

**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

AMENDED FINAL ORDER

RECEIVED

Jul 15 2026

SC Court of Appeals

APPEARANCES:

For Petitioner: Stanley Barnett, Esq.

For the Department: Bradley Churdar, Esq.

For SCCCL: Leslie Lenhardt, Esq.

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (Court or ALC) pursuant to a request for contested case filed by Bay Light, LLC (Petitioner) pursuant to section 1-23-600 of the South Carolina Code (Supp. 2025) and section 44-1-60 of the South Carolina Code (2018 & Supp. 2025). Petitioner challenges the decision of the South Carolina Department of Environmental Services (Department)¹ denying Petitioner's request to construct a 385' x 15' pile-supported vehicular bridge to provide access to a coastal island with a 4' x 185' long private recreational dock with a covered pierhead and a floating dock with ramp. The Court conducted a hearing on the merits in Columbia from December 9-10, 2025. On April 30, 2026, a Final Order was issued. On May 12, 2026, the Department and the South Carolina Coastal Conservation League (SCCCL) filed Motions for Reconsideration (Motions). Then, on May 21, 2026, Petitioner filed Responses to the Motions. The Department then filed a reply to Petitioner's Response on May 29, 2026. The Court now issues this Amended Final Order.

¹ Pursuant to South Carolina Act No. 60 of 2023 and section 1-30-140 of the South Carolina Code (Westlaw Edge through 2024 Act No. 210), all functions, powers, and duties of the environmental divisions, office, and programs of the South Carolina Department of Health and Environmental Control were transferred to, incorporated in, and shall be administered as part of the Department of Environmental Services as of July 1, 2024.



FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence.

Procedural Background

On November 11, 2021, Petitioner submitted an application to the Department to construct a 385' x 15' pile-supported vehicular bridge to access a coastal island and a private recreational dock consisting of 4' x 185' walkway with handrails, a 12.5' x 12.5' covered fixed pierhead, a 4' x 25' ramp to access a floating dock with an 8' x 30' section and a perpendicular 8' x 25' section. (Project).

The Department placed the permit application on public notice; thirty-five (35) public comments were received, including that of Charles Lane who asserted he was objecting on behalf of the ACE Basin Task Force. Specifically, Mr. Lane expressed concern that the Project is in the Ace Basin Taskforce Boundary Area.² Following a virtual public hearing on March 2, 2022, the Department sent Petitioner a technical deficiency letter, requesting additional information. Upon receipt of that request, Petitioner's environmental consultant, Judd Goff, requested a copy of the ACE Basin Taskforce Boundary Area referenced in Mr. Lane's comment letter. The Department informed Mr. Goff that while a map was not attached to Mr. Lane's letter of opposition, the Department obtained information regarding the ACE Basin Taskforce Boundary Area from its ArcGIS base map which includes a GIS data layer for the ACE Basin Taskforce Boundary Area. A printout of the Department's GIS data layer was provided to Petitioner on April 26, 2022. Shortly thereafter, on May 4, 2022, the Department provided Mr. Goff with a copy of a map that it obtained from South Carolina Department of Natural Resources (DNR) which it purported to be the "official ACE Basin Taskforce Boundary Map." Petitioner subsequently submitted responses to the technical deficiency letter on August 18, 2022 and December 12, 2022.

On September 7, 2023, the Department's Office of Coastal Resource Management (OCRM) staff denied Petitioner's permit request pursuant to subsections 48-39-30(A), (B)(1), and

² As will be discussed henceforth in this Order, the South Carolina Department of Natural Resources (DNR) and the United States U.S. Fish and Wildlife Service (USFWS) are members of the ACE Basin Task Force. While the Task Force represents the collective voices of its members, it is notable that neither of these members presented concern that the Project is in the ACE Basin Taskforce Boundary Area in comment letters which each separately submitted concerning potential adverse impact of Petitioner's project on federally protected threatened and endangered species and designated critical habitat.

