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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

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

Case No.: 2026-000221

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

v.

Rom Reddy Appellant-Respondent.

SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES'
INITIAL REPLY BRIEF

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August 3, 2026

Charleston, South Carolina

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ARGUMENT IN REPLY

Throughout his brief, Reddy repeatedly argues that the Department is attempting to “expand” its authority. The Department adamantly disagrees with Reddy’s characterization. The Department only has the authority the General Assembly has granted, and the Department is exercising that statutorily granted authority. The Department seeks to apply the South Carolina Coastal Zone Management Act’s (Act’s) plain meaning and policies to adequately protect and manage the coastal zone, including the four defined critical areas. S.C. Code Sections 48-39-10, *et seq.* While Reddy desires a static line for the Department to manage an everchanging coastline, a static line does not define the Beaches Critical Area. Furthermore, Reddy’s argument is based on the faulty premise that the Department can comprehensively manage a dynamic coastline using static guidelines that do not change to reflect current conditions. To construe the Act as stating the Department’s jurisdiction only exists seaward of the setback line, and not as the Act defines Beaches Critical Area, would diminish the Department’s authority to protect these dynamic, vulnerable and valuable areas.

I. THE ALC ERRONEOUSLY DECLINED TO REACH THE ISSUE AS TO WHETHER “BEACHES” IS AN INDEPENDENT JURISDICTIONAL CRITICAL AREA, AND THIS COURT SHOULD APPLY THE PERTINENT REGULATIONS, CZMP AND CASE LAW TO HOLD THAT IT IS A DISTINCT CRITICAL AREA OVER WHICH THE DEPARTMENT HAS AUTHORITY.

Reddy’s Issue I provides “[t]he ALC correctly found that ‘Beaches’ is not an independent jurisdictional category extending landward of the setback line.” (Reddy Resp. Br. 2.) However, the ALC specifically declined to decide this issue stating that it was not necessary.¹ (Order Mot.

¹The ALC wrote: “[i]n addition, the Department requests the Court conclude that the Department’s jurisdiction over the beaches critical area is distinct from its jurisdiction in the beach/dune system Critical Area. I do not find it necessary to reconsider my Final Order in this regard. *Jones v. Dillon-Marion Hum. Res. Dev. Comm’n*, 277 S.C. at 536, 291 S.E.2d at 196 (1982) (“Court will not pass on moot and academic questions ...”).” (See DES’s Initial Appellant Br. 27-29, May 1, 2026.)

Recons. 18.) The ALC erred as a matter of law in reaching this conclusion because it did not address the non-beach-compatible materials not associated with the walls, as set forth in the Department's Initial Appellant Brief filed May 1, 2026.²

A. The Coastal Zone Management Program (CZMP) Document Supports DES's Jurisdiction Over Beaches Critical Area.

Reddy argues that the CZMP Document does not support the Department's jurisdiction in the Beaches Critical Area, and that "the CZMP Document does not say what DES claims it says." (Reddy Initial Resp. Br. 11-13.) The Department does not contend that the CZMP Document independently redefines the critical area; rather it clarifies the statutory definition. (DES Initial Appellant Br. 45.) The CZMP Document's definition of Beaches is consistent with the Act's definition. The legislature granted authority to the Department to prescribe rules and regulations to implement the Act. When authorized, an administrative agency may "'fill up the details' by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose." *McNickel's Inc. v. S.C. Dep't of Revenue*, 331 S.C. 629, 634, 503 S.E.2d 723, 725 (1998) (citing *Heyward v. South Carolina Tax Comm'n*, 240 S.C. 347, 126 S.E.2d 15 (1962)). That is what the Department did by explaining and emphasizing that "Beaches" is a separate critical area in the CZMP Document. Reddy's argument of the CZMP's inconsistency with the Beachfront Management Act, which was enacted sometime later, fails because "Beaches" remains to be one of the four critical areas defined by the Act over which the Department has direct

² Whether Reddy violated the Act by altering the Beaches Critical Area is also not moot by the Court's Order as it is pertinent to whether penalties should be assessed. S.C. Code 48-39-170(C) provides that "[a]ny person who is determined to be in violation of any provision of this chapter by the department *shall be liable for*, and may be assessed by the department for, a civil penalty of not less than one hundred dollars nor more than one thousand dollars per day of violation." (Emphasis added.) Because the Department was seeking to enforce the AO that assessed a penalty for Reddy's violations, the ALC should have determined whether there was a violation of the Act.

permitting authority.

Reddy's contention that the General Assembly eliminated the "Beaches" Critical Area seaward of the Beach/Dune System Critical Area disregards the relationship between the South Carolina Coastal Zone Management Act (Act), the CZMP Document and the Federal Coastal Zone Management Act, 16 U.S.C. Sections 1451, *et seq.* The CZMP Document sets forth this relationship in the introduction immediately preceding the definition of "Beach," which explains the necessity for the regulation over beaches and supports DES's application of the regulations. The CZMP Document provides:

D. BEACH AND SHORELINE ACCESS

1. Introduction

The South Carolina coastal zone boasts 158 miles of Atlantic Ocean shoreline — this wealth of beaches is an invaluable and irreplaceable resource for the State. The General Assembly recognized the increasing demands on all coastal resources in the passage of the South Carolina Coastal Management Act of 1977, which mandates development of a comprehensive coastal management program. Among the many findings and concerns expressed in the State legislation are those of protecting public access and preserving and expanding recreational resources. The following beach and shoreline access policies and existing management authority address these issues.

In order to receive Federal approval and thereby continued funding through the Department of Commerce, the State must also meet Federal requirements for shoreline access in its coastal management program. The rules and regulations from the Office of Coastal Zone Management for program development and approval read as follows:

- (1) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.
- (2) There must be a definition of the term "beach" that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.
- (3) There must be an identification and description of enforceable policies, legal authorities, funding programs and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.

