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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2024-001162

South Carolina Coastal Conservation League, .....Appellant,

v.

South Carolina Department of Environmental Services and  
DeBordieu Colony Community Association, ..... Respondents.

**Return to Petition for Writ of Certiorari**

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## Introduction

This matter is before the Court because the South Carolina Coastal Conservation League (SCCCL) is seeking a writ of certiorari for review of the Court of Appeals' decision in *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 443 S.C. 80, 901 S.E.2d 706 (2024). In that decision, the Court of Appeals affirmed the Administrative Law Court's (ALC) rejection of SCCCL's challenge to a permit allowing the installation of groins on DeBordieu Beach. SCCCL has the burden to show the writ should be issued because a "writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted *only where there are special and important reasons*." Rule 242(b), SCACR (emphasis added). SCCCL does not meet this burden because, beyond a short recitation of legislative history, the Petition simply re-argues the merits without any noticeable attempt to explain why this case merits an expenditure of this Court's time and resources. The Petition therefore should be denied because SCCCL never shoulders its threshold burden of demonstrating any "special and important" questions of sufficient gravity to warrant consumption of this Court's time and energy, especially in view of the fact that the Court of Appeals and the ALC addressed both questions presented—and more—in two well-reasoned, thoroughly documented decisions.

But even beyond the failure to address the correct threshold issue, what SCCCL actually does argue further supports denial of the Petition. S.C. Code Ann. § 48-39-290(A)(8) provides that "[g]roins may be permitted after thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas." The statute further provides that "[n]ew groins may be allowed only on beaches that have high erosion rates with erosion threatening existing development or public parks." *Id.* The ALC determined that the Project meets these statutory requirements and the Court of Appeals affirmed that determination.

SCCCL repeats the arguments it made below about downdrift impact but never explains why these twice-rejected contentions constitute “special and important reasons” warranting the grant of certiorari. But, as both the Court of Appeals and the ALC concluded, the arguments rely wholly on positions inconsistent with a proper textual and plain-language reading of the governing statutory language and are not meritorious based on the reliable, probative, and substantial evidence of record. And the Petition’s contentions regarding the South Carolina Department of Health and Environmental Control’s (DHEC) determination of a high erosion rate threshold suffer from the additional failing that SCCCL did not challenge all of the grounds supporting the ALC’s determination and the Court of Appeals’ holding. In sum, a review of SCCCL’s arguments in light of the well-reasoned decisions of the Court of Appeals and the ALC demonstrates that the Court should deny the Petition because there are no “special and important reasons” to grant certiorari. Rule 242(b), SCACR.

**1. Because there is no detrimental effect on downdrift areas resulting from the groins at issue here, the Petition should be denied with respect to the first question presented.**

Although the statute authorizes the installation of groins and contemplates mitigation for any downdrift impacts resulting from the groin, SCCCL argues that, never mind the absence of any such limiting language in the statute, groins are allowed only if constructed at the end of the beach. The Court of Appeals properly affirmed the ALC’s finding that, based on the substantial evidence of record, the groins will have no detrimental effect on the downdrift Hobcaw Tract because the renourishment and mitigation provisions of the Permit are reasonable and appropriate and will serve to identify and alleviate any potential future adverse impact from installing the groins. Consequently, there is no special or important reason to grant certiorari to review SCCCL’s first question presented, and the Petition should be denied.

- 2. Because SCCCL did not challenge all of the grounds regarding a high erosion rate and because DHEC’s calculation of what is a high erosion rate is supported by reliable, probative, and substantial evidence, the Petition should be denied with respect to the second question presented.**

SCCCL also argues that DHEC improperly calculated the threshold for a high erosion rate based on an evaluation of all beaches around the State, rather than considering only purely erosional beaches. Significantly, however, while considering DHEC’s calculation, the ALC also found as a factual matter that there is high erosion in the Project area and the Court of Appeals affirmed that finding. Because SCCCL does not challenge that finding in its Petition, further appellate consideration of the second question is barred by the two issue rule. Moreover, the record demonstrates that, in categorizing an erosion rate as high, DHEC carefully considers erosive conditions throughout the State based on all types of beaches—accretional, stable, and erosional—in order to obtain a more complete understanding of erosion throughout the State. Although SCCCL contends that stable and accretional beaches should not be considered when determining whether an erosion rate is high, the record refutes SCCCL’s argument and there is no statutory or case law support for that argument. Thus, even if the issue were not now barred from further appellate consideration, there are no “special and important reasons” warranting the grant of certiorari to review the second question presented.

### **Counterstatement of the Issues Presented for Review**

1. S.C. Code Ann. § 48-39-290(A)(8) authorizes the installation of groins on beaches if “thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas,” and imposes monitoring and mitigation requirements for installed groins. The Permit requires an extensive monitoring and mitigation plan, including future renourishment projects if and when downdrift erosion reaches certain trigger points. In addition, the downdrift landowner expressly agreed to the monitoring and mitigation thresholds. The Court of Appeals and the ALC carefully considered and rejected SCCCL’s argument that monitoring and mitigation requirements cannot be considered by DHEC when permitting the installation of groins. Should this Court deny certiorari on the first question presented because there are no “special and important reasons” for granting the Petition?

