STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bay Light, LLC, Petitioner, v. South Carolina Department of Environmental Services and South Carolina Coastal Conservation League, Respondents.	)	Docket No. 23-ALJ-07-0442-CC **ORDER**

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to Motions for Reconsideration filed by South Carolina Department of Environmental Services (DES or Department) and South Carolina Coastal Conservation League (SCCCL) (collectively, Respondents) on May 12, 2026. Respondents move this Court pursuant to Rule 29 of the Rules of Procedure for the South Carolina Administrative Law Court (SCALC Rules) and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP) to reconsider and amend its Final Order and Decision dated April 30, 2026, due to errors of law, internally inconsistent reasoning, and omissions of findings. On May 21, 2026, Petitioner filed a Response to the Motions. On May 29, 2026, the Department filed a Reply to Petitioner's Response.

Although I grant the Motion and issue an Amended Final Order that better explains my application of the facts and the law in this case, I also briefly address in this Order the grounds of Respondents Motion that I found were without merit. *See* CHARLES ALAN WRIGHT & ARTHUR R. MILLER, 11 FEDERAL PRACTICE AND PROCEDURE § 2810.1 (3d ed. 2025) (observing that Rule 59(e) motions may be appropriate to preserve an issue raised in a contested case for appellate review or to ask the court to decide an issue which has been raised but not ruled upon, but they "may not be used to relitigate old matters").

DISCUSSION

Rule 29(D), SCALCR, provides that "[a]ny party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP." Although Rule 59(e), SCRCP, does

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not use the words "motion for reconsideration," it has long been viewed as providing for motions for reconsideration. *Elam v. S.C. Dep't of Transp*., 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Typically, a motion for reconsideration is filed in two circumstances. First, it must be filed if a party seeks to preserve an issue for appellate review where an issue was raised to the trial court but not ruled upon. *Id.* at 24, 602 S.E.2d at 780. Second, a party may file a motion for reconsideration when the party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id*.; *see also Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) ("The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'"). Here, Respondents have filed their Motions based on the second circumstance and argue the Court made several errors in its Final Order.

Burden of Proof

Respondents argue the Court improperly shifted the burden of proof to Respondents to affirmatively show that Petitioner's property is located within the ACE Basin Task Force Boundary. I do not find the Court erred in this regard.

Initially, Respondents contend the Court improperly shifted the burden of proof by accepting Petitioner's evidence of several maps showing that Petitioner's property is not in the general region of the ACE Basin as proof that Petitioner's property is not located within the regulated ACE Basin Task Force Boundary Area. Even if correct, their contention does not raise the issue of whether the burden of proof was shifted but rather whether Petitioner's evidence was sufficient to **meet** the requisite burden of proof. Furthermore, in its Final Order, the Court clearly recognized that Petitioner bears the burden of proving that the Department's decision was in error under the statutory and regulatory standards and the Court followed that edict in making its decision.

Moreover, the Court did not find that "Petitioner produced several maps that reflect that Petitioner's property is not within the regulated region of the ACE Basin" but rather that Petitioner established by a preponderance of the evidence that there was no map bearing the label ACE Basin Taskforce Boundary Area while there were several maps describing the "general region of the ACE Basin" in which Petitioner's Property was not located. While these maps did not expressly identify the ACE Basin Task Force Boundary Area, considering the non-existence of a map labeled ACE

Basin Taskforce Boundary Area, the evidence produced by Petitioner was certainly sufficient to bring into question the Department's determination.

Nonetheless, in making this argument, Respondents also asserted that:

> DES informed the applicant that the project is located within the [ACE Basin] Task Force Boundary [Area] during the application process and made a permitting decision based on that. Therefore, Petitioner's burden was to show that the proposed project is not located within the [ACE Basin] Task Force Boundary [Area].

