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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2026-000221

South Carolina Department of Environmental Services and South Carolina Coastal Conservation League,

Respondent-Appellants,

v.

Rom Reddy,

Appellant-Respondent.

REPLY BRIEF OF RESPONDENT-APPELLANT SOUTH CAROLINA COASTAL CONSERVATION LEAGUE

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Appellant-Respondent Rom Reddy ("Reddy") advances three substitute boundaries the Coastal Tidelands and Wetlands Act ("CTWA" or "Act") does not contain. He substitutes the setback line for the statutory definition of "beaches," the mean high water line and public trust doctrine for the Act's critical area permitting provisions, and a narrow dictionary formulation of "periodic" for the physical coastal processes the Act regulates. *See* Reddy Resp. Br. 2–7, 11–13, 20–21.

These arguments fail to acknowledge that the Act separately defines "beaches," separately lists "beaches" as a critical area, and separately lists the "beach/dune system" as another critical area. S.C. Code Ann. § 48-39-10(H), (J)(3), (4). The setback line appears in the separately defined beach/dune system critical area, but not in the beaches definition. *Id.* § 48-39-10(H), (J)(4).

Reddy also relies on conclusions the ALC never made. The ALC did not hold that beaches cease landward of the setback line, that DES lacks statutory beaches jurisdiction there, or that the physical conditions at the Site fell outside § 48-39-10(H). The ALC expressly declined to decide whether the structure was located in statutory "beaches" or whether the area was subject to "periodic inundation," and instead relied on § 48-39-120(C) to require removal because the hard structure adversely affected the public interest. Order, pp. 23, 35, 40.

That posture matters. Before trial, the ALC left for trial whether Reddy's activities occurred in "beaches" after recognizing DES jurisdiction over the Beaches Critical Area and rejecting the notion that § 48-39-290 eliminated the statutory permit requirement for beaches. Summary Judgment Order, pp. 9–10, 18. Reddy cannot recast the final order's refusal to decide that issue as an affirmative holding that the setback line eliminates beaches jurisdiction.

The statutory text, regulations, CMP, and record all point the same way: "beaches" remain a separate critical area; the Site satisfied the statutory definition; and Reddy altered that critical area without a permit. Because of these inescapable conclusions, the ALC erred when it declined to find a violation and when it failed to impose a penalty despite Reddy's unlawful conduct.

I. REDDY'S RESPONSE DEPENDS ON REPLACING THE STATUTORY BEACHES DEFINITION WITH NONSTATUTORY BOUNDARIES.

Reddy's boundary arguments fail because none of the substitute boundaries he invokes appears in § 48-39-10(H). The setback line, public trust boundary, and ordinary tide title cases may be relevant in other contexts, but they do not replace the physical test the General Assembly wrote for statutory beaches.

A. Reddy's setback line theory rewrites § 48-39-10(H).

Reddy's first premise is that the setback line is the landward limit of DES's beachfront jurisdiction. The operative definition is physical: "'Beaches' means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." S.C. Code Ann. § 48-39-10(H). It does not mention the setback line. The setback line appears only in the beach/dune system provision, a distinct and separately recognized critical area. *Id*. § 48-39-10(J)(4). Reddy's theory therefore would require the Court to alter the definition of § 48-39-10(H) to include the following phrase: "but only seaward of the setback line." That is not interpretation; it is a rewrite. The Court should apply the definition the Legislature enacted, not the text Reddy seeks to have engrafted.

B. Regulation 30-21(H)(3) cannot override the statutory beaches definition.

Reddy relies on Regulation 30-21(H)(3)'s statement that the Department's "permitting jurisdiction on beaches is determined by the location of the setback line." That sentence cannot amend § 48-39-10(H), erase "beaches" from § 48-39-10(J)(3), or convert the setback line into a limitation the General Assembly omitted from the "beaches" statutory definition.

The statutory text controls. Courts give statutory words their plain meaning and reject an agency interpretation that contradicts the statute. *Davis v. S.C. Dep't of Corr.*, 444 S.C. 138, 150, 906 S.E.2d 569, 575–76 (2024). Here, the Act separately defines "beaches" and the "beach/dune system," and only the latter is tied to the setback line. S.C. Code Ann. § 48-39-10(H), (J)(3), (4).

Other regulations preserve this distinction. Regulation 30-10(B) states that "[t]he Department has permitting authority over beaches *and* the beach/dune system." S.C. Code Ann. Regs. 30-10(B) (emphasis added). Regulation 30-11(D) likewise refers to the "beaches and beach/dune system critical areas." Those provisions treat beaches and the beach/dune system as separate critical areas, and Regulation 30-21(H)(3) should not be read to defeat that structure.

Nor does the 2024 amendment to Regulation 30-13(N)(3)(a) prove a prior statutory gap. Regulation 30-13 was titled "Specific Project Standards for Beaches and the Beach/Dune System" before and after the amendment. In any event, a project standard cannot amend § 48-39-10(H), remove "beaches" from § 48-39-10(J)(3), or add a setback line limitation the General Assembly never included.

C. Reddy's public trust argument does not answer the statutory permitting question.

Reddy's public trust argument attacks public trust as a source of beaches jurisdiction but CCL does not rely on it for that purpose. This is not a title case, a claim that the State owns Reddy's upland, or a claim that the public has acquired common law dry sand rights across his property. It is a statutory permitting and enforcement case under the Act.

