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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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Case No.: 2026-000221

South Carolina Department of Environmental Services
and South Carolina Coastal Conservation League.....Respondents-Appellants,

v.

Rom Reddy .....Appellant-Respondent.

SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES' INITIAL BRIEF

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May 1, 2026

Charleston, South Carolina

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STATEMENT OF THE ISSUE ON APPEAL

I. THE ALC ERRED IN FAILING TO ORDER REMOVAL OF THE NON-BEACH-COMPATIBLE MATERIALS NOT ASSOCIATED WITH THE CONSTRUCTION OF THE WALLS.

STATEMENT OF THE CASE

This matter is an appeal of the ALC's decision concerning the Department of Environmental Services, Bureau of Coastal Management's (the Department) enforcement action against Mr. Rom Reddy for multiple, unauthorized alterations of the critical area of the coastal zone pursuant to the South Carolina Coastal Zone Management Act (the Act), S.C. Code Ann. Sections 48-39-10, *et seq*. Reddy filed a Request for Contested Case Hearing on July 18, 2024, pursuant to S.C. Code Ann. Section 1-23-600(A) (Supp. 2017) and S.C. Code Ann. Section 44-1-60 (2018). In his Request for Contested Case Hearing, Reddy challenged the Department's July 1, 2024 Administrative Order AF-0000960 (Administrative Order) wherein the Department found Reddy violated the Act and the South Carolina Code of Regulations by significantly and repeatedly altering the Beaches Critical Area without a permit. As a result of these violations, the Department assessed a $289,000 civil penalty pursuant to Section 48-39-270, directed Reddy to submit a Corrective Action Plan (CAP) and, upon the CAP's approval, directed Reddy to remove the non-beach-compatible materials and restore the affected area.

On February 9, 2024, the Department filed a Motion for Temporary Restraining Order and Preliminary Injunction (TRO and Preliminary Injunction) with the ALC (24-ALJ-07-0032-IJ) in response to Reddy actively constructing a second wall in the Beaches Critical Area and altering the area with even more non-beach-compatible materials.

Reddy filed a Motion for Summary Judgment on March 3, 2025, challenging the Department's permitting authority in the Beaches Critical Area when it is landward of the

Beach/Dune System Critical Area setback line. The ALC denied Reddy's Motion for Summary Judgment on April 24, 2025, concluding that under the applicable statutory provisions, the Department "unequivocally has jurisdiction over the Beaches Critical Area. S.C. Code Ann. §§ 48-39-10(H) & -210" and that S.C. Code Ann. § 48-39-290 "must not be construed to undermine the statutory mandate that no person shall utilize the Beaches Critical Area without first obtaining a permit from the Department, something which it is undisputed Respondent failed to do." (Summary Judgment Order, pp. 9-10.) The ALC further found that there remained the following questions of fact:

> Respondent [Reddy] nonetheless contends their activities did not occur in the Beaches because there is no evidence that [the] "property was inundated by regular, cyclical tidal and wave action, only alleged inundation from irregular named storms." In other words, Respondent contests that this case pertains to alterations occurring in the 'Beaches' as defined under subsection 48-39-10(H) of the South Carolina Code (Supp. 2024). Thus, further inquiry into facts of the case is necessary to clarify the application of the law to the issue presented to this Court.

(Summary Judgment Order, p. 18.)

The ALC granted the South Carolina Coastal Conservation League's (the League) Motion to Intervene in this case on August 7, 2024.[1]

[1] Reddy also filed various other proceedings with the courts related to the facts of this case: (1) Reddy filed a Motion for Removal with the ALC on February 23, 2024, requesting that the action be transferred to the Charleston County Circuit Court which was denied on March 26, 2024. (2) On March 29, 2024, Reddy filed a Notice of Appeal to the Court of Appeals which was dismissed and remitted to the ALC on April 18, 2024. (3) On March 15, 2024, Reddy filed a Petition for Writ of Mandamus with the South Carolina Supreme Court requesting the Supreme Court to direct the Chief Administrative Law Judge to transfer the case to the Charleston County Circuit Court which was denied on April 17, 2024. (4) On March 29, 2024, Reddy and his wife, Renee Reddy, filed a Complaint in the Charleston County Court of Common Pleas against the Department and the City of Isle of Palms related to the assertion of jurisdiction and their alleged right to construct an erosion control structure. The Reddys raised constitutional issues and alleged inverse condemnation, trespass, and recovery of attorney fees. On September 11, 2024, the parties filed a Stipulation of Dismissal Without Prejudice as to the Department.

The ALC conducted a hearing on the merits from May 6-8 and 19-20, 2025. The Court issued a Final Order on October 23, 2025. (R. pp. __.) All parties filed Motions for Reconsideration on November 3, 2025. (R. pp. __.) The Court rescinded the Final Order on November 10, 2025, to consider the parties' Motions. (R. pp. __.) On December 30, 2025, the ALC issued both an Amended Final Order (Order) and an Order on Motions for Reconsideration. (12/30/2025 Order on Motions for Reconsideration, p. 1.) The ALC ordered Reddy to "submit a Corrective Action Plan (CAP) to the Department for the removal of the hard structure, including all unauthorized materials that were used for the construction and the restoration of the affected area." (Order, p. 40.) The ALC also concluded "the assessment of a civil penalty is not appropriate." (Order, p. 39.)

On January 9, 2026, the Department and League moved for reconsideration of the Amended Final Order. (R. pp. __.) On January 27, 2026, the ALC denied the motions and issued an Order explaining the denial. (R. pp. __.)

On January 28, 2026, Reddy filed his Notice of Appeal of the December 30, 2025 Amended Final Order. (R. pp. __.) On January 29, 2026, the Department and the League each filed their cross appeals of the December 30, 2025 Amended Final Order and January 27, 2026 Order denying their Motions for Reconsideration. (R. pp. __.) The Department also appealed the December 30, 2025 Order on Motions for Reconsideration. (R. pp. __.)

On March 11, 2026, the ALC granted Reddy's Motion to Stay the Amended Final Order. (R. pp. __.)

GENERAL OVERVIEW

Reddy owns an oceanfront home located near Breach Inlet at 118 Ocean Boulevard, in Isle of Palms, South Carolina. The Beaches Critical Area as defined by the Act has become located landward of the Beach/Dune System Critical Area, and whether the Department has regulatory

authority over this area is central to this case's controversy. This area of the beach has been designated as an unstabilized inlet erosion zone in the State's Beachfront Management Plan since 1993 because this area is highly dynamic and the shoreline can fluctuate widely. S.C. Code Ann. Regs. 30-21. This area has sustained significant beach erosion over a number of years as shown by Department staff to the Administrative Law Court (ALC) during the hearing of this case.

In May 2023, Reddy became concerned about the erosion caused by tidal and wave action that was occurring at and near his property (the Site). From May through September 2023, the Department visited the Site and advised Reddy about the allowable activities that were available to him to protect his property including beach renourishment to truck in beach-compatible sand to rebuild the dunes seaward of his property, vegetation planting and sand fencing.

In September 2023, when it was reported to the Department that Reddy appeared to be preparing to alter the beach, the Department advised Reddy that the area where he wanted to alter was "Beaches" Critical Area and was within the Department's direct permitting jurisdiction. Department staff met Reddy and his contractor at the Site on September 11, 2023, as Reddy sought advice as to whether he could add non-beach-compatible fill (clay) to his yard. At that Site visit, the Department informed Reddy and his attorney that the proposed clay fill or other non-beach-compatible materials could not be placed where Reddy proposed because it was Beaches Critical Area. The Department further advised that alterations in this area would be considered a violation of the South Carolina Coastal Tidelands and Wetlands Act and may result in the Department initiating an enforcement action. Despite this information, Reddy altered the Beaches Critical Area as follows:

- the installation of 410 cubic yards of clay, filter fabric, timber, plastic mesh/geogrid, metal fencing, artificial turf grass, gravel and rock in September and early October 2023;
- the removal and relocation of approximately 300 cubic yards of existing sand;

- the construction of a hard erosion control structure (also referred to as the 'original wall') and covering it up with sand and non-beach-compatible materials unbeknownst to the Department sometime between October 18 and 20, 2023;

- the installation of a rock revetment (which the Act also defines as a type of erosion control structure) in front of the unauthorized erosion control structure sometime in early January 2024;

- the repair and fortification of the original wall including pilings extending 10 feet below ground, brackets and mending plates in January 2024;

- the installation of a second, larger, more robust wall in February 2024; and

- the installation of artificial turf grass, fabric underlayment, gravel and rock, concrete and a flagpole in February 2024.

The Department has established that all of these unauthorized alterations took place in the Beaches Critical Area in violation of the Coastal Tidelands and Wetlands Act. (Tr. 889:15-891:2.)

While Reddy engaged in this work, the Department exercised its enforcement authority to protect this valuable resource for future generations and to ensure public access was maintained in this area. The Department's initial compliance efforts included issuing a Notice to Comply and communicating with Reddy's various attorneys multiple times to explain the Beaches Critical Area jurisdiction and the Department's concerns about alterations to this area. When these efforts failed, the Department served three Cease and Desist Orders in January, February and March, 2024, and filed a TRO and Preliminary Injunction with the ALC. Because Reddy altered and continued to alter the Beaches Critical Area despite the Department's efforts to work with Reddy to come into compliance, the Department brought this enforcement action to enforce the South Carolina Coastal Zone Management Act, to have Reddy remove all the non-beach-compatible materials from this vulnerable and valuable resource area and to restore the area that he had disrupted.

STATEMENT OF FACTS

Reddy's Purchase of 118 Ocean Boulevard & Notifications That Areas Seaward of the House May Not Be Developable

Reddy purchased 118 Ocean Boulevard on the Isle of Palms in 2014. (Order, p. 5; Joint Ex. 02, ¶ 21.) The plat in Reddy's closing package notified Reddy of restrictions on the property's development, including the construction of erosion control structures. (Joint Ex. 048; Tr. 90:19-91:3.) "The plat reflects a twenty-foot no construction area immediately seaward of the house structure and disclosures that the property may not be buildable according to the South Carolina Coastal Council Regulations." (Order, p. 5.) The plat shows the baseline and setback line for the Beach/Dune System Critical Area and defines a 20-foot no construction area immediately seaward of the house. The plat also shows a 250 feet measurement line from mean high-water mark towards the property that is related to a City of Isle of Palms (the City) ordinance pertaining to erosion control structures. (Tr. 90:19-91:19; Joint Ex. 048.) The plat advises that the City is "strongly opposed to the future issuance of any permit for any kind of beach erosion control structure (i.e., sea walls, riprap bulkheads, etc.) should such measures be requested by property owners as a result of erosion to these properties shown on this plat." (Joint Ex. 048, Note No. 3.) Reddy's closing package in several locations also advised that because of the property's proximity to the Atlantic Ocean the property is regulated by the Coastal Zone Management Act, S.C. Code Ann. Section 48-39-10, *et seq*. (Joint Ex. 066 [Krawczyk 00106-107]; Joint Ex. 067 [Krawczyk 00179-180]; Joint Ex. 068 [Krawczyk 00259].)

