issued its Formal Determination which concluded that the entirety of the Property consisted of jurisdictional wetlands. On December 17, 2024, after a series of extensions of time to file a challenge to the Formal Determination were granted, Petitioner filed a Petition for Formal Administrative Hearing (Petition for Hearing) to contest the Formal Determination.

On March 12, 2025, the Petition for Hearing was referred to DOAH for a formal administrative hearing and assigned to the undersigned as DOAH Case No. 25-1379. The final hearing was set for June 10 through 12, 2025. After the hearing was twice continued, the final hearing was scheduled for October 7 and 8, 2025.

On October 2, 2025, the parties filed their Joint Pre-hearing Stipulation (JPS). The JPS contained four stipulations of fact and seven stipulations of law, which are, where relevant, adopted and incorporated herein. The JPS also identified disputed issues of fact and law remaining for disposition.

The final hearing was convened on October 7, 2025, and Joint Exhibits (J.Ex.) 1 through 24 were received in evidence.

At the commencement of the final hearing, DEP conceded that it did not have evidence, including sufficient ground-truthing, to establish the existence of wetlands over the northern half of the Property. As a result, DEP made an ore tenus amendment to its proposed agency action to assert the existence of wetlands on the Property consistent with an October 22, 2002, informal Non-binding Jurisdictional Wetland Determination (Non-binding Determination) (*see* DEP Exhibits (DEP Ex.) 11 and 12). The amendment is accepted as establishing the limits of DEP's jurisdictional claim in this proceeding.

DEP called Haley Osbourne, an Environmental Specialist III in its Southeast District Office,[1] and Geneva Alpert, an Environmental Consultant for DEP, both of whom were tendered and received as experts in wetland evaluation, as witnesses in both its case-in-chief and on rebuttal. DEP Exs. 1 through 4 and 6 through 12 were received in evidence.

Petitioner[2] called her husband, Matthew Mattia, with whom she jointly owns the Property at issue; Michael Dennis, Ph.D., who was tendered and

[1] Ms. Osbourne was also listed as a fact witness for Petitioner. To streamline the proceeding, both parties were allowed to question her on direct while she was on the stand in DEP's case.

[2] Petitioner was listed as a fact witness to testify to standing, but at the hearing standing was stipulated based on her ownership interest in the Property, and on her status as the person filing the Petition for Determination.

received as an expert in wetlands identification methodology, and remote sensing and photo-interpretation; Jason Hahner, a project manager for EW Consultants, Inc., who was tendered and received as an expert in wetland determinations; Shawn McCarthy, Principal Planner for Martin County, Florida; and Greg Sawka, a Certified Professional Soil Scientist, who was tendered and received as an expert in soil science. Petitioner's Exhibits (P.Ex.) 1, 2, 4, 5, 8, 9, 11 through 15, 17 through 30, 32, and 33 were received into evidence.

A four-volume Transcript of the proceedings was filed on October 23, 2025. A Scheduling Order was entered on October 23, 2025, which set a November 3, 2025, deadline for submitting proposed recommended orders. The parties filed a Joint Motion for Extension of Time to Submit Proposed Recommended Order, which requested that the deadline for proposed recommended orders be extended to November 17, 2025. The Joint Motion was granted. Each of the parties timely filed Proposed Recommended Orders, which have been duly considered by the undersigned in the preparation of this Recommended Order.

The law in effect at the time DEP takes final agency action on the Petition for Determination is applicable. Thus, references to statutes are to Florida Statutes (2025), unless otherwise noted. *Cf. Lavernia v. Dep't of Pro. Regul.*, 616 So. 2d 53 (Fla. 1st DCA 1993).

FINDINGS OF FACT

1. Petitioner and her husband, Matthew Mattia (the Mattias), are the owners of the Property.

2. The Property had been cleared for construction in 1999, and a residence on the Property was constructed in 2003.

3. When the Mattias purchased the property in 2019, there were still pines and palmettos across the Property, though many of the pine trees that historically existed on the Property had been removed, and the Property converted to improved pasture to support grazing cattle. They purchased the property with the intent to farm it.

4. The Mattias continued to graze cattle on the Property until 2023, when they began to make the Property suitable for planting mango trees and producing mangos, a process that included removing most of the remaining pine trees, forming beds and furrows[3] throughout the Property, and improving an existing agricultural ditch along the eastern and northeastern boundary of the Property.

5. On February 12, 2024, Petitioner filed the Petition for Determination with DEP.

6. On March 6, 2024, DEP issued a Request for Additional Information (RAI) which requested the following as a condition for DEP to continue processing the Petition for Determination: 1) payment of the processing fee; 2) a preliminary delineation of wetlands by Petitioner or her agent; 3) the scheduling of a DEP site visit and submission of a survey of the wetland boundaries after DEP verification; and 4) publication of notice of DEP's determination. The RAI identified Ms. Osbourne as the wetland delineation processor.

7. On March 14, 2024, Mr. Hahner, on behalf of Petitioner, responded to the RAI. He indicated that: 1) the processing fee had been paid; 2) no wetlands were believed to be present on the Property; 3) a site visit with Ms. Osbourne was scheduled for March 21, 2024; and 4) acknowledged the obligation to publish notice.

[3] Matthew Mattia testified that the beds were formed by taking fill from the existing pond, and placing it in rows to form the raised beds. Though the areas between the beds have been described as "furrows," he testified that there was no excavation between the beds.

8. On March 21, 2024,[4] representatives from DEP performed a field inspection of the Property to collect data for purposes of a formal wetlands determination. The Petition for Determination was determined by DEP to be complete as of April 13, 2024.

9. On May 30, 2024, DEP issued its Formal Determination, determining that all five acres of the Property consisted of jurisdictional wetlands.

10. As set forth in the Formal Determination, DEP alleged that:

> The landward extent (i.e., the boundary) of wetlands, was first evaluated by direct application of the definition of wetlands in subsection 62-340.200(19), F.A.C., with particular attention to the vegetative communities which the definition lists as wetlands and non-wetlands. For this determination the Department further utilized the wetland delineation methodology, applying reasonable scientific judgment to evaluate the dominance of plant species, soils, and other hydrologic evidence of regular and periodic inundation and saturation as identified in Chapter 62-340, F.A.C.

Wetland Definition

11. Wetlands are defined as:

> ... those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. ... Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar

[4] The JPS indicated that the inspection was performed on March 22, 2024. The evidence, including the Chapter 62-340, F.A.C. Data Form, indicates that it was performed on March 21, 2024.

> areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.

§ 373.019(27), Fla. Stat.; Fla. Admin. Code R. 62-340.200(19).

12. No evidence was offered to establish that the Property consists of or contains swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps,[5] or other similar areas.