(Section 923.24, **Federal Register**, Vol. 44,
No. 61, March, 1979)

2. Definitions

a. Beach

The South Carolina Coastal Management Act (Act 123 of the 1977 South Carolina General Assembly) defines "beaches" as "those lands subject to periodic inundation by tidal and wave action so that non-littoral vegetation is established". (Section 3(H)). This definition includes that area of sand between mean low and spring high water, in other words, the foreshore and the dry sand beach up to the line of vegetation. Beaches are included in the management program as "critical areas", subject to the Coastal Council's direct permitting authority.

(CZMP Document, Chapter IV.D "Beach and Shoreline Access" IV-61, [SC Coastal Program \(Pt.](#)

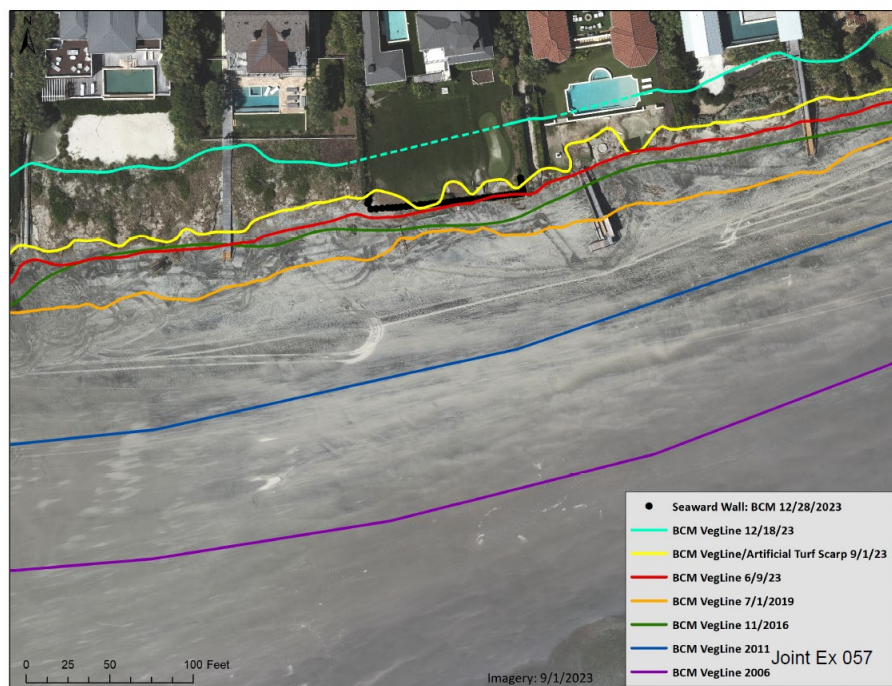
[2 - Ch. IV\).pdf](#).) As this introduction explains and the federal regulations state, “[t]he management program must contain a definition of the term ‘beach’ that is *the broadest definition* allowable under state law or constitutional provisions . . . ” 15 C.F.R. § 923.24(d) (emphasis added). The state management program for the coastal zone³ must also include “[a planning process for the protection of and access to, public beaches...” 16 U.S.C. § 1455(d)(2)(G); 15 C.F.R. § 923.3; 15 C.F.R. § 923.24. The General Assembly met these requirements by including the definition of “beaches” as a critical area and providing the Department with regulatory authority over those areas. Reddy’s assertions about the General Assembly’s alleged intent to eliminate the Department’s authority to regulate the Beaches Critical Area landward of the setback line are unsupported given that eliminating this jurisdiction would be in contravention to the Federal Coastal Zone Management Act’s requirements.

B. The Supreme Court’s Opinion in *KDP II* Addresses The Department’s Jurisdiction In the Coastal Zone and Supports DES’s Jurisdictional Claim.

Reddy also argues that *SCCCL v. SCDHEC, KDP II, LLC, and KRA Development, LP*, 434 S.C. 1, 862 S.E.2d 72 (2021) (“*KDP II*”), is inapplicable to this case since it involves a coastal zone consistency review. However, the Court in *KDP II* addressed the Department’s jurisdiction in the coastal zone and the importance of its protection at issue in this case. *KDP II* also addresses the importance of applying the Act’s policies in regulating the coastline as explained in the Department’s Initial Appellant Brief on pages 49 and 50. Reddy further argues that this case is distinguishable from the *KDP II* case in that it involved the “undisputed eventuality” of the non-critical area becoming critical area in the future. (Reddy Initial Resp. Br. 13.) However, this case

³ The Federal Coastal Zone Management Act also requires that the state have actual management and enforcement authority over the coastal zone, which is defined as including “beaches.” 16 U.S.C. § 1455(d)(10) & 16 U.S.C. § 1453(1) (defining “coastal zone” as including “islands, transitional and intertidal areas, salt marshes wetlands, and beaches”).

also involves the undisputed eventuality of the area in question becoming located in a critical area. While this area is presently in the Beaches Critical Area, it will also become located in the Beach/Dune System Critical Area. The Reddy property is located in the Unstabilized Inlet Erosion Zone. (Order 5.) The baseline in this zone is set at the most landward point of erosion in the last forty years. S.C. Code Ann. § 48-39-280. The undisputed evidence shown in Joint Exhibit 057 demonstrates that the most landward point of erosion in the last forty years is landward of Reddy's alterations. (See 12/18/23 Vegetation Line (teal) on Joint Ex. 057.)



Applying the plain meaning in Section 48-39-280 to this uncontroverted evidence, this area will be part of the Beach/Dune System Critical Area when the new baseline and setback lines are set in the next line cycle. Therefore, pursuant to *KDP II*'s holding, the Department should apply the Act's policies to protect this area.

While the Supreme Court did not provide a bright line test for the Department in *KDP II*, it warned against using a formulaic approach and emphasized the importance of following the policies and protecting the public's interests. In accordance with its holding and rationale, this area

should be protected and not altered because: (1) it is within the Beaches Critical Area as defined by the Act; (2) this erosion control structure armoring the beach immediately adjacent to the Beach/Dune System Critical Area has already adversely impacted the critical areas, including public access and recreational use, and will continue to do so; and (3) this area will be in the Beach/Dune System Critical Area when the next lines are set as erosion is already landward of it.