(B)(2) of the South Carolina Code (2008) and regulations 30.12.N(2)(b), 30.12.N(3)(a), and 30.12.N(10), of the South Carolina Code of Regulations (Supp. 2025). The Department determined the Petitioner's property was within the ACE Basin Taskforce Boundary Area, and thus the Project did not satisfy the heightened requirements under regulation 30-12.N(2)(b) of the South Carolina Code of Regulations for an area of "special resource value." For instance, the Department determined that Petitioner's application failed to present any evidence that the Project was in furtherance of the public interest or that a permanent conservation easement had been obtained. Additionally, the Department found the Project did not reflect elimination of seventy-five (75) percent of the number of private residential docks permitted by the Department's critical area permitting regulations as they existed on September 1, 2005 or, retention of a conservation easement as required under regulation 30-12.N(4). Finally, the Department concluded that the proposed Project included an impermissible roofed dock which is not allowed for private docks associated with applications for access to coastal islands.

Petitioner requested a final review conference, which the Department's Board denied, rendering the staff decision the final agency decision. *See* S.C. Code Ann. § 44-1-60(F) (2018). Thereafter, Petitioner filed a request for a contested case hearing with this Court.

ACE Basin³

The North American Waterfowl Management Plan (Plan) was enacted during the Reagan Administration to protect and restore the waterfowl population and their habitats. The Plan charged private and governmental organizations to join together to carry out the goals of the Plan. The Atlantic Coast Joint Venture (AC Venture) was subsequently formed as a regional component, and its mission was to reverse the loss of wetland and upland habitat in the Atlantic Flyway region.⁴

³ In 1963, the United States Secretary of the Interior initiated a study to identify the most important areas in the country that needed protection. Through the course of that study, the term ACE Basin was coined.

⁴ The AC Venture's Management Board includes membership from the Nature Conservancy, USFWS-Southeast & Northeast Regions, New York State Department of Environmental Conservation, Maryland Department of Natural Resources, Puerto Rico Department of Natural and Environmental Resources, North Carolina Wildlife Resources Commission, Virginia Department of Game and Inland Fisheries, Maine Department of Inland Fisheries and Wildlife, Delaware Department of Natural Resources, South Carolina Department of Natural Resources, Georgia Department of Natural Resources, U.S. Geological Survey Patuxent Wildlife Research Center, West Virginia Department of Natural Resources, Pennsylvania Game Commission, Rhode Island Department of Environmental Management, Ducks Unlimited, Inc., Massachusetts Division of Fisheries and Wildlife, New Jersey Division of Fish and Wildlife, Florida Fish and Wildlife Conservation Commission, Connecticut Department of Environmental Protection, Vermont Department of Fish and Wildlife, New Hampshire Fish and Game Department, Wildlife Management Institute, U.S. Forest Service, and the National Park Service (NPS).

The ACE Basin was identified as an area in which the wetlands and habitat should be preserved. As a result, during September 1989, members from the South Carolina DNR, Ducks Unlimited, the Nature Conservancy, and a group of private landowners partnered to form the ACE Basin Taskforce⁵ (Taskforce) to promote habitat protection, restoration, and conservation within the ACE Basin.

The ACE Basin is generally recognized as the confluence of the Ashepoo, Combahee and Edisto Rivers. It is located entirely within South Carolina and centered between Charleston, SC and Savannah, GA. The ACE Basin provides valuable spawning and nurturing ground for over 1,500 species of plants and animals; nine of which are federally listed as threatened or endangered species.

Baylight Property

Petitioner's coastal island consists of 9.7 acres of highland and 75 acres of marsh at the junction of Landing Creek and the west side of Toogoodoo Creek in the Meggett area of Charleston County (Property). Prior to purchasing the Property, Dr. James Southerland, co-owner of Baylight, LLC, hired Judd Goff to research the feasibility of obtaining requisite permits to access the Property by way of a bridge. Dr. Southerland was aware that since the Property was located in the region of the ACE Basin, it could reduce the likelihood of bridge access to the Property because of the heightened regulatory restrictions for bridge permitting within areas of special resource value.⁶ He therefore requested Mr. Goff determine if the property fell within an area of special resource value. Mr. Goff has nearly twenty-nine years of experience in preparing critical area permits and currently serves as a resource consultant for Red Bay Environmental, LLC. Nonetheless, he was unable to locate an ACE Basin Taskforce Boundary Area map detailing its boundary lines.⁷ Even so, Mr. Goff unearthed several maps on DNR's website relating to the ACE

⁵ Through the years additional entities joined the Taskforce. As of 2004, membership included individuals from the USFWS - Region 4, the South Carolina DNR, the Nature Conservancy, Ducks Unlimited, Inc., the Lowcountry Open Land Trust, the MeadWestvaco Corporation, and the Nemours Wildlife Foundation.