Beaches Critical Area and Beach/Dune System Critical Area – Two Critical Areas Over Which the Department Has Direct Permitting Authority

At the heart of this controversy is whether the Beaches Critical Area is a separate and distinct critical area over which the Department has direct permitting authority. Reddy argues that in enacting the Beachfront Management Act and defining the Beach/Dune System, the General Assembly meant to eliminate the Department's jurisdiction in the Beaches Critical Area where the

Beaches Critical Area has moved landward of the Beach/Dune System Critical Area. However, the Act defines the Beaches Critical Area and the Beach/Dune System Critical Area as two separate and distinct types of critical area over which the Department has direct permitting authority. S.C. Code Ann. § 48-39-130(A) & (C) & 48-39-10(J). "Beaches" are defined as "those lands subject to periodic inundation by tidal and wave action so that no non-littoral vegetation is established." S.C. Code Ann. § 48-39-10(H). The "Beach/Dune System" is "the area from the mean high-water mark to the setback line as determined in Section 48-39-280." S.C. Code Ann. § 48-39-10(J).

Mr. Slagel, former Beachfront Management Section Manager, explained that the typical scenario on the coast is where the Beach/Dune System's setback line is landward of the Beaches Critical Area as pictured below in Joint Exhibit 62, page 1. (Tr. 78:14-22; Joint Ex. 062, p.1.) The line of established vegetation can be seen in this figure which is the landward limit of the Beaches Critical Area. (Tr. 78:14-79:12; Joint Ex. 062, p.1.)

Figure 1: Beachfront Critical Areas

The Beach/Dune System Critical Area, however, is not always landward of the Beaches Critical Area. In more highly vulnerable and dynamic areas, beaches erode landward of the setback line as shown on Joint Exhibit 62, page 2. (Tr. 80:20 to 81:21; Joint Ex. 062, p.2.) Using this figure, Mr. Slagel explained that "[j]ust because the setback line happens to be sort of in the middle of the

beach here does not mean that the Department relinquishes direct permitting authority over that Beaches Critical Area." (Tr. 81:17-21.)

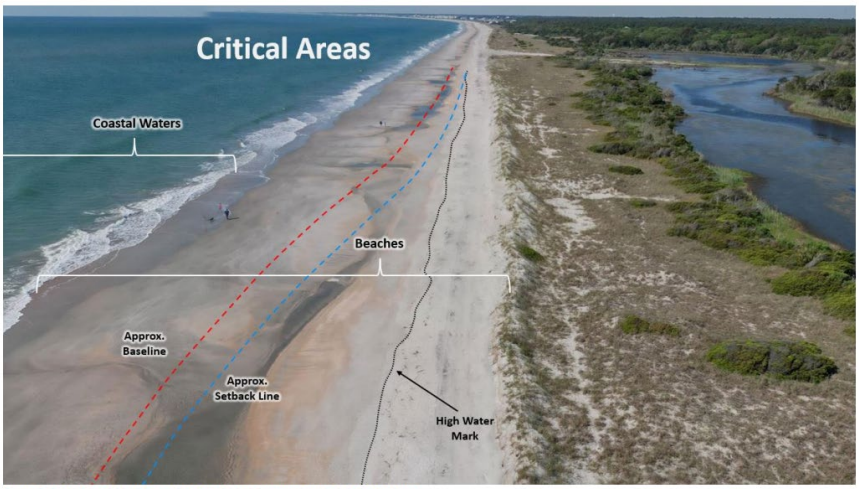


Figure 2: Beachfront Critical Areas. Beaches Critical Area landward of the setback line

Reddy's argument that the Department does not have jurisdiction in the Beaches Critical Area when it is landward of the Beach/Dune System would eliminate the Department's ability to protect the dry sand beach and public access along this area of the coast, a result which is not supported by the policies and findings of the Act.

Relationship between "Active Beach" and "Beaches"

Active beach is defined as that "area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean." S.C. Code Ann. § 48-39-270(13) (2008).[2] An escarpment is the vertical cut into the beach from tidal and wave action. (Order, p. 7, FN 19.) Ms. Boynton[3] explained that active beach looks for that first escarpment, if it exists, and then that is the landward extent of active beach, as shown in the following exhibit, Joint Ex. 063.

[2]The Act and regulations strongly disfavor construction on active beach. See e.g. S.C. Code Ann. § 48-39-290(D) and S.C. Code Ann. Regs. 30-13(B)(5), (H)(2)(e) and (R)(2)(b).

[3] Jessica Boynton, the Department's Coastal Services Section Manager, manages the collection, digitization, and analysis of coastal vegetation lines. (Tr. 685:11-20.)

If that escarpment is vegetated, the first escarpment also establishes the landward extent of the Beaches Critical Area. (Joint Ex. 063 & Tr. 817:1-9.) If the first escarpment falls seaward of all vegetation, and the escarpment itself has no vegetation, then the Beaches Critical Area is defined by the landward point of vegetation because that is an area that had been periodically inundated. (Joint Ex. 063; Tr. 807:3-25 & Tr. 84:25 to 86:22.) In either scenario, however, "active beach is always within Beaches Critical Area." (Tr. 807:10-11.) Further, changes to artificial dunes, such as beach renourishment, can change the location of active beach, but will not change where Beaches Critical Area exists. (Tr. 85:23 to 86:9.) Beaches Critical Area at the Reddy Site "exists landward of active beach" because vegetation had not become reestablished due to periodic inundation. (Tr. 85:12-22.)

Department's Methodology In Assessing the Beaches Critical Area

Beaches Critical Area is defined as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." (S.C. Code Ann. 48-39-10(H).) The Department applies the Act's plain meaning that "it has to be periodic enough such that there's no establishment . . . of nonlittoral vegetation." (Tr. 774:12-14.) As both Ms. Boynton and the

Department's expert, Christopher Jones, P.E.[4], explained, the vegetation line is a biological indicator of the landward extent of regular inundation. (Tr. 685:24 to 686:2; Tr. 870:13-24; Tr. 873:4-9; Tr. 1413:6-13.) Nonlittoral vegetation such as beach grasses, while somewhat tolerant of saltwater, cannot survive and thrive in saltwater where periodic inundation is occurring. (Tr. 82:15 to 83:7; Tr. 685:24 to 686:6.) Therefore, the presence or absence of nonlittoral vegetation directly relates to whether a specific area is subject to periodic inundation. (Tr. 873:10-16.)

Department staff visit a site to assess vegetation when evaluating individual permit applications to determine whether the proposed activity is on active beach or within Beaches Critical Area. (Tr. 72:11 to 73:10.) Vegetation is "readily observable in the field, so that staff can go out, walk a property and point it out to establish jurisdiction, whether that's walking a critical area line along the marsh, a Beaches Critical Area along the oceanfront, or when setting the baseline for the Beach/Dune System." (Tr. 73:21 to 74:6.) Where a site has been heavily manipulated by man-made activities such as the installation of artificial turf on the Reddy's Site, and vegetation is not present, the Department looks to the adjacent properties to determine where the Beaches Critical Area is located. (Tr. 74:23 to 75:6; Tr. 87:10 to 88:3.)

The Department also looks at the escarpment. If a scarped dune is fully vegetated, then the vegetation line and the escarpment (or "scarp") line are one in the same. (Tr. 714:23 to 715:2.) If the escarpment is not vegetated, then the vegetation line would be landward. (Tr. 715:6-20.)

[4] The Department presented Chris Jones, P.E., who was qualified as an expert in coastal engineering, coastal processes, including more specifically tides, waves, currents, sediment transport, shoreline change, including tidal inlets and coastal management, including consideration of storm impacts and erosion control structures. (Tr. 837:23 to 838:12.) Mr. Jones' Curriculum Vitae was entered as Joint Ex. 186. Mr. Jones has a bachelor's degree in engineering science and a Master of Science in Coastal and Oceanographic Engineering, both from the University of Florida. (Tr. 829:4-7.) Mr. Jones has previously been qualified as an expert witness in coastal processes and coastal engineering in 12 to 15 cases, including the *Lucas* case that was decided by the United States Supreme Court. (Tr. 836:18 to 837:6.)

The Department staff also assess whether the vegetation is "established" in accordance with the Act's definition of Beaches Critical Area. For vegetation to be considered "established," present vegetation would need to have a root system and be growing in a healthy condition. (Tr. 778:11-19.) Mr. Slagel testified that they assess the density of the plants and whether the rhizomes are starting to spread. (Tr. 86:20 to 87:9.) Assessments for established nonlittoral vegetation occur on the day Department staff are present on the site. (Tr. 784:21-25; Tr. 785:19-24.) However, staff may return at a later date to reassess whether vegetation has become reestablished. (Tr. 781:11-16, 781:24-25; 782:6-8.)

The Department conducted multiple inspections and documented the area's condition, and no vegetation was reestablished between September 2023 and October 2024. (Tr. 716:11 to 717:1.) Department staff (Jacques Prevost, Jessica Boynton and Matt Slagel) as well as the Department's expert (Mr. Jones) showed aerial images, photographs, and surveys that proved periodic inundation in the area of the unauthorized alterations by Reddy (altered area). The evidence included the lack of vegetation as well as the escarpment line which indicates erosive forces from the water, and wrack (dead marsh grass) that had been washed up. Imagery also showed actual inundation (water hitting the wall and around the wall) on numerous dates. (See DES's Proposed Order, pp. 15-28 & 45-51 for a detailed review of the photographic evidence and testimony presented at the hearing.) This evidence proved that the altered area experienced repeated periodic inundation from May 2023 through at least October 2024.

Assessment of Erosion, Periodic Inundation & Site Alterations
From May 2023 to September 1, 2023

From May to September 2023, prior to Reddy's later unauthorized alterations, the Department staff assessed the Site on several occasions.

May 2023

On May 20, 2023, following a nor'easter, Reddy emailed the Department to request an emergency order to conduct renourishment and sandscraping and sent photographs documenting that an escarpment had been cut by tidal and wave action into Reddy's back yard. "Photographic evidence showed that tidal and wave action swelled up to Respondent's property depositing wrack and dead marsh grass onto Respondent's yard." (Order, p. 7.) The photographs also showed his damaged dune walkover structure, vegetation that had fallen onto the beach, a part of the fence laying in the intertidal zone, exposed irrigation lines and other indicators of recent erosion. (Joint Ex. 012 [BCM Reddy 016938]; Tr. 99:23-101:20 & Tr. 139:16; also see Joint Ex. 176.) On May 22, 2023, Mr. Slagel responded to Reddy advising he was not eligible for an emergency order since the erosion was almost 60 feet from the house, but he could apply for a general permit to truck in beach-compatible sand and then stabilize that sand with vegetation and sand fencing. Mr. Slagel also indicated that he would need to coordinate with both the Department and the South Carolina Department of Natural Resources regarding any sea turtle concerns. (Joint Ex. 012 [BCM 016936].) In response, Reddy applied for a permit to conduct minor renourishment and in the application, he asserted that "[o]ne hundred percent of the dunes on the ocean side of the property have been destroyed from the high tides." (Joint Ex. 035, p. 3 [BCM Reddy 02060]).

June 2023

In addition to the guidance provided to Reddy via the May 2023 email communications, on June 9, 2023, Mr. Slagel visited the Site to observe the erosion and to meet with Reddy to discuss other allowable activities he could take to further protect his property. (Order, p. 19; Tr. 104:7-19.) Mr. Slagel's photographs taken on June 9 show that tidal and wave action swelled up to Reddy's property depositing wrack and dead marsh grass onto Reddy's yard. (Joint Ex. 082; Tr.