2. S.C. Code Ann. § 48-39-290(A)(8) allows installing groins on beaches with “high erosion rates.” Based on its surveys and evaluations of all the State’s beaches, DHEC identifies erosion rates exceeding -3.0 ft./yr. as high erosion and, thus, determined that the Project area suffers from high erosion. The ALC determined there is high erosion in the Project area on two grounds: its own independent factual finding that the erosion rates experienced in the Project area are high, and DHEC’s high erosion standard. The Court of Appeals affirmed both of those findings. In its Petition, SCCCL does not challenge the ALC’s independent factual finding and simply repeats its twice-rejected argument that DHEC should not consider all State beaches when calculating the high erosion rate threshold. Should this Court deny certiorari on the second question presented because the two issue rule bars consideration of the question and because there are no “special and important reasons” for granting the Petition?

### **Counter Statement of the Case**

In this administrative matter, the South Carolina Coastal Conservation League (SCCCL) challenges an initial and amended Critical Area Permit and Coastal Consistency Certification issued to DeBordieu Colony Community Association (DCCA) by the South Carolina Department of Health and Environmental Control (DHEC),<sup>1</sup> authorizing DCCA to perform sand renourishment and groin installation on the beach adjacent to its community property in Georgetown County, South Carolina (Project). *See* **(R. pp. 003-49, 1089-93)** (Pet’r’s Exs. 41, 77). SCCCL challenges DHEC’s approval of the groin installation, not the renourishment.

The Original Permit for the Project was issued by DHEC staff on January 24, 2019. **(R. pp. 003-49)** (Pet’r’s Ex. 41). On February 7, 2019, SCCCL filed its Request for Final Review Conference with the DHEC Board. **(R. pp. 54-62)**. On March 7, 2019, the Board denied SCCCL’s Request and declined to hold a final review conference, making the staff decision regarding the Original Permit the final agency decision. **(R. pp. 225-26)**; *see* S.C. Code Ann. § 44-1-60(f).

SCCCL timely requested a contested case hearing on April 5, 2019, contending that DHEC’s issuance of the Original Permit was contrary to the pertinent statutes, regulations, and the

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<sup>1</sup> The office within DHEC that handled the review and authorization of the permit at issue is the Office of Coastal Resource Management (OCRM). As of July 1, 2024, DHEC is now the South Carolina Department of Environmental Services.

Coastal Management Program **(R. pp. 227-35)**. DCCA's neighboring property owner, The Belle Baruch Foundation (Baruch), also requested a contested case hearing on April 3, 2019, similarly challenging DHEC's issuance of the Permit. **(R. pp. 236-95)**. On July 1, 2019, the separate contested cases were consolidated for hearing. **(R. pp. 4-5)**.

Prior to the merits hearing, Baruch and DCCA entered into a Settlement Agreement, whereby DCCA agreed, with approval from DHEC, to amended conditions for the Original Permit, including moving the southernmost groin to the north and further away from the Baruch property line, and also "reduc[ing]the length of the southernmost groin, lower[ing] the trigger point for mitigation, and significantly increas[ing] the amount and quality of the mitigation should it become necessary." **(R. pp. 11-18)**. The ALC issued an Order dated April 3, 2020, dismissing Baruch's contested case and directing DHEC to modify the Original Permit in accordance with the terms of the Settlement Agreement. **(R. pp. 6-18)**. DHEC issued a new permit on April 15, 2020 **(R. pp. 407-11, 320-65)** (Amended Permit, and together with Original Permit, Permit), which incorporated the terms of the Settlement Agreement, as directed by the Order of Dismissal. **(R. pp. 1089-93)** (Pet'r's Ex. 77). SCCCL filed a Request for Final Review Conference as to the Amended Permit on April 30, 2020. **(R. pp. 384-400)**. On May 21, 2020, the DHEC Board denied SCCCL's request and declined to hold a final review conference, again making the staff decision on the Amended Permit the final agency decision. **(R. pp. 412-13)**.

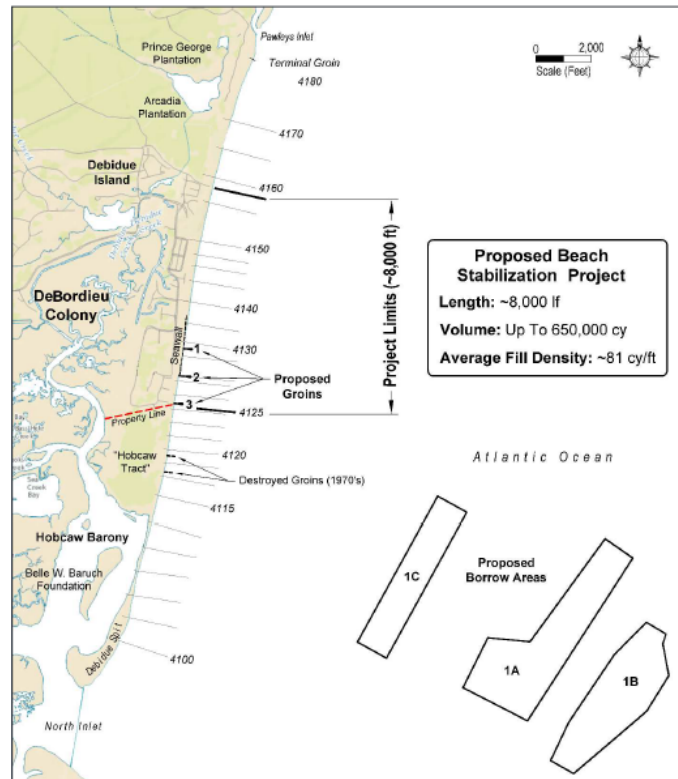
On June 22, 2020, SCCCL timely requested a contested case hearing to challenge DHEC's issuance of the Amended Permit. **(R. pp. 403-06)**. By consent motion of all parties, the ALC consolidated the Original Permit and Amended Permit cases on July 30, 2020. **(R. pp. 1-2)**. A hearing on the consolidated cases was held before the ALC on August 24-26, 2020. The ALC issued a Final Order on January 15, 2021, ruling that SCCCL failed to show by a preponderance

