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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2026-000221
Docket No. 24-ALJ-07-0232-CC

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

Rom Reddy, Appellant-Respondent.

RECORD ON APPEAL – VOLUME 1 OF 16
(pp. 1-351)

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INDEX

Volume 1

Record Page No.

ORDERS

Order Denying Motion for Removal, dated March 26, 2024	000021
Order Granting Motion to Intervene in Injunctive-Relief Case, dated April 12, 2024	000030
Order Denying Joint Motion to Consolidate, dated August 7, 2024	000036
Order Granting Motion to Intervene filed by South Carolina Coastal Conservation League, dated August 7, 2024	000038
Consent Scheduling Order, dated August 7, 2024	000040
Amended Scheduling Order, dated December 5, 2024	000042
Order Denying Rom Reddy's Motion for Summary Judgment, dated April 24, 2025	000044
Order of Dismissal (Injunctive Relief) case, dated October 23, 2025	000063
Final Order, dated October 23, 2025	000065
Order Rescinding Final Order, dated November 10, 2025	000103
Order on Motions for Reconsideration, dated December 30, 2025	000104
Amended Final Order, dated December 30, 2025	000124
Order Denying Motions for Reconsideration, dated January 27, 2026	000165
Order Staying Final Order Pending Decision, dated January 27, 2026	000171
Order Granting Motion to Stay, dated March 11, 2026	000173

PLEADINGS AND FILINGS

DES's Motion for TRO and Preliminary Injunction (including Affidavits of Jacques Prevost and Matthew Slagel), dated February 9, 2024	000181
DES's Petition for Injunctive Relief, dated February 9, 2024	000214
Rom Reddy's Request for Contested Case Hearing with attachments, dated July 18, 2024	000246

Joint Motion to Consolidate, dated July 30, 2024	000280
South Carolina Coastal Conversation League’s Consent Motion to Intervene, dated August 1, 2024.....	000284
Notice of Hearing, dated August 7, 2024.....	000286
Amended Notice of Hearing, dated December 5, 2024	000289
Respondent’s (Rom Reddy’s) Motion for Summary Judgment with exhibits, dated March 3, 2025	
Motion for Summary Judgment and Exhibit 1	000290

Volume 2

Respondent’s (Rom Reddy’s) Motion for Summary Judgment with exhibits, dated March 3, 2025 Exhibits 2 through 26.....	000352
---	--------

Volume 3

Respondent’s (Rom Reddy’s) Motion for Summary Judgment with exhibits, dated March 3, 2025 Exhibits 27 through 44.....	000580
--	--------

Volume 4

Petitioner Department of Environmental Services’ Return to Respondent’s Motion for Summary Judgment with exhibits, dated March 28, 2025	001066
Petitioner CCL’s Response in Opposition to Respondents’ Motion for Summary Judgment with exhibits, dated March 28, 2025.....	001368
Petitioner CCL’s Deposition Page and Line Designations (Emily Cedzo Deposition Transcript), dated May 1, 2025.....	001398
South Carolina Department of Environmental Services’ Motion for Reconsideration and Clarification, dated November 3, 2025	001421
South Carolina Coastal Conservation League’s Motion for Reconsideration and Clarification, dated November 3, 2025	001439
Rom Reddy’s Motion for Reconsideration with exhibit, dated November 3, 2025	001443

South Carolina Coastal Conservation League’s Response to Respondent’s Motion for Reconsideration, dated November 13, 2025	001461
Respondent Rom Reddy’s Response in Opposition to Petitioner South Carolina Coastal Conservation League’s Motion for Reconsideration and Clarification with exhibit, dated November 13, 2025	001471
Respondent Rom Reddy’s Response in Opposition to Petitioner South Carolina Department of Environmental Services’ Motion for Reconsideration and Clarification, dated November 13, 2025	001483
Department’s (DES’s) Return to Reddy’s Motion for Reconsideration with exhibits, dated November 13, 2025	001490
South Carolina Coastal Conservation League’s Reply in Support of Its Motion for Reconsideration with exhibit, dated November 20, 2025	001534
DES’ Reply to Reddy’s Return to DES’ Motion for Reconsideration, dated November 20, 2025	001541
South Carolina Coastal Conservation League’s Motion for Reconsideration, dated January 9, 2026	001551

Volume 5

Department’s (DES’s) Motion for Reconsideration and Clarification of the Amended Final Order, dated January 9, 2026	001555
Respondent Rom Reddy’s Motion to Stay and for Supersedeas, dated January 15, 2026	001569
Respondent Rom Reddy’s Response in Opposition to Petitioner South Carolina Coastal Conservation League’s Motion for Reconsideration and Clarification of the Amended Final Order, dated January 20, 2026	001578
Respondent Rom Reddy’s Response in Opposition to Petitioner South Carolina Department of Environmental Services’ Motion for Reconsideration and Clarification of the Amended Final Order, dated January 20, 2026	001581
DES’ Return in Opposition to Respondent’s (Reddy’s) Motion to Stay and for Supersedeas with exhibits, dated January 26, 2026.....	001588
South Carolina Coastal Conservation League’s Response in Opposition to Respondent’s (Reddy’s) Motion to Stay and for Supersedeas, dated January 26, 2026	001655

South Carolina Coastal Conservation League’s Reply in Support of Its Motion for Reconsideration, dated January 26, 2026	001662
Rom Reddy’s Notice of Appeal (without exhibit “Amended Final Order”), dated January 28, 2026	001667
South Carolina Department of Environmental Services’ Notice of Appeal (without exhibit orders), dated January 29, 2026	001669
South Carolina Coastal Conservation League’s Notice of Appeal, dated January 29, 2026	001671

TRANSCRIPTS

Trial Transcript, dated May 6, 2025, through May 8, 2025, and May 19, 2025, through May 20, 2025	001673
--	--------

Matthew J. Slagel

Direct Examination by Ms. Phelan	001741
Direct Examination by Ms. Lenhardt.....	001814
Cross Examination by Mr. Reddy	001819
Re-Direct Examination by Ms. Phelan	001930
Re-Cross Examination by Mr. Reddy	001934

Jacques Prevost

Direct Examination by Mr. Churdar	001938
---	--------

Volume 6

Jacques Prevost

Cross Examination by Mr. Reddy	002016
Re-Direct Examination by Mr. Churdar.....	002114
Re-Cross Examination by Mr. Reddy	002123

Doug Truslow

Direct Examination by Mr. Churdar	002138
Cross Examination by Mr. Reddy	002147
Re-Direct Examination by Mr. Churdar	002181

Morgan H. Flake

Direct Examination by Mr. Churdar	002188
Cross Examination by Mr. Reddy	002275
Re-Direct Examination by Mr. Churdar.....	002342
Re-Cross Examination by Mr. Reddy	002349

Jessica Boynton

Direct Examination by Ms. Phelan	002352
Cross Examination by Mr. Reddy	002399
Re-Direct Examination by Ms. Phelan	002478
Re-Cross Examination by Mr. Reddy	002491
Re-Direct Examination by Ms. Phelan	002496

Volume 7

Christopher P. Jones, P.E.

Direct Examination by Ms. Phelan	002500
Cross Examination by Mr. Reddy	002580
Re-Direct Examination by Ms. Phelan	002659
Re-Cross Examination by Mr. Reddy	002663

Matt Goodrich

Direct Examination by Mr. Reddy	002734
Cross Examination by Ms. Phelan	002796
Cross Examination by Ms. Milton	002821
Re-Direct Examination by Mr. Reddy	002830
Cross Examination by Ms. Phelan	002928
Cross Examination by Ms. Milton	002937
Re-Direct Examination by Mr. Reddy	002938

Volume 8

Chris Stout

Direct Examination by Mr. Churdar	002979
Cross Examination by Mr. Reddy	003020
Re-Direct Examination by Mr. Churdar.....	003056

Christopher P. Jones, P.E.

Direct Examination by Ms. Phelan	003060
Cross Examination by Mr. Reddy	003093

Inventory of Trial Exhibits.....	003186
----------------------------------	--------

RESPONDENT’S TRIAL EXHIBITS

Ex. 61 Excerpts of exhibit which include the Email: re House Subcommittee and Background on DHEC Beachfront Jurisdictional Lines	003209
Ex. 71 DHEC’s Answers to 1st Interrogatories from Plaintiffs dated October 13, 2020	003213

CCL EXHIBIT

Ex. 1 Petitioner CCL's Deposition Page and Line Designations, dated May 1, 2025.....	003219
---	--------

PETITIONERS' TRIAL EXHIBIT

Ex. 4 Final Agency Decision	003244
-----------------------------------	--------

JOINT TRIAL EXHIBITS

1. Petitioner's TRO & Petition for Inj Relief.....	003250
2. Reddy v. DHEC & IOP (2024-CP-10-01681) [summons and complaint].....	003283
3. Photos of C&D placards	003317
4. 10/20/2023 NTC (cover letter, signed doc.)	003319
5. 1/25/2024 1st C&D	003321
6. 2/2/2024 2nd C&D Reddy	003323
7. 2/2/2024 Cease and Desist to CNT	003325
8. 3/1/2024 3rd C&D	003327
9. 6/7/2024 Response to NOAV/AL	003329
10. 5/22/2024 NOAV/AL	003366
11. 7/1/2024 Administrative Order w/ cover ltr	003398
12. 5/20/2023-05-20 to 5/31/2023 Slagel & OConnor emails to Reddys re EO & GP	003429
13. 2023-08-29 Slagel to Reddy email thread describing sandbag rules w Statute attached	003448
14. 09/07/2023 Slagel letter to Blutide & Reddys	003456
15. 2023-09-11 email from Matt to Phelan to forward to Ross Appel re: 9/11/2023	003457
16. 2023-09-18 Renee Reddy to Slagel email and response sand fencing and veg.pdf	003460
17. 9/21/23 Slagel email to Rom & Renee Ready – attaching EO, How to Build A Dune guide.....	003464

Volume 9

18. 2023-09-29 Reddy to Slagel sandbags EO request and response	003474
19. 2023-10-04 Slagel to OCRM October 3, 2023 site photos	003481
20. 10/22/2023 Reddy and JPrevost re: NTC	003484
21. 1/17/2024 (thread starts 12/18/2023) email thread w/ SPhelan to Mabney cc JSmith, BChurdar attaching 9/11/2023 site photos & general permit for beach renourishment at Breach Inlet IOP.....	003491
22. 1/29/2024 & 1/30/2024 email Phelan & Abney and Smith	003515
23. 2024-07-23 to 2024-07-28 Renee Reddy & Slagel email thread re renourishment sand fencing veg	003519
24. 2024-09-26 Slagel and Reddy email exchange sand scraping	003522
25. 9/8/2023 email RAppel to BChurdar SPhelan advising he represents Reddy with 2 sketches attached (added in 2/10/2025 depo)	003525
26. 2/3/2024 email Reddy to neighbors re: Governor, DHEC Board chair, Env'l Director and attachments	003529
27. 6/20/2023 email RReddy to SMislock MMislock RVanderham Csolomon, PJorgensen	003531
28. 1/2/2024 email thread Renee Reddy to multiple neighbors w/a link to a YouTube video & forwarded email from RReddy to neighbors 46b – 3 pages screen shots from video	003533
29. 08/01/2024 Reddy email	003535
30. 06/16/2023 Appel email to Mac Mcquillin re “erosion emergency” with video attached	003536
31. Attachment to 6/16/2023 email above – Video of waves striking broken wooden stairs	003539
32. 12/18/2023 Reddy and Kerr emails	003540
33. 10/11/2023 thru 6/21/2024 email thread DFragsoso to DKerr re beach erosion mitigation efforts; RReddy to DKerr, DFragsoso, Renee, attaching OCRM04742 permit for 404-522 Ocean Blvd.; OCRM04706 for 100-402 Ocean Blvd.	003541
34. Isle of Palms Emergency Orders and Permits Table	003550
35. Reddy’s 5/22/2024 application for minor beach renourishment w/ 3 attached photos.....	003551

36. 8/31/2023_23-EO-008 City of IOP Hurricane Idalia Scraping	003558
37. 9/21/2023_23-EO-011 118 Ocean Blvd-Minor Renourishment, Plantings, Sand fencing.....	0003561
38. 09/21/2023_23-EO-012 City of IOP Idalia Scraping Round 2 – 130, 132 & 202 Ocean Boulevard.....	003570
39. 09/29/2023_23-EO-015 City of IOP Scraping Breach Inlet 100 to 314.....	003573
40. 11/15/2023_23-EO-016 City of IOP Sandbags Breach Inlet 120-206.....	003576
41. 12/23/2023_23-EO-021 City of Isle of Palms Scraping Breach Inlet 112 to 308, excluding 118 & 122	003585
42. 8/13/2024 EO sandbags EO (24-EO-008) 130 to 304	003588
43. 6/8/2017 CA 2016-00803 2018 IOP Beach Renourishment Wild Dunes	003597
44. 6/30/2023 OCRM04706 IOP Minor Renourishment 100-402 Ocean Blvd.	003639
45. 7/26/2023 OCRM04742 IOP Minor Renourishment 404-522 Ocean Blvd	003651
46. 08-16-2024 GP BCM05503 issued to City of IOP for minor renourishment	003664
47. 8/14/2024 GP-24-SMD, Sand Fences, Minor Renourishment, Dune Construction & Dune Veg.....	003672
48. 2/17/1992 Plat by Charles Dawley Jr.....	003682
49. 3W Engineering Plat	003683
50. Fence Line Exhibit & Survey drawing with 3W surveying information on 7/05/2023 & from 04/04/2024	003684
51. 1991 Line Overlays a) 118OceanBlvd_1991Lines_2024Overlay2.pdf b) BreachInlet_1991Lines_2024Overlay.pdf c) BreachInlet_1991Lines_parcel.pdf d) 118OceanBlvd_1991Lines_CSE_Sept2023.pdf.....	003686
52. Wall Point Imagery a) Feb2024Imagery_Jan2024wall.pdf b) Jan_March2023Imagery.pdf.....	003690
53. June 2023 Imagery a) June2023Imagery.pdf b) June2023Imagery_Dec2023wall.pdf c) 2023/06/09 Site Photo.pdf	003692

54. 3W Survey Data	
a) 3WSurveyData_7_5_2023_SeptImagery_revised.pdf	
b) 3WSurveyData_7_5_2023_Wall_revised. pdf	003695
55. 5.5 Contour	
a) 5.5Contour_wall_JuneImagery.pdf	
b) 5.5Contour_wall_SeptImagery.pdf.....	003696
56. Veg Contour Imagery	
a) 2006Veg_Contour_2005Imagery.pdf	
b) 2011Veg_2010Contour_2011Imagery.pdf	
c) 2016Veg_2017Contour_2017Imagery.pdf	
d) Veg_Contour_Imagery_Sept2023.pdf	003699
57. Veg Lines Imagery	
a) VegLines_SeptImagery_revised.pdf	
b) VegLines_SeptImagery_w1977revised.pdf	
c) SeptImagery_SeptVeg_Wall.pdf.....	003703
58. Jessica Monument Aerials	
a) 118OceanBlvd_BeachZone_Monuments.pdf	
b) 118OceanBlvd_BeachZone_Monuments_zoom.pdf.....	003706
59. 1949 IOP Oblique image.pdf	003708
60. CJones Historical Aerial Photos	
a) 1 - IOP Jan 25 2001.pdf	
b) 4 IOP Aug 3 2006 DSC_0378.pdf	
c) 5 - IOP SI Apr 10 2007 DSC_0111.pdf	
d) 11 IOP 4-14-2011 aerial 095.pdf	
e) 13 - IOP CSE Mar 15 2016 IMG_3662.pdf	
f) 14 - IOP Apr 5 2016 055.pdf.....	003709
61. Jessica Historical Imagery	
a) Imagery1953.pdf	
b) Imagery1953_street.pdf	
c) Imagery1963.pdf	
d) Imagery1963_2024.pdf	
e) Imagery1973.pdf.....	003715
62. Beachfront CriticalAreas.pdf	003720
63. BeacheslandwardActiveBeach.pdf	003722

64. Feb2024Imagery_DecWall_DecVeg.pdf	003723
65. A June2023Imagery_Dec2023wall (Trial 55a)	
B 3WSurveyData_7_5_2023_SeptImagery_revised. pdf (Trial 56a)	
C-E JuneOctNovSeries.pdf (new; attached)	
F December 2023 CSE Drone Imagery.pdf (Trial 205)	
G Feb2024Imagery_Jan2024wall (Trial 54a)	003724
66. 7/29/2014 Auction Purchase Agreement.....	003731
67. 9/24/2014 Title to Real estate	003747
68. 2/6/1989 Title to Real Estate.....	003755
69. Ware to Tyler email forwarding 4/19/2022, 5/20/2023, 6/14/2023 vegetation images.....	003759
70. 8/31/2023, 9/11/2023, 9/14/2023 and undated photographs.....	003765
71. 9/11/2023 Slagel Photos.....	003776
72. 9/11/2023 Visit Matt, Sallie, Rom, Renee (video)	003778
73 omitted exhibit	
74. Image of wall right after built	003779
75. 02/2023 00227 images of property	003780
76. aerial map given to us by MSlagel 2/10/2025	003793
77. Drone images in Reddy's Suppl production – undated.....	003794
78a 2023-05-20 Rom and Renee Photos.pdf	003798
78b 2023-06-09 MRO Photo.pdf.....	003807
78c 2023-06-16 Renee Reddy Photo.pdf.....	003808
78d 2023-09-01 MSlagel Photos.pdf.....	003809
78e 2023-10-05 JPrevost Photo.pdf.....	003811
78f 2023-11-17 Drone Photo.pdf.....	003812
78g 2023-12-17 December Nor-Easter	003813
78h 2023-12-18 MSlagel Photo.pdf.....	003814
78i 2023-1-02 Text photo (BCM Reddy 020208).....	003815

78j 2024-01-10 Drone Photo.pdf	003816
78k 2024-02-01 JPrevost Photos.pdf	003817
78l 2024-02-09 Drone Photo.pdf	003820
78m 2024-04-09 MSlagel Photo.pdf	003821
78n 2024-05-01 MSlagel Photo.pdf.....	003822
78o 2024-06-06 JPrevost Photos.pdf	003823
78p 2024-08-09 Photo MFlake.pdf.....	003825
78q 2024-09-19 MSlagel Photos.pdf	003826
78r 2024-10-10 MSlagel Photos.pdf.....	003828
79. 2024-02-01 JPrevost Scour Photos.pdf 2024-06-26 MSlagel Photos.pdf 2024-08-09 Scour Photo.pdf 2024-08-09; 2:07p.m. photo of wall (2518) 2024-08-20 JPrevost Photo.pdf (1695-1700) 2024-08-21 MSlagel Photo.pdf (2969-2973).....	003830
80. Video Waves Hitting Wall and Scour 02.09.2024.MOV	003844
81. 2023-06-16 Video Renee Reddy.MP4	003845
82. 6/9/2023 Department photos.....	003846
83. 8/31/2023 IOP Photos to Slagel from Desiree	003849
84. 9/1/2023 Department photos.....	003855
85. 9/06/2023 Department photos 3097-3118 sandscraping only.....	003858
86. 12/18/2023 Site visit - Department photos	003885
87. 1/25/2024 IOP photos	003888
88. 1/31/2024 CCL photos	003897
89. 2/23/2024 Site Visit.....	003901
90. 4/09/2024 Site Visit.....	003907
91. 8/21/2024 Site Visit.....	003912
92. 9/19/2024 Site Visit.....	003920

93. 10/29/2024 Site Visit.....	003930
94. 11/15/2024 Site Visit.....	003940
95. 10/9/2024 Site Visit.....	003949
96. BCM REDDY	
a) 9/01/23 photo	
b) 9/11/23 photo	003954
97. Jacques Prevost Description of observation of site conditions between 10.05.2023 and 02.01.2024.....	003956
98. 10/5/2023 & 10/6/2023 Inspection Report.pdf.....	003957

Volume 10

99. 12.13.2023Site Photos from.pdf	003967
100. 12.20.2023 Inspection Report.pdf; Reddy Property [describing debris and an exposed, previously not visible erosion control structure]	003978
101. Site Photos from 12.20.2023.pdf	003983
102. 12.28.2023 Inspection Report.pdf; inspection report.....	003989
103. 12.28.2023 118 Ocean Blvd, IOP Onsite Evaluation Memo	004001
104. Representative Site Photos from 12.28.2023.pdf.....	004002
105. 01.11.2024 Inspection Report.pdf; Reddy Property – finding a 92LF seawall and wooden Panels.....	004011
106. Site Photos from 01.11.2024 construction at 118 Ocean Blvd	004018
107. 01.25.2024 Inspection Report.pdf; Reddy Property [finding unauthorized stabilization work on seawall and riprap/fill work]	004030
108. 01.29.2024 Inspection Report.pdf; Reddy Property	004040
109. 01.29.2024 Onsite Memo.pdf	004055
110. 02.01.2024 Inspection Report.pdf; Reddy Property	004056
111. 02.01.2024 Onsite Memo.pdf; Description of the work Jacques Prevost did onsite at 118 Ocean Blvd on 02.01.2024 including discussion with adjoining landowner P. Jorgenson and posting cease and desist orders	004089

112. 2024-01-31 Isle of Palms, 15_13_31 (1).pdf, from Ryan Buckhannon to Jacques Prevost [need more decisive and forceful action to prevent the unauthorized construction on IOP]	004090
113. Log and description of calls to OCRM (Jacques Prevost especially) regarding 118 Ocean Blvd. Calls received between 2/1/2024 & 2/2/2024	004093
114. Email from Patsy Hindman [relaying Jimmy Carroll's photos of activity/site]	004095
115. photos sent by Patsy Hindman of construction activity and debris at 118 Ocean Blvd.....	004096
116. Ryan Buckhannon and Jacques Prevost [Discussion of photos taken of activity and cease desist letter at IOP property].....	004106
117. Ryan Buckhannon photos of activity/workers sent to J. Prevost	004108
118. Complainant texts and photos sent to J. Prevost regarding activity at 118 Ocean Blvd.....	004120
119. 12.27.2023 to 12.28.2023 Emails.pdf, Email JPrevost DKerr DFragsoso MFlake MSlagel mentioning backfilling and extension of wall within critical area	004127
120. 01.13.2024 Email.pdf, Email thread w Buckhannon, C&E Team, JPrevost w/description & photos of site discussing compliance process open for 118 Ocean Blvd.....	004130
121. 2023-09-19 Rom Reddy OCRM EO Application.....	004137
122. 2023-09-21 MSlagel email re: DHEC OCRM Emergency Order: Minor Renourishment, Sand Fencing, Vegetation.....	004139
123. 2023-10-03 Site photos submitted to MSlagel and forwarded to C&E on 2024-10-04	004140
124. 2023-10-05 JPrevost Site Photos	004144
125. 2023-10-06 JPrevost Site Photos	004150
126. Map of 118 Ocean Blvd (Excerpt of 2024-05-22 NOAV/AL)	004152
127. 2023-10-20 JPrevost email attaching Notice to Comply AI-0007507 and email read receipt	004153
128. 2023-11-14 MFlake Site Photos	004155
129. 2024-10-23 SPhelan Email Establishing Date of Photos.....	004159

130. 2023-11-20 email thread SPhelan MAbney JSmith re extension request; SPhelan fwd to staff 11-27-2023.....	004178
131. 2023-12-06 JPrevost Inspection Report 118 Ocean Blvd	004180
132. 2023-12-06 JPrevost Site Photos	004185
133. 2023-12-11 Meeting Memo between OCRM Staff and Nelson Mullins Staff	004187
134. 2023-12-13 JPrevost Site Photos	004188
135. 2023-12-18 OCRM Emergency Operations Inspection and Photos 118 Ocean Blvd.....	004191
136. ePermitting Log Entry Department Communications with Reddy and IOP 2023-12-19 to 2023-12-21	004196
137. 2023-12-28 JPrevost Site Photos	004197
138. 2024-01-11 JPrevost Site Photos	004205
139. 2024-01-25 JPrevost Site Photos	004217
140. 2024-01-29 JPrevost Site Photos	004222
141. 2024-01-31 Construction Image	004233
142. 2024-02-01 JPrevost Site Photos	004234
143. 2024-02-02 MFlake Site Photos	004254
144. 2027-02-07 SPhelan email re: Isle of Palms.....	004264
145. 2024-02-05 Inundation Images	004280
146. 2024-02-23 Resp.s Response and MIO to DHEC's 2024-02-09 Petition for IJ.....	004282
147. 2024-02-13 JPrevost Site Photos	004327
148. JPrevost Site Inspection 118 Ocean Blvd 2024-02-13.....	004334
149. 2/21/2024 Site Photos	004351
150. 2/21/2024 Inspection Report.....	004354
151. 2/26/2024 Site Photos	004369
152. 2/26/2024 Inspection Report.....	004372

153. 2/29/2024 Inspection Photos.....	004381
154. 2/29/2024 Inspection Report.....	004386
155. 3/4/2024 Site Photos	004415
156. 3/4/2024 Inspection Report.....	004422
157. 4/3/2024 Site Photos	004441
158. 4/3/2024 Inspection Report.....	004447
159. 5/22/2024 email sending NOAV/AL, 5/28/2024 WM reply, USPS Delivery Rcpt	004456

Volume 11

160. 6/6/2024 JPrevost 118 Ocean Blvd Site Photos.....	004461
161. 6/6/2024 J. Prevost Inspection Report	004467
162. S. Phelan letter to accompany AO	004476
163. Civil penalty calculation worksheet.....	004478
164. Uniform Enforcement Policy.....	004483
165. Civil penalty assessment guideline	004490
166. 9/7/2023 email Rom to MSlagel Blutide Renee MFlake re not working in critical areas	004500
167. 1/24/2024 email RBuckhannon to JPrevost re repositioning of wall	004501
168. 1/25/2024 email thread RBuckhannon JPrevost w photos depicting install of screw piles.....	004502
169. 1/31/2024 1st complaint email w photos	004507
170. 1/31/2024 2nd complaint email w photos	004511
171. 2/5/2024 Email thread SPhelan MAbney re 2nd C&D.....	004514
172. 2/8/2024 email from IOP re wingwall construction.....	004517
173. 2/28/2024 email from MMcQuillin re new placement of riprap	004518
174. 3/5/2024 email thread SPhelan Eware re 3rd C&D	004522

175. Aerials supporting 2019 seaward expansion of yard and dune destruction	004524
176. 5/25/2023 IOP photos	004536
177. 6/9/2023 MO'Connor email to Reddy	004539
178. Imagery Information	
a) IOP Digital Ortho Photo.pdf	
b) IOP SC Ortho Photo Index Map 1973.pdf	
c) scai_509_full.pdf scai_665_full.pdf	004540
179. December 2023 CSE Drone Imagery.pdf	004544
180. Coastal Program Damage Assessment Deployments Sheet.pdf	004545
181. King Tides Excel Combination.pdf.....	004548
182. USACE Email and Manuals	
a) 2025-01-28 USACE Periodic Ref Email.pdf	
b) USACE Manual 1110-2-1810.pdf	
c) USACE Manual 1110-2-1100.pdf.....	004549
183. Eurotop Manual.pdf	004578
184. 2025-02-20 Wave Runup Calcs.pdf	004581
185. 2025-02-21 Dune Toe Elev.pdf.....	004583
186. Chris Jones C/V and History.pdf.....	004584
187. Chris Jones Expert History Sheet.pdf.....	004594
188. FEMA Documents Used by Chris	
1) FEMA Schematic Title Page.pdf	
2) CJ FEMA Wave Run up Model Choice Schematic.pdf	
3) CJ FEMA Wave Run up Schematic.pdf	004595
189. WEC Matt Goodrich Report.pdf.....	004598