C. Reddy's Arguments Are Flawed Because They Assume Without Support That the General Assembly Intended To Have the Department Regulate a Highly Dynamic System With a Static Line and To Disregard the Beachfront's Actual Conditions.

Throughout Reddy's Brief there is speculation that the General Assembly intended to replace the Beaches Critical Area with the Beach/Dune System Critical Area, removing the Department's authority landward of the setback line even when conditions show that this area is still a coastal resource that should be protected. Reddy's construction would frustrate the Act's purposes and result in limiting the Department's authority. This is contrary to the General Assembly's finding that the Department had insufficient authority to adequately protect and regulate South Carolina's coastal resources. S.C. Code Ann. § 48-39-20(F).

1. The General Assembly's inclusion of "periodic inundation by tidal and wave action" in the "Beaches" definition accounts for the actual erosive forces which is necessary to adequately protect coastal resources.

Reddy argues for a highly restricted definition of "periodic inundation" that disregards higher than average tides including King Tides and waves generated by storms. The inundation from King Tides and storms drives erosion landward and cannot be disregarded if the Act's purposes are to be accomplished. Mr. Goodrich, Reddy's expert, conceded that high water levels, and the effects of waves and storms drive erosion. (Tr. 1131:6-14.) Goodrich further testified it can be years before a shoreline recovers from the erosion occurring from a single storm and that one would want to consider high wave and water levels and storms in forming a comprehensive beach

management plan. (Tr. 1131:15-1132:5) Mr. Jones, the Department's expert, testified "to ignore storms when you're talking about establishing jurisdictional areas or for any purpose, for building a house, for example, is crazy to ignore, because it is the storms that drive the change along the beach and damage the property." (Tr. 877:7-12.)

2. Tidelands Critical Area, Like Beaches Critical Area, Is Not Based On Static Lines.

Reddy erroneously argues "[t]he setback line serves the same boundary function for beachfront jurisdiction that the mean high-water mark serves for tidelands jurisdiction - a fixed, surveyable line that provides notice and prevents arbitrary enforcement." (Reddy Initial Resp. Br. 4.) This conclusion is erroneous as (1) this construction disregards the remainder of the Tidelands Critical Area definition; and (2) the mean high tide is not a "fixed, surveyable line."

S.C. Code Section 48-39-10(G) defines "Tidelands" as follows:

(b) "Tidelands" means all areas which are at or below mean high tide *and* coastal wetlands, mudflats, *and* similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and ***means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction.***

The tidelands definition includes other areas of "coastal wetlands" and "other similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved." S.C. Code Ann. § 48-39-10(G). The General Assembly specifically provided that "coastal wetlands . . . means those areas periodically inundated by saline waters . . . and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction." *Id.* Contrary to Reddy's assertion, the Tidelands Critical Area's landward reach is not defined by the mean high-water mark, and similar to the Beaches Critical Area, requires an on-

site assessment. Notably, the landward delineation of Tidelands Critical Area for coastal wetlands is similar to that of Beaches Critical Area in its use of periodic inundation and vegetation. Mr. Slagel explained that the Department assesses vegetation for purposes of certifying critical area lines along estuarine or salt marsh shorelines, so “vegetation is also relied upon for establishing where the Tidelands Critical Area is.” (Tr. 73:11-20.)

The Department also disagrees with Reddy that “mean high tide” is “a fixed, surveyable line” and his interpretation is not supported by the Act’s plain meaning. “Mean high tide” is not defined in the Act. “High tide” is defined as “the tide when the water is at its greatest elevation.” “High tide,” *Merriam-Webster.com* (2026) <https://www.merriam-webster.com/dictionary/high%20tide> (accessed July 16, 2026). “Mean” is defined as an “average.” *Id.* “Mean,” <https://www.merriam-webster.com/dictionary/mean> (accessed July 16, 2026). These definitions do not support the interpretation that “mean high tide” is “a fixed, surveyable line,” but should be determined at the time the decision is being made.

Determining the mean high tide at the time of the Department’s review is also in keeping with the General Assembly’s mandate that the Department “must utilize the best available scientific and historical data” in implementing the beach preservation policy. S.C. Code Ann. § 48-39-280(A).

The General Assembly’s disclosure requirements for a Tidelands Critical Area delineation also support that critical area lines change and are not static:

....Critical areas by their nature ***are dynamic and subject to change over time.*** By delineating the permit authority of the department, the department in no way waives ***its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not.***

S.C. Code § 48-39-210(B) (emphasis added). This language is contrary to Reddy’s argument that the General Assembly meant for the Department’s jurisdictional authority to be restricted by a

fixed line.⁴

D. DES's Conduct Cannot Eliminate Jurisdiction Granted To It By The General Assembly, and Even If It Could, The Department Exercised Authority Landward of The Setback Line.

Reddy contends the Department's own conduct supports his argument that the Department does not have jurisdiction in the Beaches Critical Area landward of the setback line. (Reddy Initial Resp. Br. 7-9.) Foremost, Reddy's argument that the Department's alleged conduct somehow affects the authority granted to it by the General Assembly is not supported by law and must fail as it is immaterial as to the Department's jurisdictional authority.⁵

In arguing that the Department's "own conduct" confirms that the Department does not have jurisdiction in the Beaches Critical Area, Reddy disregards the uncontroverted evidence and testimony of the changing conditions on the coastline. When the Beach/Dune System Critical Area lines were first established, the Beaches Critical Area was always seaward of the setback line. However, in recent years the Department saw the Beaches moving landward in some areas. (*See*

⁴ That the General Assembly intended the Department to assess its regulatory authority at the time of its decisions, is also supported by provisions related to the active beach. "Active beach" is defined as that "area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean." S.C. Code Ann. § 48-39-270(13) (2008). (*See* DES's Initial Appeals Br. 8-9.) The Act and regulations give the Department authority to prohibit and/or remove certain structures that become located on the active beach. *See* § 48-39-280(A)(1)(b)(ii), § 48-39-290(D)(1); S.C. Code Ann. Regs. 30-13 and 30-15. Notably, Regulation 30-15 mandates that the Department consider how soon a structure will be located on active beach in "determining whether or not a permit is contrary to the public health, safety or welfare." S.C. Regs. 30-15. Active Beach is not a fixed line but rather an on-site determination made by the Department, just like the Beaches Critical Area and the Tidelands Critical Area.