104:20-10; Tr. 106:15-16; Order, p. 7.) Reddy had draped artificial turf over the recently exposed escarpment and there was wrack and sand even on top of that. (Tr. 105:19-106:16.)

A June 2023 video shows that the water was coming up to the edge of the escarpment where the artificial turf ends and drops down to the beach and the damaged dune walkover structure. (Joint Ex. 081; Tr. 139:19-140:8.) Mr. Slagel also pointed out, using a June 12, 2023 aerial image (pictured below), the artificial turf strips that were installed to try and protect the escarpment, the wrack and sand that was piled up on the property all the way to the putting green, and the location of the tile installation. (Joint Ex. 053, p.1; Tr. 140:12 to 141:4.) This photograph along with the video demonstrate erosion from periodic inundation in the May to June 2023 timeframe. (Tr. 139:19 to 140:8; Joint Ex. 176.)

July 5, 2023 Survey Obtained by Reddy

Mr. Reddy commissioned a survey from 3W Engineering dated July 5, 2023. (Tr. 92:14-23; Tr. 231:18-20; Joint Ex. 050 [3W Engineering_000076].) This survey's reference to the "top of bank" equates with the top of the escarpment. (Tr. 93:12-18.) Referencing this survey, Mr. Slagel testified that there was an escarpment formed by tidal and wave action landward of the setback line. (Tr. 93:21-24.) This escarpment is also well landward of the fence line where the clay was

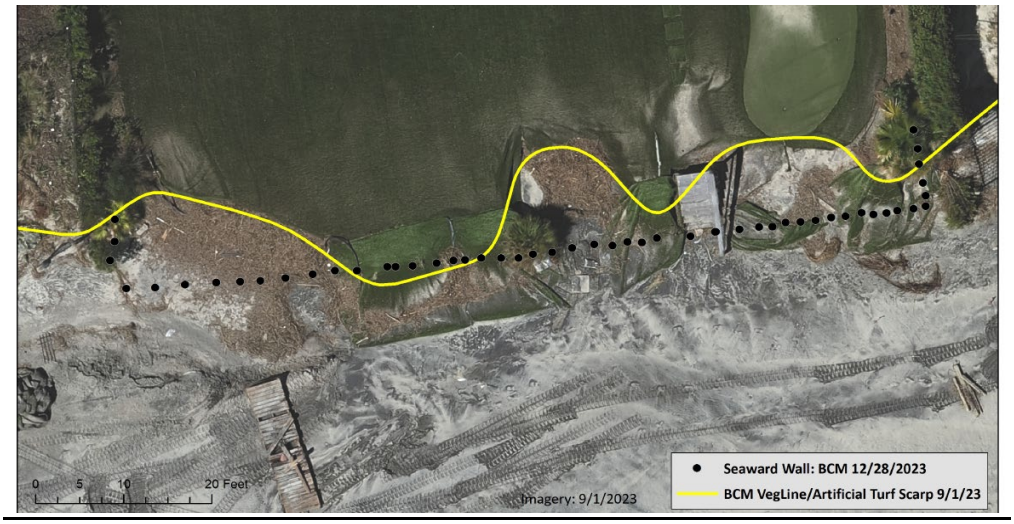
installed. (Joint Ex. 050 [3W Engineering_000076].) The Reddy's own survey therefore indicates that in July 2023, months before Reddy's unauthorized alterations, inundation was occurring landward of where the clay and other materials were installed.

August 31, 2023

Hurricane Idalia impacted the South Carolina coast on August 30, 2023. Desiree Fragoso, the Isle of Palms Town Administrator, provided pictures of the damage from the Hurricane at and near the Site. (Tr. 106:17-107:7 & Joint Ex. 083.) The photographs showed that erosion by tidal and wave action additionally impacted the Site beyond what was observed in May and June. (Tr. 107: 8-25; Tr. 141:14-22.) The escarpment had moved landward of where the escarpment was located in June (which had been covered by Reddy draping the artificial turf over it).

September 1, 2023

On September 1, 2023, Ms. Boynton and Mr. Slagel again visited the shoreline near Reddy's property to assess impacts from Hurricane Idalia. (Tr. 141:21-22; Tr. 108:15-109:1.) Ms. Boynton collected GPS data points in this area of the Isle of Palms of the vegetative escarpment line. Joint Ex. 057, page 3 (below) demonstrates the line that Ms. Boynton collected.



(Joint Ex. 057, p.3.)

Photos were also collected. (Tr. 108:15 to 109:1; Tr. 705:8-18.) In addition to the escarpment, Ms. Boynton observed a lack of vegetation and wrack which are also indicators that the area is being periodically inundated. (Joint Ex. 084, Tr. 706:5-18.) Ms. Boynton noted that there was a sole palm, which was falling into the beach and not in good health at the time because it was being inundated. (Tr. 707:13 to 708:24.)

In addition, the Department issued an Emergency Order to the City to address conditions arising from the storm, authorizing sandscraping for placement against an eroded escarpment or to replace an eroded dune seaward of a threatened structure. By September 11, 2023, the City had constructed an unvegetated dune seaward of Reddy's property. (Order, p. 8.)

The Department proved with data, photographs, and video from May, June, July, August and September 2023 that the area where unauthorized authorizations subsequently occurred was being periodically inundated.

September 7, 2023 Notice to Reddy Not to Alter The Beaches Critical Area

In September 2023, the Department became aware that Reddy, through his contractor BluTide Marine Construction (BluTide), was intending to perform alterations of the beach at his property without any Department review or authorization. (Order, p. 2.) On September 7, 2023, the Department wrote Reddy notifying him that "any unauthorized work within the State's critical areas, including the Beach/Dune System and beaches, would be a violation of the Act." (Order, p. 2; Joint Ex. 014.) The notice also advised Reddy that any unauthorized activity may result in the Department initiating an enforcement action including assessing penalties. (Joint Ex. 014.) In response, BluTide reached out to the Department and requested an on-site meeting to discuss their proposed activities. (Tr. 111:12-17.) Mr. Slagel's understanding from BluTide was that Reddy intended to place non-beach-compatible material (clay) within the Beaches Critical Area. (Tr.

111:18-23.)

September 11, 2023 On-Site Meeting to Evaluate Site and Explain to Reddy Why He Should Not Alter the Beaches Critical Area

On September 11, 2023, four days after sending the notification, the Department met with Reddy on Site to discuss "his anticipated project objectives." (Order, pp. 2-3.) Mr. Slagel assessed the Site condition changes from his prior visits. Mr. Slagel testified to his observations and photographs he took on that day explaining that the vertical escarpment that Reddy had previously covered with artificial turf had now been graded or leveled out by Reddy's contractors and they had cut the artificial turf off. (Tr. 114:2-115:1; Joint Ex. 071.) The natural vegetation defining the Beaches Critical Area was roughly in line with where the artificial turf was cut. (Tr. 115:2-11; Joint Ex. 071, pp. 1-2.) Notably, the area had been cleared and leveled further seaward than where the vegetation was on the adjacent property indicating that Reddy altered the Beaches Critical Area. (Joint Ex. 071 [BCM Reddy 000216].)

At the beginning of the meeting, BluTide and Mr. Reddy told Mr. Slagel that they wanted to install the fence and to put clay from the fence line landward because "just by putting beach sand back in there, we get these storm events *or any type of rough weather tide coming in here* and snatching their sand right out…" (Joint Ex. 072 Audio 0:47-1:32.) Mr. Reddy said that the last storm "took everything out in its path." He further stated, "we had waves breaking into our yard, you know, water going under the house." (Joint Ex. 072 Audio 3:59-4:07.) Mr. Slagel advised them the Department had authorized an emergency order to allow for a new dune to be built. (Joint Ex. 072 Audio 4:38-4:45.)

The parties discussed the Department's jurisdictional authority. (Order, p. 3.) Mr. Slagel explained there were four types of critical areas, and that at this point in time the Beaches Critical Area extended landward of the Beach/Dune System setback line. He further explained that once

vegetation is established, the area would not be critical area, and the Department would not have jurisdiction anymore. (Joint Ex. 072 Audio 5:33-5:54.) Mr. Slagel told them that until there is a somewhat stable vegetated dune, it is not allowable to bring in non-beach-compatible fill including clay. (Joint Ex. 072 Audio 4:46-5:18 & 9:31-10:13.) Mr. Slagel explained this was partly because threatened and endangered sea turtles need beach-compatible sand to lay their eggs since they cannot dig through clay. (Joint Ex. 072 Audio 24:40-24:50; 98:17-99:1.)

Mr. Slagel's Site visit photographs and Reddy's photographs taken on that day show that the City was actively performing permitted work to replace the dune that had been eroded by Idalia along with the other storms and high-tide events that had predated Idalia. (Joint Ex. 071, p. 2 [BCM Reddy 000216]; Joint Ex. 070, pp. 3-4 [Reddy 00638 & FLF Reddy 0226].) The purpose of this work was to try and restore the shoreline and protect the properties in this area. (Tr. 114:2-15 & 115:13 to 116:6.) When asked by BluTide during the meeting about getting sand fencing and planting vegetation once the City had created the dune, Mr. Slagel replied that would be the Department's recommendation. (Joint Ex. 072 Audio 10:22-10:51.)

During this meeting with the Department, Mr. Reddy emphasized private property rights. Mr. Reddy stated he would just build a seawall to protect his property and that he did not care if there was a public beach or not:

> And this is, and this is public use. This is a public beach. If we didn't care about a public beach, which honestly, I don't care. If we don't have a public beach, that's fine. I'll just build a damn seawall. I'll, I'll pay for the entire thing from the 3rd Avenue on, and say, you know what, the water will come bang up against the seawall. The beach will be destroyed. But I don't really care. I'll protect my property. So, the only reason we're putting in all these dunes and doing all these things is to maintain a beach.

(Joint Ex. 072 Audio 11:25-11:50.)

The Department followed up the meeting with a letter to Reddy through his attorney at the time documenting the Department's position. Mr. Slagel writes: "[b]ased on existing site

conditions at this property and others nearby, the area where clay is proposed to be placed is currently **active beach and/or beaches critical area**." (Joint Ex. 015, p. 1 (emphasis added).) He then provided the definitions of these terms with a link to the Act. Mr. Slagel further advised that any fill would need to be beach-compatible sand and not clay and would need to be properly authorized by the Department. (Joint Ex. 015, pp. 1-2.) A link to the General Permit application and the information for contractors that specialize in dune planting were also provided to Reddy. (Joint Ex. 015, p. 2.)

In response to this communication, the Reddys requested an emergency order for minor renourishment, the installation of sand fencing and planting natural vegetation which the Department issued on September 21, 2023. (Tr. 121:2-12; Joint Ex. 017.) Reddy did not sign and return the emergency order and did not take advantage of any of the authorized activities he could do to protect his property. (Tr. 122:7-123:3.) Instead, as set forth below, Reddy proceeded with manipulating and disturbing the Beaches Critical Area and active beach using heavy equipment and depositing even more non-beach-compatible materials in this vulnerable area.

Mr. Reddy's representations to the Department during the Site meeting as well as his representation in a September 29, 2023 email requesting an emergency order for sandbags support that there was periodic inundation by tidal and wave action at the altered area. Reddy wrote that "***the king tide cycle*** has removed the post Idalia remediation and put us back where we were after the Hurricane. We have some ***significant high tides coming up*** and will need to use sandbags to protect our property. (Joint Ex. 018, p. 2.) So, Reddy indicated that his property had been subject to repeated tidal and wave action since Idalia had eroded the shoreline in August.

