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SC Court of Appeals

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.

RESPONSE BRIEF OF RESPONDENT-APPELLANT SOUTH CAROLINA COASTAL CONSERVATION LEAGUE TO INITIAL BRIEF OF APPELLANT-RESPONDENT ROM REDDY

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STATEMENT OF ISSUES ON APPEAL

Respondent-Appellant South Carolina Coastal Conservation League ("CCL") states the issues as follows in response to Appellant-Respondent Rom Reddy's ("Reddy") challenge to the portion of the Amended Final Order requiring removal under § 48-39-120(C).

1. Whether the ALC correctly ordered removal under § 48-39-120(C) after finding that Reddy's hard erosion control structure adversely affects the public interest.

2. Whether Reddy's § 48-39-120(C) argument fails because the statute is not limited to tidelands, coastal waters, setback lines, or permit status, and § 48-39-290(B)(2)(d) expressly preserves that removal authority.

3. Whether Reddy's setback line theory fails because the Act separately defines "beaches" and "beach/dune system," and only the beach/dune system is tied to the setback line.

4. Whether substantial evidence supports the ALC's site-specific finding that Reddy's hard erosion control structure adversely affects the public interest.

5. Whether Reddy can show reversible error from his due process or undecided issue arguments where § 48-39-120(C), removal, and adverse public interest effects were identified before trial; Reddy received a five-day contested case hearing; and he cannot show substantial prejudice or any basis to reverse the removal order.

STATEMENT OF FACTS

This appeal concerns Rom Reddy's construction of an unpermitted hard erosion control structure and placement of associated materials not compatible with the beach at 118 Ocean Boulevard on Isle of Palms (the "Site"). The South Carolina Department of Environmental Services ("DES") issued Administrative Order AF-0000960 ("Administrative Order") concerning activities at the Site. Joint Ex. 11. The Administrative Order found violations of the Coastal

Tidelands and Wetlands Act, S.C. Code Ann. § 48-39-10 et seq. (2008 & Supp. 2025) (“Act”), assessed a $289,000.00 civil penalty, and required corrective action, including removal of materials not compatible with the beach and hard erosion control structures. Joint Ex. 11.

Reddy requested a contested case hearing before the ALC. CCL intervened with the consent of all parties. The ALC conducted a merits hearing from May 6 through May 8 and May 19 through May 20, 2025. At the beginning of the hearing, the Court identified five issues, including whether the Department had authority to enforce an administrative order in an area where the critical area of the beach had eroded landward of the beach/dune system, whether the penalty and removal remedy were appropriate, whether the Act’s definition of “beaches” was unconstitutionally vague, whether DES violated the Administrative Procedures Act through its interpretation of “beaches,” and whether DES’s actions amounted to a regulatory taking. Tr. 66:11–69:3.

The regulatory history began well before the hearing. In May 2023, Reddy contacted DES about erosion at the Site. Joint Ex. 12; Tr. 99:2–104:6. DES staff visited the Site and observed physical conditions relevant to the statutory beaches inquiry, including a vertical escarpment, wrack, damaged beach walkover, artificial turf draped over the escarpment, and other tidal and wave action indicators. Tr. 100:16–102:7; 105:12–106:14; 139:5–141:4; Joint Exs. 12, 81, 82, 176.

On September 7, 2023, DES warned Reddy and his contractor 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. On September 11, 2023, DES met with Reddy onsite and explained that the area where Reddy proposed to place fill was active beach and/or beaches critical area, that only material compatible with the beach could be used, and that DES authorization would be required. Joint Exs.

15, 19; Tr. 111:24–113:16. Despite those warnings, DES later learned that clay not compatible with the beach had already been placed and covered with sand. Tr. 113:5–114:1; Joint Exs. 70, 192, 193. DES also documented materials not compatible with the beach, including clay, gravel or rock, geotextile fabric, geogrid, artificial turf, and other materials at and adjacent to the Site. Tr. 125:18–128:10; 273:3–279:12; Joint Exs. 19, 65, 97, 98, 123, 124, 125.

On October 20, 2023, DES issued a Notice to Comply requiring removal of all fill not compatible with the beach, other materials, and marine debris placed on active beach and/or beaches critical area. Joint Exs. 4, 20; Tr. 271:22–273:20; 279:18–281:4. DES then issued cease and desist directives as Reddy continued work. Joint Exs. 5–8. DES also served a May 22, 2024 Notice of Alleged Violation and Admission Letter ("NOAV and Admission Letter") that expressly cited S.C. Code Ann. § 48-39-120(C) and stated that "S.C. Code Ann. § 48-39-120(C) provides the Department authority to remove all erosion control structures which have an adverse effect on the public interest." Joint Ex. 10.

Prior to the hearing, Reddy moved for summary judgment, arguing DES lacked permitting authority over the beaches critical area landward of the setback line, that DES was enforcing an unpromulgated standard, and that the statutory definition of beaches was unconstitutionally vague as applied. The ALC denied summary judgment in an April 24, 2025 order ("Summary Judgment Order"). The ALC held that the Department "unequivocally has jurisdiction over the Beaches Critical Area" and 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." Summary Judgment Order at 9–10. The Court identified the remaining factual question as whether the activities occurred in "Beaches" as defined by § 48-39-10(H). *Id.* at 18–19.

During the contested case hearing, DES and CCL presented evidence showing periodic inundation by tidal and wave action and the absence of established nonlittoral vegetation. DES staff and expert testimony tied those physical indicators to the statutory definition of "beaches." Tr. 82:16–83:11; 93:12–96:5; 105:12–106:16; 139:17–142:16; 705:13–706:21; 714:14–716:6; 725:24–726:17; 874:24–875:19; 879:25–880:9; 892:15–893:11. DES and CCL also presented evidence that Reddy's hard structure interfered with coastal processes, induced scour, caused dry sand loss, and impaired public access. Tr. 466:24–515:15; 828:22–1001:10; 1056:6–1060:2; 1388:14–1436:23.

On October 23, 2025, the ALC issued an initial Final Order ("October 23 Order"). Reddy, DES, and CCL each filed motions for reconsideration on November 3, 2025. Reddy's motion sought reconsideration of the October 23 Order "ordering the removal of Respondent's erosion control structure." Reddy Mot. Recons. at 1. On November 10, 2025, the ALC did not merely stay the October 23 Order; it entered an Order Rescinding Previous Order ("Rescission Order") stating: "IT IS HEREBY ORDERED that the Final Order and Decision is hereby rescinded pending a decision upon the parties' pleadings." Rescission Order at 1; *see also* RESCIND, Black's Law Dictionary (12th ed. 2024) (defining rescind as "to make void; to repeal or annul.").

On December 30, 2025, the ALC issued the operative Amended Final Order ("Order") and a separate Order on Motions for Reconsideration ("Reconsideration Order"). The Order retained the removal remedy but changed the rationale and relief. The ALC ordered Reddy to submit a Corrective Action Plan ("CAP") for removal of the hard structure, including unauthorized materials used for the construction and restoration of the affected area. Order at 40. The ALC vacated the $289,000.00 civil penalty, declined to determine whether Reddy's structure was located in statutory "beaches," declined to determine whether the area was subject to "periodic inundation," and declined to find a violation under § 48-39-130(C). Order at 18–19, 30–34, 37–40; Reconsideration Order at 2–3.