13. The Property is very flat, with no discernable elevation change and no depressions over the entirety of the Property, or adjacent properties.

14. USGS topographic maps for the Property (P.Ex. 1 and 8) show almost no change in elevation over the Property, and no map markings characteristic of the presence of a wetland.

15. Soils on the Property are mapped as, and consist of, Immokalee fine sand with areas of Waveland sand, neither of which is a hydric soil, and both of which are characteristic of pine flatwoods. Mr. Sawka testified convincingly that Immokalee fine sand on a site that is flat, level, and dominated by pine is incapable of being hydric, and would not support wetlands. He acknowledged that Immokalee fine sand can become hydric if it is "depressional." The Property is not depressional.

16. Dr. Mattia[6] testified convincingly that when he purchased the property it had a pine canopy, though thinned for the development of improved pasture, with a palmetto understory. His testimony is consistent with photographic evidence and expert testimony discussed herein.

17. The Property is firm enough that Dr. Mattia has been able to drive his two-wheel drive truck and Honda Accord all around the Property without

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[5] The issue of the existence of mangroves on the Property is addressed herein.

[6] Dr. Mattia holds a Ph.D. in horticultural sciences from the University of Florida. His honorific, used throughout, is not an indication that he has any particular expertise in the issues involved in this case.

sinking into the soil or getting stuck. He frequently walks the full five acres of the Property in flip-flops, and does not encounter "wet or mucky" areas. Water does not pond on the Property except after extreme weather events, such as tropical storms and hurricanes, and even then, it fully drains within three days. In his non-expert opinion,[7] the ground at the Property is not, except after extreme storms, subject to inundation.

18. Reliable photographic evidence, going back to 1994,[8] demonstrates that the Property was historically dominated by a canopy of pine trees. The canopy has been thinned over time as the land use of the area transitioned from undeveloped to improved pasture to "ranchette" residential. However, the dominant canopy species, until its recent clearing for agricultural production of mangos, remained pine. Dr. Dennis, who was qualified as an expert in photo-interpretation, opined that the aerial photographs over the period from 1994 to the present had no indication of a wetland signature.

19. The aerial photographs were not of a scale or definition to establish the nature of the understory vegetation, and there were no ground-level photographs of the property before the beginning stages of the clearing of the Property and its conversion to improved pasture that would photographically establish that it had an understory dominated by saw palmetto.

20. Dr. Dennis testified that adjacent properties have understory vegetation that includes saw palmetto, which is common on similar

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[7] *See* § 90.701, Fla. Stat. ("If a witness is not testifying as an expert, the witness's testimony about what he or she perceived may be in the form of inference and opinion when: (1) ... the witness's use of inferences or opinions will not mislead the trier of fact ...; and (2) The opinions and inferences do not require a special knowledge, skill, experience, or training.") Whether the Property is subject to inundation, or is routinely soggy or mucky, does not require special knowledge, skill, experience, or training.

[8] Aerial photographs going back to the 1940s were received in evidence. The earlier photographs are not of a scale or resolution to make a definitive determination of the nature of vegetation on the Property. By 1994, the quality of the photographs had improved to the point that it was obvious that the canopy vegetation consisted largely of pine trees, a fact confirmed by experts in photo interpretation. Since there was no evidence of earlier widespread clearing and planting on the Property, an inference is easily drawn that the canopy vegetation historically existing on the Property consisted of pine trees.

properties in Martin County. There are also areas on the Property with relict saw palmetto. Thus, it was his opinion that the Property most likely had an understory consistent with the surrounding properties. His opinion is accepted.

21. Dr. Dennis and Mr. Hahner, both of whom had visited the Property, and both of whom were qualified to opine as to photo interpretation and botanical indicators of wetland conditions, were convincing that the Property was historically a pine flatwood with an understory of saw palmetto.

Wetland Identification/Delineation

22. Rule 62-340.300(1) provides that:

> Before using the wetland delineation methodology described below, the regulating agency shall attempt to identify and delineate the landward extent of wetlands by direct application of the definition of wetlands in subsection 62-340.200(19), F.A.C. [and] ... shall attempt to locate the landward extent of wetlands visually by on site inspection, or aerial photointerpretation in combination with ground truthing.

23. Directly applying the definition of "wetlands" in section 373.019(27) and rule 62-340.200(19), it was established that the Property is not inundated or saturated by surface water or groundwater at a frequency and a duration to support vegetation adapted for life in saturated soils, either historically or at present. The soils at the Property are not classified as hydric. There was no competent substantial evidence that the Property has ever contained swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps or other similar areas. To the contrary, a preponderance of the competent substantial evidence supports a finding that the Property, until it was cleared, first for pasture and then for

the proposed mango orchard, was dominated by pine flatwoods with an understory of saw palmetto, and such a finding is thus made.

24. Aerial photographs offered in evidence do not establish the historic presence of wetlands on the Property. The difference in shades or colors across the Property and nearby properties were not proven to be indicative of the presence of wetlands. Rather, Dr. Dennis offered his expert opinion that the differences were more likely due to differences in vegetation or density on the Property.

25. Lidar images of the Property were of limited – if any – value for determining changes in contour since there was no scale provided to establish the elevation changes depicted by the different colors – colors selected by Ms. Osbourne – on the Lidar maps offered in evidence. Although Ms. Osbourne testified that the "blues and purples" indicated lower elevations, without a scale the extent of, and more importantly the significance of, that lower elevation cannot be determined. The Lidar map does not outweigh the preponderance of the evidence that the Property is flat, consistent with neighboring properties, and has no discernable elevation change and no depressions over the entirety of the Property.

26. Directly applying the definition of wetlands in section 373.019(27) and rule 62-340.200(19) leads to a finding that none of the Property consists of wetlands.

Wetland Tests

27. If the regulating agency, here being DEP, is unable to make a wetland determination by direct application of rule 62-340.200(19), it may apply one of the tests created in rule 62-340.300(2), identified and discussed in this proceeding as the A-Test, the B-Test, the C-Test, the D-Test, and the Altered Soils Test.

28. The methodology for wetland identifications and delineations involves a multi-step process, with later steps dependent on wetlands being incapable of determination by direct application of the wetland definition.

A-Test

29. The A-Test is established in rule 62-340.300(2)(a), and is used to determine whether wetlands exist by determining whether the Property includes:

> (a) Those areas where the aereal extent of obligate plants in the appropriate vegetative stratum is greater than the areal extent of all upland plants in that stratum, as identified using the method in Rule 62-340.400, F.A.C., and either:
>
> 1. The substrate is composed of hydric soils or riverwash, ... except where the hydric soil is disturbed by a nonhydrological mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance,
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> 2. The substrate is nonsoil, rock outcrop-soil complex, or the substrate is located within an artificially created wetland area, or
>
> 3. One or more of the hydrologic indicators listed in Rule 62-340.500, F.A.C., are present and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C.