Volume 12

190. CJones Alternate Runup	
a) Atlantic Ocean and Gulf of Mexico Coastal Guidelines Update (Feb. 2007)	
b) CHAMP 2.0 User Manual (omitted per SPP 5/1/2025)	
c) RUNUP 2.1 calcs - C Jones - 3-2-25.pdf	004616
191. Invoice 23-147 \$71,200; Invoice 23-157 \$36,668.....	005034
192. 8/15/2023 – 9/30/2023 Reddy texts with Rakes of Blutide	005037

193. 9/17/2023 email from Reddy to Rakes	005049
194. CNT Contract for \$109,292	005053
195. Texts from CNT subpoena	005059

Volume 13

196. 1/29/2024 email from Reddy to Bedson	005100
197. 2/6/2024 text 00334-00336 site photos attached to text	005103
198. Photo of Flooded Trench produced by Charlie Krawczyk on 2025-03-03	005108
199. 2/8/2024 Pic of seawall under construction w/ contractors present.....	005109
200. 3/20/2024 email thread RReddy TBedson	005114
201. CNT photos supplied 1/20/2025	005117
202. 5/20/2023- 5/2/2024 texts with Rom Reddy	005127
203. ProGreen photos.....	005158
204. a) 2024-08-22 MSlagel and Renee email thread discussing Construction Placards b) 2024-08-22 Construction Placard for 118 Ocean Blvd for minor beach renourishment	005174
205. 10/9/2023 to 12/29/23 texts Reddy and Jose re construction of original wall.....	005177
206. Zorro Concrete LLC \$ 27,000	005192
207. 1/26/2023 structural design with email to Rom dated 2/13/2024.....	005193
208. Aes Structural Design letter rev. 1 Revised 2024- 02-19	005202
209. Photos produced in response to AES Subpoena produced 2025-02-28	005210
210. Invoice No. 04082024-REDDY Invoice No. 07242023-REDDY	005224
211. Fence Line Exhibit	005226
212. Survey drawing with 3W surveying information on 7/05/2023 & from 04/04/2024	005227
213. Renee Reddy emails.....	005228
214. 4/11/2024 email Renee Reddy to RReddy fwdg new survey	005251
215. BCM Reddy 015243-49; DES Chronology	005254

216. BCM Reddy 012775-84; Photos	005261
217. S.C. Code Ann. § 48-39-10, et seq.....	005271
218. S.C. Code Ann. Regs. Ch. 30 (effective up to May 24, 2024).....	005346

Volume 14

219. S.C. Code Ann. Regs. Ch. 30 (effective after May 24, 2024).....	005567
220. Goodrich Sub 1553-58; Vegetative Line Photos/Charts	005715
221. BCM Reddy 016435-41; Emails: General Permits.....	005721
222. BCM Reddy 016953-59; Emails: 116 Ocean Blvd.....	005728
223. BCM Reddy 000023-27, 000142-47, and 000182-85; Emails: Attorney Correspondence	005735
224. No Bates; DES Penalty Policy	005750
225. BCM Reddy 012511-12; Email: RFRs	005758
226. BCM Reddy 016374-75; Request for Construction Placard.....	005760
227. BCM Reddy 019293-96, 019304-07, 19335-38, and 19412-19415; Staff Evaluations of Re- Vegetation.....	005762
228. BCM Reddy 018076-79; Critical Area Activity Application.....	005778
229. BCM Reddy PST 001754-001851; Army Corps. Definitions	005782
230. BCM Reddy 016305-16 and 016320-54; Reddy Application to add sand/veg. and photos	005880
231. No Bates; 42 Fed. Reg. 37122, 37129; Army Corp Wetland definition 1977	005925
232. BCM Reddy 17991-18009; IOP Beach Preservation Presentation (by CSE).....	005969
233. BCM Reddy O19196-99; von Kolnitz Letter to the Board dated 11/13/2023	005988
234. BCM Reddy 002903 -002930; DES Motion for TRO 2/9/2024.....	005992
235. No Bates; 1State Register 1995 Final Rule.....	006020
236. BCM Reddy 2886, 2887, and 2890; Photos dated 9.....	006024
237. BCM Reddy 173; Photo.....	006027
238. BCM Reddy 012764-84; Photos of Department Data Collection	006028

239. BCM Reddy 14619; Emails regarding Isle of Palms beach issues – sandscraping from CSE to Morgan Flake	006049
240. BCM Reddy 000182-000185; Emails; DES and Nelson Mullins (M. Abney)	006050
241. BCM Reddy 009924-27; Emails: 2023 Update to Local Comprehensive – Cjones to Salter/Bode - Beachfront Management Plan (“LCBMP”).....	006054

Volume 15

242. BCM Reddy 010109-12; Emails: Final Draft of 2023 LCBMP Update – 12/19/2022.....	006058
243. BCM Reddy 021139-021140; Emails: Definition of “Periodic”	006062
244. BCM Reddy 021225-68; Emails: U.S. Army Corps. Definition of “Periodic”	006064
245. M. Goodrich Deposition; Petitioner Exhibit 8 - Resp Witness List.....	006108
246. M. Goodrich Deposition; Petitioner Exhibit 210 12/31/2024 DES It to WM w NOD Goodrich.....	006112
247. M. Goodrich Deposition; Petitioner Exhibit 213 CV	006118
248. M. Goodrich Deposition; Petitioner Exhibit 214 WEC Goodrich Proposal to WM 7/16/2024.....	006120
249. M. Goodrich Deposition; Petitioner Exhibit 215 8/9/2024 Goodrich email to Ware w invoice.....	006125
250. M. Goodrich Deposition; Petitioner Exhibit 216 – Report 01-09-2025	006130
251. M. Goodrich Deposition; Petitioner Exhibit 218 Weathers Survey – w/o TOB/BOB...006142	
252. M. Goodrich Deposition; Petitioner Exhibit 219 – 1/11/2018 Plat from Ware to Goodrich in email	006144
253. M. Goodrich Deposition; Petitioner Exhibit 220 10/9/2024 email Ware to Goodrich w Bryngelson diagram attached.....	006146
254. M. Goodrich Deposition; Petitioner Exhibit 221 Reg 30-10 w/ highlights	006151
255. M. Goodrich Deposition; Petitioner Exhibit 222 7/16/2024 Digital Coast Data Team to Goodrich re processing request.....	006162
256. M. Goodrich Deposition; Petitioner Exhibit 224 10/7/2024 DES It to WM w 6th production	006163
257. M. Goodrich Deposition; Petitioner Exhibit 227 Idalia Report.....	006166

258. M. Goodrich Deposition; Petitioner Exhibit 228 Goodrich_Sub_1346 – 1366 site photos 118.....	006213
259. M. Goodrich Deposition; Petitioner Exhibit 230 Goodrich_Sub_01553-01558 veg line charts	006234
260. M. Goodrich Deposition; Petitioner Exhibit 231 Reddy_01150-01155 Google Earth photos w various baseline and setback lines from 1/8/2022 – 2/21/2024	006240
261. M. Goodrich Deposition; Petitioner Exhibit various aerials 232.....	006246
262. M. Goodrich Deposition; Petitioner Exhibit 233 Contour diagrams	006258
263. M. Goodrich Deposition; Petitioner Exhibit 234 2017-2022 Veg seaward limit line diagrams	006264
264. M. Goodrich Deposition; Petitioner Exhibit 235 Imagery collected by Kucera International w band imagery (No Bates)	006269
265. M. Goodrich Deposition; Petitioner Exhibit 236 More aerial diagrams w location of wall (No Bates)	006275
266. M. Goodrich Deposition; Petitioner Exhibit 237 Topo Survey Results 12/7/2023 and 12/8/2022(No Bates)	006278
267. M. Goodrich Deposition; Petitioner Exhibit 238 Topo Survey Results 12/7/2023 and 12/8/2022(No Bates)	006308
268. M. Goodrich Deposition; Petitioner Exhibit 239 Goodrich_Sub_1063 and 1140 strange black ink marks in middle of pages	006338
269. M. Goodrich Deposition; Petitioner Exhibit 241 Wave Dissipation Report.....	006340
270. M. Goodrich Deposition; Petitioner Exhibit 243 US Army Corps of Engineers – Distribution Restriction Statement 1/31/1995	006494
271. M. Goodrich Deposition; Respondent Exhibit 1, 1/28/2025 WM lt to SPP regarding issues with DES’ 17th production.....	006499
272. No Bab tes; Notice of Alleged Violation/Admission Letter 5/22/2024 DES Flake lt to Reddys re enforcement conference on 6/4/2024.....	006501

Volume 16

OTHER DOCUMENTS

DES’ Proposed Order (with pictures) to the ALC, dated August 15, 2025	006532
CCL’s Proposed Order submitted to the ALC, dated August 15, 2025	006632
Certificate of Counsel	006701

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Health and Environmental Control,

Petitioner,

v.

Rom Reddy and Renee Reddy,

Respondents.

Docket No. 24-ALJ-07-0032-IJ

**ORDER DENYING
MOTION FOR REMOVAL**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (Court or ALC) on a Motion for Removal (Motion) filed by Respondents Rom Reddy and Renee Reddy on February 27, 2024.¹ Respondents request removal of this case to the circuit court because they allege this dispute: (1) warrants a jury trial pursuant to subsection 48-39-220(B) of the South Carolina Code (2008); (2) involves a taking under the United States Constitution; and (3) involves a trespass on Respondents' property. *See* U.S. Const. amends. V, VII. Specifically, Respondents allege the South Carolina Department of Health and Environmental Control (Department) and the City of the Isle of Palms (City) have taken actions that amount to (1) a taking of their property and (2) trespass of their property.

On February 23, 2024, Respondents filed a Response and Memorandum in Opposition to Petitioner's Motion for Temporary Restraining Order and Petition for Injunctive Relief, Counterclaim, and Third-Party Claim (Response). In their Response, Respondents argued the Charleston County Circuit Court is the proper venue for hearing the Department's requests for injunctive relief pursuant to section 48-39-160 of the South Carolina Code (2008). Therefore, although Respondents did not specifically argue this Court lacks subject matter jurisdiction to hear the Department's requested relief, it is the only inference to be drawn from this argument.²

¹ Respondents originally submitted the Motion for filing on February 23, 2024, however, it did not include a filing fee and, thus, it was not deemed filed until the filing fee was received on February 27, 2024.

² Respondents have not filed a motion to dismiss for lack of subject matter jurisdiction. However, since the issue has been raised, I chose to address it. *See McCain v. Brightharp*, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App.

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On March 12, 2024, the Department filed a Motion to Dismiss and Return to Respondent's Motion for Removal (Return).³ In their Return, the Department argue removal is inappropriate for two reasons. First, the Department argues this Court has jurisdiction to hear requests for injunctive relief requested by the Department. Second, the Department argues Respondents' takings claim is an as-applied constitutional claim that can be heard in this Court. The Department further argues Respondents' counterclaims should be dismissed because Respondents' claims are based on a faulty interpretation of the Coastal Zone Management Act (CZMA) that imposes affirmative duties on the Department to protect Respondents' property through beach renourishment when no such affirmative duty exists.

Upon reviewing the Motion, the Response, and the Return, I conclude Respondents' Motion for Removal must be denied.

BACKGROUND

Respondents Rom Reddy and Renee Reddy own an ocean-front home located at 118 Ocean Boulevard, Isle of Palms, South Carolina. The Department initially filed this action requesting a preliminary injunction and a permanent injunction to enjoin Respondents from altering the beaches⁴ critical area⁵ adjacent to their home. More specifically, the Department contends Respondents have constructed a hard erosion control structure within the beaches critical area without a permit, and continue to alter the critical area, in open defiance of one Notice to Comply and two Cease and Desist Directives issued to them by the Department. The Department argues that if an injunction is not issued, the public will suffer immediate and irreparable harm from the Reddys' unauthorized hard erosion control structure in the critical area, which has resulted in unsafe, dangerous conditions. Specifically, the department asserts the Reddys' activities are:

2012) ("The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court.").

³ The Department argues Respondents' counterclaims for inverse condemnation, trespass, attorney's fees, and third-party claim against the City of Isle of Palms should be dismissed.

⁴ "Beaches" is defined to mean "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." S.C. Code Ann. Sec. 48-39-10(H) (Supp. 2023).

⁵ "Critical area" is defined to mean "any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280." S.C. Code Ann. Sec. 48-39-10(J) (Supp. 2023).

- i. substantially impacting the public's access and use and enjoyment of the dry sand beach;
- ii. interfering and disrupting the City's efforts to protect the beach and landward habitable structures;
- iii. disbursing non-beach-compatible materials in the critical area;
- iv. giving the inaccurate impression to other homeowners that they can engage in substantial critical area alterations on the beach without authorization, can disregard Cease and Desist Directives, repeatedly engage in other violations of the CZMA, and thwart the Department's and the City's attempts to manage and protect the beach for the public;
- v. detrimentally impacting the reputation of South Carolina beaches including, but not limited to, the Isle of Palms, which will impact tourism in those areas; and
- vi. creating hazardous conditions that could result in serious injury to the public.

In contrast, Respondents deny that the structure that they have built was ever located in the critical area subject to the Department's jurisdiction. Rather, they contend they have simply re-enforced an existing structure on their private property, which has become exposed to wave action due to storms and the Department's and the City's failure to protect the beach/dune system and renourish their property.

DISCUSSION

Initially, I must address Respondents' arguments concerning jurisdiction and their counterclaims and third-party claims in their Response, which, although apparently intended to support their Motion for Removal, only further muddy the matter. In their Response, Respondents claim "This Court has subject matter jurisdiction under 28 U.S. C. §§ 1331 and 1338(a) as this action arises under the United States Constitution." Reading this without further context, the Court would ordinarily assume that "This Court" refers to the South Carolina Administrative Law Court since that is where Respondents have attempted to file these counterclaims. However, 28 U.S.C.A. § 1331 (West) provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Clearly, this section does not provide the South Carolina Administrative Law Court with jurisdiction; rather, this is a federal statute granting jurisdiction to the **federal district courts** over civil actions arising under the United States Constitution. *Id.* If Respondents intend to file counterclaims in this Court, this

section does not support their position. Moreover, in Respondents’ Motion for Removal, they request this action be removed to the **state circuit court**. This citation supports removal, if at all, to the **federal district court**. *See id.* Further, quizzically, the second section to which Respondents cite in support of jurisdiction—28 U.S.C.A. § 1338(a)—instructs that the federal district courts shall have original jurisdiction over any civil action arising under “any Act of Congress relating to **patents, plant variety protection, copyrights and trademarks**.” 28 U.S.C.A. § 1338(a) (West) (emphasis added). How this section has any bearing on this case, in this Court, the circuit court, or federal court, alludes me. Respondents similarly cite to 28 U.S.C.A. § 1391 to argue venue is proper in the **federal district court** for a civil action of this nature, and they cite to 28 U.S.C.A. §1400 to argue venue is proper for a civil action relating to “**copyrights or exclusive rights in mask works or designs**.” (emphasis added). Again, the Court is mystified by Respondents’ choice of authority.

Next, in their recitation of their counterclaims and third-party claims, Respondents add that they are not just asserting a violation of the United States Constitution, but also of the South Carolina Constitution (in their Motion for Removal, Respondents only cite to the United States Constitution). Indeed, Respondents assert an inverse condemnation claim, arguing that “Section Article 1” of the South Carolina Constitution prohibits private property from being taken for public use without just compensation. I assume Respondents intended to cite Article 1, section 13 of the South Carolina Constitution. Respondents also make counterclaims and third-party claims for (1) trespass against the Department and the City, (2) attorneys fees, and (3) a declaratory judgment finding the City’s Management Act is unconstitutional on its face. Thus, although Respondents inconsistently cite the two constitutions, taking their two filings—the Motion and Response—together, I summarize their arguments as follows:

- (1) The South Carolina Administrative Law Court does not have jurisdiction over the Department’s requests for injunctive relief pursuant to section 48-39-160, which provides the state circuit court with jurisdiction in this matter.
- (2) This matter should be removed to circuit court (or federal district court) because Respondents’ counterclaims and third-party claims either warrant a jury trial under subsection 48-39-220(B) and/or assert a violation of:
 - a. Article 1, Section 13 of the South Carolina Constitution;
 - b. The Fifth Amendment of the United States Constitution; and
 - c. The Seventh Amendment of the United States Constitution.

I address each argument in turn.

Section 48-39-160

Respondents argue this Court does not have jurisdiction over the Department's requests for injunctive relief.⁶ Respondents rely on section 48-39-160 of the South Carolina Code, which provides, in relevant part:

The circuit court of the county in which the affected critical area or any part thereof lies shall have jurisdiction to restrain a violation of this chapter at the suit of the department, the Attorney General or any person adversely affected.

At the outset, the application of section 48-39-160 to the Administrative Law Court's review of administrative agency actions solely seeking injunctive relief is questionable. Section 48-39-160 was not only enacted well before the Administrative Law Court was created, it was also enacted well before the passage of 2006 S.C. Act 387, section 53 (Act 387).⁷ Section 53 of Act 387 states the act was "intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."⁸ The uniform procedure to which the act is referring is, in part, the review of agency actions by the Administrative Law Court. *See Chem-Nuclear Sys., LLC v. S.C. Bd. of Health & Envtl. Control*, 374 S.C. 201, 204, 648 S.E.2d

⁶ The Department's request is a request for injunctive relief rather than a request to enforce an existing administrative order. Although the Department issued two Cease and Desist Directives to Respondents, according to the Department's own regulations, these are not enforcement orders in these circumstances. *See* S.C. Code Regs. Ann. 30-8(B) & (F) (2011). Rather, the Department has procedures for issuing and enforcing administrative orders under these circumstances pursuant to subsection 48-39-170(C) and regulation 30-8(F) that it did not avail itself of in this case. S.C. Code Ann. § 48-39-170(C) (Supp. 2023) (authorizes the Department to issue administrative orders for violations of Chapter 39); S.C. Code Regs. Ann. 30-8(F) (2011) (describing additional procedures for enforcement orders and the enforcement process, which are distinct from Cease and Desist Directives); *see also Berry v. S.C. Dep't of Health & Envtl. Control*, 402 S.C. 358, 360–61, 742 S.E.2d 2, 3 (2013) (noting the Department sent a separate administrative enforcement order following its Cease and Desist Directive and a Notice of Violation and Admission Letter).

⁷ Section 48-39-160 has not been amended since its enactment in 1977.

⁸ The Administrative Law Court designates docket numbers as "CC" (indicating a contested case) or "IJ" (indicating an injunction). Nevertheless, this procedural designation does not mean that a request for injunction is not a contested case. Clearly, a request for injunction is a contested case as defined in section 1-23-505 of the South Carolina Code (Supp. 2023), which defines a contested case as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing." Article 1, Section 22 of the South Carolina Constitution states that "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard."

601, 602 (2007) (“Act 387, which was signed into law on June 9, 2006, and became effective on July 1, 2006, substantially reformed the South Carolina Administrative Procedures Act in order ‘to provide a uniform procedure for contested cases and appeals from administrative agencies.’”). Act 387 thus brought contested agency actions under the uniform structure of the Administrative Procedures Act (APA) and this Court. *See also* S.C. Code Ann. § 1-23-600 (Supp. 2023). Moreover, to the extent a statute may state otherwise, the amendments pursuant to Act 387 are controlling. 2006 S.C. Act 387, § 53 (providing “to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling”).

Here, as part of the uniform relief envisioned in Act 387, the General Assembly enacted subsection 1-23-600(F), which states:

(F) Notwithstanding another provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief pursuant to Section 1-23-630. The provisions of this section do not affect the authority of an agency to apply for injunctive relief as part of a civil action filed in the court of common pleas.

S.C. Code Ann. § 1-23-600(F) (Supp. 2023) (emphasis added). Subsection 1-23-600(F) thus specifically allows any state agency to apply for injunctive relief before the Administrative Law Court. In light of the General Assembly’s intent to create a uniform procedure, subsection 1-23-600(F) should be construed as creating the default procedure by which state agencies seek injunctive relief. Nevertheless, subsection 1-23-600(F) also recognizes the potential need for parties to seek injunctive relief in administrative matters that are reviewed as part of a civil action filed in the court of common pleas (circuit court). § 1-23-600(F) (“The provisions of this section do not affect the authority of an agency to apply for injunctive relief as part of a civil action filed in the court of common pleas.”). In other words, if a party files a civil action in the circuit court, section 1-23-600(F) provides that the circuit court can issue injunctive relief to facilitate that action without the parties having to seek that relief before the Administrative Law Court. Indeed, as further explained below, if a takings case was filed in circuit court, then the circuit court could hear a request for injunctive relief related to that claim that would ordinarily be administrative in nature.

Furthermore, even if section 48-39-160 is interpreted to allow an agency to seek injunctive relief in the circuit court, it should not be used to circumvent the jurisdiction of the Administrative Law Court where it is otherwise appropriate and preferred pursuant to Act 387.⁹ Thus, to the extent section 48-39-160 provides that certain claims for injunctive relief “shall” be filed in the circuit court, it cannot be construed to give the circuit court exclusive jurisdiction of injunctive claims by state agencies; rather, it creates a second means by which the Department can seek injunctive relief in a civil action.

Therefore, the Department, as the administrator of the Coastal Tidelands and Wetlands Act (Act) and a state agency “authorized by law to seek injunctive relief,”¹⁰ properly sought injunctive relief in this Court notwithstanding section 48-39-160. § 1-23-600(F); S.C. Code Ann. § 48-39-50 (2008) (authorizing the Department to administer the Act).

Counterclaims and Third-Party Claims

Next, Respondents argue the nature of their counterclaims and third-party claims require this matter to be removed to the circuit court (or possibly federal district court based upon their citations). Specifically, they cite to section 48-39-220, which provides that “[a]ny person claiming an interest in tidelands . . . may institute an action against the State of South Carolina for the purpose of determining the existence of any right, title or interest of such person in and to such tidelands” and “[s]ervice of process shall be made upon the State Fiscal Accountability Authority.” S.C. Code Ann. § 48-39-220(A) (Supp. 2023). Subsection (B) further provides that any party bringing suit under this section may demand a jury trial. § 48-39-220(B). This Court does not

⁹ Again, the purpose of Act 387 was to avoid such results by eliminating duplicitous provisions that would cause jurisdictional confusion in favor of a uniform system in which the Administrative Law Court is the default, if not exclusive, court for administrative matters.

¹⁰ Here, the Department is authorized under subsection 48-39-50(I) to “enforce the provisions of this chapter and all rules and regulations promulgated by the department and institute or cause to be instituted in courts of competent jurisdiction of legal proceedings to compel compliance with the provisions of this chapter.” S.C. Code Ann. § 48-39-50(I) (2008). A request for injunctive relief is a legal proceeding to compel compliance with the provisions of title 39. *See id.* Moreover, this Court is a court of competent jurisdiction under section 1-23-630, which provides that “[e]ach administrative law judge of the division has the same power at chambers or in open hearing as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction.” S.C. Code Ann. § 1-23-630 (2005).

hear jury trials and such an action is, as Respondents assert, inappropriate in this Court.¹¹ Additionally, this Court does not hear takings claims or trespass claims.¹²

Regardless, I further conclude Respondents have not properly filed their counterclaims and third-party claims with this Court. In their Response in which they allegedly filed their counterclaims and third-party claims, Respondents argue (1) the City is a required party under Rule 19 of the South Carolina Rules of Civil Procedure (SCRCP) and (2) the Court has subject matter under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). If the City is a necessary party as Respondents allege, then Respondents should have filed the appropriate motion to make the City a party, but they did not.¹³ Furthermore, 28 U.S.C. § 331 and 28 U.S.C. § 1338(a) do not provide this Court with jurisdiction over Respondents' counterclaims and third-party claims. Therefore, because Respondents counterclaims and third-party claims were not properly filed in this Court, they need not be dismissed as requested by the Department.

Finally, if Respondents wish to file a claim under section 48-39-220 and/or a takings claim and a trespass claim, they may file those actions separately in the proper court; those separate claims do not require removal of the Department's request for injunctive relief, which is proper in this Court. *Cf. Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 175, 656 S.E.2d 346, 352 (2008) ("This is a direct appeal from a decision regarding whether to uphold the Commission's decision denying the Kurschner's application to subdivide their property. Any resulting issues raised by the operation of that decision would not be ripe for judicial review at this stage, and those issues should be litigated in a separate action."). Moreover, since the Department's claim is that Respondents have not complied with any of their directives not to alter the critical area, it is questionable whether Respondents' takings claim is ripe—thus far, Respondents have been able to use their property as they desire and without restraint. *See Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 227, 467 S.E.2d 913, 917–18 (1996) ("A justiciable

¹¹ It is interesting that Respondents base their counterclaim on this section although they assert that the property at issue was dry land, outside the critical area for the purposes of adjudicating this dispute, which begs the question how then could this be a dispute about tidelands? *See* § 48-39-220(B).

¹² As the Department notes in its Return, this Court can hear "as-applied" constitutional challenges; however, a takings claim under either the South Carolina Constitution or the United States Constitution is not an "as-applied" challenge to the constitutionality of a statute.

¹³ Similarly, Respondents have made no argument about whether their counterclaims are compulsory or permissive under Rule 13 of the South Carolina Rules of Civil Procedure (SCRCP) or about the application of that rule in the Administrative Law Court.

controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.”).

ORDER

IT IS THEREFORE ORDERED that Respondents’ Motion for Removal is **DENIED**.
AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Ralph K Anderson III". The signature is written in a cursive, flowing style.

Ralph King Anderson, III
Chief Administrative Law Judge

March 26, 2024
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Health and)
Environmental Control and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy and Renee Reddy,)
)
Respondents.)
_____)

Docket No. 24-ALJ-07-0032-IJ

ORDER GRANTING MOTION

This matter is before the Court pursuant to a Motion to Intervene (Motion) filed by the South Carolina Coastal Conservation League (SCCCL or League) on March 26, 2024. The League submitted an affidavit from one of its members, Jimmy Carroll, to support its Motion. The South Carolina Department of Health and Environmental Control (Department) consents to the Motion. However, on April 5, 2024, Respondents Rom Reddy and Renee Reddy filed a Response in Opposition to the Motion (Response).¹ Based upon a thorough review of the Motion and the parties' filings, I conclude the Motion must be granted subject to limitations.

BACKGROUND

Respondents Rom Reddy and Renee Reddy own an ocean-front home located at 118 Ocean Boulevard, Isle of Palms, South Carolina. The Department initially filed this action requesting a preliminary injunction and a permanent injunction to enjoin Respondents from altering the beaches² critical area³ adjacent to their home. More specifically, the Department contends Respondents have constructed a hard erosion control structure within the beaches critical area without a permit, and continue to alter the critical area, in open defiance of one Notice to Comply

¹ Respondents' response did not include an original signature and, therefore, it was not properly filed with the Court. SCALC Rule 6(A). However, because the parties did not object, the Court will address the arguments in the Response.

² "Beaches" is defined to mean "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." S.C. Code Ann. Sec. 48-39-10(H) (Supp. 2023).

