STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2026-000221

South Carolina Department of Environmental Services and South Carolina Coastal Conservation League,

Respondent-Appellants,

v.

Rom Reddy,

Appellant-Respondent.

INITIAL BRIEF OF APPELLANT SOUTH CAROLINA COASTAL CONSERVATION LEAGUE

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Charleston, S.C.
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STATEMENT OF ISSUES ON APPEAL

I. Whether the Administrative Law Court erred by refusing to classify the Site as statutory beaches, a critical area under S.C. Code Ann. § 48-39-10(J), thereby pretermitting a violation determination under S.C. Code Ann. § 48-39-130(C) despite finding periodic inundation by tidal and wave action and the absence of nonlittoral vegetation.

II. Whether the Administrative Law Court erred in vacating the $289,000 civil penalty under S.C. Code Ann. § 48-39-170(C), and whether reinstatement is appropriate without remand because the Administrative Law Court already made all material factual findings and only legal application remains.

STATEMENT OF THE CASE

This appeal arises from the Administrative Law Court's December 30, 2025 Amended Final Order and January 27, 2026 Order Denying Motions for Reconsideration ("Reconsideration Order").

This contested case began when the South Carolina Department of Environmental Services ("DES") issued Administrative Order AF-0000960 to Rom and Renee Reddy on July 1, 2024, concerning construction activities at 118 Ocean Boulevard, Isle of Palms, Charleston County ("Site"). The Administrative Order found violations of the Coastal Tidelands and Wetlands Act, S.C. Code Ann. § 48-39-10 et seq. ("Act"), assessed a civil penalty of $289,000.00, and required, among other relief, the removal of non-beach-compatible materials and a hard erosion control structure constructed without a permit. On July 18, 2024, Rom Reddy filed a Request for a Contested Case Hearing. South Carolina Coastal Conservation League ("CCL" or "Appellant") moved to intervene on August 1, 2024, with the consent of all parties, and the Administrative Law Court ("ALC") granted that motion on August 7, 2024.

A merits hearing was conducted before the ALC on May 6 through 8 and May 19 through 20, 2025. The ALC initially issued a Final Order on October 23, 2025. On November 3, 2025, Rom Reddy, DES, and CCL each filed motions for reconsideration. The ALC rescinded the October 23, 2025 order on November 10, 2025, and, after further briefing, issued an Amended Final Order ("Order") on December 30, 2025. DES and CCL filed motions for reconsideration of the Order on January 9, 2026. Mr. Reddy filed responses in opposition on January 20, 2026, and CCL filed a reply on January 26, 2026. The ALC denied reconsideration on January 27, 2026. Appellant filed and served its notice of appeal on January 29, 2026.

In this appeal, CCL does not challenge the portion of the Order requiring removal of Reddy's hard structure. Instead, CCL only challenges the Order on the grounds stated herein.

STANDARD OF REVIEW

Under the Administrative Procedures Act, this Court reviews the ALC's final order and may reverse or modify if Appellant's substantial rights have been prejudiced because the decision is in violation of constitutional or statutory provisions, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary or capricious. S.C. Code Ann. § 1-23-610(B).

In determining whether the ALC's decision is supported by substantial evidence, the Court considers the whole record and asks whether there is evidence from which reasonable minds could reach the same conclusion as the ALC. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014). The Court may not substitute its judgment for the ALC's judgment as to the weight of the evidence on questions of fact. S.C. Code Ann. § 1-23-610(B).

Questions of statutory interpretation are reviewed de novo. *Thompson v. Killian*, 447 S.C. 177, 186, 924 S.E.2d 606, 610 (2025); *Davis v. S.C. Dep't of Corr.*, 444 S.C. 138, 149–50, 906 S.E.2d 569, 575 (2024). Courts give statutory words their plain and ordinary meaning, without resorting to subtle or forced construction to limit or expand the statute's operation. *Davis*, 444 S.C. at 150, 906 S.E.2d at 576. This Court may also affirm any ruling, order, decision, or judgment upon any ground appearing in the record on appeal. Rule 220(c), SCACR.

STATUTORY AND REGULATORY FRAMEWORK

Section 48-39-130(C) of the Act provides that "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." There are four categories of critical areas identified in the Act: coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J). The beach/dune system critical area is designated by the Act as "the area from the mean high-water mark to the setback line as determined in Section 48-39-280." *Id.* "Beaches" critical area is distinct and is defined, both in the Act and in the regulations promulgated thereunder, 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); S.C. Code Ann. Regs. 30-1(D)(5).

STATEMENT OF FACTS

The facts giving rise to this appeal center around Mr. Reddy's construction of hard erosion control devices along the beachfront portion of his property. Rom Reddy purchased 118 Ocean Boulevard, Isle of Palms, Charleston County ("Site"), on September 24, 2014. Joint Exs. 66, 67, 68. The property is located on the south end of Isle of Palms near Breach Inlet. Tr. 79:16–80:15. The area has also experienced significant storm events, increasing its vulnerability. Tr. 119:17–120:22; 725:24–726:17; 886:8–887:3; 889:10–21; Joint Exs. 78(m), 78(n), 78(o), 78(r).

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). Because beaches are a category of "critical area," S.C. Code Ann. § 48-39-10(J), the trial evidence focused on whether the altered area showed physical indicators of recurring tidal and wave action and the absence of established nonlittoral vegetation.

Communications between Mr. Reddy and DES began in May 2023, after Mr. Reddy contacted DES about erosion at his property. Joint Ex. 12; Tr. 99:2–104:6. During that period, DES staff made site visits and documented erosional conditions at the Site. *Id.* Staff observed a vertical escarpment,[1] dead marsh grass known as "wrack," a damaged beach walkover, and artificial turf draped over the escarpment. Tr. 100:16–102:7; 105:12–106:14; 139:5–141:4; Joint Exs. 12, 81, 82, 176.

DES witnesses explained how those conditions relate to the statutory beaches inquiry. Matthew Slagel, DES's former Beachfront Section Manager, explained that "nonlittoral vegetation" means ordinary upland vegetation rather than salt-tolerant vegetation. Tr. 82:16–83:11; 105:16–19. Jessica Boynton, DES's Coastal Services Section Manager, testified that if vegetation is not established on the escarpment, the vegetation line lies landward of it. Tr. 714:14–716:6. Boynton further testified that wrack, the escarpment line, and the lack of littoral vegetation were indicators DES used to determine that tidal water periodically inundated the Site. Tr. 706:5–18.

Those indicators were present immediately seaward of Reddy's artificial turf backyard, in the same area where the first wall would later be built. The observed site conditions showed tidal

[1] An escarpment is the vertical cut along the beach face; DES testimony tied the escarpment at the Site to erosive forces from inundation by water. Joint Ex. 95; Tr. 711:22-716:6; 105:2-15.

and wave action reaching the escarpment area landward of the future wall location. Tr. 106:15–16; 139:17–142:16; 874:24–875:19; 879:25–880:9; 892:15–893:11; Joint Exs. 53, 65, 78(a), 78(b), 81, 176. Thus, from the beginning of DES's involvement, the Site contained physical indicators relevant to both elements of the statutory definition of "beaches": periodic inundation by tidal and wave action and the absence of established nonlittoral vegetation. S.C. Code Ann. § 48-39-10(H).

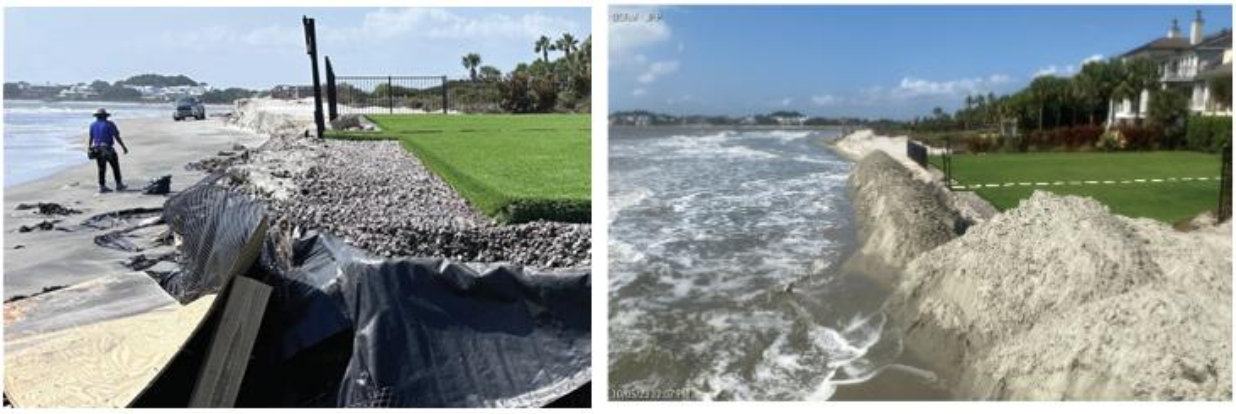
A July 5, 2023 survey commissioned by Mr. Reddy showed the "top of bank," which trial testimony equated with the top of the escarpment, landward of where Mr. Reddy would later build the erosion control structures. Tr. 92:14–23, 93:12–24, 94:2–14; Joint Exs. 50, 54. DES witnesses testified that this showed periodic inundation up to and landward of the future wall location even before later storm exposure. Tr. 93:12–94:14; 95:23–96:5. DES's evidence further showed repeated periodic inundation spanning from May 2023 through October 2024, rather than an isolated event. Tr. 120:2–122:22; 133:4–14; 725:24–726:17; Joint Exs. 50, 65, 78(m), 78(n), 160, 78(r).

In discussions that occurred on September 7, 2023, DES warned Mr. Reddy and BluTide Marine Construction, a firm retained by Mr. Reddy, that any unauthorized beachfront work within State critical areas, including the beach/dune system and beaches, would violate the Act and could result in enforcement and civil penalties. Joint Ex. 14; Tr. 110:4–111:11; 531:18–532:10; Tr. 111:24–113:16. On September 11, 2023, DES staff met with Mr. Reddy onsite to discuss options for erosion control, DES's jurisdictional authority, the location of the setback line for the beach/dune system, and the fact that beaches existed landward of that line. Tr. 111:24–113:16. In a follow-up email memorializing that meeting and in response to Mr. Reddy's expressed intention to place fill material on the beachfront, DES staff explained that the proposed area for fill was then active beach and/or beaches critical area, quoted the regulatory definition of "beaches," stated that

any fill in that area would have to be beach-compatible sand, not clay, and would need DES authorization. Joint Ex. 15. DES specifically told Mr. Reddy and counsel during the September 11 site visit that only beach-compatible material could be placed along the escarpment. Joint Ex. 19. DES later learned that clay had already been placed and then covered with sand. Tr. 113:5–114:1; Joint Exs. 70, 192, 193.

