

**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

**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)<sup>1</sup> 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.

**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:

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<sup>1</sup> 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.



## **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.<sup>2</sup> 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 Task Force Boundary Area that was 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 location from its ArcGIS base map, specifically the GIS data layer for the ACE Basin Taskforce Boundary Area. A printout of that boundary area was provided to Petitioner on April 26, 2022. Shortly thereafter, on May 4, 2022, the Department provided Mr. Goff a copy of a Waterfowl Focus Areas map obtained from South Carolina Department of Natural Resources (DNR) that it contended to be the 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 (B)(2) of the South Carolina Code (2008) and regulations 30.12.N(2)(b), 30.12.N(10), and 30.12.N(3)(a) 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

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<sup>2</sup> As will be discussed henceforth in this Order, the South Carolina Department of Natural Resources (DNR) is a member of the ACE Basin Task Force. Notably, DNR also submitted a comment letter concerning the impact of Petitioner's proposed bridge yet, in contrast to Mr. Lane's opposition, they did not express any concern that the Project was located in the ACE Basin Taskforce Boundary Area. Similarly, the United States U.S. Fish and Wildlife Service (USFWS), who is also a member of the ACE Basin Task Force, submitted a comment letter but did not express concern that the Project was in the ACE Basin Taskforce Boundary Area.

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 Basin<sup>3</sup>**

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.<sup>4</sup>

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

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<sup>3</sup> 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.

<sup>4</sup> 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).

Basin Taskforce<sup>5</sup> (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 if 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.<sup>6</sup> 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.<sup>7</sup> Even so, Mr. Goff unearthed several maps on DNR's website relating to the ACE

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<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> 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 March of 2022 by way of a Google search for the ACE Basin Taskforce Boundary Area. More specifically, she indicated that her search uncovered a map captioned "Land Protection in the ACE Basin" which designated the ACE Basin Taskforce Boundary. However, the area referenced by Ms. Adkins on the Land Protection in the ACE Basin is entitled the ACE Basin Focus Area, not the ACE Basin Boundary Area. In addition, Ms. Adkins provided no testimony or evidence to corroborate her assertion that the boundaries shown on the "Land Protection in the ACE Basin" map

Basin.<sup>8</sup> 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 boundary 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.<sup>9</sup>

Ultimately, Mr. Goff advised Mr. Southerland that the Property was outside of the ACE Basin Taskforce Boundary Area. Based upon that advice,<sup>10</sup> Dr. Southerland purchased the Property for \$225,000<sup>11</sup> with the intent to improve, entitle and resell the land for profit.<sup>12</sup>

### **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 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 ACE Basin Taskforce boundaries based upon input from and the ACE Basin Task Force. Accordingly, Mr. William’s determination that Petitioner’s Property was

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correlated with the boundaries adopted by the ACE Basin Taskforce. As such, I do not find her testimony to be probative.

<sup>8</sup> 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, the Department was not even wholly aware of what map the ACE Basin Taskforce Boundary Area data layer was based upon.

<sup>9</sup> 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).

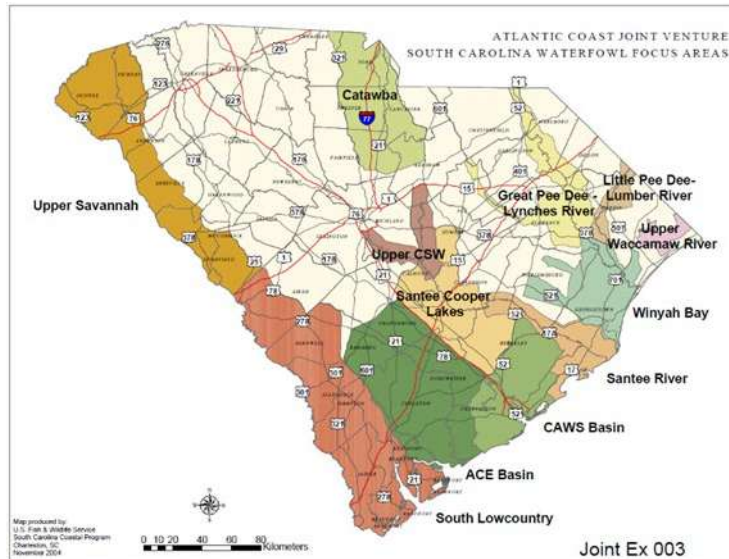
<sup>10</sup> Dr. Southerland also acknowledged that he did not reach out to the Department to discuss the ACE Basin Taskforce Area Boundary lines because he “was looking for evidence or proof of the fact that the Property was either in or out, not somebody’s opinion.” As will be discussed further below, 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 as to what constituted the Taskforce Boundary Area. Irrespectively, as stated above, an applicant is not statutorily required to contact the Department.

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

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

roughly five miles within the most northeastern edge of the boundary was based upon a data layer that could only be verified by DNR employees, none of whom 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 Area map which was approved by the Department of Interior (DOI) in 2004.<sup>13</sup> While not explicitly demarcated on the Waterfowl Focus

Area 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 when the ACE Basin Taskforce 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 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 the Department’s GIS data layer is the same as the boundary depicted on the Waterfowl Focus Area map. Yet, neither Mr. Lane nor Mr. Williams were 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.<sup>14</sup> Furthermore, neither Mr. Williams nor Mr. Lane presented credible evidence to show that the

<sup>13</sup> 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 Area.

