THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

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

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Case No.: 2026-000221

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

v.

Rom Reddy ....Appellant-Respondent.

SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES'
INITIAL RESPONSE BRIEF

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STATEMENT OF THE CASE

The Department of Environmental Services, Bureau of Coastal Management ("DES" or "Department") incorporates by reference the Statement of the Case set forth in the Department's Initial Appellant Brief to this Court filed on May 1, 2026, pages 1-3, as if fully set forth herein.

STATEMENT OF FACTS

The Department incorporates by reference the facts set forth in the Department's Initial Appellant Brief to this Court filed on May 1, 2026, pages 5-25, as if fully set forth herein. Additionally, the Department sets forth the following facts which are also relevant to the Department's response to Reddy's appeal.

Notice to Reddy That Department Was Seeking to Remove Walls

The ALC made several express findings, supported by substantial evidence, related to Reddy's notice that the Department was seeking to have the walls removed in this enforcement case. (Order Mot. Recons. 3-5, 12/30/2025.) "[T]he issues were apparent considering that the parties had been disputing the Department's authority to order the removal of Respondent's hard structure since February 9, 2024" when the Department filed a Petition for Injunctive Relief and Motion for Temporary Injunction. *(Id.* 4.)

> In fact, Respondent was clearly given notice that the Department was seeking to remove the hard structure pursuant to its authority. Indeed, the Department's October 20, 2023 Notice to Comply and the subsequent three Cease and Desist Orders repeatedly informed Respondent that the Department was seeking to remove the hard structure. S.C. Code §§ 48-39-10, *et seq*, (2008 & Supp. 2025) (Act). Later, on February 9, 2024, the Department moved this Court for a Temporary Restraining Order and Preliminary Injunction (TRO) on the specific ground that "[i]f an injunction is not issued, **the public will suffer immediate and irreparable harm by the blockade created by the Reddy's unauthorized wall in the critical area and the threat of harm due to the unsafe, dangerous conditions**." (emphasis added). The Department's May 22, 2024 Notice of Alleged Violation/Admission Letter, which Respondent's counsel acknowledged and responded to, also expressly set forth the Department's authority under subsection 48-39-120(C) of the South Carolina Code and the Department's July 1, 2024 Administrative Order also cited Respondent as in violation of the Act.

(Id. 3.) The Notice of Alleged Violation/Admission Letter (NOAV/AL) dated May 22, 2024, sent to Reddy expressly identified Section 48-39-120(C) and provided:

> **Be advised that:**
> **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.

(Joint Ex. 010, BCM Reddy 002294.) The NOAV/AL was received and read carefully as evidenced by the detailed responses to each of the violations set forth in the letter. (Joint Ex. 009.) On July 1, 2024, Department's counsel writes to Reddy's counsel "at this time, we have been given every reason to believe that your client is not willing to remove the wall, which is what the Department will require in this process." (Joint Ex. 162.) The Department then issued the Administrative Order (AO) that gave Reddy clear notice that the Department was seeking removal of the walls as it required removal of "the unauthorized non-beach-compatible materials in their entirety from the Beaches Critical Area at the Site" and identified the specific materials used in constructing the walls. (Joint Ex. 011, ¶ 4, BCM Reddy 002470.)

"The Department later filed an Agency Information Sheet (AIS) with this Court [the ALC]. While the AIS included all of the statutory provisions cited in the Administrative Order, it also set forth the additional designation that the controversy was not limited to those set forth therein." (Order Mot. Recons. 3 n.2.)

During his September 11, 2023 visit to the Site, Mr. Slagel also advised Mr. Reddy of the concern for adverse impacts of non-beach-compatible materials on the beach. For example, when Mr. Slagel was asked by Reddy's contractor if they could put clay down in the area behind Mr. Reddy's house, Mr. Slagel explained:

> …. clay is not a beach-compatible material. So, you were talking about sea turtles before. So, we do have a threatened and endangered species responsibility. The sea turtles cannot dig through clay to lay their eggs.

(Joint Ex. 072 (Audio of Visit), 24:40-24:50.) Mr. Reddy's comments that he did not care about a public beach during that meeting also show that he had notice that the impact to the public's use and enjoyment of the beach was a significant concern for the Department and was an issue even prior to his construction of the walls.[1]

Area Where Walls Were Built Was Periodically Inundated

In the Department's Initial Appellant Brief and Proposed Order to the ALC, the Department

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[1] Mr. Reddy stated he would just build a seawall to protect his property and that he did not care if there was a public beach or not:

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

(Joint Ex. 072 (Audio of Visit) 11:25-11:50.) This statement demonstrates that he had notice that public use of the beach was at issue before he constructed the walls.

set forth the Department's methodology in assessing the Beaches Critical Area and the substantial evidence supporting that periodic inundation occurred at or near the Reddy property at 118 Ocean Boulevard on the Isle of Palms, South Carolina ("Site)." (DES Initial Appellant Br. 9-25, 5/01/2026 & DES Proposed Order With Imagery 15-28 & 45-51, 8/15/2025 for a detailed review of photographic evidence and testimony.) The ALC made several findings of fact that support that the area where Reddy constructed the walls and altered the beach was periodically inundated:

> Here, the evidence established that the land where Respondent constructed ERC-1 [the original wall] and the hard structure [the enlarged structure composed of both walls] has been subject to subject to [sic] inundation. Indeed, the evidence shows water reaching Respondent's property at varying times throughout the Department's investigation. For instance, the evidence of the accumulation of wrack and saturated sand at the base and around the wing walls of both ERC-1 and the hard structure reflected the structure has been exposed to tidal wave action. In fact, both experts agreed that the presence of wrack is suggestive of tidal and wave action having reached up to the location of the wrack. Furthermore, the April 4, 2024 survey of Respondent's property shows that portions of the hard structure are seaward of the top of bank and landward of the toe of the dune. The top of the bank marks the top of the escarpment, a feature which also indicates the occurrence of erosive forces such as wave and tidal action having reached the area in question.

(Amended Final Order (Order) 18, 12/30/2025.) The "top of the bank" is from data collected on July 5, 2023, months prior to Reddy making any alterations to this area. (*See* Joint Ex. 050, pp. 1-2; DES Initial Appellant Br. 13-14; and DES Proposed Order With Imagery 15-16.) The ALC reiterated that "[t]he tidal and wave action reaching Respondent's hard structure has induced erosion and scouring on the adjacent beach." (*Id.* 32.)

The ALC also addressed the "active beach" and found that the walls were on active beach. (Order 16-17.) "In addition, ERC-1 and the hard structure have been on the active beach and therefore were subject to inundation. (*Id.* 18.) "The Department presented credible evidence to show that the hard structure has been on active beach." (*Id.* 33.) "…[T]he active beach may be a subset of the beaches and therefore evidence the exposure to tidal and wave action ….”[2] (*Id.* 18 n.39.)

The ALC also addressed the escarpment and the lack of stable vegetation:

> Respondent's April 4, 2024 property survey shows that segments of the hard structure were situated seaward of the top of the bank which again is, the top of the escarpment and, significantly, Respondent did not produce any evidence to show the presence of stable natural vegetation seaward of the escarpment. (*Id.* 39.)
>
> Georectified Imagery from October 10, 2023 and Ortho Imagery on December 18, 2023 shows the stable nature [sic] vegetation was considerably landward of ERC-1 and Respondent did not present any evidence to establish that the escarpment was seaward of the stable nature [sic] vegetation at that time. Likewise, site photographs from December 28, 2023 illustrate that the escarpment at the neighboring property was landward of ERC-1 and Respondent did not present any evidence to show the presence of stable nature [sic] vegetation seaward of the escarpment or ERC-1. (*Id.* 10-11.)

The ALC also noted "Mr. Jones [the Department's and the Coastal Conservation League's (CCL) expert] highlighted various characteristics captured between May 2023 and October 2024, including a vertical scarp, lack of nonlittoral vegetation on the scarp and base of the dune, accumulation of wrack and continued indication of water reaching the base and behind Respondent's hard structure." (Order 14 n.35.) It was undisputed at the trial that there was no stable, natural non-littoral vegetation in the area where Reddy constructed the walls.

Although the ALC made these findings about repeated inundation, that escarpments at the Site indicated erosive forces by tidal and wave action, that the walls were on active beach, and noted the lack of evidence showing the presence of stable natural vegetation seaward of the escarpment, the ALC did not make the legal determination as to whether there was "periodic inundation" as defined by Section 48-39-10(H). As explained in DES's Initial Appellant Brief on

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[2] The ALC pointed out that "[t]he fact that the hard structure has been on active beach is noteworthy to this Court [the ALC] considering that the General Assembly circumscribed stringent restrictions against construction and reconstruction in this area. S.C. Code Ann. § 48-39-290." (Order 33.)

pages 30 and 31, the only evidence presented by Reddy of where periodic inundation was occurring was a theoretical calculation by Reddy's expert. (Tr. 1127:7-22.) The ALC found that "Mr. Goodrich's conclusion unreasonably disregarded the effect of episodic events on the City's shoreline," that "Mr. Goodrich's simulated wave-run up calculation is unreliable…," and that "he too easily dismissed consideration of vegetation." (Order 15-16.) Notably, Mr. Goodrich did not testify to the location of the Beaches Critical Area at the Site and had "no opinion on the Beaches Critical Area in this matter." (Tr. 1066:9-19.) Reddy also did not testify as to where periodic inundation occurred in this area or present any other evidence as to where the Beaches Critical Area was located at the times he altered the area without a permit.

<u>Adverse Impacts of Reddy's Walls Including Scouring, Loss of Dry Sand Beach and Loss of Public Access</u>

As the ALC found, Reddy's walls have resulted in adverse public impacts, including scour to adjacent properties and a loss of public access laterally along the beach that will worsen as the coastline continues to erode. (Order 32-33.)

> Respondent's property is situated in a highly dynamic area where the beach has historically undergone cyclical periods of extensive erosion. . . . And here, while the City's beaches may have recently entered an accretional cycle, the dynamic nature of the shoreline suggests that it is only a matter of time before the shoreline is ***further scoured as a result of the presence of Respondent's hard structure.***

(*Id*. 32) (emphasis added). "Mr. Jones explained that hard erosion control structures restrict natural processes as they impede sediment flow and produce scour. Indeed, this likelihood was demonstrated by the photographic evidence which shows that the tidal and wave action reaching Respondent's hard structure has induced erosion and scouring on the adjacent beach." (*Id.*)

"There is no dispute that the beach adjacent to Respondent's property is readily accessed and enjoyed by the public" (*Id*. 18.) Also, "[i]t is undisputed that the beach adjacent to Respondent's hard structure is a well-used destination for public recreation." (*Id*. 33.)

"Respondent's hard structure protrudes farther seaward into the adjacent beach than any neighboring structure." (*Id*. 32.)

> The repeated interaction of tidal and wave action with Respondent's hard structure is significant because, ***it caused a 'significant amount of erosion or scour'*** on the adjacent public beach. As a result, ***Respondent's hard structure has accelerated erosion*** of the adjacent beach and, in doing so, adversely affected the public. As explained by Mr. Jones, hard erosion control structures like Respondent's ***restrict the natural flow of sediment and induce scour*** onto adjacent properties, a fact which Respondent did not dispute. Naturally, this ***accelerated erosion contributes to increased deterioration of the adjacent beach***; ***a loss, which adversely affects public access*** laterally along the beach adjacent to the structure. . . . Indeed, the photographic evidence shows that the footprint of Respondent's hard structure extends farther seaward into the adjacent beach than any neighboring structure and, as stated by Mr. Slagel, in cases such as here, where a beach continues to erode, hard structures like Respondents cause a loss of dry sand in adjacent areas – a consequence which will result in further loss of public access laterally along the beach adjacent to Respondent's hard structure." (*Id*. 19) (emphasis added).