On September 21, 2023, DES issued an emergency order authorizing limited renourishment measures, including sand fencing and native dune planting. Joint Ex. 37; Tr. 121:1–125:17. Despite this authorization, Mr. Reddy did not avail himself of any of the emergency measures available through the emergency order and did not use the authorized options for renourishment, vegetation, or sand fencing. Tr. 122:11–123:3.

In early October 2023, DES staff became aware that non-beach-compatible fill and materials had been placed at and adjacent to the Site in the beaches critical area. Tr. 125:18–128:10; Joint Exs. 11, 19, 97, 65, 123. Photographs depicted clay balls and gravel or rock deposited as marine debris along the beach. Joint Exs. 11, 19, 97, 65, 123. On October 5, 2023, Jacques Prevost, a DES compliance officer, conducted a site inspection and documented the debris. Tr. 273:3–279:12; Joint Exs. 78e, 98, 124, 125.



JOINT EXS. 123 AND 124 [PHOTOGRAPHS SUBMITTED TO SLAGEL ON OCTOBER 3, 2023 AND PREVOST'S OCTOBER 5, 2023 DOCUMENTING NON-BEACH-COMPATIBLE FILL AND MATERIALS AT

AND ADJACENT TO THE SITE, INCLUDING CLAY, GRAVEL OR ROCK, GEOGRID, GEOTEXTILE FABRIC, ARTIFICIAL TURF, AND OTHER DEBRIS. TR. 125:18–128:10; 273:3–279:12; *SEE ALSO* JOINT EX.19.]

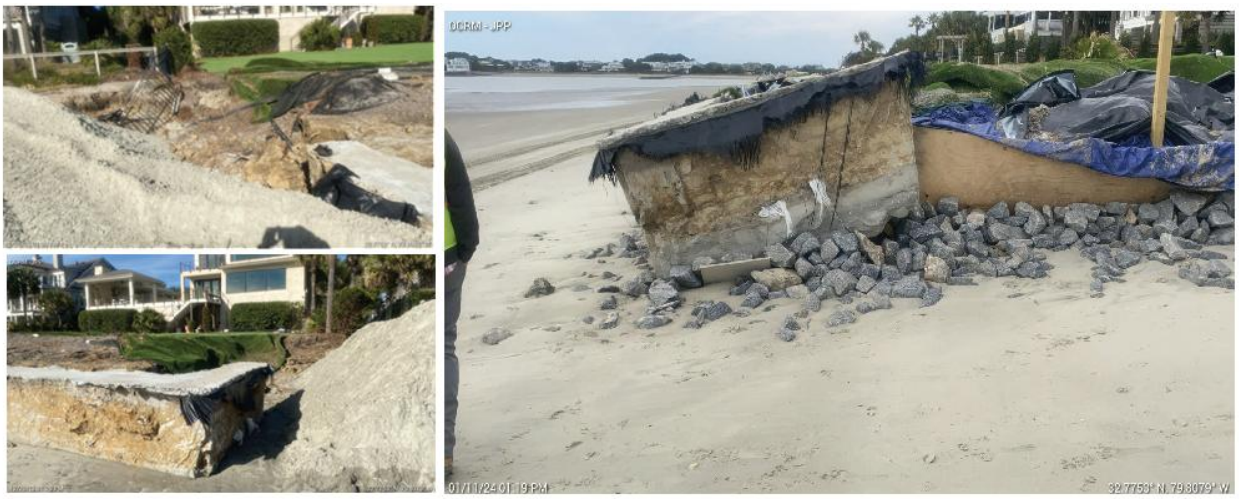
Comparing the October 5 data to September data, Mr. Prevost determined that approximately 1,255 square feet of beaches critical area was covered by unauthorized fill and non-beach-compatible materials. Tr. 273:3–279:12; Joint Ex. 98. On October 6, 2023, he returned and observed that those materials had been covered by sand and that additional sand appeared to have been added seaward of the Site. Tr. 278:13–279:15; Joint Exs. 65, 97, 98, 125, 191, 193.

On October 20, 2023, DES issued a Notice to Comply requiring Mr. Reddy to remove all non-beach-compatible fill, other materials, and marine debris he placed or had placed on active beach and/or beaches critical area. Joint Exs. 4, 20; Tr. 271:22–273:20; 279:18–281:4. DES had authorized limited soft-response measures, not clay, concrete, or a hard erosion control structure. Tr. 121:1–125:17; Joint Ex. 37. DES later discovered non-beach-compatible fill and materials at and adjacent to the Site. Tr. 125:18–128:10; Joint Exs. 19, 97, 123, 124.

The ALC found that Reddy's contractor dug a two-foot by 130-foot trench adjacent to the beach, approximately six feet deep, and filled it with concrete to form a ninety-two-linear-foot-wide, four-foot-tall, two-to-three-foot-deep structure consisting of woven geotextile fabric and wire mesh, with landward-extending wing walls. Order at 8–9. The ALC referred to that first structure as ERC-1. Order at 8 n.24. Instead of the minor renourishment authorized by the emergency order, Mr. Reddy had constructed a substantial hard structure in the critical area without a critical area permit. Joint Ex. 37; Tr. 121:1–125:17; 122:11–125:17.

DES first obtained a clear view of the exposed structure on December 20, 2023, when Prevost observed an approximately ninety-two-linear-foot-wide structure, about four feet tall from beach grade, two to three feet thick, with landward-extending wing walls, geotextile fabric, and other non-beach-compatible materials. Tr. 285:19–288:11; Joint Exs. 100, 101. On December 21,

2023, DES staff again warned Mr. Reddy's agents that DES has jurisdiction over the beach/dune system and beaches critical area under the Act and warned against burying unauthorized materials. Joint Exs. 11, 136. By January 11, 2024, DES inspection photographs and the corresponding inspection report documented the concrete erosion control structure tilting significantly seaward. Joint Exs. 105, 106.

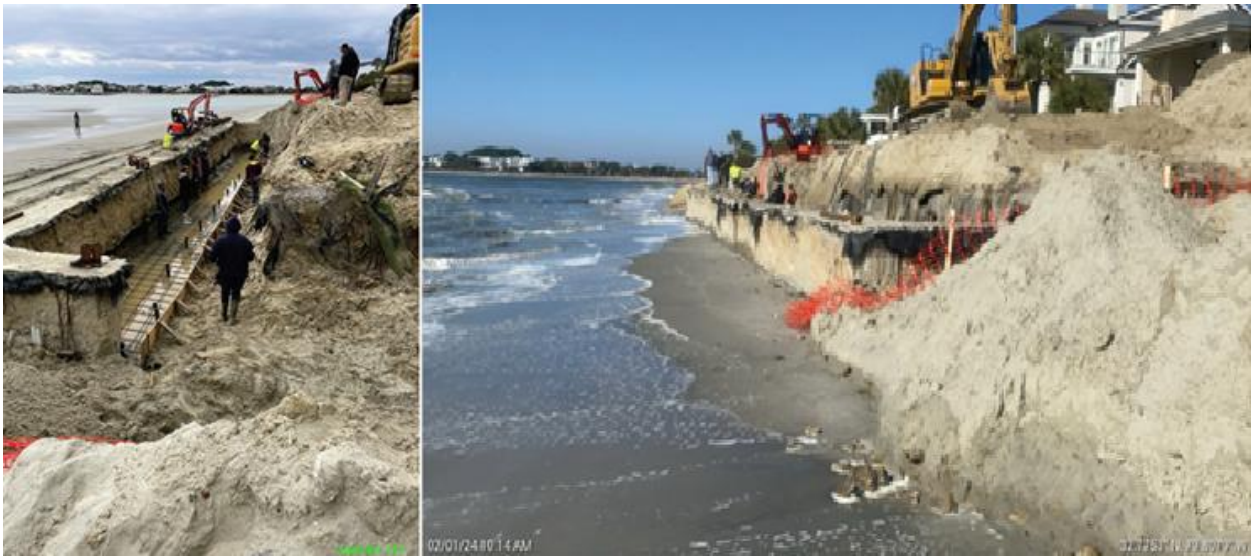


JOINT EXS. 101 AND 106 [DECEMBER 20, 2023 PHOTOGRAPHS SHOWING ERC-1 EXPOSED ON THE BEACH, AND JANUARY 11, 2024 PHOTOGRAPHS SHOWING THE STRUCTURE TILTING OR COLLAPSING SEAWARD DURING CONTINUING SITE DISTURBANCE. SEE TR. 285:19–288:11; 293:15–296:1; *SEE ALSO* JOINT EX. 138.]

By mid-January, ERC-1 had begun to tilt forward and crack. Tr. 1242:21–1243:13. Reddy testified that he hired CNT shortly thereafter to straighten the wall and fix the cracks. Tr. 1243:14–1244:13; see also Joint Ex. 194. Through that work, the ALC found, Reddy augmented ERC-1 and transformed the overall hard structure into a seawall designed to withstand normal wave forces. Order at 11, 31.