The ALC nevertheless ordered removal under S.C. Code Ann. § 48-39-120(C). The ALC found that Reddy's hard structure "protrudes farther seaward into the adjacent beach than any neighboring structure." Order at 32. It found that hard erosion control structures impede sediment flow and cause scour. *Id.* It found that photographic evidence showed tidal and wave action reaching Reddy's hard structure and inducing erosion and scouring on the adjacent beach. *Id.* It also found that public access would continue to deteriorate during future erosive cycles because of dry sand loss laterally along the beach past the structure. *Id.*

DES and CCL moved for reconsideration of the Order on January 9, 2026. Reddy opposed those motions but did not file his own Rule 29(D), SCALCR, motion for reconsideration of the December 30 Order. On January 27, 2026, the ALC denied DES's and CCL's motions. Reddy filed his Notice of Appeal on January 28, 2026. CCL filed its own Notice of Appeal on January 29, 2026. CCL does not challenge the portion of the Order requiring removal of Reddy's hard structure. CCL's separate appeal challenges the ALC's refusal to classify the Site as statutory beaches, its no-violation ruling, and its vacatur of DES's civil penalty.

STANDARD OF REVIEW

This Court reviews final decisions of the ALC under S.C. Code Ann. § 1-23-610(B) (Supp. 2025). The Court may reverse or modify if substantial rights of the appellant have been prejudiced because the ALC's decision is in violation of constitutional or statutory provisions, in excess of statutory authority, 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 or characterized by abuse of discretion. S.C. Code Ann. § 1-23-610(B).

Questions of statutory interpretation are reviewed de novo. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 35, 766 S.E.2d 707, 717 (2014); *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 72, 716 S.E.2d 877, 879 (2011). Courts give statutory words their plain and ordinary meaning and do not use subtle or forced construction to limit or expand a statute's operation. *Davis v. S.C. Dep't of Corr.*, 444 S.C. 138, 149–50, 906 S.E.2d 569, 575–76 (2024). Statutes addressing the same subject matter must be construed together, if possible, to produce a single harmonious result. *Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 271, 802 S.E.2d 794, 798 (2017). Where statutory or regulatory text directly speaks to the issue, the Court applies the text as written; if the statute or regulation is silent or ambiguous, courts defer to the agency's interpretation if it is not arbitrary, capricious, or manifestly contrary to the statute. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 34–35, 766 S.E.2d 707, 717–18 (2014); *Bruning v. S.C. Dep't of Health & Env't Control*, 418 S.C. 537, 545–46, 795 S.E.2d 290, 294–95 (Ct. App. 2016).

Factual findings are reviewed for substantial evidence. S.C. Code Ann. § 1-23-610(B). Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion reached below. *Risher v. S.C. Dep't of Health & Env't Control*, 393 S.C. 198, 211, 712 S.E.2d 428, 435 (2011). The Court may not substitute its judgment for the ALC's judgment as to the weight of the evidence. S.C. Code Ann. § 1-23-610(B); *Dorman v. S.C. Dep't of Health & Env't Control*, 350 S.C. 159, 162, 565 S.E.2d 119, 120 (Ct. App. 2002) (applying substantial evidence review to ALC decision).

Due process questions are reviewed de novo, but proof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice. *Leventis v. S.C. Dep't of Health & Env't Control*, 340 S.C. 118, 132, 530 S.E.2d 643, 650–51 (Ct. App. 2000) (requiring substantial prejudice to obtain relief for alleged due process error in administrative proceeding); *S.C. Dep't of Revenue v. Meenaxi, Inc.*, 417 S.C. 639, 651, 790 S.E.2d 792, 798 (Ct. App. 2016). This Court may affirm any ruling, order, decision, or judgment upon any ground appearing in the record. Rule 220(c), SCACR.

ARGUMENT

The ALC ordered the remedy § 48-39-120(C) authorizes: removal of an erosion control structure that adversely affects the public interest. Section 48-39-120(C) is not limited to tidelands, coastal waters, structures seaward of the setback line, or permitted structures. Section 48-39-290(B)(2)(d) confirms that the Beachfront Management Act does not narrow or displace that removal authority. Substantial evidence supports the ALC's adverse public interest findings, Reddy received due process, and his remaining arguments do not justify reversal.

I. SECTION 48-39-120(C)'S PLAIN TEXT AUTHORIZES REMOVAL OF "ALL EROSION CONTROL STRUCTURES" WITH ADVERSE PUBLIC INTEREST EFFECTS.

Reddy's lead argument fails because the ALC ordered the remedy § 48-39-120(C) authorizes: removal of an erosion control structure after finding that it adversely affects the public interest. Section 48-39-120(C) supplies that authority in its own text. Section 48-39-290(B)(2)(d) confirms that the Beachfront Management Act ("BMA") does not narrow or displace it. Reddy's contrary reading would add geographic and permit-status limits that subsection (C) does not contain, would treat subsection (B)'s permitting language as controlling subsection (C), and would render § 48-39-290(B)(2)(d) ineffective.

A. Section 48-39-120(C) contains no tidelands only, coastal waters only, setback line, or permit status limitation.

The statutory text controls. Section 48-39-120(C) states: "The department shall have the authority to remove all erosion control structures which have an adverse effect on the public interest." S.C. Code Ann. § 48-39-120(C) (2008). That language contains two express requirements: the structure must be an "erosion control structure," and it must have "an adverse effect on the public interest." *Id.* It does not limit removal to structures in tidelands, coastal waters, the area seaward of the setback line, or structures previously permitted by DES. Courts may not add limits the General Assembly omitted. *Davis v. S.C. Dep't of Corr.*, 444 S.C. 138, 149–50, 906 S.E.2d 569, 575–76 (2024); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Reddy asks this Court to import geographic limits from neighboring subsections. But the text shows that the General Assembly used limiting language when it intended to do so. Section 48-39-120(B) refers to permits for erosion control structures "on or upon the tidelands and coastal waters." S.C. Code Ann. § 48-39-120(B) (2008). Section 48-39-120(F) refers to structures "in or upon the tidelands, submerged lands and waters of this State below the mean high-water mark." *Id.* § 48-39-120(F). Section 48-39-120(C) omits both limitations. The Court should give effect to that textual choice.

Nor does § 48-39-120, read as a whole, support Reddy's tidelands only premise. Subsection (A) requires DES to "develop and institute a comprehensive beach erosion control policy" that identifies critical erosion areas and considers littoral drift systems, sand dunes, and related coastal features. *Id.* § 48-39-120(A). Subsections (D) and (E) authorize federal and state funding for "beach or shore erosion control" and "beach or shore erosion" emergencies in areas with public access. *Id.* § 48-39-120(D), (E). And even subsection (F), which contains a below-mean-high-water limitation for certain permits, expressly refers to protecting public and private property from "beach and shore destruction." *Id.* § 48-39-120(F). Reddy's reading therefore overextends subsection (B)'s tidelands and coastal waters language and ignores beach and shore erosion provisions elsewhere in the same section.

Reddy's permit status argument fails for the same reason. Section 48-39-120(C) does not say DES may remove only structures it previously permitted. It authorizes removal of "all erosion control structures" that adversely affect the public interest. *Id.* § 48-39-120(C). An unpermitted structure that was never reviewed before construction is not more protected from removal than a permitted structure that later causes public harm. Reddy's lack of a permit explains why he was not "in direct violation of any permit"; it does not exempt his hard erosion control structure from § 48-39-120(C)'s removal standard.

This case does not require the Court to decide every possible application of § 48-39-120(C). Nor is a hard erosion control structure immune from coastal remedial review merely because the owner disputes the regulatory significance of its footprint. In *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, the Supreme Court rejected a "narrow, formulaic interpretation" that treated an erosion control structure as outside heightened coastal review because it was initially proposed upland of the critical area, because the record showed the structure would affect protected shoreline resources. 434 S.C. 1, 4–5, 12–13, 862 S.E.2d 72, 74, 78 (2021).

The point is not that South Carolina Coastal Conservation League supplies the removal authority. Section 48-39-120(C) does. The point is that South Carolina coastal law evaluates hard erosion control structures by their coastal effects, not by the owner's preferred footprint line alone. Here, the ALC found that Reddy's structure protrudes seaward, impedes sediment flow, causes scour, interacts with tidal and wave action, contributes to dry sand loss, and impairs lateral public access. Order at 32–35. Those findings satisfy the statutory standard the General Assembly enacted.