The ALC's findings are supported by substantial evidence in the record. The Department demonstrated the harmful effects of Reddy's hard erosion control structures including:

- Mr. Prevost's testimony related to his January 11, 2024 site visit and his photographs showing washout and scour on the north side of the structure and significant erosion around the wall (Tr. 293:15-295:16; Ex. 106; Tr. 378:19-24);

- Mr. Prevost's testimony that water is being funneled around the hard erosion control structures and impacting the adjacent properties (Tr. 375:23-376:11);

- Texts between Reddy's general contractor, CNT, and Reddy showing the structure's erosional impact on the adjacent properties (Ex. 195, CNT Foundations, LLC-060-064);

- Multiple photographs demonstrate the structure extended far past other structures (houses, pools, fences, etc.) built along this section of the coast and that water was up to and landward of Reddy's structures, impacting the public's ability to walk past the walls (*see e.g*. Joint Ex. 064, 078j, 078l, 078n, 078r, 080 & 092);

- Mr. Slagel's testimony that the riprap placed on the beach around the structure is an issue for sea turtle nesting, public access and public safety (Tr. 133:1-12);

- Mr. Slagel's testimony about photographs he took on August 9, 2024, showing that there was no dry sand beach around the wall and that the public could not set chairs up in that area of the beach (Tr. 134:19-135:14; Joint Ex. 090);

- Mr. Slagel's testimony of how an erosion control structure impacts public access and public safety, including the loss of dry sand beach and public access, and that Reddy's walls are no different than other erosion control structures with respect to the impacts to public access (Tr. 144:21-145:13);

- Mr. Jones' testimony on the effects of hard erosion control structures, including that the walls prevent sediment from nourishing the beach and induce scouring in front of and on the adjacent properties (Tr. 905:15-25);

- Mr. Jones' opinion that it is more likely than not that the walls will have further detrimental impacts if a substantial storm hits (Tr. 906:1-5);

- Mr. Truslow's testimony about debris, clay and other non-beach-compatible material, including that there was still "granite" and that you had to be "pretty careful where you step, even now." (Tr. 471:2-18); and

- Mr. Truslow's testimony about public access being blocked off by the walls and that the public was being "put in the most dangerous part of the beach" because of the "deadly currents" of Breach Inlet (Tr. 468:17-470:4, 474:2-10 & Tr. 470:13-18).

As the ALC stated, "the impact of Respondent's hard structure on the beach is significant." (Order 39.) "[T]he construction of the hard structure has disrupted the equilibrium of the adjacent beach and has adversely affected the public's use and enjoyment of the beach and exacerbated erosional conditions." (*Id.*) "Moreover, based on the uncontroverted testimony, during future erosive cycles, the public's access to the adjacent beach will continue to deteriorate because of a loss of dry sand laterally along the beach past the structure." (*Id*. 33.)

STANDARD OF REVIEW

The Department incorporates by reference the Standard of Review at page 26 of the Department's Initial Appellant Brief to this Court filed on May 1, 2026, as if fully set forth herein.

ARGUMENT

I. THE ALC DID NOT ERR IN ORDERING REMOVAL OF THE WALLS PURSUANT TO SECTION 48-39-120(C) BECAUSE THAT SECTION IS NOT LIMITED TO THE BEACH/DUNE SYSTEM.

Reddy's argument that "Section 48-39-120 governs tidelands and coastal waters, while the Beachfront Management Act (the 'BMA') governs the beachfront" (Reddy Initial Appellant Br. 7, 4/29/2026), is erroneous and not supported by the provisions in the South Carolina Coastal Tidelands and Wetlands Act[3] or in the BMA.[4] Reddy's interpretation also is contrary to case law interpreting these provisions. The Coastal Tidelands and Wetlands Act and the BMA will collectively be referred to as the South Carolina Coastal Zone Management Act (CZMA).

A. Reddy's Strained Construction of the CZMA Should Be Rejected as Section 48-39-120(C)'s Plain Meaning Does Not Limit This Section to Coastal Waters and Tidelands.

Section 48-39-120, read as a whole, references beaches, coastal waters, tidelands, areas below mean high water, and ocean front property. Section 48-39-120(C) is not limited to just tidelands and coastal waters. The very title of Section 48-39-120 references "Development of ***beach*** erosion policy…" S.C. Code Ann. § 48-39-120 (emphasis added). The very first subsection, subsection (A), provides that "[t]he department shall develop and institute ***a comprehensive beach erosion control policy that identifies critical erosion areas*** . . ." S.C. Code Ann. § 48-39-120(A) (emphasis added). It is nonsensical to argue that the General Assembly intended to limit section (C) to only two of the critical areas, while ignoring critical beach erosion that may be occurring in and adjacent to the other two critical areas, when Section 48-39-120 expressly refers to "a comprehensive beach erosion control policy." S.C. Code Ann. § 48-39-120(A). This section refutes Reddy's argument that "[t]he entire section is directed at the first two of the Act's four critical areas -- which are seaward of the mean high-water mark." (Reddy Initial Appellant Br. 7.)

Section 48-39-120(C) provides "[t]he department shall have the authority to remove all erosion control structures which have an adverse effect on the public interest." S.C. Code Ann. § 48-39-120(C). There is no indication whatsoever that this authority is restricted to the tidelands

[3] S.C. Code Ann. §§ 48-39-10 to -230 (2008 & Supp. 2026)
[4] S.C. Code Ann. §§ 48-39-250 to -360 (2008 & Supp. 2026)

and coastal waters of the state as Reddy suggests. Such a limitation would be contrary to the CZMA's mandate for the Department to protect the coastal zone for succeeding generations and to comprehensively manage and protect the coastal resources. S.C. Code Ann. § 48-39-30(B)(2) ("Specific state policies to be followed in the implementation of this chapter are …To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations."); S.C. Code Ann. § 48-39-30(B)(4) ("To formulate a comprehensive beach erosion and protection policy including the protection of necessary sand dunes.") Had the General Assembly wanted to restrict the implementation of this section to only the tidelands and coastal waters, it could have either included limitation language in this section's title, included a limiting sentence preceding all the listed subsections, or the General Assembly could have included this express limitation in subsection (C). The General Assembly did not include any such limiting language in the CZMA and therefore, Reddy's argument should fail.

Reddy refers to subsections (B) and (F) of Section 48-39-120 in support of his argument for restricting the implementation of Section 48-39-120(C) to the tidelands and coastal waters. (Reddy Initial Appellant Br. 7.) However, the first sentence of subsection (B) refers to tidelands and coastal waters, then goes on to address restrictions on ocean front property. Additionally, the fact that subsection (B) and (F) include limitations to certain areas demonstrates that the General Assembly was cognizant of making these limitations where desired and made them only to certain subsections of Section 48-39-120. Reddy states in his brief that a statute should be given its plain meaning "without resorting to subtle or forced construction" to limit its operation, but this is exactly what Reddy attempts to persuade the Court to do. (Reddy Initial Appellant Br. 8). *Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 214, 423 S.E.2d 101, 103 (1992); *Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007) ("Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.")

The ALC's rejection of Reddy's position that the BMA limited the Department's authority over erosion control structures to those seaward of the setback line also should not be disturbed on appeal because it is consistent with Section 48-39-290's plain meaning. Section 48-39-290(B)(2)(d) expressly provides that "[t]he provisions of this section **do not affect or modify the provisions of Section 48-39-120(C)**." (Order 32) (emphasis in original Order). The plain meaning of this provision should control. *In re Vincent J.,* 333 S.C. 233, 509 S.E.2d 261 (1998) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.") Moreover, if the General Assembly intended for Section 48-39-120 to apply only to coastal waters and tidelands and not to the beachfront, then there would be no need for the General Assembly to specify in Section 48-39-290 that "the provisions do not affect or modify the provisions of Section 48-39-120(C)." The fact that the General Assembly found it necessary to make this clarification further supports that Section 48-39-120 applies to the beachfront.

Similarly, Reddy also argues that the Department's removal authority in Section 48-39-120(C) is somehow limited to permitted structures, but the plain meaning of the statute does not support this reading. *Sloan* at 495, 640 S.E.2d at 459. The General Assembly did not express any such limitation on the statute's implementation, and it would be contrary to the CZMA's directive to comprehensively manage the beach and to protect coastal resources. S.C. Code Ann. § 48-39-30(B)(2) ("Specific state policies to be followed in the implementation of this chapter are …[t]o protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations."). Furthermore, subsection (B) expressly refers to the prohibition of development resulting from "permitted or nonpermitted structures." S.C. Code Ann. § 48-39-120(B).

Moreover, construing Section 48-39-120(C) as only applying to permitted structures would mean that someone like Reddy, who disregarded the Department's many directives and built an unauthorized structure, would not be subject to the Department's removal authority because the structure was "unpermitted." This is an absurd result. The Court should "reject a statutory interpretation that leads to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." *New York Times Co. v. Spartanburg Cnty. Sch. Dist. No. 7*, 374 S.C. 307, 649 S.E.2d 28 (2007) (citing *Kiriakides v. United Artist Commun., Inc.,* 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)).

B. The Beachfront Management Act Was Intended to Expand, Not Eliminate, the Department's Authority Related to Beachfront Management of Erosion Control Structures as Shown by the CZMA's Plain Meaning, Findings and Policies.

While Reddy acknowledges the finding contained in Section 48-39-250(4) as the basis for the General Assembly enacting the BMA, he fails to explain how construing Section 48-39-120 to completely eliminate the Department's authority landward of the setback line would address the issue the General Assembly identified in that section. (Reddy Initial Appellant Br. 8.) Section 48-39-250(4) provides:

> Chapter 39 of Title 48, Coastal Tidelands and Wetlands, prior to 1988, ***did not provide adequate jurisdiction*** to the South Carolina Coastal Council to enable it to effectively protect the integrity of the beach/dune system. Consequently, without adequate controls, development unwisely has been sited too close to the system. This type of development has jeopardized the stability of the beach/dune system, accelerated erosion, and endangered adjacent property. It is in both the public and private interests to protect the system from this unwise development.

S.C. Code Ann. § 48-39-250(4) (emphasis added). Despite this declaration from the General Assembly, Reddy requests that this Court hold that the Department's beachfront jurisdiction is completely limited to the Beach/Dune System, preventing the Department from regulating hard erosion control structures in the areas that are most dynamic and subject to the most severe erosion.

Reddy also cannot explain how this result would address the issues identified by the General Assembly in Section 48-39-250(4): to "provide adequate jurisdiction …. to effectively protect the integrity of the beach/dune system;" to prevent unwise development too close to the system; to provide increased stability to the beach/dune system; and to prevent accelerated erosion and endangerment to adjacent properties from this unwise development. Reddy has unwisely developed too close to the system. Allowing these hard erosion control structures to remain in the Beaches Critical Area immediately adjacent and landward of the Beach/Dune System would not protect the integrity of the Beach/Dune System and would result in all the problems that the General Assembly has expressly identified in Section 48-39-250.

Section 48-39-250(5) provides:

> The use of armoring in the form of hard erosion control devices such as seawalls, bulkheads, and rip-rap to protect erosion-threatened structures adjacent to the beach has not proven effective. These armoring devices have given a false sense of security to beachfront property owners. In reality, these hard structures, in many instances, have increased the vulnerability of beachfront property to damage from wind and waves while contributing to the deterioration and loss of the dry sand beach which is so important to the tourism industry.