Reddy's Alterations to the Beaches Critical Area Despite Department's Notice Not to Alter This Area

"Despite receiving notification from the Department that 'any unauthorized work within

the State's critical area, which include the beach/dune system and beaches, will be considered a violation of the S.C. Coastal Tidelands and Wetlands Act,' Reddy took action to protect his property. Specifically, he contracted for the removal and relocation of approximately 300 cubic yards of existing sand to the 'critical line berm' and installation of approximately 410 cubic yards of clay up to the critical line." (Order, p. 9.) A September 13, 2023 BluTide invoice establishes that these alterations were performed using heavy equipment in the Beaches Critical Area including dump trucks, front-end loader, mini-excavator and skid steers. (Joint Ex. 191.) Texts between Reddy and Karl Rakes from BluTide also show that this clay work was already completed and that Reddy was aware that it was against the Department's directives. (Joint Ex. 192 [BluTide 00014-18].) Reddy directs BluTide that he "should try and finish up clay and *move sand back behind critical line today*." (Joint Ex. 192 [BluTide 00016])(emphasis added).) Reddy testified that the work was substantially completed by September 8, 2023 (the day after the Department notified Reddy any unauthorized work in the critical areas including Beaches would be considered a violation of the Act). (Tr. 1209:16-20; Joint Ex. 014.) [5]

Texts between Reddy and Bryan Vogt of Progreen (the company that Reddy partially owned and installed his turf) show that Reddy installed a fence in the Beaches Critical Area on approximately September 14, 2023. (Joint Ex. 202 [ProGreen_000140].) Also see Tr. 1213:11-18; Joint Ex. 070 [FLF Reddy 0227].) Texts dated September 13 through 19, 2023 set forth the plan to use an "impervious liner" over the clay, and drainage stone and turf on top of that. (Joint Ex. 202 [ProGreen_000139].) Reddy replaced the artificial turf that overlayed his yard and reinstalled the tile pavers. (Order, p. 9; Tr. 1214:8-11; 1214:21 to 1215:6.)

[5] Reddy claims that this work was done by City approval, despite that there was no information from either the City, BluTide or Mr. Reddy presented at the hearing that substantiated this claim.

October 2023

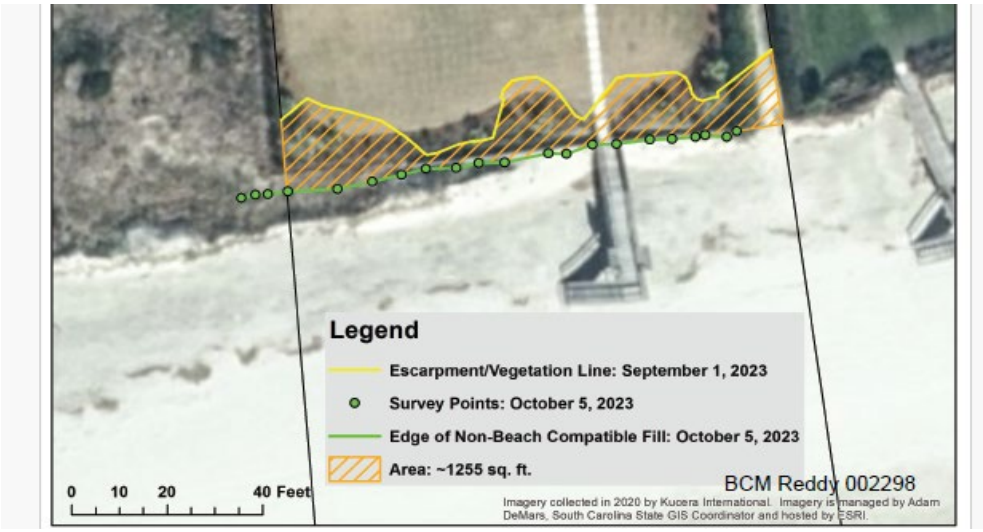
On October 4, 2023, Coastal Science and Engineering provided photographs to the Department of activities on the beach along Reddy's property that showed non-beach-compatible materials that were becoming debris located in the wet sand of the beach. These photographs documented fabric underlayment, gravel, timber, plastic mesh, artificial grass, metal fencing and clay that was placed in the Beaches Critical Area. (Tr. 125:19 to 127:19; Joint Ex. 019 [BCM Reddy 016991-92]; Joint Ex. 010, Adm. Order, Att. A [BCM Reddy 002297].)

As a result of the report of Reddy's unauthorized alterations, Mr. Jacques Prevost, Department Compliance Project Manager, inspected the Site on October 5 and 6, 2023, documented the conditions with photographs and verified that there were unauthorized alterations including these non-beach-compatible materials in the Beaches Critical Area, Beach/Dune System and on active beach. (Tr. 272:14 to 273:10; Joint Ex. 098 & 124.) Metal fencing, exposed gravel, rock, filter fabric, geogrid, tile pavers and timber were located in Beaches Critical Area. (Joint Ex. 098 & 124; Tr. 275:20 to 277:17.) As pictured below, by looking down past the Reddy property in photographs Joint Ex. 124 [BMC Reddy 804 & 812], it is evident that non-littoral vegetation on the adjacent property is landward of where Reddy had installed all these non-beach-compatible materials.

(Joint Ex. 124 [BCM Reddy 00812].)

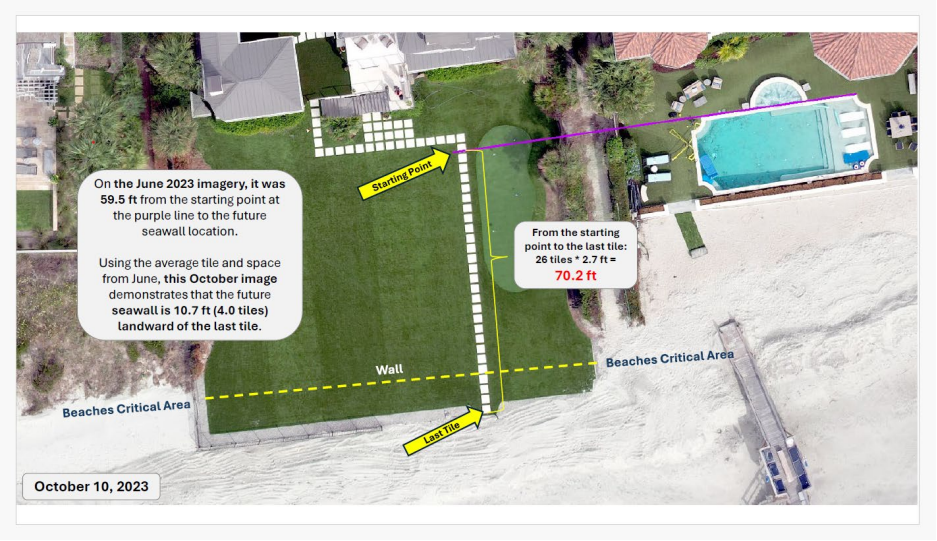
On October 6, 2023, Department staff observed that sand had been flattened out, potentially more added, and some of the non-beach-compatible materials were covered with sand and no longer visible. (Tr. 278:13 to 279:15; Joint Ex. 125.)

During the October 5, 2023 inspection, Mr. Prevost collected the seaward edge of the non-beach-compatible materials using a Real Time Kinematic (RTK) GPS unit along the escarpment which was also the seaward extent of the non-beach-compatible materials there. (Tr. 273:14 to 274:24; Joint Ex. 098 [BCM Reddy 001081]; Joint Ex. 010, Adm. Order ¶¶ 17 and 18 [BCM Reddy 00227].) Using the Department's September 1, 2023 escarpment/vegetation survey data for comparison, Mr. Prevost determined approximately 1,255 square feet of Beaches Critical Area had this non-beach-compatible fill. (Joint Ex. 098 [BCM Reddy 001081]; Joint Ex. 010, Att. B; Tr. 278:2-12.)



(Joint Ex. 010, Att. B [BCM Reddy 002298].)

The October 10, 2023 aerial photograph pictured below shows that Reddy installed non-beach-compatible materials seaward of the landward extent of where periodic inundation occurred.



(Joint Ex. 065, p. 4.)

The artificial turf, tiles, and fence are seaward of the Beaches Critical Area as evidenced by the landward location of the non-littoral vegetation at the adjacent sites. Additionally, other evidence establishes that Reddy installed a fiber pad, underlayment fabric, gravel and rock, and 410 cubic yards of clay out to the fence line underneath the artificial turf. (Joint Ex. 019, 065, 101 & 202 [ProGreen_000139]; Tr. 367:9-18.)

As a result of his October 5 and 6, 2023 Site inspections and evaluation, Mr. Prevost identified violations of the Act including unauthorized alterations of the Beaches Critical Area pursuant to Regulation 30-2(B). (Joint Ex. 098 [BCM Reddy 001089]; Tr. 279:16-280:8.) On October 20, 2023, the Department issued a Notice to Comply requiring Reddy to remove all non-beach-compatible fill and other materials and marine debris that had been placed on the active beach and/or Beaches Critical Area. (Order, p. 3; Joint Ex. 004.) Reddy did not present any evidence to refute he altered this area, or that he complied with the Notice to Comply.

Reddy Installs First Erosion Control Structure

Between October 18 and 20, 2023 Reddy substantially altered the area by building an erosion control structure. (Tr. 591:4-9.) Reddy "through his contractor, dug a 2' x 130' foot trench

adjacent to the beach, approximately six feet deep. The trench was filled with concrete to form a ninety-two linear foot wide, four foot tall, two to three feet deep structure, consisting of woven geotextile fabric and wire mesh, with landward extending wing walls…." (Order, p. 9.) Based on the photos from May 2023 to October 2024, the area where the original wall was built was getting periodically inundated. (Tr. 889:15-21; Joint Ex. 078a to 078r.) Reddy's wall is an erosion control structure that was constructed in the Beaches Critical Area. (Tr. 897:21 to 898:1 & Tr. 902:7-18.) Reddy did not dispute that the wall was built with non-beach-compatible materials. (Order, p. 9.)

On November 15, 2023, the Department issued an Emergency Order to allow property owners to use sandbags to protect their properties from erosion in this area. (Joint Ex. 040.)

On December 17, 2023, a nor'easter further impacted the South Carolina Coast uncovering and revealing Reddy's unauthorized hard erosion control structure. (*See infra* at 34 [Joint Ex. 019, p. 2 & Joint Ex. 065, p. 6.])

Reddy Installs a Rip-rap Rock Revetment to Support the Wall In The Face of Worsening Erosion

The wall that was located in the active beach was in danger of collapsing and posing a threat to the public. (Order p. 10 & Joint Ex. 106 [BCM 000203].) Rather than removing the structure as the Department instructed, Reddy "aligned non-beach-compatible rip-rap along the seaward edge of [the wall], (Order, p. 10)."[6] A rip-rap revetment is defined as an erosion control structure and is prohibited by the Act. S.C. Code Ann. § 48-39-10.[7] On January 12, 2024, a Department attorney advised Reddy through his attorney that since Reddy had refused to come

[6] In S.C. Code Section 48-39-30(B)(2), the General Assembly declared that armoring with hard erosion control structures such as rip-rap is not effective and has contributed to the loss of dry sand beach.