The decision in *McQueen v. S.C. Coastal Council* confirms the distinction. The Court there discussed public trust in terms of State title and control below the high water mark. 354 S.C. 142, 150–51, 580 S.E.2d 116, 120–21 (2003). That is not the equivalent of a statutory beaches test. Beaches are defined by physical conditions, and § 48-39-130(C) separately requires a permit before a person alters "any critical area." S.C. Code Ann. §§ 48-39-10(H), -130(C). Reddy's argument requires the substitution of the public trust boundary for the statutory beach definition but, again, those are distinct boundaries.

D. Reddy's definition of "periodic" is both overly narrow and contrary to the statute and the record.

Reddy reads the phrase "periodic inundation" to include only ordinary astronomical tide-table inundation. The statutory language is not so limited. Instead, the statute further defines the phrase: a "periodic inundation *by tidal and wave action*." S.C. Code Ann. § 48-39-10(H) (emphasis added). It does not say daily inundation, predicted astronomical tides only, average waves only, or that the same line on the beach must be wet at the same time every day.

CCL does not rely on one isolated storm event or contend that every storm surge event automatically creates statutory beaches. Instead, Mr. Jones based his testimony on coastal engineering literature, including U.S. Army Corps of Engineers materials, that use "periodic" to describe conditions recurring over time, including at irregular intervals. Joint Ex. 182; Tr. 859:19–860:19; 861:2–15; 863:10–864:15. Mr. Goodrich's narrower definition came from decidedly noncoastal physics materials and excluded storm surge, tide stacking, and wind waves. Tr. 1076:3–6; 1132:19–1135:20. The point is not that expert literature expands the statute; it is that Reddy's definition excludes wave action and recurring coastal conditions the statute expressly includes. The statutory language and the expert testimony both refute Reddy's overly narrow definition.

Reddy's reliance on *Cape Romain Land & Improvement Co. v. Georgia-Carolina Canning Co.*, 148 S.C. 428, 146 S.E. 434 (1928), and *State ex rel. McLeod v. Murrell's Inlet Camp &*

Marina, Inc., 259 S.C. 404, 192 S.E.2d 199 (1972), is unavailing. Those title cases used high-water concepts to determine ownership of tidelands; they did not interpret § 48-39-10(H), address "beaches" as a statutory critical area, or decide the reach of CTWA permit requirements. Section 48-39-10(H) does not ask who owns the land or how far high water reaches. It asks whether the land is subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.

II. THE ALC DID NOT HOLD THAT THE SETBACK LINE IS THE LANDWARD LIMIT OF STATUTORY BEACHES.

Reddy's deference argument depends on treating an avoided issue as a decided issue. The order under review contains no finding that the Site was not statutory beaches and no holding that the setback line is the jurisdictional ceiling.

A. Reddy's response misstates the decision under review.

Reddy repeatedly says the ALC "correctly found" that beaches are not an independent jurisdictional category landward of the setback line. The ALC did not make that conclusion. What the ALC actually stated is this: "I do not find it necessary to determine whether Respondent's structure is located in the statutorily defined 'beaches' and thus whether the area where the unpermitted activity occurred was specifically subject to 'periodic inundation.'" Order, p. 23. The court then relied on § 48-39-120(C) because it found adverse public interest effects. Order, pp. 23, 35, 40. Reddy cannot claim deference to the ALC's avoided beaches ruling while asking this Court to decide, as a matter of law, the setback-line issue the ALC did not decide.

B. A refusal to decide is not entitled to substantial evidence deference.

Reddy attempts to frame this appeal as an attack on factual findings, but CCL does not ask this Court to reweigh evidence or draw a new vegetation line. The ALC's criticisms of particular evidence did not become findings that the Site was not beaches, that DES lacked jurisdiction, or that the setback line controlled. The error is legal: the ALC declined to decide statutory beaches status and the permit violation, then used setback line and regulatory history concerns to support complete penalty vacatur. De novo review applies to the statutory interpretation question; substantial evidence deference applies only to factual findings actually made, not to an avoided statutory determination. *See Sierra Club v. S.C. Dep't of Health & Env't Control*, 387 S.C. 424, 438–39, 693 S.E.2d 13, 20–21 (Ct. App. 2010) (affirming and giving deference on issues the ALC addressed, but remanding issues the ALC failed to address); *Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 521–22, 560 S.E.2d 410, 418 (2002) (holding the lack of findings and discussion of law prevented review and that the reviewing tribunal lacked authority to make its own factual findings).

The reconsideration order confirms the point. CCL asked the ALC to clarify that its no violation ruling should not be misconstrued given the record of unpermitted construction and alteration activity. The ALC again declined, stating there was "no need to reconcile whether Respondent violated the Act when he failed to obtain a permit" because § 48-39-120(C) authorized removal. Order Denying Motions for Reconsideration, pp. 49–50. That is not a finding that the Site was not beaches; it is a refusal to decide the question of statutory violation.

III. THE ACT TREATS "BEACHES" AND THE "BEACH/DUNE SYSTEM" AS SEPARATE CRITICAL AREAS.

The Act's structure refutes Reddy's core legal premise. Beaches and the beach/dune system are separately defined, separately listed, and separately regulated; Reddy's reading would improperly combine them.