⁶ Areas of special resource value are essentially land areas which provide significant value that preserves critical habitat. They include the ACE Basin Taskforce Boundary Area, the North Inlet National Estuarine Research Reserve, and the Cape Romain National Wildlife Refuge. S.C. Code Regs. 30-12.N(2)(b). As will be discussed further in this Order, regulation 30-12.N sets forth specific project standards for permit applications for bridges and docks as a means of obtaining access to coastal islands. Of significance to this case, subsection 30-12.N(2)(b) provides that "[b]ridge permits ... will not be issued in areas of special resource value unless they qualify under the special exceptions. . . . " S.C. Code Regs. 30-12.N(2)(b).

⁷ SCCCL attempted to impeach Mr. Goff through the testimony of Ms. Mary Adkins, a resident of Toogoodoo Creek. Contrary to Mr. Goff, Ms. Adkins indicated that she was able to locate a map sometime around February or

Basin.⁸ Specifically, he found an “ACE Basin Project Area” map; the “ACE Watersheds” map; and, a map of the “Watershed Affecting the ACE Basin.” Significantly, Mr. Goff averred that the Property was outside of the boundaries shown on each of those maps. In addition, Mr. Goff found an ACE Basin Project flyer which displayed a map of the ACE Basin for which Petitioner’s Property was also outside of the identified boundary.⁹

Ultimately, Mr. Goff advised Mr. Southerland that the Property was not within the ACE Basin Taskforce Boundary Area. Based upon that advice,¹⁰ Dr. Southerland purchased the Property for \$225,000¹¹ with the intent to improve, entitle and resell the land for profit.¹²

Department Review

To discern whether a property is within a special resource area, the Department uses a regulatory batch map and ArcGIS database which enables Department staff to overlay project locations on various data layers of significance. The Department obtained the Geographical

March of 2022 by way of a Google search for the ACE Basin Taskforce Boundary Area. More specifically, she indicated that she found a map captioned “Land Protection in the ACE Basin” which she claimed to display the ACE Basin Taskforce Boundary. However, the area referenced by Ms. Adkins is entitled the ACE Basin Focus Area, not the ACE Basin Boundary Area. Furthermore, the map found by Ms. Adkins does not even include a physical description of the demarcated boundary. As such, I do not find her testimony to be probative or credible.

Additionally, while Mr. Lane also indicated that the “Land Protection in the ACE Basin” map referenced by Ms. Mary Adkins was the area adopted by the ACE Basin Task Force, I did not find Mr. Lane’s testimony credible upon this point. For instance, no one testified that the ACE Basin Focus Area indicated in the “Land Protection in the ACE Basin” map was adopted by ACE Basin Taskforce as the ACE Basin Taskforce boundary area. Moreover, the “Land Protection in the ACE Basin” map failed to show sufficient detail to discern whether Petitioner’s project was within the area it referenced as the ACE Basin Focus Area nor does it show whether that area was the same as the area referenced on the Waterfowl Focus Areas map as the ACE Basin.

⁸ Respondents questioned the reasonableness of Mr. Goff’s efforts by drawing attention to the fact that he never reached out to Department staff for guidance as to the location of the ACE Basin Taskforce Boundary Area. However, I do not find their argument to be persuasive. While the law encourages persons to seek preliminary review and guidance from the Department, there is no statutory requirement to obtain Department staff guidance prior to submission of an application. Moreover, as the testimony in this case revealed, mere months before the permit was denied, the Department was uncertain as to the metes and bounds of the ACE Basin Taskforce Boundary Area.

⁹ Mr. Goff opined that the map appeared to reflect the same boundary as that shown on the “ACE Basin Core Area Protected Property” map (referenced during the hearing as “the Camel” map).