B. <u>Section 48-39-290(B)(2)(d) preserves, rather than narrows, § 48-39-120(C).</u>

Reddy's BMA argument fails because the BMA itself invokes and preserves § 48-39-120(C). Section 48-39-290 governs construction and reconstruction seaward of the baseline and construction, reconstruction, and alterations between the baseline and setback line. S.C. Code Ann. § 48-39-290(A), (B) (Supp. 2025). Subsection (B), § 48-39-290(B)(2) specifically addresses erosion control structures and devices. It restricts new erosion control structures or devices seaward of the setback line, limits repair and replacement of existing structures or devices, and requires removal of certain structures or devices destroyed beyond the statutory thresholds. *Id.* § 48-39-290(B)(2)(a)–(c).

Immediately after those erosion control device provisions, the General Assembly stated: "The provisions of this section do not affect or modify the provisions of Section 48-39-120(C)." *Id.* § 48-39-290(B)(2)(d). That text is decisive. When the General Assembly revised the BMA's detailed erosion-control-device provisions in Act No. 607 of 1990, it included this express preservation clause within the same subsection. *See* Act No. 607, § 3, 1990 S.C. Acts 2581. The legislature therefore did not use the BMA to silently narrow § 48-39-120(C). To the contrary, it directed that § 48-39-290 does not affect or modify § 48-39-120(C).

CCL does not contend that § 48-39-290(B)(2)(d) expands § 48-39-120(C). Section 48-39-120(C) supplies the removal authority by its own terms. Section 48-39-290(B)(2)(d) matters because it prevents Reddy from using § 48-39-290 to narrow, qualify, or displace that authority. Read together, § 48-39-290 governs the BMA's prospective construction, reconstruction, repair, line-setting, and special-permit rules, while § 48-39-120(C) authorizes removal after an erosion control structure is shown to adversely affect the public interest.

Reddy's general/specific argument fails at the threshold. That canon applies only when statutes conflict. *Porter v. S.C. Pub. Serv. Comm'n*, 327 S.C. 220, 224 n.3, 489 S.E.2d 467, 469 n.3 (1997). There is no conflict here. Section 48-39-290(B)(2)(d) expressly resolves the relationship between the provisions by stating that § 48-39-290 does not affect or modify § 48-39-120(C). The Court therefore need not choose between competing statutes. It need only give effect to both.

Nor is this a case of implied repeal or irreconcilable conflict. Repeal by implication is disfavored and exists only when statutes are incapable of reasonable reconciliation. *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 141–42, 628 S.E.2d 38, 41 (2006). Here, reconciliation is not merely possible; it is commanded by the text. Reddy's reading would drain § 48-39-290(B)(2)(d) of operative effect in the BMA's erosion control device subsection because, on his theory, § 48-39-120(C) would have no independent beachfront role for § 48-39-290 to preserve. South Carolina law rejects interpretations that render statutory language surplusage, superfluous, meaningless, or futile. *State v. Sweat*, 386 S.C. 339, 350–51, 688 S.E.2d 569, 575 (2010); *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012).

Reddy's cited statutory construction cases do not change the result. *Bruning* rejected an agency's attempt to use general regulatory language to avoid specific stormwater criteria. *Bruning v. S.C. Dep't of Health & Env't Control*, 418 S.C. 537, 546, 795 S.E.2d 290, 295 (Ct. App. 2016). Neither DES nor the ALC seek to avoid or contradict specific language. Instead the decision below relies on express statutory removal authority that is further preserved by § 48-39-

290. *Denman* and *Spectre* apply the ordinary rule that a specific statute controls over a general statute when statutes conflict. *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010); *Spectre, LLC v. S.C. Dep't of Health & Env't Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010). Neither decision authorizes a court to create a conflict where the legislature has expressly resolved the relationship between the provisions.

C. <u>Reddy's nonuse, rulemaking, and 2024-regulation arguments cannot override the statute.</u>

Reddy also argues DES's alleged historical nonuse proves the authority was never conferred. That argument cannot overcome the statutory text. Courts may consider an agency's interpretation, but they reject agency interpretations and practices that conflict with plain statutory language. *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). A long-standing administrative construction likewise "affords no basis for the perpetuation of a patently erroneous application of the statute." *Jack's Custom Cycles, Inc. v. S.C. Dep't of Revenue*, 439 S.C. 35, 49, 885 S.E.2d 433, 441–42 (Ct. App. 2023) (quoting *Sweat*, 386 S.C. at 351, 688 S.E.2d at 575–76).

Nor does *Gilstrap* create a nonuse veto over clear statutory authority. There, the agency's long failure to exercise a claimed power was relevant only after the Court examined the statutory text, legislative history, prior administrative interpretation, legislative rejection of proposed language, and constitutional concerns and concluded the claimed power had not been conferred. *Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 214–15, 423 S.E.2d 101, 103–04 (1992). Here, the text points the other way. Section 48-39-120(C) authorizes removal of "all erosion control structures" with adverse public-interest effects, and § 48-39-290(B)(2)(d) expressly preserves that authority.

Reddy's APA rulemaking argument fails because the ALC applied a statute, not an internal guidance document or unpromulgated agency policy. Section 48-39-120(C) supplies the operative removal standard: an erosion control structure with an adverse effect on the public interest. South Carolina courts have rejected attempts to use the APA to disable coastal authority supplied by the Act. In *Spectre*, the Supreme Court held that the CZMA did not require DHEC to promulgate regulations separate from the Coastal Management Program before applying coastal consistency review, and that the APA did not repeal the CZMA's specific coastal-management framework. *Spectre, LLC v. S.C. Dep't of Health & Env't Control*, 386 S.C. 357, 370–72, 688 S.E.2d 844, 851–52 (2010). This case is simpler: the ALC did not apply a management plan policy or agency-created test. It applied § 48-39-120(C)'s statutory text, which § 48-39-290(B)(2)(d) expressly preserves. The 2024 amendment to Regulation 30-13(N)(3)(a) does not rewrite § 48-39-120(C). Whatever the amendment's purpose, a later regulatory change cannot prove that the preexisting statute meant the opposite of its text. The authority applied here is § 48-39-120(C), preserved by § 48-39-290(B)(2)(d). Neither alleged agency nonuse, nor an unpromulgated-rule theory, nor a later regulation gives Reddy a basis to avoid the removal order.

II. THE SETBACK LINE IS NOT THE LANDWARD LIMIT OF THE SEPARATE STATUTORY "BEACHES" CRITICAL AREA.

Reddy's setback line argument does not support reversal of the removal order. The ALC could and should have resolved statutory beaches status for purposes of liability and penalty, and CCL challenges that legal error in its separate appeal. But the ALC's failure to decide that separate issue does not defeat removal under § 48-39-120(C), which turns on whether Reddy's hard erosion control structure adversely affects the public interest. In any event, Reddy's premise is wrong: the setback line is not the landward limit of the separate statutory "beaches" critical area.

The Coastal Tidelands and Wetlands Act defines "critical area" to include four separate categories: "coastal waters," "tidelands," "beaches," and "beach/dune system." S.C. Code Ann. § 48-39-10(J) (Supp. 2025). Only one of those categories, the beach/dune system, is defined by reference to the setback line. *Id.* § 48-39-10(J)(4). Beaches are defined by physical conditions: "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." *Id.* § 48-39-10(H).

That textual distinction defeats Reddy's setback line theory. The beach/dune system is line-based. It extends from mean high water to the setback line. *Id.* § 48-39-10(J)(4). Beaches are condition-based. They exist where the statutory physical criteria are met, regardless of whether those conditions occur seaward or landward of the mapped setback line. *Id.* § 48-39-10(H), (J)(3). The areas may overlap, but they are not coextensive.