A. The statutory text requires both categories to function independently.

The Act separately lists "beaches" and the "beach/dune system" as critical areas. S.C. Code Ann. § 48-39-10(J)(3), (4). The beach/dune system is a mapped regulatory area tied to the setback line framework. *Id.* § 48-39-10(J)(4). Beaches are a separate critical area defined by physical coastal conditions. *Id.* § 48-39-10(H), (J)(3). Both provisions operate in tandem but separately; Reddy's interpretation would essentially eliminate "beaches" as a critical area.

The regulations confirm that separation. Regulation 30-10(B) gives the Department permitting authority "over beaches and the beach/dune system," and Regulation 30-11(D) directs decisions involving the "beaches and beach/dune system critical areas." Those provisions do not collapse beaches into the beach/dune system. They treat each as a regulated critical area.

B. The BMA added the beach/dune system; it did not silently repeal statutory beaches.

Reddy's legislative history argument cannot overcome the text the General Assembly enacted. Before the Beachfront Management Act ("BMA") was enacted, § 48-39-10(J) already listed "beaches" as a separate critical area. *See 1988 S.C. Op. Att'y Gen*. No. 88-44, 1988 WL 383527, at *4 n.2. The BMA then added a mapped beach/dune system framework without deleting "beaches," without altering the physical definition in § 48-39-10(H), and without tying that definition to the setback line. S.C. Code Ann. § 48-39-10(H), (J)(3), (4).

That statutory history is additive, not restrictive. Shortly after the 1988 and 1990 amendments, the Attorney General described the BMA as enacted "to supplement the earlier provision and to enhance the ability of the Coastal Council" regarding South Carolina's beachfront and dune system. *Op. S.C. Att'y Gen*., 1992 WL 682832, at *1 (Aug. 10, 1992). That description accords with South Carolina's settled rule disfavoring implied repeal and requiring courts to reconcile statutes so that later enacted legislation can operate together with earlier enacted statutes. *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558–59, 462 S.E.2d 858, 859–60 (1995); *Spectre, LLC v. S.C. Dep't of Health & Env't Control*, 386 S.C. 357, 367–68, 688 S.E.2d 844, 849–50 (2010).

Reconciliation is straightforward here. Beaches remain a critical area defined by physical coastal conditions; the beach/dune system is a related, mapped critical area governed by the baseline and setback line framework. Reddy's construction fails not only because it is contrary to the text and legislative history, but also because it would effectively repeal the separate statutory category of "beaches" wherever the beach/dune system has a setback line.

The BMA's own findings confirm CCL's position. Section 48-39-250(4) states that pre-1988 law did not provide adequate jurisdiction to protect the beach/dune system. It does not say the Legislature intended to diminish beaches jurisdiction. The remedy was simply to add a beach/dune system framework. When the Legislature intended the BMA to affect preexisting authority, it spoke directly: § 48-39-290(B)(2)(d) expressly preserves § 48-39-120(C). It did not displace § 48-39-10(H), § 48-39-10(J)(3), or § 48-39-130(C). The BMA contains no similarly direct expression that beaches are to be folded into the beach/dune system framework.

Reddy's surplusage argument also fails and that doctrine actually supports CCL. The setback line retains substantial utility under CCL's reading because it defines the landward boundary of the beach/dune system. S.C. Code Ann. § 48-39-10(J)(4). Reddy's reading creates the surplusage problem by depriving "beaches" of independent meaning on oceanfront properties with setback lines. Reddy's reliance on § 48-39-280(E)(3) does not solve that surplusage problem. That provision permits DES, by regulation, to exempt specifically described portions of the coastline from "the survey requirements of this section" when the coastline is not subject to erosion, is unlikely to be developed because of protective government programs, or both. S.C. Code Ann. § 48-39-280(E)(3). It does not amend § 48-39-10(H), redefine "beaches," remove beaches from § 48-39-10(J)(3), or limit § 48-39-130(C)'s permit requirement for alteration of "any critical area." A survey exemption is not a beaches exemption. If the General Assembly intended surveyed setback lines to displace the statutory beaches category, it would have said so in § 48-39-10(H), § 48-39-10(J), or § 48-39-130. It did not say so in § 48-39-280(E)(3).

C. Reddy's enforcement history argument cannot overcome the statutory text.

Reddy's enforcement history argument misuses *Gilstrap*. The Court there did not treat agency inaction as dispositive. It considered the agency's practice as one part of a broader statutory analysis in which the statutory text, the agency's own prior understanding, the Legislature's rejection of expanded authority, and constitutional limits all pointed in the same direction. *Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 214–17, 423 S.E.2d 101, 103–05 (1992). Here, the statutory text points the other way. Section 48-39-10(H) defines "beaches" by physical conditions; § 48-39-10(J)(3) lists beaches as a critical area; and § 48-39-130(C) requires a permit before a person alters any critical area. The BMA added a mapped beach/dune system framework, but it did not delete "beaches," amend § 48-39-10(H), or add the setback line to that definition. Reddy uses alleged nonenforcement for the opposite purpose: to create a setback line limitation absent from the statutory beaches definition. *Gilstrap* does not authorize that. At most, alleged enforcement history belongs in the fair notice and penalty analyses; it cannot erase the beaches critical area or override DES's later site specific warnings. Joint Exs. 14, 15; Tr. 110:4–113:16; 531:18–532:10.