[7] A revetment is "a sloping structure built along an escarpment or in front of a bulkhead to protect the shoreline or bulkhead from erosion." S.C. Code Ann. 48-39-270(1)(c).

into compliance and had continued to alter the critical area by placing the revetment, the Department would refer this issue for further enforcement. (Joint Ex. 021 [Reddy_00393-394].)

Reddy Repairs First Erosion Control Structure

By mid-January 2024, the first erosion control structure developed cracks and tilted forward towards the beach. (Order, p. 10.) Reddy hired CNT Foundations to straighten and repair the wall. The contract describing the scope included installing brackets, extending piles ten feet below grade and installing mending plates. (Joint Ex. 194; Order, p. 10.) It also included rental of a large excavator to move approximately 450 cubic yards of soil. (Joint Ex. 194.) Additionally, expanding polyurethane structural foam was applied to fill the cracks in the wall. (Order, p. 11.) Mr. Jones, the Department's expert, testified that the location where Mr. Reddy repaired the original erosion control structure, installed pins in front of it and pulled it up and straightened it was in Beaches Critical Area. (Tr. 889:22 to 890:5.) Mr. Jones opined that Reddy did as much work to stabilize the wall as it would have taken to remove it. (Tr. 1420:17 to 1421:5.)

Reddy Installs Second Erosion Control Structure

Reddy hired CNT Foundations to construct a second wall to fortify the first wall. While the second structure is landward of the first structure, it forms one contiguous structure and is a hard erosion control structure. (Order, pp. 11 & 30.) In an email chain from January 4 through February 7, 2024, an Isle of Palms resident reported significant alterations. For example, the resident writes on January 31, 2024, that the contractors were now "placing rebar and pouring concrete behind the existing illegal wall. All on open beach. The pump truck in (sic) in the driveway and pumping it under the house and out to the beach." On February 1, 2024, this resident reported that the contractors "worked on the wall all night. 5+ truck loads of concrete poured just last night." (Joint Ex. 144 [BCM Reddy 000051-52].) On February 3, 2024, the resident reports "last night they were

back at it and this morning saw 4 concrete trucks. This means at a minimum, 10 trucks or 100 cubic yards of concrete and rebar have been placed on the active beach thus far and he [Reddy] is not done." (Joint Ex. 144 [BCM Reddy 000046].) A February 2, 2024 drone photograph shows heavy equipment on the beach and the wall which is clearly seaward of the non-littoral vegetation on the adjacent properties. (Joint Ex. 064.) Mr. Jones, the Department's expert, testified that Mr. Reddy built the second erosion control structure in the Beaches Critical Area. (Tr. 890:6-17.)

Reddy Again Installs the Artificial Turf and Other Non-Beach-Compatible Materials In The Beaches Critical Area

In late February 2023, Reddy reinstalled the artificial turf, fabric underlay and rock and gravel in the Beaches Critical Area landward of the wall. (Joint Ex. 008, 155 & 156.) Reddy also installed a flagpole, pine straw and non-native vegetation in this area. (Joint Ex. 160 & 161.)

During Reddy's repeated and extensive alterations of the Beaches Critical Area, the Department issued multiple Cease and Desist Directives in January, February and March 2024 in an attempt to protect this area of the beach for the public. (Joint Ex. 005, 006, 007 & 008.) On February 9, 2024, the Department also filed a Petition for Injunctive Relief and Motion for Temporary Restraining Order and Preliminary Injunction with the ALC. Reddy, however, refused to stop the substantial alterations to the Beaches Critical Area. Both the Department staff and the Department's expert testified that these alterations were performed in the Beaches Critical Area. (Tr. 889:15 to 891:2; Tr. 142:6-16.) The vegetation line adjacent to Mr. Reddy's house has largely moved in a landward direction over a long period of time between 2006 and December 2023. (Tr. 899:11 to 900:3.) In other words, this area became located in the Beaches Critical Area over a long period of time and not a single event. (Tr. 899:20 to 900:3; See Joint Ex. 057 which is a map showing vegetation lines from 2006 to December 2023.)

STANDARD OF REVIEW

This Court may reverse or modify the Administrative Law Court's decision when the appellant's rights have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

> (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.

S.C. Code Ann. § 1-23-610(B); S.C. Code Ann. § 1-23-380(5). Reversal or modification is warranted when the ALC's "findings are affected by error of law, are not supported by substantial evidence, or are characterized by abuse of discretion or clearly unwarranted exercise of discretion." *Olson v. S.C. Dep't of Health & Env't Control*, 379 S.C. 57, 63 663 S.E.2d 497, 501 (Ct. App. 2008). The ALC's decision is supported by substantial evidence when reasonable minds could reach the same conclusions from analyzing the entire record on appeal. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 766 S.E.2d 707 (2014). Where the ALC's factual findings "are clearly erroneous in view of the reliable, probative and substantial evidence in the whole record," they do not bind this Court. *Commissioners of Pub. Works v. S.C. Dep't of Health & Env't Control*, 372 S.C. 351, 358, 641 S.E.2d 763, 766–67 (Ct. App. 2007). Questions of law, however, are reviewed de novo. *S.C. Dept. of Revenue v. Blue Moon of Newberry, Inc*., 397 S.C. 256, 260, 725 S.E.2d 480, 483 (2012). While the ALC's finding of fact is normally upheld, "such a finding may not be based upon surmise, conjecture or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." *Glover v. Rhett Jackson Co. of Bush River Rd.*, 274 S.C. 644, 649, 267 S.E.2d 77, 81 (1980) (citation omitted).

ARGUMENT

I. THE ALC ERRED IN FAILING TO ORDER REMOVAL OF THE NON-BEACH-COMPATIBLE MATERIALS NOT ASSOCIATED WITH THE CONSTRUCTION OF THE WALLS.

The ALC specifically ordered the walls' removal, "including all unauthorized materials *that may have been used in its construction*." (Order, p. 40 (emphasis added).) The underlying enforcement action, however, encompasses the Department finding Reddy violated the Act by having installed materials unassociated with the walls' construction including artificial turf, gravel, filter fabric, clay, webbing material, metal fencing, wood, metal flagpole, and gravel rock which were becoming debris on the beach. (Joint Ex. 019.) The record indisputably establishes Reddy conducted these additional alterations, yet the ALC erroneously found that the issue of the Department's jurisdiction and the removal of these materials was moot despite that the Department sought to enforce the entirety of its Administrative Order. Like the walls, these additional materials on the beach are adverse to the public interest and are in violation of the Act. These materials detrimentally impact the coastal zone including reducing safe, recreational public access to the beach and posing threats to South Carolina's Loggerhead Sea Turtles. (Joint Ex. 072 Audio Tr. 24:40-50; Tr. 133:3-12; Tr. 471:2-17.) The Department requests this Court hold the Order's failure to require removal of materials *unassociated* with the walls' construction is clearly erroneous and that Reddy's alterations violate the Act. This necessarily requires the Court to hold that the Department has jurisdiction in the Beaches Critical Area. The Department further seeks the Order to be modified to require the complete removal of all unpermitted, non-beach-compatible materials as enunciated in its own enforcement order.

A. The ALC erroneously held that there was no justiciable controversy when the Department established through uncontroverted evidence that non-beach-compatible materials not associated with the walls' construction were installed and remained in the Beaches Critical Area.

While the Department agrees with the ALC's decision to remove the walls pursuant to Section 48-39-120(C), the Department contends that as part of this determination, the ALC has erroneously held that it need not reach the question of whether the Department had jurisdiction in the Beaches Critical Area landward of the Beach/Dune System and whether Reddy's alterations not associated with the walls occurred in the Beaches Critical Area and violated the Act.

In its Original Order, the ALC erroneously determined that these alterations need not be addressed because he had ordered the removal of the walls pursuant to 48-39-120(C). (10/23/2023 Final Order, p. 38.) Section 48-39-120(C) provides "[t]he department shall have the authority to remove all erosion control structures which have an adverse effect on the public interest." The Department requested the ALC reconsider the issue of whether the Department had jurisdiction in the Beaches Critical Area and whether a violation of the Act occurred. (DES 11/3/2025 Motion for Reconsideration, pp. 16-17.) The ALC summarily denied that request, stating, "I do not find it necessary to reconsider my Final Order in this regard" and cited to *Jones v. Dillon-Marion Hum. Res. Dev. Comm'n,* 277 S.C. at 536, 291 S.E.2d at 196 (1982) ("Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.") (12/30/2025 Order on Motions or Reconsideration, p. 18.) At the same time, the ALC issued an Amended Final Order. (R. pp. __.) This time, rather than the ALC simply ordering Reddy to submit a CAP to the Department, the ALC specifically ordered the removal of the hard structure, "including all unauthorized materials that may have been used in its construction." (Order, p. 40)

The Department requested the ALC to reconsider this portion of its Final Amended Order because there were non-beach-compatible materials not associated with the wall that the ALC's decision did not reach. (R. pp. __.) The ALC denied the motion again citing *Jones* and stated, "any determination on this issue would be merely advisory since there is no longer a justiciable

controversy." (1/27/2026 Order on Motions For Reconsideration, p. 5.) The ALC additionally found that "the continued existence of non-compatible materials unassociated with those used in the construction of the hard erosion control structure was not established by the evidence." (1/27/2026 Order on Motions For Reconsideration, p. 4.)

1. It is uncontroverted that Reddy installed various non-beach-compatible materials in the critical area that were not associated with the walls' construction.

Substantial, probative, reliable and uncontroverted evidence establishes that Reddy altered the area the Department asserts to be Beaches Critical Area with non-beach-compatible materials not associated with the walls' construction. The Department ordered Reddy "to remove the unauthorized non-beach-compatible materials in their entirety" and identified a comprehensive list of materials including those not associated with the walls' construction. (Joint Ex. 011, p. 26, ¶ 4.) Throughout this case the Department has sought enforcement of this entire directive.

By way of joint exhibit, the Department proved Reddy violated the Act by altering the Beaches Critical Area and by depositing non-beach-compatible materials on active beach before and after construction of the walls:

- In September and October 2023, Reddy installed 410 cubic yards of clay, gravel, filter fabric, webbing material, plastic mesh/geogrid, wood, artificial turf, and metal fencing in the Beaches Critical Area as documented by photographs and the Department's inspections. (Joint Ex. 019, 070, 098, 124, 191 & 202; Tr. 272:21 to 273:10, 275:20 to 277:17 & 400:9-15.) The evidence established that approximately 1,255 square feet of Beaches Critical Area had been filled with non-beach-compatible materials. (Joint Ex. 098[BCM Reddy 001081]; Joint Ex. 010, Att. B [BCM Reddy 002298]; Tr. 277:18 to 278:12.)

- In January 2024, Reddy "aligned non-beach-compatible rip-rap along the seaward edge" of the original wall. (Order, p. 10.) A rip-rap revetment is also defined as an erosion control structure and is prohibited by the Act. S.C. Code Ann. § 48-39-10. The ALC found that the wall was on active beach (Order, p. 9), thus, the rip-rap revetment that was placed seaward of the wall was also on active beach.

- In March 2024, after the completion of the reinforcement and repair of the original wall and the second wall's construction, Reddy again installed artificial turf, fabric

underlayment and rock and gravel in the Beaches Critical Area. (Joint Ex. 008, 155 & 166.)