B-Test

30. The B-Test is established in rule 62-340.300(2)(b), and is used to determine whether wetlands exist by determining whether the Property includes:

> (b) Those areas where the areal extent of obligate or facultative wet plants, or combinations thereof,

> in the appropriate stratum is equal to or greater than 80% of all the plants in that stratum, excluding facultative plants, and either:
>
> 1. The substrate is composed of hydric soils or riverwash, ... except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance,
>
> 2. The substrate is nonsoil, rock outcrop-soil complex, or the substrate is located within an artificially created wetland area, or
>
> 3. One or more of the hydrologic indicators listed in Rule 62-340.500, F.A.C., are present and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C.

C-Test

31. The C-Test is established in rule 62-340.300(2)(c), and is used to determine whether wetlands exist by determining whether the Property includes:

> Those areas, other than pine flatwoods and improved pastures, with undrained hydric soils which meet, in situ, at least one of the criteria listed below. A hydric soil is considered undrained unless reasonable scientific judgment indicates permanent artificial alterations to the on site hydrology have resulted in conditions which would not support the formation of hydric soils.
>
> * * *
>
> 4. For the purposes of this paragraph only, "pine flatwoods" means a plant community type in Florida occurring on flat terrain with soils which may experience a seasonal high water table near

> the surface. The canopy species consist of a monotypic or mixed forest of long leaf pine or slash pine. The subcanopy is typically sparse or absent. The ground cover is dominated by saw palmetto with areas of wire grass, gallberry, and other shrubs, grasses, and forbs, which are not obligate or facultative wet species. Pine flatwoods do not include those wetland communities as listed in the wetland definition contained in subsection 62-340.200(19), F.A.C., which may occur in the broader landscape setting of pine flatwoods and which may contain slash pine. Also for the purposes of this paragraph only, "improved pasture" means areas where the dominant native plant community has been replaced with planted or natural recruitment of herbaceous species which are not obligate or facultative wet species and which have been actively maintained for livestock through mechanical means or grazing.

D-Test

32. The D-Test is established in rule 62-340.300(2)(d), and is used to determine whether wetlands exist by determining whether the Property includes:

> Those areas where one or more of the hydrologic indicators listed in Rule 62-340.500, F.A.C., are present, and which have hydric soils, as identified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida, and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C. These areas shall not extend beyond the seasonal high water elevation.

If the D-Test result is due to the presence of organic bodies in the soil, the "Chapter 62-340, F.A.C. Data Form Guide" requires that the volume of the organic bodies composed of muck or mucky mineral soil texture in the soil matrix be at least two percent of the total volume of the sample starting at less than six inches from the soil surface.

Altered Soils Test

33. If DEP cannot identify whether wetlands exist on a parcel of property by direct application of the definition of wetlands in rule 62-340.200(19), and if none of the factors in the A-Test through D-Test in rule 62-340.300(2) apply because the soils on the property have been altered, DEP may apply the test established in rule 62-340.300(3), which provides, in pertinent part, that:

> (3)(a) If the vegetation or soils of an upland or wetland area have been altered by natural or man-induced factors such that the boundary between wetlands and uplands cannot be delineated reliably by use of the methodology in subsection 62-340.300(2), F.A.C., as determined by the regulating agency, and the area has hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a non hydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance, then the most reliable available information shall be used with reasonable scientific judgment to determine where the methodology in subsection 62-340.300(2), F.A.C., would have delineated the boundary between wetlands and uplands. Reliable available information may include, but is not limited to, aerial photographs, remaining vegetation, authoritative site-specific documents, or topographical consistencies.

34. Here, the available evidence, including soil maps, established that the Property – consisting of topographically non-depressional Immokalee fine sand and Waveland sand – had no hydric soils, and was characteristic of a pine flatwood.

Non-binding Jurisdictional Wetland Determination

35. On October 14, 2002, the then owner of the Property requested a non-binding informal wetland jurisdictional determination of the Property. On October 22, 2002, DEP issued the Non-binding Determination that now constitutes DEP's proposed wetland limits on the Property, which included a roughly drawn outline of wetlands and surface waters on a grainy aerial photograph of the Property.[9] The outline generally encompassed the southern half of the property.

36. The Non-binding Determination indicated that it was based on a site inspection, and "the aerial photograph of the subject site as well as the Martin County Soils Map submitted for the site." Given the lack of definition of the aerial photograph, its value could only be for roughly determining the Property boundary. The record does not include the Soils Map, so what it may have shown is not known. What is known is that the soils on the Property are Immokalee fine sand with areas of Waveland sand, neither of which is a characteristically hydric soil type. There was no identification of the inspector(s), no description of their training or experience, no evidence of whether soil samples were taken and analyzed, and no notes or photographs from the inspection.

37. The Non-binding Determination is quite specific that it does not "in any way" bind DEP, does not convey legal rights, expressed or implied, and that the Property owner is not allowed to rely upon it.

38. Given the lack of any information as to how the Non-binding Determination was developed, the imprecision of the drawing itself, and the express denial of any legal rights resulting from its issuance, the Non-binding Determination is found to have no factual bearing or legal significance, and is given no evidentiary weight, as to the issues in this case.

[9] It appears that the grainy photograph was one submitted by the Property owner with the request, since it has a DEP "received" stamp dated October 14, 2002, the date of the request.

March 22, 2024, Inspection

39. On March 22, 2024, after the Petition for Determination was filed, DEP conducted a site visit to the Property. In attendance was David White, a DEP Certified Wetland Evaluator; Ms. Osbourne; and Caroline Richardson, who "tagged along" to observe the process. Ms. Osbourne, who was first employed with DEP in September 2023, was not a Certified Wetland Evaluator, and the site visit to the Property was her first formal wetland determination. Also in attendance was Mr. McCarthy from Martin County, who was there with Jerry Mitchell, whose position with Martin County was not disclosed. Mr. McCarthy holds a professional wetlands science certification. The Mattias were not in attendance.

40. Before the inspection, Ms. Osbourne organized the Petition for Determination and performed a "desktop review," which included reviewing historical aerial photographs, LIDAR maps, and documents from DEP's OCULUS permitting document management system.

41. The photographs submitted with the Petition for Determination, one of which was a 2023 Martin County aerial photograph and the other an aerial depicting soil types,[10] showed the five-acre Property with a house and driveway, a few small outbuildings, and a pond. The Property was otherwise improved pasture with a scattering of trees, primarily pine.