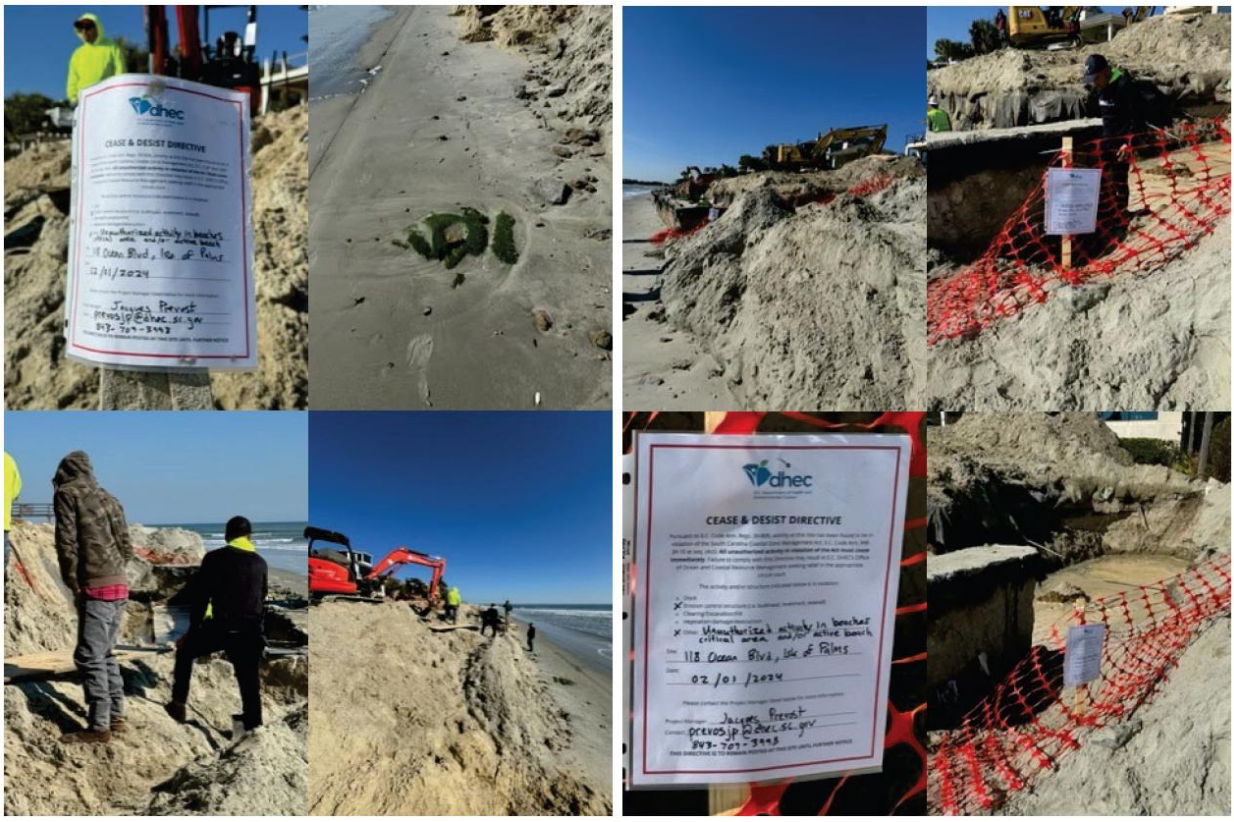
On January 25, 2024, DES issued its first Cease and Desist Directive. Joint Ex. 5; Tr. 301:1–302:25; 317:12–319:25. The directive ordered Mr. Reddy to "immediately cease and desist all work" in violation of the Act. Joint Ex. 5, 11. In early 2024, photographs and inspections documented continued violations. Tr. 312:16–316:22; Joint Exs. 6, 7, 110, 142, 143, 144, 145,

195. On January 31, 2024, the record documented continued installation of metal grid or rebar on the landward side of the structure. Tr. 576:17–577:3; Joint Ex. 141. The next day, Prevost's February 1, 2024 site photographs documented continued unauthorized work, including excavation, rebar, wood forms, supports, and newly poured concrete immediately landward of the structure. Tr. 312:16–318:18; Joint Exs. 110, 142. The photographs also show water at and around the structure while the work continued. Joint Exs. 141, 142.



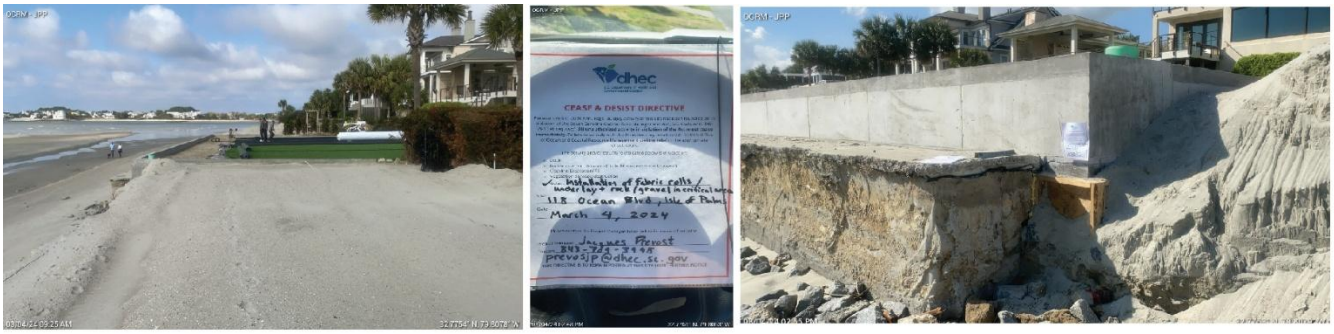
JOINT EXS. 141 AND 142 [JANUARY 31 AND FEBRUARY 1, 2024 IMAGES DOCUMENTING CONTINUED CONSTRUCTION AFTER DES ISSUED THE JANUARY 25 CEASE AND DESIST DIRECTIVE, WITH WATER VISIBLE AT THE SEAWARD FACE OF THE STRUCTURE AND AROUND THE WORK AREA. *SEE ALSO* TR. 576:17–577:3; 312:16–318:18.]

After receiving notice that work had not ceased, DES issued additional Cease and Desist Directives to both Mr. Reddy and CNT. Joint Exs. 6, 7. Subsequent DES inspections documented continued concrete work, non-beach-compatible materials, and marine debris in and around the Site, along the beach from the adjacent property to Breach Inlet. Tr. 323:4–327:7; Joint Exs. 147, 148, 149, 150, 151, 152. Mr. Prevost testified that this material matched debris previously observed on the Site and was not known to originate from any other source, indicating the debris had migrated downdrift of Mr. Reddy's property. Tr. 324:6–327:7.



JOINT EX. 144 [FEBRUARY 7, 2024 CCL MEMBER/STAFF EMAIL CHAIN FORWARDING CONTEMPORANEOUS REPORTS AND PHOTOGRAPHS TO DES REGARDING CONTINUED ACTIVITY AT 118 OCEAN BOULEVARD AFTER DES ISSUED CEASE AND DESIST DIRECTIVES. THE PHOTOGRAPHS SHOW WORKERS AND HEAVY EQUIPMENT AROUND POSTED CEASE AND DESIST PLACARDS, FORMWORK AND REBAR/CONCRETE WORK BEHIND THE EXISTING WALL, AND WATER AT AND AROUND THE STRUCTURE.]

DES issued a third Cease and Desist Directive on March 1, 2024, documenting continued unauthorized activity. Joint Exs. 8, 11.



JOINT EX. 155 [MARCH 4, 2024 DES SITE PHOTOGRAPHS SHOWING THE COMPLETED HARD STRUCTURE, EXPOSED ESCARPMENT, ARTIFICIAL TURF, NON-BEACH-COMPATIBLE ROCK AT THE BASE OF THE WALL, CONTRACTORS NEAR THE STRUCTURE, AND A POSTED CEASE AND DESIST PLACARD.]

Throughout this period, DES site-visit photographs documented dates, times, and GPS coordinates at or adjacent to 118 Ocean Boulevard from December 2023 through March 2024. Joint Exs. 99, 101, 104, 106, 107, 142, 147, 149, 151, 153, 154, 156.

In analyzing whether the Site fell within statutory "beaches" critical area jurisdiction, the ALC set out the governing definition and cited testimony that "active beach is a subset of the beaches critical area." Order at 16–17. The record showed, and the ALC agreed, that stable vegetation was landward of ERC-1, that water reached the property at varying times, and that wrack, saturated sand, and the escarpment all reflected tidal and wave action at the Site. Order at 16–19. In short, the evidence showed repeated inundation and the absence of nonlittoral vegetation over time, not a single transitory event. Order at 16–19; Tr. 120:2–122:22; 133:4–14; 725:24–726:17.

The hard structure also harmed the adjacent public beach and public use of that beach. The ALC found that the structure had an adverse effect on the public interest because it caused or contributed to erosion and scour on the adjacent public beach and impaired lateral public access. Order at 34–35. The record also reflects repeated public complaints concerning ongoing construction and resulting hazards. Joint Exs. 112–118. One such complainant was Doug Truslow, an Isle of Palms resident who walked the beach almost daily. Tr. 467:14–23. Truslow testified that the wall at times prevented him and other members of the public from passing on dry sand, forced them toward dangerous inlet waters, and made the area hazardous underfoot because of debris. Tr. 469:5–470:4; 471:11–17. Cedzo likewise testified that seawalls can contribute to the loss of dry-sand beach and impair public beach access and use, and that Reddy's wall limited CCL members' ability to use the Isle of Palms beach as they normally would for public access, recreation, and enjoyment. CCL Ex. 1 at 69:8–70:5; 84:5–85:17. Having found adverse effects on the public

interest, the ALC ordered removal of the hard structure under S.C. Code Ann. § 48-39-120(C). Order at 34–35, 40.

DES calculated the $289,000 civil penalty using its enforcement worksheet and civil penalty assessment guideline. Joint Exs. 163, 165. The guideline states that OCRM developed the guideline to ensure a "fair, consistent, and appropriate method" for assessing civil penalties and directs enforcement staff to determine the extent of deviation, determine adverse impact to coastal resources, use the penalty matrix, consider adjustment factors where appropriate, calculate economic benefit where appropriate, account for repeat violations where appropriate, and ensure the total does not exceed the statutory maximum. Joint Ex. 165 at BCM Reddy 020186.

The worksheet identified nine violated requirements, including unpermitted alteration of Beaches Critical Area, use of non-beach-compatible materials, unlawful strengthening of the unauthorized erosion control structure, and failure to comply with the January, February, and March 2024 Cease and Desist Directives. Joint Ex. 163 at BCM Reddy 002408–002412. For each listed violation, the worksheet classified both the extent of deviation and adverse impact as "major." *Id.* The guideline's penalty matrix places violations with "major" extent of deviation and "major" adverse impact in the $901-to-$1,000 range. Joint Ex. 165 at BCM Reddy 020192. The worksheet used a 289-day violation period, from approximately September 13, 2023 through June 28, 2024, and applied the statutory maximum of $1,000 per day, resulting in a calculated penalty of $289,000. Joint Ex. 163 at BCM Reddy 002408, 002411–002412. Flake testified that DES followed its uniform enforcement policy and civil penalty assessment guideline, that penalties serve deterrence, and that DES selected the maximum daily rate because of the overall egregiousness of the violations. Tr. 596:20–599:21. She further testified that DES had provided Reddy clear guidance and authorized soft-response measures, yet Reddy disregarded those options

and proceeded with unauthorized hardening, and that this was the first case in her section requiring DES to seek injunctive relief and a temporary restraining order to stop ongoing coastal violations. Tr. 599:19–602:21.