⁵ As the ALC explained:

the Department's past regulatory practice is immaterial to this Court's consideration of Department's jurisdictional authority. Indeed, the Department cannot create jurisdiction. *Trident Med. Ctr., LLC v. S.C. Dep't of Health & Env't Control*, 438 S.C. 391, 397, 882 S.E.2d 878, 882 (Ct. App. 2022) (citing *SGM-Moonglo, Inc. v. South Carolina Department of Revenue*, 378 S.C. 293, 295, 662 S.E.2d 487, 488 (Ct. App. 2008). ("An administrative agency has only the powers conferred on it by law and must act within the authority created for that purpose."). (Order 27.)

DES's Initial Resp. Br. 21-22 & Tr. 805:15-21.) This more recent development explains: (1) the lack of enforcement actions in the past; and (2) the language referring to the setback line as the most landward line on the beach, which was true given the conditions at that time and is still true on the vast majority of the coast.⁶

1. The Lack of Past Enforcement Actions Does Not Support A Legal Conclusion That The General Assembly Did Not Grant the Department Authority in the Beaches Critical Area But Rather Reflects the Past Conditions on the Beachfront.

The uncontroverted evidence in this case is that in the vast majority of areas along the coastline the Beaches Critical Area is seaward of the Beach/Dune System. (Tr. 89:19-90:7; 750:12-22.) It is only more recently that erosion has outpaced the Beach/Dune System and driven the Beaches Critical Area landward of the Beach/Dune System Critical Area. Because of these changed conditions, it is not reasonable to infer that because the Department did not produce evidence it ever required a permit for construction of an erosion control structure or assessed penalties for a structure built landward of the setback line that the Department did not assert its authority. Moreover, the evidence in this case showed only two past cases where applicants were seeking to build structures landward of the setback line in the Beaches Critical Area. In one of those cases, the Department asserted its jurisdiction in the Beaches Critical Area landward of the setback line and obtained a favorable ALC opinion, confirming its authority as discussed in the following section. In the other case, the Department made a mistake by not requiring a permit due to a miscommunication when a new staff member took over the permitting review.⁷ Neither of

⁶ Guidance documents and reports, which do not have the force of law, and regulations, which do, cannot change the Act's mandate.

⁷ Mr. Slagel testified to a miscommunication when he took over the permit review from a prior project manager. He stated, "comparing Piping Plover to this situation is different in several ways,

these cases supports Reddy's argument that the Department's conduct demonstrates it did not have authority. Reddy presented no other evidence supporting his argument. It is not reasonable to infer a pattern of conduct from a single case.

2. The Department Has Consistently Asserted Jurisdiction in the Beaches Critical Area Contrary to Respondent's Representations.

Both the ALC and Reddy completely disregard the 1998 case of *Summer House Horizontal Property Regime v. SCDHEC, et al.*, 97-ALJ-07-0403-CC & 97-ALJ-07-407, wherein the Department asserted jurisdiction landward of the setback line in the Beaches Critical Area. In that case, three houses were built landward of the critical areas and were not required to obtain permits at the time they were built. Sometime after their purchases, the property owners submitted permit applications to install sandbags on the beachfront. At the time of their applications, the houses had become located in the Beaches Critical Area, landward of the setback line. The Department asserted jurisdiction and denied the permit applications because the property owners were proposing alterations of the Beaches Critical Area in a manner inconsistent with coastal division regulations. The owners appealed and the ALC upheld the Department's decision, stating:

but one of them is the fact that the Department simply missed that one.” (Tr. 173:5-8.) The ALC found that:

Mr. Slagel testified that in the Piping Plover case there was internal Department miscommunication. Specifically, he stated that when he was assigned to the matter it was his understanding that the homeowners had been informed that erosion control structure could only be installed landward of both the setback line and the beaches critical area. Respondent attempted to impeach Mr. Slagel's testimony through prior testimony in the Piping Plover matter indicating that the Department does not distinguish between the beach/dune system and the beaches critical area. However, consistent with his prior testimony, Mr. Slagel explained that the beaches critical area is typically within the beach/dune system which is the area measured from the mean high-water mark to the setback line, as described in Section 48-39-280 of the Beachfront Management Act. Importantly, he further explained that while this is typically the case, there are areas of the beachfront where “those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established” are landward of the setback line. (Order 20 n.42.)

Once the tide reached the setback line and the erosion began, OCRM [predecessor to the Department's Bureau of Coastal Management] had jurisdiction over the area. Once jurisdiction was established, the Petitioners needed a permit to alter the critical area unless subject to an exemption.

Summer House Horizontal Prop. Regime, 1998 WL 268396, at *8 (Apr. 28, 1998). The ALC specifically rejected the argument that Reddy now makes that the Department's critical area jurisdiction ends at the setback line. The ALC found as follows:

Petitioners reiterate their argument that the statutes and regulations promulgated thereto do not confer upon OCRM authority to regulate any construction landward of the setback line. As stated in the Order denying summary judgment, the legislature defined the areas over which OCRM has control. **That area included beaches. The delineation and creation of the setback line and the baseline did not divest OCRM of jurisdiction over those areas landward of the setback line when oceanfront beaches are subject to tidal wave action.** In fact, the regulations promulgated by OCRM and adopted by the legislature allow OCRM to take action in cases in which the "active beach" affects certain structures. OCRM jurisdiction is restricted to the critical area which includes tidelands, *beaches*, coastal waters, and the beach/dune systems which extend to the setback line. **Beach includes those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.**

Id. (emphasis added). There is no reason for a different result here. The Beaches Critical Area is a distinct critical area which uses a different delineation than the setback line. References in the statute and regulations to the setback line relate to the Beach/Dune System Critical Area only, and they neither amend the meaning of Beaches Critical Area nor divest the Department of its jurisdiction. *Summer House* also refutes Reddy's "conduct" argument and demonstrates that the Department has asserted jurisdiction in the Beaches Critical Area landward of the setback line.