42. When DEP inspectors arrived at the Property, they observed that the Property had changed from its appearance in the aerial photographs submitted with the Petition for Determination. Most of the pine trees had been removed, but for a fringe at the eastern boundary of the Property, a small remnant at the northwest corner of the Property, and an area between the driveway and Southwest 33rd Street. Rows and furrows were formed along the southern boundary with a small extension along the southwestern

[10] But for the angle of shadows cast by trees on the Property, one might conclude they were the same photograph, as the location and density of trees on the Property appear substantially identical.

side of the Property, and in the entire eastern end of the Property. The rows and furrows are intended to be planted with mango trees for commercial production of fruit. The pond appeared to have been enlarged, which is consistent with the testimony that spoil from the pond was used to build up the rows. A man-made agricultural ditch containing standing water extended along the northeastern and eastern side of the Property. The eastern portion of the ditch is parallel to 66th Avenue. Dr. Mattia testified that part of the ditch was there when he bought the Property in 2019, though he expanded it. There was no clear evidence as to when the ditch was first dug. There is a separate roadside ditch along 66th Avenue.

43. Though the locations of DEP's expected soil sampling sites were not described, the preparation of the Property for mango production changed the way in which DEP selected its data points. When DEP arrived, the inspectors and Mr. McCarthy walked along the perimeter, looked over the area, and settled on a spot at the southeast corner of the property as the location from which to take a soil plug. The location was roughly eight feet from the agricultural ditch.

44. Ms. Osbourne reviewed the Property to determine whether there were plant species on the Property of sufficient areal extent to meet the wetland standards in the A-Test or the B-Test. Based on her site evaluation, Ms. Osbourne determined that no area on the Property met the A-Test or the B-Test. Her conclusion was entered on the field-notes version of the Chapter 62-340 F.A.C. Data Form (field Data Form). Although the field Data Form indicated that "DW," meaning David White, was the "Areal extent estimator," Ms. Osbourne testified that she was responsible for performing that duty, with Mr. White recording her observations.

45. Mr. White was the designated "Soil describer" for the soil samples taken on the Property, and was the "Indicator evaluator" for the hydrologic indicators for the Property, and he performed those duties. It was the

consensus of the persons on site to observe the inspection that "he was the one in charge."

46. A soil plug was extracted, and the hole was further augered to determine the depth to groundwater. The water table was encountered at a depth of 16.5 inches below the ground surface.

47. In the field Data Form, Mr. White concluded that the Property did not meet the C-Test or the D-Test. Among his conclusions was that the soil was not hydric using standard NRCS definitions and practices, which was entered on the field Data Form. The field notes indicated that there were alterations or conditions affecting reliable application of the C-Test and the D-Test such that the Altered Sites Test was more appropriate. Even so, he ultimately concluded, applying his reasonable scientific judgment, that the sample location was not a wetland.

48. After the inspection, Ms. Osbourne returned to the office to complete the final version of the Data Form (final Data Form). The final Data Form shows a March 21, 2024, date, though whether that was the date on which the final Data Form was completed, rather than the date of the inspection, was not disclosed.

49. Ms. Osbourne's conclusion as to the applicability of the A-Test and B-Test standards did not change after she returned to the office and transcribed the results of the field Data Form onto the final Data Form. All of the information from the field Data Form regarding the A-Test and the B-Test, for which she was responsible, was substantively carried over onto the final Data Form.

50. It is the site conditions evaluated by Mr. White, as the soil describer and indicator evaluator, that dramatically vary, turning a determination that the Property was not characteristic of a wetland into a determination that all five acres of the Property is a wetland. Mr. White was not part of the process of developing the final Data Form. No explanation was offered as to why he was removed from that process, and he did not testify at the hearing.

51. Ms. Osbourne indicated that she re-evaluated Mr. White's conclusions after she returned to the office and reviewed photographs taken of the soil sample to support her differing conclusions. Mr. Hahner and Mr. Sawka, both of whom were experienced and credible soil evaluators, testified that the evaluation of soils to determine a stripped matrix must be made in the field. The use of photographs to establish hydric soil indicators is less reliable than findings based on evaluations in the field. Their testimony is credited.

52. Going through the final Data Form (J.Ex 10), material changes to the field Data Form start at paragraph 6, where Point ID is changed from "Southeast Corner" to "Southeast Corner – Wetland," a small but consequential change, and one that portends the more fundamental changes made to Mr. White's assessments that follow.

53. At paragraph 16, entitled Soil Description, the areas lighter than the soil matrix were, from 0 to 8.5 inches in depth, described by Mr. White as "clear." Ms. Osbourne changed his in-field description to "diffuse." Clear means that one can start to see the changes in colors of the soils. Diffuse means that it is impossible to discern the boundaries between the layers. Clear boundaries are not characteristic of a stripped matrix. Diffuse boundaries are. No satisfactory explanation was given as to why the description of an experienced Certified Wetland Evaluator, and one whose evaluation was "his call" in the field, would be overridden – after-the-fact and without his input – by an inspector on her first formal wetland determination.

54. At paragraph 17 of the field Data Form, Mr. White found no Hydric Soil Field Indicators. The field Data Form had an "(S6) Stripped Matrix" box that was not checked by Mr. White. A stripped matrix can be indicative of groundwater moving up and down through the soil matrix, blurring and spreading the otherwise more distinct layering. As stated by Ms. Osbourne, a "rounded and diffuse" soil matrix means that any boundary between layers is impossible to tell. However, in the final Data Form, Ms. Osbourne identified

"(S6) Stripped Matrix" from 4.5 to 7 inches. Thus, Ms. Osbourne's rejection of Mr. White's observation that the matrix was "clear," meaning that one can see the changes in colors of the soils in the matrix, in favor of a determination that the matrix was diffuse, meaning changes cannot be discerned, is significant. Mr. Sawka, who is well qualified to opine on such matters, found Ms. Osbourne's stripped matrix finding to be implausible since the observed water table at the sample location was at a depth of 16.5 to 17 inches.

55. Mr. White's assessment, based on his field observations, was that there were no hydric soil field indicators present (J.Ex. 22, ¶ 19). Although the "No" space was circled, and not filled in, the next sentence in paragraph 19 provides that "If no..., is the soil hydric as determined by other NRCS methods?" Mr. White's conclusion was "No." In the final Data Form, Ms. Osbourne overrode Mr. White, and changed paragraph 19 to indicate that there were one or more hydric soil field indicators present. No persuasive explanation for her rejection of Mr. White's findings was given.

56. As set forth previously, Mr. White indicated that the soil was not hydric "as identified using standard NRCS definitions and practices." (J.Ex. 22, ¶ 25.c.). Again, Mr. White's assessment was overridden in the final Data Form.