In other words, Respondents contend that since the Department determined that the project was within the ACE Basin Task Force Boundary, it was Petitioner's burden to prove that it was not within that boundary. While that burden may be reasonable if there was discernible data of the ACE Basin Task Force Boundary Area in the Record, Respondents' contention is unreasonable in this case as the evidence before the Court did not sufficiently establish the ACE Basin Task Force Boundary Area. In fact, Petitioner showed that there is no ACE Basin Taskforce Boundary Area map—a fact which Respondents do not deny.

Accordingly, Respondents' ultimate contention is that since the Department determined that the Waterfowl Focus Areas map is the ACE Basin Taskforce Boundary Area and, that according to that map Petitioner's project is within the regulated ACE Basin Task Force Boundary Area, it was Petitioner's burden to show that the Waterfowl Focus Areas map does not establish the ACE Basin Taskforce Boundary Area. Said plainly, Respondents aver that the Court must accept the accuracy of its contention that the Waterfowl Focus Areas map is the ACE Basin Task Force's boundary determination and that it correctly establishes the boundaries for the ACE Basin Taskforce Boundary Area, without questioning the legitimacy of their assertions.

In logical terms, Respondents' argument hinges on the premise that since there is no proof that their contentions are false, the Court must assume them to be true. Stated differently, they contend that since the Waterfowl Focus Areas map represents the ACE Basin Task Force's boundary determination and correctly establishes the boundaries for the ACE Basin Taskforce Area, it is Petitioner's burden to prove their contentions false in its case in chief. However, Respondents' argument overlooks the uncontested fact that there is no map labeled ACE Basin Taskforce Boundary Area. Indeed, under the semblance of arguing that the Court shifted the burden of proof, Respondents shift the responsibility on Petitioner to establish that the map the Department used as proxy to establish the boundaries of the ACE Basin Taskforce Boundary Area is incorrect.

Respondents further assert that the evidence in the Record establishes that the Waterfowl Focus Areas map is the ACE Basin Taskforce Boundary Area and that the GIS data layer which the Department obtained from the South Carolina Department Natural Resources (DNR) is the same boundary shown on the Waterflow Focus Areas map. Simply put, the Department is asking that the Court trust it as to the accuracy of the GIS data layer. Although the Court certainly recognizes the sincerity of the Department's staff, the evidence in this case failed to sufficiently establish a credible nexus between the ACE Basin Taskforce Boundary Area and the GIS layer that the Department applied in this case. While the Waterfowl Focus Areas map outlines a boundary for the ACE Basin, it did not reference the ACE Basin Taskforce Boundary Area nor describe the specific points on the land which formed the area that Charles Lane proclaimed to be the boundary adopted by the Task Force.

Nevertheless, Respondents further argue that the Court incorrectly imposes a requirement on the Department to establish the metes and bounds for the ACE Basin Taskforce Boundary Area, particularly when an ordinary person of reasonable intelligence can visually compare boundary shapes and confirm that Petitioner's property is within the regulated boundary. This argument is without merit. Notably, the Department's own employee, Mr. Williams, acknowledged the importance of the terminal points of the regulated boundary in his May 4, 2023 email correspondence to Mr. Lane and DNR staff. Mr. Williams wrote.

> I would like to know if you can provide some background on how this boundary was developed and **more importantly provide the Department with specific language that describes the metes and bounds** of this boundary. This description should include rivers, **roads** or other geographic features that can distinguish the complete limits of the boundary area.

(emphasis added). Furthermore, counsel for the Department confirmed in its opening that the GIS data layer which the Department applied "is dependent upon the determination of what the metes and boundaries are …." Indeed, without credible factual evidence of the metes and bounds adopted by the ACE Basin Task Force, the boundary identified in this case becomes merely subjective.

Metes and bounds are "the boundaries or limits of a tract of land especially as described by reference to lines and distances between points on the land[]" and they are important when factually determining whether a property is in a certain area subject to heightened regulatory standards. *Metes and Bounds*, Merriam-Webster, https://www.merriam-webster.com/legal/metes%20and%20bounds, (last visited, May 27, 2026); 9 S.C. Jur. Boundaries and Land Surveying § 8 (boundary lines of land, with their terminal points and angles).