of the evidence that DHEC erred in granting the Permit. (**R. pp. 19-53**).<sup>2</sup> SCCCL timely filed a Notice of Appeal on February 16, 2021. Oral argument was held on March 7, 2024, and, on May 1, 2024, the Court of Appeals filed its opinion affirming the ALC. SCCCL's petition for rehearing was denied on June 13, 2024. The Petition followed.

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<sup>2</sup> It should be noted that the groins, as authorized by the Amended Permit and in accordance with the Settlement Agreement with Baruch, were fully constructed during the winter of 2021-22, presently remain on the beach, and are functioning in accordance with projections. SCCCL sought supersedeas of the ALC's Final Order dated January 15, 2021, but the ALC rejected that request on September 27, 2021, as did the Court of Appeals by order dated November 9, 2021.

**Statement of the Facts**  
**Illustration 1**  
**DeBordieu Colony Beach**



**FIGURE 1.1.** Debidue Island showing proposed beach stabilization project limits (DeBordieu Colony) and three groins to reduce sand losses. Sand would be dredged from portions of offshore areas 1A, 1B, and/or 1C.

DeBordieu Colony is located on the coast of South Carolina<sup>3</sup> in Georgetown County. The beachfront portion of DeBordieu Colony, known as DeBordieu Beach, is located on Debidue Island and is approximately 8,000 feet (1.5 miles) in length. DeBordieu Beach suffers from high erosion<sup>4</sup> at the southern end of the beach where the Project was permitted. *See (R. p. 788)* (Tr. at

<sup>3</sup> The separate names and spellings of the community, beachfront area, and island sometimes cause confusion and are further elucidated in DCCA’s Final Brief at 4, n.3.

<sup>4</sup> Although it did not appeal from the actual factual finding of high erosion made by the ALC and affirmed by the Court of Appeals, *see* discussion *infra* Argument Part 2.A, SCCCL nevertheless regurgitates testimony regarding the erosion rate at the Project area. Pet. for Cert. at 9-12. DCCA provided a full analysis of the testimony regarding the high erosion rate at the Project area in its brief to the Court of Appeals, *see* DCCA’s Final Br. at 30-35, and does not believe it necessary to repeat that detailed analysis here given that SCCCL does not challenge the factual determination of high erosion in its Petition.

374:6-21); (**R. p. 804**) (Tr. at 390:18-25); *see also* Pet. for Cert. at 5-6 (recognizing the “obvious erosion rate”). This high erosion makes it impossible for a dry sand beach to form and remain in existence naturally, which is significant because the dry sand beach serves as a “bank of sand that can have sand withdrawn from it during storm conditions, then . . . redeposited during normal conditions,” (**R. p. 1036**) (Tr. at 622: 20-23), and thus serves as a “buffer” that “protect[s] whatever infrastructure or houses are located landward of it,” (**R. pp. 1036-39**) (Tr. at 622:24-625:2).<sup>5</sup> The high erosion in the Project area robs the area of the sand necessary to serve this function, threatening the safety of existing structures on the beach. *See* (**R. p. 1030**) (Tr. at 616:21-24) (“Beach renourishment sand and artificial dunes that are created [in the Project area] are quickly lost and so, the erosion threat to those structures continues.”). The Project area and the adjacent structures therefore are susceptible to flood damage and worsening erosion. Among other dangers, the lack of a protective beach has caused waves to reach and damage development in the Project area much quicker than if a dry sand beach were present. *See* (**R. p. 789**) (Tr. at 375:7-11).<sup>6</sup>

Due to this substantial and continuing erosion, DeBordieu Colony implemented four renourishment projects on DeBordieu Beach over 25 years: 1990, 1998, 2006, and 2015. Each of these projects has added increasingly larger amounts of sand to protect the beach. The projects in 1990 and 1998 were smaller projects using trucks to haul sand to the beach from inland excavating pits. (**R. p. 851**) (Tr. at 437:9-12). The 2006 and 2015 projects, however, were larger scale hydraulic fill projects—similar to the Project—in which sand was pumped by dredge from offshore borrow areas to the beach using a large pipeline and then spread on the beach by bulldozers. (**R.**

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<sup>5</sup> The State expressly seeks to “protect, preserve, restore, and enhance the beach/dune system . . . to provide . . . a source for the preservation of dry sand beaches . . . .” S.C. Code Ann. § 48-39-260(1)(b).

<sup>6</sup> The dangers posed by the condition of the Project area were echoed by multiple experts. *See* DCCA’s Final Br. at 30-35.

**p. 851**) (Tr. at 437:12-17). These projects have collectively added approximately 1,690,000 cubic yards of sand to the beach to combat the persistent erosion. **(R. p. 1362)** (Resp'ts' Jt. Ex. 1g, p.19). But this sand has been rapidly lost due to the high erosion.

