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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Environmental Services and South Carolina Coastal Conservation League, Petitioners, v. Rom Reddy, Respondent.	Docket No. 24-ALJ-07-0232-CC **ORDER DENYING MOTIONS FOR RECONSIDERATION**

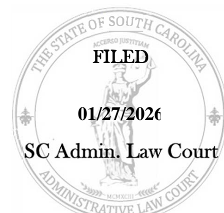
This case is before the South Carolina Administrative Law Court (Court or ALC) pursuant to Motions for Reconsideration (Motions) filed by the South Carolina Department of Environmental Services (Department) and South Carolina Coastal Conservation League (SCCCL) (collectively, Petitioners) on January 9, 2026. Petitioners move this Court pursuant to Rule 29(D) of the Rules of Procedures for the Administrative Law Court (SCALC Rules) and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP) to reconsider and amend the Amended Final Order (Amended Order) dated December 30, 2025. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) ("A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule."). On January 20, 2026, Rom Reddy (Respondent) filed a Response to the Motions (Response). On January 26, 2026, SCCCL filed a reply to Respondent's Response.

Having reviewed the Petitioners' Motions and the Response, the Court does not find that it overlooked, misinterpreted, or failed to apply South Carolina law and/or overlooked or misunderstood certain evidence, points, and arguments presented. Nevertheless, I issue this Order regarding the arguments set forth in the parties' Motions, to further explain my application of the facts and the law in the Amended Final order.

DISCUSSION

SCCCL's Arguments

SCCCL contends clarification of the Amended Order is necessary to ensure that the Court's factual findings align with the statutory framework governing coastal development under the South



Carolina Coastal Tidelands and Wetlands Act (the Act). SCCCL focuses on the Court's statutory interpretation of the term "periodic inundation" and the additional findings of the presence of tidal and wave action at the area in question and a lack of stable natural vegetation or nonlittoral vegetation seaward of the escarpment. However, as stated in the Amended Order, the dynamic nature of the shorelines evince the difficulty in making a determination of the presence of "periodic inundation" under the particular facts of this case. For instance, a wealth of the photographic evidence was taken in the aftermath of storms and king tides and as stated in the Amended Final order:

> since storms are episodic in nature and do not occur in a consistent and predictable cycle, the inundation from a singular storm would not be considered periodic; even though storms are nevertheless reoccurring. King tides, on the other hand, occur at irregular intervals yet they are a part of a consistent tidal pattern. Therefore, depending upon the frequency of their occurrence, they could certainly be characterized as periodic. … Therefore, while episodic events and king tides are not necessarily determinative of what constitutes periodic inundation for purpose of identifying the beaches as designated by statute, these [isolated] events are nevertheless a part of my consideration of the effects of Respondent's hard structure on the adjacent beach.

Furthermore, because of the disposition of the case, I did not find it necessary to determine whether Respondent's structure is located in the statutorily defined "beaches" and thus whether the area where the unpermitted activity occurred was specifically subject to "periodic inundation." Moreover, motions for reconsiderations "may not be used to relitigate old matters." *See* Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2810.1 (2d ed. 1995) [hereinafter Wright & Miller].

SCCCL also requests clarification to ensure that the Court's finding that Respondent did not violate a regulation, standard, or requirement under the Act is not misconstrued in light of the substantial record evidence of unpermitted construction and alteration activity. I do not find further clarification to be necessary. While subsections 48-39-130(A), (C) of the South Carolina Code (2008) establish limitations on activities and uses of critical areas, under the fact of this case, there is no need to reconcile whether Respondent violated the Act when he failed to obtain a permit for the construction and alternation activity that ultimately resulted in the installation of the hard erosion control structure. The Act ultimately authorizes the Department to order the removal of all erosion control structures, such as Respondent's hard structure, which have an adverse effect on the public interest. S.C. Code Ann. §48-39-120(C) (2008) ("The department shall have the

authority to remove all erosion control structures which have an adverse effect on the public interest.").

Finally, SCCCL seeks clarification to ensure that the Amended Order is not construed to foreclose the Department's civil penalty authority in future cases, or to diminish the Department's statutory role in enforcing the Act through the full range of remedies authorized by the General Assembly. I do not find further clarification is needed. As clearly stated in the Amended Order, "the Department's assessment of a $289,000 penalty is not appropriate **under the facts of this case**." (emphasis added).

Department's Arguments

The Department's Specialized Knowledge

First, the Department contends that it's qualifications and experience, including those of Ms. Boynton, extend beyond the establishment of just the baseline and setback line. Thus, the Department argues that the Court should reconsider the limitations on the Department's specialized knowledge for purpose of its evaluation of the evidence and recognize that the specialized knowledge and skills used in setting the baseline and setback line are the same skills that the Department uses in determining the escarpment and vegetation lines for other purposes.