Reddy's reading would collapse the separate "beaches" category into the beach/dune system whenever beach conditions migrate landward of the setback line. That is not what the General Assembly wrote. If the setback line were the landward limit of all beachfront critical-area jurisdiction, the separate statutory listing of "beaches" would lose operative effect in precisely the dynamic shoreline conditions where it matters most. Courts avoid constructions that render statutory language meaningless or futile. *State v. Sweat*, 386 S.C. 339, 350–51, 688 S.E.2d 569, 575 (2010); *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012).

The record illustrates the point. Trial testimony and Joint Exhibit 62 showed that the baseline and setback line define the beach/dune system critical area, while "beaches" remain a separate critical area. Tr. 77:16–78:5; 80:20–81:21; Joint Ex. 62. The testimony explained that beaches critical area can be landward of the setback line, including where the setback line is "in the middle of the beach" or below the high-water mark. Tr. 80:20–81:21. In that circumstance, the area from the setback line to the vegetation line remains beaches critical area, and the Department does not relinquish direct permitting authority merely because the setback line falls within the beach. Tr. 81:5–21; Joint Ex. 62 at 2.

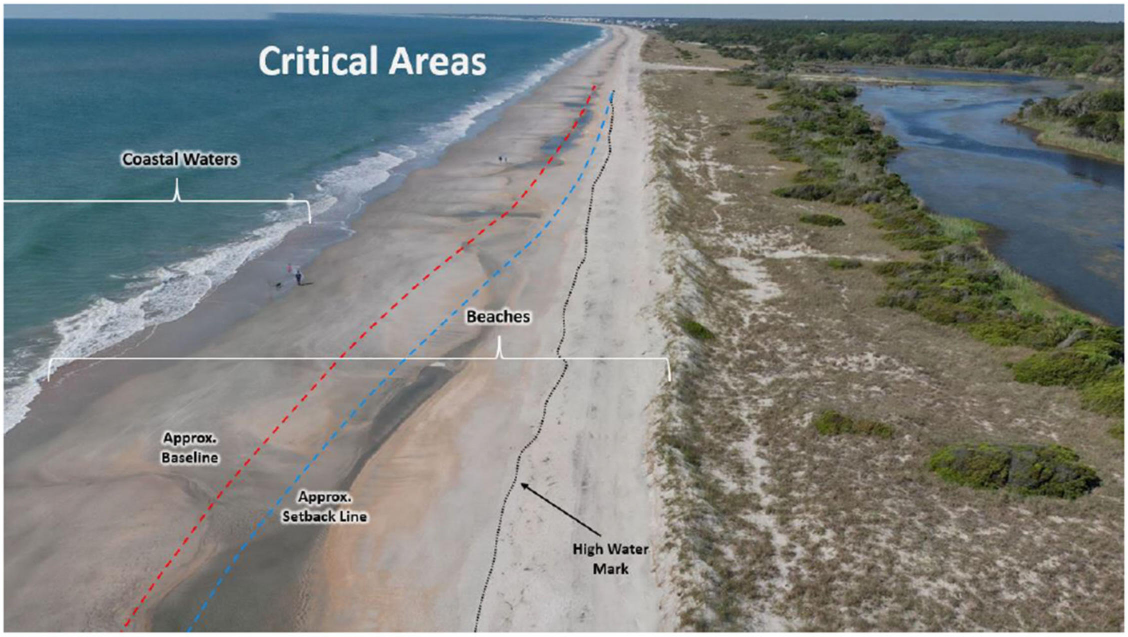

Figure 2: Beachfront Critical Areas. Beaches Critical Area landward of the setback line

JOINT EX. 62, P. 2: BEACHES CRITICAL AREA LANDWARD OF THE SETBACK LINE

The same condition-based distinction applies at Reddy's Site. Reddy's own July 5, 2023 survey showed the "top of bank," or top of the escarpment, landward of where he later built the hard erosion control structure. Tr. 92:14–23; 93:12–24; 94:2–14; Joint Exs. 50, 54. DES witnesses testified this showed periodic inundation up to and landward of the future wall location before Hurricane Idalia. Tr. 93:12–96:5. DES staff also documented wrack, saturated sand, escarpment movement, tidal and wave action reaching the structure, and lack of established vegetation. Tr. 100:16–102:7; 105:12–106:16; 139:17–142:16; 705:13–706:21; 714:14–716:6; 725:24–726:17; Joint Exs. 53, 57, 65, 78(a), 78(b), 81, 84, 176. That evidence matters because the statutory beaches definition turns on physical conditions, not on the setback line alone.

Other provisions confirm that DES's critical-area authority is not limited by Reddy's setback line theory. 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) (2008). Beaches are critical area. S.C. Code Ann. § 48-39-10(J)(3) (Supp. 2025). The coastal zone includes "all lands and waters in the counties of the State which contain any one or more of the critical areas." *Id.* § 48-39-10(B). And DES is the only state agency with authority to permit or deny alterations in critical areas. S.C. Code Ann. § 48-39-210(A) (2008). Those provisions apply to beaches as a separately defined critical area.

Reddy therefore cannot use the setback line to erase statutory beaches. The setback line marks the landward boundary of the beach/dune system. It does not rewrite the separate condition-based definition of beaches, and it does not prevent DES or the Court from applying the Act where the record shows statutory beaches conditions landward of that line.

III. THE ALC'S FAILURE TO DECIDE STATUTORY BEACHES STATUS DOES NOT SUPPORT REVERSAL OF THE REMOVAL ORDER.

Reddy argues the removal order must be reversed because the ALC declined to decide whether the Site was statutory beaches and whether Reddy violated § 48-39-130(C). That argument confuses two separate questions. The first is whether the ALC could order removal under § 48-39-120(C) after finding that Reddy's hard erosion control structure adversely affects the public interest. It could. The second is whether the ALC should also have decided statutory beaches status, liability, and penalty. It should have, and CCL raises that error in its separate appeal. But an error adverse to DES and CCL does not give Reddy a basis to vacate a removal order supported by an independent statutory ground.

A. <u>The § 48-39-120(C) removal ruling stands independently.</u>

The ALC's removal remedy did not depend on a prior finding that Reddy violated § 48-39-130(C). Section 48-39-120(C) authorizes DES to remove "all erosion control structures which have an adverse effect on the public interest." S.C. Code Ann. § 48-39-120(C) (2008). The ALC found that Reddy's hard erosion control structure has adverse public interest effects, including seaward protrusion, interference with sediment flow, scour, tidal and wave interaction, dry sand loss, and impairment of lateral public access. Order at 30–35. It then ordered Reddy to submit a Corrective Action Plan for removal of the hard structure, unauthorized construction materials, and restoration of the affected area. Order at 40.

That ruling is enough to affirm removal. As explained above, § 48-39-120(C) is not limited to structures in tidelands, coastal waters, the beach/dune system, statutory beaches, or permitted structures. It applies where the structure is an erosion control structure and has an adverse effect on the public interest. The ALC found both. Reddy cannot overcome that ruling by pointing to the ALC's separate refusal to decide additional liability and penalty issues.

Nor was § 48-39-120(C) a new issue detached from the case tried below. Removal was at issue throughout the enforcement process and merits hearing. Joint Exs. 4, 10, 11; Tr. 66:11–69:3. The May 22, 2024 NOAV and Admission Letter expressly cited § 48-39-120(C) and stated that the statute "provides the Department authority to remove all erosion control structures which have an adverse effect on the public interest." Joint Ex. 10.

> **Be advised that:**
>
> **S.C. Code Ann. §48-39-50(I),** *as amended*, provides the Department the power to enforce the provisions of this chapter and all rules and regulations promulgated by the Department and institute or cause to be instituted, in courts of competent jurisdiction, legal proceedings to compel compliance with the provisions of this chapter.
>
> **S.C. Code Ann. §48-39-120(C),** *as amended*, provides the Department the authority to remove all erosion control structures which have an adverse effect on the public interest.
>
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JOINT EX. 10: MAY 22, 2024 NOAV IDENTIFYING § 48-39-120(C) REMOVAL AUTHORITY

The Summary Judgment Order also cited § 48-39-120(C) before trial. Summary Judgment Order at 4. The rescinded October 23 Order likewise applied § 48-39-120(C) to Reddy's hard erosion control structure. Oct. 23 Order at 30, 38. The Amended Final Order retained removal on the same statutory ground. Order at 30–35, 40. After the October 23 Order, Reddy moved for reconsideration of the order "ordering the removal of Respondent's erosion control structure." Reddy Mot. Recons. at 1.