IV. THE CMP DOES NOT HELP REDDY; IT CONFIRMS THE STATUTORY DISTINCTION HE TRIES TO ERASE.

The CMP does not create CCL's jurisdictional theory, the CTWA does. The CMP is relevant because it confirms the actual statutory structure. It directs a case-by-case application of the statutory beaches definition and describes beaches as including "the foreshore and the dry sand beach up to the line of vegetation." CMP, Ch. III, p. III-3; CMP, Ch. IV.D, Beach and Shoreline Access, IV-61. That confirms beaches are not confined to wet sand below mean high water and are not displaced by the setback line. The CMP also separates public trust concepts from statutory beaches jurisdiction. Its discussion of public beach ownership and access rights addresses title and public use; the beaches critical area inquiry asks whether land satisfies § 48-39-10(H). Even if Reddy were correct about the public trust boundary, that would not resolve the statutory permitting issue. Section 48-39-10(H) defines beaches by physical conditions, not title, and § 48-39-130(C) requires a permit before a person alters a critical area.

V. THE RECORD ESTABLISHES STATUTORY BEACHES STATUS UNDER THE PROPER LEGAL STANDARD.

Reddy's reliance on the ALC's evidentiary critique does not change the legal question. The ALC criticized particular lines, methods, and proof, but it did not find that the statutory elements were absent. It declined to decide whether the Site was statutory beaches because it believed § 48-39-120(C) supplied a sufficient removal remedy. The Court should not treat that nondecision as a factual finding against beaches status. The record is not limited to a storm photograph or a disputed line drawn after the fact. There is a robust site-specific record of physical conditions before, during, and after Reddy's construction.

A. The statutory test is physical, not mapped.

Section 48-39-10(H) asks whether land is subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established. As this text confirms, the jurisdictional boundary is not controlled by the setback line, title, or mean high water. It is controlled by physical conditions. That physical test is consistent with § 48-39-210(B), which recognizes that critical areas are dynamic and that permit jurisdiction may be asserted "at any time in any critical area on the subject property, whether shown hereon or not." *Hill v. S.C. Dep't of Health & Env't Control*, 389 S.C. 1, 12 n.5, 698 S.E.2d 612, 618 n.5 (2010).

Grant v. S.C. Coastal Council confirms the same principle in enforcement. There, the landowner argued the Council lacked jurisdiction because the filled area was not critical area after Hurricane Hugo. 319 S.C. 348, 351–52, 461 S.E.2d 388, 390–91 (1995). The Supreme Court affirmed the agency's critical area determination and held that former § 48-39-200 did not restrict the Council's authority to decide whether a specific area was definitional critical area. *Id.* at 356, 461 S.E.2d at 392. The point is not that a mapped line moved; it is that the statute classifies beaches by dynamic physical conditions.

B. Jones's testimony and exhibits defeat Reddy's narrow "periodic" argument.

Applying that statutory reading to the record, Reddy's narrowed definition of "periodic" fails. The record showed recurring coastal processes over time, including observed tides, king tides, wave action, wrack, scarping, vegetation loss, and survey evidence predating the wall. Mr. Jones testified that coastal engineering literature, including USACE materials, uses "periodic" to include conditions recurring over time, including at irregular intervals. Joint Ex. 182; Tr. 859:19–860:19; 861:2–15; 863:10–864:15.

Mr. Jones's king tide testimony also defeats Reddy's effort to treat those events as irrelevant anomalies. Over the three-year period Mr. Jones analyzed, eighty king tides were predicted. Observed water levels exceeded the king tide threshold 451 times, roughly once every two to three days. Joint Ex. 181; Tr. 1407:7–24; 1408:9–23. Mr. Jones also testified that observed tides exceeded the highest predicted astronomical tide used by Mr. Goodrich in thirty of thirty-six months. Joint Ex. 189, p. 11; Tr. 1409:19–1410:16. Further, Reddy overstates footnote 38 of the Order. The ALC's reference to "episodic storm events and king tides" does not establish that the Site was not periodically inundated. It shows only that inundation was not limited to ordinary predicted tide-table water levels, which is precisely why the statutory phrase "tidal and wave action" matters.

C. The evidence was not limited to one storm or one photograph.

Reddy reduces the evidence to episodic storm events and king tides, but the record was broader. Jones's opinion and the Department's proof relied on survey data, dated photographs, vegetation and contour comparisons, dune-toe and back-of-beach elevations, FEMA and USACE materials, and wave-runup analysis. Joint Exs. 55–57, 65, 78(a)–78(r), 179, 182, 185, 188, 190; Tr. 839:7–12; 874:1–13; 889:15–891:2; 895:16–898:24; 899:16–900:3; 1390:12–1401:24; 1413:6–1419:24. This was site-specific evidence, not guesswork.

D. The July 2023 survey and top-of-bank evidence predate the later construction.

The July 5, 2023 survey matters because it anchors preconstruction physical conditions and rebuts Reddy's claim that DES relied on speculation after the fact or storm-driven hindsight. The survey, commissioned by Reddy, identified the "top-of-bank," which testimony equated with the top of the escarpment, landward of where Reddy later built the wall. Joint Ex. 50; Tr. 92:14–23; 93:12–24; 94:2–14. Mr. Jones likewise testified that, before any work was done, the scarp was already being reached. Tr. 1418:12–1419:2. That evidence answers Reddy's effort to characterize the record as post-construction speculation or storm driven hindsight.