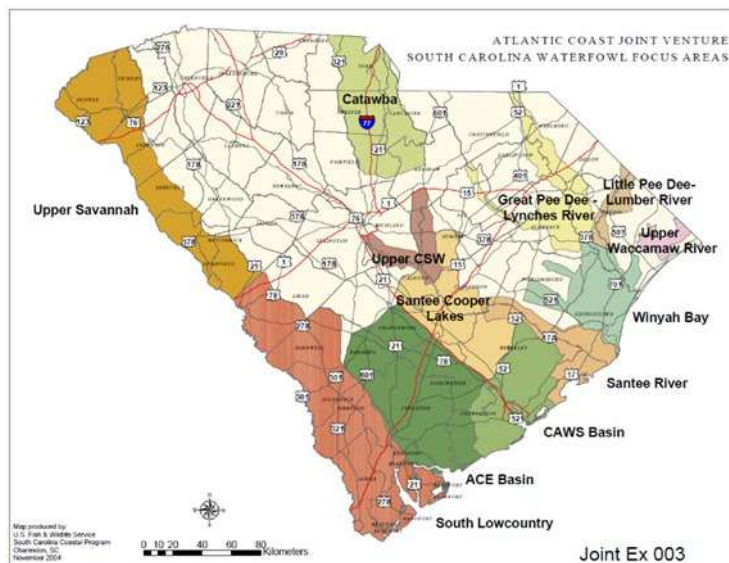
¹⁰ Dr. Southerland also acknowledged that he did not reach out to the Department to discuss the ACE Basin Taskforce Area Boundary lines because he “was looking for evidence or proof of the fact that the Property was either in or out, not somebody’s opinion.” As will be discussed further below, it is questionable whether the Department would have even been able to provide Mr. Southerland with reliable information considering that the Department had to seek the opinions of Mr. Lane and DNR staff to ascertain the metes and boundaries of the ACE Basin Taskforce Boundary Area. Irrespectively, as stated above, an applicant is not legally required to contact the Department.

¹¹ Dr. Southerland would not have purchased the Property if it was within the ACE Basin Boundary Area.

¹² Specifically, he intended to obtain a critical line and freshwater wetlands delineation, bridge access permit, tree survey and possibly prepare a development plan.

Information System (GIS) data layer for the ACE Basin Taskforce Boundary from DNR in 2009 and has used it to evaluate permitting projects since that time. Blair Williams, the Department's Division Director of the critical area permitting section, stated that it was his understanding that DNR employees Dean Harrigal and Emily Cope created the GIS data layers for the ACE Basin Taskforce Boundary Area based upon input from and the ACE Basin Task Force. Accordingly, Mr. William's determination that Petitioner's Property was roughly five miles within the most northeastern edge of the boundary was based upon a GIS data layer created by DNR's "GIS gurus." Indeed, Mr. Williams explained that Emily Cope and Dean Harrigal provided all of the data designating the ACE Basin Taskforce Boundary Area that the Department uses for its review of permit applications such as Petitioner's yet, neither Ms. Corpe nor Mr. Harrigal testified before this Court.

ACE Basin Taskforce Boundary Area



The ACE Basin Taskforce Boundary Area was developed by the ACE Basin Task Force as the area in which it seeks habitat protection, restoration, and conservation efforts. Mr. Lane testified that this boundary is depicted by the Waterfowl Focus Areas map which was approved by the Department of Interior (DOI) in 2004.¹³ While not explicitly demarcated on the Waterfowl Focus

Areas map, Mr. Lane averred that the ACE Basin Taskforce Boundary Area is the dark green area labeled "ACE Basin" and that its boundaries have remained unchanged since its inception. He nevertheless asserted that since the Task Force did not have GIS data when the ACE Basin Taskforce Boundary Area was created, roads and natural features were chosen to identify the boundaries. However, when asked by the Court to identify the roadways that formed the

¹³ Mr. Lane has been a member of the Task Force since its inception and took part in the creation of the ACE Basin Taskforce Boundary Area. Michael McShane, another member of the ACE Basin Task Force, also generally averred that ACE Basin boundary is based upon the Waterfowl Focus Areas map.

boundaries, Mr. Lane professed that “I really can’t remember” after all, “I’m trying to recollect something that happened 21 years ago[.]”