The evidence supporting removal under § 48-39-120(C) also overlapped with the evidence tried on the statutory beaches issue. Both theories concerned the same hard structure, the same shoreline conditions, the same public access impacts, and the same physical effects of placing a hard erosion control structure on an eroding oceanfront site. For § 48-39-120(C), the ALC did not need to determine the metes and bounds of statutory beaches before ordering removal. It needed to determine whether the structure was an erosion control structure and whether it adversely affected the public interest. The ALC made those findings and they are supported by substantial evidence in the record.

B. Any error in refusing to decide statutory beaches status is an issue for CCL's appeal, not a basis for relief to Reddy.

Reddy tries to turn the ALC's failure to decide statutory beaches status into reversible error in his favor. That is backwards. The ALC's refusal to decide whether the Site was statutory beaches, whether Reddy violated § 48-39-130(C), and whether DES's civil penalty should be upheld was an error adverse to DES and CCL. It limited the relief DES obtained and vacated the civil penalty. It did not impose any additional obligation on Reddy beyond the independently supported removal order under § 48-39-120(C).

CCL's position is therefore consistent. The Court should affirm the portion of the Order requiring removal because § 48-39-120(C) independently supports that remedy. In CCL's separate appeal, the Court should also correct the ALC's refusal to decide statutory beaches status, liability, and penalty. Those issues affect whether Reddy also violated § 48-39-130(C) and whether DES's civil penalty should be reinstated. They do not undermine the separate removal ruling under § 48-39-120(C).

If this Court reaches statutory beaches status in connection with Reddy's arguments, the record supplies an additional ground supporting affirmance. Rule 220(c), SCACR, allows this Court to affirm any ruling, order, decision, or judgment upon any ground appearing in the record. The record contains evidence supporting both statutory beaches elements: periodic inundation by tidal and wave action and absence of established nonlittoral vegetation. DES staff documented wrack, saturated sand, escarpment movement, tidal and wave action reaching the structure, erosion and scouring on the adjacent beach, and lack of established vegetation. Tr. 100:16–102:7; 105:12–106:16; 139:17–142:16; 705:13–706:21; 714:14–716:6; 725:24–726:17; 874:24–875:19; 879:25–880:9; 892:15–893:11; Joint Exs. 53, 57, 65, 78(a), 78(b), 81, 84, 176.

Reddy's own July 5, 2023 survey showed the "top of bank," or top of the escarpment, landward of where he later built the hard erosion control structure. Tr. 92:14–23; 93:12–24; 94:2–14; Joint Exs. 50, 54. DES witnesses testified this showed periodic inundation up to and landward of the future wall location before Hurricane Idalia. Tr. 93:12–96:5. The record also included repeated evidence of inundation and vegetation failure from May 2023 through October 2024, not a single isolated storm event. Tr. 120:2–122:22; 133:4–14; 706:10–21; 716:11–717:1; 725:24–726:17; Joint Exs. 50, 65, 78(m), 78(n), 78(r), 160.

That same record also shows alteration without a critical area permit. Section 48-39-130(C) prohibits any person from filling, removing, dredging, draining, erecting a structure on, or otherwise altering any critical area without first obtaining a permit. S.C. Code Ann. § 48-39-130(C) (2008). Beaches are critical area. S.C. Code Ann. § 48-39-10(J)(3) (Supp. 2025). Reddy erected a hard structure and placed materials not compatible with the beach without first obtaining a critical area permit. Tr. 125:18–128:10; 273:3–279:12; Joint Exs. 19, 65, 97, 98, 123, 124, 125, 191, 193.

The point remains narrow. The Court need not reverse the removal because the ALC declined to decide statutory beaches status. The removal order rests on § 48-39-120(C) and the ALC's public interest findings. If the Court reaches statutory beaches status, the record supports affirmance on that ground too. Either way, Reddy is not entitled to vacatur of the removal order.

IV. SUBSTANTIAL EVIDENCE SUPPORTS THE ALC'S FINDING THAT REDDY'S HARD STRUCTURE ADVERSELY AFFECTS THE PUBLIC INTEREST.

Reddy's substantial evidence challenge asks this Court to reweigh the record. That is not the appellate standard. The ALC heard the witnesses, reviewed the exhibits, and made specific findings that Reddy's hard erosion control structure protrudes seaward, interferes with sediment flow, causes scour, interacts with tidal and wave action, contributes to dry sand loss, and impairs lateral public access. Those findings are supported by testimony, photographs, survey evidence, GNSS data, and public use evidence. Because reasonable minds could reach the ALC's conclusion, the removal order should be affirmed.

A. The ALC's adverse public interest findings are supported by site specific evidence.

The ALC found that Reddy's hard structure "protrudes farther seaward into the adjacent beach than any neighboring structure." Order at 32. That finding is supported by survey and location evidence showing the structure's position relative to the adjacent beach and neighboring structures. Tr. at 466:24–515:15; Joint Exs. 50, 57. The ALC found that hard erosion control structures impede sediment flow and cause scour. Order at 32. That finding is supported by expert testimony explaining how hard structures built parallel to shore affect sediment movement, erosion patterns, scour, and adjacent beach conditions. Tr. at 828:22–1001:10, 1388:14–1436:23.

The ALC further found that photographic evidence showed tidal and wave action reaching Reddy's hard structure and inducing erosion and scouring on the adjacent beach. Order at 32. That finding is supported by DES staff observations and photographs documenting tidal and wave action indicators at the Site, including wrack, saturation, escarpment movement, and water reaching the structure. Tr. at 100:16–102:7; Joint Exs. 81, 84. The ALC also found that public access would continue to deteriorate during future erosive cycles because of dry sand loss laterally along the beach past the structure. Order at 32–35. That finding is supported by testimony showing that the structure interfered with lateral beach access and reduced the dry sand area available for normal beach use. Tr. at 469:5–470:4; CCL Ex. 1, at 69:8–70:5, 84:5–85:17.

The public access evidence was concrete. Mr. Truslow testified that he and his wife frequently walk or bike on the beach and that, when the seawall was exposed in November and December 2023, he and other beach users had to wade into the water to get around it. Tr. at 469:5–16. He further testified that people walking north from Breach Inlet could not pass Reddy's house, forcing them toward "the most dangerous area of the island," where signs warn that it is illegal to wade, swim, or go in the water. Tr. at 469:17–470:4. Ms. Cedzo's designated testimony explained that CCL members use and enjoy the Isle of Palms beach and that the wall's presence limited normal public access, recreation, and enjoyment by contributing to dry sand beach loss and reducing the area available for public use. CCL Ex. 1, at 69:8–70:5, 84:5–85:17.

The broader site evidence also supports the ALC's findings. DES and CCL presented evidence that the Site is in an unstabilized inlet erosion zone near Breach Inlet; that the Site experienced repeated erosion and periodic inundation; that Reddy placed a substantial hard structure and materials not compatible with the beach at the Site; and that the structure interferes with coastal processes and public access. Tr. at 80:16–81:21, 119:17–120:22, 466:24–515:15, 828:22–1001:10, 1388:14–1436:23; Joint Exs. 50, 53, 57, 65, 78, 81, 84, 98, 123, 124, 125, 176. This extensive evidence is more than sufficient to meet the substantial evidence threshold.