Undoubtedly, without the metes and bounds of the ACE Basin Taskforce Boundary Area, what one person may believe to be the physical limits of the ACE Basin Taskforce Boundary Area may differ from another. This obscurity is even more apparent considering Respondents' contention that the areas roadways and geologic features form the boundaries of the ACE Basin Taskforce Boundary Area. Certainly, these physical bounds are necessary to determine if Petitioner's property is located in the Waterfowl Focus Areas map (which Respondents claim is the proxy for ACE Basin Taskforce Boundary Area). Yet again, the physical boundaries of the area purportedly adopted by the Task Force are not clearly identifiable on the Waterfowl Focus Areas map nor were they sufficiently described through the testimony in this case.

Thus, considering that Petitioner established that there is no map labeled ACE Basin Taskforce Boundary Area and Respondents failed to produce credible evidence of the boundaries limits for the ACE Basin Taskforce Boundary Area it would be improper to require Petitioner to prove, as a component of its burden of proof, that its property is not located within an area that was never sufficiently established by Respondents. *See* Irving M. Copi, INTRODUCTION TO LOGIC, 91, 5th ed. (1978) ("The argumentum *ad ignorantiam* is committed whenever it is argued that a proposition is true simply on the basis that it has not been proved false or that it is false because it has not been proven true."); Melissa H. Weresh, WAIT, WHAT? HARNESSING THE POWER OF DISTRACTION OR REDIRECTION IN PERSUASION, 15 Legal Comm. & Rhetoric: JALWD 81, 111 (2018) ("'A classic example of this is an appeal to ignorance (*argumentum ad ignoratiam*), when it is argued that a proposition is true on the ground that it has not been proved false, or when it is argued that a proposition is false because it has not been proved true.'") (citing Frank C. Woodside III & Jacqueline R. Sheridan, RESPONDING TO TABLE POUNDING: DEFENSE THROUGH THE EXPOSURE OF FALLACIES, 58 Dri For Def., 63, (2016). Therefore, the Court did not improperly shift the burden of proof.

Whether the Order Mischaracterizes the Testimony in the Record

Mr. Williams

The Department argues the Court erred in finding that "the Department was not even wholly aware of what map the ACE Basin Taskforce Boundary Area data layer was based upon." Rather, the Department contends Mr. Williams testified that "[the Department] was confident in the boundary that [they] were utilizing on [its] regulatory base map layer."

At the outset, simply because a witness possesses "confidence" in their beliefs does not make that belief accurate. Furthermore, as explained in the Court's Final Order, the Department's determination that Petitioner's property was in the ACE Basin Taskforce Boundary Area was supported by Mr. Williams' application of the GIS data layer for the ACE Basin Taskforce Boundary Area—a GIS data layer which the Department obtained from a DNR staff member. Thus, while Mr. Williams proclaimed his confidence that the Department's GIS data layer was the same as the Waterfowl Focus Areas map, his belief was brought into question by the evidence in the Record. Indeed, Mr. Williams was not involved in the creation of the GIS data layer. In fact, Mr. Williams' testimony and review of Petitioner's application supplants doubt as to the accuracy of this data. For instance, on May 4, 2023, Mr. Williams sent an email to DNR staff and Mr. Lane stating that, "**[i]t ha[d] come to DHEC OCRM's attention that the boundary is unclear as to the limits of the boundary.**" Accordingly, Mr. Williams requested "**specific language that describes the meets and bounds of this boundary[]**" and to "describe your understanding of the differences between the Ace Basin Taskforce Boundary Area, Ace Basin Characterization Study Area, ACE Basin Waterfowl Focus Area[s] and the ACE Basin Watershed Boundary Area." Importantly, this email was sent only a few months before the Department issued the decision in this matter. This evidence shows that at the time of its review of Petitioner's application, the Department was uncertain as to the legitimacy of the GIS data layer or the metes and boundaries of the area adopted by the ACE Basin Taskforce