³ "Critical area" is defined to mean "any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280." S.C. Code Ann. Sec. 48-39-10(J) (Supp. 2023).

ROA 000030



and two Cease and Desist Directives issued to them by the Department. The Department argues that if an injunction is not issued, the public will suffer immediate and irreparable harm from the Reddys' unauthorized hard erosion control structure in the critical area, which has resulted in unsafe, dangerous conditions. In contrast, Respondents deny that the structure that they have built was ever located in the critical area subject to the Department's jurisdiction. Rather, they contend they have simply re-enforced an existing structure on their private property, which has become exposed to wave action due to storms and the Department's and the City's failure to protect the beach/dune system and renourish their property.

DISCUSSION

The League is a non-profit membership corporation organized and existing under the laws of the State of South Carolina. The League asserts its members regularly use and enjoy the public trust beaches and other natural resources of the South Carolina coastal zone, including the Isle of Palms, which are impacted by the Department's decisions. The League seeks to intervene in this case because a decision in Respondents' favor would set a precedent that "could encourage other property owners to adopt similar hard erosion control structures." It further argues that this precedent "would pose a direct threat to the interests of the League members who value and partake in the public's access to the dry sand areas for recreation and enjoyment."

Rule 20 of the Rules of Procedure for the South Carolina Administrative Law Court (SCALC Rules) governs interventions. Rule 20 provides that any person may intervene in a pending contested case upon showing that:

- (1) the movant will be aggrieved or adversely affected by the final order;
- (2) the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene; and
- (3) that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

SCALC Rule 20(B). "Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties." *Kiawah Resort Assocs., L.P. v. Kiawah Island Cmty. Ass'n, Inc.*, 421 S.C. 538, 552, 808 S.E.2d 521, 528 (Ct. App. 2017). In determining whether to allow a party intervene, the court should consider the practical implications of denying or allowing intervention. *Gov't Employee's Ins. Co., Ex parte*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007). Overall, the ALC's Rule is one of permissive intervention.

Standing

A party must have standing to intervene in an action. *Kiawah Resort Assocs., L.P.*, 421 S.C. at 552, 808 S.E.2d at 528. “Generally, a party must be a real party in interest to the litigation to have standing.” *Hill v. S.C. Dep’t of Health & Env’t Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010). “A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation.” *Id.* at 22, 698 S.E.2d at 623; *see Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001) (“A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action.”).

Here, Respondents do not challenge the League’s standing to intervene. Nonetheless, the League has standing to intervene as its members reside and actively use and enjoy the water, wetlands, and beaches surrounding the Isle of Palms, including the area on which Respondents have constructed the erosion control structure.

Adversely Affected

The League asserts it has a vital interest in, and will be affected by, the outcome of this matter. Specifically, it argues that if the final order is in favor of Respondents, it will affect its members who regularly use the public beach at the Isle of Palms, including Jimmy Carroll, a member of the League and property owner on the Isle of Palms. The League submitted Mr. Carroll’s affidavit, which avers that “the impact of the seawall on [him] is significant,” and the “impacts if the permit denial is reversed would be devastating to my recreational and aesthetic interest in the Isle of Palms, undermining the very essence of why I choose to reside here.”

Respondents argue that the League has not “made a showing that it is entitled to intervene and its reasons for intervention are speculative at most.”

The League has demonstrated that an order in favor of Respondents could set a precedent that would encourage other property owners to adopt similar hard erosion control structures, which pose a direct threat to the interests of its members who value and partake in the public’s access to the dry sand areas. Indeed, Mr. Carroll attested that he resides near the Respondents and has witnessed the “negative effects of [Respondents] actions on [himself], the environment and beachgoer’s experience.” He asserts he has been unable to use the public beach in front of Respondents’ property because of the structure.

Therefore, a decision in Respondents' favor could adversely affect the League's members, including Mr. Carroll. However, the question remains whether the League's interests are being adequately represented by the Department.

Adequate Representation by Existing Parties

"The burden to show that the representation may be inadequate is on the [intervenor]." *S.C. Tax Comm'n v. Union Cty. Treasurer*, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct.App. 1988). "This burden is minimal and the [intervenor] need only show that the representation of his interests 'may be' inadequate." *Berkeley Elec. Co-op., Inc.*, 302 S.C. at 191, 394 S.E.2d at 715. For guidance on this particular requirement, it is helpful to look at jurisprudence discussing Rule 24(a) of the South Carolina Rules of Civil Procedure (SCRCP). Under Rule 24(a), if the intervenor and an existing party have "the same interests or ultimate objective in the litigation a presumption arises that its interests are adequately represented and the application should be denied unless a showing of inadequate representation is made by demonstration of adversity of interest, collusion, or nonfeasance." *Union Cty. Treasurer*, 295 S.C. at 260, 368 S.E.2d at 74. Further, to determine whether the movant's rights are adequately represented, our supreme court has referred to three factors to consider. *Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990) (referencing the three factors examined by the U.S. Ninth Circuit Court of Appeals in *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir.1983)). The three factors are:

- (1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.

Id.

The League argues its interests will not be adequately represented by the Department. It specifically argues that while the Department represents the members of the public generally, the "League represents a subset of the public who have a particular mission to protect the environmental values of the coast for future generations." More persuasively, Mr. Carroll asserts that "as a neighboring property owner and member of the League, I have a perspective on the impacts of the proposed project that Petitioner DHEC cannot provide." Indeed, the League asserts its members could provide specific evidence about how the erosion control structure has impacted the local public's use and enjoyment of the public trust and the beach. Respondents, however, assert that nothing suggests that the Department could not make all of the intervenor's arguments

or that it is unwilling to make any arguments. Respondents also argue that the Department and the League share the same objective and that “the League has not made any showing sufficient to overcome a presumption of adequacy.”

As evidenced by the Department’s filings in this case, the Department appears to be arguing the same points the League makes here—in particular, the Department argues the ongoing construction of the erosion control structure by Respondents poses immediate and irreparable harm to the public. *See Berkeley Elec. Co-op., Inc.*, 302 S.C. at 191, 394 S.E.2d at 715. Thus, I find the League has failed to show they meet the first factor under *Berkeley Electric*. *See id.* As to the second factor—whether the existing parties are capable and willing to make such arguments, the Department’s consent suggests the Department, itself, may not make all of the intervenor’s arguments.

As to the third factor—whether the League has different knowledge, experience, or perspective on the proceedings—I find that the League has demonstrated that it may have a different experience or perspective than the Department regarding the damage the erosion control structure has caused. Nonetheless, if both the League and the Department seek to enjoin Respondents from altering the beaches critical area adjacent to their home, then their interests are aligned. *See S.C. Tax Comm’n v. Union Cty. Treasurer*, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988) (“When an applicant for intervention and an existing party have the same interests or ultimate objective in the litigation a presumption arises that its interests are adequately represented and the application should be denied unless a showing of inadequate representation is made by demonstration of adversity of interest, collusion, or nonfeasance.”).

Importantly, the Court is mindful that “the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties.” *Kiawah Resort Assocs., L.P.*, 421 S.C. at 552, 808 S.E.2d at 528. Therefore, although it is unlikely the League will make claims that will not be adequately represented by the Department, the Court cannot, at this point, clearly find they will not. Accordingly, the League should be allowed to intervene, but its representation will be limited to presenting arguments and evidence that are different from the Department’s and uniquely reflects their interests. Any effort to extend their representation to issues that overlap with the Department would be a violation of the League’s conditional intervention.

Prejudice

The League argues there will be no undue delay or prejudice to the existing parties because a hearing has already been set and they “will comply with all Court scheduling orders and deadlines.” Respondents did not address the issue of prejudice or undue delay in their Response. Accordingly, I do not find allowing the League to intervene to be prejudicial.

ORDER

IT IS THEREFORE ORDERED that the League’s Motion to Intervene is **GRANTED** but their intervention is limited to the presentation of arguments that are different and unique compared to the Department’s arguments in this case.

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Ralph K. Anderson, III". The signature is written in a cursive, flowing style.

Ralph K. Anderson, III
Chief Administrative Law Judge

April 12, 2024
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy and Renee Reddy,)
)
Respondents.)
_____)

Docket No. 24-ALJ-07-0232-CC

**ORDER DENYING
MOTION TO CONSOLIDATE**

This matter is before the South Carolina Administrative Law Court (the Court) pursuant to a request for contested case filed by Rom Reddy and Renee Reddy. The Reddys challenge the administrative order issued by the South Carolina Department of Environmental Services (Department) finding they unlawfully constructed a structure in beaches critical area in violations of its cease and desist directives, statutory law, and regulations.

Previously, the Department had filed a Notice of Petition and Petition for Enforcement and Injunctive Relief regarding Reddys' failure to comply with two Cease and Desist directives from the Department (Docket No. 24-ALJ-07-0032-IJ). In its request for relief, the Department contends the Reddys have constructed a hard erosion control structure within the beaches critical area without a permit and have continued to alter the critical area.

After this contested case was filed, the parties filed a Joint Motion to Consolidate this contested case matter (Docket No. 24-ALJ-07-0232-CC) with the injunctive matter (Docket No. 24-ALJ-07-0032-IJ) because the cases involve common questions of law and facts.¹ In addition, the same or substantially the same evidence is relevant to the matters at issue in each case.

The Court held a conference call on August 1, 2024, at 10:00 a.m., in which all parties participated. During the call, the Department explained the contested case is the current priority; nonetheless, it would like to reserve its right to pursue its petition for injunctive relief. In other words, it wanted to continue the petition for injunctive relief. Thus, unless the Department decides

¹ The parties also submitted a Consent Scheduling Order involving both of these cases. However, because the Joint Motion is denied, the Court will issue the scheduling order in the contested case only.

ROA 000036



to revive its petition for injunctive relief during the pendency of the contested case action, the hearing on the merits will only involve the contested case.

Regarding the Motion to Consolidate, Rule 19(D) of the Rules of Procedure for the Administrative Law Court (SCALC Rules) provides, in relevant part:

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at such hearing, the administrative law judge may upon motion by any party or on his own motion order that a consolidated hearing be conducted.

Although the cases involve the same or substantially the same evidence and facts, the Court finds that given the distinct nature of this contested case proceeding and injunctive proceedings, consolidation of these actions is not appropriate. Injunctive relief is “a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Peek v. Spartanburg Reg’l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005), holding modified by *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). “To obtain an injunction, the plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to **protect the legal rights pending in the litigation.**” *Id.* (emphasis added). Thus, the nature of injunctive relief is to protect rights pending litigation; it does not serve this purpose if it is consolidated with that pending litigation. *See id.* Therefore,

IT IS HEREBY ORDERED that the Joint Motion is **DENIED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

August 7, 2024
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy and Renee Reddy,)
)
Respondents.)
_____)

Docket No. 24-ALJ-07-0232-CC

ORDER GRANTING MOTION

This matter is before the Court pursuant to a Motion to Intervene (Motion) filed by the South Carolina Coastal Conservation League (SCCCL or League) on August 1, 2024, with the consent of all parties.

DISCUSSION

Rule 20 of the Rules of Procedure for the South Carolina Administrative Law Court (SCALC Rules) governs interventions. Rule 20 provides that any person may intervene in a pending contested case upon showing that:

- (1) the movant will be aggrieved or adversely affected by the final order;
- (2) the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene; and
- (3) that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

SCALC Rule 20(B). Overall, the ALC's Rule is one of permissive intervention.

"Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties." *Kiawah Resort Assocs., L.P. v. Kiawah Island Cmty. Ass'n, Inc.*, 421 S.C. 538, 552, 808 S.E.2d 521, 528 (Ct. App. 2017). In determining whether to allow a party intervene, the court should consider the practical implications of denying or allowing intervention. *Gov't Employee's Ins. Co., Ex parte*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007).

Based upon the consent of the parties,



ROA 000038

IT IS THEREFORE ORDERED that SCCCL's Motion to Intervene is **GRANTED**.
AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Ralph K. Anderson, III". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Ralph K. Anderson, III
Chief Administrative Law Judge

August 7, 2024
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
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Petitioners,)
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v.)
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Rom Reddy and Renee Reddy,)
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)
Respondents.)
_____)

Docket No. 24-ALJ-07-0232-CC

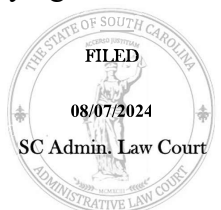
CONSENT SCHEDULING ORDER

This matter is before the Court, pursuant to the party's agreement to a Scheduling Order. The Court finds that good cause exists to set the agreed deadlines.

IT IS THEREFORE ORDERED that the Court adopt the following Consent Scheduling Order:

1. The Reddys and the Department shall identify witnesses it expects to call at trial by name, address, telephone number, and expected subject matter of the testimony, no later than **August 15, 2024**. The Department's consent to this particular deadline does not waive the Department's current request for sanctions against Respondents, filed on July 15, 2024, which includes a request to exclude certain witnesses. It is the Department's position that only witnesses that are unique to the issues contained in the Administrative Order should be subject to this expanded deadline as witnesses related to the Injunctive Relief Petition were compelled to be properly disclosed pursuant to the Court's Order dated June 6, 2024.
2. The Reddys shall file and serve a document identifying expert witnesses by name, address, telephone number, area of expertise, and expected subject matter of the testimony, no later than **August 15, 2024**.
3. SCCCL shall identify witnesses it expects to call at trial by name, address, telephone number, and expected subject matter of the testimony, no later than **September 15, 2024**.
4. At this time the Department intends to rely on the specialized knowledge and expertise of its staff members. However, the Department and SCCCL reserve the right to name expert witnesses in response to those named by the Reddys if necessary. The Department and SCCCL will name any expert witnesses necessary in response to those named by the Respondents no later than **October 15, 2024**.
5. The Reddys reserve the right to name rebuttal expert witnesses in response to those named by the Department and SCCCL and shall file and serve a document identifying

ROA 000040



any rebuttal expert witnesses by name, address, telephone number, area of expertise, and expected subject matter of the testimony no later than **November 1, 2024**.

6. The parties shall complete discovery pursuant to the Administrative Law Court Rules of Procedure no later than **December 15, 2024** with all requests served in a timely manner to allow for responses by this date.
7. Dispositive motions, if any, shall be filed no later than **January 24, 2025**.
8. This case will be called for trial on or after **February 15, 2025**.
9. The parties shall, on or before **fourteen calendar days prior to the scheduled hearing date** exchange:
 - a. a final list of witnesses the party reasonably expects to testify at the hearing, including name, address, telephone number, and expected subject matter of the testimony if that information has not otherwise been disclosed in discovery, and
 - b. a final list of all exhibits expected to be offered at the hearing.
10. Any objections to these disclosures must be exchanged on or before **ten calendar days prior to the scheduled hearing date**, and a joint exhibit list reflected those exhibits agreed upon should be compiled.
11. The parties may mutually agree to alter any deadline within this Scheduling Order with the exception of the trial deadline which can only be altered with leave of the Court.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

August 7, 2024
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
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Petitioners,)
)
v.)
)
Rom Reddy and Renee Reddy,)
)
)
Respondents.)
_____)

Docket No. 24-ALJ-07-0232-CC

AMENDED SCHEDULING ORDER

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a request for contested case hearing by Respondents challenging the administrative order issued by the South Carolina Department of Environmental Services (Department) finding Respondents unlawfully constructed a structure in beaches critical area in violations of its cease-and-desist directives, statutory law and regulations. On November 25, 2024, the parties filed a Consent Motion for Entry of Proposed Second Amended Scheduling Order (Consent Motion) requesting to amend its scheduling order due to the number of experts, discovery and extensive amount of preparation required for counsel. The parties submitted a Proposed Second Consent Scheduling Order reflecting the terms of their agreement. After reviewing the parties' request, this Court grants the Consent Motion and issues the following Amended Scheduling Order:

1. At this time the Department intends to rely on the specialized knowledge and expertise of its staff members. However, the Department and SCCCL reserve the right to name expert witnesses in response to the Reddy expert who is to be deposed on December 12, 2024, if necessary. The Department and SCCCL will name any expert witnesses necessary in response to those named by the Respondents no later than January 1, 2025.
2. The Reddys reserve the right to name rebuttal expert witnesses in response to those named by the Department and SCCCL and shall file and serve a document identifying any rebuttal expert witnesses by name, address, telephone number, area of expertise. and expected subject matter of the testimony no later than January 14, 2025.



ROA 000042

3. The parties shall complete discovery pursuant to the Administrative Law Court Rules of Procedure no later than March 3, 2025 with all requests served in a timely manner to allow for responses by this date.
4. Dispositive motions, if any, shall be filed no later than March 3, 2025; Response briefs will be due no later than March 17, 2025; and Replies will be due no later than March 24, 2025.
5. This case will be called for trial on or after April 28, 2025.
6. The parties shall, on or before fourteen calendar days prior to the scheduled hearing date exchange:
 - a. a final list of witnesses the party reasonably expects to testify at the hearing, including name, address, telephone number, and expected subject matter of the testimony if that information has not otherwise been disclosed in discovery, and
 - b. a final list of all exhibits expected to be offered at the hearing.
7. Any objections to these disclosures must be exchanged on or before ten (10) calendar days prior to the scheduled hearing date, and a joint exhibit list reflecting those exhibits agreed upon should be compiled.
8. The parties may mutually agree to alter any deadline within this Scheduling Order with the exception of the trial deadline which can only be altered with leave of the Court.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 5, 2024
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
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Petitioners,)
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v.)
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Rom Reddy and Renee Reddy,)
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Respondents.)
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Docket No. 24-ALJ-07-0232-CC

**ORDER DENYING MOTION
FOR SUMMARY JUDGMENT**

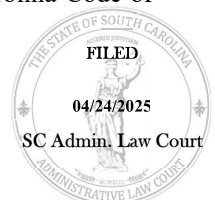
STATEMENT OF THE CASE

This matter is before the Administrative Law Court (Court or ALC) on a Motion for Summary Judgment (Motion) filed by Respondents Rom and Renee Reddy (collectively, Respondents) on March 3, 2025. On March 28, 2025, Petitioners South Carolina Department of Environmental Services (Department)¹ and South Carolina Coastal Conservation League (SCCCL) each filed a response to the Motion.

Respondents filed a request for a contested case hearing on July 18, 2024, challenging the administrative order issued by the Department wherein it found Respondents violated the South Carolina Coastal Zone Management Act (Act) and the South Carolina Code of Regulations by constructing a structure within a “beaches critical area” and altering a critical area without a permit.² As a result of these violations, the Department assessed a \$289,000.00 civil penalty and requested that Respondents submit a Corrective Action Plan (CAP) and, upon approval of the CAP, immediately remove non-beach compatible materials and restore the affected area.

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

² Specifically, the Department found Respondents violated subsections 48-39-130(A),(C), (D)(6) of the South Carolina Code (2008) and Regulations 30-2(B), -8(B), -13(N)(3)(c), & 15(H)(5)(a) of the South Carolina Code of Regulations (2011 & Supp. 2024).



ROA 000044

In its Motion, Respondents argue that it is entitled to summary judgment as a matter of law because 1) the Department lacks permitting authority over the “Beaches Critical Area,” 2) the Department exceeded its authority by enforcing an unpromulgated standard, and 3) the definition of “Beaches Critical Area” is unconstitutionally vague and therefore unenforceable as applied.

Based upon a thorough review of the Motion and the parties’ filings, I conclude Respondents’ Motion should be denied.

UNDISPUTED FACTS

On September 24, 2014, Rom L. Reddy purchased 118 Ocean Boulevard, Isle of Palms, Charleston County, SC (PID 5680900155) (property).³ The property is located in the unstabilized inlet erosion zone on Isle of Palms,⁴ a portion of the property is also located in the Beaches Critical Area, including the active beach,⁵ regulated by the Department.

On September 7, 2023, the Department became aware that Respondents, through their contractor BluTide Marine Construction (contractor), were intending to perform beachfront activities at the property; specifically, Respondents were seeking to modify the landscape landward of the setback line. There is no dispute between the parties that Respondents proceeded through their contractor to modify the property by filling approximately 1,255 sq. ft. of the beach with non-beach compatible materials and constructing a hard erosion control structure. Nevertheless, the parties disagree as to whether the Department has permitting authority in the Beaches Critical Area landward of the setback line. Additionally, the parties disagree as to whether the statutory definition of Beaches Critical Area is unconstitutionally vague, as applied to Respondents.

DISCUSSION

The Rules of Procedure for the South Carolina Administrative Law Court (SCALC Rules) provide “[t]he South Carolina Rules of Civil Procedure . . . may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.” SCALC Rule 68. Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary

³ Mr. Rom Reddy and his spouse, Renee Reddy, reside at the property.

⁴ An Inlet Erosion Zone is “a segment of shoreline along or adjacent to tidal inlets which is directly influenced by the inlet and its associated shoals.” S.C. Code Ann. Regs. 30-1.D(28) (Supp. 2024). Unstabilized Inlet Erosion Zones are “inlets that have not been stabilized by jetties, terminal groins, or other structures.” *Id.* at – D(28)(a).

⁵ 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 § 48-39-270(13).

judgment shall be granted if it is shown “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *See also Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005); *Cisson Constr. Inc. v. Reynolds & Assoc. Inc.*, 311 S.C. 499, 429 S.E.2d 847 (Ct. App. 1993). “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

“In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378–79, 534 S.E.2d 688, 692 (2000). “[B]ecause summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues.” *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014). Furthermore, “[s]ummary judgment is not appropriate where further inquiry into the facts is desirable to clarify the application of the law.” *Rothrock v. Copeland*, 305 S.C. 402, 405, 409 S.E.2d 366, 368 (1991). Summary judgment should also not be granted “even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts.” *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000).

Before turning to the substance of Respondents’ Motion, an overview of the South Carolina Coastal Tidelands and Wetlands Act (Act), the Beach Management Act, and the South Carolina Coastal Zone Management Act (Regs) is helpful.

The South Carolina Coastal Tidelands and Wetlands Act

In 1977, the Legislature enacted the South Carolina Coastal Tidelands and Wetlands Act (Act) to “protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone.” S.C. Code Ann. §§ 48-39-30 to -360 (2008 & Supp. 2024). The Act defines the State’s “coastal zone” as “all coastal waters and submerged lands seaward to the state’s jurisdictional limits and all lands and waters in the counties of the State which contain **any one or more of the critical areas**.” S.C. Code Ann. § 48-39-10(B) (emphasis added). The Act establishes specific state policies, including “to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the **critical areas of the coastal zone**.” S.C. Code Ann. § 48-39-30(B)(1) (2008) (emphasis added). Notably, the Act forbids any person from utilizing “a critical

area for a use other than the use the critical area was devoted to on such date unless he has first obtained a permit from the department.” S.C. Code Ann. § 48-39-130(A) (2008). Further, “no person shall fill, remove, dredge, drain or erect any structure on or in any way alter any critical area without first obtaining a permit from the department.” S.C. Code Ann. § 48-39-130(C).

Pursuant to the Act, “critical areas” include “any of the following: coastal waters; tidelands; beaches; beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.”⁶ S.C. Code Ann. § 48-39-10(J) (Supp. 2024) (originally enacted as Act No. 123, § 3 (1977) (defining critical area as: coastal waters, tidelands, beaches, and primary oceanfront sand dunes).⁷ “Beaches” are defined as “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) (Supp. 2024).

Further, the Legislature empowered the Department with the responsibility to administer the provisions of the Act, including the duty to promulgate rules and regulations; examine, modify, approve or deny applications for activities covered by the provisions; and enforce the provisions of the Act. S.C. Code Ann. § 48-39-50 (2008). The Department is also required to develop a comprehensive coastal management program and provide a regulatory system for the orderly and beneficial use of the critical areas. S.C. Code Ann. § 48-39-80 (2008 & Supp. 2024). Further, the Department has the authority to remove all erosion control structures that have an adverse effect on the public interest. S.C. Code Ann. 48-39-120 (2008).

The Beach Management Act

The Legislature subsequently amended the Act to incorporate the Beach Management Act (BMA). S.C. Code Ann. §§ 48-39-250 to -360 (2008 & Supp. 2024). The BMA was in part enacted out of the recognition that the Department did not have “adequate jurisdiction ... to enable it to effectively protect the integrity of the **beach/dune system**.” S.C. Code Ann. § 48-39-250(4) (2008) (emphasis added); *see also* S.C. Code Ann. § 48-39-260 (2008 & Supp. 2024) (setting forth policy statement of BMA). Prior to its enactment, the Department’s permitting authority over

⁶ The Act does not include a discrete definition of “beach/dune system” aside from that provided under the subsection § 48-39-10(J)(4). However, the Department’s regulations define beach/dune system as “all land from the mean high-water mark of the Atlantic Ocean landward to the 40-year setback line described in §48-39-280.” S.C. Code Regs. 30-1.D(5) (Supp. 2024).

⁷ As originally enacted, primary oceanfront sand dunes are “those dunes which constitute the front row of dunes adjacent to the Atlantic Ocean.” S.C. Code Ann. § 48-39-10(I) (originally enacted as Act No. 123, § 3 (1977)).

“primary ocean front sand dunes” critical area extended only to “the landward trough of the front row of dunes adjacent to the Atlantic Ocean.” Nat’l Oceanic and Atmospheric Admin. (NOAA), *Final Findings of Approvability* (Feb. 15, 1989); *see* S.C. Code Ann. § 48-39-10(I). The BMA, however, replaced the “primary ocean front sand dunes” critical area with “beach/dune system” critical area which the Act defines as the “area from the mean high-water mark to the setback line as determined in Section 48-39-280.” Fed. Reg. Vol 54, No. 34 (Feb. 22, 1989); *compare* S.C. Code Ann. § 48-39-10(J) (originally enacted as Act No. 123, § 3 (1977), *with* S.C. Code Ann. § 48-39-10(J) (Supp. 2024); S.C. Code Ann. § 48-39-280 (establishment of baseline and setback lines). Section 48-39-280 of the South Carolina Code (Supp. 2024) further requires the Department to establish a setback line “based upon the best historical and scientific data adopted by the Department as a part of the State Comprehensive Beach Management Plan.” S.C. Code Ann. § 48-39-280(B). In other words, pursuant to the BMA, the scope of the “beach/dune system” critical area is tied to the setback lines established by the Department.

The BMA also established strict limitations on construction seaward of the setback line. S.C. Code Ann. § 48-39-290 (2008 & Supp. 2024) (establishing restrictions on construction or reconstruction). Additionally, the General Assembly suggested disrelishment towards the use of new hard erosion control structures declaring that “[n]o new erosion control structures or devices are allowed seaward of the setback line except: [listing exceptions].”⁸ S.C. Code Ann. §§ 48-39-250(5) (2008), -290(B)(2)(a) (2008). Further, the BMA established that “[a]ll other construction or alteration between the baseline and setback line requires a department permit.” S.C. Code Ann. § 48-39-290(B)(4).

South Carolina Coastal Zone Management Act

To guide preservation and utilization of coastal resources, the Department promulgated Chapter 30 of the South Carolina Code of Regulations (2011) (amended by SCSR 48-5 doc. No. 5200, eff May 24, 2024) (The South Carolina Coastal Zone Management Act, hereinafter

⁸ More specifically, subsection 48-39-250(5) of the South Code (2008) includes the finding that “[t]he use of armoring in the form of hard erosion control devices such as seawalls, bulkheads, and rip-rap to protect erosion-threatened structures adjacent to the beach has not proven effective. These armoring devices have given a false sense of security to beachfront property owners. In reality, these hard structures, in many instances, have increased the vulnerability of beachfront property to damage from wind and waves while contributing to the deterioration and loss of the dry sand beach which is so important to the tourism industry.”