B. **The ALC used the legislative findings as statutory context, not as a substitute for evidence.**

Reddy argues the ALC improperly relied on legislative findings rather than record evidence, citing *Bauer v. South Carolina State Housing Authority*, 271 S.C. 219, 229, 246 S.E.2d 869, 875 (1978), and *Velishka v. City of Nashua*, 99 N.H. 161, 165, 106 A.2d 571, 573 (1954). Those cases do not help him. Legislative findings are entitled to weight; they simply do not substitute for proof. The ALC did not treat § 48-39-250 as a substitute for evidence. It used the General Assembly's findings to identify the public interests protected by the Act, then applied those interests to site-specific evidence concerning Reddy's structure. Section 48-39-250(5) identifies the same public interest concerns at issue here: hard erosion control devices can increase vulnerability to wind and wave damage and contribute to deterioration and loss of the dry sand beach. S.C. Code Ann. § 48-39-250(5) (2008). The ALC then found that Reddy's structure caused those same types of effects, including scour, sediment disruption, tidal and wave interaction, dry sand loss, and impairment of lateral public access. Order at 32–35.

That approach is consistent with *Kiawah Development Partners II*, where the Supreme Court evaluated public access impacts from a hard erosion control structure by applying coastal statutes and regulations to evidence of how the structure would affect actual public use of sandy shoreline. The Court rejected the ALC's attempt to discount public access impacts and explained that the applicable public access standard was implicated "whenever a proposed bulkhead or revetment would have an adverse effect on public access." *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 38–39, 766 S.E.2d 707, 720–21 (2014). Here, the ALC made the same type of evidence-based public access finding: Reddy's structure contributes to dry sand loss and impairs lateral public access, and beach users testified that they had to wade into the water to pass it.

Nor do Reddy's criticisms of Mr. Jones undermine the substantial evidence supporting the ALC's adverse-public-interest finding. Any dispute over Mr. Jones's site visit, methodology, or view of critical area encroachment went to weight, not legal sufficiency. The ALC could credit photographs, DES staff observations, survey evidence, GNSS data, public access testimony, and other evidence supporting adverse effects on the public interest. In *Maull*, the Court of Appeals rejected a similar argument that the ALC misapprehended expert testimony, explaining that the ALC, acting as factfinder, "was not restricted to accept only expert testimony," and that the decision to accept or reject expert testimony is a credibility question for the ALC. *Maull v. S.C. Dep't of Health & Env't Control*, 411 S.C. 349, 359, 768 S.E.2d 402, 408 (Ct. App. 2015). As a Court of review, this Court may not and need not substitute its judgment for the ALC's judgment on the weight of the evidence. S.C. Code Ann. § 1-23-610(B) (Supp. 2025); *Dorman v. S.C. Dep't of Health & Env't Control*, 350 S.C. 159, 162, 565 S.E.2d 119, 120 (Ct. App. 2002).

Substantial evidence is evidence that, considering the record as a whole, would allow reasonable minds to reach the conclusion reached below. *Risher v. South Carolina Department of Health & Environmental Control*, 393 S.C. 198, 211, 712 S.E.2d 428, 435 (2011). The record easily meets that standard. The ALC heard Reddy's evidence and nevertheless found adverse effects on the public interest. Order at 32–35. Reddy's disagreement with that weighing is not reversible error.

V. REDDY RECEIVED DUE PROCESS AND CANNOT SHOW SUBSTANTIAL PREJUDICE.

Reddy's due process argument fails because § 48-39-120(C), removal, and adverse effects on the public interest were not new post-hearing issues. Removal and corrective action were in the case from the beginning. Section 48-39-120(C) was expressly identified before trial. And the facts relevant to § 48-39-120(C), including public access, dry sand loss, scour, sediment disruption, and adverse effects from the hard erosion control structure, were litigated at the merits hearing.

The Amended Final Order retained the same removal remedy on a statutory basis identified before trial. It did not introduce a new remedy, a new factual dispute, or a new evidentiary burden after the record closed. Reddy therefore cannot obtain reversal merely by pointing to the hearing notices. Even assuming those procedural documents should have identified § 48-39-120(C) more specifically, Reddy must show substantial prejudice. He has not done so.

A. **<u>Section 48-39-120(C), removal, and adverse public interest effects were in the case before trial.</u>**

The chronology defeats Reddy's claim of surprise. Before trial, Reddy knew DES sought removal of the hard erosion control structure and associated unauthorized materials. The October 20, 2023 Notice to Comply directed removal of unpermitted materials placed on active beach and/or beaches critical area. Joint Exs. 4, 20. The cease and desist directives kept unauthorized work and corrective relief at issue. Joint Exs. 5–8. The July 1, 2024 Administrative Order required removal of unauthorized materials not compatible with the beach and restoration. Joint Ex. 11.

More importantly, the May 22, 2024 NOAV and Admission Letter expressly cited § 48-39-120(C) and stated that "S.C. Code Ann. § 48-39-120(C) provides the Department authority to remove all erosion control structures which have an adverse effect on the public interest." Joint Ex. 10. Reddy acknowledges that the NOAV and Admission Letter referenced § 48-39-120(C), but he characterizes it as merely one provision among many. That does not establish surprise. The provision identified the same removal authority the ALC later applied and the same adverse public interest standard litigated at the merits hearing.

The ALC's April 24, 2025 Summary Judgment Order also identified § 48-39-120(C) before trial. Summary Judgment Order at 4. CCL's summary judgment briefing placed public access and public coastal impacts at issue by explaining that CCL intervened to protect its members' interests in preserving public beach access and preventing unauthorized coastal development. CCL MSJ Response at 2. DES's summary judgment response likewise argued that public access was of great importance, that Reddy's hard structure affected public access, and that the structure detrimentally impacted the public. DES MSJ Response at 11-13; Reconsideration Order at 4 & n.3. Reddy then proceeded through a five-day merits hearing, cross-examined witnesses addressing public access and adverse effects, presented his own expert testimony, testified on his own behalf, and introduced exhibits and deposition testimony.

Reddy's notice argument is also not strengthened by recasting it as a technical defect in the hearing notices. Article I, section 22 does not require notice in every document or at every stage of the administrative process. In *Ross v. Medical University of South Carolina*, the Supreme Court held that Article I, section 22 requires notice and an opportunity to be heard "at some point before the agency makes its final decision," not at each level of the administrative process. 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997). The Court also rejected an APA-notice challenge where correspondence "fully and fairly apprised" the party of the matters asserted in time to respond at the hearing. *Id.* at 63–64, 492 S.E.2d at 69.

This case satisfies that standard. As explained above, the May 22, 2024 NOAV provided the requisite notice. Reddy's counsel received and responded to that NOAV before the Administrative Order issued. Reconsideration Order at 3; Joint Ex. 9. The Administrative Order then required removal and restoration through a corrective action plan. Joint Ex. 11. Before trial, the Summary Judgment Order also cited the Department's authority to remove erosion control structures with adverse-public-interest effects under § 48-39-120(C), and at the outset of trial the issues included the Department's authority to enforce its Administrative Order and whether removal was an appropriate remedy. Reconsideration Order at 4–5; Tr. 66:11–69:3. Reddy did not ask the ALC for prehearing statements or a more definite statement of the statutory provisions at issue. Reconsideration Order at 4–5. On this record, the absence of § 48-39-120(C) from the hearing notices did not prevent Reddy from preparing for or litigating the removal remedy and public interest evidence.

That sequence matters. Removal was the remedy. Section 48-39-120(C) provided the statutory removal authority. Public access, dry sand loss, scour, sediment disruption, and adverse effects from the hard structure were factual issues litigated at the hearing. Reddy was not deprived of notice that removal and adverse effects would be decided. Nor can Reddy separate the asserted notice defect from the practical reality of the case he litigated. As to the removal issue Reddy challenges in this appeal, this case has always concerned the same wall, the same unauthorized hard erosion control structure, and the same removal remedy. DES repeatedly told Reddy that the structure and associated materials were unauthorized and had to be removed. Joint Exs. 4–8, 11. The NOAV then identified § 48-39-120(C) as the Department's authority to remove erosion control structures with adverse effects on the public interest. Joint Ex. 10. Reddy therefore cannot show surprise merely because the hearing notices did not repeat every statutory provision already identified in the enforcement record. The relevant question is whether he had notice of the removal remedy and a meaningful opportunity to litigate the facts supporting that remedy. He did.