Furthermore, Mr. Williams acknowledged that the legitimacy of the Department's GIS Data layer for the ACE Basin Taskforce Boundary Area was established through communications with DNR staff and Mr. Lane. While I recognize that the Department routinely cooperates with other agencies to carry out its regulatory functions, in a case such as here, the reliability of the GIS data layer obtained from DNR is speculative without some evidentiary facts to show that the coordinates of the Department's GIS data layer coincide with the boundary adopted by the ACE Basin Task Force. In fact, the Waterfowl Focus Areas map does not reference the ACE Basin Taskforce Boundary Area nor does it describe the specific points on the land that formed the boundary shown on that map. Moreover, the record lacks credible evidence of the physical features and specific points on the land that were adopted by the ACE Basin Task Force as well as those relied upon by DNR staff to create the GIS layer. Finally, while Mr. Lane testified that the

boundary on the Waterfowl Focus Areas map was the same as the Department's GIS data layer, he was not involved in the creation of the GIS Data layer.

Additionally, the Department argues that the Court erred in finding that only DNR employees could verify Mr. William's determination that Petitioner's Property was roughly five miles inside the ACE Basin Taskforce Boundary Area. The Department asserts that the Court's error regarding Blair Williams' "five mile" calculation is based on the inaccurate presupposition that "Blair Williams … stated that it was his understanding that DNR employees Dean Harrigal and Emily Cope *created* the ACE Basin Taskforce boundaries based upon input from and the ACE Basin Task Force." However, the Department misconstrues the Court's Final Order. Instead, that section of the Final Order simply described the Department's GIS's data layer which the Department uses when reviewing permitting projects like Petitioner's project and, recognized that DNR employees were responsible for inputting the coordinates of the ACE Basin Taskforce boundaries to create the GIS data layer. The Court does not find that it erred or misconstrued the testimony but nonetheless clarified its findings on this issue in the Amended Final Order.

Petitioner's Investigatory Efforts

Respondents contend the Court mischaracterized Petitioner's investigatory efforts, which led to the arbitrary finding that Petitioner's due diligence efforts were reasonable. Specifically, SCCCL asserts that a reasonable person would have contacted the Department as part of its investigatory efforts. As such, SCCCL argues the Court should have found Mr. Goff's due diligence efforts to be unreasonable since he never contacted the Department. Likewise, the Department argues that Petitioner could have easily determined that the Property was inside the ACE Basin Taskforce Boundary Area had it contacted the Department before closing on the Property. Additionally, the Department contends the Court misunderstood and/or failed to fully consider Mary Adkins' impeachment testimony. I do not find that the Court erred.

As trier of fact, the Court may give testimony, including an expert's testimony, the weight that he or she determines it deserves, *Florence County Department of Social Services v. Ward*, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992), and may accept the testimony of one expert over that of another, *South Carolina Cable Television Association v. South Bell Telegraph & Telephone Co.,* 308 S.C. 216, 417 S.E.2d 586 (1992). Indeed, "[t]he judging of the credibility of witnesses and the weighing of evidence in a law case are uniquely functions of the trial court." *Bivens v. Watkins*, 313 S.C. 228, 235, 437 S.E.2d 132, 136 (Ct. App. 1993). Further, the Court is

"in a superior position to judge the witnesses' demeanor and veracity and, therefore, his findings should be given broad discretion." *Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996).