The Department's argument appears to be a convoluted challenge to the credibility assigned to the testimony of Ms. Boynton. Initially, as addressed in the Court's Order on the parties' first Motion for Reconsideration, the term "may" in subsection 1-23-330(4) of the South Carolina Code (2005) implies that the Court's consideration of the Department's specialized knowledge is discretionary when considering the evidence presented to the Court. *See Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352–53, 549 S.E.2d 243, 250 (2001) ("The use of the word "may" in a statute signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute."). To the extent the Department yet again asserts that the Court should have relied on Ms. Boynton's testimony since GIS, GPS field collection, shoreline change, and feature identification are a part of her Departmental duties, motions for reconsiderations "may not be used to relitigate old matters." *See* Wright & Miller. Moreover, as the trier of fact, the Court may give testimony, the weight that he or she determines it deserves, *Florence County Department of Social Services v. Ward*, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992), and may accept the testimony of one expert over that of another, *South Carolina Cable Television Association v. South Bell*

Telegraph & Telephone Co., 308 S.C. 216, 417 S.E.2d 586 (1992); *Bivens v. Watkins*, 313 S.C. 228, 235, 437 S.E.2d 132, 136 (Ct. App. 1993) ("[t]he judging of the credibility of witnesses and the weighing of evidence in a law case are uniquely functions of the trial court."); *Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996) (the Court is "in a superior position to judge the witnesses' demeanor and veracity and, therefore, his findings should be given broad discretion." Finally, there is insufficient evidence for this Court to conclude that **Ms. Boynton's** use of GIS, GPS, and feature analysis established the location of the Beaches Critical Area in this case, which is distinct from the regulatory determination of the baseline and setback line. *See* S.C. Code Ann. § 1-23-330(4) (providing that"[t]he agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.").

Non-Compatible Materials

The Department requests the Court find that Respondent violated the Act when, prior to the installation of the hard erosion control structure, Respondent installed non-beach-compatible materials without a permit and failed to comply with its October 20, 2023 Notice to Comply. In addition, the Department requests that the Court order the removal of the non-beach-compatible materials that were installed during October 2023 because they are adverse to the public interest, threatening the endangered sea turtles and causing public access and safety concerns for the public.

However, the continued existence of non-compatible materials unassociated with those used in the construction of the hard erosion structure was not established by the evidence. For instance, non-compatible materials are not shown in later photographic evidence of the site. Indeed, a drone photo taken in November 2023 does not show any non-beach compatible materials near Respondent's property or along the adjacent beach. Similarly, other photographic evidence taken after the installation of the hard erosion control structure and the Department's June 6, 2024 inspection report does not show the presence of non-compatible materials scattered along the adjacent beach. Thus, beyond its determination to order the removal of the seawall, the Court does not find sufficient evidence to order the requested relief.

The Department also requests that the Court reconsider its finding that there was no nexus between Respondent's actions and the non-compatible materials laden along the beach. However, the Department has too broadly construed the Court's finding. While the Amended Order included a finding that the Department failed to convincingly establish a nexus between Respondent's actions and the non-compatible materials observed along the **adjacent beach**, Respondent's

concession of the use of non-beach compatible materials in the construction of the hard structure implies that the materials directly contiguous to the hard structure were attributable to his actions. Importantly, the Amended Order specifically orders "the removal of the hard structure, **including all unauthorized materials that were used for its construction**, and the restoration of that affected area once excavation/removal is complete." Thus, reconsideration of this issue would have no practical impact on the outcome of this case. *E.g., Jones v. Dillon-Marion Hum. Res. Dev. Comm'n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982) ("Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.").

Expert Witness Testimony

Next, the Department contends the Court drew an adverse inference from Mr. Jones's testimony when it found that "even the Department's own witness could not confirm where the 'beaches' is now." The Department argues the Department did not retain Mr. Jones to evaluate the beaches critical area **at the time of trial** nor was he provided with any evidence related to current conditions at the site at the time of trial. In addition, the Department avers that it was prepared to call Mr. Christopher Stout to testify as to where the critical area was **at the time of trial** but decided that it was best to move on since the primary issue before the Court was whether the alterations were in beaches critical area at the time of their installation.

I do not find that the Court erred. The Court's reference to Mr. Jones testimony was not intended to establish where the beaches critical area is now but rather to illustrate, as emphasized by Mr. Jones, the manner in which "jurisdiction, through the beaches definition, changes." As stated in the Amended Order, "this would create an undesirable result, leaving the Department's permitting authority ever changing with no certainty to either landowners' or this Court as to whether a permit is required." Even so, if Mr. Stout could have rebutted Mr. Jones's testimony, the Department should have called him to testify. The Department cannot use evidence it failed to present to illustrate an error in the Court's reasoning.

September 1, 2023 Observations

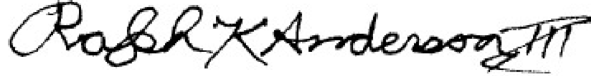
Lastly, the Department argues the Court's finding related to "the Department's isolated observations on September 1, 2023" is not consistent with the testimony presented at the hearing of the case. The Court does not find that it erred. A complete reading of the Amended Order leaves no doubt that Court considered not only the Department's observations on September 1, 2023 but also all of the evidence before it, including but not limited to the June and September

vegetative escarpment lines, Ms. Boynton's feature analysis, the photographic evidence in the record, and Respondent's July 2023 and April 2024 property surveys.

ORDER

IT IS THEREFORE ORDERED that the Motions for Reconsideration are **DENIED**.

AND IT IS SO ORDERED.

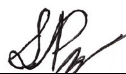


Ralph King Anderson, III
Chief Administrative Law Judge

January 27, 2026
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

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