CZMA).⁹ Consistent with section 48-39-130 of the South Carolina Code (2008 & Supp. 2024), the CZMA provides that “**any person wishing to alter a critical area must receive a permit from the Department.**” S.C. Code Ann. Regs. 30-2.B (2011) (emphasis added). Regulation 30-10 of the South Carolina Code establishes critical area boundaries for “Coastal Waters and Tidelands” and “Beaches and Beach/Dune system.” Notably, the regulation provides that in determining the boundaries of Beaches and Beach/Dune System, “the Department will be guided by Section 48-39-270, Section 48-39-280 and Section 48-39-360.” S.C. Code Ann. Regs. 30-10.B (2011) (emphasis added); *see* S.C. Code Ann. §§ 48-39-280(A) & (B) (establishment of baseline and setback line), -270 (2008) (definitions), -360 (inapplicable exception to permit requirement) (2008).

Consistent with the BMA, regulation 30-13 of the South Carolina Code of Regulation (2011) prohibits “new erosion control structures or devices ... **within the beaches and/or beach/dune system critical areas**” and construction on the active beach. S.C. Code Ann. Regs. 30-13.N(3)(a) (amended by SCSR 48-5 doc. No. 5200, eff May 24, 2024) (amending to replace reference to “setback area” with “beaches and/or beach/dune system critical area”) (emphasis added).

Finally, Chapter 30 of the South Carolina Code of Regulations recognizes the need for a “comprehensive, long-range beach management plan.” *See* S.C. Code Ann. §S 48-39-260(2) (“... the policy of South Carolina is to ... (2) create a comprehensive, long-range beach management plan. . .”), -320(A) (“The department’s responsibilities include the creation of a long-range and comprehensive beach management plan for the Atlantic Ocean shoreline in South Carolina), -320(A)(2) (“The plan must include . . . development of guidelines . . . [for] (b) development of a beach access program to preserve the existing public access . . . (c) maintenance of a dry sand and economically stable beach. . . [and] (d) protection of all sand dunes seaward of the setback line[.]”). The Department’s Beach Management Plan became effective in 1993 and has not been amended since. Significantly, it sets forth that, the Department’s permitting jurisdiction on beaches is “determined by the location of the setback line.” S.C. Code Ann. Regs. 30-21.H(3).¹⁰

⁹ The CZMA “[is] the Department statements of general public applicability that implement and prescribe policy and practice requirements of the Department. They are to be read as part of, and to be construed with, the policies set forth in the South Carolina Coastal Management Program.” S.C. Code Ann. Regs. 30-1.A(3) (Supp. 2024).

¹⁰ The Department was formerly known as the Coastal Council.

Whether the Department has Permitting Jurisdiction over Beaches Critical Area?

Respondents argue they are entitled to summary judgment as a matter of law because the Department lacks jurisdiction to enforce the administrative order imposed against them. More specifically, Respondents contend that section 48-39-280 of the South Carolina Code (Supp. 2024) implements the “preservation policy” applicable to “beaches”, not the “beach/dune system.” Respondents further argue that the inclusion of language in section 48-39-290 of the South Carolina Code (Supp. 2024) restricting construction and alteration in areas between the baseline and setback line with exclusion of any similar restrictions for projects landward of the setback line implies that the General Assembly intended to confine permitting for projects in the Beaches to areas seaward of the baseline or between the baseline and the setback line. Further, Respondents assert that regulation 30-10.B of the South Carolina Code of Regulations (2011), which effectuates the Department’s responsibility to establish a setback line, limits the Department’s permitting authority to the “Beaches and Beach/Dune System” which, they contend is single critical area. Respondent argue that support for their construction of the scope of the Department’s permitting authority can be gleamed from regulation 30-21.H(3) of the South Carolina Code (2011) which plainly states that “[the Department’s] permitting jurisdiction on the “beaches” is determined by the location of the setback line.” Lastly, Respondents argue that prior to the underlying allegations in this case, regulation 30-13.N(3)(a) of the South Carolina Code only restricted erosion control structures or devices in areas “seaward of the setback line.” S.C. Code Regs. 30-13.N(3)(a) (Supp. 2023), *compare with* S.C. Code Regs. 30-13.N(3)(a) (Supp. 2024) (restricting erosion control structures in areas within the “beaches and/or beach/dune system critical areas.”). Respondents assert that only thereafter did the Department amend its regulations to prohibit alterations in “beaches and/or beach/dune system critical areas.” In other words, Respondents suggest that the Department’s recent amendment to the regulation implies that it previously lacked permitting authority over areas landward of the setback line.

Conversely, the Department argues section 48-39-10(H) of the South Carolina Code (Supp. 2024) clearly and unambiguously establishes four critical areas (one of which includes the Beaches Critical Area) and that Respondents’ construction of the Act would render meaningless the Legislature’s establishment of four defined Critical Areas. Further, the Department argues that pursuant to section 48-39-20 of the South Carolina Code (2008) it has jurisdiction over coastal

lands and critical areas.¹¹ Additionally, the Department asserts that the lack of regulatory guidelines defining the scope of the Department's permitting authority does not imply that the Department lacks jurisdiction in this case since the Act unequivocally establishes that permits must be obtained to utilize or alter critical areas. *See* S.C. Code Ann. §§ 48-39-10(H) (defining beaches), -20 (granting Department permitting authority), -130(A) & (C) (prohibiting uses of critical areas without permits). Additionally, the Department argues that in order to construe regulation 30-21.H(3) of the South Carolina Code of Regulations (2011) consistently with the statutory language granting the Department permitting authority in the Beaches Critical Area, the meaning of "beaches" must be given its ordinary meaning. Similarly, SCCCL asserts that the Department's jurisdiction over the Beaches Critical Areas is clearly established by statute and has been recognized by courts and enforced by the Department for decades.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see also* *Murphy v. S.C. Dep't of Health & Env't. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012) ("Regulations are interpreted using the same rules of construction as statutes."). However, here the exact parameters of the Department's regulatory authority is ambiguous and thus statutory construction is required to resolve the issue presented in Respondents' Motion. "Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007). Further, statutes "must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *CRFE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)). "We therefore should not concentrate on isolated phrases within the statute." *Id.* Additionally, as currently established "where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons."). *Kiawah*

¹¹ The Department cites to multiple provisions of the Act including, subsections 48-39-250(3), (5), (6), (8), & (11) and section 48-39-260 of the South Carolina Code (2008 & Supp. 2024) to further show that the Department's jurisdiction in Beaches Critical Area is in furtherance of the overarching purpose and goals of the Act.

Dev. Partners, II v. S.C. Dep't. of Health & Env't Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014).

The Department's Permitting Authority over Beaches Critical Areas

Subsection 48-39-10(J) of the South Carolina Code (Supp. 2024) sets forth **four (4) distinct critical areas**: “(1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.” Pursuant to the plain language of this subsection, the Beaches Critical Area is a **distinct critical area** from the other three critical areas defined by the Act. “Beaches” are defined by the Act as “those lands subject to periodic inundation by tidal and wave action so that no non-littoral vegetation is established.” S.C. Code Ann. § 48-39-10(H). Meanwhile, the “Beach/Dune System” is “the area from the mean high-water mark to the setback line as determined in Section 48-39-280.” S.C. Code Ann. § 48-39-10(J). Notably, when the General Assembly enacted the BMA (including those sections emphasized by Respondents in their Motion) it did not repeal or alter the definition of Beaches. Rather beaches and the beach/dune system remained defined as two distinct critical areas. Further, the General Assembly has set forth that “no person shall utilize a critical area ... unless he has first obtained a permit from the department.” S.C. Code Ann. §§ 48-39-130(A) & -210(A) (2008) (setting forth exceptions).¹² Presumably, since the Department is the only state agency authorized to permit or deny alterations or utilizations within critical areas, it unequivocally has jurisdiction over the Beaches Critical Area. S.C. Code Ann. §§ 48-39-10(H) & -210.

Further, Respondents' contention that subsections 48-39-280 and 290 of the South Carolina Code (Supp. 2024) restrict the Department's permitting authority in the Beaches Critical Area to locations seaward of the setback line is unconvincing.¹³ Section 48-39-280 establishes the State's

¹² The exemptions are inapplicable to the matter at hand.

¹³ In support of their argument, Respondents cite to *Walldorf v. S.C. Dept. of Health and Env't Control*, Nos. 11-ALJ-0002-CC through 11-ALJ-07-0004-CC, 2011 WL 2413301 (S.C. Admin Law Ct. filed Mar. 28, 2011) for “the simple proposition that single provisions of the Act may not be read in isolation, and as a result, alteration and utilization activities must be listed in Section 290 to be subject to the Department's permitting authority.” While the Court agrees that statutory sections which are part of the same general statutory law must be construed together and each one given effect, Respondents argument is unconvincing. By interpreting the beach preservation policy to only restrict alterations in areas between the baseline and setback lines, Respondents discount the importance of the language of section 48-39-280 which establishes the beach preservation policy. Indeed, the beach preservation policy was implemented to establish standards for setting the baseline and setback line. Importantly, the beach/dune system is the only critical area that is determined by the setback line. Thus, construing Title 39 as a whole, section 48-39-290 appears to apply to the Beach/Dune System Critical Area, not the Beaches Critical Area. Consistent with this

beach preservation policy and assigns the Department the responsibility to “establish a baseline that parallels the shoreline for each standard erosion zone and each inlet erosion zone.”¹⁴ To implement the beach preservation policy,

a setback line must be established landward of the baseline a distance which is forty times the average annual erosion rate or not less than twenty feet from the baseline for each erosion zone based upon the best historical and scientific data adopted by the department as a part of the State Comprehensive Beach Management Plan.

S.C. Code Ann. § 48-39-280(B).¹⁵ Notably, of the four critical zones, the Beach/Dune System is the only critical area defined by the setback line. Although the Legislature prohibits construction under subsections 48-39-290(B)(2)(a) & -290(B)(4) in areas seaward of the baseline—or between the baseline and the setback line, the Legislature did not create an absolute right to construct landward of the setback line, when that area is “subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.” S.C. Code Ann. § 48-39-10(H) (defining beaches).¹⁶ Therefore, I conclude that section 48-39-290 of the South Carolina Code (Supp. 2024) must not be construed to undermine the statutory mandate that no person shall utilize the Beaches Critical Area without first obtaining a permit from the Department, something which it is undisputed Respondent failed to do. *See* S.C. Code Ann. §§ 48-39-10(H), 130(A) & (C).¹⁷

conclusion, it is significant to note that in applying section 48-39-290, the *Walldorf* court considered activities within the Beach/Dune System Critical Area, not the Beaches Critical Area.

¹⁴ Respondents also argue that subsection 48-39-280(A) creates a “preservation policy” applicable to “beaches,” not the “beach/dune system.” S.C. Code Ann. § 48-39-280(A). However, Respondents provide no argument to further support their narrowed application of the beach preservation policy. Indeed, Respondents’ construction disregards the underlying policy for comprehensive, long-range beach management plan and local comprehensive beach management plans to be established for the protection, preservation, restoration, and enhancement of the beach/dune system which must promote the state’s beachfront. *See* S.C. Code Ann. § 48-39-250(2) (2008). Thus, I conclude that the beach preservation policy applies to the entirety of the state’s coastal environment. S.C. Code § 28-39-30(A) (purpose of Title 39 is “to protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and of all the people of the State.”).

¹⁵ The language of the statute implies that the reference to the State Comprehensive Beach Management Plan is for purpose of the adopted data which the Department shall use to set the setback line.

¹⁶ Indeed, this Court reached a similar conclusion in *Summer House Horizontal Prop. Regime v. S.C. Dep’t of Env’t. Control*, Docket No. 97-ALJ-07-0403-CC & 97-ALJ-07-0407-CC, 1998 WL 268396 (S.C. Admin. L. Ct. filed Apr. 28, 1998). In *Summer House*, the Court reviewed the Department’s denial of two permit applications to install erosion control devices in the Beach Critical Area. The Court found that the Beaches is a legislatively defined area over which the Department has permitting authority. *Id.* at * 8. Notably, the Court further concluded that “[t]he delineation and creation of the setback line and the baseline did not divest the Department of jurisdiction over areas landward of the setback line when oceanfront beaches are subject to tidal wave action so that no nonliteral vegetation is established.” *Id.*

¹⁷ I acknowledge that at first glance section 48-39-290 of the South Carolina Code could be considered more specific and definite than subsection 48-39-130(A) of the South Carolina Code. *See also Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010) (citing *Spectre, LLC v. S.C. Dept. of Health and Env’t. Control*, 386 S.C.

Respondents further contend that, pursuant to Regulation 30-10(B) of the South Carolina Code of Regulations (2011), the Department's permitting authority is limited to a single Beaches and Beach/Dune System Critical Area. Regulation 30-10(B) provides:

Beaches and Beach/Dune System: The Department has permitting authority over beaches and the beach/dune system. In determining the boundaries of this critical area, the Department will be guided by Section 48-39-270, Section 48-39-280 and Section 48-39-360."

While regulation 30-10(B) of the South Carolina Code of Regulations (2011) establishes critical area boundaries for the Beaches and Beach/Dune System, the regulation specifically refers to these as two separate critical areas, "beaches **and** the beach/dune system;" which, are also recognized under the Act as distinct critical area. Further, the second sentence uses the singular tense of critical area, thus implying that the provision only applies to one of the referenced critical areas. Importantly, of the two referenced critical areas, the beach/dune system is the only critical area which is defined by the setback line described in section 48-39-280." S.C. Code Ann. §§ 48-39-10(J)(4) & -270(5). Following in point, the Department must be guided by the referenced statutes to determine the boundaries for the Beach/Dune System, which again is a separate and distinct critical area from the Beaches Critical Area. Moreover, Respondents' interpretation of Regulation 30-10(B) of the South Carolina Code of Regulations (2011) would render meaningless the General Assembly's establishment of four critical areas, each of which shall not be used unless a permit is obtained from the Department. S.C. Code Ann. §§ 48-39-130(A) & (C). Likewise, if the Respondents' interpretation were correct, regulation 30-21(H)(3) of the South Carolina Code of Regulations (2011) would be rendered void to the extent that it conflicts with the Act. *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984) (a regulation must fall when it alters or adds to a statute).

357, 688 S.E.2d 844, 851 (2010) ("[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect."). However, as stated above, section 48-39-290 does not encompass "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." In fact, it only references "areas seaward of the baseline or between the baseline and the setback line." Accordingly, I conclude that section 48-39-290 is not a qualifier of subsection 48-39-130(A). Indeed, to conclude otherwise would leave the Department unable to protect lands that fall landward of the setback line that are "subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." See S.C. Code Ann. §§ 48-39-10(H),

The Department's Permitting Authority under the Beachfront Management Plan

The Beachfront Management Plan obviously cannot be construed to undermine the Department's permitting authority over the Beaches Critical Area. Subsection (H) of the Beachfront Management Plan is entitled "Methodology and the Generation and Adoption of Baselines and Setback Lines." Subsection H(1) further defines three specific types of beach zones, Standard Erosion Zones, Inlet Erosion Zones and Stabilized Inlet Erosion Zones. S.C. Code Ann. Regs. 30-21.H(1). Indeed, as argued by the Department, the beaches referenced under regulation 30-21.H of the South Carolina Code of Regulations should not be confused with the Beaches Critical Area which are "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established."¹⁸ S.C. Code Ann. § 48-39-10(H). Reading the regulation as a whole and consistent with the Act, subsection 30-21(H)(3) of the South Carolina Code of Regulations (2011) establishes the Department's direct permitting authority over the beach zones described in the regulation. *See Branch v. Myrtle Beach*, 340 S.C. 405, 412, 532 S.E.2d 289, 293 (2000) ("If the provisions of the two statutes can be construed so that both can stand, this Court will so construe them."). Conversely, construing regulation 30-21.H(3) of the South Carolina Code of Regulations (2011) to limit the Department's permitting authority to areas seaward of the baseline—between the baseline and the setback line—is inconsistent with the overarching purpose and meaning of the Act. *Society of Professional Journalists v. Sexton*, 283 S.C. at 567, 324 S.E.2d at 315 (a regulation must fall when it alters or adds to a statute); *Milliken and Co. v. S.C. Dept. of Labor*, 275 S.C. 264, 269 S.E.2d 763 (1980) (a regulation which materially alters or adds to the law is void); *see also* S.C. Code Ann. §§ 48-39-20 (establishing department's permitting authority over critical areas), -250(8) (2008 & Supp. 2024) ("in the state's best interest to protect and to promote increased public access to South Carolina's beaches").

The Legislative Findings and Purpose of the Act

The policy and intent of the Act can be ascertained, in part, from the "Legislative declaration of findings," which expressly provide the need for and importance of protecting the coastal zone. S.C. Code Ann. § 48-39-20. Coastal Zones are defined as "all coastal waters and submerged lands seaward to the state's jurisdictional limits **and all lands and waters in the counties of the State which contain any one or more of the critical areas**." S.C. Code Ann. §

¹⁸ In response, the Department argues that beaches should be given its ordinary meaning.

48-39-10(B) (emphasis added). If the Department’s jurisdiction in the Beaches Critical Areas landward of the Beach/Dune System Critical Area is interpreted as proposed by Respondents, the Department would be thwarted from fully carrying out this policy. *See A.O. Smith Corp. v. S.C. Dept. of Health & Env’t. Control*, 428 S.C. 189, 202, 833 S.E.2d 451, 458 (Ct. App. 2019) (“[a] statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute.”) (quoting *Lockwood Greene Eng’rs, Inc. v. S.C. Tax Comm’n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987); *see also State v. Taylor*, 411 S.C. 294, 301, 768 S.E.2d 71, 75 (Ct. App. 2014) (“Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intent”).

Similarly, subsection 48-39-250(8) of the South Carolina Code (2008) sets forth that “[i]t is in the state’s best interest to protect and to promote increased public access to South Carolina’s beaches for out-of-state tourists and South Carolina residents alike.” S.C. Code Ann. §§ 48-39-250(8) & -250(1)(b) (acknowledging the importance of the tourism industry to the state’s economy and tourists enjoyment of “the ocean and the dry sand beach.”). Certainly, to fully protect and promote increased public access to South Carolina’s beaches the Department must have jurisdiction over the entire area of the Beaches, which again, the Legislature defined as those “lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established,” irrespective of the location of the setback line. S.C. Code Ann. §48-39-10(H).

Indeed, the South Carolina Supreme Court accentuated the significance of the General Assembly’s policy declarations in *S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’t. Control*, 434 S.C. 1, 11, 862 S.E.2d 72, 77 (2021),¹⁹ when it held that “‘the public’s interest must be the lodestar’ of [the] analysis” since the General Assembly proscribed the protection of the “the quality of the coastal environment and [promoting] the economic and social improvement of the coastal zone and of all the people of the State” as a policy of the State. S.C. Code Ann. § 48-39-30(A). With the policy goals in mind, I find that Respondents’ interpretation of the Act and the correlating regulations is contrary to the General Assembly’s declaration for the Department

¹⁹ Notably, in *S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’t. Control*, the court addressed the Department’s issuance of a permit to KDP to construct an erosion control device **outside of the critical area**. Notwithstanding the fact that the property was outside of the critical area, the Court held that, in light of the overarching policy to protect the coastal zone, the ALC erred in upholding the Department’s issuance of a permit because the erosion control device would have an impact on the critical area.

to administer the provisions of Title 39 “to protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and of all the people of the State.” S.C. Code Ann. §§ 48-39-40 & -50(F); *State v. Taylor*, 411 S.C. 294, 301, 768 S.E.2d 71, 75 (Ct. App. 2014) (“Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intent”).

Conclusion

In conclusion, Respondents’ contention that the Department lacks jurisdiction to enforce the administrative order is without merit. In contrast to the Beach/Dune System, which is determined by the location of the setback line, Beaches include all “lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established,” irrespective of the setback line. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.”). Indeed, Respondents’ construction of the Act would render the inclusion of Beaches Critical Area meaningless. *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2021) (quoting *Hinton v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004) (“The court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless.”). Because the Department is the only state agency authorized to permit or deny alterations or utilizations within critical areas, it undeniably has jurisdiction over the Beach Critical Area even if, such lands fall landward of the setback line. S.C. Code Ann. §§ 48-39-130(A) & -210(A). As such, I conclude that the Department has permitting over the Beaches Critical Area. *See e.g., CRFE, LLC v. Greenville Cnty. Assessor*, 395 S.C. at 74, 716 S.E.2d at 881.

Is the Department’s Interpretation of Beaches Critical Area an unpromulgated regulation?

Respondents argue that they are entitled to summary judgment because the Department’s practice of prohibiting new erosion control structures or devices in the Beaches Critical Area functions as a “binding norm.” Respondents contend that at some point between 2019 and 2023, the Department changed its policy of not requiring permits for erosion control structures in shoreline areas landward of the setback line and that it applied its “new” unpromulgated policy of

requiring permits in the Beaches Critical Area landward to prosecute Respondents.²⁰ Respondents argue the Department’s “new” policy functions as a “binding norm” as it leaves the Department with no discretion regarding its application. Further, Respondents contend that the Department’s “new” policy disregards the plain and ordinary reading of the Department regulations existing at the time of the violations and the limitations placed upon the Department’s permitting authority.²¹ To the contrary, the Department and SCCL argue the Department’s actions were not improper considering that the General Assembly expressly granted the Department permitting authority in the Beaches Critical Area and the new policy does not conflict with the scope of its granted authority. For the reasons that follow, I conclude that the Department’s policy of enforcing its permitting authority over the Beaches Critical Area landward of the setback line did not establish a binding norm.

“Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law.” *Joseph v. S.C. Dep’t of Lab., Licensing & Regul.*, 417 S.C. 436, 454, 790 S.E.2d 763, 772 (2016) (quoting *Sloan v. S.C. Board of Physical Therapy Examiners*, 370 S.C. 452, 491, 636 S.E.2d 598, 618 (Total, C.J., Dissenting) (quoting *Ryder Truck Lines, Inc. v. U.S.*, 716 F.2d 1369, 1377 (11th Cir. 1983) (emphasis added); S.C. Code Ann. § 1-23-10(4) (2005). “Whether a particular agency creates a regulation or simply announces a general policy statement depends on whether the agency action establishes a ‘binding norm.’” *Joseph v. S.C. Dep’t of Lab., Licensing & Regul.*, 417 S.C. at 454, 790 S.E.2d at 772. The “key inquiry” to determine whether a Department action gives rise to a binding norm is:

the extent to which the challenged policy leaves the agency free to exercise its discretion to follow or not follow that general policy in an individual case, or on

²⁰ This practice was subsequently codified by regulation, effective May 24, 2024. S.C. Code Ann. Regs. 30-13.N(3)(a) (2024) (stating no ‘new erosion control structures or devices ... **within the beaches and/or beach/dune system critical areas**’, compare with S.C. Code Ann. Regs. 30-13.N(3)(a) (2023) (providing no “new erosion control structures or devices **are allowed seaward of the setback line**” Respondents contend that the Department’s subsequent amendments display the Department recognition that its altered policy was unenforceable absent promulgation. Further, Respondents assert that the Department’s enforcement of the revised policy was unlawful as the regulation went into effect after the latest alleged violative conduct in this case. However, Respondents did not provide any evidence that the Department applied the current version of regulation 30-13, prior to its effective date. Regulation 30-13 sets forth Specific Project Standards for Beaches and the Beach/Dune System. Importantly, Respondents did not, and have not, applied for a permit. Rather, the Department issued the Administrative Order on July 1, 2025 against Respondent for altering the Beaches Critical Area without first obtaining a permit. Indeed, the Department’s actions are consistent with its authority under the Act. See §§ 48-39-20 (granting Department permitting authority), -130(A) & (C) (prohibiting uses of critical areas without permits).

²¹ Specifically, sections 48-39-280 & -290 of the South Carolina Code and regulations 30.10.B and 30-21.H(3) of the South Carolina Code of Regulations.

the other hand, whether the policy so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule's criterion. As long as the agency remains free to consider the individual facts in the various cases that arise, then the agency action in question has not established a binding norm.

Id.

Notably, prior to the underlying allegations in this case, the Act has consistently defined “Beaches” as “those lands subject to periodic inundation by tidal and wave action so that no non-littoral vegetation is established.” S.C. Code Ann. § 48-39-10(H). As discussed above, Beaches are a critical area—an area in which “no person shall fill, remove, dredge, drain or erect any structure on or in any way alter any critical area **without first obtaining a permit from the department.**” S.C. Code Ann. § 48-39-130(A) (emphasis added). Contrary to the Respondents’ arguments, the Department derives its permitting authority in the Beaches Critical Area from the Act. *See* S.C. Code Ann. §§ 48-39-10(H) & (J), -130, -210. Indeed, the Department’s new policy did not change or alter statutorily granted permitting authority in the Beaches Critical Area.

Moreover, Respondents failed to provide any credible evidence that the Department established a binding interpretation of the Beaches Critical Area prior to May 2024. Rather, Respondents rely on Department guidance documents and records from the Beach Preservation Stakeholder Workgroup (Workgroup),²² each of which do not carry the force of law or establish a binding interpretation by the Department.²³ Accordingly, I conclude that the Department’s practice of prohibiting new erosion control structures or devices in the Beaches Critical Area did

²² The South Carolina Beach Preservation Stakeholder Workgroup was assembled by the Department to identify recommendations as the State implements a policy of beach preservation. “In addition to defining beach preservation, the Workgroup examined several beach preservation topics including beach nourishment, pilot project processes, and the State’s role in the beaches critical area, as well as issues associated with land management practices.” A total of six recommendations were offered by the Workgroup, one of which being to “[p]rohibit New Erosion Control Structures within the Beaches Critical Area.”

²³ Respondents also argue Mr. Slagel’s testimony in *Karen Wells, et. al v. William Oberheim, et. al*, 2019-CP0702544 (S.C. Cir. Ct. 2020) supports that the Department did not have permitting authority in the Beaches Critical Area landward of the setback line until May 2024. Respondents point to Mr. Slagel’s testimony that the *Wells* litigation was “the first time that it really rose to [the Department’s] attention that there [was a] potential issue of Beaches Critical Area landward of the setback line.” However, his testimony does not establish that the Department lacked permitting authority over the Beaches Critical Area. Rather, Mr. Slagel’s testimony is consistent with evidence before the Court regarding the changing conditions of the Beaches Critical Area. Nonetheless, there is a dispute between the parties, regarding the factual circumstance surrounding the *Wells* case. Accordingly, further inquiry of the facts is desirable to clarify the application of the law.” *Rothrock v. Copeland*, 305 S.C. 402, 405, 409 S.E.2d 366, 368 (1991).

not establish a “binding norm” as the Department’s actions are consistent with the permitting authority condoned by the Legislature.

Whether the Definition of Beaches Critical Area Is Unconstitutionally Vague?