S.C. Code Ann. § 48-39-250(5). Especially informative is the General Assembly's declaration that:

> Erosion is a natural process which becomes a significant problem for man only **when structures are erected in close proximity to the beach/dune system**. It is in both the public and private interests **to afford the beach/dune system space to accrete and erode in its natural cycle**. This space can be provided only by discouraging new construction **in close proximity to the beach/dune system**.

S.C. Code Ann. § 48-39-250(6) (emphasis added). The General Assembly's use of the words "in close proximity to the beach/dune system" and that the Beach/Dune System should be afforded "space to accrete and erode in its natural cycle" demonstrates that the General Assembly intended for the Department to have authority to regulate and protect from unwise development areas outside of the Beach/Dune System Critical Area and not just within it.[5]

Additional provisions that evidence that the General Assembly intended the Department to have authority to remove hard erosion control structures in the coastal zone are those that set forth the importance of public access and tourism. Section 48-39-250(8) finds that "[i]t is in the state's best interest to protect and to promote increased public access to South Carolina's beaches for out-of-state tourists and South Carolina residents alike." S.C. Code Ann. § 48-39-250(8). The General Assembly again advises of the importance of the tourism industry in South Carolina in Section 48-39-250(5), set forth above, and in Section 48-39-250(1)(b), finding that "[t]he tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues…" S.C. Code Ann. § 48-39-250(1)(b). These findings are applicable broadly to the entire coastal zone including the four critical areas. They are not limited to the Beach/Dune System and do not support making such a limitation to the Department's authority in Section 48-39-120(C) to remove erosion control structures that are adverse to the public's interest.

As the ALC pointed out in its Order On Motions For Reconsideration, Section 48-39-120(C)'s application to the coastal zone is also in keeping with CZMA's purpose as set forth in the

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[5] In *Kiawah Dev. Partners, II v. S.C. Dept. of Health & Env't Contr*ol, 411 S.C. 16, 31, 766 S.E.2d 707, 716 (2014), the Supreme Court addressed the CZMA's emphasis on protecting natural systems in the coastal zone. The Supreme Court pointed out that "[t]he legislature codified in the CZMA its finding that in South Carolina there is an 'urgent need to protect and to give high priority to natural systems in the coastal zone.'" *Id. (*quoting S.C. Code Ann. § 48–39–20(F)). The Supreme Court stated:

> As recognized by the General Assembly, there is often great value in allowing nature to take its course, rather than having our coast become an armored, artificial landscape. *See id.;* Meg Caldwell & Craig Holt Seagall, *No Day at the Beach: Sea Level Rise, Ecosystem Loss, and Public Access Along the California Coast,* 34 Ecology L.Q. 533, 539–40 (2007) *(explaining why "[a] fortified coast comes with major financial, social, and ecological costs").*

Id. at 31-32, 766 S.E.2d at 716-717.

legislative policies in Section 48-39-30(A) and (B)(2). (Order Mot. Recons. 8.) The General Assembly's declaration of state policy in these sections are as follows:

> (A) The General Assembly declares the basic state policy in the implementation of this chapter is to protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and all the people of the State.
>
> (B) Specific state policies to be followed in the implementation of this chapter are:
> (2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

S.C. Code Ann. § 48-39-30(A) and (B)(2). The General Assembly expressly refers to the "coastal zone" in these provisions. The "coastal zone" is defined as "all coastal waters and submerged lands seaward to the state's jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas." S.C. Code Ann. § 48-39-10(B). The language throughout the CZMA provides for comprehensive protection along the beach, not just in the Beach/Dune System Critical Area as Reddy suggests. The plain meaning of Section 48-39-120(C) does not support Reddy's position that the statute does not apply to the beachfront, and such a reading of the statute would frustrate and undermine the CZMA's express purpose of protecting coastal resources for future generations, as expressed in Section 48-39-30 set forth above. "Statutes which are part of the same legislative scheme should be read together to ascertain legislative intent. *Great Games, Inc. v. South Carolina Dep't of Rev.*, 339 S.C. 79, 529 S.E.2d 6 (2000). "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *A.O. Smith Corp. v. S.C. Dept. of Health & Env't Control*, 428 S.C. 189, 202, 833 S.E.2d 451, 458 (Ct. App. 2019) (quoting *Lockwood Greene Eng'rs, Inc*. v. *S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987)).

The Supreme Court addressed the CZMA and the extent of the Department's jurisdiction in the coastal zone in *SCCCL v. SCDHEC, KDP II, LLC, and KRA Development, LP,* 434 S.C. 1, 862 S.E.2d 72 (2021) as briefed in the Department's Initial Appellant Brief on pages 49 and 50. The Supreme Court held that the Department should have applied its "more rigorous critical area permitting analysis," including the policy in Section 48-39-30(D),[6] for the construction of an erosion control structure *outside of the critical area* where the evidence showed that the critical area would be impacted. *Id.* at 11-13 n.7, 862 S.E.2d at 77-78 n.7. In accordance with this Supreme Court opinion, the Department's authority in Section 48-39-120(C) should not be interpreted as limited to seaward of the setback line but rather should be interpreted to apply to the coastal zone.

If the Department does not have jurisdiction to regulate hard erosion control structures when they are located landward of the setback line, then it cannot adequately protect and promote public access or the tourism industry. In this case, the Reddy's walls extend onto the beach, where tidal waters come up to the wall at certain stages, indubitably limiting public access and interfering with the public's enjoyment of the dry sand beach.

(Joint Ex. 078k, BCM Reddy 000517.)

Joint Ex 078k
BCM Reddy 000517

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[6] Section 48-39-30(D) provides "[c]ritical areas shall be used to provide the combination of uses which will insure the maximum benefit to the people…" S.C. Code Ann. § 48-39-30(D).

The record in this case demonstrates that the wall directly interferes with public access. And as the ALC pointed out:

> In sum, reverberating throughout the Act is the fundamental responsibility of the Department, and therefore this Court, to protect the public's interests in the coastal zone even if that protection may be detrimental to the property owner's interest. Significantly, in this case, since Respondent installed the structure without any review by the Department, there has been no analysis as to whether soft solutions referenced in the law would be viable to protect his property.

(Order 34.) Eliminating the Department's jurisdiction along the beachfront in the most dynamic areas where the setback line does not extend far enough landward to protect the beach is contrary and perverse to the General Assembly's stated purpose and findings.[7]

C. Reddy's Interpretation of the Relationship Between Section 48-39-290(B)(2)(D) and Section 48-39-120(C) Demonstrates a Fundamental Misunderstanding of the Relationship Between These Sections and of the ALC's Order.

Reddy argues that Section 48-39-290 is "the specific statute governing beachfront erosion control structures" while Section 48-39-120(C) is "the general prohibition for tidelands and coastal waters" and that since they deal with "identical issues" the more specific statute should control. (Reddy Initial Appellant Br. 9.) However, these sections do not deal with "identical issues" as Reddy claims. Section 48-39-290 is entitled "Restrictions on construction or reconstruction, seaward of the baseline or ***between the baseline and the setback line***; exceptions; special permits."[8] (Emphasis added.) Section 48-39-290(B)(2), which specifically addresses erosion control structures, again limits these provisions to the Beach/Dune System by referencing the

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[7] The Department incorporates by reference DES' Initial Appellant Brief filed on May 1, 2026, Issue I(C)(2), pages 46-49 appealing the ALC's Order. This issue addresses further the CZMA's findings and policies that support the Department exercising authority in the coastal zone.

[8] *Joytime Distrib. & Amusement v. State,* 338 S.C. 634, 649, 528 S.E.2d 647, 655 (1999) ("[I]t is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature[.]") (citing *Lindsay v. Southern Farm Bureau Cas. Ins. Co.,* 258 S.C. 272, 188 S.E.2d 374 (1972)); 73 Am.Jur.2d *Statutes* § 98, at 322 (1974) ("[I]t is a generally accepted view of the United States that resort may be had to the title of an act as an aid in its interpretation.").

setback line: "[n]o new erosion control structures or devices are allowed ***seaward of the setback line***…." (Emphasis added.) In contrast, the Coastal Tidelands and Wetlands Act states in Section 48-39-80(A) that the Department "shall develop a ***comprehensive coastal management program***" that includes "a regulatory system which the department shall use in providing for the orderly and beneficial ***use of critical areas***." (Emphasis added.) Section 48-39-120(C) states "the department shall have the authority to remove all erosion control structures that have an adverse effect on the public interest." Therefore, Reddy's argument that these provisions address "identical issues" is not supported by the plain meaning of the statutes. Section 48-39-290 addresses only <u>one</u> critical area: the Beach/Dune System, while Section 48-39-120 and the Coastal Tidelands and Wetlands Act, Sections 48-39-10, *et seq*., are much broader and address the entire coastal zone, including the four defined critical areas.

Reddy erroneously concludes that "applying § 48-39-120 to override the BMA's detailed scheme would 'render the provision meaningless and futile.'" (Reddy Initial Appellant Br. 9.) However, as explained above, Section 48-39-120 provides the Department with removal authority in the coastal zone to more comprehensively manage and protect the coast. Section 48-39-290 helps to accomplish protection of the coast by establishing regulatory guidelines. Section 48-39-290 provides for a setback line based on the erosion rate that often is more landward than the Beaches Critical Area. Mr. Slagel explained the Beach/Dune System setback lines as follows:

> in the vast majority of cases, properties along the South Carolina shoreline, the setback line is landward of Beaches Critical Area … in those areas, that setback line limits development, square footage of development, the siting of different types of activities along – along the state's beaches. .... it's marking the landward limit of one of the four critical areas, the Beach/Dune System." (Tr. 89:19-90:14.)

The Department and CCL's expert witness, Chris Jones, P.E., was personally involved with the methodology in setting the very first interim baseline and setback lines for the Beach/Dune System pursuant to Section 48-39-290. Mr. Jones testified that "the Beaches Critical Area can be seaward ***or landward*** of the Beach/Dune System jurisdictional lines. (Tr. 831: 3-13 & Tr. 832:12-22; Joint Ex. 186, p. 1.) Since the Beach/Dune System setback line allows the Department to regulate beyond the active erosion that is occurring, it provides invaluable protection for much of the coastline so that the Department can help keep development from being sited too close to the system.

Reddy erroneously claims that the ALC read Section 48-39-290(B)(2)(d) "as extending § 48-39-120(C)'s authority to the beachfront." (Reddy Initial Appellant Br. 10.) However, the ALC in no way suggested that 48-39-290(B)(2)(d) affected Section 48-39-120(C) in any manner. Quite the contrary, the ALC discussed the CZMA's policies and findings and determined that they did not align with Reddy's argument that Section 48-39-290 restricted the Department's authority. (Order 30-32.) The ALC then looked to the plain meaning of Section 48-39-290(B)(2)(d) to continue its analysis. The ALC explained that Section 48-39-290's restrictions of its application to the area between the baseline and the setback line do not apply to Section 48-39-120. The ALC pointed out that Section 48-39-290(B)(2)(d) specifically provides that "[t]he provisions of this section **do not affect or modify the provisions of Section 48-39-120(C).**" (Emphasis added in the Order.) (*Id.* 32.)