At the outset, Respondents provided no legal authority that an applicant is required to personally contact the Department to obtain its tacit approval of a permit before applying for a permit. In fact, the Respondents' reasoning begs the question, is an applicant required to trust the Department staff's opinion regarding the authority to obtain a permit? Here, the facts of this case illustrate the dubiousness of requiring an applicant to seek the Department staff's opinion before applying for a permit. Specifically, it is questionable whether the Department would have even been able to provide Petitioner with reliable information prior to May 2023. As stated in the Court's Final Order, Petitioner established that there is no map bearing the label ACE Basin Taskforce Boundary Area and thus it would be impossible to find that which does not exist. Interestingly, the regulation at the heart of this case identifies three areas of special resource value: the ACE Basin Taskforce Boundary Area, the North Inlet National Estuarine Research Reserve, and the Cape Romain National Wildlife Refuge. S.C. Code Ann. Regs. 30-12.N(2)(b) (emphasis added). The latter two not only have maps readily available for an ordinary person to seek but their boundaries are also easily identifiable. Thus, for projects in the North Inlet National Estuarine Research Reserve and the Cape Romain National Wildlife Refuge, an individual can easily discern whether their project is in either of these regulated areas. Yet, for purpose of projects in the ACE Basin Taskforce Boundary Area, Respondents believe that a person, like Petitioner, must first contact the Department to get their opinion as to what the ACE Basin Taskforce Boundary Area is and whether one's project is in that area, instead of the Department providing a definable map that an ordinary person can easily determine what the boundaries of the regulated area are.

Mr. Lane

The Department also argues that the Court erroneously stated that "Mr. Lane testified that although Dean Harrigal was 'intimately involved in the details' of creating the GIS data layer, he did not have GIS coordinates for the map." (Final Order, page 7). The Court clarified this statement in its Amended Final Order.

Department's GIS Data Layer

Respondents assert that the Court misconstrued the testimony concerning its GIS data layer, which led to the erroneous factual finding and conclusion that the GIS data layer for the ACE Basin Taskforce Boundary Area was unreliable. More specifically, the Department contends

the Court erred in finding that the physical descriptions of Mr. Williams and Mr. Lane materially differed as Mr. Williams was testifying to a small portion of the ACE Basin Taskforce Boundary whereas Mr. Lane offered a broader description of the Boundary area. In addition, SCCCL argues that Mr. Lane and Mr. Williams' inability to detail every single length of the ACE Basin Taskforce Boundary Area does not negate that the evidence establishes a nexus between the Waterfowl Focus Areas map and the Department's GIS data layer particularly since "[n]o question [was] raised or evidence presented that the GIS data layer used and relied upon by the Department contain[ed] any inaccuracies."

Here again, as discussed previously in this Order and the Court's Final Order, the metes and boundaries of the ACE Basin Taskforce Boundary Area were not sufficiently established. In addition, even if Mr. Williams' testimony was limited to a small portion of the ACE Basin Taskforce Boundary Area, he repeatedly emphasized that the boundary of the ACE Basin Taskforce Boundary Area was shown by a geographic area between Highway 165 to Stevens Towing, LLC. Yet, these important geographic attributes are not visible on the Waterfowl Focus Areas map which Respondents contend serves as a proxy for the ACE Basin Task Force Boundary Area. In addition, Mr. Lane testified that the ACE Basin Task Force used roads and creeks to form the ACE Basin Taskforce Boundary Area, yet he did not reference 165 as part of his description of the ACE Basin Boundary Area. Certainly, one would assume that given the importance of this area in determining Petitioner's property is within the ACE Basin, this "small portion[s]" of the boundary would have been included as part of Mr. Lane's "broader" description.

Also, the fact that Petitioner did not directly contest Mr. Williams' testimony that the Waterfowl Focus Areas map is the ACE Basin Taskforce Boundary Area, which Respondent asserted is the same boundary as the Department's GIS layer, does not render Mr. Williams' testimony undisputed. *Black v. Hodge*, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991) ("The fact that testimony is not contradicted directly does not render it undisputed. There remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation. If there is anything tending to create distrust in his [or her] truthfulness, the question must be left to the jury." (citations removed)). Indeed, Petitioner established that there is no map labeled ACE Basin Taskforce Boundary Area. Likewise, the Department was not involved in the creation of the GIS layer that it utilized to verify the location of Petitioner's property in relation to the regulatory boundary. Coupled together with the

lack of factual evidence of the physical boundaries adopted by the ACE Basin Task Force is certainly sufficient to cast doubt on the credibility of the Department's GIS layer, particularly when the Department has an obvious interest in the outcome of the case.