Respondents contend that they are entitled to summary judgement because the definition of “beaches” is unconstitutionally vague as-applied to their right to make alternations to their property. Specifically, Respondents assert that the Department provided entirely contradictory notice regarding the scope of the Beaches Critical Area by representing to the regulated community that the setback line is the landward limit of Beaches Critical Area. Additionally, Respondents further argue regulations 30-10.B, 13, & -21.H(3) of the South Carolina Code of Regulation (2011) similarly directs the public to the setback line for purpose of identifying the conduct proscribed. *See, e.g.*, 2003 Fact Sheet, IOP Line Report, and JLWG Final Report. Respondents also argue the Act fails to inform the public that one storm can transform an unregulated area into the Beaches Critical Area or that inundation may differ from regular tidal cycles. Further, Respondents assert the definition of the Beaches Critical Area is vague because it relies on “periodic inundation,” an undefined term which Respondents contend the Environmental Protection Agency repudiated due to vagueness concerns. Nonetheless, Respondents also assert that the Department does not even consider “periodic inundation” but rather uses vegetation as an “indicator” of periodic inundation, an approach which it contends is inconsistent with the Act. Moreover, in contrast to other property owners, Respondents argue they were not afforded an opportunity to establish vegetation before the Department exercised its permitting authority.

To the contrary, the Department argues the statutory definition of beaches is “plain and easy to understand” and that a person of ordinary intelligence could discern that the Beaches Critical Area extends from the area that is getting inundated periodically with tidal and wave action to the area where non-littoral vegetation can grow. It further argues that vegetation is used in delineating other critical areas and that this Court has previously upheld “vegetation” as a “sound and appropriate” indicator for establishing the most landward point of erosion in absence of escarpments or other geographical signs of erosion. Finally, SCCCL argues that Respondents challenge to the statute requires factual determination which cannot be resolved by a Motion for Summary Judgment.

In an as-applied challenge, “the party challenging the constitutionality of the statute claims that the application of the statute in the particular context in which he has acted, or in which he

proposes to act, would be unconstitutional.” *Doe v. State*, 421 S.C. 490, 503, 808 S.E.2d 807, 813 (2017) (internal quotation marks and citation omitted); *see also Travelscape v. S.C. Dep’t of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 39 (2011) (ALC has authority to address facial challenges to constitutionality of statutes or regulations but is not empowered to consider facial challenges). In order to meet constitutional due process standards, a statute and therefore a regulation must give sufficient notice to enable a reasonable person to comprehend what is prohibited. *State v. Crenshaw*, 274 S.C. 475, 266 S.E.2d 61, *cert. denied*, 449 U.S. 883, 101 S.Ct. 236, 66 L.Ed. 2d 108 (1980); *Toussaint v. State Board of Medical Examiners*, 303 S.C. 316, 400 S.E.2d 488 (1991) (the constitutional standard for vagueness is the practical criterion of fair notice to those to whom the law applies).; *Curtis v. State*, 345 S.C. 557, 572, 549 S.E.2d 591, 599 (2001) (Fair notice is “measured by common understanding and practices.”). “Consequently, a statute may be unconstitutionally vague where ‘(1) it does not provide fair notice of the conduct proscribed,’ or ‘(2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed[.]’” *S.C. Dep’t of Soc. Servs. v. Michelle G.*, 407 S.C. 499, 505, 757 S.E.2d 388, 392 (citing *In re Gentry*, 142 Mich.App. 701, 369 N.W.2d 889, 893 (1985)).

The Act defines “Beaches” as “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). Therefore, the central question in determining whether land is a beach, is whether the land suffers “periodic inundation.” Respondents nonetheless contend their activities did not occur in the Beaches because there is no evidence that “property was inundated by regular, cyclical tidal and wave action, only alleged inundation from irregular named storms.” In other words, Respondents contest that this case pertains to alternations occurring in the “Beaches” as defined under subsection 48-39-10(H) of the South Carolina Code (Supp. 2024). Thus, further inquiry into facts of the case is necessary to clarify the application of the law to the issue presented to this Court. *Singleton v. Sherer*, 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008) (“[s]ummary judgment is not appropriate where further inquiry into the facts ... is desirable to clarify the application of the law.”).

CONCLUSION

I conclude as a matter of law that the Department has jurisdiction over the Beaches Critical Area, including landward of the setback line and as such, had the authority to impose the

administrative order against Respondents. Moreover, I find that there are genuine issues of material facts and that further inquiry into the facts is necessary to clarify the application of the law to the issues presented to this Court. *Rothrock*, 305 S.C. at 405, 409 S.E.2d at 368.

Therefore, Respondents' Motion for Summary Judgment is denied. *See* Rule 56(c), SCRCPP (providing summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is **no** genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law") (emphasis added).

ORDER

IT IS THEREFORE HEREBY ORDERED that Respondents' Motion for Summary Judgment is **DENIED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

April 24, 2025
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioners,)

v.)

Rom Reddy and Renee Reddy,)

Respondents.)

Docket No. 24-ALJ-07-0032-IJ

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (the Court) pursuant to a Notice of Petition and Petition for Enforcement and Injunctive Relief (Petition) filed by the South Carolina Department of Environmental Services (Department) regarding Respondents Rom Reddy's and Renee Reddy's failure to comply with two Cease and Desist directives from the Department.

On July 30, 2024, the parties filed a Joint Motion to Consolidate this matter with Docket Number 24-ALJ-07-0232-CC, a contested case hearing that was filed by Respondent Rom Reddy challenging the administrative order issued on July 1, 2024 by the Department in which it found Respondent unlawfully constructed a structure in beaches critical area in violations of the cease-and-desist directives and state law and regulations. While the two cases involved similar issues, the Court determined that consolidating the two cases was not necessary as the contested case would likely address the issues raised in the Department's Petition. In other words, the Court found that the determination in the contested case challenging that factual basis for the Order would most likely render the Petition moot. *E.g., Sloan v. Dep't of Transp.*, 379 S.C. 160, 666 S.E.2d 236 (2008) (appellate court will not pass on moot questions or make an adjudication where there remains no actual controversy). On October 23, 2025, the Court issued a Final Order and Decision in the contested case. As a result of that decision, no issue remains for adjudication by the Court. Consequently, I find good cause to dismiss this matter. *Id.*



ROA 000063

IT IS THEREFORE ORDERED that this matter is **DISMISSED WITH PREJUDICE.**
AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

October 23, 2025
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy,)
)
Respondent.)
_____)

Docket No. 24-ALJ-07-0232-CC

FINAL ORDER

Appearances:

For DES: Bradley D. Churdar, Esq.
Sallie Phelan, Esq.
For SCCCL: Leslie S. Lenhardt, Esq.
Lauren Milton, Esq.
For Respondent: *Pro se*

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to a request for contested case filed by Respondent Rom Reddy¹ pursuant to subsection 1-23-600(A) of the South Carolina Code (Supp. 2024) and section 44-1-60 of the South Carolina Code (2018).

Respondent challenges the administrative order issued by the South Carolina Department of Environmental Services (DES or Department) wherein it found Respondent violated the South

¹ Originally, this case was captioned to include Mrs. Renee Reddy as a Respondent. During the hearing, Rom and Renee Reddy moved the Court to remove Mrs. Renee Reddy due to a lack of standing. Importantly, Mrs. Reddy did not file a request for a contested case hearing in this matter. See S.C. Code Ann. § 48-6-30(D)(2) (Supp. 2024); S.C. Code Ann. Regs. 30-8(F)(4) (2011) (providing that “[a]ny persons to whom an order is issued may appeal it pursuant to applicable law, including S.C. Code Title 48, Chapter 6; Title 1, Chapter 23; and Title 48, Chapter 39 and S.C. Code Ann. Regs. 30-8 (2011); see also Rule 11(c), SCALCR (providing requests for contested case hearing must be filed and served within thirty (30) days after actual or constructive notice of the agency’s final decision). In addition, the evidence did not show Mrs. Reddy was directly involved in the alleged violations. Indeed, Mrs. Reddy’s name is not listed on the deed to the property at issue in this case nor is her name listed on the invoices for the construction of the activity discussed herein. Furthermore, Mrs. Reddy’s removal from this contested case hearing will not prevent the Department from pursuing civil action against Mrs. Reddy. For these reasons, I find good cause for the removal of Mrs. Reddy from this matter.

ROA 000065



Carolina Coastal Zone Management Act (Act) and the South Carolina Code of Regulations when he installed non-beach compatible materials and excavated substantial amounts of substrate with heavy machinery in the “beaches critical area” without a permit. As a result of these violations, the Department assessed a \$289,000.00 civil penalty and requested that Respondent submit a Corrective Action Plan (CAP) and upon approval immediately remove non-beach compatible materials and restore the affected area.

The Court conducted a hearing on the merits in Columbia, South Carolina from May 6-8 and 19-20, 2025.

FINDINGS OF FACT

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

Procedural Background

In September 2023, the Department became aware that Respondent, through his contractor BluTide Marine Construction (contractor), was intending to perform beachfront activities at his property without any Department review or authorization.² As a result, the Department sent a letter to Respondent notifying him that any unauthorized work within the State’s critical areas, including the beach/dune system and beaches, would be a violation of the S.C. Coastal Tidelands and Wetlands Act (CTWA or Act). Thereafter, the Department met with Respondent on site to discuss his anticipated project objectives.³ The parties discussed the Department’s jurisdictional authority, specifically as it related to the location of the setback line for the beach/dune critical

² The Department’s Beachfront Section Manager, Matthew Slagel, testified that it was his understanding that Respondent intended to place clay material within the beaches critical area. As Section Manager, Mr. Slagel reviews permit applications for activity along the beachfront, conducts site visits to ensure that proposed activity does not occur within the active beach or beaches critical area, and measures the location of the vegetation line.

³ On September 19, 2023, Respondent requested a minor beach renourishment emergency order which was issued by the Department on September 21, 2023. This emergency order (EO) allowed Respondent to conduct minor renourishment, install sand fencing, and/or plant native dune species. It also prohibited the covering or burying of any portion of an erosion control structure and required that renourishment sand originate from an upland source approved by the Department as beach compatible. Notably, this EO had an expiration date of October 21, 2023. Nevertheless, it appears Respondent did not return a signed copy of the permit, nor did he coordinate with the Department to conduct minor renourishment, install sand fencing, and/or plant native species in those areas in which his property was threatened by erosion. Accordingly, there is insufficient evidence before me to determine if the EO ever became effective.

system and the fact that the beach was landward of that line.⁴ The Department informed Respondent that the placement of clay in that area or the active beach would not be considered beach-compatible.⁵

Shortly thereafter, the Department determined that non-beach compatible materials were used at Respondent's property and, on October 20, 2023, it issued a Notice to Comply requiring Respondent to remove all non-beach compatible fill and other materials and marine debris that had been placed on the active beach and/or beaches critical area. The Department subsequently issued Cease and Desist orders on January 25, 2024 and February 2, 2024, seeking to enforce its determination. On February 9, 2024, the Department filed a Petition for Injunctive Relief and Motion for Temporary Restraining Order and Preliminary Injunction with this Court, citing public safety hazards and blocked access to beachgoers. A third Cease and Desist order was later issued on March 1, 2024. On May 22, 2025, the Department sent Respondent a Notice of Alleged Violation/Admission Letter (NOVAL), setting forth the facts and grounds of the alleged violations and providing notice of an enforcement conference. On June 7, 2025, Respondent submitted a response which the Department deemed insufficient to resolve the Department's concerns. As a result, the Department issued an Administrative Order on July 1, 2024.

The Department found Respondent violated subsection 48-39-130(A), (C) of the South Carolina Code (2008) and Regulation 30-2(B) of the South Carolina Code of Regulations (2011 & Supp. 2024) by installing non-beach-compatible materials in the beaches critical area. The Department further found Respondent violated subsection 48-39-130(D)(6) of the South Carolina

⁴ The CTWA restricts use of a critical area absent a permit from the Department. S.C. Code Ann. § 48-39-130(A) (2008). Critical area means any of the following: coastal waters; tidelands; beaches; and beach/dune system which is "the area from the mean high-water mark to the setback line as determined in Section 48-39-280." S.C. Code Ann. § 48-39-10(J) (Supp. 2024). Beaches, to be discussed hereinafter, are defined as "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) (Supp. 2024).

⁵ Notably, the Department used the term "beaches critical area." Although the critical area includes beaches, the term "beaches critical area" does not exist as a specific term in the law. This distinction is significant because the question before the Court is whether the statutory definition of the beaches serves as a designation of a critical area that is separately subject to regulation, even though beaches lie within an area for which a baseline and setback line have been established to designate the regulation of the beach/dune system. In other words, although the beach/dune system necessarily encompasses the beaches and defines how beaches within the system are regulated, the Department contends that the beaches are nevertheless a separately regulated area. Notably, if this were the case, the dune would be left as the only area regulated under the beach/dune system.

Nevertheless, I do recognize that shorelines are dynamic in nature. Thus, my consideration of the scope of the Department's jurisdiction must be viewed within the context of whether the General Assembly intended for the Department's powers to vacillate with episodic shifts or remain fixed based upon the periodic establishment of a setback line and baseline. Indeed, the baseline and setback line must serve some purpose.

Code (2008) when he installed an erosion control structure in the critical area, without having first given notice to the Department. The Department also found Respondent did not obtain approval for renourishment materials and that the materials placed in the beaches critical area/active beach were not only non-beach-compatible but also resulted in marine debris. In addition, the Department found Respondent violated the EO issued on September 21, 2023 when, without consulting with SCDNR, he covered an unauthorized erosion control structure and authorized work in direct contact with the South Carolina Department of Natural Resources (SCDNR) Marine Turtle Conservation Program. The Department further found Respondent violated regulation 30-13(N)(3)(c) of the South Carolina Code by strengthening the unauthorized concrete erosion control structure with metal screw piles, steel mending plates and associated bolts, and spray foam. Lastly, the Department found Respondent in violation of regulation 30-8(B) of the South Carolina Code (2011) for failing to conform to the January, February and March 2024 cease and desist orders. As a result of these violations, the Department assessed a \$289,000.00 civil penalty and directed that Respondent submit a Corrective Action Plan (CAP) and, upon approval of the CAP, immediately remove non-beach compatible materials in the beaches critical area and restore the affected area.

Respondent does not dispute the use of non-beach compatible materials nor that he constructed a hard structure.⁶ Rather, Respondent challenges: 1) whether the Department has jurisdiction over areas landward of the setback line; 2) whether the activity occurred in the beaches critical area; 3) whether the Department violated the APA when it took enforcement action based upon its interpretation of beaches critical area; and 4) whether the assessed civil penalty is reasonable.⁷

Respondent's Ownership of the Property

Respondent Rom Reddy purchased 118 Ocean Boulevard, Isle of Palms, Charleston County, SC (PID 5680900155) (property) on September 24, 2014.⁸ The property is located in the

⁶ As will be explained in this Order, Respondent first installed a concrete structure which was later enhanced through the construction of a second structure.

⁷ In his request for a contested case, Respondent also argued that the Department's actions amounted to a taking. However, Respondent did not address this issue in his proposed order and this Court lacks jurisdiction to hear a takings' claim under either the South Carolina Constitution or the United States Constitution. Accordingly, this issue will not be addressed any further.

⁸ The plat for the property is recorded in the Office of the RMC for Charleston County in Plat Book EC at page 209. Respondent's property is bounded by the mean high water line as of October 1986 and it demarcates a setback

coastal zone on the south end of Isle of Palms, approximately a half mile from Breach Inlet and northward of Wild Dunes. It is located in an unstabilized inlet zone,⁹ adjacent to the beach, where the predominant wave direction occurs from the southeast.¹⁰ Respondent's property line extends from Ocean Boulevard to the mean high water line.

Nonetheless, the property is subject to easements, restrictions, reservations and conditions, including conditions of the South Carolina Coastal Zone Management Act.¹¹ Indeed, the plat reflects a twenty-foot no construction area immediately seaward of the house structure and disclosures that the property may not be buildable according to the South Carolina Coastal Council Regulations.¹² Additionally, because of the property's proximity to the Atlantic Ocean, the title to the property indicates that "depending on the location of the baseline and setback line, the construction, repair, reconstruction and modification of habitable structures improvements and erosion control devices may be prohibited or severely restricted." While Mr. Reddy construed the disclosure to imply that his property rights were bounded by the baseline and setback line, the disclosure merely provides notice that his useful rights to the property are subject to limitations. Moreover, even if the baseline and setback line established the outer limits of Respondent's right to construct, repair, and modify structural improvements and erosion control structures, the baseline and setback line shown on the plat ceased to have effect five years from the date of survey or, in other words, on March 24, 1997. *See* S.C. Code Ann. § 48-39-210(C) (2005).

and baseline and twenty (20) foot no construction area.

⁹ Under the CTWA, there are three primary zones: standard erosion zones, unstabilized inlet zones, and stabilized inlet zones. In contrast to stabilized zones, unstabilized inlet zones are more susceptible to dynamic shoreline change. The baseline for unstabilized inlet zones is determined by the Department as the most landward point of erosion at any time during the past forty years, unless the best available scientific and historical data of the inlet and adjacent beaches indicate that the shoreline is unlikely to return to its former position. S.C. Code Ann. § 48-39-280(A)(2) (Supp. 2024).

¹⁰ The Department measures beach profiles and elevations at survey monuments on an annual basis. The closest survey monuments to Respondent's property are 3105B and 3100B, each approximately 100 feet from Respondent's property. Beach profiles are used to compare coastline changes over time.

¹¹ Interestingly, the plat for Respondent's property includes a designation from the Isle of Palms of its strong opposition for future permitting of any kind of beach erosion control structure on the property.

¹² The South Carolina Coastal Council was the predecessor agency to the Department's Office of Ocean and Coastal Resource Management and was the regulatory agency responsible for administering and enforcing the Act. Later, the South Carolina Department of Health and Environmental Control (DHEC) assumed this regulatory responsibility. During the course of this case, DHEC was restructured, and its powers were transferred to DES. Act 60, 2023 S.C. Act 60; *see* S.C. Code Ann. § 1-30-140 (Supp. 2024). In the interest of clarity and convenience, the term "Department" may refer to DES or its predecessor agencies.

Prior to the erosive events discussed below, Respondent's property was protected by a "sacrificial dune" and his back yard was landscaped with vegetation including a palm plant.

Baseline and Setback Line

The General Assembly implemented the baseline and setback line as part of its creation of the management of the "beach/dune system" in 1988. *See* Act No. 634, 1988 S.C. Laws Act 634 (codified at S.C. Code Ann. §§ 48-39-270-360). The Department last established a baseline and setback line for Isle of Palms (City) in 2018. Significantly, Respondent's property is located in close proximity to the beach/dune system and, since 1991 the setback line and baseline for the City has gradually shifted seaward from the location reflected on Respondent's plat.¹³ There is no dispute between the parties that Respondent's hard structure was installed landward of the setback line.

General Characteristics of the Isle of Palms Shoreline

The City is in an unstabilized inlet zone, and its shoreline has historically experienced dynamic movement. Aerial photographs show that the beaches adjacent to Respondent's property have advanced and retreated through time. Still, the shoreline in the vicinity of Respondent's property is generally accretional in nature with vacillating periods of accretion and erosion lasting anywhere from one to several years. For instance, the Department's Coastal Services Section Manager, Ms. Jessica Boynton, commented that the City has been in an erosional cycle since 2016 and Mr. Slagel indicated that as September 2023, the beaches extended landward of the setback line. Yet, as highlighted by the Department's expert witness, Christopher P. Jones, P.E.,¹⁴ the City's beaches have recently started to accrete.

Episodic Events

The area surrounding Respondent's property as well as the adjacent shoreline has recently been impacted by a series of episodic events.¹⁵ For instance, on May 18, 2023, a nor'easter hit the South Carolina coast, decimating the dune on the beaches adjacent to Respondent's property. Not

¹³ Notably, the vegetation/escarpment line along the City's coastline has also moved landward between 2006 and December 2023.

¹⁴ Christopher P. Jones was qualified as an expert in coastal engineering, coastal processes and management with a focus on storm impacts and erosion control structures.

¹⁵ Episodic events include occasional or intermittent weather events and storm surges. Obviously, these events can affect shoreline change.

long thereafter, on August 30-31, 2023, Tropical Storm Idalia hit the South Carolina coastline, causing a 9.23-foot surge along the City.¹⁶ Later that year, a third coastal storm impacted the City and produced the highest non-tropical tide of record, measuring 9.86 feet.

Erosion and Renourishment Efforts

Following the May 2023 nor'easter, Respondent contacted the Department to express concerns regarding erosion and the vulnerability of his property due to the loss of the “sacrificial” dune.¹⁷ In an effort to protect the exposed escarpment,¹⁸ Respondent removed all of the most seaward line of vegetation, with the exception of a palm plant, on his property and draped artificial turf over the slope of the exposed escarpment. In addition, Respondent met with the Department to discuss other permissible activities he could take to further protect his property. At that time, the Department informed Respondent by email that “[h]ard erosion control structures such as seawall, bulkheads, or revetments have been prohibited **seaward** of the [DES] OCRM setback line since 1988 with the passage of the S.C. Beachfront Management Act[.]” (emphasis added). The Department further directed Respondent to the Department’s jurisdictional line website for information on the current baseline and setback line which, it indicated, “do not change in between line review cycles.”¹⁹

Shortly thereafter, on June 30, 2023, the Department issued a General Permit to the City to perform minor beach renourishment from 100 to 402 Ocean Boulevard, Isle of Palms, which includes Respondent’s property. Renourishment efforts were to include placement of Department-approved beach-compatible sand along 3,400 linear feet of beachfront and construction of a six-foot dune with a fifteen-foot-wide dune crest and slope of 1:4.

¹⁶ Hurricane Idalia was classified as a category 4 hurricane on August 30, 2023. The hurricane made landfall near Keaton Beach, Florida but rapidly weakened and fell below hurricane strength. Nonetheless, the storm produced large areas of heavy rains and tropical-storm-force winds across southeastern Georgia and eastern portions of the Carolinas, including the City, from August 30-31, 2023.

¹⁷ Initially, Respondent applied for a General Permit on May 22, 2023, which the Department granted. However, the permit was subsequently withdrawn as a result of the issuance of a general permit to the City for minor beach renourishment from 100 to 402 Ocean Blvd.

¹⁸ Later that summer, Respondent commissioned 3W Engineering & Surveying, LLC, for a professional survey of his property. Notably, the survey shows that the escarpment was landward of the setback line. An escarpment is the vertical cut into the beach from tidal and wave action.

¹⁹ The Department’s jurisdictional line website provides a GPS viewer where homeowners can view the location of the “jurisdictional lines” in correlation to one’s property.

On August 30, 2023, Tropical Storm Idalia ushered additional damage and erosion, including that of Respondent's property. On September 1, 2024, Ms. Boynton and Mr. Slagel visited the shoreline near Respondent's property to assess damage and collect data on the erosion.²⁰ In addition, the Department issued an EO to the City to address conditions arising from the storm. Specifically, the Department authorized the City to scrap no more than one foot of sand from the intertidal beach extending from 100 to 314 Ocean Boulevard and 11 Beachwood East, Isle of Palms, for placement against an eroded escarpment or, to replace an eroded dune, seaward of a threatened structure. The EO restricted the dune height to no more than six-feet above grade or twenty-feet in width as measured from dune toe-to-dune toe and no sand was to be placed landward of an existing functional erosion control structure.²¹ As a result of the City's efforts, a dune was fully constructed seaward of Respondent's property by September 11, 2023.²²

Installation of the First Concrete Structure²³

Despite receiving notification from the Department that "any unauthorized work within the State's critical area, which include the beach/dune system and beaches, will be considered a violation of the S.C. Coastal Tidelands and Wetlands Act," Respondent took action to protect his property. Specifically, he contracted for the removal and relocation of approximately 300 cubic yards of existing sand to the "critical line berm" and installation of approximately 410 cubic yards of approved clay up to the critical line. In addition, Respondent replaced the artificial turf that overlayed his yard, resulting in the repositioning of the tile pavers leading to the beach. Nonetheless, the artificial turf began to wrinkle. In an effort to stabilize the turf, Respondent, through his contractor, dug a 2' x 130' foot trench adjacent to the beach, approximately six feet deep. The trench was filled with concrete to form a ninety-two linear foot wide, four foot tall, two

²⁰ The Department used a Global Navigation Satellite System (GNSS) unit to demarcate the landward extent of erosion at that time. Data points for the location of the escarpment/vegetation line were collected manually, on site, using a handheld GPS.

²¹ An additional EO was issued on September 29, 2023 to address ongoing conditions associated with Tropical Storm Idalia and subsequent king tide events. Similar to the August EO, the September EO permitted the City to scrape sand from the intertidal beach between 100 and 314 Ocean Boulevard for placement against an eroded scarp or dune, seaward of threatened structures. An EO was also issued on September 21, 2023 for sand scraping yet it was limited to beaches facing the Atlantic Ocean at 130, 132, and 202 Ocean Blvd., Isle of Palms.

²² By mid-October, the City had completed the construction of a continuous sand dune extending north and south of Respondent's property.

²³ Hereinafter, I will refer to this structure as ERC-1.

to three feet deep structure, consisting of woven geotextile fabric and wire mesh, with landward extending wing walls.

While Respondent does not dispute that he constructed ERC-1, he maintains that it is not an erosion control structure because it was not engineered to withstand the forces of water.²⁴ Mr. Jones nevertheless explained that ERC-1 is an erosion control structure because it was designed to retain fill material and thus was a bulkhead.²⁵ Indeed, based upon Respondent's own accounting, ERC-1 was constructed to retain his yard, an outcome which he achieved by filling concrete approximately six feet below grade.

Ongoing Erosion and Renourishment Efforts

On November 15, 2023, the Department determined that conditions along the shoreline continued to expose and create an imminent threat to the City's beach front properties. The Department issued a fourth EO to the City to remove or maintain existing sandbags or place new sandbags on the beaches from 120 to 206 Ocean Blvd., Isle of Palms.

Thereafter, on December 17, 2023, a nor'easter hit, which further eroded the beaches and also left ERC-1 exposed to the surf. The Department then issued a fifth EO to the City to address additional emergency conditions. Importantly, while this EO authorized sand scraping from the intertidal beach between 112 to 308 Ocean Boulevard, Isle of Palms, it specifically excluded sand scraping seaward of 118 and 122 Ocean Boulevard, purportedly due to the presence of "unauthorized erosion control structures."

Around the same time, Respondent made efforts to clean up debris on his yard and the adjacent beach. In addition, Respondent attempted to place half a million cubic yards of beach compatible sand in the area near ERC-1 yet, his efforts were halted by the City Administrator who informed Respondent that he was prohibited from placing additional sand to cover up ERC-1 and other non-beach compatible materials at his property. Compliance and Enforcement Section Manager for the Department, Morgan Flake, acknowledged that she was the person who informed the City that sand could not be placed in front of ERC-1. Ms. Flake averred that "covering up a violation does not compel compliance, [and], in this instance, it wouldn't allow the Department to

²⁴ As will be discuss further below, Respondent subsequently modified ERC-1 to ensure that it would not fall as a result of exposure to tidal and wave action.

²⁵ See S.C. Code Ann. § 48-39-270(1)(b) (defining bulkhead as "a retaining wall designed to retain fill material but not to withstand wave forces on an exposed shoreline.").

further assess and really understand the extent of the structure that had been recently uncovered that was in the critical area.” However, I find her contentions to be questionable and, in fact, the Department’s directive appears to have further exposed 118 and 122 Ocean Boulevard to additional erosional forces.

Respondent testified that by January he was greatly concerned because ERC-1 was starting to appear unstable. He feared that “if this wall starts to move, there’s no telling what it’s going to do. ... if there’s a pet there, if there’s a person there, it could kill them....” To remediate the perceived hazard, Respondent aligned non-beach compatible riprap along the seaward edge of ERC-1. Respondent believed his actions were necessary because the Department prohibited him from protecting his property and mitigating safety concerns.