Reddy cites to *Bruning v. SCDHEC*, 418 S.C. 537, 546, 795 S.E.2d 290, 295 (Ct. App. 2016), to argue a general statute cannot control over a specific statute. (Reddy Initial Br. 9-10.) This case differs from the *Bruning* case where the Court of Appeals held that a specific provision governing the storage of runoff was controlling over a more general regulation. Unlike in *Bruning,* Section 48-39-120(C) is not a general statute being used to control or interpret a more specific statute addressing the same issue. Section 48-39-120(C) addresses erosion control structures that have an adverse effect on public interest in the coastal zone including all four critical areas, while Section 48-39-290(B)(2) addresses erosion control structures only in the Beach/Dune System. These two sections work together to provide different standards: Section 48-39-120 addresses removal in the coastal zone and Section 48-39-290 addresses what is permitted to be constructed in the Beach/Dune System. *See e.g. State v. Sweat*, 386 S.C. 339, 352, 688 S.E.2d 569, 576 (2010) (holding a standard for the weight of regular vehicles set forth in one subsection of a statute did not control an exception for special use vehicles found in a separate subsection, rather the two subsections work together to set forth the different standards for regular and special use vehicles).

Reddy claims that "[r]eading the clause as the ALC did would create unlimited power to order removal of any erosion control structure anywhere in the coastal zone." (Reddy Initial Br. 10.) However, the Department does not have unfettered discretion; it is bound by the parameters of the CZMA. Through the specific findings, policies, definitions and other provisions in the CZMA, the General Assembly has expressly identified for the Department what considerations should be taken into account and what concerns of the public should be protected. The CZMA also provides for challenges to the Department's determinations before the ALC and appeals of those decisions such as this one, which eliminates the possibility of "unfettered" discretion. S.C. Code Ann. § 48-39-150(D) ("An applicant having a permit denied or a person adversely affected by the granting of the permit has the right of direct appeal from the decision of the administrative law judge pursuant to Section 1-23-610[of the South Carolina Code (2005 & Supp 2026)].").

D. Reddy's Claims That Jurisdiction Was Never Conferred Because the Department Has Never Ordered Removal of Beachfront Erosion Control Structures Pursuant to Section 48-39-120 Is Unsupported by Any Evidence in the Record.

Without record support, Reddy argues that "DES has never before invoked § 48-39-120(C) to order removal of a beachfront erosion control structure." (Reddy Initial Appellant Br. 11.) He then cites to *Gilstrap v. S.C. Budget and Control Board*, 310 S.C. 210, 423 S.E.2d 101 (1992), which is very dissimilar to the matter before the Court. (*Id.*) In *Gilstrap,* the record evidence demonstrated that the Board's actions showed that the Board "did not believe that it had authority" it later claimed to have. *Gilstrap* at 214, 423 S.E. 2d at 104. In the past, the Board had applied the statute differently than the application it was arguing for in that case. *Id.* In contrast, in this case there is no record evidence that the Department only applied Section 48-39-120 to coastal waters and tidelands and not the beachfront,[9] so Reddy's argument must fail.

E. The Amendment to Regulation 30-13(N)(3)(A) to Clarify That No New Hard Erosion Control Structures Are Allowed Within the Beaches Critical Area and/or the Beach/Dune System Critical Area Is In Accordance With the Authority Granted by the General Assembly in the CZMA.

Prior to the 2024 amendment and currently, Regulation 30-13 was titled: "Specific Project Standards for ***Beaches and*** the Beach/Dune System." (Emphasis added.) In May 2024, the General Assembly approved the amendment to Regulation 30-13, in accordance with authority granted by the CZMA, to further clarify the Department's project standards in the Beaches Critical Area when it extends beyond the Beach/Dune System. Regulation 30-13(N)(3)(a)'s language prohibiting new erosion control structures was amended, consistent with its title, to state the prohibition of new erosion control structures applied to both the Beaches and Beach/Dune System Critical Areas and not just "seaward of the setback line." The amendment to subsection (N)(3)(a) also aligned this project standard with the remaining subsections N(3)(b) through (e), which regulate erosion

[9] The ALC findings cited to by Reddy related to a different issue: civil penalties and exercising permitting authority landward of the setback line. (Reddy Initial Br.11; Order 18; Tr. 603:10-14 & Tr: 604:20-605:6.) The record evidence in this case, unlike *Gilstrap*, also demonstrated that the Department had exercised authority over erosion control structures on the beachfront because the Department had initiated other enforcement actions for erosion control structures installed landward of the setback line, but the Department was still working through those actions, so penalties had not been assessed. (Tr. 636:9-15.)

control structures without reference to whether they are seaward or landward of the setback line. The amendment did not expand the Department's authority as argued by Reddy but was consistent with the authority already granted to the Department by the CZMA. It is also consistent with the legislature's policies set forth in Section 48-39-30 & Section 48-39-260.[10]

When Regulation 30-13 first became effective, a ban on new erosion control structures "seaward of the setback line" included such structures in the Beaches and Beach/Dune System Critical Areas since the setback line was almost always landward of the Beaches Critical Area. S.C. Regs. 30-13 (eff. 6/27/2003 through 5/23/2024). However, in recent years the Beaches Critical Area has moved landward of the setback line and the Beach/ Dune System Critical Area in some places, which led the Department to amend the regulation to clarify that its project standards applied to both critical areas.

The Department presented testimony at the hearing as to the movement of the Beaches Critical Area landward of the Beach/Dune System Critical Area. Ms. Boynton explained that:

> ….typically, the historic situation is that the setback line was well into the dune environment, which would make it landward of both the beaches and the beach/dune system. That's still the case today for the vast majority of properties. The properties that are most vulnerable and most dynamic have seen the beaches critical area erode landward of the setback line.

(Tr. 750: 12-22; *also see* Tr. 746:10-21 addressing language referring to the Beach/Dune System as being most landward.) Mr. Slagel testified that there were not many examples of Beaches

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[10] *See e.g.*, S.C. Code Ann. § 48-39-30(B)(2) ("Specific state policies to be followed in the implementation of this chapter are …To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations."); S.C. Code Ann. § 48-39-30(B)(4) ("To formulate a comprehensive beach erosion and protection policy including the protection of necessary sand dunes."); and Section 48-39-260 ("In recognition of its stewardship responsibilities, the policy of South Carolina is to: ….(3)"severely restrict the use of hard erosion control devices to armor the beach/dune system and to encourage the replacement of hard erosion control devices with soft technologies as approved by the department which will provide for the protection of the shoreline without long-term adverse effects").

Critical Area moving landward of the Beach/Dune System until recently because:

> prior to the last several years, that scenario was – *was infrequent*. It was *atypical* to have Beaches Critical Area landward of the setback line, landward of the Beach/Dune System Critical Area. But in the last several years, we've been seeing with more frequency this issue occurring, whether it's due to higher king tides than predicted, more frequent king tides, sea level rise, the hurricanes that have impacted our coast going back to Hurricane Matthew in 2016, to Hurricane Matthew, Irma, Florence, Michael, Ian, Isaias, Idalia, all within the last ten years. They didn't have a direct impact like Hugo did, but, cumulatively, each one of those storms has been causing erosion along the state's beaches.

(Tr. 98:5-99:1) (emphasis added).

Therefore, until the recent condition changes occurred, the Department's prior language referring to "seaward of the setback line" was sufficient to address the protection and management of the Beaches Critical Area along the vast majority of the coast where the Beach/Dune System was the most landward critical area. However, with the changing environmental conditions and time, this language needed to be clarified to ensure the continued protection of the Beaches Critical Area in places where it moved landward of the setback line. This amendment was in keeping with the CZMA's finding that:

> South Carolina can only regain control of the regulation of its critical areas by developing its own management program. The key to accomplishing this is to encourage the state and local governments to exercise ***their full authority over the lands and waters in the coastal zone***.

S.C. Code Ann. § 48-39-120(C) (emphasis added). The regulation needed to be amended to refer to the Beaches Critical Area as well as the Beach/Dune System Critical Area to clarify the full authority granted to the Department by the CZMA.

The Notice of Final Regulation set forth the reason for the amendment as follows: "Amend language to clarify that the Department applies restrictions for erosion control structures consistently within the beaches and beach/dune system critical areas and to conform with the title of R.30-13." *Notice of Final Regulation*, South Carolina State Register, Volume 47, Issue 7, July 28, 2023. Ms. Boynton, who was involved with proposing the regulations, testified "[t]he authorities for the Department were already established. The Department provided clarification in the regulations." (Tr. 802:6-8.)

Reddy argues that the amendment to Regulation 30-13(N)(3)(a) "confirms that, under the prior regulation in effect at the time of Reddy's conduct, DES's regulatory prohibition on erosion control structures was limited to areas seaward of the setback line." (Reddy Initial Appellant Br. 11.) Reddy's argument does not acknowledge that there is nothing in the CZMA or in the Department's regulations that creates an absolute right to install erosion control structures landward of the setback line. Nor does Reddy's argument acknowledge the mandates to the Department to protect the dry sand beach and access to the public, and to severely restrict hard erosion control structures. The Department amended Regulation 30-13 to ensure, in light of recent changes in conditions, that the ban on new erosion control structures remained in effect in both the Beaches and Beach/Dune System Critical Areas as the regulation's original language intended.[11]

II. THE ALC DID NOT ERR IN ORDERING THE REMOVAL OF THE WALLS BUT SHOULD HAVE ALSO DETERMINED THE DEPARTMENT'S JURISDICTION IN THE BEACHES CRITICAL AREA TO ENFORCE THE ADMINISTRATIVE ORDER TO REMOVE ALL NON-BEACH-COMPATIBLE MATERIALS.

For the reasons expressed in Issue I.C of the Department's Initial Appellant Brief filed on

[11] Assuming arguendo that the standards contained in Regulation 30-13 did not previously apply to construction of a wall in the Beaches Critical Area, which the Department strongly disagrees is the case, Reddy fails to acknowledge the requirement to apply for a permit to alter the Beaches Critical Area. In accordance with the CZMA's mandates, the Department would then review the permit under the General Considerations for All Critical Areas as they existed prior to the construction. *See* S.C. Code Ann. § 48-39-150 & S.C. Code Regs. R.30-11.B. The CZMA requires, among other things, that the Department consider "the extent to which the activity could cause erosion," "the extent to which the development could affect existing public access to ... beaches," and "the extent to which the proposed use could affect the value and enjoyment of adjacent owners." *Id.* The Department would also apply the CZMA's policies.

May 1, 2026, the Department agrees that the ALC should have decided the issue of whether the Department had jurisdiction over the Beaches Critical Area. The ALC's Order decided the issue of removal of the walls pursuant to Section 48-39-120 but did not order the removal of other non-beach-compatible materials in the Beaches Critical Area despite the substantial and uncontroverted evidence that the materials were located there. The Department incorporates Issue I.C of DES's Initial Appellant Brief by reference as if fully set forth herein.

A. The ALC's Order to Remove the Walls and Restore the Affected Area Should Also Be Affirmed on the Grounds That Reddy Altered the Beaches Critical Area Without a Permit.

"The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. "Under the present rules, a respondent – the 'winner' in the lower court – may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000).

The ALC ruled that the Department has the authority to order the walls' removal pursuant to Section 48-39-120(C). Should the Court determine that the Department does not have authority under that section, the Court should affirm the ALC's ruling to remove the walls pursuant to Section 48-39-130[12] and Section 48-39-50(I).[13] The evidence is uncontroverted that Reddy did not apply for a permit, allow the Department to consider whether one should be issued, or possess

[12] S.C. Code Ann. § 48-39-130(A) (2008) ("[N]o person shall utilize a critical area for a use other than the use the critical area was devoted to on such date unless he has first obtained a permit from the department.").