57. In the assessment of the Altered Sites Test, Mr. White indicated that the alterations made to the Property, though authorized or legal,[11] could

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[11] Mr. White noted in the field Data Form that changes in the Property were authorized or legal. Paragraph 8 indicated "Current condition of described point: Authorized or legal condition." In paragraph 31 of the field Data Form, in response to the question "Have any **unauthorized** alterations affected the normal wetland condition at the described point," the response was "No."

Ms. Osbourne changed each of Mr. White's conclusions to indicate that the alterations were unauthorized and illegal. Paragraph 8 was changed to "Current condition of described point: Unauthorized or illegal condition." The response to the question in paragraph 31 was changed to "Yes." The bases for her decisions were not explained, though she testified that she reviewed OCULUS, which is DEP's permit information program, and saw no evidence of permits having been issued for the Property. Describing the May 8, 2025, Property inspection (discussed herein), Ms. Osbourne testified "that wetlands existed prior to the alterations at

mask or eliminate reliable expression of wetland indicators, and that could affect normal wetland conditions (J.Ex. 22, ¶ 28). However, paragraph 29.d. of the field Data Form included the following question:

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the Mattia project – at the Mattia site, and, therefore, the alterations were unauthorized because this activity would have needed a permit to commence."

The evidence here established not only that the Property did not exhibit any of the physical indicia of being a wetland described in section 373.019(27) and rule 62-340.200(19), but that the Property was, since well before 2019, methodically converted from pine flatwoods with a palmetto understory to improved pasture. Both the previous owner and Petitioner had cattle on the Property. Then, in 2023, Petitioner began the horticultural process of making the Property suitable for planting mango trees and producing mangos. According to Mr. Hahner, the Property is zoned agricultural, and Dr. Mattia indicated that it has an agricultural exemption. The conclusion on the part of Ms. Osbourne that the activities undertaken on the Property are unauthorized and illegal seems to overlook section 373.406(2), which provides that:

> Notwithstanding s. 403.927, nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the normal and customary practice of such occupation in the area. However, such alteration or activity may not be for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands. This exemption applies to lands classified as agricultural pursuant to s. 193.461 and to activities requiring an environmental resource permit pursuant to this part. This exemption does not apply to any activities previously authorized by an environmental resource permit or a management and storage of surface water permit issued pursuant to this part or a dredge and fill permit issued pursuant to chapter 403. This exemption has retroactive application to July 1, 1984.

There was no suggestion that site preparation for the mango orchard was a subterfuge to mask Petitioner's desire to impede or divert the flow of surface waters or adversely impact wetlands. This case is not an enforcement case, and is not intended to resolve issues of regulatory compliance. Nonetheless, the burden is on DEP to prove the elements necessary to establish that the Property is, or includes, wetlands. Whether activities on the Property are authorized or legal seems to be an element of DEP's determination as established by its prominence in the Data Form. That activities on the Property, before and during Petitioner's ownership, were unauthorized has not been proven, and Mr. White's conclusion that the activities were authorized and legal is accepted.

> Using the most reliable available information and reasonable scientific judgment, would the types of evidence and characteristics contemplated in §62-340.300, F.A.C. identify or delineate the described point as a wetland with cessation of legal altering activities?

Mr. White responded "No." As a reason, the field Data Form provides that: "Historic aerials appear to show uplands prior to current ownership." That conclusion is supported by a preponderance of the competent substantial evidence in this case.

58. Further on in the field Data Form, at paragraph 32, the Wetland and Other Surface Water Summary, the question was posed:

> With reasonable scientific judgment is the described point a wetland as defined in §62-340.200(1), F.A.C. and located by Ch. 62-340, F.A.C.?

Mr. White again responded "No."

59. In the final Data Form, Ms. Osbourne flipped each of Mr. White's substantive conclusions, substituting her "reasonable scientific judgment" for his. In paragraph 29, she concluded that there were no "authorized or legal alterations" of the Property affecting the vegetation and soils, concluding that all of the Tests were affected by unauthorized alterations of the Property (J.Ex. 10, ¶ 31), and answering "Yes" to paragraph 32.a., thus concluding that the Property is a wetland. Mr. White's statement that historic aerial photographs showed the Property to be uplands was stricken from the final Data Form.

60. In her Notes of the inspection, which do not appear in the field Data Form, Ms. Osbourne stated that "Yard appears to have been dredged and filled to support row crops[12] for mangos. Soil surface was scraped, berm was

[12] "Row crops" are plants that are annual, producing fruit or vegetables once, after which the ground is tilled in preparation for the next year's planting. Examples provided at the hearing

created, and an agricultural ditch created on the eastern side of the property, following around the north side of the property."

61. Included in the final Data Form was a photograph of a grouping of mangrove trees listed, very specifically, as having been taken "within the agricultural ditch on the north property line." Mangroves are an obligate species that lives in and near water and saturated soils, and are evidence of wetland conditions. There are no mangroves on the Property, and none for at least a mile from the Property.

62. Ms. Osbourne explained that the photograph was presumably the result of erroneously "dragging and dropping" photos from other site visits that day. However, she testified that as she was completing the final Data Form, it was her belief that mangroves were on the Property, but that "[i]t didn't necessarily sway the decision either way. It was just, again, supporting information because we thought it was on site and just was remembered incorrectly." That her belief that mangroves existed on the Property would *not* have swayed her decision and influenced the conclusions in the final Data Form is simply implausible.

63. Mr. Hahner, who was on-site for the inspection, indicated that at the conclusion of the inspection, DEP staff, presumably Mr. White, advised him that there were no hydric soil indicators on the Property, and no wetlands observed. Such on-site verbal confirmation is common practice during DEP site visits.

64. Mr. McCarthy testified that he overheard the conversation between Mr. Hahner and Mr. White. He confirmed that, towards the end of the conversation, as Mr. White was examining the soil sample, he advised Mr. Hahner that there were no hydric soils, and likely no wetlands on the Property. At the conclusion of the inspection, Mr. McCarthy was under the

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included corn, sugar, soybeans, and peanuts. Mango trees are not row crops (though they are planted in rows), and a mango orchard does not require tillage between seasons.

impression that DEP had concluded that there were no wetlands on the Property.

65. Mr. McCarthy testified that in a post-inspection telephone call with DEP employee William Lange, Ms. Osbourne's manager, Mr. Lange indicated that DEP would be determining that the Property consisted of wetlands. Mr. Lange focused on the mangroves as the only evidence supporting a determination that wetlands existed on the Property. A reasonable and inescapable inference is drawn that DEP's conclusion that the Property was a wetland was influenced, if not determined, by Ms. Osbourne's and Mr. Lange's belief that mangroves were growing on the Property, a condition that did not exist.