While Ms. Flake acknowledged that configuration across a dune must be contiguous, she nevertheless averred that sand cannot be placed seaward of the spring high tide line. Yet, she did not explain, nor did the Department introduce evidence to show the location of the spring high tide line. Nevertheless, the EO the Department issued to the City expressly prohibited sand scraping seaward of an erosion control structure unless it was proven that the erosion control structure was in danger of collapsing **and** within ten feet of the habitable structure. Therefore, although ERC-1 was in danger of collapsing and thus posing a threat to the public, it did not rise to the criteria the Department established for sand scraping in this instance because the ERC-1 was more than ten feet from Respondent’s home. In addition, Respondent did not submit an application to the Department for sand scraping or minor beach renourishment, nor did he inform the Department of perceived safety concerns related to a lack of sand in front of ERC-1.

Construction of the Second Structure

By mid-January, ERC-1 started to develop cracks and further tilt forward towards the beach. Respondent hired CNT to straighten and repair ERC-1. The contract described the scope of work to include:

Install underpinning brackets in an inboard/outboard pattern, 6’ on center of entirely existing wall. Brackets to be mechanically attached to wall all thread and epoxy. Bracket to be “pinned” through the t-pipe and pile connection and to prevent up lift. Piles to extend 10’ below grade. Install steel mending plates (4) at each joint. Plate to be approximately 3’ in length $\frac{3}{4}$ ’ thick. Two plates bolted inboard of joint and two plates to be bolted outboard of joints. Anticipated 4 joints. Rent large excavator, move approximately 450 cubic yards of soil. Excavation to be to inboard plane of new wall. Contract with Penhall concrete cutting and section existing wall into manageable pieces. Attempt to right existing wall into a plumb postilion.

Additionally, expanding polyurethane structural foam was applied to fill the cracks in ERC-1. However, Respondent indicated that he was later informed by CNT that, notwithstanding the repairs, ERC-1 would not withstand the wave forces. Respondent thus amended the contract to provide for the installation of a “real wall” landward of ERC-1 as “it [was] very important to [him] that this thing does not fall down.” While the second structure was constructed landward of ERC-1, the photographic evidence and Respondent’s survey clearly show that ERC-1 and the second structure form one contiguous hard structure.²⁶ Based upon Respondent’s own accounting, the hard structure is a seawall,²⁷ which is also considered a hard erosion control structure, since the second structure was specifically installed to ensure that ERC-1 would not just retain Respondent’s yard but also withstand normal wave forces.

Regulation of the Erosion Control Structure

Utilization of the Critical Area

The Department determined that it had the authority to enforce the provisions of the CTWA because Respondent installed a hard erosion control structure in the “beaches critical area.” The Department reached this conclusion based upon the Department’s then acting Compliance Project Manager Jacques Prevost’s observation that the hard structure was seaward of observed vegetation at adjacent properties and also seaward of the Department’s June and September vegetative escarpment line.²⁸

Mr. Slagel testified that the beaches critical area is “where the sand and vegetation boundary exists ... using that vegetation as an indicator for the periodic inundation that is occurring.”²⁹ Mr. Slagel also explained that in instances where landscape has been heavily manipulated or vegetation has been removed, the Department looks for established vegetation at

²⁶ Collectively referred to as a hard structure hereinafter.

²⁷ See S.C. Code Ann. § 48-39-270(1)(a) (defining seawall as “a special type of retaining wall that is designed specifically to withstand normal wave forces[.]”).

²⁸ Similarly, Mr. Prevost opined that ERC-1 was also installed seaward of observed vegetation at adjacent properties and also seaward of the Department’s June and September vegetative escarpment line.

²⁹ While the Department relies on the vegetation line to determine the most landward point of erosion, Ms. Boynton indicated that it also considers other indicators to discern the presence of inundation, including the presence of an escarpment line, accumulation of wrack, organic material and dead marsh grass indicators. Indeed, Respondent’s expert witness, Matthew Goodrich, who was qualified as an expert on periodic inundation and its relationship to vegetation, agreed that the presence of wrack can signify that water has reached up to the location of the wrack. However, evidence of water occasionally reaching a certain location does not in and of itself establish that an area falls within the statutory definition of beaches.

the adjacent properties. Notably, at the time Ms. Boynton collected the vegetative escarpment line on September 1, 2023,³⁰ Respondent's palm was the only visible vegetation along the seaward edge of Responds property. Nonetheless, Ms. Boynton's disregarded the palm because she believed it was not in good health due to inundation.³¹ As a result, she marked the location of the escarpment slightly landward of the palm on Respondent's property. Overlaying the location of ERC-1 on the September 1, 2023 vegetation/escarpment line, Ms. Boynton averred that ERC-1 was approximately ten to twelve feet seaward of the escarpment line.

Respondent criticized Ms. Boynton's testimony, arguing that her demarcation of the vegetative escarpment was subjective and based on arbitrary factors not encompassed within the statutory definition of beaches. However, Respondent overlooks that Ms. Boynton's consideration of the presence of vegetation on September 1, 2023 was for purpose of identifying the vegetative escarpment line or, in other words, the most landward point of erosion at any time in the last forty years. Nevertheless, the Department's determination of the location of the critical area line was dubious. First, the Department collected the vegetative escarpment line the day after Tropical Storm Idalia and, the Department's own expert witness acknowledged that the beaches critical area line could effectively change day-by-day, storm-by-storm, based upon the category of a storm and its effects on the shoreline. Moreover, the Department delineates the beaches critical area line using GPS vegetation line surveys, escarpment mapping, elevation data, tidal records, and comparison with adjacent undisturbed properties where vegetation has not been obscured. While I find GPS units to be accurate, the Department's identification of the vegetation line in this case was subjective. Ms. Boynton indicated that the Department also considers other indicators to discern the presence of inundation, including the accumulation of wrack, organic material and dead marsh grass indicators, yet evidence that water **occasionally** reached Respondent's property does not establish that ERC-1 was subject to periodic inundation nor that it is in the statutorily defined beaches which again, also requires evidence of a lack of nonlittoral vegetation.

³⁰ Ms. Boynton has completed numerous vegetation trainings, including critical area vegetation trainings with the Department and other wetlands vegetation trainings with the U.S. Army Corps. and the South Carolina Department of Natural Resource.

³¹ Ms. Boynton indicated that when marking the vegetation line consideration is given to the existence of a root system and health of any observed vegetation since it "takes more than five minutes for a plant to die."

Feature Analysis

To further show that ERC-1 was located in the beaches critical area, the Department conducted a feature analysis using aerial imagery from June, October, and November 2023.³² Since only the June 2023 aerial image was georectified, Ms. Boynton relied on Respondent's tile pavers to establish a unit of measurement to gauge the location of ERC-1 during October and November 2023.³³ To account for any tile movement, Ms. Boynton used the fixed location of the pool at the adjacent property to establish a 2.7 foot average tile size and spatial unit of measurement. To ensure the accuracy of her estimated 2.7-foot unit of measurement, Ms. Boynton replicated this process on georectified imagery from January and March 2023 and September and February 2024. Notably, while three of the four images produced an average tile and spacing of 2.7 feet, the February 2024 image resulted in an average tile and spacing of 2.65 feet. Nonetheless, Ms. Boynton selected an average tile and spacing unit of 2.7 feet since she believed it produced a more "conservative estimate" of the location of ERC-1. Based upon the 2.7-foot unit of measurement, Ms. Boynton opined that during October and November 2023, ERC-1 protruded approximately four to five feet into the beaches critical area, a conclusion which Mr. Jones found to be reliable.

However, Respondent convincingly established the unreliability of the Department's feature study. The variation in the average tile and spacing corroborates Respondent's indication that the tiles were moved after Tropical Storm Idalia. While Mr. Jones believed the feature analysis to provide a reliable indicator of the location of ERC-1, he did not provide a sufficient basis for his opinion, in fact he did not even visit the area in question. Furthermore, I am wary of Ms. Boynton "conservative" selection of the 2.7-foot unit of measurement. Although Ms. Boynton believed it to produce a conservative estimate, it seemed to position ERC-1 farther seaward, a result which is indisputably favorable to the Department's position in this case. As such, I find the probative value of the feature analysis is de minimis.

³² A feature analysis uses remotely sensed imagery to interpret the relationship between observable natural and man-made features to extrapolate measurements and form hypotheses. The June 2023 aerial image contains georectified spatial data, effectively giving the observed features real-world coordinates. While the October and November aerials were not georectified, Ms. Boynton used them since they depicted the area in question before and after the construction of ERC-1. Notably, the feature interpretation also incorporated Respondent's July survey data.

³³ Ms. Boynton explained that she selected the tile pavers because they were consistent in size and spacing and apparent in all three images.

Expert Testimony

Both parties engaged experts to assist the Court in its consideration of the presence of periodic inundation for purpose of determining whether Respondent's hard erosion control structure was in the "beaches" as designated by statute. On behalf of the Department, Mr. Jones testified as an expert in coastal engineering, coastal processes and management, particularly on storm impacts and erosion control structures. Mr. Jones's work has been heavily concentrated on South Carolina coastal environments, and he convincingly described the effects of storms and erosion control structures on the City's beaches. Notwithstanding his work on the development of the State's interim baseline and involvement in drafting the City's 2008, 2017, and 2022 long-term beach management plan, he was, nevertheless, not qualified in coastal policies. Additionally, Mr. Jones has neither visited the property nor been to the City since 2018. Rather, Mr. Jones' opinion was founded upon his review of the Department's photographic evidence from May 2023 through October 2024. Based on that evidence, he opined that Respondent's hard structure was periodically inundated.³⁴ As such, he further opined that the structure was in the beaches critical area.

Nonetheless, Mr. Jones was unable to state with a reasonable degree of certainty the extent to which Respondent's hard structure encroaches into the beaches critical area. In fact, he indicated that the critical area has moved over time and that at some point in the future Respondent's hard structure may even cease to be in the beaches critical area. Even more disconcerting, Mr. Jones opined that due to the episodic nature of storms, the Department's critical area jurisdiction could change day-by-day or storm-by-storm based upon the statutory definition of the beaches. In other words, neither the Court nor a landowner could consistently determine, with a reasonable degree of certainty, the location of the beaches critical area line.

On the other hand, Matthew Goodrich was qualified as an expert on periodic inundation, how its calculated, and its relationship to vegetation on behalf of Respondent. However, although he was qualified as an expert, it is nonetheless notable that Mr. Goodrich's work has been heavily concentrated on engineering projects on estuarine or riverine environments rather than open

³⁴ Mr. Jones highlighted various characteristics captured between May 2023 and October 2024, including a vertical scarp, lack of nonlittoral vegetation on the scarp and base of the dune, accumulation of wrack and continued indication of water reaching the base and behind Respondent's hard structure. However, Mr. Jones also opined that the vegetation line is a "good indicator" of periodic inundation, particularly on an eroding shoreline. This opinion is not in keeping with the specificity of the statutory definition of a beach which requires both periodic inundation and non littoral vegetation.

beaches and thus he lacks experience in coastal management and in the identification of vegetation and delineation of critical area lines along shorelines.

Mr. Goodrich opined that the establishment of vegetation is determined by the limit of periodic inundation, something which he averred is a factor of ground elevation. He opined that periodic inundation is the periodic rising and falling of water, an occurrence which he believed to be caused by astronomical tides. Based upon these principles, he calculated that the maximum elevation of the tides at Respondent's property was a 5.5-foot elevation contour NAVD (North American Vertical Datum of 1988), an elevation which he further found to be insufficient to produce periodic inundation at the location of Respondent's hard structure.

To arrive at his estimate, Mr. Goodrich considered available information from the National Oceanic and Atmospheric Administration (NOAA) on tidal water levels. However, Mr. Goodrich's conclusion unreasonably disregarded the effect of episodic events on the City's shoreline. Furthermore, Mr. Goodrich's simulated wave-run up calculation is unreliable as these calculations are highly variable depending on the selected model and inputs. Here, Mr. Goodrich relied on the equation extracted from the EurOtop manual and his calculations were a derivative of the average offshore waves at the Charleston House gauge and a uniform slope of a .03. However, this data is not representative of the limit of periodic inundation as reflected on the beach profiles near Respondent's property.³⁵ In addition, even were the Court were to assume Mr. Goodrich's 5.5-foot elevation contour NAVD to be accurate, periodic inundation would have overrun Respondent's hard structure considering that its highest elevation as measured by Respondent's surveyor was 3.9-feet NAVD. Thus, the data applied by Mr. Goodrich is not reflective of the maximum elevation of inundation at the property.

I also found that Mr. Goodrich too easily dismissed consideration of vegetation, particularly considering that he was unable to account for the thirty-four-foot variance between his theoretical estimate of the landward extent of periodic inundation and the vegetative escarpment line collected on September 1, 2023. In fact, Mr. Goodrich even acknowledged that the vegetation line can be an indicator of the landward extent of the water's reach where erosion has eroded the soil and removed vegetation. Therefore, while Mr. Goodrich testified in detail and with reasoning that made him persuasive in some areas, his theoretical approach was not an accurate reflection of

³⁵ Notably, the beach profiles illustrate that the slope of the foreshore is not uniform and that the reach of periodic inundation ranges from six to 6.6-feet NAVD.

conditions depicted, time and again, in the photographic evidence.

In sum, I did not find either expert to be entirely convincing. Therefore, I have made my factual analysis based upon the aspects of each expert's testimony I found convincing. *See Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 470, 494 S.E.2d 835, 846 (Ct. App. 1997) ("Where the expert's testimony is based upon facts sufficient to form the basis for an opinion, the trier of fact determines its probative value."); *see also Altama Delta Corp. v. Comm'r*, 104 T.C. 424, 465–66 (1995) ("We are not bound by the opinion of any expert witness, but will consider that opinion based on our analysis of the evidence in the record and applying our judgment in consideration of that evidence.") ("While we may choose to accept the opinion of one expert in its entirety, we may also be selective in the use of any portion of that opinion.").

Conclusion

Although storms and high waves are a part of the natural coastal environment, periodic inundation includes wave and tidal action that recurs over a period of time in regular cycles, repeatedly, or at irregular intervals. Here, the evidence established that Respondent's hard structure is subject to periodic inundation. In particular, the photographic evidence consistently depicted accumulated wrack and saturated sand at and around the wings of the hard structure which both experts agreed to be suggestive of tidal and wave action. In addition, the April 4, 2024 survey of Respondent's property shows that portions of the hard structure are seaward of the top of bank and landward of the toe of the dune. Mr. Slagel explained that the top of the bank marks the top of the escarpment, a feature which also indicates the occurrence of erosive forces such as wave and tidal action on the beaches.

Active Beach

Relatedly, "active beach" also has a regulatory function. It is the "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). Mr. Jones opined that the term is commonly used to describe the area of the beach that moves frequently. Indeed, even man-made events such as sand scraping can alter the location of the active beach since it can lower the beach elevation and allow the tide to reach further upland.³⁶

³⁶ Notably, there is no evidence to suggest that the Department's cessation of the City's scraping efforts caused Respondent's hard structure to become situated in the active beach. In fact, the photographic evidence from February

In this case, Respondent's hard structure has become situated in the active beach. Mr. Jones confirmed this conclusion, based upon his review of the Department's February 1, 2024 site photographs and Respondent's April 4, 2024 property survey which show that segments of the hard structure are situated seaward of the top of the bank which again is, the top of the escarpment.³⁷ Indeed, the photographic evidence also did not show any nonlittoral vegetation seaward of the escarpment line. Furthermore, although Respondent asserted that the location of "the palm" held a significant importance, while the photographic evidence reveals a palm located at the edge of the escarpment line at Respondent's property, its location upon the escarpment line did not show that Respondent's hard structure was built behind that line.

Adverse Effects of Hard Erosion Control Structures

As discussed above, the evidence shows that inundation has periodically washed up to and around the sides of Respondent's hard structure.³⁸ The interaction of tidal and wave action with Respondent's hard structure is significant in this case because, it caused a "significant amount of erosion or scour" on the adjacent beach to the north/right side of the structure. Importantly, as explained by Mr. Jones, hard erosion control structures like Respondent's restrict the natural flow of sediment and induce scour onto adjacent properties, a fact which Respondent did not dispute.

Furthermore, both experts agreed that episodic events are a natural part of the coastal environment. Indeed, as the facts of the case reveal, storms have been commonplace in the City and it thus appears that those episodic storm events will persist in the future. Significantly, Mr. Jones averred that when a storm hits, Respondent's hard structure will have a detrimental impact because they will cause scour and additional erosion will occur. Naturally, this accelerated erosion contributes to increased deterioration of the adjacent beach; a loss, which adversely affects the public. For instance, there is no dispute that the beach adjacent to Respondent's property is readily accessed and enjoyed by the public. Indeed, the photographic evidence in the record shows that the footprint of Respondent's hard structure extends farther seaward into the adjacent beach than

2024 through October 2024 consistently show that the escarpment at the adjacent properties was landward of Respondent's hard structure.

³⁷ I acknowledge that 3W's survey only portrays a segment of the hard structure seaward of the top of the bank. Nonetheless, portions of Respondent's hard structure are situated seaward of the top of the escarpment.

³⁸ Indeed, the Department's March 4, 2024, April 3, 2024, and June 6, 2024 photographs also show an escarpment line and accumulated wrack and/or organic material at the base and around the wings of Respondent's hard structure, evidence which clearly establishes that tidal and wave action reached the hard structure.

any neighboring structure and, in cases such as here, where a beach continues to erode, hard structures like Respondent's cause a loss of dry sand in adjacent areas—a consequence which will result in further loss of public access laterally along the beach past the structure.

In sum, Respondent's hard structure has accelerated erosion of the adjacent beach and, in doing so adversely affected the public.

Civil Penalty

As set forth above, the Department assessed a \$289,000.00 civil penalty against Respondent. Ms. Flake averred that Respondent's actions were the most egregious she has seen throughout her tenure with the Department's Compliance and Enforcement section. Ms. Flake indicated that a maximum penalty of \$1,000 per day was assessed because, notwithstanding clear advice from the Department as to its jurisdiction over the area landward of the setback line, Respondent installed a structure to protect his property with non-beach compatible materials, without first obtaining Department approval. Ms. Flake also asserted that the purpose of assessing penalties is to deter future non-compliance and she believed that if the Department had not assessed a "meaningful penalty" for Respondent's actions, the "cumulative impacts of other people thinking that they can ignore Department [] directives and authority in the critical area ... could lead to astronomical critical area impacts that negatively impact – affect all of South Carolina, all of the citizens, all the visitors of the state."

However, the Department did not produce any credible evidence to show that it has exercised its jurisdiction landward of the setback line since 1999 nor that it has assessed a civil penalty for activity landward of the setback line.³⁹ To the contrary, Respondent introduced evidence that the Department did not require a critical area permit for construction of an erosion control structure landward of the setback line.⁴⁰ While Mr. Slagel professed that "[i]t was a mistake by the Department," he nevertheless acknowledged that he informed the homeowners that **no** Department approval was required for the construction of a seawall landward of the setback line.⁴¹

³⁹ The Department avers that it has issued many permits for major beach renourishment and reviewed emergency orders for activities landward of the setback line, yet the Department failed to substantiate its claims. As such, I do not find this contention and the testimony presented in support of it probative.

⁴⁰ This matter was repeatedly referenced as the Piping Plover case.

⁴¹ 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

It is also significant that Department initially informed Respondent by email that “[h]ard erosion control structures such as seawall, bulkheads, or revetments have been prohibited **seaward** of the [DES] OCRM setback line since 1988 with the passage of the S.C. Beachfront Management Act[.]” (emphasis added). The Department further directed Respondent to the Department’s jurisdictional line website for information on the current baseline and setback line which, it indicated, “do not change in between line review cycles.” While the Department did not expressly state that the baseline and setback line define the scope of the Department’s permitting authority, Respondent’s inference is understandable, especially considering the Department characterization of the baseline and setback line as the “jurisdictional lines.” Moreover, the introductory section of the Beachfront Jurisdictional Line Stakeholder Workgroup May 2019 Final Report, the Beachfront Jurisdictional Lines Background provided to the Senate Subcommittee, and the Department’s representation of its jurisdictional line website each imply that the extent of the Department’s direct permitting authority over beachfront activity is established by the location of baseline and setback lines.

Lastly, Ms. Flake further indicated that Respondent’s installation of the second structure after issuance of the first cease and desist order and construction of that structure during the night evidenced Respondent’s deceptive conduct. Yet, the Department failed to corroborate this allegation with any direct evidence of work having been performed at night or Respondent placing sand atop of either of his hard structure.

ISSUES

1. Does the Department have jurisdiction over areas landward of the setback line?
2. Is the Department precluded from enforcing its jurisdiction because it failed to promulgate a regulation amending its long-standing policies in areas landward of the setback line?
3. Whether the activity occurred in the Beaches Critical Area?
4. Whether the proposed sanctions are arbitrary and capricious?

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.

CONCLUSIONS OF LAW

Standard of Review

Pursuant to the Administrative Procedures Act, the ALC conducts its review *de novo*. *Engaging & Guarding Laurens Cnty. Env't (EAGLE) v. S.C. Dep't of Health & Env't Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014); *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. at 54, 766 S.E.2d at 728 (2014) (“The General Assembly specifically granted ALCs the significant right to render final decisions based on *de novo* review.”). Therefore, in contested cases such as here, the ALC serves as the sole finder of fact and considers the matter anew, freely substituting its own judgment as if no trial whatsoever had been had in the first instance. *S.C. Dep't of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 731 S.E.2d 330 (Ct. App. 2012). Consequently, this Court may exercise its own independent judgment as to both the law and the facts on the evidence presented to it and the record made before it.

Furthermore, the burden of proof in a contested case hearing is by the preponderance of the evidence. *Nat'l Health Corp. v. S.C. Dep't of Health & Env't Control*, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989). “In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof.” *Sierra Club v. S.C. Dep't of Health & Env't Control*, 426 S.C. 236, 257, 826 S.E.2d 595, 67 (2019) (citation omitted); Rule 29(B), SCALCR (“In matters involving the assessment of civil penalties, the imposition of sanctions, or the enforcement of administrative orders, the agency shall have the burden of proof.”). When applicable, the Court “shall give consideration to the provisions of § 1-23-330 with regards to the Department’s specialized knowledge.” S.C. Code Ann. § 44-1-60(F)(2) (2018).

Additionally, “[t]he qualification of a witness as an expert in a particular field is within the sound discretion of the trial judge.” *Risher v. S.C. Dep't of Health & Env't Control*, 393 S.C. 198, 206, 712 S.E.2d 428, 432 (2011). Where the expert’s testimony is based upon facts sufficient to form the basis for an opinion, the trier of fact determines its probative weight. *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 780 S.E.2d 252 (2015). Furthermore, the trier of fact is not compelled to accept an expert’s testimony, but he may give it the weight and credibility he determines it deserves. *Florence County Dep't of Soc. Servs. v. Ward*, 310 S. C. 69, 425 S. E.2d 61 (Ct. App.1992). The trier of fact may accept one expert’s testimony over that of another. *S.C. Cable Television Ass'n v. S. Bell Tel. and Tel. Co.*, 308 S.C. 216, 417 S. E.2d 586 (1992).

Here, there is no dispute between the parties that Respondent constructed a hard structure without first obtaining a permit from the Department nor that he used non-beach compatible materials. Rather, at the heart of this case is a disagreement between the parties as to the scope of the Department's jurisdictional authority under the CTWA. In the alternative, Respondent argues that even if the Department has jurisdiction, it has failed to meet its burden to show that the hard structure is in the "beaches" critical area. Lastly, Respondent contends that the assessed civil penalty imposed is unreasonable.

Department's Jurisdiction over the Beaches in Coastal Zone

Statutory Framework

In 1977, the South Carolina General Assembly enacted the South Carolina Coastal Tidelands and Wetlands Act (Coastal Act) to "protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone." S.C. Code Ann. § 48-39-30(A) (2008). Among other things, the Act provided that "no person shall fill, remove, dredge, drain or erect any structure on or in any way alter any critical area without first obtaining a permit from the department." S.C. Code Ann. § 48-39-130(C). The Act originally defined "critical area" to mean "coastal waters, tidelands, beaches, and primary ocean front sand dunes." S.C. Code Ann. 48-39-10(J) (1977). Previously, "[p]rimary oceanfront sand dunes" was defined in the Act as "those dunes which constitute the front row of dunes adjacent to the Atlantic Ocean." S.C. Code Ann. 48-39-10(I) (1977), amended by Act No. 634 § 4, 1988 S.C. Laws Act 634. "Beaches", however, was, and remains, defined in the Act as "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) (1977) (current version at S.C. Code Ann. § 48-39-10 (Supp. 2024)).

In 1988, the General Assembly adopted the Beachfront Management Act (BMA), based, in part, on a finding that the CTWA did "not provide adequate jurisdiction to the [Department] to enable it to effectively protect the integrity of the beach/dune system." Act No. 634, § 1 (1988), 1988 S.C. Laws Act 634. The BMA amended the definition of "critical area" by replacing "primary oceanfront sand dune" with the "beach/dune system," which is designated as "the area from the mean high-water mark to the setback line as determined in Section 48-39-280." *Id.* at § 4 (codified as amended at S.C. Code Ann. § 48-39-10(J)) (1988)). To establish this jurisdictional area, the BMA called for the creation of baselines and setback lines on portions of the shoreline, depending on whether they are in a "standard erosion zone" or an "inlet erosion zone." *Id.* at § 3

(codified as amended at S.C. Code Ann. § 48-39-280(A) (1988)). The Department is required to establish the baseline based on the “best available information and data,” and the setback is to be landward of the baseline at a distance of forty times the annual erosion rate as determined by historical and other scientific evidence. *Id.* Importantly, the BMA recognizes the dynamic nature of shorelines and thus provides for the periodic revision of these lines.⁴² *Id.*

The BMA further added section 48-39-330 of the South Carolina Code (1988), which requires that any contract of sale and any deed with respect to transfers of real property located in whole or in part seaward of the setback line disclose the following:

[A] contract of sale or transfer of real property located in whole or in part seaward of the setback line or the jurisdictional line must contain a disclosure statement that the property is or may be affected by the setback line, baseline, and the seaward corners of all habitable structures referenced to the South Carolina State Plane Coordinate System (N.A.D.-1983) and include the local erosion rate most recently made available by the department for that particular standard zone or inlet zone as applicable. Language reasonably calculated to call attention to the existence of baselines, setback lines, jurisdiction lines, and the seaward corners of all habitable structures and the erosion rate complies with this section.

S.C. Code Ann. § 48-39-330 (1988).

Lastly, the BMA pronounced a policy of strictly discouraging new construction of “new erosion control devices” in proximity to the beach/dune system. Act No. 634, §§ 1, 2, 3 (1988), 1988 S.C. Laws Act 634.