To better protect the beach and adjacent structures, DCCA applied for a permit on November 10, 2017, to construct three groin structures on the southern end of DeBordieu Beach and to renourish the beach with the placement of up to 650,000 cubic yards of sand onto the beach, with the sand to be pumped from borrow areas located approximately 1.5 to 2 miles offshore. Prior to submitting the application, DCCA's consultant prepared several analyses to support the application. *See* DCCA's Final Br. at 10-14. On January 24, 2019, DHEC granted the Original Permit approving DCCA's application. *See*

**(R. p. 071)** (Resp'ts' Jt. Ex. 54). The groins designed and installed for the Project are often identified in testimony as "low-profile groins," which follow the natural slope or contour of the beach so that the landward end of the groin is no higher than the natural dry sand beach. *See, e.g.,* **(R. p. 1037)** (Tr. at 623:8-20).<sup>7</sup> In addition to being more aesthetically pleasing than traditional groins,

***Illustration 2***  
**Folly Beach Low Profile Groins**



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<sup>7</sup> Illustration 2 was not moved or introduced into evidence but was shown demonstratively to the ALC to demonstrate what an in-place low profile groin looks like. Illustration 2 depicts a low-profile groin similar to those planned for the Project that was installed at Folly Beach County Park in 2013. **(R. p. 858)** (Tr. at 444:14-15). Since construction of that groin, which was also installed with a renourishment project, the shoreline of the beach has since been restored and now extends much further out into the ocean from its prior pre-construction condition. **(R. p. 860)** (Tr. at 446: 5-24).

such as those installed at Pawleys Island or other locations in the State, the effect of the modern low-profile design is to allow excess sand to move around and over the structures to provide sand to the downdrift beach. (*Id.*); *see also* (R. pp. 591, 679, 901) (Tr. at 177:12-23; 265:17-22; 487:8-25). As engineered, “[m]ost of the structure[s] will be buried” after installation, (R. p. 864) (Tr. at 450:3), and the goal of the design is “to keep as much of the structure[s] buried and invisible to the casual observer as possible.” (R. p. 864) (Tr. at 450: 8-10); *see also* (R. p. 4022) (Resp’ts’ Jt. Ex. 64) (groin design profile).

The Permit, as amended, authorizes three groins: groin one is approximately 300 feet in length, groin two approximately 400 feet, and groin three approximately 300 feet. (R. pp. 472-73, 3-49, 1089-93) (Tr. at 58-59; Pet’r’s Exs. 41, 77). The groins are spaced approximately 1,000 feet apart, with the first groin approximately resting in the middle of a bulkhead<sup>8</sup> located on the beach; the second resting at the southern end of the bulkhead; and the third near DCCA’s southern property line.<sup>9</sup> *See (Id.)* Moreover, the 650,000 cubic yards of sand added to the beach will exceed the trapping capacity of the groins, which is between 50,000 to 70,000 cubic yards of sand per groin. (R. pp. 862-63) (Tr. at 448:20-449:1). Accordingly, “in simple numbers, [there is] about three times as much sand as [is] need[ed] to satisfy the [] trapping capacity of each groin.” (*Id.*)<sup>10</sup>

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<sup>8</sup> In 1981, due to continued erosion and chronic dune recession, a timber bulkhead (seawall) supported by pilings was constructed along the southern end of DeBordieu Beach to protect adjacent houses and hold the shoreline in place. (R. p. 805) (Tr. 39:6-12); *see also* (R. p. 1360) (Resp’ts’ Jt. Ex. 1g, p. 17).

<sup>9</sup> In the Original Permit, the third groin was proposed for placement at the southern end of DeBordieu Beach adjacent to the Hobcaw Tract property line. The Amended Permit requires locating the third groin approximately 25 feet farther north and approximately 50 feet farther west than contemplated in the Original Permit. *See* (R. p. 1091) (Pet’r’s Ex. 77, p. 3).

<sup>10</sup> The sand placed on the beach during renourishment does not stop flowing downcoast at the property line between DeBordieu Beach and the Hobcaw Tract. Instead, it extends past the property line on to and out from Hobcaw Tract public beach. *See* (R. p. 1091) (Pet’r’s Ex. 77, p. 3). Moreover, the excess sand placed during the renourishment process will move freely downcoast during the construction of the groins, which occurs after the renourishment. (R. p. 856) (Tr. at

This will serve to provide a readily available source of sand for the downcoast property in the initial years following installation of the groins.

Significantly for this appeal, Special Condition 22 imposes requirements if there is “an increased erosion rate along the adjacent or downdrift beaches that is attributable to the three new permitted groins.” *See* (R. pp. 320-65, 1089-93) (Pet’r’s Exs. 41, 77). In response to the Baruch Settlement Agreement and ALC Order of Dismissal, DHEC amended Special Condition 22 to modify the threshold for when further mitigation must be performed. (R. pp. 1089-90) (Pet’r’s Ex. 77, pp. 1-2). The amendment—which is a product of an agreement of Baruch and DCCA—lowered the mitigation trigger point from -8.1 cy/ft./yr. to -6.0 cy/ft./yr. and also added a shoreline loss-based trigger point of .75 acres per year, which equates to a shoreline change rate between -7 and - 8 ft./yr. *See (Id.)*; (R. p. 877) (Tr. at 463:12-17); *see also* Pet. for Cert. at 7 (“[B]oth the Permit and the Amended Permit contain monitoring requirements and downdrift erosion thresholds that would trigger an obligation on DCCA’s part to conduct additional future renourishment.”).