Reddy's reliance on § 1-23-320(B)(1) and (3) does not establish reversible error. Section 1-23-320(B) requires notice of the legal authority and jurisdiction for the hearing and reference to the statutes and rules involved. S.C. Code Ann. § 1-23-320(B)(1), (3) (2005). Even assuming the hearing notices should have separately listed § 48-39-120(C), South Carolina law does not reverse administrative decisions for technical notice defects absent substantial prejudice. *Myers v. S.C. Dep't of Health & Hum. Servs.*, 418 S.C. 608, 620, 795 S.E.2d 301, 307 (Ct. App. 2016); *Leventis v. S.C. Dep't of Health & Env't Control*, 340 S.C. 118, 132, 530 S.E.2d 643, 650–51 (Ct. App. 2000).

B. Reddy received a meaningful opportunity to be heard and identifies no substantial prejudice.

Reddy received the process Article I, section 22 requires. He requested a contested case hearing. The ALC conducted a de novo merits hearing. Reddy conducted discovery, cross-examined DES and CCL witnesses, presented Mr. Goodrich as an expert, testified on his own behalf, introduced exhibits and deposition testimony, participated in post-order reconsideration proceedings, and now has judicial review.

That is the procedure Article I, section 22 contemplates. To effectuate Article I, section 22's guarantee that no person be finally bound by a quasi-judicial agency decision without notice, an opportunity to be heard, and judicial review, the ALC conducts a de novo contested-case hearing "complete with the presentation of evidence and testimony." *Engaging & Guarding Laurens Cnty.'s Env't v. S.C. Dep't of Health & Env't Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014). An adequate de novo review renders harmless an alleged procedural due process violation in an earlier administrative step. *Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 174–75, 551 S.E.2d 263, 272 (2001).

Reddy was not finally bound by the NOAV or the Administrative Order without process. DES prosecuted the enforcement action; an independent administrative law judge heard the case under the APA and ALC Rules; Reddy presented evidence and cross-examined witnesses; and this Court now provides judicial review. Article I, section 22 requires no more. Due process is flexible and turns on the procedure the particular case demands. *Tall Tower, Inc. v. S.C. Procurement Rev. Panel*, 294 S.C. 225, 232–33, 363 S.E.2d 683, 686–87 (1987). It requires notice and a meaningful opportunity to be heard, but it does not require reversal for every alleged procedural imperfection. *Id.*; *Leventis*, 340 S.C. at 132, 530 S.E.2d at 650–51. In *Tall Tower*, the Supreme Court rejected a due process challenge where the parties had notice of the issues, the opportunity to present favorable witnesses, and the right to cross-examine adverse witnesses. 294 S.C. at 233, 363 S.E.2d at 687. Reddy received those protections here.

The due process inquiry turns on substantial prejudice, not Reddy's characterization of § 48-39-120(C) as a different "theory." *Leventis* supplies the controlling rule: due process in an administrative proceeding requires notice, a meaningful opportunity to be heard, and judicial review, but reversal requires a showing that the challenged procedure substantially prejudiced the party. *Leventis v. S.C. Dep't of Health & Env't Control*, 340 S.C. 118, 132, 530 S.E.2d 643, 650–51 (Ct. App. 2000). The Court applied that rule despite expressly disapproving DHEC's ex parte stipulated agreement with the permit applicant, holding that the extensive administrative hearing, witness presentation, cross-examination, and meaningful review removed any prejudicial error. *Id.* at 134–35, 530 S.E.2d at 652–53.

The decision in *Myers* applies the same prejudice requirement to a notice defect. There, the agency failed to identify the specific regulation supporting its action, and the appellant argued that better notice would have allowed additional live testimony. The Court still found no due process violation because the appellant had notice of the proposed action, received the agency's justifications before hearing, submitted evidence, and failed to show how the hearing would have been different. *Myers v. S.C. Dep't of Health & Hum. Servs.*, 418 S.C. 608, 618–20, 795 S.E.2d 301, 306–07 (Ct. App. 2016). Reddy received pretrial identification of § 48-39-120(C), notice that removal was sought, discovery, a five-day contested case hearing, cross-examination, expert testimony, reconsideration practice, and judicial review. He identifies no witness, document, discovery, expert opinion, or factual defense he would have presented had § 48-39-120(C) been repeated in the hearing notices. His claimed prejudice is legal, not factual: he argues § 48-39-120(C) does not apply outside tidelands, coastal waters, or the setback line. That argument requires statutory interpretation, not vacatur for lack of notice.

Reddy's argument about Mr. Jones's expert testimony does not establish prejudice. Reddy cross-examined Mr. Jones. He also presented his own expert, Mr. Goodrich. In any event, the ALC's adverse public interest findings did not rest solely on Mr. Jones. The record also included DES staff observations, photographs, surveys, GNSS data, public access testimony, and CCL designated testimony supporting scour, dry sand loss, tidal and wave interaction, sediment disruption, and impaired lateral public access. Order at 32–35; Tr. at 100:16–102:7, 469:5–470:4, 828:22–1001:10, 1388:14–1436:23; CCL Ex. 1, at 69:8–70:5, 84:5–85:17; Joint Exs. 50, 57, 81, 84.

The Reconsideration Order confirms the same point. The ALC found that Mr. Jones's disclosure included coastal processes affecting the Site and surrounding area and principles of coastal processes and coastal morphology as applied to this case, including sediment transport, beach erosion, and erosion control structures. Reconsideration Order at 6–7. The ALC also found that Reddy did not object when DES elicited adverse effects testimony from Mr. Jones. *Id.* at 7. Reddy cannot convert that record into reversible surprise.

Reddy's cited cases do not require a different result. *Stono River Env't Prot. Ass'n v. S.C. Dep't of Health & Env't Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991), and *Ogburn-Matthews v. Loblolly Partners*, 332 S.C. 551, 561–62, 505 S.E.2d 598, 603 (Ct. App. 1998), overruled on other grounds by *Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 560 S.E.2d 410 (2002), state the general rule that due process requires notice and an opportunity to be heard in a meaningful way. Reddy received both. *Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 657, 726 S.E.2d 9, 12 (Ct. App. 2012), and *In re Dickey*, 395 S.C. 336, 360, 718 S.E.2d 739, 751 (2011), likewise recite ordinary notice and hearing principles, but they do not dispense with the substantial prejudice requirement or mandate reversal where the party had pretrial notice of the removal authority, a full contested case hearing, cross-examination, expert testimony, reconsideration, judicial review, and no identified prejudice.

Reddy's due process claim ultimately fails because he cannot identify concrete prejudice from the asserted notice defect. The ALC did not impose a new remedy or decide a new factual issue after trial. It retained the same removal remedy on a statutory ground identified before trial and on adverse effects evidence litigated at trial. That is not reversible due process error.

VI. REDDY'S REMAINING ARGUMENTS DO NOT JUSTIFY VACATING THE REMOVAL ORDER.

Reddy's remaining arguments do not provide a basis to vacate the removal order. The operative decision on appeal is the December 30, 2025 Amended Final Order, not the rescinded October 23 Order. The Amended Final Order ordered removal under § 48-39-120(C) after finding that Reddy's hard erosion control structure adversely affects the public interest. Order at 30–35, 40. For the reasons stated above, that ruling should be affirmed.