Parties Contentions

SCCCL and the Department contend that the Department has jurisdiction to enforce the July 1, 2024 administrative order against Respondent because it has permitting authority over the beaches critical area. Specifically, they argue that the plain language of subsection 48-39-10(J) of the South Carolina Code (Supp. 2024) classifies “beaches” and “beach/dune system” as separate critical areas. Therefore, they contend the Department has jurisdiction over “beaches” even if it is

⁴² As originally enacted, the baseline and setback line were to be revised no less than five years nor more than ten years from the reset date. The frequency of revision of the baseline and setback line was subsequently amended and today provides for reestablishment every seven to ten years. S.C. Code Ann. § 48-39-280(C) (1988), amended by Act No. 173, § 4, 2018 S.C. Laws Act 173. The BMA also created a right for affected landowners to contest the Department’s establishment of the setback line, baseline, or erosion rate. Act No. 634 § 3 (1988), 1988 S.C. Laws Act 634. (codified as amended at S.C. Code Ann. § 48-39-280(E)). Thereafter, in 2018, the General Assembly enacted the Beachfront Management Reform Act (the “BRMA”), which added detailed procedures under which adversely affected landowners could request review of the establishment of the baseline and setback line, including the right to request a contested case hearing before the Administrative Law Court. Act No. 173, § 4, 2018 S.C. Laws Act 173 (codified as amended at S.C. Code Ann. § 48-39-280(F)).

within the area for which a setback line has been statutory prescribed. In other words, it is the Department's position that even though the BMA added the "beach/dune system" to the CTWA and further established a regulatory process for determining a baseline and setback line to effectuate a regulatory process to provide for beach protection, it nonetheless has jurisdiction landward of the "beach/dune system," if it can demonstrate that the area meets the definition of beaches.⁴³ See S.C. Code Ann. §§ 48-39-10(H), (J); see also -280-90. In accordance with that interpretation of its jurisdiction, the Department contends Respondent is in violation of the CTWA because permits are required to alter or utilize any critical area. S.C. Code Ann. §§ 48-39-130(A) (providing that "no person shall utilize a critical area for a use other than the use the critical area was devoted to on such date unless he has first obtained a permit from the department."), -210(A) (2008) (providing "department is the only state agency with authority to permit or deny any alteration or utilization within the critical area").

To the contrary, Respondent contends that since the "beach/dune system," which encompasses both beaches and dunes, is a specifically defined term in the Act, the Department's jurisdiction is limited to areas seaward of the setback line as provided under section 48-39-290 of the South Carolina Code (2008 & Supp. 2024). More specifically, Respondent asserts that the Department lacks the authority to regulate any activity which occurred landward of the setback

⁴³ Interestingly, under the standard of review set forth in its proposed order, the Department cites case law on agency deference. Presumably, the Department believes its interpretation of the scope of its regulatory authority over the beaches critical area is entitled to agency deference. Indeed, the South Carolina Supreme Court has repeatedly found that "where the construction of the statute has been uniform for many years in administrative practice and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons." *E.g., Charleston Cty. Assessor v. Univ. Ventures, LLC*, 427 S.C. 273, 289, 831 S.E.2d 412, 420 (2019) (internal quotation and citation omitted); see also *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 140, 694 S.E.2d 525, 526 (2010) (agency's long-standing interpretation is usually entitled to deference). Nevertheless, this deference has its limits. For instance, it is the uniform construction of a statute by an agency, for many years, that leads to an inference that the General Assembly has acquiesced to the construction. In addition, it is the interpretation adopted by the policymaker for the Department, not its staff, that is entitled to a degree of deference. See also *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005) ("The Panel, not OCRM staff, is entitled to deference from the courts.").

Here, we see not only the limits of agency deference but the need to circumscribe its application. As readily apparent from the evidence introduced in this case, the Department has set forth inconsistent positions regarding its jurisdiction over areas landward of the setback line. Moreover, the Department offered no substantiation that it has adopted a formal interpretation of the limits of its permitting authority or even that the Department has a longstanding interpretation regarding jurisdiction over the beaches critical area. In fact, evidence of the Department's practice for the past twenty-five years is contrary to the interpretation averred by the Department's witnesses in this case. Thus, this case appears to be an attempt by the Department to receive deference in disregard of the fundamental legal requisites of agency deference. *Charleston Cty. Assessor v. Univ. Ventures, LLC*, 427 S.C. at 289, 831 S.E.2d at 420; see *e.g., Harry v. S.C. Dep't of Health and Env't Control*, Docket No. 09-ALJ-07-0255-CC (July 15, 2010) (setting forth the hazard of errantly granting agency deference).

line as the Department's jurisdiction over the "beaches" is limited by the statutorily designated boundaries of the "beach/dune system," which is the area between the mean high-water mark to the setback line. He argues that his interpretation is supported by the General Assembly's disuse of the term "means" to define "beach/dune system." According to Respondent, by failing to use "means" in designating the "beach/dune system," the General Assembly did not attempt to define that term but rather intended to establish the "geographic scope of the Department's jurisdiction over beaches and dunes and their associated system."

Respondent further contends that the inclusion of "beaches" as a separate critical area is not rendered meaningless since the Act provides for regulation of areas of the coastal zone for which a baseline or setback line is not established. Said differently, it is Respondent's contention that it was the Legislature's intent to retain "beaches" as a separate critical area to ensure that the Department would maintain jurisdiction in the areas of the coastal zone that are exempted from the "beach/dune system" regulation.

Moreover, Respondent contends the Court should find that his interpretation is consistent with the Legislature's intent because it is congruent with the Department's practice for the past twenty-five years; an interpretation which he further emphasizes is supported by the General Assembly's inclusion of the term "beach" in "beach/dune system." He also argues his interpretation was favorably viewed in *Braden's Folly, LLC v. City of Folly Beach*, 439 S.C. 171, 886 S.E.2d 674 (2023).

Yet still, Respondent argues that the rules of statutory interpretation support the conclusion that the Department's jurisdiction is limited to the geographic bounds of the "beach/dune system." Specifically, he contends his interpretation is consistent with CTWA's general goal of balancing economic and social development of the coastal zone with preservation of this State's coastal resources as it advances general notice and due process requirements, it avoids regulatory takings and is consistent with the State's adoption of a policy of beach renourishment and increased public access to South Carolina beaches. Lastly, Respondent argues indication of the General Assembly's intent can be gleamed from statutory provisions which establish procedures for claims to land seaward of the baseline or setback line and requirements for disclosure of the setback line and baseline on contracts of sale or transfer of property.

Analysis

The facts of this case reveal a unique factual circumstance in which the beach adjacent to Respondent's property is landward of the setback line. In that light, the question presented to this Court by the parties is whether the laws establishing the setback line preclude the Department from exercising jurisdiction landward of that line even if the area meets the statutory definition of "beaches." In reviewing that question the Court is faced with determining the implication that the Act sets forth separate definitions of "beaches" and the "beach/dune system" yet also defines each to mean a critical area that is irrefutably subject to the Department's regulation.

In addressing this issue, the Court first notes that Respondent misreads the reach of the Supreme Court's opinion in *Braden's Folly*.⁴⁴ In that case, the Supreme Court considered whether Folly Beach's enactment of a property merger ordinance amounted to an unconstitutional regulatory taking. Importantly, in setting forth the background of the case, the Court explained that the General Assembly exempted Folly Beach from part of the requirements set forth under the BMA and it granted Folly Beach the authority to act in the State's stead when protecting the beach. Importantly, the Supreme Court recognized that since no setback line was established for Folly Beach, the City had the sole discretion to allow for all types of development that would otherwise be precluded under section 48-39-290 of the South Carolina Code. The Supreme Court did not, however, consider the Department's jurisdiction in areas other than those strictly regulated under sections 48-39-280 and 48-39-290 of the South Carolina code from which Folly Beach was distinctively exempted.

Furthermore, regarding Respondent's contention that this Court should adopt his interpretation of the Department's jurisdictional authority because it is consistent with the Department's prior practice of only regulating areas seaward of the setback line, I find that the CTWA directly addresses whether the Department has jurisdiction to enforce the administrative order. As such, the Department's past regulatory practice is immaterial to my consideration of the issue of the Department's jurisdiction. See *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 32–33, 766 S.E.2d 707, 717 (2014) ("Interpreting and applying statutes and regulations administered by an agency is a two-step process. First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must

⁴⁴ 439 S.C. 171, 886 S.E.2d 674 (2023).

utilize the clear meaning of the statute or regulation.”); *Brown v. S.C. Dep’t of Health & Env’t Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (“Where the terms of the statute are clear, the court must apply those terms according to their literal meaning.”). Moreover, irrespective of any past practices, the Department cannot create jurisdiction. Rather the Legislature confers jurisdiction.

Turning to SCCCL and the Department’s claims, the Court initially notes that as a creature of statute, regulatory bodies such as the Department possess only those powers which are specifically delineated. *City of Rock Hill v. S.C. Dep’t of Health & Env’t Control*, 302 S.C. 161, 165, 394 S.E.2d 327, 330 (1990) (citing *City of Columbia v. Board of Health and Env’t Control*, 292 S.C. 199, 355 S.E.2d 536 (1987)). In implementing those laws, agencies must consider the policies the General Assembly has set forth as undergirding the law. *See S.C. State Highway Dep’t v. Harbin*, 226 S.C. 585, 86 S.E.2d 466 (1955) (citing *State v. Stoddard*, 126 Conn. 623, 13 A.2d 586, 588) (administrative bodies must conform with statutes which declare legislative policies). Here, the policies which underlie the CTWA may arguably be viewed as supporting the Department’s contention that it has permitting jurisdiction over the beaches critical area. Indeed, subsection 48-39-250(8) of the South Carolina Code (2008) sets forth that “[i]t is in the state’s best interest to protect and to promote increased public access to South Carolina’s beaches for out-of-state tourists and South Carolina residents alike.” S.C. Code Ann. § 48-39-250(8). Coastal Zones are defined as “all coastal waters and submerged lands seaward to the state’s jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. S.C. Code Ann. § 48-39-10(B) (Supp. 2024). It is therefore reasonable to assume that if the challenged activity occurred in the area statutorily defined as “beaches,” it is in keeping with this State’s policy that the Department has permitting authority since it could not otherwise protect the entirety of the coastal zone if it were unable to exercise regulatory authority over the beaches, irrespective of the location of the setback line.⁴⁵

Nevertheless, the Court cannot ignore that there must have been a legislative purpose for the establishment of the baseline and setback line. *See* S.C. Code Ann. § 48-39-280. While the BMA does not specifically set forth the purpose of the baseline and setback line, its purpose is apparent from an analysis of the law. The baseline and setback line are statutorily established and

⁴⁵ It is nonetheless important to recognize that the Department’s expert was uncertain whether the structure was still in the “beaches” critical area at the time of trial.

are subject to a required review of their continued application after a specific period of time. S.C. Code Ann. § 48-39-290(C). In light of the establishment and review cycles, it can be reasonably inferred that the lines exist to establish consistency in coastal zone regulation. That consistency could certainly be construed by interpreting the BMA as establishing a limit to the Department's jurisdiction landward of the setback line. Indeed, the Court's understanding of the reasonableness of a landward limitation was revealed from the Department's own evidence. Certainly, if there is no consistent delineation of the Department's permitting authority along the shoreline, the determination of whether to grant a permit to a landowner will be in a constant state of flux. As acknowledged by the Department's own expert witness, the "beaches critical area" could change significantly from month to month or storm by storm and the extent of the change could be minor or significant depending upon the intensity of the storm. Undeniably, this would create an undesirable result, leaving the Department's permitting authority ever changing with no certainty to either landowners' or this Court as to whether a permit is required.⁴⁶ Presumably, the legislature recognized the importance of avoiding such uncertainty when it established the baseline and setback line.

Additionally, the BMA established a public notice and participation process as a necessary component to the establishment of the baseline and setback line under section 48-39-280 of the South Carolina Code. Surely, this review provides the public with not only an understanding of the location where construction or reconstruction is permissible but also an opportunity to challenge the Department's proposed baseline and setback line if they are adversely effected by their establishment. *See* S.C. Code Ann. § 48-39-280(F) (Supp. 2024). Consistent with the BMA's notice provision, the Act also requires that any contract of sale or transfer of real property "located in whole or in part seaward of the setback line or jurisdictional line" contain a disclosure that the property is or may be effected by the baseline and setback line determination and notice of the local erosion rate which, could presumably effect the locations of the baseline and setback line. S.C. Code Ann. § 48-39-330. The BMA did not, however, require disclosure that the property may also be subject to the Department's determination of "beaches critical area." The fact that the General Assembly did not require such a disclosure could reflect that it did not intend for the Department's jurisdiction to extend landward of the setback line.

⁴⁶ Notably, Mr. Jones opined that there should be at least one growing season before vegetation is considered.

Although these considerations present a challenge in determining whether the General Assembly intended to generally limit the Department's permitting authority to areas seaward of the setback line, under the facts of this case, the Department's authority to order the removal of Respondent's structure and restore the affected area must be viewed in the context of the "basic state policy" to "protect the quality of the coastal environment" and likewise, the use of erosion control structures. S.C. Code Ann. § 48-39-30(A), -250-60. In other words, the policies and findings regarding the regulation of the coastal zone and the laws concerning erosion control structures necessitate consideration of whether Respondent's placement of the structures in the coastal zone is consistent with the policies and laws codified by the CTWA. Indeed, this Court has in the past found that the Department was precluded from regulating the construction of erosion control structures outside of the critical area. *S.C. Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, 15-ALJ-07-0369-CC, 2018 WL 4854113 (S.C. Admin. Law Ct. Sept. 24, 2018). However, the South Carolina Supreme Court disagreed with that interpretation in *S.C. Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, holding that consideration must be given to the impact an erosion control structure will have on the critical area, even when built outside of the critical area.⁴⁷ 434 S.C. 1, 862 S.E.2d 72 (2021). Therefore, the Court now turns to an examination of the policies and law regarding erosion control devices.

Regulation of Erosion Control Structures

Erosion Control Structures

The Department has the power to enforce the CTWA and compel compliance with each of its provisions, including those related to erosion control structures. S.C. Code Ann. § 48-39-50(I). Pursuant to the CTWA, erosion control structures include:

- (a) seawall: a special type of retaining wall that is designed specifically to withstand normal wave forces;
- (b) bulkhead: a retaining wall designed to retain fill material but not to withstand wave forces on an exposed shoreline;
- (c) revetment: a sloping structure built along an escarpment or in front of a bulkhead to protect the shoreline or bulkhead from erosion.

⁴⁷ The Legislature's decision to repeal section 48-39-200 from the Act reflects the Department currently has regulatory authority over the entirety of the coastal zone, even if activity occurs outside of the critical area. S.C. Code Ann. § 48-39-200 (*repealed by* 1993, Act No. 181, § 1235, effective from and after July 1, 1994).

S.C. Code Ann. § 48-39-270(1). Initially, Respondent argues that his hard structure is not an erosion control structure. Nevertheless, he agreed that it was originally designed to retain material and, as such, it is a bulkhead which is defined under subsection 48-39-270(1)(b) of the South Carolina Code (2008) as an erosion control structure. Moreover, Respondent attested that the second structure was installed for the purpose of reinforcing ERC-1 so that it could remain water-facing. As such, based on Respondent's own testimony, I conclude that the addition of the second structure augmented ERC-1, transforming it into a seawall since its enhanced design was not only to retain Respondent's yard but to withstand normal wave forces. *See* S.C. Code Ann. § 48-39-270(1)(a) (2008). In sum, Respondent's structure is a hard erosion control structure.⁴⁸ *See* S.C. Code Ann. § 48-39-270(1) (2008).

Adverse Effects

The CTWA specifically provides that the Department has "the authority to remove all erosion control structures which have an adverse effect on the public interest." S.C. Code Ann. § 48-39-120(C) (2008). The policies and findings undergirding the CTWA also guide the Court when removal of an erosion control structure is warranted. In implementing the CTWA, the General Assembly declared it is the "basic state policy ... to protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and of all the people in the State." S.C. Code Ann. § 48-39-30(A). The General Assembly then set forth specific state policies to protect the State's coastal zone. S.C. Code Ann. § 48-39-30(B)(2) (2008). The General Assembly later amended the CTWA, declaring that:

(3) Many miles of South Carolina's **beaches have been identified as critically eroding.**

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(5) The use of armoring in the form of hard erosion control devices such as **seawalls, bulkheads,** and rip-rap to protect erosion-threatened structures **adjacent to the beach has not proven effective.** These armoring devices have given a false sense of security to beachfront property owners. In reality, these hard erosion control structures, in many instances, have increased the vulnerability of beachfront property to damage from wind and waves while **contributing to the deterioration and loss of the dry sand beach** which is so important to the tourism industry.

(6) **Erosion is a natural process which becomes a significant problem for man only when structures are erected in close proximity to the beach/dune system. It is in both the public and private interests to afford the beach/dune system**

⁴⁸ As stated earlier in this Order, the second structure and ERC-1 are conterminous, thus, forming one hard erosion control structure.

space to accrete and erode in its natural cycle. This space can be provided only by discouraging new construction in close proximity to the beach/dune system.

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(8) It is in **the state's best interest to protect and to promote increased public access to South Carolina's beaches** for out-of-state tourists and South Carolina residents alike.

S.C. Code Ann. § 48-39-250 (1976) (amended by Act No. 607, § 1, 1990 S.C. Acts) (emphasis added).

In recognition of these policies, the General Assembly then outlined specific state policies pertaining to the use of hard erosion control structures, stating in part that the Department must:

(3) **severely restrict the use of hard erosion control devices** to armor the beach/dune system and to encourage the replacement of hard erosion control devices with soft technologies as approved by the department which will provide for the protection of the shoreline without long-term adverse effects;

(4) **encourage the use of erosion-inhibiting techniques which do not adversely impact the long-term well-being of the beach/dune system;**

S.C. Code Ann. § 48-39-260 (2008) (emphasis added). In reading these policies and findings in their entirety, it is evident that hard erosion control devices are generally regarded in this State as harmful to the coastal environment, particularly when placed in close proximity and/or adjacent to the beach and beach/dune system. Nonetheless, Respondent argues that the Department has failed to show that Respondent's hard erosion control structure has or will adversely affect the public's interest. I respectfully disagree.

It is undisputed that Respondent's property is in the coastal zone. S.C. Code Ann. § 48-39-10(B). In fact, Respondent's property is situated in a highly dynamic area where the beach has historically undergone cyclical periods of extensive erosion. Indeed, the photographic evidence of the beach adjacent to Respondent's structure shows such erosion.

Moreover, the General Assembly has found that hard erosion control structures like Respondent's are not only ineffective when placed adjacent to the beach but create a "significant" erosion problem. S.C. Code Ann. § 48-39-250(5), (6). As explained by Mr. Jones, hard erosion control structures restrict natural processes as they impede sediment flow and produce scour. This likelihood was demonstrated by the photographic evidence which shows that the tidal and wave action reaching Respondent's hard structure has induced erosion and scouring on the beach adjacent to the structure. While the City's beaches may have entered an accretional cycle, the dynamic nature of the shoreline suggests that it is only a matter of time before the shoreline is

scoured as a result of the presence of the hard structure. Indeed, both experts agreed that episodic events are a natural part of the coastal environment and as attested by Mr. Jones, when a storm hits Respondent's hard structure, it will cause additional erosion which will result in a loss of dry sand on the adjacent beach. The General Assembly has declared that it is in the public's interest to protect natural processes like cyclical erosion. S.C. Code Ann. § 48-39-250(6). Certainly, this policy cannot be furthered if Respondent's hard structure remains in close proximity to the beach and beach/dune system.

Furthermore, this Court is well aware of the Supreme Court's emphasis on the public's interest and its predilection toward denying erosion control structures when balancing economic and social development in the coastal zone. In *Kiawah Development Partners, II v. S.C. Department of Health & Environmental Control*, the Supreme Court held that "the public's interest must be the **lodestar** which guides our legal analysis in regard to the State's tidelands." 411 S.C. 16, 29, 766 S.E.2d 707, 715 (2014) (emphasis added). Later in *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, the court addressed this ALC's approval of a permit to KDP to construct an erosion control device outside of the critical area. Notwithstanding the fact that the structure was outside of the critical area, the Supreme Court again held that, in light of the overarching policy to protect the coastal zone, the ALC erred in upholding the Department's issuance of a permit because the erosion control device would ultimately have an impact on the critical area. 434 S.C. 1, 862 S.E.2d 72, *reh'g denied*, (September 1, 2021) (2021).

Here it is undisputed that the beach adjacent to Respondent's hard structure is a well-used destination for public recreation. Moreover, based on the uncontroverted testimony, during future erosive cycles, the public's access to the adjacent beach will continue to deteriorate because of a loss of dry sand laterally along the beach past the structure.

It is also significant that the General Assembly circumscribed stringent restrictions on construction and reconstruction of erosion control structures. S.C. Code Ann. § 48-39-290. Specifically, section 48-39-290(D)(1) of the South Carolina Code (2008) sets forth that:

If an applicant requests a permit to build or rebuild a structure . . . that is not allowed otherwise pursuant to Sections 48-39-250 through 48-39-360, the department may issue a special permit to the applicant authorizing the construction or reconstruction if the structure is not constructed or reconstructed on a primary oceanfront sand dune or on the active beach and, if the beach erodes to the extent the permitted structure becomes situated on the active beach, the permittee agrees to remove the

structure from the active beach if the department orders the removal. However, the use of the property authorized under this provision, in the determination of the department, must not be detrimental to the public health, safety, or welfare.

Therefore, a landowner cannot build an erosion control structure on the active beach and even if the property may be used to construct such a structure, it is not authorized if it would be detrimental to the public welfare. *Cf. S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 354 S.C. 585, 589, 582 S.E.2d 410, 413 (2003) (holding “BMA authorized OCRM to issue groin permits in furtherance of the State’s policy of encouraging certain types of erosion-inhibiting techniques and promoting beach renourishment **where appropriate.**”) (emphasis added).

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. The survey of Respondent’s property confirms that portions of his hard structure are seaward of the escarpment and, the weight of the evidence did not show any natural vegetation seaward of either structure. Accordingly, I conclude that segments of Respondent’s hard structure are situated on the active beach, a location for which the General Assembly clearly intended for there to be no such structures.⁴⁹

In sum, reverberating throughout the CTWA is the fundamental responsibility of the Department, and therefore this Court, to protect the public’s interests in the coastal zone. Significantly, in this case, since Respondent installed the structure without any review by the Department, there has been no analysis as to whether soft solutions referenced in the law would be viable to protect his property. Moreover, Respondent did not refute the legislative findings discussed above. *See also Bauer v. S.C. State Hous. Auth.*, 271 S.C. 219, 229, 246 S.E.2d 869, 875 (1978) (citing *Velishka v. Nashua*, 99 N.H. 161, 106 A.2d 571, 573, 44 A.L.R.2d 1406, 1411 (1954)) (“[L]egislative findings and declarations have no magical quality to make valid that which is invalid but they are entitled to weight....”). Thus, taking into consideration the findings codified by the General Assembly and evidence regarding the threat posed by hard erosion control structures situated adjacent to the beaches—specifically, the threat of accelerated erosion, intrusion

⁴⁹ Significant to this Court, the General Assembly established the standard that “if the beach erodes to the extent the permitted structure becomes situated on the active beach, the permittee agrees to remove the structure from the active beach if the department orders the removal.” S.C. Code Ann. § 48-39-290(D)(1). Thus, even if the Department had issued a permit for the construction of either ERC-1 or the second structure, the Department could order removal of Respondent’s hard erosion control structure since segments of it are situated in the active beach. *Id.*

on the natural erosive cycle, and the reduction in public access to the beaches, I conclude that the Department met its burden of proof to show that the public interests protected by the CTWA override Respondent's interest to prevent further erosion of his property thru installation of a hard erosion control structure. S.C. Code Ann. §§ 48-39-30 & -260. As a result, I further conclude that removal of the hard structure is warranted.⁵⁰ S.C. Code Ann. § 48-39-120(C).

The Department's Proposed Sanctions

Parties Contentions

Respondent contends that the Department failed to establish that the proposed penalties are fair, consistent, and reasonable under the circumstances of this case. Respondent argues that for at least twenty-five years prior to his case, the Department had not taken enforcement action against structures built landward of the setback line. Respondent also argues that the penalty is significantly harsher than that which was imposed for a similar offense in the Piping Plover matter and that the Department failed to provide any evidence of comparable fines for any similar enforcement matters. Respondent further contends that while he may disagree with the Department's interpretation of the CTWA, his discord cannot be construed as a disregard for the Department's jurisdiction, nor does it justify the imposition of a \$289,000 fine.

Conversely, the Department asserts that it adhered to its uniform enforcement policy and civil penalty assessment guidelines and that the assessed penalties are reasonable in light of Respondent's willful conduct and the extent of the unpermitted alterations he made in the beaches critical area without a permit. Specifically, the Department contends Respondent disregarded its guidance and advice regarding allowable activity in the critical areas and instead, installed two substantial structures and other non-beach compatible material which interfered with the public's use and enjoyment of the beach and exacerbated erosional conditions.

In addition, the Department argues that Respondent has been on notice of restrictions regarding erosional control structures since the purchase of his property yet, he installed two hard

⁵⁰ While the Act authorizes the Department to remove erosion control structures, neither the Act nor the Department's regulations set forth a process for their removal. Moreover, while the Department generally discussed possible soft solutions to protect coastal property, there has been no analysis as to viable soft solutions to protect Respondent's property. In light of these considerations and mindful of the law and state policies delineated above, the Court encourages DES to respectfully wield its authority, in cooperation with Respondent, to develop a plan of removal which, to the extent possible, preserves the infrastructure landward of Respondent's existing erosion control structure and utilizes "soft technologies [to] provide for the protection of the shoreline without long-term adverse effects." See S.C. Code Ann. § 48-39-30(A) & -260 (3).

structures and willfully concealed his activities from the Department. The Department also asserts Respondent disregarded their cease-and-desist orders. In addition, the Department argues Respondent violated its September 21, 2023 Emergency Order directing him not to place sand on the beach to cover or bury any portion of an erosion control structure.

The Department also contends that the assessed penalty is neither retaliatory nor inequitable. The Department asserts that it has not changed its practice and, further contends that the Piping Plover matter is distinguishable because the activity occurred in a standard erosion zone, public access was not an issue, and the homeowners cooperated with the Department's enforcement action. Furthermore, the Department argues Respondent has not received disparate treatment considering the imposition of a far higher penalty against the Ocean Club condominium for similar violations, specifically Ocean Club's unpermitted construction in a critical area, despite its heightened awareness of the Department's jurisdiction.

Lastly, SCCCL argues that the Administrative Order is enforceable against Ms. Reddy. SCCCL asserts Ms. Reddy was a named addressee of the Administrative Order, and that she actively participated in, financed, and directed unpermitted activities in the beaches critical area. SCCCL argues the Administrative Order is final and immediately enforceable against Ms. Reddy because she did not file a timely request for a contested case. SCCCL further contends that Ms. Reddy's lack of title to the property is no shield against the Department's order to remove the unauthorized structure, restore the affected critical area, and pay the assessed civil penalties.

Analysis

"Inherent in and fundamental to the powers of an Administrative Law Judge, as the trier of fact in contested cases under the Administrative Procedures Act, is the authority to decide the appropriate sanction when such is disputed." *Walker v. South Carolina Alcoholic Beverage Control Comm'n*, 305 S.C. 209, 407 S.E.2d 633 (1991); *Berry v. S.C. Dep't of Health & Env't Control*, 402 S.C. 358, 364, 742 S.E.2d 2, 5 (2013) ("[R]eview of the agency's enforcement order and its imposition of civil fine is an administrative matter that falls squarely within the ambit of a contested case as defined in the APA."). Subsection 48-39-170(C) of the South Carolina Code (Supp. 2024) 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." See S.C. Code Regs. Ann. 30-8(D) (2011); see also *Midlands Util., Inc. v. S.C. Dep't*

of Health & Env't Control, 313 S.C. 210, 212, 437 S.E.2d 120, 121 (Ct. App. 1993) (civil penalties are intended to deter future non-compliance). In addition, the Department may issue an order requiring such person to comply with such permit, regulation, standard, or requirement, including an order requiring restoration when deemed environmentally appropriate by the department. S.C. Code Ann. § 48-39-170(C); S.C. Code Ann Regs. 30-8(F) (2011).