66. There was no credible, persuasive explanation for DEP's rejection of the reasonable scientific judgment of its Certified Wetland Evaluator in favor of the conclusions of an employee on her first formal wetland determination.

67. Furthermore, how the results of a single soil sample at the far southeast corner of the property – even if it exhibited wetland characteristics contrary to Mr. White's reasonable scientific judgment – could have resulted in a conclusion that the entire five-acre Property was wetlands was not explained and is, frankly, inexplicable. In that regard, Mr. Hahner's testimony that "[i]t's not possible to delineate an entire five-acre property with one data point" is accepted.

68. Had Mr. White's reasonable scientific judgment – as DEP's only Certified Wetland Evaluator at the inspection, and the person designated as the soil describer and indicator evaluator in the field Data Form – been accepted, as one would think to be the normal course, and whose reasonable scientific judgement is found to be supported by a preponderance of the competent substantial evidence, the Formal Determination would have determined the Property to not be a wetland, thus heading this case off at its inception. Nonetheless, as this is a de novo proceeding, we must proceed on the basis of the decision made.

May 8, 2025, Inspection

69. On May 8, 2025, Ms. Osbourne, accompanied by Ms. Alpert, returned to the Property for a second site visit. Representatives of Petitioner, including Mr. Hahner and Mr. Sawka, accompanied them and observed.

70. Ms. Osbourne and Ms. Alpert identified six spots on the property deemed suitable for sampling. Three extended from the southern edge of the pond diagonally to the southeast (Transect 1) and three from a location close to the back of the house diagonally to the southwest corner of the Property (Transect 2). All were in areas prepared for the mango orchard. None were in areas that retained any of the more "natural" features of the Property.

71. Ms. Osborne testified that none of the six points had features that met the A-Test, B-Test, or C-Test.

72. One of the six data points, Transect 2.2, did not meet any of the hydric soil tests. Though the Data Form (J.Ex. 18) checked the stripped matrix box, that was in error since the stripped matrix, at 12 to 14 inches, did not meet the depth requirement for a hydric soil indicator.

73. One of the six data points, Transect 2.3, met the D-Test, due to organic bodies being found at the soil surface. It did not meet any other hydrologic indicator, including a stripped matrix. Ms. Osbourne could not recall how she collected the soil sample giving rise to her finding. She testified that while no stripping was found within six inches of the soil surface at this data point, the organic body at the soil surface qualifies as a hydric soil field indicator and a hydrologic indicator.

74. The photographs of the organic bodies showed two small dark colored balls of soil material. Ms. Osbourne could not remember whether they were created by combining smaller soil samples plucked from the surface, or if that was how they occurred naturally. The evidence was insufficient to support a finding that the volume of the organic material was at least two percent of the volume of the soil layer sampled.

75. Mr. Hahner testified that presence of a hydric indicator, such as organic bodies at the surface of the ground, would indicate that the seasonal high water table would also be at the soil surface. If that were the case, there would be other hydric soil indicators present. None were observed by DEP or Mr. Hahner. A seasonal high water table at the ground surface is not consistent with Dr. Mattia's description of the Property as flat, firm, well-drained, and not "wet or mucky."

76. At the other four data points, the presence of hydric soils was inferred from soil stripping at various depths, at least one of which was discontinuous.

77. At Transect 1.1, DEP stated that the soil plug showed a stripped matrix from two to six inches below ground surface. The Data Form for Transect 1.1 indicates the presence of fine to medium roots extending the length of the plug to the 13-inch cut.

78. At Transect 1.2, DEP stated that the soil plug showed a stripped matrix extending from three to 12.5 inches below the ground surface. The Data Form for Transect 1.2 indicates the presence of very fine roots extending to the full length of the 12.5-inch plug.

79. At Transect 2.1, DEP stated that the soil plug showed a stripped matrix beginning and ending at 2 inches below the ground surface. The thickness of the layer was not provided. The stripped matrix then reappeared at 6 inches and extended to 13 inches below the ground surface. Ms. Osbourne was unable to explain how a stripped soil matrix, which is dependent on the effect of the seasonal water table moving up and down through the soils at a location, could be discontinuous, other than to state that "we're looking at a really altered site, so anything goes in terms of the data that could be collected or expected or not expected." The Data Form for Transect 2.1 indicates the presence of medium roots extending to 10.5 inches, and fine roots extending to the full 13-inch length of the plug.

80. Mr. Sawka was convincing that as a general rule, roots are an indicia of the depth of the seasonal water table because roots will die and decompose

below that depth. The presence of roots at and below 12.5 inches in depth is evidence that the seasonal water table does not extend above that depth, and evidence that the sample locations are not wetlands.

81. At Transect 1.3, DEP stated that the soil plug showed a stripped matrix extending from three to 16 inches below the ground surface.

82. Contrary to DEP's conclusions, Mr. Hahner testified that during his multiple site visits, including those with DEP and Mr. Sawka and those at which he collected his own soil samples, he did not observe any hydric soil field indicators in any soil sample within 6 inches of the soil surface. It was his testimony that "I didn't observe any portions of the property that met the definition of a wetland. There was no hydrophytic vegetation present. Did not observe any hydrologic indicators that are indicative of wetland conditions, and we did not observe any hydric soil indicators with a complete absence of all three. My opinion is that the Mattia property does not contain any jurisdictional wetlands."

83. Similarly, Mr. Sawka testified that none of the soil samples he collected across the Property exhibited characteristics of wetlands, with all showing a seasonal high water table greater than 12 inches below the ground surface. His analysis uncovered no instance of a stripped matrix within 6 inches of the soil surface, which was expected since the soil at the Property is non-hydric.

84. Based on the foregoing, DEP failed to establish, by a preponderance of the evidence, that the results of the May 8, 2025, site inspection proved that the Property, either in whole or in part, is a wetland as defined.

Vegetative Evidence

85. In conjunction with the May 8, 2025, inspection, Ms. Osbourne went on Google Street View to view photographs of the Property. She testified that the Google photos showed evidence of pine trees "hummocking" up from the ground, which she took as evidence of their pushing up from a high water

table. She also observed what she believed to be a lichen line on one tree, and what she took to be water lines on several fence posts. She did not take her own photos, and did not personally observe the areas depicted on Google Street View.

86. During one of his visits, Dr. Dennis observed and photographed the base of the pine trees on the Property. He testified convincingly that the "hummocks" or "buttresses" were not an indicia of wetlands. Rather, "having seen a lot of pasture areas that previously had cows on them and remnant pines or oaks, this is typical of what I would expect in that kind of situation and that kind of land use."