The October 23 Order was rescinded. The Rescission Order did not stay the October 23 Order or preserve it as an alternative final decision. It stated: "IT IS HEREBY ORDERED that the Final Order and Decision is hereby rescinded pending a decision upon the parties' pleadings." Rescission Order at 1. The ALC then issued the Amended Final Order and the separate Order on Motions for Reconsideration on December 30, 2025. Reddy's Notice of Appeal likewise identifies the December 30 Amended Final Order as the order appealed. Notice of Appeal at 1. Review should therefore focus on the removal ruling actually made in the operative Order.

Rule 29(D), SCALCR, provides that "[a] party must file a motion for reconsideration prior to filing a notice of appeal and must state with particularity the points supposed to have been overlooked or misapprehended by the Court." The note to Rule 29 likewise states that, "in accordance with applicable case law on issue preservation, a motion for reconsideration is a prerequisite to filing a notice of appeal." Reddy's November 3 motion challenged the October 23 Order. But that order was rescinded before the ALC issued the December 30 Amended Final Order. Once the ALC rescinded the October 23 Order and issued the Amended Final Order, the Amended Final Order became the operative decision for Rule 29(D) and appellate-review purposes. See *High v. High*, 389 S.C. 226, 248, 697 S.E.2d 690, 701 (Ct. App. 2010) (holding that, when the first order was rescinded ab initio, "it was as if it had never existed," and the later order was the only order from which a party could move to reconsider). Nor can Reddy avoid Rule 29(D)'s preservation requirement by relying on a motion directed to an order that no longer exists.

The distinction between the two orders is substantive, not semantic. The December 30 Amended Final Order changed the Court's reasoning, vacated the civil penalty, declined to decide statutory beaches status, retained removal under § 48-39-120(C), and imposed detailed corrective action plan ("CAP") and restoration requirements. Order at 18–19, 30–35, 37–41. It required a CAP within sixty days, removal of the hard structure and unauthorized construction materials, restoration of the affected area, beach-stabilization methods, identification of beach-compatible sand from an upland source, compliance with the South Carolina Department of Natural Resources Marine Turtle Conservation Program, commencement within ninety days of Department approval, completion within thirty days after commencement, and a Department liaison process. Order at 40–41. Reddy filed no Rule 29(D) motion directed to that operative order.

Reddy's own stay practice confirms the omission. After the Amended Final Order issued, Reddy moved under Rule 29(E), SCALCR, and Rule 241, SCACR, to stay the December 30 order requiring removal. The ALC's stay order recognized that Reddy's deadline to submit a CAP had begun running under the Amended Final Order and stayed the Amended Final Order pending a decision on the merits of the stay request if a party appealed. Stay Order at 1–2. A stay motion is not a Rule 29(D) motion for reconsideration. It does not ask the ALC to correct alleged error in the final decision, and it does not state with particularity any point the ALC allegedly overlooked or misapprehended.

At minimum, Reddy preserved no objection to any implementation term first imposed or materially clarified in the December 30 Amended Final Order. Reddy opposed DES's and CCL's January 9 motions for reconsideration, but those responses were not his own Rule 29(D) motion asking the ALC to reconsider adverse rulings in the Amended Final Order. Issues not raised to and ruled upon by the ALC are not preserved for appellate review. *Risher v. S.C. Dep't of Health & Env't Control*, 393 S.C. 198, 208, 712 S.E.2d 428, 433 (2011); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23–24, 602 S.E.2d 772, 780 (2004). The Court of Appeals has applied that rule in the ALC context where a party failed to file a Rule 29(D) motion calling the ALC's attention to the alleged error. *S.C. Dep't of Motor Vehicles v. Dover*, 423 S.C. 153, 168 n.3, 813 S.E.2d 532, 540 n.3 (Ct. App. 2018). And even when a party files a reconsideration motion, the motion does not preserve a later appellate argument unless it specifically calls that issue to the ALC's attention. In *MRI at Belfair*, the appellant filed a motion for reconsideration, but the Court still held the issue unpreserved because the appellant "never specifically objected" to the alleged error and its related argument was "not sufficiently specific" to preserve the later appellate issue. *MRI at Belfair, LLC v. S.C. Dep't of Health & Env't Control*, 394 S.C. 567, 576–77, 716 S.E.2d 111, 115–16 (Ct. App. 2011). The Court emphasized that "it is incumbent upon appellant to show it had clearly raised the issue to the ALC and asked for a specific ruling in that regard to preserve the issue for appellate review." *Id.* at 577, 716 S.E.2d at 116.

Accordingly, Reddy's appeal should be limited to issues actually preserved below. At most, his earlier motion preserved broad objections to the ALC's legal authority to order removal. It did not preserve a challenge to the December 30 Amended Final Order itself, and it did not preserve any separate objection to the CAP process, restoration terms, sequencing, deadlines, sand-source requirements, turtle-program compliance, or other implementation details first stated or materially clarified in that operative order.

CONCLUSION

The Court should affirm the portion of the Amended Final Order requiring Reddy to remove the hard erosion control structure and the unauthorized construction materials covered by that Order and to restore the affected area. Affirmance of that removal ruling does not limit DES's and CCL's separate appeals seeking additional relief on statutory beaches status, liability, civil penalties, and the full scope of required removal and restoration. Section 48-39-120(C) authorizes that remedy, § 48-39-290(B)(2)(d) expressly preserves it, substantial evidence supports the ALC's adverse public interest finding, and Reddy received due process. The Court should reject Reddy's request to vacate the removal order or remand for a new jurisdictional proceeding.

For the reasons stated in CCL's separate initial brief, the Court should also correct the ALC's legal errors by holding that the record satisfies the statutory beaches definition, that Reddy violated § 48-39-130(C), and that the ALC erred in vacating DES's civil penalty.

Respectfully submitted,

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

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Attorneys for S.C. Coastal Conservation League

Charleston, S.C.
July 1, 2026

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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.

PROOF OF SERVICE

I, Polly Bell, hereby certify that on this date, I served the *Response Brief of Respondent-Appellant South Carolina Coastal Conservation League to Initial Brief of Appellant-Respondent Rom Reddy* and *Designation of Matter* upon all counsel of record electronically by sending same to the email addresses indicated below:

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Respectfully submitted,

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

s/Polly Bell
Polly Bell, Paralegal

Charleston, S.C.
July 1, 2026

SCELP

Polly Bell <polly@scelp.org>

SCDHEC vs. Rom Reddy; Appellate Case No. 2026-000221

1 message

Polly Bell <polly@scelp.org> Wed, Jul 1, 2026 at 4:44 PM
To: brandongaskins@mvalaw.com, lauraphillips@mvalaw.com, ckieser@pacificlegal.org, jtalcott@pacificlegal.org, Lauren Megill Milton <lauren@scelp.org>, Leslie Lenhardt <leslie@scelp.org>, sallie.phelan@des.sc.gov, Bradley.Churdar@des.sc.gov, "Janet H. DeBruhl" <Janet.DeBruhl@des.sc.gov>

Good afternoon, enclosed please find the Response Brief of Respondent-Appellant South Carolina Coastal Conservation League to Initial Brief of Appellant-Respondent Rom Reddy for service upon you in the above-referenced matter.

Thank you,

Polly Bell
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South Carolina Environmental Law Project
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VIA EMAIL TO CTAPPFILINGS@SCCOURTS.ORG
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
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Re: *SCDES and South Carolina Coastal Conservation League v. Rom Reddy*
Appellate Case No. 2026-000221

Dear Ms. Kitchings:

Attached for filing is the Response Brief of Respondent-Appellant South Carolina Coastal Conservation League to Initial Brief of Appellant-Respondent Rom Reddy and Designation of Matter in the above-captioned appeal. By copy of this correspondence, I am providing these materials to counsel of record as reflected below and on the attached Proof of Service. With deep respect and kind regards, I remain;

Sincerely,

Lauren Megill Milton

LMM/pb
cc:
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Our Mission We use our legal expertise to protect land, water and communities across South Carolina.