The uncontroverted substantial, probative evidence proved that Reddy violated the Act by altering the Beaches Critical Area and by depositing non-beach-compatible materials on active beach. Therefore, there remains a justiciable controversy of whether Reddy violated the Act by altering the Beaches Critical Area with non-beach-compatible materials not associated with the walls' construction. The ALC erroneously declined to reach the question of whether the Department has jurisdiction in the Beaches Critical Area on the basis that there remained no justiciable controversy.

2. The area Reddy altered was in the statutorily defined Beaches Critical Area.

The Act defines "Beaches" as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." S.C. Code Ann. § 48-39-10(H) (Supp. 2024). As explained fully in Subsection C, *infra*, "beaches" is one of four critical areas over which the Department has direct permitting authority pursuant to Sections 48-39-130 and 48-39-210.

The Department presented substantial evidence showing that the altered area was subject to periodic inundation by tidal and wave action and because of this periodic inundation, no non-littoral vegetation was established there. (*See supra* at 11-15.) As the General Assembly directed through the plain meaning of the definition of "beaches," the Department evaluated where there was sufficient inundation in the altered area so that non-littoral vegetation was not established. Accordingly, the area Reddy altered was "Beaches Critical Area."

To support this determination, the Department presented direct observations from Site inspections, photographic evidence and GPS data collected of vegetation lines. Department testimony established indicators in addition to vegetation to inform the Department's determination as well. Testimony discussed data, direct observation, photographic evidence of the

location of the escarpment, and the location of where wrack and sand were being washed up on the beach by tidal and wave action. During the hearing, both the Department staff and the Department's expert testified through numerous photographs and maps of the data collected to show that periodic inundation had occurred and was continuing to occur where Reddy altered the beach. Evidence from May 2023 through October 2024 showed periodic inundation was occurring from approximately five months prior to when Reddy began altering the Beaches Critical Area to approximately seven months after his alterations. (See DES's Proposed Order, pp. 15-28 & 45-51 for a detailed review of the photographic evidence and testimony presented at the hearing.)

Reddy's sole expert, Matt Goodrich, conceded that the limit of periodic inundation can be the edge of vegetation on the beach in some cases. (Tr. 1125:1-22.) Mr. Goodrich did not have any evidence to refute the Department's assessments from many Site visits that the edge of the non-littoral vegetation indicated where periodic inundation was occurring. Instead, he presented a theoretical analysis. (Tr. 1127:7-22.) The ALC discounted Goodrich's theoretical calculation for the elevation of inundation in the area. It found: "Mr. Goodrich's conclusion unreasonably disregarded the effect of episodic events on the City's shoreline," that "Mr. Goodrich's simulated wave-run up calculation is unreliable…," and that "he too easily dismissed consideration of vegetation." (Order, pp. 15-16.) Mr. Goodrich did not testify to the Beaches Critical Area location in this area and had "no opinion on the Beaches Critical Area in this matter." (Tr. 1066:9-19.)

Reddy also did not testify as to where there was periodic inundation in this area, or present any other evidence as to where the Beaches Critical Area was located, at the time he altered the area. Significantly, the ALC found that Reddy did not produce any evidence to show the presence of non-littoral vegetation seaward of the escarpment ("top of bank") identified by data collected in July 2023 and shown in Reddy's land survey. (Order, p. 17.) Therefore, the ALC was not

presented with any credible evidence to contradict the Department's testimony and evidence that the area Reddy altered was in "Beaches Critical Area." "[W]here there is no conflict in testimony, or where there is no evidence upon a material matter, the question presented is one of law, and not of fact…" *Guerin v. Hunt,* 118 S.C. 32, 110 S.E. 71, 74 (1921). A legal conclusion such as where the Beaches Critical Area is located is also a question for this Court to determine. *Brownlee v. S.C. Dep't of Health & Envtl. Control*, 382 S.C. 129, 142, 676 S.E.2d 116, 122-23 (2009) (legal conclusion as to navigability is a question of law to be reviewed de novo even though it may turn on the case's facts.) Given that the record is devoid of any evidence controverting the Department's comprehensive evidence of where periodic inundation was actually occurring and where the Beaches Critical Area was located at the time of Reddy's alterations, this Court should hold that the Department proved that Reddy's unauthorized alterations were in the Beaches Critical Area.

3. The ALC committed an error of law by placing a burden on the Department to show the unauthorized materials remained on the beach at the time of the hearing.

The Department requested the ALC reconsider its Amended Final Order to determine Reddy violated the Act by installing non-beach-compatible materials without a permit, by failing to comply with the Department's October 20, 2023 Notice to Comply, and for an order to remove the non-beach-compatible materials not associated with the construction of the wall. (R. p. __.) The ALC denied the Department's Motion and reasoned:

> 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.***

(1/27/2026 Order Denying Motions For Reconsideration, p. 4) (emphasis added.) These findings are unsupported by the very evidence that the ALC cites. "Where the evidence gives rise to but one reasonable inference the question becomes law for the courts to decide." *Kinsey v. Champion Am. Service Center,* 268 S.C. 177, 181, 232 S.E.2d 720, 722 (1977). Nowhere in the record is there any evidence Reddy removed the unauthorized material the Department is seeking to have removed or that he mitigated the unpermitted alterations to the critical area.

The ALC cites a November 2023 drone photograph to support an incorrect conclusion that "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." The November 2023 drone photograph pictured below clearly shows artificial turf, tile pavers, fill, dark mulch and metal fencing (left corner of property) all seaward of the adjacent vegetation line and in Beaches Critical Area. Thus, the ALC's finding is clearly erroneous and does not support its limitation to its Order.

Joint Ex.065, p.5.

Furthermore, as the uncontroverted testimony and photographic evidence established, Reddy installed clay as a substrate in the back of his yard out to the fence line and even further

seaward of where the walls were built, most of which was then covered by artificial turf. (See, e.g., photographs in Joint Ex. 078e & 101.) The uncontroverted testimony also shows that Reddy installed, and reinstalled, artificial turf in his backyard. Turf installation required the addition of an impervious liner/fabric underlayment, gravel/drainage stone and geogrid, all underneath the artificial turf. (Joint Ex. 019, 065, 101 & 202 [ProGreen_000139]; Tr. 367:9-18.) The following photograph on the left shows the underlayment, wire mesh or geogrid, and rock that was used in the turf's installation. (Joint Ex. 019, p.2). The following photograph on the right, taken after the December 2023 nor'easter, demonstrates the fallacy of the ALC's findings in that it shows the underlayment and other materials inherent to the turf installation that are installed under artificial turf, even though they were not visible until the artificial turf was disturbed by the storm. (Joint Ex. 065, p. 6; also see Joint Ex. 203.) Reddy reinstalled turf after this photograph was taken.

(Joint Ex. 019, p. 2)

(Joint Ex. 065, p. 6.)

The ALC is to base its findings on substantial evidence, and reasonable minds cannot conclude that these materials no longer remain simply because they are not visible in later photographs. "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)(citation omitted). The

ALC clearly erred in finding that the evidence did not show the materials "remained" as the record is void of reliable, probative, or substantial evidence to support that conclusion.

The ALC also incorrectly relied on June 6, 2024 inspection report photographs as a basis for its finding that the Department did not establish the "continued existence" of these materials. As an initial matter, these photographs show there are non-beach-compatible materials in the Beaches Critical Area on top of the wall. These materials include a flagpole set in the concrete, non-native vegetation, artificial turf and tile pavers. (Joint Ex. 161, p.3). As for the front, seaward side of the wall and wingwalls, it is not reasonable to infer that non-beach-compatible materials are no longer there just because they are not visible in those photographs. The June 6 photographs are taken at a time when the sand is at a higher elevation than where those materials are based on earlier photographs. As shown in the following left picture, the sand is almost to the top of the lower mending plate in the June 2024 photograph on which the ALC relies. (Joint Ex. 161, p. 7.) However, the February 2024 photograph on the right shows that the non-beach-compatible materials were at a lower elevation than the two mending plates. (Also see Joint Ex. 151 & 152.)

Joint Ex. 161, p. 7 (06/06/2024)

Joint Ex. 173 (approx. 2/28/24)

Additional photographs in February 2024 show non-beach-compatible materials including a red mesh-like plastic located at a lower elevation than depicted in the June 2024 photograph. (Joint Ex. 089 [BCM Reddy 0030524] taken 2/23/24.) Joint Ex. 087 shows metal pins that were used to

brace the original wall when it was reinforced along with the rip-rap that was put in this area. The sand in the June 2024 photo has buried the area where the non-beach-compatible materials, including the metal pins, were placed. Just because the metal pins bracing the wall are not visible from the pictures relied on by the ALC, it is not reasonable to infer that they are not there when no evidence was ever presented that they were removed. (See e.g. Ex. 087 [BCM Reddy 003035-39].) Likewise, just because the other materials are not shown by photographs with higher sand levels it is not reasonable to conclude they are no longer there.

The ALC's order also fails to address the testimony of Doug Truslow, an Isle of Palm's resident who recreates on that part of the beach. Mr. Truslow described a part of the revetment and testified, "you could readily see there was granite. There's still granite out there. I mean it's pretty far out. So, you've gotta be pretty careful about where you step, even now." (Tr. 471:2-17.) On cross, Mr. Truslow reiterated this testimony stating "you could go out there today and you could see it [the granite]" in front of Reddy's house.[8] (Tr. 501:7-15.) So, the only reliable testimony regarding the rock revetment's presence on the beach at the time of trial, is that the granite rocks remained scattered on the beach, contrary to the ALC's finding. Reddy presented no evidence to show that the granite rocks had ever been removed.

Moreover, the ALC's finding no evidence of these materials' "continued existence" places an erroneous and unreasonable burden on the Department to prove a continuing violation at the time of the contested case hearing. That is not the Department's burden and is an error as a matter of law. "In general, the party asserting the affirmative issue in an adjudicatory administrative

[8] Mr. Truslow testified he was not testifying that Reddy put the granite there but what he observed. He stated "these are my observations … I saw during the critical period of time, you might call it riprap, you might call it part of a revetment. I call it just granite, large chunks of rock that were up against [Reddy's] wall, and they've migrated down closer to the water." (Tr. 501:16 to 502:5.)

proceeding has the burden of proof." *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017), *reh'g denied* (Jan. 11, 2018). In this contested case, the Department bore the burden of proving that issuance of the Administrative Order is supported by a preponderance of the evidence and proper under the applicable statutory and regulatory standards. S.C. Code Ann. § 1-23-600(A)(5). The uncontroverted evidence established that Reddy made alterations with non-beach-compatible materials unrelated to the construction of the wall without a permit in the area that the Department assessed to be Beaches Critical Area and/or active beach. Thus, the agency undeniably established violations and grounds to order the removal of these materials.

Once the Department established a prima facie case with regard to a violation of the Act, the burden shifted to Reddy to rebut it. *See, e.g., Daisy Outdoor Adver. Co., Inc v. S.C. Dep't of Transp.*, 352 S.C. 113, 118, 572 S.E.2d 462, 465 (Ct. App. 2002). Since Reddy would have the burden to present evidence that there had not been a violation, then he also has the burden to present any mitigating factors that may diminish consequences stemming from the violations. *Cf. TNS Mills, Inc. v. S.C. Dep't of Revenue,* 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) ("The burden is on claimants to prove their rights to an exemption by bringing themselves clearly within the conditions imposed by the statute.") The ALC committed an error of law by placing the burden on the Department to show not only the violation had occurred (i.e. alterations of the Beaches Critical Area), but also that the non-beach-compatible materials Reddy installed remained there. This is particularly true in this case since Reddy presented absolutely no evidence that he either removed all the non-beach-compatible materials or restored the area as directed by the Department. *See Hamm v. Cent. States Health & Life Co., of Omaha,* 292 S.C. 408, 410, 357 S.E.2d 5, 6 (1987) (reversal where no reliable, probative and substantial record evidence supported the hearing

officer's approved rate increase).