The Department’s GIS Data Layer

Mr. Williams also asserted that he was confident that the Department’s GIS data layer is the same boundary depicted on the Waterfowl Focus Areas map. Yet, Mr. Williams was not involved in the creation of the GIS data layer. In fact, according to Mr. Williams, the GIS layer was created by the “GIS gurus” from the Nature Conservancy and DNR, which was before his time.¹⁴ However, Respondents failed to produce evidence of the data DNR used to produce the boundaries shown on its GIS data layer. The absence of this evidence makes it too difficult to discern whether the Department’s GIS data layer coincides with the area purportedly adopted by the ACE Basin Task Force. Moreover, Mr. Williams’ physical description of the Department’s GIS data layer for the ACE Basin Taskforce Boundary materially differs from Mr. Lane’s description of the area purportedly adopted by the ACE Basin Task Force. Mr. Williams described the northeastern side of the GIS data layer boundary as:

[E]ssentially the Wadmalaw River as you’re going from south to north. There’s a straight line as you curve north up on Wadmalaw River that is basically from Highway 165 where it terminates at Stevens Towing, there’s a straight line going from north to south to the shorelines of Wadmalaw Island.

To the contrary, Mr. Lane identified the northeastern boundary as encompassing “all of Edisto Island. And that’s Edisto Island on that side, it’s the North Edisto River, and then cut straight up and over to 17, and the up over towards I-26 and further up.”¹⁵ Notably, the geographic attributes emphasized by Mr. Williams were not mentioned as part of Mr. Lane broader description of the boundary adopted by the ACE Basin Task Force. Presumably, given the importance of the ACE Basin Taskforce Boundary Area, these “small portion[s]” of the boundary would certainly have been included as part of Mr. Lane’s “broader” description had they been a part of the area adopted

¹⁴ Mr. Williams became the Department’s critical area permitting section manager in 2008. Curiously, Respondents did not offer any testimony from representatives from either TNC or DNR.

¹⁵ The Record includes a document entitled “ACE Basin Focus Area Boundary physical description” which appears to describe the ACE Basin Focus Area Boundary. Nevertheless, the Court is unable to discern the reliability of this document as it is unclear who produced this document or where it came from. But even if I were to consider this evidence, the description of the northern boundary still differs from that of Mr. Williams who did not reference Road 199, Highway 17, I-26 or Highway 33. Moreover, a majority of these roads and highways are not identifiable on the Waterfowl Focus Areas map which the Department applied when considering Petitioner’s permit application.

by the Task Force. In addition, the GIS data layer was adopted by the Department in 2009 and, as acknowledged by Mr. Williams, the Department's regulatory authority is limited to the ACE Basin Taskforce Boundary Area that was in place at the time the regulation was adopted during 2006.¹⁶

Conclusion

The Department asserts the ACE Basin Taskforce Boundary Area is “based upon” the Waterfowl Focus Areas map. Yet the Waterfowl Focus Areas map lacks a detailed description of the roads and natural features which form its boundaries. Moreover, the Waterfowl Focus Areas map does not even include the term ACE Basin Taskforce Boundary Area on its face. Although Mr. Lane declared that the dark green area on the Waterfowl Focus Areas map represents the ACE Basin Taskforce Boundary Area, his inability to explicitly describe the specific limits of the ACE Basin Taskforce Boundary raises significant concern to the Court. Indeed, if Mr. Lane is unable to describe the boundaries, how can an ordinary person be expected to identify the physical limits of the ACE Basin Taskforce Boundary Area? But even if I were to find that the evidence sufficiently establishes the ACE Basin Taskforce Boundary Area, Respondents failed to show a correlation between the Department's GIS data layer and the area adopted by the ACE Basin Task Force. Indeed, Mr. Williams' confidence in the boundary which the Department has been using on its regulatory base map was based upon his communication with two former DNR employees, Emily Cope and Dean Harrigal. Yet neither of those former employees, who were intricately involved in their creation, testified before this Court. Accordingly, based upon the facts presented, I do not find the Department's GIS data layer to be a reliable indicator of the ACE Basin Taskforce Boundary Area.

ISSUES

Whether the Department's denial of the permit was based upon a proper application of regulation 30-12.N(2) of the South Carolina Code of Regulations?

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude the following as a matter of law:

¹⁶ Notably, the amendments to regulation 30-12(N) were passed on June 23, 2006—three years before the Department's adoption of the GIS data.