Facial v. As-Applied Constitutionality

Respondents contend the Court erred in concluding that the matter before the Court was an as-applied constitutional challenge because there is "no scenario where the Department can ever sufficiently establish the boundary to the Court's satisfaction without amending the regulation." I do not find that the Court erred as argued by Respondents.

As the evidence in the Record evinces, Respondents could have presented testimony and documentary evidence to sufficiently establish that the coordinates from the Department's GIS data layer coincide with the area labeled ACE Basin on the Waterfowl Focus Areas map. Indeed, emails and testimony from Mr. Williams indicated that the Department was aware of the individuals who had knowledge of the parameters of the ACE Basin Taskforce Boundary Area. Specifically, Mr. Williams testified that the "GIS gurus" were from DNR and the Nature Conservancy (TNC). Additionally, he stated that David Bishop was a GIS expert who had done some of the recent mapping on this boundary. Furthermore, he indicated that Mr. Bishop, Dean Harrigal and Emily Cope "were key" in developing the GIS data layers. Nonetheless, none of these individuals, who were intricately involved with the adoption of the boundaries into the GIS and who possessed the knowledge of the specific boundary at issue, testified before this Court.

Curiously, the Record also includes a document entitled "ACE Basin Focus Area Boundary physical description" which appears to describe the boundaries in particularized detail. Nevertheless, the Court was unable to discern the reliability of this document as it is unaware of who produced this document or where it came from. If Respondents had laid a proper foundation for this document, then that evidence could have presumably been used to discern whether there was a nexus between the Waterfowl Focus Areas map and the Department's GIS data layer. Moreover, the evidence in the Record establishes that during 2004 the U.S. Fish and Wildlife Services (USFWS) officially adopted the ACE Basin Taskforce Boundary Area. Interestingly, Respondents did not call a member from the (USFWS) to corroborate what was officially adopted. Furthermore, it can be reasonably assumed that specific details of the metes and bounds of the boundary area must have been a part of their official adoption.

As explained in the Court's Final Order, resolution of this case is not predicated upon what the Department adopted but rather **how** the Department **applied** the standard set forth under regulation 30-12.N(2)(b) of the South Carolina Code of Regulations to Petitioner's permit. (emphasis added). Notably, the evidence in the Record did not establish a sufficient nexus between the ACE Basin Taskforce Boundary Area and the GIS data layer which the Department applied to determine that Petitioner's project fell within an area of "special resource value" and thus, subject to the heightened requirements under regulation 30-12.N(2)(b) of the South Carolina Code of Regulations. Significantly, as set forth above, the individuals who clearly possessed the knowledge of the data that underlies the Department's GIS data layer were not offered. As a result, the Court was unable to sufficiently understand how the ACE Basin Taskforce Boundary Area relates to Petitioner's project. Similarly, the evidence did not sufficiently show how the roadways and geologic features that Mr. Lane asserted were adopted by the ACE Basin Task Force to form the ACE Basin Taskforce Boundary Area related to Petitioner's project. Thus, the vagueness of the Department's application of the standard set forth under regulation 30-12.N(2)(b) emanates from the elusiveness of its evidence. Indeed, if another permit applicant challenges the Department's authority to enforce the ACE Basin Taskforce Boundary Area under the regulation in the future, the Department could submit evidence to establish the limits of the boundaries and that applicant may get a different outcome than Petitioner in this matter. As a result, Petitioner's claim is an as-applied challenge to the regulation and therefore, the Court did not err in finding that it had the authority to hear the matter.

ORDER

IT IS THEREFORE ORDERED that the relief requested in the Motions for Reconsideration is determined, in part, as set forth above and the remaining issues are addressed in the Amended Final Decision.

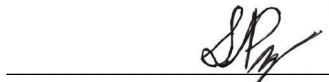
AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

June 16, 2026
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



Stephanie Armada
Judicial Law Clerk

June 16, 2026
Columbia, South Carolina