### Standard of Review

Certiorari to this Court “is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. The Court of Appeals affirmed the decision of the ALC, which is the fact finder in a contested permitting case and makes a *de novo* determination regarding the matters in controversy arising from the agency’s initial permitting decision. *E.g., Jones v. S.C. Dep’t of Health & Env’t Control*, 384 S.C. 295, 303, 682 S.E.2d 282, 287 (Ct. App. 2009).

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442:12-24). After installation of the groins, excess sand will for some time continue to bypass the groins downcoast due to their low-profile design. (R. p. 901) (Tr. at 487:8-25). If and when the mitigation triggers in the Amended Permit are reached, DCCA will engage in further renourishment of the Project area.

The appeal is from the decision of the ALC. S.C. Code Ann. § 1-23-610(B). An appellate court “may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact.” *Id.* Instead, the reviewing court must affirm unless the ALC’s decision affects the appellant’s substantial rights and is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

*Id.* “In determining whether the [ALC’s] decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the [ALC] reached.” *Hill v. S.C. Dep’t of Health & Env’t Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010)

### **Argument**

DCCA respectfully submits that there are no “special and important reasons” for reviewing the decision of the Court of Appeals and the Petition should be denied. Beyond repeating the same arguments it made below, SCCCL never shoulders its burden to explain why this Court’s review is warranted in light of the thorough, well-reasoned decisions below. And, as was the case below, rather than point to specific evidence or scientific analysis to support its stated opposition, SCCCL relies on generalized accusations and biased statutory interpretation arguments that ignore the actual statutory language and the evidence of record, including but not limited to the conditions experienced at the Project area. The Court of Appeals and the ALC carefully and exhaustively considered and reviewed all the evidence and concluded that the groins should be permitted, and there are no “special and important reasons” for this Court to review those decisions.

1. **Certiorari is not warranted on the first question presented because the Court of Appeals correctly held and the ALC properly determined that the groins should be permitted because the substantial evidence of record demonstrated that the groins will not cause a detrimental effect on adjacent or downdrift areas and, if and when erosion reaches a certain level agreed to by the downdrift landowner, DCCA will undertake steps to ensure there is no detrimental downdrift impact.**

SCCCL's argument is that no groin should be allowed on DeBordieu Beach because § 48-39-290(A)(8) does not authorize DHEC to consider mitigation when determining whether the groins will cause a detrimental effect downcoast, never mind the statutory language expressly governing the mitigation and correction of downdrift impacts regarding groins actually installed on a beach. *See* Pet. for Cert. at 12-13. But as the Court of Appeals correctly held, based on an extensive review of the well-developed record from the ALC, this argument is unsupported by and inconsistent with the statutory language. *SCCCL*, 443 S.C. at 93-94, 901 S.E.2d at 713-14; *see TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) ("In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect."). SCCCL never explains the "special and important reasons" warranting review by this Court, especially in view of the fact that the monitoring and mitigation thresholds to protect against high erosion on Hobcaw Tract were agreed to by Baruch.

The arguments that SCCCL actually makes also do not warrant this Court's expenditure of time and resources to review the Court of Appeals' decision. A review of the statutory language shows the Court of Appeals correctly interpreted the General Assembly's intent. South Carolina Code § 48-39-290(A)(8)(a)(i-iii) expressly requires all groin permits to incorporate monitoring and mitigation components, a requirement which would be unnecessary if groins are allowed only if there are no downdrift impacts in any form. *SCCCL*, 443 S.C. at 94, 901 S.E.2d at 714; **(R. p .46)** (Final Order at 28); *see Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d

125, 128 (2008) (holding that the “Court must presume the Legislature intended its statutes to accomplish something and did not intend a futile act”). This is even more so given that the statute also provides that an “adjacent or downdrift property owner who claims a groin has caused or is causing an *adverse* impact shall notify the department of the impact.” § 48-39-290(A)(8) (emphasis added). If a groin is only installed when there is no downdrift impact whatsoever, by definition there would be no need to include notification provisions. *Duvall*, 377 S.C. at 42, 659 S.E.2d at 128.

SCCCL attempts to evade this inescapable conclusion by articulating an extra-statutory tiered analysis for the first time in this case. *See* Pet. for Cert. at 13. This new contention appears to be based on the argument SCCCL made below that groins should be installed only at the end of a littoral cell. *See* Pet. for Cert. at 7-8; (**R. pp. 45-46**) (Final Order at 27-28). But SCCCL’s contention proves too much because none of the statutory provisions would be applicable if groins are authorized for installation only at the end of a littoral cell. Moreover, under SCCCL’s new tiered analysis, groin installation would be further restricted to the very tip of a peninsula where there is no downstream or adjacent littoral cell that could be impacted. By arguing that the statute limits groins to installation in a virtually nonexistent set of circumstances, SCCCL attempts to achieve its desired result by erasing virtually all of the statutory language. *See Duvall*, 377 S.C. at 42, 659 S.E.2d at 128. (**R. p. 46**) (Final Order at 28) (“I conclude that if the statute only allowed for groins that . . . were placed so as not to create a detrimental effect as the League suggestions, then the statute would have no reason to include monitoring, mitigation, and notice provisions for downdrift property owners.”).