Standard of Review

The ALC is the fact finder in this case and conducts its review de novo. *Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002); *Hill v. S.C. Dep't of Health & Env't Control*, 389 S.C. 1, 9, 698 S.E.2d 612, 616 (2010). The burden of proof in a contested case hearing is by the preponderance of the evidence. *Nat'l Health Corp. v. S.C. Dep't of Health & Env't Control*, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989). "In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof." *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017), *reh'g denied* (Jan. 11, 2018). Accordingly, Petitioner bears the burden of proving that the Department's decision was in error under the statutory and regulatory standards. *Id.*

Additionally, "[t]he qualification of a witness as an expert in a particular field is within the sound discretion of the trial judge." *Smoak v. Liebherr-America Inc.*, 281 S.C. 420, 422, 315 S.E.2d 116, 118 (1984). Where the expert's testimony is based upon facts sufficient to form the basis for an opinion, the trier of fact determines its probative weight. *Berkeley Electric Coop. v. Pub. Serv. Comm'n*, 304 S.C. 15, 402 S.E. 2d 674 (1991). Furthermore, the trier of fact is not compelled to accept an expert's testimony, but he may give it the weight and credibility he determines it deserves. *Florence County Dep't of Social Services v. Ward*, 310 S. C. 69, 425 S. E.2d 61 (Ct. App.1992). The trier of fact may accept one expert's testimony over that of another. *S.C. Cable Television Ass'n v. Southern Bell Telephone and Telegraph Co.*, 308 S. C. 216, 417 S. E.2d 586 (1992).

Jurisdiction

Before turning to the merits, I first address Respondents' contention that the Court lacks subject matter jurisdiction to consider Petitioner's claim because it is a facial challenge to the constitutionality of the regulation. I disagree.

"While it is true that AL[C]s cannot rule on a facial challenge to the constitutionality of a regulation or a statute, AL[C]s can rule on whether a law as applied violates constitutional rights." *Dorman v. Dep't of Health & Env'tl. Control*, 350 S.C. 159, 171, 565 S.E.2d 119, 126 (Ct. App.2002); *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 38- 39 (2011). Importantly, as it relates to the subject matter jurisdiction of this Court, the distinction between facial and as-applied challenges lies in the legal versus factual nature of the challenge.

Travelscape, LLC v. S.C. Dep't of Revenue, 391 S.C. at 109, 705 S.E.2d at 38-39 (“ALCs are better suited for making the factual determinations necessary for an as applied challenge, and finding a statute or regulation unconstitutional as applied to a specific party does not affect the facial validity of that provision.”). Yet, “[t]he line between facial and as-applied relief is [a] fluid one, and many constitutional challenges may occupy an intermediate position on the spectrum between purely as-applied relief and complete facial invalidation.” *Doe v. State*, 421 S.C. 490, 502, 808 S.E.2d 807, 813 (2017) (quoting 16 C.J.S. *Constitutional Law* § 153, at 147 (2015)). “[A]n ‘as applied’ challenge to the constitutionality of a statute is evaluated considering how it operates in practice against the particular litigant and under the facts of the instant case, not hypothetical facts in other situations.” 16A Am. Jur. 2d *Constitutional Law* § 180.

Respondents’ contention that the Court lacks subject matter jurisdiction is predicated upon the premise that a finding by this Court that the “ACE Basin Taskforce Boundary Area” is unreasonably vague in this case would apply ipso facto to every single applicant who seeks a bridge permit in the ACE Basin Taskforce Boundary Area. However, resolution of this case is not predicated upon the map which was assertedly adopted by the ACE Basin Task Force but rather how the Department applied the standard set forth under regulation 30-12.N(2)(b) of the South Carolina Code of Regulations. Significantly, if the ACE Basin Taskforce Boundary Area was established in 2004 as testified to by Mr. Lane, the application of that boundary would not be vague as the Court should only need to look to the terminal points of the boundary lines to discern whether Petitioner’s property falls within the regulatory boundary. Similarly, the Waterfowl Focus Areas map, which was adopted by the Department as a proxy for its GIS data layer, could potentially have been used as evidence of the ACE Basin Taskforce Boundary Area. However, as will be discussed further below, the evidence in this case failed to sufficiently establish that the GIS data layer is the boundary that was assertedly adopted by the ACE Basin Task Force.