87. Likewise, Mr. Hahner provided a persuasive explanation of why lichen on a tree may be unrelated to water encroaching up the trunk. As he stated, "[t]here's all sorts of reasons as to why lichen will and will not grow in certain areas." In addition, one might expect lichen on more than a single tree if it was evidence of water levels endemic to the area.

88. Mr. Hahner also did not believe the marks were caused by the presence of water, since in such cases "I would see consistent watermarks on other trees. I would see that watermark being consistent all the way around a tree on each of the trees at the same elevation." The Google Street View photographs do not show that consistency.

89. Finally, the presence of hummocking, lichen lines, and water lines assumes periods in which water is near, at, or above the surface of the ground. Dr. Mattia was convincing that except for brief periods after unusually heavy storm events, water does not exist at or above the ground surface, and does not exist near enough to the ground surface to make the soil mucky.

90. For the reasons stated, the Google Street View images do not constitute competent substantial evidence that the Property consists of wetlands.

Reference Properties

91. Ms. Osborne did not collect data in the less altered portions of the Property to determine whether they might provide evidence of wetland characteristics of the Property in its unaltered state. She also testified as to reasons why properties immediately to the north and south of the Property, which have the same soil types as those on the Property, were not representative of the Property itself. Her reasoning was not persuasive.

92. Rather than looking to properties immediately adjacent, which would logically be the most representative, Ms. Osbourne and Ms. Alpert traveled several lots west along Southwest 33rd Street until they came upon what they agreed between themselves to be a representative property. The property includes pine trees, along with acacia trees, Brazilian pepper, and other vegetation dissimilar from that in the immediate vicinity of the Property, and from that apparent in the historic aerial photographs of the Property. The data sheet for the reference property did not include a map or other means of easily identifying the location, nor was one otherwise offered in evidence. By looking to the west, they quite possibly, if not probably, selected a parcel with "Placid and Basinger fine sands, depressional," described as "in natural conditions are on depressional landscapes or drainageways and are dominantly hydric soils" (P.Ex.32), which are entirely different soil types than the Immokalee fine sand and Waveland sand that exist on the Property. They were not able to collect soil samples from the reference property because they did not have site access. As a result of the limitations described, no evidentiary value can be ascribed to the reference property that would bear on any issue pertaining to the Property.

93. Petitioner's representatives assessed less altered portions of the Property in the northwest portion of the property and along its northern boundary, north of the driveway. Data collected showed no evidence of wetland vegetation, and no evidence of hydric soil indicators within 6 inches of the soil surface.

94. Furthermore, contiguous upland properties to the north and south of the Property had the same non-hydric Immokalee fine sand and Waveland sand as that on the Property, and similar pine flatwood vegetation as that on the Property before it was cleared.[13] The evidence established that those contiguous properties were suitable reference properties, were indicative of the Property in its unaltered state, and support a finding that the Property is not a wetland.

Water Table

95. As indicated previously, the water table at the soil boring location at the March 22, 2024, site inspection was encountered at a depth of 16.5 inches.

96. On September 16, 2025, Mr. Sawka installed four water table wells spread throughout the Property. He also dug soil borings at each of those four locations. It was getting towards the end of the rainy season, and the area had received a lot of rain during the month, with Dr. Mattia indicating that the Property received 14 inches of rain in September 2025. According to Mr. Sawka, "things were getting quite wet."

97. The last of the four wells was placed at the location where DEP encountered organic bodies during the May 22, 2025, inspection, located by the GPS mark. Mr. Sawka dug in the bottom of the furrow to see if he could find any organic bodies, but encountered none.

98. Mr. Sawka dug down further and encountered seasonal high saturation at a depth of 12 inches below ground surface. A soil boring was extracted. The soil was non-hydric.

99. All four of the wells were installed with the slotted portion of the piezometer extending two feet into the ground. The pipes themselves were

[13] The property to the south has a discrete wetland area in its interior. There was no persuasive evidence that the wetland was connected to or influenced the Property. The wetland signature of that portion of the southern property as depicted in aerial photographs and USGS maps is inconsistent with the soil signatures of the Property.

five feet in length, with three feet above the ground surface for ease in finding them. To the bottom of the pipes – 24 inches – there was no water present.

100. Dr. Mattia monitors the wells at least twice a week. Since their installation, he has not measured any water in those wells within two feet of the soil surface.

Ultimate Findings of Fact

101. The preponderance of the competent substantial evidence adduced at hearing establishes that the Property does not meet the facial definition of a wetland in section 373.019(27) or rule 62-340.200(19).

102. The Property was historically a pine flatwood with an understory of saw palmetto. It is flat, not depressional, well-drained, and consistent in topography with adjacent properties.

103. The soils on the Property are Immokalee fine sand with areas of Waveland sand, neither of which is a hydric soil, and both of which are characteristic of pine flatwoods.

104. The evidence established that no point on the Property meets the wetland identification tests created in rule 62-340.300(2), identified as the A-Test, the B-Test, and the C-Test.

105. The evidence was insufficient to establish that the single area on the Property identified as meeting the D-Test contained organic bodies at the volume required for the test. Furthermore, the presence of organic bodies could not be replicated during the September 2025 inspection. Finally, the conditions necessary for the creation of organic bodies by natural hydrographic processes, i.e., a seasonal high water table at the ground surface, do not exist on the property. Thus, the D-Test organic bodies are insufficient to establish that the Property is a wetland.

106. Evidence as to the presence of stripped matrices sufficient to meet the Altered Soils Test was contradictory. It is found that the evidence offered

to rebut the existence of stripped matrices, including that of DEP's own Certified Wetland Evaluator, Mr. White, outweighed the evidence offered in support of the existence of stripped matrices. A preponderance of the competent, substantial, and persuasive evidence establishes that conditions on the Property do not meet the Altered Soils Test.

107. As a result of the foregoing, the Property, either in its entirety or as limited to the area encompassed by the Non-binding Determination, is not a wetland.

CONCLUSIONS OF LAW

A. Jurisdiction.

108. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. §§ 120.569 and 120.57(1), Fla. Stat.

109. DEP is Florida's state administrative agency having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of chapter 373, as well as the rules promulgated thereunder in chapter 62-330 regarding identification and delineation of jurisdictional wetlands.