Moreover, placing a burden on the Department to prove not only a violation of the Act but also that materials ***remain in the critical area*** is inconsistent with the Act as it would diminish the Department's enforcement authority and ability to protect the coast. To hold otherwise would mean that immediately before the hearing of every similar enforcement case, the Department would have to do an in-depth investigation to determine whether the materials comprising the violations were still in the area. In this case, while the artificial turf and pavers are evident from a visual inspection, the Department would likely have to obtain a warrant and rent heavy equipment to dig down in the area in question to collect evidence that the clay, underlayment, gravel and other non-beach-compatible materials "remain" in the critical area. Requiring this of the Department is particularly unreasonable and burdensome when it is uncontroverted that these materials were installed and Reddy did not present any evidence they were ever removed.

Once the uncontroverted and substantial evidence in this case proved that the Department acted to enforce unauthorized alterations in this area, the ALC should have determined whether the Department had jurisdiction over this area and thus whether Reddy violated the Act. The Department had no burden to establish evidence that Reddy had or had not mitigated his unauthorized alterations by the time of the hearing. In accordance with the substantial and uncontroverted evidence presented at the hearing, the Department respectfully requests that this Court order Reddy to remove any non-beach-compatible materials in the critical area for which he is responsible regardless of whether they are associated with the walls' construction and to remediate this area in its entirety.

B. The ALC's limitation on what materials must be removed creates an incomplete and ambiguous directive for the Department's oversight and will lead to unnecessary further litigation.

The ALC's limitation for Reddy to remove materials that were used for the construction of the walls guarantees conflict between the parties and unnecessarily complicates the remediation of this area. Since the ALC only addressed non-beach-compatible materials used in the construction of the wall, and it may be commingled with other non-beach compatible materials, it is not clear what materials must be removed from this area. The Department anticipates the issue of what is and what is not "used in the construction of the walls" will be the source of conflict during the removal and remediation, leading to additional litigation and delay.

Moreover, given the ALC's incomplete Order, it is not clear whether Reddy will be able to landscape with non-native plants and reinstall the artificial turf with all its accompanying non-beach-compatible materials as part of the restoration measures, since the ALC never reached the question of whether the Department had jurisdiction over this area. It would be a waste of both judicial and agency resources to require the Department to start all over with a second enforcement action to have these materials removed when the issues have been fully brought before the ALC and this Court. Thus, a determination of the Department's jurisdiction of the Beaches Critical Area should be made, and consistent with the substantial, probative and reliable evidence in the record, this Court should order removal of all these materials and restoration of the critical area.

C. The ALC erred by declining to hold that the Department has jurisdiction in the Beaches Critical Area pursuant to the plain meaning of S.C. Code Ann. Section 48-39-130(A) & (C), its implementing regulations, the Coastal Zone Management Program Document and Supreme Court precedent.

Pertinent statutes and regulations clearly establish the Department's authority in the Beaches Critical Area and exemplify the ALC's error in refusing to find the Department has regulatory authority over the altered area.

In 1977, the General Assembly enacted the South Carolina Coastal Tidelands and Wetlands Act which is commonly referred to as the Coastal Zone Management Act (Act), S.C. Code Ann.

§§ 48-39-10, *et. seq.* (2008 & Supp. 2024), to "protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and of all the people of the State," S.C. Code Ann. § 48-39-30(A). In passing the Act, the General Assembly found:

> (A) the coastal zone is rich in a variety of natural, commercial, recreational and industrial resources of immediate and potential value to the present and future well-being of the State.
> (D) The coastal zone and the fish, shellfish, other living marine resources and wildlife therein, may be ecologically fragile and consequently extremely vulnerable to the destruction of man's alterations.
> (E) In light of competing demands and the urgent need to protect and give high priority to natural systems in the coastal zone while balancing economic interests, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

S.C. Code Ann. § 48-39-20(A), (D) and (E). The General Assembly also found that increasing and competing demands in the coastal zone have resulted in the decline of living resources, permanent adverse changes and decreased space for public use; and values of the coastal zone are being irretrievably damaged or lost by ill-planned development. S.C. Code Ann. § 48-39-20(B) & (F). The Act defines the State's "coastal zone" as "all coastal waters and submerged lands seaward to the state's jurisdictional limits and all lands and waters in the counties of the State which contain ***any one or more of the critical areas***." S.C. Code Ann § 48-39-10(B) (emphasis added). The Act defines "Beaches" as one of four critical areas. S.C. Code Ann. § 48-39-10(J)(3).

The General Assembly declared that the state policy to be followed in the Act's implementation includes "to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;" "to protect and where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;" and "to formulate a comprehensive beach erosion and protection policy." S.C. Code Ann. § 48-39-30(B)(1)(2) & (4). In furtherance of these and other policies, the Act mandates, "no person shall fill, remove, dredge,

drain or erect any structure on or in any way alter any critical area without first obtaining a permit from the department." S.C. Code Ann. § 48-39-130(C) (emphasis added).

The General Assembly empowered the Department with the responsibility to administer the Act's provisions, including the duty to promulgate rules and regulations; examine, modify, ***approve or deny applications*** for activities covered by the provisions; and ***enforce*** the provisions of the Act. S.C. Code Ann. § 48-39-50 (2008) (emphasis added). The General Assembly declared "the key to accomplishing this [protecting the coastal zone] is to encourage the state and local governments ***to exercise their full authority over the lands and waters in the coastal zone.***" S.C. Code Ann § 48-39-20(C) (emphasis added). The General Assembly also provided the Department with the authority "to remove all erosion control structures which have an adverse effect on public interest." S.C. Code Ann.§ 48-39-120(C) (2008).

In 1988, the South Carolina General Assembly enacted S.C. Code Sections 48-39-250 to 360 (2008 & Supp. 2024), referred to as the Beachfront Management Act (BMA), to expand the Act. The BMA was in part enacted out of the recognition that the Department did not have "adequate jurisdiction . . . to enable it to effectively protect the integrity of the beach/dune system." S.C. Code Ann. § 48-39-250(4) (2008). To provide the Department with more comprehensive authority, the BMA directed the establishment of a setback area for the Beach/Dune System Critical Area defined by the baseline and setback line that was based on erosion in the area. S.C. Code Ann. § 48-39-280. These amendments also established limitations on construction or reconstruction seaward of the Beach/Dune System's setback line and permit requirements. S.C. Code Ann. § 48-39-290 (2008 & Supp. 2024). As the ALC found in its Order Denying Reddy's Summary Judgment Motion, only the scope of the "Beach/Dune System" critical area is tied to the setback lines established by the Department. (Summary Judgment Order p. 10). "Notably, when

the General Assembly enacted the BMA[,] it did not repeal or alter the definition of Beaches." (Summary Judgment Order, p. 9.) The BMA did not limit the Department's permitting authority in the separate and distinct Beaches Critical Area and repeatedly recognizes the need for a "comprehensive, long-range beach management plan." *See* S.C. Code Ann. § 48-39-260(2) & § 48-39-320(A).

To guide preservation and utilization of coastal resources, the Department promulgated Chapter 30 of the S.C. Code of Regulations (2011) (the Regulation). Consistent with S.C. Code Section 48-39-130 (2008 & Supp. 2024), the Regulation provides that "any person wishing to alter a critical area must receive a permit from the Department." S.C. Code Ann. Regs. 30-2(B). The Regulation also establishes critical area boundaries for the four critical areas: "Coastal Waters and Tidelands" and "Beaches and Beach/Dune System." S.C. Code Ann. Regs. 30-10.

The "Beachfront Management Plan" set forth in Regulation 30-21 became effective in 1993. The 1993 Plan in Regulation 30-21(H)(3) states the permitting jurisdiction on beaches is determined by the location of the setback line, which was and is true along the majority of the coastline. (Tr. 750:12-22 & 805:15-21.) In the more highly vulnerable and dynamic areas, the Department has seen the Beaches Critical Area erode landward of the setback line. (Tr. 805:18-21.) [9] The Beachfront Management Plan, however, has not been amended since its enactment in 1993. For these areas, to the extent that Regulation 30-21(H)(3) conflicts with the Act, the provision is void. *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984) (a regulation must fall when it alters or adds to a statute).

[9] In 2024, Regulation 30-13 was amended consistent with the Act's stated policies and findings to clarify that "new erosion control structures or devices . . . within the beaches and/or beach/dune system critical areas . . . and construction on the active beach" were prohibited. S.C. Code Ann. Regs. 30-13(N)(3)(a) (amended by SCSR 48-5 doc. No. 5200, *eff.* May 24, 2024).

1. The plain meaning of Section 48-39-130 and Section 48-39-10(J)(3) and (H) grants the Department authority over "beaches," one of the four critical areas defined in the Act.

Section 48-39-130 states: "no person shall fill, remove, dredge, drain or erect any structure on or in any way alter ***any critical area*** without first obtaining a permit from the department." S.C. Code Ann. § 48-39-130(C) (emphasis added). S.C. Code Ann Section 48-39-10(J) sets forth four types of critical areas:

> (J) "Critical area" means any of the following:
> (1) coastal waters;
> (2) tidelands;
> (3) beaches;
> (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.

S.C. Code Ann. § 48-39-10(J). Pursuant to this section's plain meaning, Beaches Critical Area is a separate and distinct critical area from the other three critical areas including the Beach/Dune System Critical Area. Because the Beaches Critical Area is one of the four statutorily defined critical areas, Section 48-39-130's grant of permitting authority clearly applies to the Beaches Critical Area. The provisions at issue clearly define the Beaches Critical Area, and expressly and unambiguously give the Department jurisdiction over this area.

> When construing a statute, a court must seek to ascertain and effectuate legislative intent. The cardinal rule of statutory construction is that words used in a statute must be given their ***plain and ordinary meaning*** without resort to subtle or forced construction to ***limit*** or expand the operation of the statute. The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. (Emphasis added.)

Koenig v. S. C. Dep 't of Pub. Safety, 325 S.C. 400, 403-04, 480 S.E.2d 98, 99 (Ct. App. 1996) (citations omitted). "If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction, and this Court has no right to look for or impose another meaning." *Enos v. Doe*, 380 S.C. 295, 303, 669 S.E.2d 619, 623 (Ct. App. 2008) (*citing Tilley v.*

Pacesetter Corp., 355 S.C. 361, 373, 585 S.E.2d 292, 298 (2003)). The first step in interpreting statutes is to determine whether the language of the statute "directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation." *Kiawah Dev. Partners, II*, 766 S.E.2d 707, 717 (citing *Brown v. S.C. Dept. of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002).

Section 48-39-10(H) defines Beaches Critical Area as "those lands subject to periodic inundation by tidal and wave action ***so that no non-littoral vegetation is established***." S.C. Code Ann. § 48-39-10(H) (emphasis added). A plain reading of this provision provides that the Beaches Critical Area extends where periodic inundation is occurring to the point on the beach where ***non-littoral vegetation is established***. If there is an absence of non-littoral vegetation due to periodic inundation, then the area is within the Beaches Critical Area and within the Department's jurisdiction. If non-littoral vegetation is present, it is not the Beaches Critical Area but could still be the Beach/Dune System Critical Area, depending on where the setback line is located.