Therefore, Respondents’ assertion that if the ACE Basin Taskforce Boundary Area is vague in one instance, it would ipso facto render its application vague in all, is flawed. Accordingly, I conclude that this Court has the authority to hear this case. As such, I turn to the merits of Petitioner’s claim.

Regulation 30-12.N(2)(b)

Regulation 30-12 sets forth specific project standards for permits for bridges and docks as a means of obtaining access to coastal islands. S.C. Code Ann. Regs. 30-12.N (Supp. 2025). The

regulation directs the Department to weigh “the impacts to the public trust lands, critical area, coastal tidelands and coastal waters, against the reasonable expectations of the owner of the coastal island.” S.C. Code Ann. Regs. 30-12.N(2)(a). Significantly, if the project is in “areas of special resource value” the regulation restricts the Department from issuing a bridge permit unless the project qualifies under the special exceptions set forth under 30-12.N(10).¹⁷ S.C. Code Ann. Regs. 30-12.N(2)(b). The regulation defines “[a]reas of special resource value [to] include: the ACE Basin Taskforce Boundary Area, the North Inlet National Estuarine Research Reserve, and the Cape Romain National Wildlife Refuge.” *Id.*

Constitutionality of the Use of the Waterfowl Focus Areas Map

Petitioner argues that the Department adopted their own interpretation of what the ACE Basin Task Force Boundary Area is without any statutory or regulatory benchmarks to guide them. As such, Petitioner asserts the Department’s use of the Waterfowl Focus Area map is invalid.¹⁸ In support of this contention, Petitioner cites to *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control*, 363 S.C. 67, 610 S.E.2d 482 (2005), for the proposition that the Department adopted its own interpretation of the ACE Basin Taskforce Boundary Area without a statutory or regulatory benchmark to guide them.

“The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication.” *State v. Michau*, 355 S.C. 73, 76-77, 583 S.E.2d 756, 758 (2003) (quoting *Curtis v. State*, 345 S.C. 557, 571, 549 S.E.2d 591, 598 (2001)). A law is considered “unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application.” *Curtis*, 345 S.C. at 572, 549 S.E.2d at 598. “A statute can be impermissibly vague for either of two independent reasons. First, it may fail to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Or, second, it may authorize or encourage arbitrary and discriminatory enforcement.”

¹⁷ This requirement does not apply to permits for non-vehicular bridges for access by the general public. S.C. Code Ann. Regs. 30-12.N(2)(b)

¹⁸ Petitioner’s Proposed Order also included a footnote which referenced this Court’s Order on Motion for Summary Judgment. Specifically, it provided that the Court previously found that “the Department’s action is not an attack on the regulation itself but rather the Department’s application of the Waterfowl Focus Area map as the ACE Basin Task Force Boundary Area[.]” and it asserted that that ruling should be affirmed. However, the Court’s Order on Motion for Summary Judgment did not stand for this proposition but rather that there remained genuine issues of material facts which required further inquiry into the facts to clarify the application of the law to the issues presented.

State v. Houey, 375 S.C. 106, 119, 651 S.E.2d 314, 321 (2007) (citing *Hill v. Colorado*, 530 U.S. 703, 732, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000); *State v. Thompkins*, 263 S.C. 472, 211 S.E.2d 549 (1975). See also *In re Amir X.S.*, 371 S.C. 380, 391, 639 S.E.2d 144, 150 (2006) (concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication); *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591).

At the outset, Petitioner's reliance on *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control*, 363 S.C. 67, 610 S.E.2d 482 (2005) is flawed. In *Coastal Conservation League* whether an island was "small" was the threshold issue. The court reasoned that "'[s]mall' is a term of subjective relativity" thus leaving nothing for the Department to interpret or apply. *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control*, 363 S.C. at 75, 610 S.E.2d at 486. As a result, the Court concluded that the regulation fails for vagueness since there was no promulgated test for the Department to determine whether an island was small.