ARGUMENT

This appeal concerns a narrow but consequential legal error. The Administrative Law Court correctly ordered removal of Mr. Reddy's hard structure, but this appeal principally concerns the ALC's refusal to apply the statutory definition of "beaches," determine liability, and uphold the Department's civil penalty. After making findings satisfying the statutory definition of "beaches" in S.C. Code Ann. § 48-39-10(H) and confirming that Mr. Reddy erected and altered the structure without a permit, the ALC declined to draw the legal conclusions those findings require, including that the Site was a critical area under S.C. Code Ann. § 48-39-10(J). It refused to determine whether the Site constituted statutory beaches, declined to find a violation of S.C. Code Ann. § 48-39-130(C), and vacated the Department's civil penalty. This Court should reverse those legal errors, hold that Mr. Reddy violated the Act as a matter of law, and reinstate the Department's $289,000 civil penalty.

The ALC's continued refusal to make the necessary conclusions of law was puzzling because the issue was squarely before it. At the outset of the hearing, the ALC expressly identified the issues before it, including whether DES had authority to enforce the Administrative Order where the critical area of the beach had eroded landward of the beach/dune system. Tr. 66:8–69:3. The remaining issues included whether the penalty and removal remedy were appropriate, Tr. 67:4; 68:19–24, whether the Act's definition of "beaches" was unconstitutionally vague, Tr. 67:4–6, and whether DES violated the Administrative Procedures Act by taking enforcement action based on its interpretation of "beaches," Tr. 67:7–9. Although Reddy also raised a regulatory-taking issue,

the ALC stated that it did not believe it had jurisdiction to decide that issue. Tr. 67:10–15. The parties confirmed those issues matched the issues raised in Reddy's request for contested case hearing. Tr. 68:14–69:3.

Having identified those disputed issues, the ALC was required to make findings and conclusions sufficient to resolve them in its final order. *See* S.C. Code Ann. § 1-23-350 ("A final decision shall include findings of fact and conclusions of law, separately stated."); *Island Packet v. Kittrell*, 365 S.C. 332, 342, 617 S.E.2d 730, 735 (2005) ("[T]he ALC is required to make specific, express findings of fact when faced with an issue in which there is a dispute."); *Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) ("Implicit findings of fact are not sufficient."); *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 21–22, 507 S.E.2d 328, 333 (1998) (administrative findings must be detailed enough for appellate review of whether "the law has been applied properly to those findings"). Instead, after making factual findings satisfying § 48-39-10(H), the ALC declined to conclude whether those findings established statutory "beaches," thereby avoiding the liability determination required by §§ 48-39-10(J) and 48-39-130(C).

I. THE ALC'S FINDINGS ESTABLISH THAT THE SITE IS "BEACHES" AND THAT REDDY VIOLATED THE ACT AS A MATTER OF LAW.

The Administrative Law Court committed legal error by making findings satisfying both prongs of S.C. Code Ann. § 48-39-10(H) and then refusing to determine whether those findings established statutory "beaches." Because beaches are a critical area under S.C. Code Ann. § 48-39-10(J), and because the ALC also found unpermitted construction of a hard structure at that location, the ALC's own findings establish a violation of S.C. Code Ann. § 48-39-130(C) as a matter of law. This issue is reviewed de novo because the ALC made all material factual findings and the remaining question is the legal effect of those findings. S.C. Code Ann. § 1-23-

610(B); *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011); Order at 16-19, 23, 37-40.

A. The statutory definition of "beaches" controls.

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). The statutory inquiry is whether tidal and wave action reaches the land with sufficient recurrence so that nonlittoral vegetation does not establish there. S.C. Code Ann. § 48-39-10(H).

B. The ALC's factual findings satisfy both elements of § 48-39-10(H).

The statutory definition of "beaches" has two elements: periodic inundation by tidal and wave action, and the absence of established nonlittoral vegetation. S.C. Code Ann. § 48-39-10(H). The ALC's factual findings satisfy both.

As to vegetation, Boynton testified that where vegetation is not established on the escarpment, the vegetation line lies landward of it. Tr. 714:14–716:6. She further testified that, in seventeen years working on the South Carolina coast, she could not recall seeing vegetation seaward of an escarpment, and that the erosive forces causing the escarpment "would be the inundation by water." Tr. 714:14–716:6. Jones likewise testified that vegetation is a reliable indicator of the landward limit of the beach on an eroding shoreline, and that even salt-tolerant beach grasses can withstand only so much saltwater flooding. Tr. 873:4–16; 1413:6–24. Consistent with that testimony, the ALC found that stable natural vegetation was considerably landward of ERC-1, that Reddy did not present evidence showing stable natural vegetation seaward of the escarpment or ERC-1, and that "[t]he weight of the evidence did not show any natural vegetation seaward of either structure." Order at 17–18.

The ALC's findings also satisfy the periodic inundation element. Slagel testified that DES did not rely on a single observation; photographs and site visits from May 2023 through September 2023 showed storm impacts, wrack lines, and an escarpment, which were "clear indicators" that inundation had occurred "not just once, but periodically over that time frame." Tr. 119:17–120:22. Boynton likewise testified that "periodic" means occurring repeatedly over time and that storm and hurricane events are included in the analysis because they repeatedly inundate the shoreline. Tr. 774:9–775:6; 775:20–776:5.

The physical evidence confirmed those repeated conditions. Jones testified that Joint Exhibit 53, a June 2023 photograph, showed the top of the scarp, sand lying on the horizontal portion of the property, and wrack on the seaward slope, all signs of periodic inundation. Tr. 892:17–893:3; Joint Ex. 53. Jones also testified that Joint Exhibit 179 showed the wall and the area behind it being periodically inundated, including debris washed into the lawn area. Tr. 891:5–18; Joint Ex. 179.

The ALC itself found that "the evidence established that the land where Reddy constructed ERC-1 and the hard structure has been subject to inundation"; that "the evidence shows water reaching Reddy's property at varying times throughout the Department's investigation"; that wrack and saturated sand at the base and around the wing walls of ERC-1 and the hard structure reflected exposure to tidal and wave action; that both experts agreed wrack suggested tidal and wave action had reached that location; and that the top of bank marked the top of the escarpment, a feature indicating wave and tidal action had reached the area in question. Order at 18–19. The ALC further found that Department photographs showed "an escarpment line and accumulated wrack and/or organic material," which was "evidence which clearly establishes that tidal and wave action reached the hard structure." Order at 20 n.40.

Those findings satisfy both statutory elements. Once applied to § 48-39-10(H), the ALC's findings establish that the Site is statutory "beaches" as a matter of law.

C. The ALC's reliance on baseline and setback concepts did not justify declining to decide statutory beaches status.

The ALC acknowledged that the Act defines "beaches" as lands "subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established," and that this definition "confers permitting jurisdiction." Order at 4 n.6, 17. Yet after making findings showing tidal and wave action, wrack, saturated sand, an escarpment, and the absence of stable natural vegetation seaward of the structures, the ALC declined to apply that definition. It stated that it did "not find it necessary" to determine whether Reddy's structure was located in statutorily defined beaches. Order at 18–19.

The Reconsideration Order confirms that omission was deliberate. The ALC stated that, "because of the disposition of the case," it did "not find it necessary to determine whether Respondent's structure is located in the statutorily defined 'beaches' and thus whether the area where the unpermitted activity occurred was specifically subject to 'periodic inundation.'" Reconsideration Order at 2. The ALC further stated that there was "no need to reconcile whether Respondent violated the Act when he failed to obtain a permit" because the Act separately authorized DES to order removal of erosion control structures having an adverse effect on the public interest. Reconsideration Order at 2–3.

The Act creates separate critical-area categories for "beaches" and the "beach/dune system." S.C. Code Ann. § 48-39-10(J)(3)–(4). The setback line defines the landward extent of the beach/dune system; it does not appear in the statutory definition of beaches. *Compare* S.C. Code Ann. § 48-39-10(H), *with* S.C. Code Ann. § 48-39-10(J)(4). Thus, the ALC's concern about baseline and setback concepts did not relieve it of the obligation to decide whether the Site

independently met the statutory definition of beaches. That omission was legal error. The Act defines beaches in § 48-39-10(H), classifies beaches as a distinct critical area in § 48-39-10(J), and provides that "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. §§ 48-39-10(H), -10(J), -130(C).

Once the ALC made findings satisfying § 48-39-10(H), it was required to apply the statute and decide the resulting issue before it: whether the Site constituted statutory beaches and therefore critical area under § 48-39-10(J), triggering the permit requirement in § 48-39-130(C). That determination was not discretionary.

The ALC's reason for avoiding that determination appears in its discussion of the baseline and setback line. The ALC recognized that the baseline and setback line establish the regulatory boundary for the beach/dune system, and it expressed concern that DES's interpretation of "beaches" would allow permitting jurisdiction to move landward of those lines based on changing shoreline conditions. Order at 28–29. But that concern addresses the beach/dune system, not the separate statutory category of "beaches." The Act uses the setback line to define the beach/dune system; it does not use the setback line to define or limit statutory beaches. S.C. Code Ann. § 48-39-10(H), (J)(3)–(4). Thus, the baseline and setback line did not supply a lawful reason to avoid deciding whether the altered area independently met the statutory definition of beaches.

The statutory structure confirms the point. Beaches are defined by physical conditions: periodic inundation by tidal and wave action and the absence of established nonlittoral vegetation. S.C. Code Ann. § 48-39-10(H). The beach/dune system, by contrast, is defined as the area from the mean high-water mark to the setback line. S.C. Code Ann. § 48-39-10(J)(4). The General Assembly therefore used the setback line expressly when defining the beach/dune system, but not

when defining beaches. S.C. Code Ann. § 48-39-10(H), (J)(3)–(4). If statutory beaches were absorbed into the beach/dune system or cut off at the setback line, the separate definition of "beaches" in § 48-39-10(H) and the separate critical-area category for "beaches" in § 48-39-10(J)(3) would lose independent force. South Carolina law does not permit that construction. *See In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.").

The regulatory concept of "active beach" likewise did not replace the statutory definition. Active beach may corroborate physical conditions showing statutory beaches, but it cannot substitute for the statutory test. The operative inquiry remains the one supplied by § 48-39-10(H): whether the land is subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.