E. The vegetation element is satisfied.

The relevant area lacked established nonlittoral vegetation. Ms. Boynton testified that no vegetation reestablished at the Site between September 1, 2023 and October 9, 2024, and that her observations showed erosive inundation sufficient to limit vegetation up to and landward of the structure. Tr. 705:8–9; 706:10–21; 712:3–4; 713:5–24; 716:7–717:1. The ALC also recognized that the active beach is seaward of the escarpment or first line of stable natural vegetation, that active beach is a subset of beaches critical area, and that Reddy produced no evidence showing nonlittoral vegetation seaward of the escarpment. Order, pp. 16–17. Nor does later accretion defeat beaches status during the violations; the statutory question is whether the altered area was subject to periodic tidal and wave action so that no nonlittoral vegetation was established, and the record showed no vegetation reestablished through October 2024.

F. Reddy's expert did not disprove beaches status.

Reddy overstates Mr. Goodrich's testimony. Mr. Goodrich testified that more than half, and possibly as much as seventy-five percent, of his recent work was estuarine or riverine rather than open beach, and he could not quantify his oceanfront work in the preceding five years. Tr. 1064:21–1065:5. He did not consider himself an expert in coastal permitting, would not testify about the extent of the Beaches Critical Area, and had no opinion on DES's actions giving rise to this case. Tr. 1066:10–23. His narrower model does not displace the site-specific photographs, surveys, vegetation evidence, and Mr. Jones's testimony.

If the Court concludes the Site satisfied § 48-39-10(H), the permit violation follows directly. Beaches are critical areas, and § 48-39-130(C) prohibits a person from filling, removing, dredging, draining, erecting a structure on, or otherwise altering a critical area without first obtaining a permit. S.C. Code Ann. § 48-39-10(J)(3); § 48-39-130(C). The ALC found that Reddy constructed hard erosion control structures and placed materials not compatible with the beach without a critical area permit. Order, pp. 8-11. Those findings establish the violation the ALC declined to decide once the Site is treated as statutory beaches.

VI. THE PENALTY VACATUR CANNOT BE AFFIRMED ON REDDY'S FAIRNESS THEORY.

Reddy defends the penalty vacatur as discretionary, but the ALC's analysis rested on the wrong legal premise. It vacated the penalty after declining to decide the violation that triggers § 48-39-170(C).

A. The penalty issue depends on the statutory violation the ALC refused to decide.

The ALC stated that, given its disposition, "it is questionable whether the penalty provisions apply" because it had not found a direct violation of a permit, regulation, standard, or requirement under the Act. Order, p. 42. That legal conclusion infected the penalty ruling. If the Site was statutory beaches and Reddy altered it without a permit, § 48-39-170(C) applies. The ALC's fairness findings may bear on the amount if assessed under the correct framework, but they do not support the ALC's stated reason for complete penalty vacatur: that penalty authority was questionable because no predicate violation had been found. If the predicate violation exists, the proper course is to apply § 48-39-170(C) to the penalty decision, not to treat penalty authority as unavailable. Nor did the ALC find facts that would treat the violation as authorized or excused; it did not find that DES authorized the wall, approved non-beach-compatible material, or withdrew its September 2023 site specific warnings before Reddy continued work.

B. Section 48-39-170(C) does not require concealment, bad faith, or willfulness.

Reddy emphasizes that the ALC did not find his conduct "egregious," but the penalty statute does not make egregiousness, concealment, bad faith, or willfulness prerequisites. Section 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" between $100 and $1,000 per day. S.C. Code Ann. § 48-39-170(C). The trigger is a violation; those other facts may inform the ultimate penalty amount.

C. Reddy continued after DES explained that current physical conditions made the work area active beach and/or beaches critical area.

The chronology of events undermines Reddy's fairness theory. Reddy's fairness argument depends on earlier general guidance, but the operative notice was later and site specific. On September 7, 2023, DES warned Reddy and BluTide that unauthorized work in State critical areas, including beaches, would violate the Act and could result in enforcement and civil penalties. Joint Ex. 14; Tr. 110:4–111:11; 531:18–532:10. On September 11, 2023, after an onsite meeting with Reddy, his counsel, and his contractor, DES explained that the setback line identified only the beach/dune system, that beaches were a separate critical area, and that the proposed work area was active beach and/or beaches critical area because of existing site conditions and lack of vegetation. Joint Ex. 15; Tr. 111:24–113:16. That explanation gave the practical warning missing from Reddy's fairness theory: work in that area required authorization, and only beach-compatible material could be placed there. DES then authorized only limited soft measures, issued the October 20, 2023 Notice to Comply, met with counsel to explain the statutory beaches issue, and issued three cease and desist directives as Reddy continued work. Joint Exs. 4, 5–8, 20, 37, 133; Tr.

271:22–273:20; 279:18–281:4; 316:23–319:08; 335:09–338:14. No DES document authorized continued unpermitted hard structure work after that site specific explanation.