B. Standard and Burden of Proof

110. This is a de novo proceeding, pursuant to section 120.57, intended to formulate final agency action rather than to review DEP's proposed Formal Determination, and the proposed agency action is not entitled to a presumption of correctness. § 120.57(1)(k), Fla. Stat.; *see also Dep't. of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 785 (Fla. 1st DCA 1981) (quoting *McDonald v. Dep't of Banking and Fin.*, 346 So. 2d 569, 584 (Fla. 1st DCA 1977)); *Capeletti Bros. v. Dep't of Gen. Servs.*, 432 So. 2d 1359, 1363 (Fla. 1st DCA 1983). In addition, interpretation of a statute or rule in an administrative proceeding is de novo. Art. V, § 21, Fla. Const.; s*ee also Kanter*

Real Est., LLC v. Dep't of Env'tl Prot., 267 So. 3d 483, 487 (Fla. 1st DCA 2019).

111. The standard of proof is the preponderance of the competent, substantial evidence. § 120.57(1)(j), Fla. Stat.

112. Petitioner is not seeking a license, permit, or government approval, entitlement to which would be her burden. *Dep't of Transp. v J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981). Rather, Petitioner is asking DEP to advise her, using the procedures established by statute and rule, where DEP believes it has regulatory jurisdiction over her property. Had this case arisen as an enforcement case in which DEP was asserting that Petitioner had encroached into jurisdictional wetlands, the burden of proof, including the burden of proving jurisdiction, would be on DEP. *Balino v. Dep't of HRS*, 348 So. 2d 349 (Fla. 1st DCA 1977)("burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal").

113. Though Petitioner requested a formal determination, it is DEP that is asserting jurisdiction based on its analysis of vegetative and soil conditions on the Property. Thus, DEP bears both the initial burden of going forward with the evidence and the ultimate burden of proving the accuracy of its Formal Determination by a preponderance of the evidence. *Maddan v. Dep't of Env'tl Prot.*, Case No. 03-1499 (Fla. DOAH Oct. 10, 2003, Fla. DEP Nov. 21, 2003); *see also J.W.C. Co.*, 396 So. 2d at 788-89; § 120.57(1)(i), Fla. Stat.

C. Standing

114. Section 120.52(13), Florida Statutes, defines a "party," in pertinent part, as a person "whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party." Section 120.569(1) provides, in pertinent part, that "[t]he provisions of this section apply in all

proceedings in which the substantial interests of a party are determined by an agency."

115. As the person requesting a Formal Determination of the extent of DEP jurisdictional wetlands on her own property, Petitioner has standing to participate in this proceeding. *See Ft. Myers Real Est. Holdings, LLC v. Dep't of Bus. & Pro. Regul.*, 53 So. 3d 1158, 1162 (Fla. 1st DCA 2011); *Maverick Media Grp. v. Dep't of Transp.*, 791 So. 2d 491, 492-93 (Fla. 1st DCA 2001).

D. Standards

116. Section 373.421, entitled "Delineation methods; formal determinations," provides, in pertinent part, that:

> (1) The Environmental Regulation Commission shall adopt a unified statewide methodology for the delineation of the extent of wetlands as defined in s. 373.019(27). This methodology shall consider regional differences in the types of soils and vegetation that may serve as indicators of the extent of wetlands. ... Subsequent to legislative ratification, the wetland definition in s. 373.019(27) and the adopted wetland methodology shall be binding on [DEP], the water management districts, local governments, and any other governmental entities. Upon ratification of such wetland methodology, ... the exclusive definition and delineation methodology for wetlands shall be that established pursuant to s. 373.019(27) and this section. ...
>
> (2) A water management district or [DEP] may provide a process by rule for formal determinations of the extent of surface waters and wetlands, as delineated in subsection (1). ... If a rule is adopted, a property owner ... may petition the district for a formal determination. In such rule, the governing board or [DEP] shall specify information which must be provided and may require authorization to enter upon the property. The rule shall also establish procedures for issuing a formal determination.

117. Section 373.019(27) defines "wetlands" as:

> ... those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.

That statutory definition is recited, verbatim, in rule 62-340.200(19).

118. "Inundation" is defined as "a condition in which water from any source regularly and periodically covers a land surface." A preponderance of the competent substantial evidence established that water does not regularly and periodically cover the surface of the Property.

119. "Saturation" is defined as a location with "a water table six inches or less from the soil surface for soils with a permeability equal to or greater than six inches per hour in all layers within the upper 12 inches, or a water table 12 inches or less from the soil surface for soils with a permeability less than six inches per hour in any layer within the upper 12 inches." A preponderance of the competent substantial evidence established the water table at the Property is greater than 12 inches from the soil surface.

120. Rule 62-340.300, entitled "Delineation of Wetlands," starts by providing that:

> The landward extent (i.e., the boundary) of wetlands as defined in subsection 62-340.200(19), F.A.C., shall be determined by applying reasonable scientific judgment to evaluate the dominance of plant species, soils, and other hydrologic evidence of regular and periodic inundation and saturation as set forth below. In applying reasonable scientific judgment, all reliable information shall be evaluated in determining whether the area is a wetland as defined in subsection 62-340.200(19), F.A.C.

What follows is a lengthy and detailed description of the vegetative, soil, and hydrologic conditions to be evaluated in determining the landward extent of wetlands on a parcel of property.

121. Rule 62-330.201(2) provides that:

> (2) Formal determinations.
>
> (a) A real property owner ... may petition the Agency for a formal determination of the landward extent of wetlands and other surface waters for that property pursuant to Section 373.421(2), F.S. A formal determination means the Agency will make a binding determination of the landward extent (boundaries) of wetlands and other surface waters as defined by Chapter 62-340, F.A.C. A formal determination is binding on the real property for which that determination is sought for as long as the determination is valid, in accordance with Sections 373.421(2) and (3), F.S.

122. The tests for evaluating the existence of wetlands when the facial determination cannot be made under section 373.019(27) and rule 62-340.200(19), i.e., the A-Test, B-Test, C-Test, D-Test, and the Altered Soils Test, are set forth in rules 62-340.300(2)(a) through (d) and 62-340.300(3), respectively. The text of the tests are set forth in the Findings of Fact.

123. The preponderance of the competent, substantial, and persuasive evidence, as set forth in the Findings of Fact, established that DEP failed to prove that any portion of the Property consists of wetlands. To the contrary, Petitioner proved that no part of the Property constitutes a wetland either by facial application of section 373.019(27) and rule 62-340.200(19), or by the tests established in rules 62-340.300(2)(a) through (d) and 62-340.300(3).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Environmental Protection enter a final order on the Petition for a Formal Determination of the Landward Extent of Wetlands and Other Surface Waters determining that Petitioner's five-acre parcel of property at 6608 Southwest 33rd Street, Palm City, Florida 34990 is not, in whole or in part, a wetland.

DONE AND ENTERED this 12th day of December, 2025, in Tallahassee, Leon County, Florida.

E. GARY EARLY
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of December, 2025.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.