Conversely, in this case, the threshold issue is whether Petitioner's Property is in an area of special resource value. Unlike the provision at issue in *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control*, regulation 30-12.N(2)(b) identifies the area at issue as the "the ACE Basin Taskforce Boundary Area." While the Supreme Court has "struck down statutes for which the proscribed conduct is predicated on wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings[.]" the ACE Basin Taskforce Boundary Area is a term that can be objectively applied. *Whitehurst v. Town of Sullivan's Island*, 446 S.C. 137, 155, 919 S.E.2d 402, 412 (2025), *United States v. Williams*, 553 U.S. 285, 306, 128 S.Ct. 1830, 170 L.Ed.2d 650 (2008). Indeed, the ACE Basin Taskforce Boundary Area was established in 2004 as a collective effort between the ACE Basin Task Force and the Department of Interior.

Here, however, Petitioner produced several maps describing the general region of the ACE Basin in which the Project was not located. While these maps did not expressly demarcate the ACE Basin Task Force Boundary Area, they bring into question the Department's determination particularly since there is no map bearing the label ACE Basin Taskforce Boundary Area as set forth in Regulation 30-12(N)(2)(b).

Nevertheless, Respondents assert Petitioner's maps are irrelevant because the Waterfowl Focus Areas map establishes the regulatory boundaries for the ACE Basin Taskforce Boundary Area. Accordingly, the Department evaluated Petitioner's Project based upon a GIS data layer it had received from DNR employees—GIS data which was purportedly based upon the Waterfowl Focus Areas map. However, the Waterfowl Focus Areas map does not describe or even reference the ACE Basin Taskforce Boundary Area. In addition, the evidence simply failed to sufficiently show what the boundaries of the Waterfowl Focus Areas map (the map which the Department used as a proxy for the ACE Basin Taskforce Boundary Area) are as they relate to the determination in this case. Moreover, even though Mr. Lane proclaimed that the dark green area labeled ACE Basin on the Waterfowl Focus Areas map is the ACE Basin Taskforce Boundary Area, the Waterfowl Focus Areas map does not include a sufficiently clear indication of the parameters of that area to discern whether Petitioner's property falls within the area purportedly adopted by the ACE Basin Task Force. Indeed, Mr. Lane testified that the area roadways and natural features comprise the boundaries of the ACE Basin Taskforce Boundary Area yet, the relevant roads and highways are not clearly identifiable on the Waterfowl Focus Areas map nor were they sufficiently defined through the testimony in this case.

Likewise, even though Mr. Williams contended that the Department's GIS data layer represented the ACE Basin Taskforce Boundary Area, he was not involved in the creation of the GIS data layer nor was there sufficient evidence to establish that the coordinates of the Department's GIS data layer coincide with the physical boundaries adopted by the ACE Basin Task Force. In fact, the geographic features and roadways of the boundary referenced during Mr. Williams testimony were not corroborated by nor included as part of Mr. Lane's discussion of the natural features and roadways tied to the boundary adopted by the ACE Basin Task Force.

In conclusion, the evidence failed to adequately establish the boundaries of the ACE Basin Taskforce Boundary Area as they relate to Petitioner property and in turn, the Department's authority to subject Petitioner's permit to the higher scrutiny of an area of special resource value. Indeed, the evidence in the Record failed to sufficiently define the boundaries of the ACE Basin Taskforce Boundary Area. Consequently, under this particular factual context, the Department's use of the Waterfowl Focus Areas map as an equivalent to the ACE Basin Taskforce Boundary Area and a proxy for the Department's GIS data layer gives rise to an unconstitutionally vague application of the regulation. Indeed, as illustrated by the Department's application of the GIS

data layer, what one person may believe to be the boundary limits for the ACE Basin Taskforce Boundary Area, may differ from another. *Cf. State v. Green*, 397 S.C. 268, 280, 724 S.E.2d 664, 670 (2012) (holding that constitution requires terms sufficiently definite to enable a person of common intelligence not to have to guess as to its meaning). This is particularly troubling in a case such as here where the Court must factually apply the metes and bounds of the ACE Basin Taskforce Boundary Area to discern whether Petitioner’s project is subject to the heightened requirements under regulation 30-12.N(2)(b) of the South Carolina Code of Regulations for an area of “special resource value.”

ORDER

Based upon the above Findings of Fact and Conclusions of Law:

IT IS ORDERED that the matter is **REMANDED** to the Department to resume the processing of the application consistent with the standards of regulation 30-12 with the exception of the heightened standards set forth under regulation 30-12.N(10).

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