Nor could the ALC add limitations to § 48-39-10(H) that the General Assembly did not include. When statutory text is plain, courts must apply it as written and may not impose another meaning. *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995). Courts likewise may not rewrite clear statutory text or inject limitations absent from the statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 580 (2000). Nothing in § 48-39-10(H) limits "periodic inundation" to a rigid tidal schedule or allows the ALC to avoid the statutory beaches inquiry because removal authority exists elsewhere in the Act.

The ALC's final approach also conflicted with its earlier order denying summary judgment. There, the ALC explained that § 48-39-10(J) establishes "four distinct critical areas," including separate categories for "beaches" and the "beach/dune system," and that the beach/dune system, unlike beaches, is defined by the setback line. Order Denying Mot. for Summ. J. at 9–10. The ALC

further concluded that § 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." *Id.* at 10. The final Order never reconciled its refusal to determine statutory beaches status with that earlier, correct reading of the Act.

Nor did Goodrich's modeling evidence supply a basis to avoid the statutory definition. Goodrich's theory was that periodic inundation should be determined primarily through an elevation-based model rather than through observed physical indicators at the Site. He asserted that the appropriate periodic-inundation analysis should be based on astronomical tides and average wave conditions, while excluding storm surge, tide stacking, and wind waves as episodic or random events. Tr. 1074:23–1075:2; 1076:3–6; 1077:1–4; 1079:5–1080:2; 1141:23–1142:2. Using that approach, Goodrich placed the limit of periodic inundation at approximately 5.5 feet NAVD and concluded that periodic inundation did not reach the wall at the time of construction. Tr. 1079:8–11; 1088:11–1095:8; Joint Ex. 183. He also discounted the vegetation line as an indicator because, in his view, vegetation can be affected by episodic erosion or burial rather than regular flooding. Tr. 1079:12–13; 1108:1–12; 1123:8–12.

The ALC rejected that theory because it did not match actual site conditions. The ALC found that Goodrich's modeled tide-and-wave theory was "not an accurate reflection of conditions depicted, time and again, in the photographic evidence." Order at 16. Jones testified that Goodrich's 5.5-foot NAVD calculation was "too low" and lacked a sufficient evidentiary basis because it excluded observed tides, higher waves, storm impacts, and king tides, all of which were relevant to determining the landward extent of periodic inundation. Tr. 1388:15–1390:18; 1406:15–24; 1408:24–1409:3; 1413:17–23. Having rejected Goodrich's model as inconsistent

with actual site conditions, the ALC could not rely on uncertainty generated by that model to avoid applying § 48-39-10(H).

The Act's treatment of critical-area boundaries confirms the same conclusion. Section 48-39-210(B) recognizes that critical areas are dynamic and that DES does not waive jurisdiction over any critical area "whether shown hereon or not." S.C. Code Ann. § 48-39-210(B). And in *Grant*, the Supreme Court rejected the idea that a claimed limit on agency authority excused deciding whether property met the statutory definition of a critical area. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 356, 461 S.E.2d 388, 392 (1995). Once the ALC found facts satisfying § 48-39-10(H), it was required to decide whether the Site was statutory beaches.

D. Once the Site meets the definition of beaches, the ALC's findings establish a violation of § 48-39-130(C).

Section 48-39-130(C) provides that "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). The ALC's findings establish each element of that violation.

First, the ALC found that Reddy erected and altered a structure. It found that Reddy constructed ERC-1 as a concrete hard structure incorporating woven geotextile fabric and wire mesh. Order at 8–9. It further found that later work augmented ERC-1 and transformed the overall hard structure into a seawall designed to withstand normal wave forces. Order at 11, 31.

Second, the ALC's findings establish that the altered structure was located in a critical area. As shown above, the ALC found facts satisfying the statutory definition of beaches under § 48-39-10(H). Because beaches are expressly included within the Act's definition of "critical area," the Site was necessarily critical area as a matter of law. S.C. Code Ann. § 48-39-10(J).

Third, the ALC found that Reddy acted without a permit. It expressly stated that "there is no dispute between the parties that Reddy constructed a hard structure without first obtaining a permit from the Department." Order at 23.

Taken together, those findings establish all elements of a violation of § 48-39-130(C). No further factual development is required. Section 48-39-130(A) and Regulation 30-2(B) reinforce the same permit-first requirement. Section 48-39-130(A) bars use of a critical area for a new use without a permit, and Regulation 30-2(B) likewise requires a permit before altering a critical area. S.C. Code Ann. § 48-39-130(A); S.C. Code Ann. Regs. 30-2(B) (2011). The February 2, 2024 Cease and Desist Directive invoked both provisions in documenting continued unauthorized work in beaches critical area and/or active beach. Joint Ex. 6. Those authorities do not create a separate theory of liability; they confirm the same statutory regime requiring Department authorization before critical area alteration.

E. The ALC's no-violation conclusion cannot be reconciled with its own findings.

Despite its findings, the ALC declined to find a violation. Order at 37–38. That conclusion cannot be reconciled with the rest of the Order. The ALC found that Reddy constructed a hard structure without first obtaining a permit, that the structure was on the active beach, that the structure was subject to inundation, and that the evidence showed tidal and wave action reached the hard structure. Order at 18–20 & n.40, 23, 33–34. The ALC also recognized testimony that active beach is "a subset of the beaches critical area." Order at 17.

The ALC nevertheless stated that it "need not consider these issues because the Department, and thus this Court, has the authority to order the removal of hard structures in the coastal zone whether or not they are in the beaches critical area or landward of the setback line." Order at 40. CCL does not challenge the ALC's authority to order removal under § 48-39-120(C).

To the contrary, that remedy should be affirmed. The error is that the ALC treated removal authority as a substitute for the separate classification-and-liability analysis required by §§ 48-39-10(H), -10(J), and -130(C).

Removal authority and permit liability are not interchangeable. Removal addresses what DES may require when a harmful erosion control structure exists; permit liability addresses whether a person violated the Act by altering critical area without prior authorization. Section 48-39-120(C) authorizes DES to remove erosion control structures that adversely affect the public interest. S.C. Code Ann. § 48-39-120(C). Section 48-39-130(C), by contrast, separately prohibits a person from filling, removing, dredging, draining, erecting a structure on, or otherwise altering a critical area without first obtaining a Department permit. S.C. Code Ann. § 48-39-130(C). Because the ALC found facts bearing on both inquiries, it could affirm removal while still being required to decide the separate statutory question of violation. The ALC could not use the former to avoid the latter.

That conclusion follows from ordinary statutory construction principles. Statutes must be read as a whole, and provisions within the same statutory scheme must be construed together and given effect. *Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 127 (2008) (construing retirement statutes together and rejecting a reading that would defeat the Legislature's intended cap on unused-leave compensation). Here, §§ 48-39-120(C) and 48-39-130(C) can readily be read together: one authorizes removal of harmful erosion control structures; the other imposes a permit requirement for critical-area alteration. Reading § 48-39-120(C) to make the permit-liability inquiry unnecessary would deprive § 48-39-130(C) of independent effect whenever DES also seeks removal.

Sierra Club reflects the same principle. There, the Supreme Court rejected a regulatory shortcut under which compliance with one set of performance-based requirements would effectively excuse noncompliance with separate technical requirements. *Sierra Club v. S.C. Dep't of Health & Env't Control*, 426 S.C. 236, 255–56, 826 S.E.2d 595, 606 (2019) (holding that result-based compliance could be relevant to, but could not excuse, compliance with separate technical requirements). The Court explained that related provisions must be read together, but separate requirements may not be ignored merely because another provision has been satisfied; otherwise, the separate requirements would become "unnecessary and superfluous." *Id; see also State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (holding that statutes must be construed so that no provision is rendered surplusage or superfluous). The same reasoning applies here. The ALC could rely on § 48-39-120(C) to order removal, but it could not use that remedial authority to bypass the separate classification-and-liability analysis required by §§ 48-39-10(H), -10(J), and -130(C).

The Supreme Court's decision in *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control* reinforces that point in the coastal context. There, the Court reversed the ALC for accepting a "narrow, formulaic interpretation" that avoided the Act's critical-area analysis even though the record showed the critical area would be impacted. *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, 434 S.C. 1, 12–13, 862 S.E.2d 72, 78 (2021) (holding that the ALC erred in declining to apply § 48-39-30(D)'s critical-area analysis where the project would affect critical area). Here, the ALC committed the same type of legal error. After finding facts showing that tidal and wave action reached the hard structure, that the structure was on the active beach,

and that Reddy lacked a permit, the ALC could not avoid the Act's classification-and-liability analysis by relying on a different remedial provision.

The same result follows from the administrative law requirement that an order show the law was properly applied to the facts found. *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 21–22, 507 S.E.2d 328, 333 (1998) (holding that administrative findings must be detailed enough to allow review of whether the evidence supports the findings and whether "the law has been applied properly to those findings"); *Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) (holding that implicit findings and general conclusions are insufficient where they leave the reviewing court unable to address the issues). Courts do not accept an administrative decision at face value when the decision does not explain how the legal conclusion follows from the facts found. *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 338 S.C. 92, 96–97, 525 S.E.2d 863, 865–66 (1999) (reversing where the agency's orders lacked explanation and left the reasons underlying the decision to speculation). Here, the problem is not an absence of factual findings. The problem is that the ALC's no-violation conclusion contradicts the legal effect of its own findings under the Act.

The Reconsideration Order confirms the error. The ALC stated that there was no need to reconcile whether Reddy violated the Act by failing to obtain a permit because "[t]he Act ultimately authorizes the Department to order the removal of all erosion control structures . . . which have an adverse effect on the public interest." Reconsideration Order at 2–3. But the existence of removal authority did not eliminate the separate liability question. Because the ALC's no-violation ruling conflicts with its own findings and rests on an erroneous substitution of remedy for liability, that ruling should be reversed.

F. The error was the failure to apply the statute to a complete factual record and its findings permit only one legal conclusion.

The ALC's error was not a lack of evidence or a failure to make factual findings. It was the failure to apply the governing statutes to the facts it found. The ALC made findings addressing inundation, vegetation, location, construction, materials, permitting status, and the effect of the hard structure on the public beach. Order at 17–23, 31, 34–35. It identified no evidentiary gap requiring further proceedings. The omitted step was legal: applying S.C. Code Ann. §§ 48-39-10(H), -10(J), and -130(C) to those findings.