Also contrary to this unreasonable conclusion that the Department did not have jurisdiction is the other undisputed evidence that the Department asserted its regulatory authority in the Beaches Critical Area. This evidence includes the emergency orders and renourishment permits the Department issued along the coastline. Reddy himself applied for a permit for soft solutions for the erosion that occurred landward of the setback line in the Beaches Critical Area including

renourishment and sandscraping. (Joint Ex. 012.) Notably, there is no mention of the location of the setback lines in this communication, and the photographs demonstrate that the area in question is landward of the setback line. (*Id.*)

Mr. Slagel testified that the Department has been exercising Beaches Critical Area authority on an ongoing basis regardless of whether the Beaches Critical Area was landward of the setback line or not. (Tr. 96:6-25.) He testified that the Department has:

issued many permits for major beach renourishment projects ... where a dredge pumps sand from offshore onto the beach. Oftentimes, those projects place sand within the Beaches Critical Area landward of the setback line. When erosion occurs such that properties qualify for an emergency order, meaning that they're about 20 feet from erosion, we've also authorized sandbags, sand scraping, trucking in sand landward of the setback line within Beaches Critical Area.

(*Id.*) The Department staff also testified to several other compliance and enforcement actions that were ongoing at the time of the hearing where the Department was enforcing its jurisdiction in the Beaches Critical Area landward of the setback line. (Tr. 97:1-17; 636:6-13 & 677:12-20.)

Moreover, once the Department began seeing Beaches landward of the Beach/Dune System, the Department amended the regulations, with the General Assembly's approval, to clarify that the same project standards applied for constructing erosion control structures in the Beaches Critical Area⁸ as the Beach/Dune System Critical Area. The Department repeatedly notified Reddy that his construction was unauthorized, expressly explaining that his alterations were in the Beaches Critical Area and that they would not be allowed pursuant to Section 48-39-130.

3. *Gilstrap* Is Factually Dissimilar From This Case and Does Not Support A Conclusion That the Department's Behavior Shows That It Did Not Believe It Has Jurisdiction In The Beaches Critical Area.

⁸ Prior to this amendment, the Department used the considerations set forth in Section 48-39-130 and the Act's policies to determine whether alterations to the Beaches Critical Area would be allowed. (Tr. 1326:21-1327:8.)

Reddy argues that *Gilstrap v. S.C. Budget and Control Board*, 310 S.C. 210, 423 S.E.2d 101 (1992), supports his position. (Reddy Initial Resp. Br. 7-8.) In *Gilstrap*, the evidence demonstrated that the Board “did not believe that it had authority” it later claimed to have. *Gilstrap* at 214, 423 S.E. 2d at 104. In the past, the Board had applied the statute differently than the application it was arguing for in that case. *Id.* This case is factually distinguishable in that the Department had exercised its authority in the Beaches Critical Area regardless of the setback line. Both Matt Slagel and Jessica Boynton testified that the Beaches Critical Area is a separate and distinct critical area from the Beach/Dune System Critical Area over which the Department has had jurisdiction. (Tr. 80:20-21; 96:6-25; 744:19-23; 746:13-15; 750:7-9 & 806:12-15.) Christopher Stout, the Department’s current Bureau Chief for the Bureau of Coastal Management, who has been with the Department over seventeen years, testified that the Department has exercised jurisdiction in the Beaches Critical Area since that authority was granted to the Department by the General Assembly. (Tr. 1309:8-19, 1310:16-1312:13 & 1326:9-20.)

4. Regulation 30-21(H)(3) Was Written When the Beaches Critical Area Was Seaward of the Beach/Dune System Critical Area and Cannot Eliminate Jurisdiction That The General Assembly Has Granted.

Reddy also argues that Regulation 30-21(H)(3) limits the Department’s critical area jurisdiction to the setback line. (Reddy Initial Resp. Br. 5.) Regulation 30-21(H)(3) states “the Coastal Council’s permitting jurisdiction on beaches is determined by the location of the setback line...” S.C. Code Ann. Reg. 30-21(H)(3). However, Subsection (H) is entitled “H. Methodology and the Generation and Adoption of Baselines and Setback Lines,” so subsection 3 is specifically related to the Beach/Dune System Critical Area. To construe this regulatory language consistently with the statutory language granting authority in the Beaches Critical Area, this provision should be limited to applying to the Beach/Dune System as indicated in its title, and the meaning of

“beaches” should be given its ordinary meaning of referring to the “beaches” in general and not the term of art for Beaches Critical Area expressly defined in the Act. Pursuant to the South Carolina Supreme Court’s instructions in *Branch v. Myrtle Beach*, 340 S.C. 405, 412, 532 S.E.2d 289, 293 (2000), the construction that should be given to the language is the one that does not create any conflict between the statute and the regulations. *Branch* at 412, 532 S.E.2d at 293.

Moreover, Reddy’s argument related to 30-21(H)(3) again disregards that 30-21(H)(3) is consistent with the Act on the vast majority of the coast. Reddy simply fails to acknowledge that the coast is a changing system and that the Department must assess permits in accordance with the Act based on current conditions to protect these resources.

II. THE ALC ERRED AS A MATTER OF LAW IN NOT APPLYING THE DEFINITION OF BEACHES AND THE DEPARTMENT’S THOROUGH UNCONTROVERTED EVIDENCE OF PERIODIC INUNDATION TO HOLD THAT REDDY VIOLATED THE ACT.

The Department’s documentation of periodic inundation is comprehensive and taken throughout the relevant time period following normal tides, king tides and waves from storm events. Reddy states that the ALC’s findings rejected the Department’s proof, but this is a gross overstatement as set forth in DES’s Response Brief at pages 30 through 34 and incorporated by reference herein. These findings do not touch the remainder of the Department’s uncontroverted, substantial evidence of periodic inundation, including inspection reports and photographs.