South Carolina law does not allow earlier informal guidance to defeat enforcement after a later site specific correction. In *S.C. Coastal Council v. Vogel*, the Court of Appeals allowed the Coastal Council to seek removal of an unpermitted deck over a primary dune even though the owners claimed a Council planner told them no permit was required. 292 S.C. 449, 452–53, 357 S.E.2d 187, 188–89 (Ct. App. 1987). In doing so, the court held that unauthorized or erroneous staff advice could not estop coastal enforcement or authorize construction where a permit was required. *Id.* at 453, 357 S.E.2d at 189. The same rule governs DHEC penalty enforcement. *Midlands Utility* held DHEC was not estopped from assessing civil penalties where the regulated party claimed DHEC had led it to believe enforcement would not occur, but the party had been notified several times that enforcement was contemplated. 298 S.C. 66, 71, 378 S.E.2d 256, 259 (1989). The additional estoppel authorities confirm the same point: reliance is not justifiable when the alleged representation concerns a legal matter ascertainable from governing law and public records. *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 319–21, 659 S.E.2d 263, 267–68 (Ct. App. 2008); *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 236–41, 692 S.E.2d 499, 506–09 (2010); *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 166–69, 714 S.E.2d 869, 875–76 (2011).

Nor did the earlier guidance authorize this work. The June 9 email was not a permit, a site specific jurisdictional determination, an approval of non-beach-compatible materials, or a representation that § 48-39-10(H) could not apply to this Site. Joint Ex. 222. The Piping Plover statement was an informal communication in another matter, later described as a mistake or internal miscommunication, not a regulation, permit, order, final agency decision, or authorization for Reddy's wall. Order, p. 20. Alleged prior enforcement history may bear on amount; it cannot nullify the statutory permit requirement or override DES's later site specific warnings.

The record also defeats Reddy's innocent-reliance framing. After DES warned him, he continued toward completion, discussed timing construction around agency attention, and, after the first cease and desist directive, instructed his contractor to ensure the crew did not speak with OCRM personnel if they appeared on the beach. Joint Exs. 192, 193, 195; Tr. 573:17–575:1; 580:17–581:06. The ALC found that Reddy's contractor dug a trench, filled it with concrete, and constructed a hard erosion control structure with wingwalls; after later damage, Reddy built a second, taller concrete structure landward of the first. Order, pp. 8–11. After the October 20 Notice to Comply and later cease and desist directives, Reddy proceeded with riprap, screw piles, rebar, concrete, excavation, and formwork. Joint Exs. 4, 6, 7, 107, 120, 139, 141, 142, 144, 155, 156, 170, 195; Tr. 293:15–294:1; 296:2–298:11; 312:16–319:08; 335:09–338:14; 573:17–575:1; 580:17–581:06. Complete penalty vacatur cannot be reconciled with that record if the Court applies § 48-39-10(H) and § 48-39-130(C).

D. Reddy does not specifically challenge the ALC's active beach finding, which substantial evidence supports.

The active beach finding matters to penalty because it confirms the site specific notice DES gave before Reddy continued work and the seriousness of the omitted permit review. It also matters to public interest and removal because the ALC found the hard structure occupied an area the Act and regulations treat as especially restricted. It is not a substitute for statutory beaches status. It is a narrower factual finding: the ALC found that the hard structure had been on active beach. Order, pp. 16–19, 33–34. Active beach is the area seaward of the escarpment or first line of stable natural vegetation, whichever first occurs, measured from the ocean. S.C. Code Ann. § 48-39-270(13); S.C. Code Ann. Regs. 30-1(D)(2).

Reddy disputes what follows from active beach status, but he does not specifically challenge the ALC's finding that the structure occupied active beach. His issues address the geographic scope of § 48-39-120(C), the ALC's refusal to decide statutory beaches status, the ultimate public interest determination, and due process. He does not contend that the April 4, 2024 survey failed to place portions of the hard structure seaward of the top of bank, that the top of bank was not the escarpment, or that stable natural vegetation existed seaward of the escarpment. Rule 208(b)(1)(B), SCACR; *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 530 n.2, 489 S.E.2d 674, 675 n.2 (Ct. App. 1997); *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003).

Even if Reddy's general public interest issue preserved a challenge to active beach status, substantial evidence supports the finding. The ALC relied on georectified imagery, photographs showing the escarpment landward of the structure, February 2024 photographs placing the structure on active beach, and Reddy's April 4, 2024 survey showing portions of the hard structure seaward of the top of bank. Order, pp. 16–19. The ALC also found that Reddy produced no evidence of stable natural vegetation seaward of the escarpment. *Id.* Those facts matter because, under the special permit regulation, the omitted permit review would have addressed erosion rate, active beach location, public health, safety, welfare, cumulative effects, and removal obligations. S.C. Code Ann. Regs. 30-15(F)(1), (4). The ALC's related public interest findings confirm the materiality of those conditions: significant erosion or scour on the adjacent public beach, accelerated erosion, adverse effects on lateral public access, and dry sand loss in eroding areas. Order, p. 19.

E. The penalty had a structured basis.

The penalty amount was tied to DES's ordinary enforcement framework, not an ad hoc number. DES used its enforcement worksheet and civil penalty assessment guideline. Joint Exs. 163, 165; Tr. 596:20–602:21. The worksheet identified nine violated requirements, classified the extent of deviation and adverse impact as "major," used the $901 to $1,000 major/major matrix range, applied a 289-day violation period, and calculated $289,000 at the statutory maximum of $1,000 per day. Joint Ex. 163 at BCM Reddy 002408–002412; Joint Ex. 165 at BCM Reddy 020186, 020192.