The APA authorizes this Court to correct that legal error. This Court may reverse or modify an ALC decision that is "in violation of constitutional or statutory provisions" or "affected by other error of law." S.C. Code Ann. § 1-23-610(B)(a), (d). Statutory interpretation is a question of law reviewed without deference to the ALC. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (holding that questions of statutory interpretation are legal questions appellate courts decide "without any deference to the court below"). Likewise, when an appeal from the ALC raises a legal question, the reviewing court may reverse if the decision violates a statutory provision or is affected by legal error. *Torrence v. S.C. Dep't of Corr.*, 433 S.C. 633, 642–43, 861 S.E.2d 36, 41 (Ct. App. 2021) (applying § 1-23-610(B) and recognizing that statutory interpretation is a question of law).

Sierra Club confirms the distinction between a missing ruling that may require remand and a completed factual record that presents a legal-application issue. In the first appeal, the Court of Appeals remanded because the ALC had not issued a specific ruling on preserved regulatory issues, leaving the appellate court unable to determine whether the ALC erred. *Sierra Club v. S.C. Dep't of Health & Env't Control*, 387 S.C. 424, 435–39, 693 S.E.2d 13, 19–21 (Ct. App. 2010) (remanding for the ALC to apply its factual findings to unaddressed technical requirements). After

remand, however, the Supreme Court accepted the ALC's fixed factual findings and reviewed the ALC's application of the governing regulations under § 1-23-610(B)(d), explaining that regulatory construction is a question of law reviewed de novo. *Sierra Club v. S.C. Dep't of Health & Env't Control*, 426 S.C. 236, 247, 826 S.E.2d 595, 601 (2019) (reviewing application of governing regulations to fixed factual findings as an error-of-law question). This case falls on the latter side of that line. The ALC made the material findings and identified no need for additional evidence; it simply declined to apply the statutory beaches, critical-area, and permit-liability provisions to those findings.

The Supreme Court's coastal-zone precedent confirms that an ALC commits legal error when it avoids a required critical-area analysis triggered by the record. In *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, the Court reversed where the ALC accepted a "narrow, formulaic interpretation" that avoided the Act's critical-area analysis even though the record showed the project would affect critical area. 434 S.C. 1, 5, 12–13, 862 S.E.2d 72, 74, 78 (2021) (holding that the ALC erred in declining to apply § 48-39-30(D)'s critical-area analysis). The same principle applies here. Once the ALC found facts satisfying § 48-39-10(H), found unpermitted construction, and recognized the structure's location on the active beach, the remaining issue was not whether more evidence was needed. It was whether the Act's legal consequences followed from those findings.

Where the evidence gives rise to only one reasonable inference, the question becomes one of law for the court. *Kinsey v. Champion Am. Serv. Ctr.*, 268 S.C. 177, 181–82, 232 S.E.2d 720, 722 (1977) (holding that, although the administrative body is the factfinder, a single reasonable inference presents a legal question for the courts). That rule applies here. The ALC found facts establishing periodic inundation and the absence of natural vegetation seaward of the structures; it

found that Reddy constructed and altered a hard structure; and it found that he did so without first obtaining a permit. Order at 17–23, 31. Once those findings are applied to the Act, only one legal conclusion follows: the Site met the statutory definition of "beaches," beaches are critical area, and Reddy violated § 48-39-130(C).

This is not a request for the Court to reweigh evidence or make new factual findings. It is a request for the Court to correct the ALC's legal error by applying the statutes to the findings the ALC already made. Because the ALC's own findings establish that the Site constituted beaches critical area and that Reddy constructed and altered a hard structure there without a permit, this Court should affirm the order requiring removal of Reddy's hard structure, hold that Reddy violated S.C. Code Ann. § 48-39-130(C) as a matter of law, and reverse the ALC's contrary no-violation ruling.

II. THE ALC ERRED IN VACATING THE CIVIL PENALTY, AND THIS COURT SHOULD REINSTATE THE $289,000 PENALTY WITHOUT REMAND.

The ALC erred when it vacated the Department's $289,000 civil penalty. That ruling matters to CCL because the penalty serves an interest broader than removal of the structure itself. CCL's mission includes protecting South Carolina's coastal resources from unlawful alteration, and the record shows that Reddy's hard structure impaired ordinary beach passage, affected the adjacent public beach, and diminished the public's use and enjoyment of the shoreline, including by CCL members. Cedzo testified that "[s]eawalls can contribute to the loss of the dry sand beach which in turn impacts the ability for folks to access and utilize the beach." CCL Ex. 1 at 69:8–15. She further testified that CCL members use or recreate on the Isle of Palms beach where Reddy's wall is located and that the wall limited their "ability to utilize the beach as they normally would through public access, recreation, enjoyment of the resource." CCL Ex. 1 at 85:5–17. The ALC likewise found that the hard structure adversely affected the public interest by causing or

contributing to erosion and scour on the adjacent public beach and impairing lateral public access. Order at 34–35.

Removal addresses the existing obstruction; a civil penalty serves the separate statutory purpose of deterring future unpermitted hardening in the Beaches Critical Area and preserving the Act's permit-first regime, which protects fragile coastal resources before unauthorized damage occurs. The Department supported its assessment with an enforcement worksheet and testimony explaining the calculation. Joint Ex. 163; Tr. 596:20–602:21. The ALC did not identify any defect in the Department's penalty methodology, violation period, daily rate, worksheet classifications, gravity analysis, or arithmetic. Instead, it declined to determine liability under the Act and then treated that omission, together with perceived ambiguity, perceived unfairness, its assessment of Reddy's conduct, and the fact that removal had been ordered, as reasons not to uphold the Department's assessment under S.C. Code Ann. § 48-39-170(C). That was legal error. Once the antecedent liability error is corrected, none of the ALC's stated rationales supports vacatur of the assessment on this record.

A. The ALC vacated the penalty because it declined to determine liability, not because it found any defect in the Department's assessment.

Section 48-39-170(C) provides that a violator "shall be liable for, and may be assessed by the department for, a civil penalty" of not less than one hundred dollars nor more than one thousand dollars per day of violation. S.C. Code Ann. § 48-39-170(C) (emphasis added). Under the statute, a violation is the antecedent event that triggers exposure to civil penalties.

The ALC concluded that "it is questionable whether the penalty provisions apply" because it had "not found" that Reddy violated a permit, regulation, standard, or requirement under the Act. Order at 37–38. It further stated that, even if it assumed a violation, the Department's

"assessment of a $289,000 penalty is not appropriate under the facts of this case." Order at 38. That reasoning was erroneous.

The ALC did not analyze and reject the Department's penalty assessment on its own terms. It did not reject the 289-day violation period, the $1,000 daily rate, the worksheet's identification of violated requirements, the worksheet classifications, the Department's gravity findings, or the arithmetic. Instead, it declined to reach liability and then used the absence of a liability finding to vacate the penalty. Once that antecedent legal error is corrected, the principal rationale the ALC gave for vacating the assessment falls away.

The Reconsideration Order confirms the same error. The ALC reiterated that there was no need to reconcile whether Reddy violated the Act because the Act authorized removal of the structure, and then adhered to its view that the Department's "assessment of a $289,000 penalty is not appropriate under the facts of this case." Reconsideration Order at 2–3. Thus, the ALC stopped its analysis after selecting a remedy under § 48-39-120(C), without reaching the separate liability determination required by §§ 48-39-10(H), -10(J), and -130(C). That short-circuiting allowed Reddy to avoid the statutory consequences that flow from a violation, including application of the civil penalty provision.

B. Section 48-39-170(C) does not require bad faith, concealment, or willfulness.

The ALC imposed prerequisites to imposing a penalty that are not provided for in the statute. Section 48-39-170(C) does not condition civil penalty liability on bad faith, concealment, or willfulness. South Carolina courts may not read extra conditions into an environmental penalty statute that the General Assembly did not include. In *Midlands Util., Inc. v. S.C. Dep't of Health & Envtl. Control*, the Supreme Court held, in construing a parallel environmental penalty provision, that the statute "does not make a showing of harm a prerequisite to liability" and that

the circuit court "erroneously read into" the penalty provision "a condition which is not there." *Midlands*, 298 S.C. 66, 71, 378 S.E.2d 256, 259 (1989).

The same principle applies here. Section 48-39-170(C) authorizes civil penalties when a person is in violation of the Act. It does not make deceptive intent, concealment, or willfulness a threshold prerequisite to liability, and the ALC could not impose additional conditions absent from the statute. The ALC therefore erred to the extent it treated the absence of deceptive conduct, concealment, or willfulness as a basis to vacate the Department's assessment altogether. Those considerations, if relevant at all, bear only on whether the amount assessed is appropriate under the circumstances. They do not create a threshold bar to civil penalty liability under § 48-39-170(C).

That conclusion is consistent with South Carolina environmental penalty law. In the later *Midlands Utility* decision, the Court of Appeals held that "[t]he assessment of a civil penalty for violation of an environmental statute is committed to the informed discretion of the circuit court" and that, in exercising that discretion, the court should give effect to "the major purpose of a civil penalty—deterrence." *Midlands Util., Inc. v. S.C. Dep't of Health & Envtl. Control*, 313 S.C. 210, 212, 437 S.E.2d 120, 121 (Ct. App. 1993). The Court further explained that "each fine must be analyzed individually to determine if it is appropriate under the circumstances." *Id.* That framework confirms the relevant distinction: facts bearing on culpability may inform the appropriateness or amount of a civil penalty, but they do not rewrite the statute by adding threshold elements the General Assembly did not impose.

C. The ALC's ambiguity, fairness, and prior-practice rationale does not support vacatur.

The ALC alternatively reasoned that Reddy's contrary inference about the Department's jurisdiction was understandable and that the Department's $289,000 assessment did not "appear

to be fair." Order at 38. That rationale does not support vacatur on this record. Whatever Reddy later claimed about the Department's jurisdiction, he and his representatives received repeated, direct, and specific notice of the Department's position before and during the relevant conduct.

On September 7, 2023, the Department warned BluTide and Reddy that unauthorized work within the State's critical areas, including the beach/dune system and beaches, would violate the Act and could result in enforcement and civil penalties. Joint Ex. 14; Tr. 110:4–111:11; 531:18–532:10. On September 11, 2023, after an onsite meeting with Reddy, his representatives, and contractors, Department staff explained in writing that the beach/dune system extends to the setback line, but that the beach/dune system is only one of four critical areas under the Act. Joint Ex. 15; Tr. 111:24–113:16. Department staff further explained that, based on then-existing site conditions, the proposed fill area was "currently active beach and/or beaches critical area," and that because of the lack of vegetation in that area, any fill would have to be beach-compatible sand and properly authorized by the Department. Joint Ex. 15; Tr. 111:24–113:16.