<sup>14</sup> 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.

coordinates from the Department's GIS data layer coincided with the area shown in green on the Waterfowl Focus Area map. Indeed, 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. Clearly, this raises a substantial question as to the precise coordinates of the boundary lines the Taskforce created. Moreover, Mr. Williams' physical description of the Department's data layer for the ACE Basin Taskforce Boundary materially differs from Mr. Lane's description of the ACE Basin Taskforce Boundary Area. Mr. Williams described the northeastern side of the 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."<sup>15</sup> 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.<sup>16</sup>

### Conclusion

The Department asserts the ACE Basin Taskforce Boundary Area is "based upon" the ACE Basin Waterfowl Focus Area map. Yet the Waterfowl Focus map lacks any definite description of the roads and natural features which form its boundaries. Moreover, the Waterfowl Focus 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 Areas, his inability to explicitly describe the specific limits of ACE Basin Taskforce Boundary raises significant concern to the Court. Indeed, if Mr. Lane is unable

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<sup>15</sup> 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 unaware of who produced this document nor 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 map that the Department applied when considering Petitioner's permit application.

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

to describe the boundaries, how can an ordinary person be expected to identify the physical limits of the ACE Basin Taskforce Boundary Area.<sup>17</sup> But even if I were to find that the Waterfowl Focus Areas map sufficiently sets forth the limits of the ACE Basin Taskforce Boundary Area, neither Mr. Williams nor Mr. Lane established a nexus to show that the dark green area designated on the Waterfowl Focus Areas map coincides with the coordinates for the Department's GIS data layer. In fact, Mr. Williams attested that after communicating with two former DNR employees, Emily Cope and Dean Harrigal, he concluded that the 2004 Waterfowl Focus Area Map is the same map as the ACE Basin Task Force boundary and that the GIS data layer was consistent with the 2004 Waterfowl Focus Area map. Yet, neither of those former employees, who were intricately involved with the adoption of the map, testified before this Court and, even more disconcerting, the Court was informed that at least one of them did not have the GIS coordinates for the ACE Basin Taskforce Boundary Area. 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:

#### **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

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<sup>17</sup> Interestingly, as stated earlier in this Order, two important members of the Task Force: DNR and U.S. Department of Interior's Fish & Wildlife Service, did not raise any concerns in their comment letters that Petitioner's property is in the ACE Basin Taskforce Boundary Area. In fact, according to Mr. Lane, the U.S. Department of Interior is the entity that allegedly approved the map. Thus, it brings into question the validity of Mr. Lane's testimony about the boundaries of the Waterfowl Focus map.

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 & Envtl. 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” map is unreasonably vague 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 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. Significantly, Mr. Lane testified that the ACE Basin Taskforce Boundary Area was established in 2004 and therefore the application of that boundary would not be vague as the Court should have only needed to look to the established boundary lines to discern whether Petitioner’s property is within the regulatory boundary. Similarly, the Waterfowl Focus Areas Map, which was adopted by the Department as the ACE Basin Taskforce Boundary Area map, could have been reasonably used as there was testimony that the Waterfowl Focus Areas map **included** the ACE Basin Taskforce Boundary Area. However, as will be discussed further below, the boundary of the ACE Basin Taskforce Boundary Area was not sufficiently established for this Court to discern whether Petitioner’s property is within a special resource area.

Therefore, Respondents’ assertion that if the ACE Basin Taskforce Boundary Area map 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).<sup>18</sup> S.C. Code Ann. Regs.

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<sup>18</sup> 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)

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.<sup>19</sup> 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.” *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).

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<sup>19</sup> 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 Water Fowl 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.

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. Additionally, Mr. Lane attested that the Waterfowl Focus Areas map was adopted as the ACE Basin Taskforce Boundary Area map, therefore forming a nexus between the Waterfowl Focus Areas map and the ACE Basin Taskforce Boundary Area.

Here, Petitioner established that there is no map bearing the label ACE Basin Taskforce Boundary Area. Moreover, Petitioner produced several maps that reflect that Petitioner’s property is not within the regulated region of the ACE Basin. Nevertheless, Respondents assert those maps are irrelevant because the Waterfowl Focus Areas map is the map that establishes the regulatory boundaries for the ACE Basin Taskforce Boundary Area. Accordingly, the Department evaluated Petitioner’s Project based upon GIS data it had received from DNR employees—GIS data which was purportedly based upon the Waterfowl Focus Areas map.

Nevertheless, although 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 credible evidence to establish that the coordinates of the Department's GIS data layer coincide with the physical boundaries established by the ACE Basin Task Force. In fact, Mr. Williams' physical description of the northeastern side of the GIS data layer differed from Mr. Lane's description of the northeastern boundary adopted by the ACE Basin Task Force.

Furthermore, although Respondents assert that the Waterfowl Focus Areas map establishes the regulatory boundaries for the ACE Basin Taskforce Boundary Area, the evidence in the Record simply failed to reasonably show that the Petitioner's property was within the ACE Basin Taskforce Boundary Area. Specifically, the Waterfowl Focus Area map which the Department used as a proxy for the GIS data layer does not identify the metes and bounds of the ACE Basin Taskforce Boundary Area. In fact, the Waterfowl Focus Areas map leaves much to conjecture as it does not even reference the ACE Basin Taskforce Boundary Area. While 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 sufficiently clear parameters of that area as to discern whether Petitioner's property falls within the boundary of the ACE Basin as represented on the Waterfowl Focus Areas map. Thus, the evidence failed to sufficiently 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.

In conclusion, under this particular factual context, the Department's use of the Waterfowl Focus Area 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 to not 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 the Property 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.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

April 30, 2026  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, 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).



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Stephanie Perez  
Judicial Law Clerk

April 30, 2026  
Columbia, South Carolina