Ms. Flake testified that DES used BCM's policy, guideline, and the statute; that penalties serve deterrence; that DES considered the overall egregiousness of the violations; that DES gave clear guidance and authorized soft measures Reddy disregarded; that DES had not previously had to issue three cease and desist directives to stop unauthorized critical area alterations; and that this was the first case in her section requiring injunctive relief and a temporary restraining order. Tr. 596:20–597:7; 599:4–15; 599:19–600:5; 600:8–601:8; 601:20–602:21. Reddy may dispute the amount and defend the no-penalty result, but that dispute goes to mitigation or remand, not to the ALC's threshold legal conclusion that penalty authority was questionable because it declined to decide the predicate violation.

F. Removal does not displace civil penalties.

Removal and civil penalties serve different purposes. Removal remediates the physical condition created by unauthorized work; civil penalties punish past violations and deter future unauthorized critical area work. Sections 48-39-120(C) and 48-39-170(C) create separate remedies, and the Act does not make them mutually exclusive. Reddy's approach would make removal the only consequence for unauthorized hard structure construction in a protected coastal resource, which the Act does not require. That remains true even if removal is substantial relief; the statutory question is not whether removal is onerous, but whether § 48-39-120(C) displaces § 48-39-170(C). It does not.

G. The Court should reinstate the penalty or remand under the correct standard.

Because DES's penalty had a structured basis and the ALC vacated it under the wrong legal premise, the Court should reinstate the $289,000 penalty or, at minimum, remand for reconsideration under § 48-39-170(C). If the Court remands for amount, the remand should be limited to applying the correct statutory framework, not to revisiting the setback line limitation or treating fairness concerns as a complete bar to penalty authority.

VII. REDDY'S REMOVAL ARGUMENTS DO NOT JUSTIFY VACATING OR NARROWING THE ENFORCEMENT ORDER.

Reddy uses the removal issue to advance the same jurisdictional premise rejected above: that the setback line bars DES from enforcing the Act landward of that line. Reddy's removal arguments do not support his requested jurisdictional ruling or vacatur of the Administrative Order. Section 48-39-290(B)(2)(d) expressly provides that § 48-39-290 does not affect or modify § 48-39-120(C), and Reddy's reading does the opposite by using the setback line framework to restrict § 48-39-120(C).

Reddy's effort to confine § 48-39-120(C) to tidelands and coastal waters fails on the text. Neighboring subsections contain geographic qualifiers, but subsection (C) does not. It authorizes removal of "all erosion control structures" that adversely affect the public interest. Section 48-39-290(B)(2)(d) then confirms that the BMA does not affect or modify that authority. Reading the setback line framework to narrow § 48-39-120(C) would make the savings clause do no work.

In any event, the removal order may also be affirmed on the independent ground that the Site was statutory beaches and Reddy altered it without a permit. *See* Rule 220(c), SCACR. The two provisions do different work. Section 48-39-290 governs construction in the beach/dune system; § 48-39-120(C) authorizes removal of erosion control structures that adversely affect the public interest. The Supreme Court likewise cautioned against reading § 48-39-290 in isolation when doing so would undermine OCRM's statutory mandate to administer South Carolina's beach erosion control policy. *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 354 S.C. 585, 588–89, 582 S.E.2d 410, 412–13 (2003).

A. The materials dispute cannot carry Reddy's requested relief.

Reddy treats the materials issue as though it undermines the enforcement order as a whole. It does not. The ALC's limitation on removal of non-beach-compatible materials not associated with construction of the wall is the subject of DES's appeal, and CCL supports DES's position. But even if that limitation remains in place, the order still requires removal of the hard structure, removal of the unauthorized materials used to construct it, and restoration of the affected area. Order, p. 40; Order Denying Motions for Reconsideration, p. 52. The question whether non-beach-compatible materials not associated with wall construction must also be removed therefore cannot support Reddy's request to vacate the Administrative Order, disturb the removal remedy, or adopt his setback line theory. That issue runs, if anywhere, in DES's favor. It is not a basis for additional relief to Reddy.

B. Reddy's "nothing to remove" argument does not justify vacating the relief.

Reddy's "nothing to remove" argument fails even under the ALC's narrowed order. The ALC ordered a CAP for removal of the hard structure, including unauthorized materials used for construction, and restoration of the affected area. Order, p. 40. The reconsideration order confirms the Amended Order requires "the removal of the hard structure, including all unauthorized materials that were used for its construction, and the restoration of that affected area once excavation/removal is complete." Order Denying Motions for Reconsideration, p. 52. Thus, Reddy's attack on materials does not justify vacating relief as to the wall, construction materials, and restoration, and it does not defeat DES's separate request for broader removal relief.

VIII. REDDY'S DUE PROCESS ARGUMENT DOES NOT DEFEAT CCL'S REQUESTED RELIEF.

Reddy's due process argument repackages his statutory theory in constitutional language. The relevant appellate question is whether he can show substantial prejudice after a full contested case hearing on the same issues.

A. This is not a federal constitutional shortcut around South Carolina's APA prejudice requirement.

The appeal is grounded in South Carolina administrative law and substantial prejudice. The APA authorizes reversal only where the appellant's substantial rights have been prejudiced. S.C. Code Ann. § 1-23-610(B); *see also* S.C. Code Ann. § 1-23-380(5). Reddy received a contested case hearing, presented evidence, cross-examined witnesses, and argued jurisdiction, removal, public access, and the structure's effects. He received due process under the law.