That notice continued. Reddy received multiple notices to comply and notices of violation. Joint Exs. 20, 127. On December 11, 2023, Department staff met with Reddy's representatives, explained the statutory definition of beaches under S.C. Code Ann. § 48-39-10(H), and documented that Reddy's representatives stated they needed to reconvene with their client in light of their "new understanding" of OCRM's position that 118 Ocean Boulevard contained backfilled beaches critical area with unauthorized non-beach-compatible materials. Joint Ex. 133.

On this record, the ALC's generalized fairness rationale cannot support vacating the penalty. Even if Reddy disputed the Department's interpretation, he was repeatedly told what the Department's position was, why the Department regarded the area as beaches critical area, what materials were allowed, what authorization was required, and what consequences could follow

from unauthorized work. A party with that level of actual notice cannot avoid civil penalties by recasting a concrete enforcement dispute as abstract regulatory ambiguity.[2]

Midlands Utility confirms the point. There, the Supreme Court reversed a circuit court order setting aside environmental penalties and rejected the respondent's argument that DHEC was estopped from imposing penalties where the respondent had been notified several times that enforcement action was contemplated and failed to show lack of knowledge or detrimental reliance. *Midlands Util., Inc. v. S.C. Dep't of Health & Env't Control*, 298 S.C. 66, 71–72, 378 S.E.2d 256, 259 (1989). The Court also rejected the circuit court's attempt to read an additional prerequisite into the penalty statute, explaining that the statute did "not make a showing of harm a prerequisite to liability" and that the circuit court erred by reading into the statute "a condition which is not there." *Midlands Util*., 298 S.C. at 71, 378 S.E.2d at 259. The same principles apply here. Reddy had repeated actual notice, and § 48-39-170(C) does not permit the ALC to replace the statutory penalty inquiry with an uncabined fairness judgment.

[2] The Ocean Club and Piping Plover matters arose only because Reddy argued the Department treated him unfairly compared to other enforcement matters, including by imposing a harsher penalty than in Piping Plover and failing to show comparable fines. Order at 35–36. The Department responded that Piping Plover was materially different because it involved activity in a standard erosion zone, no public access issue, and cooperative homeowners, while this case involved an unstabilized inlet erosion zone, public access impacts, and repeated noncompliance after notice. Order at 35–36; Tr. 260:11–261:10; 468:13–25; 469:5–470:1. The Department further explained that Ocean Club undermined Reddy's disparate-treatment theory because DES assessed a far higher penalty against the Ocean Club condominium for unpermitted critical-area construction after Ocean Club had "heightened awareness" of DES jurisdiction. Order at 36; Tr. 597:8–24; 598:18–23; 605:13. The ALC ultimately stated that Ocean Club and Piping Plover were "not instructive," reasoning that there was no evidence the activity in those matters occurred landward of the setback line and that Piping Plover was handled by DES's Bureau of Water under a different penalty process. Order at 38–39. Those comparator matters therefore do not support vacatur. The Department's authority to assess a civil penalty comes from § 48-39-170(C), and the propriety of the assessment turns on the statutory violation, the Department's worksheet, and the record in this case, not on distinguishable enforcement matters the ALC itself found not instructive.

Nor did the ALC make findings that would support a reliance-based vacatur. The Order did not find that the Department authorized Reddy to construct or augment a hard structure in beaches critical area without a permit. It did not find that the Department approved non-beach-compatible fill in that area. And it did not find that the Department withdrew its September 2023 warnings before Reddy proceeded with the work that gave rise to the enforcement action. The record instead shows repeated notice, continued work, and escalating enforcement. Joint Exs. 14, 15, 20, 127, 133.

Finally, the civil penalty serves a deterrent function distinct from removal. In the later *Midlands Utility* penalty appeal, the Court of Appeals explained that, in assessing environmental civil penalties, the court should give effect to "the major purpose of a civil penalty—deterrence." *Midlands Util., Inc. v. S.C. Dep't of Health & Env't Control*, 313 S.C. 210, 212, 437 S.E.2d 120, 121 (Ct. App. 1993). Vacating the assessment based on perceived unfairness, despite repeated notice and an unrejected Department calculation, undermines that deterrent function and the Act's permit-first regime.

D. The ALC's rationale for discounting the Department's penalty evidence cannot be reconciled with the record.

Even if culpability-related facts may bear on the amount assessed, the ALC's rationale for discounting the Department's penalty evidence cannot be reconciled with the record. The ALC reasoned that the Department had not presented personal observations of nighttime work or of Mr. Reddy placing sand atop the hard structure, and it further characterized Mr. Reddy as "responsive to the Department," relying in part on his responses to cease and desist directives and the nonexecution of the September 21, 2023 Emergency Order. Order at 38. That rationale is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record.

The record showed continued unauthorized work after the January 25, 2024 Cease and Desist Directive. Mr. Prevost testified that the first directive ordered Mr. Reddy to cease all work violating the Act in the beaches critical area, including activity involving the ninety-two-linear-foot erosion control structure, metal screw piles on the seaward side of the structure, and scattered clay and riprap debris. Joint Ex. 5; Tr. 301:19–302:17. When Mr. Prevost returned on January 29, 2024, he observed contractors actively working at the Site, with heavy machinery on the beach, a large excavator staged landward of the structure, metal screw piles being installed on the landward side of the structure, and a large excavation area behind the wall. Joint Ex. 108; Tr. 302:18–304:21. The January 29 inspection report separately documented continued active work, including metal pile installation on the landward side of the structure and a large excavation area landward of the wall. Joint Ex. 108 at BCM Reddy 000935.

That same day, Ms. Phelan, counsel for DES, notified Mr. Reddy's representatives that the January 25 directive "is not being complied with," reported continued work with heavy equipment and metal poles in the critical area, and relayed that onsite workers refused to identify themselves or explain the work. Joint Ex. 22. Mr. Reddy's representatives replied the next day that the work had been "necessary to secure the retention wall," asserted it was "complete," and declined to identify the workers who had been onsite. *Id.*

The later record showed the same pattern. The February 2, 2024 Cease and Desist Directive states that after the January 25 directive, Department staff inspected again on February 1 and confirmed continued unauthorized activities, including excavation of the beaches critical area and/or active beach, installation of rebar, wood forms and supports, and newly poured concrete immediately landward of the unauthorized erosion control structure. Joint Ex. 6 at BCM Reddy 000166; Tr. 316:23–318:18. The March 1, 2024 Cease and Desist Directive then states that, despite

the prior January 25 and February 2 directives, staff again confirmed on February 29 that unauthorized activities continued, including installation of fabric rolls and underlay and rock or gravel landward of the erosion control structure in the beaches critical area. Joint Ex. 8 at BCM Reddy 000170; Joint Ex. 154 at BCM Reddy 001024, 001051; Tr. 327:1–329:3. Responses from Mr. Reddy or his representatives could not establish compliance in the face of this record.

The record also contained evidence refuting the ALC's characterization of Mr. Reddy as merely responsive. Ms. Flake testified from Joint Exhibit 195 that on January 26, 2024, Mr. Reddy texted Travis Bedson: "given the OCRM cease and desist order, please make sure they don't talk to anyone on the beach and if anyone from OCRM shows up, ask them to notify you, and pl call me." Joint Ex. 195; Tr. 573:20–574:10. She further testified that on January 31, 2024, Mr. Reddy texted that OCRM would inspect "what we are doing tomorrow" and that it was "best to keep any materials, etc[.] on or inside wall. People working is fine." Joint Ex. 195; Tr. 574:24–575:8. That evidence materially undermines the ALC's "responsive" characterization.

Although the ALC emphasized the absence of "personal observations" of nighttime work, the record still contained evidence of evening work and sand atop new concrete. Ms. Flake testified that at 9:12 p.m. on January 31, 2024, Mr. Reddy texted: "Travis, ur guys probably need to call it a day. There's a noise ordinance that goes into place and the cops will show up here," followed by "Not worth the battle at this point." Joint Ex. 195; Tr. 575:9–25. She also testified that DES received reports and photographs on January 31 showing that Mr. Reddy was "now placing rebar and pouring concrete behind the existing illegal wall." Joint Ex. 88; Tr. 575:18–577:3. Mr. Prevost later read into the record the accompanying text reflected in Joint Exhibit 195: "This is the top of the pour from yesterday. You can see all the sand on top of the new concrete where the waves are crashing over the wall." Joint Ex. 195; Tr. 444:24–445:10. Joint Exhibit 199 contains the

corresponding photographs and repeats that same text, including the statement that there was "all the sand on top of the new concrete where the waves are crashing over the wall." Joint Ex. 199 at REDDY_00377–00381; Tr. 447:1–448:8. Even without a Department eyewitness account of every minute of nighttime work, the record contained evidence of evening work, continued pouring activity, and sand atop newly poured concrete.

The Emergency Order point likewise does not carry the weight the ALC assigned to it. Even if the September 21, 2023 Emergency Order never became effective because it was not signed and returned, that does not negate the later penalty record. The Department offered lawful soft-response options and advised the Reddys and BluTide that they could pursue minor renourishment, sand fencing, and vegetation. Joint Exs. 15, 17, 37, 121; Tr. 121:1–125:17. Instead, the later record showed that Mr. Reddy proceeded with an unpermitted hard structure and then continued unauthorized work after repeated directives to stop. Joint Exs. 5, 6, 8; Tr. 301:19–302:17; 316:23–318:18; 327:1–329:3. The nonexecution of that earlier order does not convert the later record of ongoing noncompliance into responsiveness.

E. Removal and restoration do not displace civil penalties.

The ALC further reasoned that although the hard structure's impact on the coastal zone was significant, the ordered removal and restoration would eliminate that impact and therefore made the penalty inappropriate. Order at 39. That rationale is legally insufficient. Removal and restoration serve a different function from civil penalties. Removal addresses the physical consequences of the violation. Civil penalties serve deterrence and enforce the Act's permit-first regime. The availability or necessity of one remedy does not obviate the need for the other.