The question of what constitutes “periodic inundation” for purposes of the Beaches Critical Area is a legal question that can be decided by this Court. As the ALC explained:

although ‘periodic’ is not specifically defined under the Act, it has a clear ordinary meaning. Specifically, “periodic” is defined as “appearing or occurring from time to time.” *Periodic*, Merriam-Webster, <https://www.merriam-webster.com/thesaurus/periodic> (last visited Nov. 12, 2025). Furthermore, the inclusion of the language limiting “periodic inundation” to lands in which “no nonlittoral vegetation is established,” provides a benchmark by which to discern whether inundation which has occurred from time to time, renders the area beaches.

(Order MFR 12, 12/30/2025.) Despite Reddy’s contrary argument, the ALC did not find that the Department failed to demonstrate “periodic inundation” for purposes of delineating the Beaches Critical Area. The General Assembly’s inclusion of waves and tides (not just average tides) in its definition, supports that “periodic inundation” means inundation repeatedly over irregular intervals (Tr.: 863:22-864:9).⁹

A. The ALC Erred In Declining To Apply the Complete Definition Set Forth in Section 48-39-10(H) To Determine Whether “Periodic Inundation” Occurred For Purposes of Delineating the Beaches Critical Area.

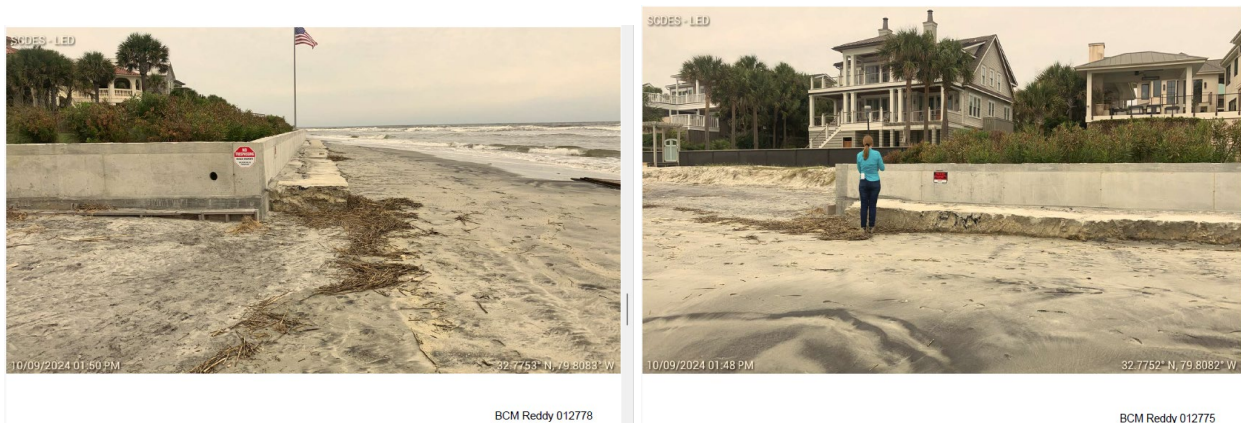
The Department respectfully disagrees with the ALC’s position that the term “periodic inundation” is difficult to apply in this case for purposes of determining where the Beaches Critical Area is located. (*See* Order 17 & Order MFR 2 1/27/2027.) The General Assembly provided the key to making this determination. The Department is to evaluate periodic inundation *by tidal and wave action*. King tides are a type of tides and are therefore included in the consideration of periodic inundation by the plain language of the Beaches definition. The number of King Tides that occurred during the relevant time period are undisputed in this case. (Joint Ex. 181.) It is also undisputed that higher than average tides and storms should be considered in managing the coast. (Tr. 1130:3-1132:5.) Reddy’s strained and forced application of the definition of Beaches omits higher than average tides, including observed King Tides, and waves from storms. Reddy’s definition includes only predicted King Tides, despite the fact that observed King Tides occurred over five times more often than predicted King Tides.¹⁰ The General Assembly did not make the

⁹ Defining “periodic” as “repeatedly over irregular intervals” is also consistent with the General Assembly’s use of “periodic” in S.C. Code § 48-39-270(4) (“the artificial establishment and periodic renourishment of a beach ...”) and Regulation 30-1(C)(4) (“periodic storms”).

¹⁰ Mr. Jones explained that the difference between predicted astronomical tides and observed tides is weather effects including wind and barometric pressure. (Tr. 1410:7-16.) He testified that “there were eighty predicted tides in that three-year period. There were 451 observed in that same period.

various limitations on the definition of periodic inundation that Reddy proposes. Instead, the General Assembly directed the Department to consider tidal and wave action and the absence of non-littoral vegetation.

The application of “periodic inundation” is only difficult if one disregards the remaining language (“so that no non-littoral vegetation is established”) of the Beaches Critical Area definition. Established vegetation evidences the lack of periodic inundation necessary for the area to be Beaches Critical Area. Importantly, no evidence was presented of natural non-littoral vegetation in the area the Department was attempting to regulate to protect the beach. (Order 39.) (See DES Initial Resp. Br. 4-5.) Photographs taken up to seven months after Reddy completed his alterations show no non-littoral vegetation present due to the periodic inundation at and near the location of the walls. (Joint Ex. 238.) If there was no periodic inundation occurring, vegetation would have become reestablished. (Tr. 782:6-8.)



(Joint Ex. 238 (taken October 9, 2024 showing no non-littoral vegetation and wrack).)

The Department presented extensive photographic evidence and testimony of periodic inundation by tidal and wave action occurring at and in the near vicinity of the Reddy’s alterations

So, it went from two a month to over twelve a month or, on average, about one every three days – one every two to three days.” (Joint Ex. 181 & Tr. 1407:14-24.) (See DES’s 8/15/25 Proposed Order with Imagery 55.)