[13] S.C. Code Ann. § 48-39-50(I) (2008) (listing the Department's powers and duties, including "[t]o 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 of legal proceedings to compel compliance with the provisions of this chapter.").

a permit when he constructed the walls and that he built them despite several cease-and-desist directives not to do so. The Department also presented substantial evidence that the altered area was in the Beaches Critical Area because it was being periodically inundated by tidal and wave action as set forth in the Statement of Facts on pages 1 through 8, and the Department's Initial Appellant Brief on pages 11-32. The ALC made several findings of fact supporting this determination. The ALC found that "the evidence established that the land where Respondent constructed ERC-1 and the hard structure has been subject to subject to [sic] inundation."(Order 18.) The ALC found that "[i]ndeed, the evidence shows water reaching Respondent's property at varying times throughout the Department's investigation." (*Id.* at 18.) The ALC further found:

> "Respondent's April 4, 2024 property survey shows that segments of the hard structure were situated seaward of the top of the bank which again is, the top of the escarpment and, significantly, Respondent did not produce any evidence to show the presence of stable natural vegetation seaward of the escarpment."

(Order 39.) The "top of the bank" is from data collected on July 5, 2023, months prior to Reddy making any alterations to this area. (*See* Joint Ex. 050, pp. 1-2; DES Initial Appellant Br. 13-14, 5/1/2026; and DES Proposed Order With Imagery 15-16, 8/15/25.) Reddy's own survey therefore indicates that in July 2023, periodic inundation was occurring up to and landward of the future walls' location. As set forth above, the ALC also found that Reddy did not produce any evidence to show the presence of stable vegetation seaward of this line. (Order 39.)

The Department respectfully requests that the Court affirm the ALC's Order to remove the walls and restore the area pursuant to Section 48-39-130 & Section 48-39-50(I). The Record on Appeal supports the Court affirming the ALC's Order pursuant to these provisions. Rule 220(C), SCACR; *I'On, L.L.C.* at 419, 526 S.E.2d at 723.

B. The Beachfront Management Act Did Not Eliminate The Department's Authority Landward of the Setback Line as Beaches Is a Separate and Distinct Critical Area.

As explained in Issue I.C(1) of DES's Initial Appellant Brief, the Department has been granted authority over four critical areas including the Beaches Critical Area. (DES Initial Appellant Br. 43-46.) While the BMA replaced the "primary oceanfront sand dunes" with "beach/dune system," the General Assembly did not incorporate "beaches and dunes into a single managed area bounded by the setback line" as Reddy argues. (Reddy Initial Appellant Br. 12.) "Beaches" and the "Beach/Dune System" are still set forth as separate and distinct critical areas. S.C. Code Ann. § 48-39-10(J)(3) & (4). And the definition of "beaches" remains unchanged. Notably, the definition of "beaches" does not reference the setback line whatsoever. S.C. Code Ann. § 48-39-10(H) ("'Beaches' means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.").

The BMA's legislative history demonstrates that Reddy's construction to limit the Department's authority is contrary to the legislative intent. The subject of Bill Number 3713, which was ratified into the BMA, sets forth that the bill's purpose is "[t]o provide for ***beach*** protection; to restore the dune system to its natural dynamic equilibrium." H.B. 3713, 1988 Gen. Assemb., 107th Sess. (S.C. 1988) (emphasis added). Reddy's reading of the BMA would have the dry sand beach completely unprotected when it is landward of the Beach/Dune System. Furthermore, to allow armoring immediately adjacent to the Beach/Dune System, as where Reddy's wall is located, would not "restore the dune system to its natural dynamic equilibrium."

Notably, when the General Assembly enacted the BMA, it specifically amended the Coastal Tidelands and Wetlands Act Section 48-39-10, which defines the critical areas, and Section 48-39-130, which sets forth the Department's permitting authority in the critical areas. Bill Number 3713, which was ratified and became the BMA, provides that this amendment was:

> AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 48-39-270 THROUGH 48-39-360 SO AS TO PROVIDE FOR BEACH PROTECTION THROUGH A FORTY-YEAR PROGRAM TO RESTORE THE BEACH/DUNE SYSTEM TO ITS NATURAL DYNAMIC EQUILIBRIUM; TO AMEND SECTION 48-39-10, RELATING TO DEFINITIONS PERTAINING TO COASTAL TIDELANDS AND WETLANDS, SO AS TO REVISE THE DEFINITION OF 'CRITICAL AREA,' AND TO AMEND SECTION 48-39-130, RELATING TO PERMITS TO UTILIZE CRITICAL AREAS, SO AS TO REVISE THE EXCEPTION FOR EMERGENCY REPAIRS WITHOUT A PERMIT.

Id. The fact that the General Assembly left the Department's authority in the Beaches Critical Area unchanged when amending these sections demonstrates it did not intend to limit the Department's authority in creating the BMA. Also, this language reemphasizes that the BMA's purpose was to "provide for beach protection" and "to restore the beach/dune system to its natural dynamic equilibrium." *Id.* The fallacy of interpreting the BMA as eliminating the Department's jurisdiction landward of the setback line is demonstrated as these two legislative goals would not be accomplished.

The BMA intended to expand the Department's jurisdiction by creating an area based on twenty times the erosion rate from the current baseline so that the Department could protect the coast landward of where the beach was actively eroding. To construe the BMA as completely eradicating the Department's landward authority on the dry sand beach, rather than expanding it, is contrary to the plain meaning of the statute and frustrates the very purpose of creating this Beach/Dune System Critical Area. "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *New York Times Co.* at 310-311, 649 S.E.2d at 30 (2007) (citations omitted).

Reddy proposes a nonsensical interpretation that "preserves 'beaches' for areas where no baseline or setback line has been established. S.C. Code Ann. § 48-39-280(E)(3)." (Reddy Initial Appellant Br. 12.) Section 48-39-280(E)(3) addresses coastal areas where development is unlikely, making it highly unlikely that the Department would need to protect these areas from unwise development. This section provides:

> The department, by regulation, may exempt specifically described portions of the coastline from the survey requirements of this section when, in its judgment, ***the portions of coastline are not subject to erosion or are not likely to be developed*** by virtue of local, state, or federal programs in effect on the coastline which would preclude significant development, or both.

S.C. Code Ann. § 48-39-280(E)(3). To unduly restrict the Department's authority in the Beaches Critical Area to coastal areas that "***are not subject to erosion or are not likely to be developed***" would render the CZMA's establishment of the Department's regulatory authority in the Beaches' Critical Area meaningless. "The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (citing *State ex rel. McLeod v. Montgomery,* 244 S.C. 308, 136 S.E.2d 778 (1964)). "The court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless." *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2021).

Reddy further erroneously argues that "DES's interpretation renders the setback line superfluous as a jurisdictional boundary." (Reddy Initial Appellant Br. 12-13.) As the Department staff testified, the setback line of the Beach/Dune System is the most landward line of the Department's jurisdiction in the vast majority of the coastline. (Tr. 89:19-90:14; Tr. 750: 12-22.) The setback line is what the Department uses to determine its permitting authority in all those areas where the Beaches Critical Area is seaward and not landward of the setback area.

Reddy also argues that Section 48-39-330 confirms that the Department was not meant to have jurisdiction landward of the Beach/Dune System Critical Area. (Reddy Initial Appellant Br.

13.) But Section 48-39-330 cites to "jurisdictional lines" twice in addition to the setback line and baseline:

> Thirty days after the initial adoption by the department of setback lines, a contract of sale or transfer of real property located in whole or in part ***seaward of the setback line or the jurisdictional line*** must contain a disclosure statement that the property is or may be affected by the setback line, baseline, and the seaward corners of all habitable structures referenced to the South Carolina State Plane Coordinate System (N.A.D. 1983) and ***include the local erosion rate*** most recently made available by the department for that particular standard zone or inlet zone as applicable. Language reasonably calculated to call attention to the existence of ***baselines, setback lines***, ***jurisdictional lines***, and the seaward corners of all habitable structures and ***the erosion rate*** complies with this section."

S.C. Code Ann. § 48-39-330. (Emphasis added.) The statute's plain meaning is that there are other jurisdictional lines in addition to the baselines and setback lines that should be disclosed. This language supports that the baselines and setback lines were not meant to eliminate the other jurisdictional lines of the Department's critical areas. The requirement to disclose the actual erosion rate also supports the interpretation that the Beach/Dune System Critical Area was not the only important critical area. In other words, the statute requires the contract to notify the property owner that a high rate of erosion may cause the area to be regulated. The plain meaning of the statute, the lack of any limiting language as to the Beaches Critical Area, and the legislative history all support the Department's conclusion that it was given jurisdiction over the Beaches Critical Area even if it is landward of the Beach/Dune System setback line.

C. The ALC's Findings Do Not Compel Holding that the Department Did Not Have Authority to Issue the Administrative Order for Reddy's Violations in the Beaches Critical Area Landward of the Setback Line.

Reddy decontextualizes several of the ALC's findings in an effort to support his argument that "these findings, taken together, compel the conclusion the ALC avoided: the setback line marks the landward limit of DES's beachfront jurisdiction, and DES lacked authority to issue the Administrative Order for activity occurring entirely landward of that line." (Reddy Initial

Appellant Br. 13-14.) The Department will address each of the ALC's findings that Reddy claims "compel" such a conclusion:

- *"DES's vegetation line assessment was 'subjective' and 'dubious.'"* (Reddy Initial Appellant Br. 13 (citing Order 12).)

This finding went to a single vegetation line assessment on September 1, 2023. The ALC did not make a similar finding to any of the other vegetation lines the Department presented, which showed a landward progression of erosion over the last seventeen years. (Joint Ex. 057.) This finding also should be read with the ALC's footnote to this finding, which states "[w]hile the Department relies on the vegetation line to determine the most landward point of erosion, Ms. Boynton indicated that it also considers other indicators to discern the presence of inundation, including the presence of an escarpment line, accumulation of wrack, organic material and dead marsh grass indicators." (Order 12 n. 30.) Evidence of these other indicators of periodic inundation was presented at the hearing to support periodic inundation on September 1, 2023 as shown by the photographs in Joint Exhibit 084 below and testified to at trial. (Tr. 705:4-706:2; Tr. 108:13-109:1.)

Joint Ex. 084, p.1

Joint Ex. 084, p.3

Reddy's assertion that this finding compels a holding that the Department lacks jurisdiction in the altered area also ignores the other compelling evidence of periodic inundation in this case.

- *"DES's feature analysis had 'de minimis' probative value."* (Reddy Initial Appellant Br. 13 (citing Order 14).)

That the ALC discounted one piece of evidence the Department presented does not equate to compelling a finding that the Department did not have jurisdiction. DES's feature analysis related to the October and November maps that were not georectified. This finding does not eradicate or diminish Department's other evidence of the location of the Beaches Critical Area. The Department presented evidence that the area where the walls were to be built was periodically inundated by tidal and wave action starting in May 2023, and the erosion continued moving landward as shown by the Department's last assessment before the trial in October 2024. (*See* DES Initial Appellant Br. 11-13 & 30-32; *See* DES Proposed Order With Imagery 15-28 & 45-51 for a detailed review of the photographic evidence and testimony presented at the hearing.)

- *"DES's expert could not identify with reasonable certainty where the 'beaches critical area' was located."* (Reddy Initial Appellant Br. 13 (citing 14-15).)