Moreover, in a finding that SCCCL has never come to grips with, the ALC correctly determined that the issue framed by the statute is whether there is in fact an actual detrimental

downdrift impact. **(R. p. 46)** (Final Order at 28). The statute does not state “that mitigation cannot be considered when evaluating whether the effect of a groin will be ‘detrimental.’” (*Id.*) The statute also provides, in addition to the notification provision above, that DHEC can take action if there are unaddressed adverse downdrift impacts. § 48-39-290(A)(8)(e) (authorizing DHEC to require reconstruction or removal of a groin, restoration of the impacted area, or both). And the statute provides that “new groins may be constructed ... only in furtherance of an *ongoing* beach mitigation effort ....” § 48-39-290(A)(8) (emphasis added). Under a proper reading of the statute, there presently is no detrimental downdrift impact from the groins and the monitoring and mitigation provisions in the Permit ensure that there never will be. Read as a whole, the statutory provisions mean that mitigation is an obvious and legitimate consideration with respect to DHEC’s permitting the installation of groins.

Viewed in this light, there are no “special and important reasons” warranting this Court’s review. The Court of Appeals and the ALC correctly determined that the statute allows the installation of groins as part of a permitted project that, as here, includes an ongoing beach nourishment effort and mitigation and monitoring provisions. And, as determined by the ALC, the initial level of sand placed on the beach through renourishment will exceed the sand trapping capacity of the groins, thereby providing a source of sand that will be transported to the adjacent Hobcaw Tract and will, in the earlier years after completion of the Project, provide levels of sand that exceed the historical transport rates observed in the area. **(R. p. 34)** (Final Order at 16). Although the volume of sand transported downcoast will decline over time, DCCA will continue funding ongoing and regular monitoring and mitigation and, as necessary, comply with the permit requirements regarding reconfiguration of the groins, removal of the groins, restoration of any adversely affected area, or a combination of all three measures. *See* **(R. p. 1089)** (Special Condition

#22, Pet'r's Ex. 77). Accordingly, the amount of sand added from the Project will initially add shoreline to the downdrift beach, to the benefit of the downcoast Hobcaw Tract. Most importantly, the ongoing commitment to mitigation in the form of additional renourishment on the Hobcaw Tract will be required under the Permit if and when the downdrift erosion rate exceeds the mitigation trigger rate, *which is set at a level below the uncontested background rate of erosion on that beach*. Therefore, the Project as permitted will actually *decrease* the erosion rate on the downdrift Hobcaw Tract, as well as along DeBordieu Beach. And it should be noted—again—that the monitoring and renourishment provisions were agreed upon by the downdrift property owner, Baruch. *See SCCCL*, 443 S.C. at 94, n.15, 901 S.E.2d at 714, n.15. As such, the uncontested evidence shows that the Project as permitted will result in more dry sand beach to the downdrift property and enhance the health of both DeBordieu Beach and Hobcaw Tract.

SCCCL in a footnote acknowledges that this Court in 2003 recognized DHEC's authority to permit groin construction. Pet. for Cert. at 4, n.1 (citing *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 354 S.C. 585, 582 S.E.2d 410 (2003)). Although SCCCL argues that the law was amended in 2002 to effectively prohibit that authority, this Court has already observed that § 48-39-290(A)(8) "was amended to explicitly authorize the issuance of permits to construct and/or reconstruct groins." *Id.*, 354 S.C. at 589, n.6, 582 S.E.2d at 412, n.6. This Court also held that "the [Beachfront Management Act (BMA)] authorized OCRM to issue groin permits in furtherance of the State's policy of encouraging certain types of erosion-inhibiting techniques and promoting beach renourishment where appropriate." *Id.*, 354 S.C. at 589, 582 S.E.2d at 413. In sum, the General Assembly did not amend § 48-39-290(A)(8) to prohibit the construction of groins subject to exceptions that would effectively be superfluous. If the General Assembly had intended such a limitation, it could have succinctly expressed that intention without

the statutory provisions requiring monitoring and mitigation and, if necessary, removal of an installed groin.

SCCCL also generally contends that the policy behind the BMA requires concluding that groins should not be allowed. Pet. for Cert. at 3-5. But that contention is not supported by a review of the BMA. *See S.C. Coastal Conservation League*, 354 S.C. at 589, 582 S.E.2d at 412-13 (holding that one BMA statute cannot be read in isolation). Although § 48-39-260(3) does say that the policy of the BMA is to “severely restrict the use of hard erosion control devices to armor the beach/dune system,” groins are not defined as “erosional control devices” in the BMA. *See S.C. Coastal Conservation League*, 354 S.C. at 587, 582 S.E.2d at 412 (“There is no question that groins are not ‘erosion control structures or devices’ as defined by S.C. Code Ann. § 48-39-270(1) [ ].”). Moreover, in 2018, the General Assembly changed the State’s beach management policy from retreat to preservation. *See* § 48-39-280(A). To this end, the BMA states that it is the policy of South Carolina to “(1) protect, preserve, restore, and enhance the beach/dune system, the highest and best uses of which are declared to provide . . . a source for the preservation of dry sand beaches which provide recreation and a major source of state and local business revenue.” § 48-39-260(1)(b). Significantly here, the ALC found and the Court of Appeals recognized that the Project will serve the purpose of protecting, preserving, restoring, and enhancing the beach and dune system in the Project area and will help to preserve the dry sand beach on DeBordieu Beach. *See (R. pp. 49-50)* (Final Order at 31-32); *see also* § 48-39-260(1)(b). And the uncontested expert testimony demonstrates that the background erosion rate on the downdrift Hobcaw Tract will actually *decrease* as a result of the Project, particularly in the initial years following installation of the groins as excess sand flows downcoast in levels higher than the historical erosion rate. *See (R. pp. 32, 46)* (Final Order at 14, 28). In short, the record comprehensively establishes that the Project

is actually promoting the health of DeBordieu Beach as well as Hobcaw Tract and, as such, SCCCL's claims to the contrary do not establish "special or important reasons" meriting this Court's review.