B. Beaches jurisdiction, removal, public access, and adverse public interest effects were in the case before trial and at trial.

The record forecloses Reddy's claim of surprise. At trial, the ALC identified as a primary issue whether DES had authority to enforce the Administrative Order where "the critical area of the beach" had eroded landward of the beach/dune system. Tr. 66:8–67:3. The parties also identified penalty, removal, vagueness, APA, and takings issues for decision, and confirmed those issues matched Reddy's request for contested case hearing. Tr. 67:4–69:3.

Reddy had notice that § 48-39-120(C), removal, and adverse public interest effects were at issue. Pretrial notice defeated any surprise claim. DES's May 22, 2024 NOAV expressly cited § 48-39-120(C), and the Administrative Order required removal of unauthorized materials and restoration. Joint Exs. 10, 11. The summary judgment order stated that DES had authority to remove erosion control structures with adverse public interest effects, and Reddy himself used § 48-39-120 throughout trial, including subsection (B), to argue the same mean high water and public trust limitation he presses now. Order Denying Mot. Summ. J., p. 4; Tr. 211:22–213:15; 481:6–483:20; 1254:10–16; 1451:1–12; 1487:13–1488:25. The ALC reached the same conclusion in rejecting Reddy's notice argument, finding that the parties had disputed DES's authority to seek removal since the February 9, 2024 IJ filing, that the May 22, 2024 NOAV expressly cited § 48-39-120(C), and that Reddy never sought prehearing statements or a more definite statement of the statutory provisions at issue. Order on Motions for Reconsideration, pp. 3–5.

C. Reddy cannot show substantial prejudice.

Reddy cannot show substantial prejudice from alleged surprise over the governing statutes. Due process in an administrative proceeding requires notice, an opportunity to be heard in a meaningful way, and judicial review, but proof of a denial of due process requires a showing of substantial prejudice. *Leventis v. S.C. Dep't of Health & Env't Control*, 340 S.C. 118, 132, 530 S.E.2d 643, 650–51 (Ct. App. 2000). In *Leventis*, the Court of Appeals disapproved DHEC's ex parte procedure but affirmed the result because the challengers failed to establish substantial prejudice after an extensive administrative hearing, witness presentation, cross-examination, and meaningful review. *Id.* at 134–35, 530 S.E.2d at 652–53. The decision in *Myers v. S.C. Dep't of Health & Hum. Servs.* applies the same rule to notice defects. 418 S.C. 608, 618–20, 795 S.E.2d 301, 306–07 (Ct. App. 2016).

That prejudice analysis fits this record. Reddy's claimed missing proof is not factual, but legal: whether § 48-39-120(C) applies outside tidelands, coastal waters, or the setback line and what procedures precede removal. Additional factual evidence would not change or inform that statutory question. Nor does Reddy identify a witness, document, discovery request, expert opinion, or factual defense he would have presented had § 48-39-120(C) been repeated in the hearing notices. The May 22, 2024 NOAV expressly cited § 48-39-120(C) and stated DES's removal authority; removal was sought from the beginning; and Reddy received discovery, a five-day contested case hearing, cross-examination, expert testimony, reconsideration practice, and judicial review. Joint Ex. 10; S.C. Code Ann. Regs. 30-8(F).

The record shows disagreement over legal consequences, not prejudice. Reddy personally read and argued § 48-39-120(B), used § 48-39-120 more generally in testimony and argument, cross-examined witnesses on mean high water and public trust concepts, examined witnesses on the statutory beaches definition, and pressed the same setback line, beaches, public trust, and equal protection theories he now raises on appeal. Tr. 211:22–213:15; 481:6–483:20; 622:1–18; 1254:10–16; 1440:17–25; 1451:1–12; 1487:13–1488:25. Conflicting general guidance does not establish prejudice where DES gave specific warnings before Reddy continued construction and Reddy fully litigated jurisdiction, removal, public access, and adverse public interest effects at trial.

IX. REDDY'S REQUEST TO VACATE THE ADMINISTRATIVE ORDER ENTIRELY OVERREACHES.

Reddy seeks vacatur of AF-0000960 in its entirety. Reddy Resp. Br. 24–25. That relief depends on the same arguments addressed above. It assumes the setback line is a jurisdictional ceiling, treats the ALC's refusal to decide statutory beaches status as a finding against jurisdiction, and disregards the ALC's independent removal ruling under § 48-39-120(C). None of those premises supports complete vacatur. The ALC ordered removal under § 48-39-120(C) and found adverse public interest effects. Order, pp. 23, 35, 40. The statutory and evidentiary record also supports beaches status, violation, and penalty. Reddy is not entitled to erase the entire enforcement action based on an avoided issue and a setback line limitation absent from the statute.

CONCLUSION

For these reasons, the Court should reverse the ALC's no violation and penalty rulings; hold that the Site satisfied § 48-39-10(H)'s requirements, or remand with instructions to apply that definition without a setback line limitation; hold that Reddy violated § 48-39-130(C); reinstate the $289,000 penalty or remand for limited penalty reconsideration under § 48-39-170(C); reject Reddy's setback line ceiling; and reject his request to vacate AF-0000960 in its entirety.

Respectfully submitted,

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

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