Reddy next asserts that the ALC found that "DES's expert could not identify with reasonable certainty where the 'beaches critical area' was located." (Reddy Initial Appellant Br. 13.) This grossly mischaracterizes the finding. The Department's and CCL's expert, Mr. Jones, testified extensively as to the evidence of periodic inundation and the location of the Beaches Critical Area. Mr. Jones expressly testified that at the times Reddy substantially altered the beachfront the alterations were in the Beaches Critical Area. (*See* DES Final Proposed Order With Imagery at 51; Tr: 889:15-891:2.) This was the relevant time period for determining whether Reddy violated the CZMA by altering the Beaches Critical Area without a permit. The ALC asked Mr. Jones where the Beaches Critical Area was located *at the time of the hearing*, which he stated he did not know. This was not an issue Mr. Jones was asked to assess because his focus was determining whether Reddy violated the CZMA by altering the Beaches Critical Area without a permit. Nonetheless, the evidence demonstrated that periodic inundation occurred at the site from June 2023 to October 2024, and that vegetation had not been reestablished in the area at issue.

- *“Under DES’s interpretation, ‘neither the Court nor a landowner could consistently determine, with a reasonable degree of certainty, whether a permit is required.”* (Reddy Initial Appellant Br. 13 (citing Order 15.)

  The ALC in discussing Mr. Jones’ testimony stated:

  > [Mr. Jones] indicated that the critical area has moved over time and that at some point in the future Respondent’s hard structure may even cease to be in the beaches critical area. Even more disconcerting, Mr. Jones opined that due to the episodic nature of storms, the Department’s jurisdiction could change day-by-day or storm-by-storm based upon the statutory definition of the beaches. In other words, neither the Court nor a landowner could consistently determine, with a reasonable degree of certainty, whether a permit is required. Yet still the Department‘s witnesses averred that while the vegetation line is the biological indicator of the landward extent of regular inundation, it also considers other indicators such as the accumulation of dead marsh grass or an escarpment to discern whether periodic inundation is present.

(Order 14-15.) The ALC did not make a finding that DES’s interpretation was wrong; it found Mr. Jones’s application of the statutory definition disconcerting because it did not provide certainty over time. However, a certain, static delineation is not inherent to the ever-changing critical areas as the General Assembly expressly emphasized in Section 48-39-210(B). This section provides “[c]ritical areas by their ***nature are dynamic and subject to change over time***. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction ***at any time in any critical area*** on the subject property.” § 48-39-210(B) (emphasis added.) The Department’s interpretation (and that of Mr. Jones) of the definition of the Beaches Critical Area is in keeping with the express recognition by the General Assembly that the critical areas are dynamic in nature and may change. While the ALC expressed concern about the changing nature of the critical area, it did not make a finding that would compel the conclusion that the Department improperly asserted its jurisdiction.

The Department respectfully requests that the Court reject Reddy’s argument that these findings compel the conclusion that the Department does not have jurisdiction in the Beaches

Critical Area because they are taken out of context and/or ignore the other substantial, reliable and probative evidence in this case that supports the Department's jurisdiction. The ALC set forth a thorough analysis of the CZMA and its application to the Beaches Critical Area in its Order Denying Reddy's Motion For Summary Judgment as it did in *Summer House Horizontal Property Regime v. S.C. Dep't of Health & Env't Control,* 97-ALJ-07-0403-CC & 97-ALJ-07-0407-CC, 1998 WL 2683961999 ("[t]he delineation and creation of the setback line and the baseline did not divest OCRM of jurisdiction over those areas landward of the setback line when oceanfront beaches are subject to tidal wave action.") Neither the ALC's findings that Jones could not testify to the location of the Beaches Critical Area *at the time of the hearing*, nor the ALC's expressed concerns about the changing nature of the Beaches Critical Area, are relevant to the Court's application of the CZMA. Therefore, the Department requests that the Court apply the CZMA's plain meaning consistent with its stated purposes and policies to hold that the Department has jurisdiction landward of the setback line in the Beaches Critical Area. The Department further requests that the Court apply the ALC's findings of fact related to repeated inundation, tidal and wave action and lack of vegetation as set forth in the Statement of Facts *supra* 3-6, to hold that Reddy violated the CZMA by altering the Beaches Critical Area without a permit.

D. Supreme Court Precedent Is Contrary to Reddy's Interpretation and Supports That The Department's Authority in the Beaches Critical Area Was Not Eliminated Landward of The Setback Line.

In *South Carolina Coastal Conservation League v. S.C. Dep't of Health & Env't Control & Port Royal Plantation*, 354 S.C. 585, 582 S.E.2d 410 (2003), the Supreme Court addressed an argument similar to Reddy's where it was argued that Section 48-39-290 should be read in isolation and not as one part of a more comprehensive statutory scheme for the beachfront. The issue in *Port Royal* was "whether the Court of Appeals erred in holding that the legislature intended to prohibit permits for the rehabilitation or construction of groins." *Port Royal Plantation*, 354 S.C. at 587, 582 S.E.2d at 412. The Court of Appeals held that whether the Department could issue the groin permit was controlled exclusively by Section 48-39-290. *Id.* at 588-89, 582 S.E.2d at 412. The Court of Appeals determined that since groins were not among the enumerated exceptions to prohibiting new construction in that section, the Department lacked authority to issue the groin permits. *Id.* The Supreme Court rejected the Court of Appeals' interpretation that Section 48-39-290 exclusively controls the Department's authority on the beachfront. *Id.* at 589, 582 S.E.2d at 412. The Supreme Court explained "the BMA authorized OCRM to 'develop and institute a comprehensive beach erosion control policy[.]'" *Id.* at 587, 582 S.E.2d at 412 (quoting S.C. Code Ann. § 48-39-120(B) (Supp. 2002)). "Groins, by definition, must be located in the 'critical areas' on the 'active beach.'" *Id.* at 587-588, 582 S.E.2d at 412. A footnote following "critical areas" provided that "[t]he 'critical area' includes beaches" and cited the definition of Critical Area including "beaches" in Section 48-39-10(J)(3). *Id.* at 588 n.4, 582 S.E.2d at 412 n.4. Therefore, the Supreme Court in addressing Section 48-39-290 as it related to the Beach/Dune System specifically recognized "beaches" as a separate critical area over which the Department has direct permitting authority. This opinion directly conflicts with Reddy's position that Section 48-39-290 eliminated the Department's authority in the Beaches Critical Area.

In finding that the Department had authority to issue the groin permit, the Supreme Court explained:

> we do not find that the question of groin permits can be answered by examining § 48-39-290 in isolation. … [T]o find groin permits are prohibited by § 48-39-290(D)(1) undermines the OCRM's [Department's] statutory mandate to administer a 'comprehensive beach erosion control policy,' § 48-39-120(A), and frustrates the legislature's instruction that the State should 'encourage the use of erosion-inhibiting techniques which do not adversely impact the long-term well-being of the beach/dune system' and 'promote carefully planned renourishment as a means of beach preservation and restoration where economically feasible,' § 48-39-260(4)

> and (5), since groins are defined in the regulations as erosion-retardation devices. *See* fn. 2 *supra; see e.g. Great Games, Inc. v. South Carolina Dep't of Rev*., 339 S.C. 79, 529 S.E.2d 6 (2000) (statutes which are part of the same legislative scheme should be read together to ascertain legislative intent).

Id. at 589, 582 S.E.2d at 412-13.

The Supreme Court opinion in the *Port Royal Plantation* case confirmed that CZMA grants the Department authority over the Beaches Critical Area. To limit that authority would frustrate the legislature's mandate that the Department "administer a comprehensive beach erosion control policy" and the instruction that the State should encourage the use of erosion inhibiting techniques that do not harm the beachfront.[14] S.C. Code Ann. § 48-39-120(B). Such a limitation would also frustrate several other policies, including the importance and protection of public access and the discouragement of hard erosion control structures due to their harmful effects. (*See supra 12-14 & infra* 42-43.) (*Also see* DES Initial Br. 49-50, Issue I.3(C), addressing *SCCCL v. S.C. Dept. of Health & Environmental Contr*ol, 434 S.C. 1, 11-13 n.7, 862 S.E.2d 72, 77-78 n.7 (2021) (The Department should have applied critical area permitting requirements including the CZMA's policies to the proposed wall outside of the critical area where the Department had strong evidence that the area would become critical area in the future, and the wall would impact the critical area.)

E. The Definition of Beach in the Coastal Zone Management Program Document Also Supports that the Department Has Authority in the Beaches Critical Area Regardless of Whether It Is Landward of the Setback Line.

The plain meaning of The Coastal Zone Management Program Document (CZMP) which defines "Beach," also supports a finding that it is a distinct critical area and does not entirely lie

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[14] In this case, the Department issued to Reddy and the City renourishment permits to encourage renourishment as beach preservation as the State mandated. (Joint Ex. 021 & 017.) Instead of taking advantage of that option, Reddy decided to thwart the Department's authority and build hard erosion control structures which are strongly disfavored in South Carolina as evidenced by the BMA's findings and express prohibitions.

within the Beach/Dune System Critical Area. The CZMP has "the full force of the law." *Spectre, LLC v. S.C. Dep't of Health & Env't Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010).

This CZMP repeats the statutory definition of Beaches but adds the following language:

> 2. Definitions
> a. Beach
> The South Carolina Coastal Management Act (Act 123 of the 1977 South Carolina General Assembly) defines "beaches" as "those lands subject to periodic inundation by tidal and wave action so that no non-littoral vegetation is established." (Section 48-39-10(H)). ***This definition includes that area of sand between mean low and spring high water, in other words, the foreshore and the dry sand beach up to the line of vegetation. Beaches are included in the management program as "critical areas," subject to OCRM's direct permitting authority.***

(CZMP, Chapter IV.D. Beach and Shoreline Access at IV-61 (emphasis added).) The Department's contention that Beaches is a separate critical area subject to direct permitting authority is consistent with the plain meaning of the last sentence of the Beach definition in the CZMP.

III. THE ALC'S "ADVERSE EFFECT ON PUBLIC INTEREST" FINDING IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND SHOULD NOT BE DISTURBED ON APPEAL.

Reddy asserts that "the ALC's adverse-effect finding rests on general legislative policy declarations rather than case-specific evidence." (Reddy Initial Appellant Br. 14.) Reddy quotes the Supreme Court opinion in *Bauer v. S.C. State Housing Authority* for the proposition that "legislative findings and declarations have no magical quality to make valid that which is invalid." 271 S.C. 219, 230, 246 S.E.2d 869, 875 (1978). However, he omits the remainder of the Supreme Court's quote, which provides that "they [legislative findings and declarations] are entitled to weight." *Id.* While the ALC's consideration included the CZMA's findings of the detrimental effects of hard erosion control structures, there is also substantial evidence that supports the ALC's findings set forth in the Statement of Facts *supra 6-8*. These findings include that there was a significant amount of erosion or scour on the adjacent beach

(Order 19), that the wall jutted out much farther on the beach than other structures blocking public access (*Id.* 19 & 32), and that "during future erosive cycles, the public's access to the adjacent beach will continue to deteriorate because of the loss of dry sand laterally along the beach past the structure." (*Id.* 33.) These findings were based on testimony from the Department's staff; Mr. Truslow, an Isle of Palms resident; and the Department's and the CCL's expert witness, Mr. Jones. Texts between Reddy and his contractor also showed the walls' erosional impact on adjacent properties. (Ex. 195, CNT Foundations, LLC – 060-064.) The ALC also based its findings on photographs presented at the hearing of the case.