(“the Site”) during the months leading up to the alterations, throughout the months that Reddy was actively altering this area and the following six months. The photographs were Joint Exhibits, and Reddy did not contest that they accurately depicted site conditions. Whether King Tides and storms should be considered as part of “periodic inundation by tidal and wave action” is a question of law. The number of King Tides are portrayed in Joint Ex.181, which is also uncontroverted. “[W]here there is no conflict in testimony, or where there is no evidence upon a material matter, the question presented is one of law, and not of fact...” *Guerin v. Hunt*, 118 S.C. 32, 110 S.E. 71, 74 (1921). A legal conclusion such as the location of the Beaches Critical Area as defined by the Act is a question of law for this Court to determine. *Brownlee v. S.C. Dep’t of Health & Env’tl. Control*, 382 S.C. 129, 142, 676 S.E.2d 116, 122-23 (2009) (legal conclusion as to navigability is a question of law to be reviewed de novo even though it may turn on the case’s facts.) The Department respectfully requests that this Court determine the Beaches Critical Area based on the uncontroverted evidence that was presented.

B. The Department Presented Evidence of Periodic Inundation From Normal Tides.

Reddy wrongly asserts that “DES presented no evidence of regular tidal inundation at the relevant property elevation; all evidence showed episodic storm overwash.” (Reddy Initial Resp. Br. 7.) This is not true. The witnesses testified to only three storms: May 18th, 2023; August 30th, 2023 (Idalia); and December 17th, 2023 (nor’easter). In addition to presenting evidence of inundation after these storms, the Joint Exhibits contain observations and photographs documenting the Site’s conditions on at least twenty-four other dates. Reddy’s statement that “all evidence showed episodic storm overwash” is erroneous and unsupportable.

Notably, in January 2024, when Reddy was preparing to repair the original wall and build a second wall, nothing in the record indicates that storms occurred, and only one King Tide was

observed during January, (Joint Ex. 181). Photographs from this time document the area as Beaches Critical Area because they show the Site is periodically inundated by tidal and wave action and lacks non-littoral vegetation. The following photographs show the sand piled up seaward of the wall on January 31st, 2024, (Joint Ex. 088), has washed away by February 1st, 2024, (Joint Ex. 142).



Joint Ex. 088 [BMC Reddy 0003048]

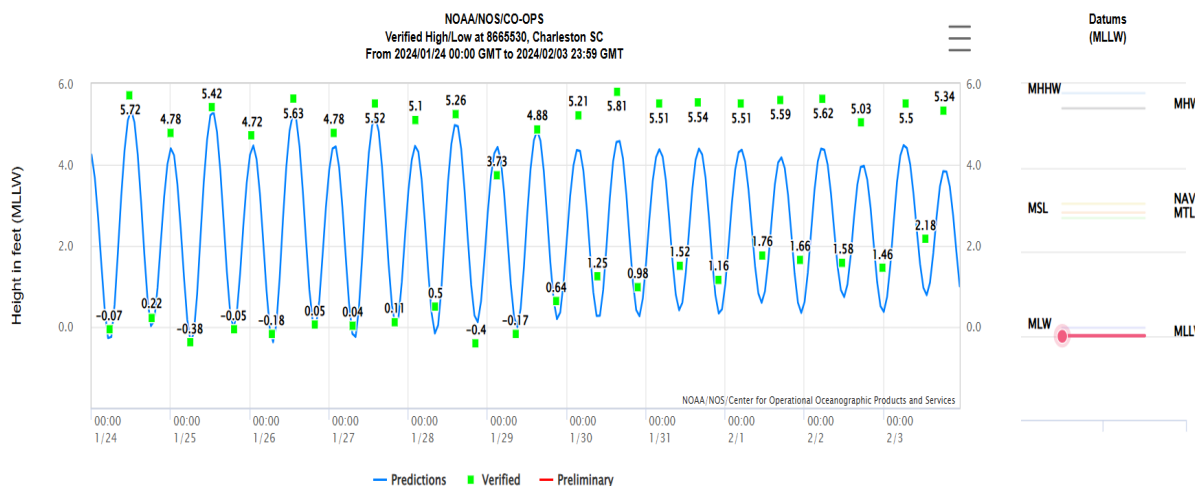


Joint Ex. 142 [BCM Reddy 000516].

Workers can also be seen altering the Beaches Critical Area without a permit at these times.

National Oceanic and Atmospheric Administration (NOAA) Tides and Currents website shows there were no tides above 5.81 feet from January 24, 2024 to February 3, 2024. *Verified High/Low at 8665530, Charleston SC From 2024/01/24 00:00 GMT to 2024/02/03 23:59 GMT*, NOAA, <https://tidesandcurrents.noaa.gov/waterlevels> (last visited July 10, 2026).¹¹

¹¹ Although the NOAA Tides and Currents data was not presented at trial, this Court can take judicial notice of this information as it is the type of facts “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Rule 201(b), SCRE. Judicial notice may be taken at any stage of the proceeding. Rule 201(f), SCRE.



King Tides are anything over 6.6 feet above Mean Lower Low Water. (Tr. 941:5-6.) Periodic inundation was demonstrated during this time period through photographs taken on January 25th (Joint Ex. 139), January 29th (Joint Ex. 140), January 31st (Joint Ex. 88, 141 and 169), February 1st (Joint Ex. 78k, 79 & 142), and February 2nd (Joint Ex. 064 & 143). During this nine-day period, with no reported storm events or King Tides, changes on either side of the wall, as well as along the face and landward of the wall, can be seen due to periodic inundation.

C. Evidence of Inundation During King Tides Should Be Considered “Periodic” As They Not Only Occur From Time to Time But Are Consistently Occurring Along Our Coastline.