To summarize, these statutory provisions and the historical background show that the General Assembly intended for monitoring and mitigation to be considered in determining if and when groins will cause a detrimental downdrift impact. DCCA is implementing a robust monitoring system to evaluate impacts to Hobcaw Tract using levels and evaluation methods specifically agreed to by that adjacent landowner and to ensure that new renourishment projects are undertaken if and when the background erosion rate on Hobcaw Tract begins to approach defined trigger points. DCCA's commitment in this regard is long-term and fully funded, but also mandatory under the specific requirements of the Permit. Significantly, the monitoring and mitigation requirements of the Permit also are more stringent than any previous groin permit in the State. *See (R. p 573)* (Tr. 159:17-25). Consequently, the lower courts properly and correctly considered and ruled in thorough, well-reasoned decisions that there is no detrimental downdrift impact based on the statutory language and the comprehensive monitoring and mitigation provisions implemented in accordance with the Permit and as agreed upon with the downcoast landowner. Certiorari is not warranted on the first question presented in the Petition.

2. **Certiorari is not warranted on the second question presented because the Petition does not challenge both grounds underlying the ALC’s finding of high erosion in the Project area and, regardless, DHEC’s calculation of a high erosion rate threshold should be affirmed based on the reliable, probative, and substantial evidence in the record.**
  - A. ***Because the Petition does not challenge both grounds for the ALC’s findings or the Court of Appeals’ holdings regarding the existence of a high erosion rate at the Project area, consideration of Petitioner’s second question presented is barred by the two issue rule.***

If a lower court decides an issue on multiple grounds and the losing party does not challenge all of the grounds on appeal, the reviewing court must affirm the decision below based on the two-issue rule. *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (“Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.”), *abrogated on other grounds by Repko v. Cnty. of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018); *see also First Union Nat’l Bank of S.C. v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (“The unchallenged ruling, right or wrong, is the law of the case and requires affirmance.”).

The ALC evaluated the existence of high erosion in the Project area in two ways. First, it considered whether erosion at the Project area is high based on DHEC’s stated standard of -3 ft./yr. Second, it found that erosion at the Project area is high because of the testimony and evidence in the record. The ALC ultimately determined that “whether the Department’s interpretation is a legal one or a factual one does not matter in this case because under the facts of this case, the Project is in the area of high erosion.” (**R. p. 43**) (Final Order at 25). The Court of Appeals affirmed the ALC’s determination on both grounds. *SCCCL*, 443 S.C. at 91-92, 901 S.E.2d at 712-13. Thus, both lower courts determined on the same two grounds that there is high erosion at the Project area.

However, the Petition articulates a challenge to only one of the two grounds supporting the high erosion determinations of the Court of Appeals and the ALC: whether DHEC's determination of a high erosion rate standard of -3 ft./yr. is supported by substantial evidence. *See* Pet. at 2, 15-18. In support of its argument, the Petition quotes the Court of Appeals' holding regarding DHEC's "approach that focuses on the range of erosion rates, including accreting and stable beaches, as [DHEC expert witness Matt] Slagel suggested ...." Pet. at 16 (quoting *SCCCL*, 443 S.C. at 92, 901 S.E.2d at 712. Although the ALC did evaluate the DHEC standard in one ground, it independently found that the Project area suffers high erosion as a factual matter without reference to erosion or accretion rates in any other area. **(R. pp. 43-44)** (Final Order at 25-26). In point of fact, the ALC ruled as follows in pertinent part:

In other words, the League argues that when developing the threshold rate at issue, the Department erroneously considered the overall shoreline change rates in the State instead of just the erosional change rates in the State. *Again, consideration of this issue is unnecessary because I found [DCCA expert witness] Dr. [Timothy] Kana's factual opinion that the Project was located in an area of high erosion to be persuasive.*

**(R. p. 43)** (Final Order at 25) (emphasis added).<sup>11</sup> Although the Court of Appeals affirmed both findings, *SCCCL* never challenges or even mentions the ALC's independent factual finding or the testimony of Dr. Kana in its argument. *See* Pet. at 15-18. It also does not mention the other testimony underlying the ALC's factual determination as identified by the Court of Appeals. *SCCCL*, 443 S.C. at 91, 901 S.E.2d at 712 (noting testimony as to the high Project area erosion rate given by Dr. Kana, Dr. Haiquing Kaczowski,<sup>12</sup> and William Eiser<sup>13</sup> ).

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<sup>11</sup> *See* DCCA's Final Br. at 4, n.5 (explaining Dr. Kana's expert qualifications and background).

<sup>12</sup> *See* DCCA's Final Br. at 32, n.37 (explaining Dr. Kaczowski's expert qualifications and background).

<sup>13</sup> *See* DCCA's Final Brief at 6, n.2 (explaining Mr. Eiser's expert credentials and background with DHEC).

SCCCL has therefore failed to raise in its petition both grounds underlying the ALC's determination of high erosion because it does not challenge the ALC's factual finding in its issue statement and does not make any argument regarding that finding in the body of its brief. *See* Rule 208(b)(1)(E), SCACR (requiring "discussion and citations of authority" in a brief); *cf. Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) ("Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal."). Consequently, because the ALC's finding of high erosion was based on two grounds and SCCCL challenges only one of those grounds, the Petition should be denied with respect to SCCCL's second question presented. *Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996) ("Because he has not appealed on all grounds, the trial court's decision is affirmed.").