The ALC's findings were based on a preponderance of evidence in the record of this case and were consistent with the legislative findings related to hard erosion control structures. The ALC's findings should not be disturbed on appeal.

IV. THE ALC DID NOT DENY REDDY DUE PROCESS BY ORDERING THE WALLS' REMOVAL PURSUANT TO SECTION 48-39-120(C) AS REDDY HAD NOTICE OF THE ISSUES BEFORE THE ALC AND THE GOVERNING LAW, HAD THE OPPORTUNITY TO BE HEARD AND WAS HEARD.

It is undisputed that Reddy had notice that the Department was claiming jurisdiction and was seeking to have the walls removed from the beach because of their detrimental impacts. Reddy claims, however, that because a reference to Section 48-39-120(C) was not in the AO, and because the ALC did not cite to this section in its hearing notice, he was deprived of due process. From the very beginning of this controversy, the issue before the ALC was that the Department asserted jurisdiction and requested that Reddy remove the hard erosion control structures. Reddy's due process argument fails under the controlling South Carolina case law.

"Procedural due process requirements are not technical; no particular form of procedure is necessary." *Mitchell v. W.T. Grant Co.,* 416 U.S. 600, 94 S. Ct. 1895, 40 L.Ed.2d 406 (1974). At a minimum, procedural due process requires: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Adams v. H.R. Allen, Inc*., 397 S.C. 652, 657, 726 S.E.2d 9, 12 (Ct. App. 2012) (citations omitted.). Instead of being technical and formulaic, "[d]ue process is flexible and calls for such procedural protections as the situation demands." *Leventis v. S.C. Dep't of Health & Envtl. Control*, 340 S.C. 118, 131, 530 S.E.2d 643, 650 (Ct. App. 2000); *see also Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). "Procedural due process requires that a litigant be placed on notice of the issues which the court is to consider." *Murdock v. Murdock*, 338 S.C. 322, 526 S.E.2d 241 (Ct. App. 1999) (citing *Cameron & Barkley Co. v. South Carolina Procurement Review Panel,* 317 S.C. 437, 454 S.E.2d 892 (1995); *Abbott v. Gore,* 304 S.C. 116, 403 S.E.2d 154 (Ct. App. 1991)).

A. Reddy Had Adequate Notice That Section 48-39-120 Was Relevant to the Issues Before the ALC and Reddy Referred to this Section in His Opening Statement, Cross Examinations and Closing.

From the initiation of the Department's Compliance and Enforcement Action, Reddy had notice of Section 48-39-120(C) and that the Department was seeking to have the walls removed due to their adverse impacts on the public. The ALC's factual findings on these issues formed the basis of the ALC's application of Section 48-39-120(C).

The Department's May 22, 2024, Notice of Alleged Violation/Admission Letter (NOAV/AL) sent to Reddy provided actual notice that Section 49-39-120(C) was one of the statutory grounds for the enforcement action. (Joint Ex. 010, BMC Reddy 002294). Reddy received the NOAV/AL and provided a detailed response on June 7, 2024, evidencing that he received actual notice of the Department's position that it had authority pursuant to Section 48-39-120(C) to have the original wall removed because it was adverse to the public interest. (Joint Ex. 009, BCM Reddy 016897.) The Department also identified Sections 48-39-10, *et seq.*, as the statutory provisions giving rise to the case in the Agency Information Sheet (AIS) served on Reddy.

(DES Return Mot. Recons., Ex. A, AIS, 11/3/2025.) So, from the very beginning of this case, Reddy was informed that the Department was seeking to remove the walls and enforce the provisions set forth in the CZMA, including Section 48-39-120(C).

Reddy was on notice that Section 48-39-120(C) was important to the ALC's consideration of the case because the ALC expressly referenced the section in its April 24, 2025 Order Denying Reddy's Motion For Summary Judgment. In this Order, the ALC provided "[f]urther, the Department has the authority to remove all erosion control structures that have an adverse effect on the public interest. S.C. Code Ann. 48-39-120 (2008)." (Order Denying Mot. Summ. J. 4, 4/24/2025.) The ALC therefore specifically identified the significance of Section 48-39-120 when considering the removal of the walls and their adverse effect on the public.

Reddy's contention that he was deprived of due process because he did not know Section 48-39-120 was at issue is also severely undercut by the fact that Reddy used Section 48-39-120(B) in the presentation and defense of his own case at the hearing. Reddy crossed Mr. Slagel and attempted to cross Mr. Truslow using Section 48-39-120 during the trial. (Tr. 211:11-213:13; Tr. 481:16-483:20.) Reddy also testified about Section 48-39-120 in his direct examination, which he did in a narrative form. (Tr. 1254:10-16.) Reddy again used Section 48-39-120 in support of his directed verdict motion and in his closing argument. (Tr. 1437:10-11, 1440:16 & 1450:21-1451:12; Tr. 1487:13-1488:7.) It is disingenuous for Reddy now to posit a deprivation of due process when he utilized the same statute throughout his case-in-chief.

B. Reddy Was Not Deprived of Due Process as He Was Also Given Actual Notice of the Issues Identified in Section 48-39-120(C) Throughout This Case.

Reddy was fully aware that the Department was requesting removal of the walls because of their adverse impacts to the public as these issues were at the very root of this controversy. Prior to this enforcement action even being initiated, the Department filed a Motion for Temporary

Restraining Order and Preliminary Injunction (TRO) against Reddy, seeking to have the walls removed pursuant to the CZMA. (Joint Ex. 001.) In that Motion, the Department moved pursuant to Sections 48-39-10, *et seq*. and argued "[i]f an injunction is not issued, the public will suffer immediate and irreparable harm by the blockade created by the Reddy's unauthorized wall in the critical area and the threat of harm due to the unsafe, dangerous conditions." (Joint Ex. 001, p. 1.) In support of the TRO, the Department provided Mr. Prevost's Affidavit, which addressed the walls' detrimental impacts on the beach and to the public. (Joint Ex. 001, pp. 22-33, specifically ¶¶ 14, 19, 23 & 24.) Mr. Prevost testified consistently with his affidavit at trial, including his testimony about the photographs from his February 1, 2024 inspection that showed how Reddy's walls impacted public access along the beach.[15] (Tr. 316:14-22; Joint Ex. 079.)

In addition to the TRO, the Department gave Reddy notice of the relevance of Section 48-39-120(C) to the case throughout the litigation through compliance and enforcement communications, pleadings, briefs, and discovery disclosures, all of which specifically referenced the issues of the walls' removal and their adverse impacts to the public. The Notice to Comply directed Reddy to remove non-beach-compatible materials from the Beaches Critical Area and/or active beach. (Joint Ex. 004-008.) Mr. Slagel advised Reddy during his site visit on September 11, 2023, of the Department's concern for adverse impacts resulting from the use of non-beach-compatible materials on the beach. For example, when Mr. Slagel was asked by Reddy's contractor if they could put clay down in the area behind Mr. Reddy's house, Mr. Slagel explained that clay was non-beach compatible and could adversely impact sea turtles. (Joint Ex. 072 (Audio of Visit), 24:40-24:50.) So, Reddy was put on notice of the public concern of harming threatened and

[15] Mr. Prevost's Affidavit was identified in response to Interrogatory Number 4 requesting a summary sufficient to inform the other party of the important facts known to or observed by the witness. (DES Return Mot. Recons., Ex. B, DES Resp. Interrog. No. 44.)

endangered species by installing non-beach-compatible materials in the area. Mr. Reddy's comment during the same meeting showed that he had notice that the impact to the public's access was also of concern to the Department: "if we don't have a public beach that's fine … I'll just build a damn seawall … the water will come bang up against the seawall. The beach will be destroyed. But I don't really care …" (Joint Ex. 072 (Audio of Visit), 11:25-11:50.)

Reddy concedes that the NOAV/AL expressly set forth Section 48-39-120(C) but claims a due process violation for lack of notice occurred because the Department's Administrative Order (AO) did not expressly refer to 48-39-120(C). The AO's primary purpose is to set forth notable events and to address compliance with the law, not specifically the Department's jurisdiction or authority. The statutory sections set forth in the AO are those that the Department determined Reddy had violated and the provisions allowing it to bring an action. (Ex. 011, BCM Reddy 002466-002469.) Moreover, like the other documents sent to Reddy regarding this controversy, the AO included notice of the issues that form the basis of the legal application of Section 48-39-120(C) -that the Department was seeking the walls' removal and that it was the Department's position that the walls' presence on the beach was detrimental to the public interest. The AO specifically requests that all non-beach-compatible materials be removed and specifically lists out the materials used to construct the wall. (Joint Ex. 11, Para. 4, BCM Reddy 002470.) The AO also refers to the NOAV/AL that the Department issued and that specifically cited to Section 48-39-120(C). (Joint Ex. 011, ¶ 63.)

The extensive briefing and the detailed ALC Order on Reddy's Motion for Summary Judgment also provided Reddy notice that the Department sought the walls' removal based on their detrimental impacts to the public. In DES's Return, the Department identified several provisions of the CZMA that emphasize the importance of public access. The Department referenced Section

48-39-250(8), finding "[i]t is in the state's best interest to protect and to promote increased public access to South Carolina's beaches for out-of-state tourists and South Carolina residents alike." (DES Return Mot. Summ. J. 11, 3/28/2025.) The Department also cited to Section 48-39-30(D), stating that "[c]ritical areas shall be used to provide the combination of uses which will insure the maximum benefit to the people…" and arguing that "there is no evidence that the Respondent's wall will provide any benefit 'to the people,' especially considering the detrimental impact on public access to the beach,… and the recognized scouring effects of hard erosion control structures…." (*Id.* 15.) Additionally, the Department referenced Section 48-39-260, declaring the policy of South Carolina is to "preserve existing public access and promote the enhancement of public access to assure full enjoyment of the beach by all our citizens…." (*Id.* 18.)

The Department's Return further put Reddy on notice that his structures directly interfere with public access. A drone photograph showed the structures' extension far out on the beach with the water reaching the wall. (*Id.* 12.) The Department included a second ground photo showing that the water was reaching the wall, blocking public access to dry beach. (*Id.* 13.) The Department cited to James Carroll's Affidavit that the impact of the seawall was "significant," that he could not get around the seawall, and that he had seen many other people turn around. (*Id.*) Reddy was made fully aware through the Department's arguments that the Department was seeking removal of the structure as it was detrimentally impacting the public. The ALC also gave further notice to Reddy by addressing these issues in its April 24, 2025 Summary Judgment Order and specifically referencing Section 48-39-120(C).

The Department gave even more notice that the structures' detrimental impacts on the public, including impacts to public access, were an issue before the ALC when disclosing Doug Truslow as a witness. The Department disclosed Mr. Truslow's area of testimony at trial as follows:

> Mr. Truslow is a resident of the Isle of Palms and is expected to testify as to his knowledge of the construction of the Reddys' wall, including his observation of the work, the existence of rip rap and debris seaward of the wall, *the impacts of the wall on his and others' use and enjoyment of the beach,* and any other information he may have related to the issues in this case.

(DES Return Mot. Recons., Ex. B, DES Answers Interrog.) (emphasis added). For Reddy to claim he was not afforded due process for lack of notice is without merit, and the ALC's Order to remove the walls pursuant to Section 48-39-120(C) should be affirmed.

C. Reddy Had an Adequate Opportunity to Refute the Department's Presentation of Evidence Supporting a Determination of the Walls' Removal and the Walls' Adverse Impacts to the Public.