The ALC stated “[k]ing tides, on the other hand, occur at irregular intervals yet they are a part of a consistent tidal pattern. Therefore, depending upon the frequency of their occurrence, they could certainly be characterized as periodic.” (Order 17-18.) During the relevant time period, King Tides occurred approximately once every two to three days.¹² In October 2023, when Reddy

¹² Joint Ex. 181 sets forth the observed King Tides that occurred from 2022 to 2024. There was an observed King Tide on average of about once every two to three days. (Joint Ex. 181 & Jones Tr. 1407:21-24.) Mr. Jones testified that these observed King Tides are frequently occurring and should be considered in determining whether an area is getting periodically inundated due to tidal and wave action. (Tr. 1407:25-1408:8; 1408:20-1409:6; DES Proposed Order with Imagery 55.)

was constructing the original wall, there were thirty King Tides. In November 2023, there were twenty-two, and in December 2023 there were eleven. (Joint Ex. 181.) Given the number of King Tides, it would be nearly impossible for the Department to present evidence of inundation that was not after a King Tide. Reddy's argument to eliminate King Tides from the meaning of "periodic" despite their numerous occurrences, would mean that in the majority of the months where Reddy was altering the beach, the Department would be unable to consider any of the inundation. Although King Tides occur at irregular intervals, they are part of a consistent tidal pattern that should not be disregarded in comprehensively managing the beachfront.

The evidence shows that during King Tides, periodic inundation occurred up and around the walls and even splashed over the top of the walls. For example, on February 8, 2024, Reddy's contractor texted Reddy several photographs showing that water was overtopping the walls. (Joint Ex. 195 [CNT Foundations LLC-048-049] & Joint Ex. 199.)



(Joint Ex. 199 [Reddy_00377].)



(Joint Ex. 199 [Reddy_00378].)

The contractor texts:

[t]his is the top of the pour from yesterday. You can see all the sand on the top of the new concrete where the waves are crashing over the wall. This was this morning. You can see the one side where the dirt caved in all our forms so I had to dig out all the forms and reform that side." Reddy texted back "[t]hat water is crazy. Looks like u are on a boat..."

(Joint Ex. 195 [CNT Foundations LLC-048-049].) This uncontroverted evidence supports that

periodic inundation by tidal and wave action was occurring where Reddy was altering the Beaches in violation of the Act.

D. Storms Result In Waves, and the General Assembly Specifically Provided That Waves Should Be Considered In Determining Beaches Critical Area.

The General Assembly specifically included “waves” and not just tides in the consideration of “periodic inundation.” Reddy’s overly stringent definition of “periodic” does not account for wave action whatsoever, despite its inclusion in the definition. Storms cause waves. (Tr. 866:21-24.) “Limiting the definition of periodic inundation to exclude storms is not appropriate.” (Tr. 866:25-867:5.) The General Assembly could have specifically limited the consideration to tides, excluding waves. It could also have specifically eliminated the consideration of storms. The General Assembly did neither.

E. Cases Cited By Reddy Do Not Support His Argument As To What Definition of Periodic Inundation Applies In Determining the Beaches Critical Area.

Reddy cites to *State v. Murrell’s Inlet Camp & Marina, Inc.*, 259 S.C. 404, 407, 192 S.E.2d 199, 201 (1972) and to *Cape Romain Land & Improvement Co. v. Georgia-Carolina Canning Co.*, 148 S.C. 428, 146 S.E. 434, 437 (1928), that discuss state ownership. At issue in this case is not ownership, but the state’s authority to regulate, manage and protect the area. The General Assembly did not define the Beaches Critical Area in terms of high tide, high-water mark, or where the tide was reaching twice a day. Rather, the General Assembly defined it as to where periodic inundation was occurring so that no non-littoral vegetation is established. It is obvious from the Act’s plain meaning, findings and policies that the General Assembly intended that the Department have authority landward of the high tide so that it could protect and manage the beach.

III. THE ELIMINATION OF A CIVIL PENALTY SETS A DANGEROUS PRECEDENT IN THAT IT ELIMINATES DETERRENCE OF SIMILAR FUTURE ACTS.

The Department’s position is that Reddy, knowingly and despite the Department’s repeated

objections, significantly altered the critical area without a permit resulting in violations of the Act. While these actions do warrant assessment of a significant penalty, the Department elected not to appeal the civil penalty portion of the ALC's orders because removal of the walls and unrelated non-beach-compatible materials to protect the public and preserve the beach is its primary objective. The Department is concerned, however, that this issue may give rise to precedent applicable to the Department's future actions, and it is incumbent upon the Department to advise the Court of the potential effects of such precedent.

In this case, the Department explained multiple times to Reddy and his representatives the statutory authority requiring a permit, the prohibition of construction on active beach, and that the Beaches Critical Area was not defined by the setback line like the Beach/Dune System Critical Area. The Department also assessed current conditions at the Site with Reddy and his representative and showed them the conditions that demonstrated the area they planned to alter was located in the Beaches Critical Area and on active beach. The Department further communicated that these alterations would be harmful to coastal resources. Reddy did not follow the Department's direction in using soft solutions to address the erosion as allowed by the Act. Nor did he properly challenge the Department's directives, such as by appealing the Department's determination as provided for in the Act, filing for injunctive relief and/or filing for a declaratory judgment action. Instead, Reddy continued substantially altering the area on active beach and in Beaches Critical Area despite the Department's notifications that these activities violated the Act.

The Department's Compliance and Enforcement Section Manager testified that Reddy's actions have been "the most egregious disregard for the Department's assertion of jurisdiction" she has seen during her ten-year period with this section. (Tr. 602:3-6.) The Department applied uniform criteria in assessing this penalty assessment in accordance with the Department Bureau of

Coastal Management's Uniform Enforcement Policy and Civil Penalty Guideline. (Tr. 596:20-597:7; Joint Ex. 164.) Main goals of civil penalties are to deter future violations of the Act and to eliminate economic incentives for non-compliance, (Joint Ex. 164; Tr. 1315:17-1316:1), neither of which have been accomplished in this case. While Reddy's neighbors complied with the Act and used soft solutions, Reddy's walls remain on the beachfront armoring his property, impeding natural processes and obstructing public access.

Failure to assess a penalty for egregious violations such as Reddy's would compromise the Department's ability to enforce the General Assembly's statutory directives and disincentivize the public from adhering to the law and the Department's directives. The General Assembly gave the Department authority to assess penalties to aid in its regulation of the coast. Not to award such penalties in a case such as this one has the danger of creating the public perception that the Department's sanctions authority is largely illusory. This would undermine the Department's ability to implement the law it has been entrusted to enforce and is against sound public policy.

CONCLUSION

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

s/ Sallie P. Phelan

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