Additionally, Section 48-39-210(A) states: "[t]he department is the only state agency with authority to permit or deny any alteration within the critical area. . ." S.C. Code Ann. § 48-39-210(A). This provision does not specify any particular critical area. Instead, it applies to all four critical areas, including the Beaches Critical Area. It goes on to list exemptions, none of which apply to Reddy. The provisions at issue clearly define the Beaches Critical Area, and expressly and unambiguously give the Department permitting and enforcement jurisdiction over this area. Therefore, erection of any structure or any alteration of the Beaches Critical Area requires a permit from the Department (with certain specific exceptions not applicable in this case).

The Regulation's plain meaning including the Coastal Zone Management Program Document also supports the Department's jurisdiction in the Beaches Critical Area as the

Regulation refers to Beaches as a separate critical area. Regulation 30-10(B) provides:

> Beaches and Beach/Dune System: The Department has permitting authority over beaches and the beach/dune system. In determining the boundaries of this critical area, the Department will be guided by Section 48-39-270, Section 48-39-280 and Section 48-39-360."

S.C. Code Regs. 30-10(B). The regulation refers to two critical areas: "Beaches" and "Beach/Dune System," and plainly states that the Department has permitting authority over both of these critical areas. The second sentence referring to "this critical area" immediately follows the Beach/Dune System Critical Area and addresses this single critical area and not the Beaches Critical Area. This construction is consistent with the South Carolina Supreme Court's opinion in *Branch v. Myrtle Beach*, that a statute and regulation should be construed together, if possible, to give both effect. *Branch,* 340 S.C. 405, 412, 532 S.E.2d 289, 293 (2000).

The Department's contention that Beaches is a separate critical area is consistent with the plain meaning of the Beaches definition in the Coastal Zone Management Program (CZMP) Document that has "the full force of the law." *Spectre, LLC v. S.C. Dep't of Health & Env't Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010) (The Coastal Zone Management Program Document is "valid" and has the full force of the law.). This document repeats the statutory definition of Beaches but adds clarifying language:

> The South Carolina Coastal Management Act (Act 123 of the 1977 South Carolina General Assembly) defines "beaches" as "those lands subject to periodic inundation by tidal and wave action so that non-littoral vegetation is established." (Section 48-39-10(H)). ***This definition includes that area of sand between mean low and spring high water, in other words, the foreshore and the dry sand beach up to the line of vegetation***. ***Beaches are included in the management program as "critical areas," subject to OCRM's direct permitting authority.***

(CZMP Document, Chapter IV.D. Beach and Shoreline Access at IV-61 (emphasis added).) Interpreting the law to limit the Department's authority in Beaches when it is landward of the Beach/Dune System setback line would completely eliminate the Department's ability to protect

the dry sand beach in the most highly erosional areas from manmade destruction and/or alteration.

2. The Department would not be able to effectuate the Act's goals of providing comprehensive management over the vulnerable and valuable coastal resources without jurisdiction in the Beaches Critical Area landward of the setback line.

When read as a whole, the Act vests the Department with jurisdiction in Beaches Critical Area. "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *A.O. Smith Corp. v. S.C. Dept. of Health & Env't Control*, 428 S.C. 189, 202, 833 S.E.2d 451, 458 (Ct. App. 2019) (*quoting Lockwood Greene Eng'rs, Inc*. v. *S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987).)

The Act's policy and intent can be found, in part, in the legislative findings which include:

> (A) The coastal zone is rich in a variety of natural, commercial, recreational and industrial resources of immediate and potential value to the present and future well-being of the State. ….
>
> (C) South Carolina can only regain control of the regulation of its critical areas by developing its own management program. ***The key to accomplishing this is to encourage the state and local governments to exercise their full authority over the lands and waters in the coastal zone. . . .***
>
> (F) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone while balancing economic interests, present state and local institutional arrangements for planning and regulating land and water uses in such areas ***are inadequate***.

S.C. Code Ann. § 48-39-20(A), (C) & (F) (emphasis added). Additionally, Section 48-39-20(B) finds demands of the coastal zone have resulted in a decline of resources and decreased open space for public use. Subsection (D) finds that the coastal zone and its wildlife may be "extremely vulnerable to destruction by man's alterations." Subsection (E) relates to irretrievable damage from ill-planned development. These findings express the need for and importance of protecting the state's coastal zone. The coastal zone is "all coastal waters and submerged lands seaward to the state's jurisdictional limits and all lands and waters in the counties of the State which contain ***any***

one or more of the critical areas." S.C. Code Ann § 48-39-10(B) (emphasis added).

The Act's other provisions are also consistent with the Department's authority in the Beaches Critical Area. For example, although S.C. Code Section 48-39-250 contains legislative findings related to the Beach/Dune System Critical Area, these findings support the Department's assertion of jurisdiction in the Beaches Critical Area located ***adjacent*** *to* the Beach/Dune System Critical Area. In S.C Code Ann. Section 48-39-250(5) and (6), the General Assembly makes findings related to the negative impact of erecting erosion control structures including riprap revetments such as the ones built by Reddy:

> (5) The use of armoring in the form of hard erosion control devices such as seawalls, bulkheads, and rip-rap to protect erosion-threatened structures ***adjacent to the beach*** has not proven effective. These armoring devices have given a false sense of security to beachfront property owners. In reality, these hard structures, in many instances, have increased the vulnerability of beachfront property to damage from wind and waves while contributing to the deterioration and loss of the dry sand beach which is so important to the tourism industry.
>
> (6) Erosion is a natural process which becomes a significant problem for man only when structures are erected ***in close proximity*** to the beach/dune system. It is in both the public and private interests to afford the beach/dune system space to accrete and erode in its natural cycle. This space can be provided only by discouraging new construction ***in close proximity*** to the beach/dune system.

(Emphasis added.) S.C. Code Ann. § 48-39-250(5) & (6). These findings relate to the Beaches Critical Area when it is landward of the Beach/Dune System Critical Area because it is ***adjacent*** and/or ***in close proximity*** to the Beach/Dune System Critical Area and if not protected, would certainly contribute to the loss of the dry sand beach. If the Department does not have jurisdiction over this area, then the Department is unable to regulate construction in close proximity to the Beach/Dune System or to protect the public and private interests "to afford the beach/dune system space to accrete and erode in its natural cycle." S.C. Code Ann. § 48-39-250(6).

The Act also emphasizes the importance of the public's use of the beaches. In S.C. Code Ann. Section 48-39-150(A)(5), the General Assembly finds that the Department should be guided

by the following general considerations including "[t]he extent to which the development could affect existing public access to tidal and submerged lands, navigable waters and beaches or other recreational coastal resources." S.C. Code Ann. Section 48-39-250(8) finds that "[i]t is in the state's best interest to protect and to promote increased public access to South Carolina's beaches for out-of-state tourists and South Carolina residents alike." S.C. Code Ann. § 48-39-250(8). The General Assembly declares one of the polices of the BMA is to "preserve existing public access and promote the enhancement of public access to assure full enjoyment of the beach by all our citizens. . . ." S.C. Code Ann. § 48-39-260(6).

If the Department does not have jurisdiction over Beaches Critical Area when it is located landward of the Beach/Dune System, then it has no ability to protect public access whatsoever, contrary to the Act's stated purposes and policies. And once permanent seawalls are constructed, public access may be lost for future generations to come. In this case, Reddy's wall juts out onto the beach with tidal waters coming all the way up to the wall at certain stages, indubitably limiting access. (Joint Ex. 078k, BCM Reddy 000517.) The ALC erred in failing to hold that the Department's exercise of authority in the Beaches Critical Area landward of the Beach/Dune System Critical Area is a proper exercise of its jurisdiction to protect and promote the public access to "ensure the maximum benefit to the people" as directed by the General Assembly. S.C. Code Ann. § 48-39-30(D).

If the Department has no authority in the Beaches Critical Area landward of the setback line, then the Department has no authority when the erosion has outpaced the Beach/Dune System Critical Area. This means that the Department cannot provide comprehensive beach management or prevent unwise development in some of the most dynamic and vulnerable areas of the coastline such as the unstabilized inlet erosion zone at the southern end of Isle of Palms. The Department is

encountering Beaches Critical Area landward of the setback line more frequently because of increased storminess, higher than predicted high tides, and other coastal processes that are driving shoreline change. (Tr. 98:5 to 99:1.) Given these changing conditions, the Beaches Critical Area is an essential part of the Department's comprehensive beach management authority needed to protect the South Carolina coast and public access to the dry sand beach.

3. Construing the Act in a manner that upholds the Department's authority in the Beaches Critical Area is also in accordance with the South Carolina Supreme Court's holding that the Department should assert permitting jurisdiction to protect the coast when the Department knows that the activity will impact a critical area.

A determination that the Department has been granted regulatory authority over the Beaches Critical Area landward of the Beach/Dune System's setback line is consistent with the South Carolina Supreme Court holding in the 2021 opinion of *SCCCL v. SCDHEC, KDP II, LLC, and KRA Development, LP,* 434 S.C. 1, 862 S.E.2d 72 (2021)("KDP II"). At the outset of this opinion, the Supreme Court emphasizes that "the public's interest must be the lodestar" of its analysis. The Supreme Court goes on to state that "[t]his is because the General Assembly has set forth its policy of protecting 'the quality of the coastal environment and [promoting] the economic and social improvement of the coastal zone and all the people of the State.'" 434 S.C. at 10, 862 S.E.2d at 77 (citation omitted). The Supreme Court cited the policy in Section 48-39-30(D)[10] as the basis for holding the Department should have applied critical area permitting requirements to KDP's proposed wall *outside of the critical area* where the Department knew the area *would become* critical area and would impact it. *KDP*, 434 S.C. at 11-13, FN7, 862 S.E.2d at 77-78, FN

[10] S.C. Code Ann. Section 48-39-30(D) states "[c]ritical areas shall be used to provide the combination of uses which will insure the maximum benefit to the people, but not necessarily a combination of uses which will generate measurable maximum dollar benefits. As such, the use of a critical area for one or a combination of like uses to the exclusion of some or all other uses shall be consistent with the purposes of this chapter.

7. If the Department should assert jurisdiction that is completely *outside of* a critical area when the critical area is impacted, then it follows the Department should assert jurisdiction *within* a critical area ("Beaches") even when outside a different critical area (the "Beach/Dune System"). Moreover, substantial alterations in the Beaches Critical Area so close to the Beach/Dune System Critical Area would necessarily impact the Beach/Dune System Critical Area. Therefore, consistent with the Supreme Court's holding in KDP II, the Act's proper construction in accordance with its stated purposes is that the Department has regulatory authority over this vulnerable and valuable coastal resource.

CONCLUSION

WHEREFORE, for the reasons stated herein as well as those set forth in the Department's Motions for Reconsideration, the South Carolina Department of Environmental Services respectfully requests that the Court affirm the ALC's decision to remove the walls, hold that the Department has jurisdiction in the Beaches Critical Area and that Reddy's alterations were in violation of the Act, and order the removal of all non-beach-compatible materials from the Beaches Critical Area and the restoration of the affected area.

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