In addition to adequate notice, due process requires an adequate opportunity for a hearing, the right to introduce evidence, and the right to confront and cross-examine witnesses. *Adams* at 657, 726 S.E.2d at 12. Here, Reddy participated in a five-day hearing before the ALC where he confronted and cross-examined witnesses on the issues pertaining to the walls' removal based on their adverse impacts to the public. Reddy also cross-examined witnesses on and repeatedly argued for the application of Section 48-39-120 to refute the Department's position his walls deprived the public of access. The ALC addressed the notice Mr. Reddy had of removal of the walls (pages 2-6) and the adverse effects of the hard structure (pages 6-7) in its Order on Motions For Reconsideration. The following excerpts from the record exemplify Reddy's opportunity to be heard and to confront and cross-examine witnesses on the walls' effects on the public interest:

- At the beginning of the hearing, the Court outlined the issues to be considered for the parties and Department's counsel specifically stated that the Department was seeking a determination that the hard erosion control structure should be removed from the beach. (Tr. 66:8-68:21.) Reddy did not object to this issue being identified for the Court's determination. (Tr. 68:18-69:4.)

- Reddy argued in his Opening Statement about access, which shows he knew that the impact to the public was at issue from the very beginning of the hearing. (Tr. 60:11-14; 61:20-62:2.)

- Reddy crossed Mr. Prevost on his testimony about the walls' impacts on the adjacent property owners. (Tr. 375:23-379:6.)

- Reddy also crossed Mr. Truslow, who testified to the danger of blocking access where the only way around the wall would be through "deadly currents" near Breach Inlet. (Tr. 468:17-470:4, 474:2-10 & Tr. 470:13-18.)

- Mr. Slagel testified regarding Section 48-39-150, which applies to all permit applications related to critical area alterations and includes subsection (A)(5): "the extent to which development could affect existing public access to tidal and submerged lands, navigable waters, and beaches or other recreational coastal resources." (Tr. 144:6-20.) Without objection, Mr. Slagel was asked "[h]ow does an erosion control structure impact public access and public safety?" Mr. Slagel responded that "installation of a hard structure, if a beach continues to erode, as we've seen here, will result in the loss of that dry sand beach seaward of the structure, resulting in the loss of that public access laterally along the beach past that structure." He further confirmed that these impacts apply to the Reddy's structures as well. (Tr. 144:24-145:13.)

- Reddy also had the opportunity to cross Mr. Slagel on the harm to sea turtles caused by having non-beach-compatible materials on the beach but did not do so. (*See* Tr. 112:20-113:4 for Slagel testimony.)

- During Reddy's Motion for Involuntary Non-Suit, Reddy challenged CCL's intervention, arguing that CCL's witness "has no knowledge about access issues." (Tr.1024:5-7.)

- When Reddy read Section 48-39-120(B) into the record during his direct statement it was to address the access issue:

  > Lastly, Your Honor, I want to say that I'm – we have been repeatedly accused of denying access, access, access, and access, including the wall getting in the way and so on and so forth. …..As far as access parallel to the shoreline, if that the access we're talking about walking parallel to the shoreline, as Your Honor saw, there is the statute I put up – put up, believe it's 48-39-120, that clearly says that the mean high tide line is as it was at the time the property was subdivided and – and that the land below the mean high tide line is held in trust by the State. (Tr. 1253:19-1254:16.)

  - On cross examination, Reddy was asked whether he ever considered removal of the walls and he testified that removal would be impossible. (Tr. 1264:2-1265:11.) Reddy also crossed Mr. Jones on this issue, who testified that "it is possible to remove that wall. [Reddy] did as much work to stabilize the wall as it would have taken to … remove that wall." (Tr. 1420:17 to 1421:5.)

Reddy failed to present convincing evidence to counter the Department's trial theory that the walls should be removed because they were against public policy. As set forth in Issue III *supra*, the Department presented substantial evidence of the walls' impact on the public through testimony and photographs. Reddy had every opportunity to refute the Department's public impact evidence, took steps to do so at trial, and did not prevail.[16]

D. Reddy Has Failed to Show that He Was Substantially Prejudiced by the Administrative Process.

"Proof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice." *Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n,* 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984) (citation omitted). "Where a party receives inadequate notice, he must demonstrate prejudice resulting from the insufficient notice." *Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 14, 577 S.E.2d 190, 197 (2003) (citing *Ballenger v. South Carolina Dep't of Heath and Envtl. Control*, 331 S.C. 247, 500 S.E2d 183 (Ct. App. 1998)) ("even though applicant's notice was misleading, opposing party was not prejudiced"). "To demonstrate prejudice in a matter involving allegedly insufficient notice, an appellant must establish if he or she had received appropriate notice, he or she would have done something different, thereby affecting the decision of the trial court and advancing his or her case" *Chastain v. Hiltabidle*, 381 S.C. 508, 517, 673

[16] The disingenuousness of Reddy's position that he did not have notice is also demonstrated by his failure to object to the presentation of these issues at trial. For example, "[w]ithout objection from Respondent [Reddy], Mr. Jones was offered as an expert in "coastal engineering, coastal processes, … **including consideration of storm impacts and erosion control structures.**" (Emphasis in original.) (Order Mot. Recons. 6.) Reddy also did not object when Mr. Jones testified regarding the adverse effects of the hard structure. (*Id.* 7 & Tr: 906: 1-16.) Mr. Slagel was specifically asked "[a]nd, particularly, how does an erosion control structure impact public access and public safety?" (Tr. 144:21-145:13.) Reddy did not object. As the ALC noted, "[a] party cannot use a motion for reconsideration to raise for the first time an issue the party could have raised prior to judgment but did not, nor bring before the court theories or arguments that were not advanced earlier." (Order Mot. Recons. 7 (citing *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990)).

S.E.2d 826, 831 (Ct. App. 2009) (citing *Gardner* at 14, 577 S.E.2d at 197).

In *Leventis v. S.C. Dep't of Health & Envtl. Control*, the South Carolina Court of Appeals found that the appellant's due process rights were not prejudiced because an "exhaustive" hearing eliminated any prejudicial error and adequately protected due process rights. 340 S.C. 118, 131, 530 S.E.2d 643, 650 (Ct. App. 2000). Similar to *Leventis*, Reddy has failed to show substantial prejudice from the alleged failure to provide him notice of Section 48-39-120(C) given the ALC held a five-day hearing that afforded Reddy a full opportunity to present his case.

Reddy's only argument as it pertains to prejudice is his assertion that he was "denied the opportunity to present evidence specifically addressing whether § 48-39-120(C) applies outside the tidelands and coastal waters and what procedures must precede a removal order under that provision." (Reddy Initial Appellant Br. 17.) However, whether Section 48-39-120(C) applies outside the tidelands and coastal waters is an application of the law (the statutory construction of this provision) and not one of fact.[17] Additionally, there has been no prejudice because Reddy fully argued Section 48-39-120's application to the ALC in his Motion for Reconsideration. Reddy's presentation of evidence at trial would not have changed because the South Carolina Supreme Court has held "the Court may not look to the opinions of legislators or others concerned in the enactment of the law—expressed subsequent to enactment —to ascertain the intent of the legislature." *Creswick v. Univ. of S.C.*, 434 S.C. 77, 862 S.E.2d 706 (2021) (citing *Kennedy v. S.C. Ret. Sys*., 345 S.C. 339, 353-354, 549 S.E.2d 243, 250 (2001)).

As for Reddy's claim that he was unable to present evidence specifically addressing "what procedures must precede a removal order under that provision," this also is a question of law and

[17] Mr. Reddy attempted to question Mr. Truslow about Section 48-39-120(B), however, the Judge informed him that determining the meaning of the law was the ALC's function and not that of the witness. (Tr. 481:18-483:21.)

not one of fact. The CZMA sets forth procedures for enforcing its provisions; notably, the CZMA does not set forth a separate procedure depending on what section the Department is proceeding under. Section 48-39-50(I) provides the Department the power:

> [t]o 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. § 48-39-50(I). S.C. Code Ann. § 48-39-170(C) provides that:

> … [w]henever the Department determines that any person is in violation of any permit, regulation, standard, or requirement under this chapter, the department may issue an order requiring the person to comply with such permit, regulation, standard, or requirement, including an order requiring restoration when deemed environmentally appropriate by the Department; in addition, the department may bring a civil enforcement action under this section as well as seeking an appropriate injunctive relief under Section 48-39-160.

S.C. Code Ann. § 48-39-170(C). Regulation 30-8(F) directs the Department to issue an Admission Letter setting forth all facts and grounds for violation and further allowing the responsible party to respond. S.C. Code Ann. Regs. 30-8(F). Reddy was given notice of these procedures along with Section 48-39-120(C), specifically, in the NOAV/AL sent by the Department in accordance with Regulation 30-8(F). (Joint Ex. 010, NOAV, BCM Reddy 002294-95.)

The Department is required to follow the same enforcement procedures for the walls' removal pursuant to Section 48-39-120(C) as the Department is required to follow for the walls' removal pursuant to Section 48-39-130 for failure to obtain a critical area permit. Therefore, Reddy had the same incentive to address any alleged irregularities in the Department's procedure at trial. Reddy fails to show that he was substantially prejudiced by the alleged inability to present evidence on this issue when he had the opportunity to do so.

Since all parties were fully aware of the issues in this case, including that the Department was seeking the walls' removal pursuant to Section 48-39-10, *et seq*., Reddy is unable to establish substantial prejudice as required to be successful on a due process claim. In *Hill v. York County Natural Gas Authority*, the South Carolina Supreme Court held that when all parties were well aware of the central dispute in condemnation proceedings there was no prejudice because of an incorrect statutory reference in the Notices of Condemnation. 384 S.C. 483, 491, 682 S.E.2d 809, 813 (2009). Like the parties in *Hill*, the parties in this case were fully aware that Section 48-39-120 pertained to the issues in the case. Pursuant to the Supreme Court's holding in *Hill,* Reddy has failed to show any prejudice resulting from the Department's Administrative Order and the ALC's hearing notice not expressly referencing Section 48-39-120.

Reddy had ample notice and opportunity to create a full, factual record with regard to whether the hard erosion control structures he built adversely affected the public interest and whether they should be removed. Reddy chose not to do so, and his decision cannot now form the basis of a due process claim. *GTE Sprint Comm. Corp. v. Public Service Com'n of S.C.*, 288 S.C. 174, 181, 341 S.E.2d 126, 128 (citing *Palmetto All., Inc.,* 282 S.C. at 438, 319 S.E.2d at 700) (GTE was not denied procedural due process where GTE "failed to exercise its right to present rebuttal evidence or dispute the relevancy of the issue."). Further, Reddy himself argued Section 48-39-120 to the Court as it pertained to the Department's evidence related to access and impact to the public, claiming that the public did not have an interest. It is disingenuous for him now to complain his due process rights were violated by the ALCs reliance on this same provision when it is clear he had notice of the underlying issues since the inception of this controversy. Moreover, Reddy had the additional opportunity to be heard on Section 48-39-120(C) in his Motion for Reconsideration to the ALC.

CONCLUSION

WHEREFORE, for the reasons stated herein, and for reasons stated in its Initial Appellant Brief filed with the Court on May 1, 2026, the South Carolina Department of Environmental Services respectfully requests the Court affirm the ALC's decision to remove the walls pursuant to Section 48-39-120, hold that the Department has jurisdiction in the Beaches Critical Area and that Reddy's alterations were in violation of the CZMA, and order the removal of all non-beach-compatible materials from the Beaches Critical Area and the restoration of the affected area.

s/ Sallie P. Phelan
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