That distinction is especially important here. The ALC found that Mr. Reddy installed the structure without Department review, thereby depriving the Department of the opportunity to

evaluate less harmful alternatives before the hardening occurred. Order at 39. If Mr. Reddy may flout agency directives yet avoid penalties so long as a tribunal later orders removal, the Act's permit requirement would be reduced from a prerequisite to a litigable option. South Carolina environmental penalty law points the other way. *Midlands Utility, Inc. v. S.C. Dep't of Health & Env't Control*, 313 S.C. 210, 212, 437 S.E.2d 120, 121 (Ct. App. 1993) ("The assessment of a civil penalty for violation of an environmental statute is committed to the informed discretion of the circuit court; in exercising this discretion, the court should give effect to the major purpose of a civil penalty—deterrence.").

That result would also conflict with the Act's stated policies. The General Assembly found that hard erosion control devices "have not proven effective," have increased the vulnerability of beachfront property to damage from wind and waves, and have contributed to the deterioration and loss of the dry-sand beach. S.C. Code Ann. § 48-39-250(5). It further declared the policy of South Carolina to "severely restrict the use of hard erosion control devices," to "encourage the use of erosion-inhibiting techniques which do not adversely impact the long-term well-being of the beach/dune system," to "promote carefully planned nourishment," and to "preserve existing public access and promote the enhancement of public access." *Id.* § 48-39-260(3)–(6). Those policies confirm why later-ordered removal cannot substitute for the statutory consequences of building first in a critical coastal area.

More broadly, the Act reflects the General Assembly's judgment that the coastal zone is ecologically fragile, vulnerable to destruction by human alteration, and subject to advance environmental safeguards for construction in critical areas. *See* S.C. Code Ann. §§ 48-39-20(D)–(F), 48-39-30(B)(1). The permitting requirement is not merely procedural. It is the mechanism by which the Department evaluates proposed alterations before they occur in a dynamic coastal

area. *See* S.C. Code Ann. §§ 48-39-130(A), -130(C), -150(A), -210(A). The ALC itself found that once Mr. Reddy built first, the Department lost the opportunity to evaluate whether softer, less harmful alternatives could have avoided the public harms the ALC later found. Order at 39. That lost preconstruction review matters because § 48-39-150 requires the Department to evaluate, before alteration occurs, effects on public access, the comparative benefits of preservation, unavoidable adverse environmental impacts, and whether all feasible safeguards have been taken. S.C. Code Ann. § 48-39-150(A)(5), (7)–(9). Those same findings show why later-ordered removal cannot substitute for the statutory consequences of violating the permit-first regime.

F. The Department's assessment had a structured, unrejected basis in the worksheet and testimony.

The Department's assessment was not ad hoc. It was supported by the Department's civil penalty assessment guideline, the penalty calculation worksheet, and Ms. Flake's testimony explaining the calculation. Joint Exs. 163, 165; Tr. 596:20–602:21. The guideline was developed to ensure a "fair, consistent, and appropriate method" for assessing civil penalties, and it directs enforcement staff to determine the extent of deviation, determine the adverse impact to coastal resources, use the penalty matrix, apply adjustment factors where appropriate, calculate economic benefit where appropriate, account for repeat violations where appropriate, and ensure the total does not exceed the statutory maximum. Joint Ex. 165 at BCM Reddy 020186. The ALC did not identify any methodological flaw in that assessment.

The worksheet supplied a structured gravity analysis supporting the amount. It identified nine violated requirements, including unpermitted alteration of Beaches Critical Area, use of non-beach-compatible materials, unlawful strengthening of the unauthorized erosion control structure, and failure to comply with the January, February, and March 2024 Cease and Desist Directives. Joint Ex. 163 at BCM Reddy 002408–002412. For each listed violation, the worksheet classified

both the extent of deviation and adverse impact as "major." *Id.* The guideline's penalty matrix places violations with "major" extent of deviation and "major" adverse impact in the $901-to-$1,000 range. Joint Ex. 165 at BCM Reddy 020192. The worksheet then used a 289-day violation period, from approximately September 13, 2023 through June 28, 2024, and applied the statutory maximum of $1,000 per day, resulting in a calculated penalty of $289,000. Joint Ex. 163 at BCM Reddy 002408, 002411–002412.

The worksheet also explained why the violations were treated as major. For the unpermitted critical-area alteration, the worksheet stated that Reddy altered Beaches Critical Area by installing numerous non-beach-compatible materials, operating heavy machinery, and excavating substantial substrate without a Department permit. Joint Ex. 163 at BCM Reddy 002408. For the strengthening violation, the worksheet stated that Reddy strengthened the unauthorized concrete erosion control structure using metal screw piles, steel mending plates and associated bolts, and spray foam. Joint Ex. 163 at BCM Reddy 002410. For each Cease and Desist Directive violation, the worksheet stated that Reddy failed to follow the directive and classified the violation as major because he failed to implement a substantial portion of the applicable requirement and altered critical area in a manner otherwise prohibited by regulation. Joint Ex. 163 at BCM Reddy 002410–002411. For the multi-day component, the worksheet stated that a contractor invoice documented unauthorized alterations beginning on or before September 13, 2023, and that staff continued to observe non-beach-compatible fill materials in the Beaches Critical Area because Reddy had failed to remove the unauthorized materials. Joint Ex. 163 at BCM Reddy 002411.

Ms. Flake's testimony likewise supported the amount. She testified that the Department used its uniform enforcement policy and civil penalty assessment guideline, that penalties are

intended to deter future noncompliance, and that the Department selected the maximum daily rate because of the overall egregiousness of Reddy's conduct. Tr. 596:20–599:21. She further testified that the Department had provided clear guidance and authorized soft alternatives, yet Reddy proceeded with unauthorized hardening, and that this was the first time her section had to seek injunctive relief and a temporary restraining order to halt ongoing coastal violations. Tr. 599:19–602:21. She also testified that the Department did not include the continuing $1,000-per-day component that would have made the total much higher by the time of trial. Tr. 597:8–24.

The ALC's findings reinforce that conclusion. It recounted multiple notices and cease and desist directives. Order at 2–4. It credited testimony describing Reddy's conduct as "the most egregious" observed by the Department's enforcement manager "throughout her tenure." Order at 19. It also found that the structure caused a "significant amount of erosion or scour" on the adjacent public beach, accelerated erosion, and diminished lateral public access. Order at 34–35. And it found that, because Reddy installed the structure without Department review, there was no opportunity to evaluate less harmful alternatives before the hardened structure was built. Order at 39. Those findings support, rather than undermine, the Department's assessment.

Vacating the penalty on this record would weaken the Act's permit-first scheme. If Reddy may continue unauthorized hardening of the beach after repeated directives and then avoid penalties because the tribunal declines to determine liability, the statutory permit requirement is reduced from a prerequisite to a litigable option.

G. Reinstatement without remand is appropriate.

Section 1-23-610(B) does not make remand mandatory. It authorizes this Court to "affirm," "remand," "reverse," or "modify" an ALC decision depending on the nature of the error. S.C. Code Ann. § 1-23-610(B); see also Rule 220(a), SCACR ("The court may affirm, reverse, or modify the

decision below or remand all or any issues for further proceedings."). Here, the error was legal, not factual. The ALC already made the material findings bearing on liability and penalty, and the remaining dispute is the legal effect of those findings under the Act.

That distinction matters. When an appeal from the ALC presents a question of law, the appellate court may correct the legal error without deferring to the ALC. *S.C. Dep't of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 260–61, 725 S.E.2d 480, 483 (2012) (stating that appellate courts correct ALC decisions affected by legal error and review questions of law de novo). Likewise, where there are no material factual disputes and the issue on review is legal, § 1-23-610(B)(d) authorizes reversal for error of law. *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 313, 785 S.E.2d 600, 605 (Ct. App. 2016) (reviewing ALC decision under § 1-23-610(B)(d) where "there are no factual disputes" and the issues were legal); *Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 280, 781 S.E.2d 914, 916 (Ct. App. 2016) (reversing ALC decision where the sole issue was statutory interpretation). And when the facts are stipulated, undisputed, or otherwise fixed, the appellate court owes no deference to the lower tribunal's legal application of those facts. *J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999) (holding that where an appeal involves stipulated or undisputed facts, the appellate court may review whether the law was properly applied to those facts without deference to the lower court's legal conclusions).

This case falls within that rule. The ALC did not omit the factual predicates relevant to liability and penalty; it made them, but declined to apply the statutory consequences they triggered. Reconsideration Order at 3. Reversal therefore would not require this Court to substitute its judgment on disputed facts. It would require only application of the Act to the facts the ALC found.

Nor is this a case like *Hill*, where remand was appropriate because the reviewing court could not make its own factual findings on an unresolved constitutional issue. *See Hill v. S.C. Dep't of Health & Env't Control*, 389 S.C. 1, 15, 698 S.E.2d 612, 620 (2010) (explaining that remand would have been the appropriate remedy if the ALJ failed to rule on an equal-protection issue because the reviewing court's limited scope of review did not authorize it to make its own factual findings). Here, the ALC made the material findings. The missing step was legal application, not factfinding. Once the antecedent liability error is corrected, nothing in the Order supplies a separate basis to vacate the $289,000 assessment. The ALC did not reject the Department's penalty methodology, duration, daily rate, worksheet classifications, gravity findings, or arithmetic. It vacated the penalty because it declined to recognize the underlying violation and then deemed the result "not appropriate under the facts of this case." Order at 37–38; Joint Ex. 163. This Court should therefore reverse the vacatur of the civil penalty and reinstate the Department's $289,000 assessment.

As a fallback only, if this Court remands at all, any remand should be strictly limited to penalty amount. A limited remand is appropriate where only a discrete issue remains, and the tribunal on remand must act within the scope of the appellate mandate. See *Bobo v. Marshane Corp.*, 302 S.C. 86, 88–89, 394 S.E.2d 2, 4 (Ct. App. 1990) (holding that an administrative tribunal exceeded the authority granted by a limited remand when it went beyond the remand instructions and issued a new decision). Because the ALC did not reject the Department's structured methodology or underlying calculations, any remand should not reopen liability or the factual predicates already found.

CONCLUSION

For the foregoing reasons, this Court should affirm the Administrative Law Court's order requiring removal of Mr. Reddy's hard structure, hold that the Site constitutes statutory beaches and is therefore a critical area under S.C. Code Ann. §§ 48-39-10(H) and 48-39-10(J), hold that Mr. Reddy violated S.C. Code Ann. § 48-39-130(C) as a matter of law, and reverse the Administrative Law Court's contrary no-violation and penalty rulings. The Court should further reinstate the Department's $289,000 civil penalty without remand.

Respectfully submitted,

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

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