***B. Even if this Court finds it appropriate to consider the high erosion rate question despite the two issue rule, certiorari is not warranted because the Petition does not articulate any "special and important reasons" warranting this Court's review in light of the reliable, probative, and substantial evidence of record.***

SCCCL complains that the Court of Appeals erred in affirming the ALC's determination that the erosion rate at the project area is high because it exceeds DHEC's threshold for a high erosion rate. Pet. for Cert. at 10-11, 15-18. The basis for SCCCL's argument is that, when DHEC determines what is a high erosion rate for the South Carolina coast, it should not consider all beaches, but instead only those experiencing erosion. Pet. for Cert. at 15-18. This argument ignores the factual finding made and affirmed by the lower courts based on the reliable, probative, and substantial evidence. It further ignores the need for DHEC to determine what is "high erosion"—a term not defined by statute or regulation—throughout the State based on its sound expertise.

First, as a matter of simple logic, omission of stable beaches from the analysis inevitably skews the baseline for erosional beaches upward, thereby distorting the appropriate threshold for

determination. In fact, as the Court of Appeals concluded, including accreting and stable beaches in the calculation “brings a more predictable approach to what would be considered high and does not exclude beaches with high erosion rates from the protections of the statute simply because some other beaches have higher rates.” *SCCCL*, 443 S.C. at 92, 901 S.E.2d at 712; *see also* **(R. pp. 43-44)** (Final Order at 25-26). Or, as the ALC found, including all shoreline change rates in the State in the high erosion rate analysis provides a “broader spectrum” of data upon which DHEC can make its evaluation, thereby leading to better informed permitting decisions. *See* **(R. p. 44)** (Final Order at 26). On the other hand, accepting SCCCL’s argument “could produce an absurd result” where an extremely high rate of erosion in one localized area could result on a non-probative skewing of the mean, among other examples. *Id.*

In any event, the record contains more than enough reliable, probative, and substantial evidence to refute SCCCL’s argument. Mr. Slagel testified that DHEC considers an erosion rate greater than -3 ft./yr. to be high based on its analysis of coastal conditions throughout the state. **(R. p. 488)** (Tr. at 74:23-24). Mr. Slagel explained that DHEC’s determination of a high erosion rate is, in part, based on its review and analysis of data from almost 500 beach survey monuments<sup>14</sup> at which physical and repetitive beach profile measurements have been taken over decades. **(R. pp. 488-89)** (Tr. at 74:24-75:13). DHEC’s review of beach monument data for purposes of a groin permit analysis includes reference data from all monuments in the state, including those that are accretional, stable, and erosional. **(R. p. 1070)** (Tr. at 656:9). Similarly, Mr. Slagel testified that, for purposes of establishing and updating the jurisdictional baselines and setback lines, DHEC reviews long-term shoreline change rates for all beaches—accretional, stable, and erosional. **(R.**

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<sup>14</sup> Beach monuments are survey structures established by DHEC along the coast used to determine jurisdictional lines (the baseline and setback line) for purposes of coastal development laws.

**p. 559)** (Tr. at 145:15-17). As noted by the lower courts, Mr. Slagel’s testimony was supported by Dr. Kana, Dr. Kazckowski, and Mr. Eiser, all of whom testified as experts in coastal processes (or similar areas) that the erosion rate in the Project area is high based on their experience. *See SCCCL*, 443 S.C. at 91-92, 901 S.E.2d at 712. Notably, the ALC found that the factual evidence established that erosion rate in the Project area is high independent of DHEC’s position on the issue. *See (R. pp. 43-44)* (Final Order at 25-26).

SCCCL’s argument is largely based upon its incorrect assertion that groins are disfavored in this State; rather, as discussed above, groins are allowed in accordance with the statute. And DHEC’s analysis does not improperly “skew” the analysis; rather, it correctly recognizes the need to evaluate all beaches in context. As observed by the ALC, DHEC’s consideration of all the state’s shorelines inherently “provides a broader picture of how certain erosional rates fall within the spectrum of the State’s rates as a whole.” **(R. p. 44)** (Final Order at 26); *see SCCCL*, 443 S.C. at 92, 901 S.E.2d at 712. Moreover, SCCCL improperly presumes that the phrase “high erosion rates” limits DHEC to considering only erosional beaches. There is no such limitation; rather, DHEC must evaluate what is “high erosion” in discharging its statutory responsibilities and has concluded, in its expert judgment, that determining the threshold for “high erosion rates” should account for the State’s entire inventory of beaches—accretional, stable, and erosional. There is more than sufficient evidence in the record to support the approval of DHEC’s analysis by the Court of Appeals and the ALC. Accordingly, as the Court of Appeals correctly held, the ALC’s finding that the Project area suffers from high erosion is “based on the probative, substantial, and reliable evidence in the record, [and is] not clearly erroneous nor [] arbitrary or capricious.” *SCCCL*, 443 S.C. at 92, 901 S.E.2d at 713.

For these reasons, the lower courts properly and correctly considered and ruled on the erosional issues articulated by SCCCL and the Petition points to no “special and important reasons” why this Court’s review is warranted in view of the well-reasoned decisions issued by the Court of Appeals and the ALC. Consequently, certiorari is not warranted on the second question presented in the Petition.

### **Conclusion**

For the reasons explained above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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