Considering the disposition of this matter, it is questionable whether the CTWA penalty provisions apply. Indeed, I have not found that Respondent is in direct violation of any permit, nor have I found that he violated a regulation, standard, or requirement under the CTWA. Nonetheless, even if I were to assume Respondent was in violation of a provision of the CTWA, I conclude that the Department's assessment of a \$785,000 penalty is not appropriate under the facts of this case.

The Department's imposition of a civil penalty was predicated on three prongs. The Department first contends Respondent willfully disregarded the Department's directives. Clearly, although he generally responded to the Department's directives, Respondent did not comply with those commands. However, a voluntary act only becomes willful when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong. *Willful*, Black's Law Dictionary (12th ed. 2024). Here, Respondent's actions do not rise to the level of willfulness.

Respondent was familiar with the rules and regulations governing beachfront properties, yet he in good faith believed that the Department's permitting authority was limited to areas seaward of the setback line. Unquestionably, Respondent's actions contravene the guidance offered by its staff, specifically that it is a violation of the CTWA to engage in unauthorized activity in the beaches critical area. Nonetheless, the evidence in this case shows that the regulatory law and the Department's contradictory guidance regarding the scope of its jurisdictional authority could have reasonably led Respondent to believe that the Department lacked jurisdiction landward of the setback line. *E.g.*, S.C. Regs. Ann. 30-21(H)(3) (providing jurisdiction on beaches is determined by the location of the setback line) (2011); S.C. Code Ann. Regs. 30-13(N)(3)(a) (listing project standards for erosion control structures or devices) (amended by SCSR 48-5 Doc. No. 5200, 2024 SC Reg Text 636980, eff May 24, 2024). For instance, the introductory section of the Beachfront Jurisdictional Line Stakeholder Workgroup May 2019 Final Report, the Beachfront Jurisdictional Lines Background provided to the Senate Subcommittee, and the

Department's representation of its jurisdictional line website each imply that the purpose of baseline and setback lines are to delineate **the extent of** the Department's direct permitting authority for activities within the defined **beaches and beach/dune system critical areas**. In addition, while Respondent's plat may disclose the City's general opposition to permitting of erosional control structures on the property, this disclosure does not prohibit erosional control structures on the property nor does it establish the scope of the Department's jurisdictional authority. Furthermore, the Department did not present any credible evidence to show that it has exercised its authority landward of the setback line since 1999.⁵¹ Additionally, while described as an oversight by the Department, Mr. Slagel nevertheless acknowledged that he informed the homeowners in the Piping Plover that **no** Department approval was required for the construction of a seawall landward of the setback line. In addition, Ms. Flake was unable to identify one instance in the last twenty-five years when the Department imposed a civil penalty for activity landward of the setback line. Respondent's belief as to permissible activities is certainly understandable considering these facts and the legal implication of the setback line.

The Department also contends the penalty is warranted considering Respondent's deceptive conduct. However, the Department characterization of Respondent's actions as deceptive is based on the allegation that he took steps to conceal the installation of the second structure by conducting work into the night. Nonetheless, the Department did not present any evidence of the personal observations of work being conducted at night or Respondent placing sand atop of the erosion control structure. In fact, the evidence shows that Respondent has been responsive with the Department. Respondent halted his efforts to place sand in front of ERC-1 when directed. Moreover, although Respondent did not agree with the Department's directives, he responded to the cease-and-desist orders, albeit consistently stating his position that the construction activity that occurred on his property was outside of the jurisdiction of the Department. Furthermore, the September 21, 2023 Emergency Order was never fully executed and thus, any requirements or restrictions set forth therein are not enforceable against Respondent.

⁵¹ The Department's regulations were amended during 1999 to add the beaches to the regulatory definition of the critical areas. For purpose of determining the boundaries of the "Beaches and Beach/Dune System," regulation 30-10(B) of the South Carolina Code of Regulations (2011) provides that the Department will be guided by Section 48-39-270, Section 48-39-280 and Section 48-39-360 or, in other words, the statutes establishing the baseline and setback lines. While the Department's regulations are not determinative of the Department's jurisdiction, a review of the regulatory history further alludes to the Department's treatment of the setback and baseline as the bounds of its jurisdiction limits.

In addition, I do not find the assessment of penalties in either the Ocean Club or the Piping Plover matters to be instructive. Although the assessed penalty in the Ocean Club exceeds the penalty imposed against Respondent, the penalty was found to be appropriate because the Department had previously worked with Ocean Club for permit authorizations and Ocean Club had heightened awareness of the Department's jurisdiction. In contrast to the matter before this Court, there is no evidence to suggest that Ocean Club disagreed with the Department's interpretation of its jurisdiction limits, rather only that it chose to move forward despite its understanding of the Department's jurisdictional authority. In addition, as explained by Mr. Stout, the Piping Plover enforcement matter was handled by the Department's Bureau of Water who has a different process and policy for assessment of penalties.

The Department also contends the penalty is appropriate in light of the egregious nature of the alterations to the beaches critical area. As discussed above, the construction of the hard structure has disrupted the equilibrium of the adjacent beach and will thus adversely affect the public's use and enjoyment of the beach and exacerbate erosional conditions. Yet, Respondent's construction of the hard structure was predicated upon his understanding that the Department's permitting authority was confined by the setback and baselines. While the impact of Respondent's hard structure on the beaches is significant, Respondent actions cannot be labeled as egregious considering that his actions were a good faith effort to protect his property from further erosion.

Finally, as stated in my findings of fact, Ms. Reddy does not have any ownership interest in the property at issue, nor did she file a request for a contested case hearing in this matter. *See* S.C. Code Ann. § 48-6-30(D)(2) (Supp. 2024). As such, she is not a party to the underlying matter.

For the foregoing reasons, I conclude that the assessment of a civil penalty is not appropriate.

Other Issues

In the alternative, Respondent argues that the Department failed to meet its burden of proof to show that the hard structure was built in the beaches critical area because the Department failed to prove that inundation reached the property and that nonlittoral vegetation had been well established for an extended period prior to September 1, 2023.

Respondent also argues that to the extent that the CTWA could be interpreted as ambiguous, the Department failed to promulgate regulations through the APA process. Specifically, Respondent asserts that the Department did not comply with the rulemaking process required under the Administrative Procedure Act (APA) when it abandoned its apparent long-

standing policy of not asserting jurisdiction landward of the setback line and took enforcement action against Respondent. In support of his argument, Respondent stressed the Department's inability to identify a case, since 1999, where it exercised permitting authority landward of the setback line. In addition, Respondent points to the Department inaction in the Piping Plover matter wherein the Department did not require homeowners to obtain a permit for the construction of a seawall landward of the setback line in beaches critical area.

Respondent further argues that the Department's exercise of jurisdiction landward of the setback line is also inexplicable because it is inconsistent with the City's 2017 Local Comprehensive Beach Management Plan and Department regulations in effect at the time enforcement action was taken in this case. Specifically, Respondent asserts that the combined heading of "Beaches and "Beach/Dune System" and the singular use of "critical area" in regulation 30-10(B) of the South Carolina Code of Regulations (2011) implies that the Department construed "beaches" and "beach/dune system" as a single critical area. Likewise, Respondent asserts that regulation 30-21(H) of the South Carolina Code of Regulations (2011) belies the Department's current jurisdictional policy as it provides that the Department's "permitting jurisdiction on beaches is determined by the location of the setback line." As such, Respondent contends the Department should be precluded from enforcing its jurisdiction in this case.

However, in light of the disposition of the case, I need not consider these issues.

ORDER

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

IT IS THEREFORE ORDERED that Respondent submit a Corrective Action Plan for the removal of the hard erosion control structure.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

October 23, 2025
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy,)
)
Respondent.)
_____)

Docket No. 24-ALJ-07-0232-CC

ORDER

A hearing was held in this matter from May 6-8 and 19-20, 2025 at the Administrative Law Court (ALC or Court). This Court issued a Final Order and Decision on October 23, 2025. Thereafter, on November 3, 2025, Respondent Rom Reddy, the South Carolina Department of Environmental Services and the South Carolina Coastal Conservation League each filed a Motion for Reconsideration (Motion). Although the parties have not filed responses to the Motions, given the length and complexity of the Motions, the Court finds it prudent to rescind its existing Final Order in this matter to give the Court additional time to review all three Motions. Therefore,

IT IS HEREBY ORDERED that the Final Order and Decision is hereby rescinded pending a decision upon the parties' pleadings.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

November 10, 2025
Columbia, South Carolina



ROA 000103

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy,)
)
Respondent.)
_____)

ORDER ON MOTIONS FOR RECONSIDERATION

¹ See Rule 29(D)(2), SCALCR (providing that “[i]f no action is taken by the administrative law judge within the applicable period [thirty days from the filing of a motion for reconsideration or following responses to such motion], the inaction shall be deemed a denial of the relief sought in the motion.”); see also Rule 3(B), SCALCR (“For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law.”).



PRACTICE AND PROCEDURE § 2810.1 (3d ed. 2025) (observing that Rule 59(e) motions may be appropriate to preserve an issue raised in a contested case for appellate review or to ask the court to decide an issue which has been raised but not ruled upon, but they “may not be used to relitigate old matters”). Nevertheless, while review of the parties’ Motions caused me to reassess my reasoning on some issues in this case, I ultimately arrived at the same conclusion.

DISCUSSION

Respondent’s Arguments

Notice that the Court Could Order the Removal of His Structure

Respondent argues he was denied due process because he lacked adequate notice that the removal of the hard structure which he constructed was a potential action based upon subsection 48-39-120(C) of the South Carolina Code. Specifically, Respondent contends the Department’s July 1, 2024 Administrative Order contains no reference to subsection 49-38-120(C) of the South Carolina Code nor were prehearing statements issued setting forth with particularity the issues to be considered by the Court. Respondent therefore argues he was deprived of the opportunity to argue and present evidence regarding the applicability of that statutory provision outside of the critical area as well as whether the hard structure presented an adverse effect on the public interest.

Despite Respondent’s assertions to the contrary, I find Respondent’s due process rights have not been violated.

“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Kurschner v. City of Camden Plan. Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 901, 47 L.Ed.2d 18 (1976)). At a minimum procedural due process requires: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.” *Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 657, 726 S.E.2d 9, 12 (Ct. App. 2012) (citing *In re Dickey*, 395 S.C. 336, 360, 718 S.E.2d 739, 751 (2011) (quoting *In re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003))).

“The purpose of administrative notice requirements is to allow parties to prepare intelligently for the hearing.” 73A C.J.S. Public Administrative Law and Procedure, Notice and hearing requirements in administrative proceedings, § 307 (May 2025 Update). “The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties

of the pendency of the action and afford them an opportunity to present their objections.” *Blanton v. Stathos*, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950)); *Kurschner*, 376 S.C. at 171, 656 S.E.2d at 350 (“Procedural due process mandates that a litigant be placed on notice of the issues which the court is to consider.”). “In determining the process due, courts must consider: (1) the private interest affected by the proceeding; (2) the risk of erroneous deprivation of that interest as a result of the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the State’s interest, including the burden of additional or substitute procedural requirements.” *McIntyre v. Sec. Comm’r of S.C.*, 425 S.C. 439, 449, 823 S.E.2d 193, 198 (Ct. App. 2018).

In this instance, Respondent has failed to show that he was denied due process. In fact, Respondent was clearly given notice that the Department was seeking to remove the hard structure pursuant to its authority. Indeed, the Department’s October 20, 2023 Notice to Comply and the subsequent three Cease and Desist Orders repeatedly informed Respondent that the Department was seeking to remove the hard structure. S.C. Code §§ 48-39-10, *et seq.*, (2008 & Supp. 2025) (Act). Later, on February 9, 2024, the Department moved this Court for a Temporary Restraining Order and Preliminary Injunction (TRO) on the specific ground that “[i]f an injunction is not issued, **the public will suffer immediate and irreparable harm by the blockade created by the Reddy’s unauthorized wall in the critical area and the threat of harm due to the unsafe, dangerous conditions.**” (emphasis added). The Department’s May 22, 2024 Notice of Alleged Violation/Admission Letter, which Respondent’s counsel acknowledged and responded to, also expressly set forth the Department’s authority under subsection 48-39-120(C) of the South Carolina Code and the Department’s July 1, 2024 Administrative Order also cited Respondent as in violation of the Act.² Moreover, even if the Department’s notice was insufficient, the *de novo* hearing before this Court, renders harmless any procedural due process violations before the lower administrative body. *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 551 S.E.2d 263 (2001); *see also Engaging & Guarding Laurens Cnty’s*

² The Department later filed an Agency Information Sheet (AIS) with this Court. While the AIS included all of the statutory provisions cited in the Administrative Order, it also set forth the additional designation that the controversy was not limited to those set forth therein.

Env't (EAGLE) v. S.C. Dep't of Health & Env't Control, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (recognizing contested case proceedings before the ALC are *de novo*).

Yet still, Respondent argues that he was deprived of the opportunity to argue and present evidence regarding whether subsection 48-39-120(C) of the South Carolina Code applied outside of the critical area since he was unaware of this Court's consideration of the statutory provision. He specifically contends that he lacked sufficient notice because Prehearing Statements were not ordered to delineate with specificity the issues before the Court. However, the use of Prehearing Statements is discretionary. Indeed, Rule 14, SCALCR, provides that the Court "**may** order each party to prepare and return a pre-hearing statement...." (emphasis added). Obviously, "[t]he use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning." *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352–53, 549 S.E.2d 243, 250 (2001). Thus, the Court was not required to order Prehearing Statements. In fact, Prehearing Statements were not ordered in this case as the issues were apparent considering that the parties had been disputing the Department's authority to order the removal of Respondent's hard structure since February 9, 2024. *See* SCDHEC's Petition for Injunctive Relief and Motion for Temporary Injunction, *South Carolina Department of Environmental Services and South Carolina Coastal Conservation League v. Rom Reddy*, Docket No. 24-ALJ-007-0032-IJ (Feb. 9, 2024). Additionally, after this case was filed, Respondent neither moved this Court for an order for Prehearing Statements nor an order for a more definite statement of the statutory provisions at issue in the case.

Furthermore, subsection 48-39-120(C) of the South Carolina Code was specifically referenced in the Court's April 14, 2025 Order on Respondent's Motion for Summary Judgement. Indeed, on page four of the Order, the Court stated "[f]urther, the Department has the authority to remove all erosion control structures that have an adverse effect on the public interest.³ S.C. Code Ann. § 48-39-120 (2008)." Moreover, at the commencement of the contested case hearing, the Court set forth its understanding of the issues in the case. The Department clarified, without objection from Respondent, that one of the issues was whether the Department had the authority to enforce its July 1, 2024 Administrative Order, which specifically ordered the removal of the

³ Similarly, the Department's Reply to Respondent's Motion for Summary Judgement expressly sets forth its position that public access was of great importance and that the hard structure was affecting public access and detrimentally impacting the public.

unauthorized materials (including the two structures), in the area where the critical area of the beach has eroded landward of the beach/dune system. Significantly, the issue was not limited to the Department's authority to require a permit pursuant to section 48-39-130 of the South Carolina Code nor the grounds set forth in the Department's July 1, 2024 Administrative Order. The Department also further clarified that another issue was if the penalty was appropriate, including the "removal of the hard erosion control structure off the beach" and counsel for the Department specifically stated it wished for the Court "to order the removal of the wall...." Notably, Respondent never objected. In addition, Respondent himself addressed public access issues, thus showing that he was clearly on notice that the effects of the hard structure on the public were at issue. *See Hill v. York Cnty. Natural Gas Auth.*, 384 S.C. 483, 491, 682 S.E.2d 809, 813 (2009) (holding that no party was prejudiced by statutory references when all parties were well aware of the central dispute).

In addition, Rule 15, SCALCR, only requires the Court issue notice of "the date, time, place, purpose of the hearing, the administrative law judge who will conduct the hearing, and any other matters necessary for the prompt resolution of the matter." The Court timely issued notice on January 17, 2025, which complied with this rule. Rule 15, SCALCR; *see also* S.C. Code Ann. § 1-23-600(B) ("Notice of the contested case hearing must be issued in accordance with the rules of procedure of the Administrative Law Court.").

Finally, Respondent failed to show that he was substantially prejudiced by the process. *Leventis v. S.C. Dep't of Health and Env't Control*, 340 S.C. 118, 132, 530 S.E.2d 643, 650 (S.C. Ct. App. 2000) (citing, *Ogburn-Matthews*, 332 S.C. 551, 561, 505 S.E.2d 598, 603 (citing *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 319 S.E.2d 695 (1984))) ("[t]o prove the denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced by the administrative process."), *overruled on other grounds by, Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 521, 560 S.E.2d 410, 418 (2002). Respondent contends that he was prejudiced because he did not have an opportunity to create a factual record regarding "the lack of adverse effects on the public interest" and thus, he argues the record is insufficient for an appellate court to determine whether the Court's factual findings are supported by the evidence. However, a full hearing was held before this Court over the course of five days during which Respondent actively participated. Indeed, Respondent had the opportunity to elicit testimony, present favorable evidence, cross-examine adverse witnesses and present favorable

ones. *See Leventis, v. S.C. Dep't of Health and Env't Control*, 340 S.C. at 131, 530 S.E.2d at 650. In fact, Respondent even cross-examined the Department's witnesses regarding the impact of the hard structure he constructed on the public. Respondent's failure to present evidence to disprove evidence of the adverse effects of his hard structure cannot now be recast as a due process violation. Lastly, to the extent Respondent argues he was deprived of an opportunity to argue whether the provision is applicable outside of the critical area, Respondent's briefing of this issue in his Motion for Reconsideration satisfies the bare minimum requirements of procedural due process.

Notice of the Issue of the Adverse Effects of the Hard Structure

Respondent contends the topics listed in the Department's expert disclosure for Mr. Jones neither generally nor specifically related to the adverse effects of the hard structure. Accordingly, he argues that he had no prior knowledge that Mr. Jones would testify about adverse effects of the hard structure and thus was deprived of the opportunity to conduct a meaningful cross-examination of Mr. Jones or present his own witnesses to rebut Mr. Jones's testimony.

At the outset, this Court's finding of adverse effects in the Final Order was not solely based on the testimony of Christopher P. Jones. Indeed, Mr. Jones's testimony was cumulative to other testimony and evidence regarding the adverse effects of the hard structure on the public's interest, including the testimony of Morgan Flake and Matt Slagel and photographic evidence in the Record. Moreover, the Department's disclosure set forth that Mr. Jones's testimony was expected to include "[c]oastal processes affecting the [s]ite and surrounding area" and "[p]rinciples of coastal processes and coastal morphology as applied to the facts of this case." Certainly, this would seem to include testimony regarding sediment transport, beach erosion and the use of erosion control structures. Additionally, even if the Department's expert disclosure for Mr. Jones did not expressly state that the Department intended to show the adverse effect of the hard structure through Mr. Jones's testimony, Respondent should have expected that Mr. Jones's testimony would be used to support the Department's case which, as explained above, included the Department's authority to order the "...removal of erosion control structures which have an adverse effect on the public interest." S.C. Code Ann. § 48-39-120(C).

Respondent was also clearly placed on notice of this issue during the presentation of the evidence. For instance, without objection from Respondent, Mr. Jones was offered as an expert in "coastal engineering, coastal processes, ... **including consideration of storm impacts and erosion control structures.**" (emphasis added). Respondent had an opportunity to cross-examine

Mr. Jones and, significantly, he did not object when the Department elicited testimony from Mr. Jones regarding the adverse effects of the hard structure. Thus, Respondent was clearly on notice of this issue in the case. *See also Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (“A party cannot use a motion for reconsideration to raise for the first time an issue the party could have raised prior to judgment but did not, nor bring before the court theories or arguments that were not advanced earlier.”).

In conclusion, the record shows Respondent received extensive notice that the Department was seeking to enforce the provision of the Act, including subsection 48-39-120(C) of the South Carolina Code, and removal of the hard structure. Respondent had an opportunity to, and did, conduct extensive discovery, and was afforded a full evidentiary hearing and opportunity to create a full, factual record with regard to the adverse effects on the public interest. Certainly, Respondent could have presented favorable witness and evidence to refute the adverse effects of the hard structure on the public interest, if he wished. Accordingly, Respondent has failed to show a violation of his due process rights.

Application of Subsection 48-39-120(C)

Respondent argues subsection 48-39-120(C) of the South Carolina Code does not give the Department jurisdiction to remove erosion control structures outside of the critical area because when interpreted within the broader context of the Act, there is nothing to suggest that the General Assembly intended to expand the Department’s jurisdiction beyond the critical areas. Respondent also submits that the Court erred in relying on *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, 434 S.C. 1, 862 S.E.2d 72 (2011) since that case arose from a non-critical area permit for which the Department’s jurisdiction was not in dispute.

The Court respectfully does not find that it misinterpreted or misapplied subsection 48-39-120(C). “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston Cnty. Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)). “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998). “If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.

Paschal v. State Election Comm’n, 317 S.C. 434, 454 S.E.2d 890 (1995) (citing *Miller v. Doe*, 312 S.C. 444, 441 S.E.2d 319 (1994)).

The Legislature has declared that it is the policy of this state “to protect the quality of the coastal environment and to promote the economic and social improvement of the **coastal zone** ...” and “[t]o protect and, where possible, to restore or enhance the resources of the **State’s coastal zone** for this and succeeding generations.” S.C. Code Ann. § 48-39-30(A), (B)(2) (2008) (emphasis added). Importantly, the coastal zone is not confined to the critical areas but rather includes “**all lands** and waters in the counties of the State which contain any one or more of the critical areas.” S.C. Code Ann. § 48-39-10(B) (Supp. 2025). Certainly, the Legislature could have chosen to limit the Department’s authority under subsection 48-39-120(C) to the critical area, yet it chose not to.

Here, there is no dispute that Respondent’s hard structure lies in the coastal zone and therefore falls within the Department’s jurisdiction by operation of law. Respondent nonetheless argues in his Motion for Reconsideration that through the enactment of the BMA the Legislature “comprehensively amended the Department’s prior authority over erosion control structures ... creating specific provisions addressing removal and repair of erosion control structures.” However, subsection 48-39-290(B)(2)(d) of the South Carolina Code clearly provides that “[t]he provisions of this section **do not affect or modify** the provisions of Section 48-39-120(C).” (emphasis added).

Yet, Respondent further asserts that considering the Department’s inaction in enforcing this provision it can be inferred from the “statutory context” that it was intended to regulate what is now obsolete or hazardous groins, jetties, or seawalls located in tidal waters or public trust land. In addition, he argues that before the Court can order removal under this statutory provision the Department must promulgate regulations in accordance with the Administrative Procedure Act (APA) which set forth procedures, factors, and standards to be applied. However, Respondent did not cite any authority or explain how the “statutory context” support his contention. Moreover, this Court has simply applied the facts to the law as enacted.

Lastly, Respondent claims the Court’s citation to *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control*, 434 S.C. 1, 862 S.E.2d 72 (2011), does not support the conclusion that the Department has jurisdiction outside of the critical area because the Department’s jurisdiction was not in dispute in that case.

Contrariwise, *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control* illustrates that jurisdictional authorities under the Act extends beyond the critical area. Furthermore, *South Carolina Coastal Conservation League* emphasizes that the policies undergirding the Act must remain front and center of this Court's analysis. It is those statutory enumerated policies that directed the Court's determination.⁴

Adverse Effect of Respondent's Structure on the Public Interest

Respondent argues substantial evidence does not support the Court's finding that Respondent's hard structure has an adverse effect on the public interest. Respondent contends the Court overlooked the fact that Mr. Jones's testimony was about the "principal effects of hard erosion control structures" and not based on the specific circumstances surrounding Respondent's hard structure. In addition, Respondent avers Mr. Jones's opinion is speculative and that the Department failed to meet its burden to show that the structure is presently having an adverse effect on the public interest.

I do not find the Court erred in this regard. Mr. Jones's discussion regarding the "principal effects of hard erosion control structures" was the basis for which Mr. Jones concluded Respondent's hard structure would have a "further detrimental impact if a substantial storm hits." Notably, Mr. Jones's opinion is consistent with the Legislative recognition that hard structures contribute to the deterioration and loss of the dry sand beach. *See* S.C. Code Ann. S.C. Code Ann. § 48-39-250(5). Lastly, while I acknowledge that the degree of the future impact of Respondent's hard structure on the adjacent beach is still unknown, the evidence establishes that the hard structure is affecting and will continue to affect the public's interest as further clarified in the Court's subsequent discussion of the adverse effects.

Application of Subsection 48-39-290(D)(1)

Respondent argues that the Court erred in relying on subsection 48-39-290(D)(1) to buttress its conclusion under subsection 48-39-120(C) of the South Carolina Code since subsection 48-39-290(D)(1) only applies to special permits to build structures "other than an erosion control structure or device."

⁴ I also again note that the Supreme Court determined that this Court must consider the effect of a structure upon the critical area, even if that structure is not in the critical area.

I do not find the Court erred in this regard. Respondent’s focus on the phrase “other than an erosion control structure or device” ignores that the provision only excludes “erosion control structure or device **seaward of the baseline**”. S.C. Code Ann. § 48-39-290(D)(1) (emphasis added). Certainly, this makes sense when considering the Legislative findings regarding hard erosion control devices and the general prohibition against new construction or reconstruction seaward of the baseline. *See* S.C. Code Ann. 48-39-290(A) (Supp. 2025). Therefore, I do not find that the Court erred in its consideration of the statutory provision.

Determination of Whether the Department Has Jurisdiction
Landward of the Setback Line.

Respondent as well as the Department request that this Court conclusively determine whether the Department has jurisdiction landward of the setback line. However, that determination is not necessary to resolve the principal issue before this Court. Therefore, it is not necessary to reconsider my Final Order in this regard.

This matter arose from Respondent’s request for a contested case hearing to review the Department’s July 1, 2024 Administrative Order in which the Department found Respondent unlawfully constructed a hard structure in violation of certain South Carolina statutes, regulations, and cease and desist directives and orders. The initial decision resulted in the Department ordering removal of Respondent’s hard structure, thus giving rise to a justiciable controversy. *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (“A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.”).

As stated in my Final Order, the policies and law support the actions of the Department, a conclusion which ends the litigation on the merits of the challenged action. *See also Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004) (citing *Link v. Sch. Dist. of Pickens County*, 302 S.C. 1, n. 3, 393 S.E.2d 176, n. 3 (1990)). Therefore, although the Department conclusion that Respondent’s hard structure was in “beaches critical area” was a component of its decision, that decision was not a necessary determination for purpose of this Court’s *de novo* review of the contested case on appeal. *See Brown v. S.C. Dep’t of Health and Env’t Control*, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2022) (noting that when reviewing a **contested case** on appeal, the ALJ conducts a *de novo* hearing with the presentation of evidence and testimony.); *Blizzard v. Miller*, 306 S.C. 373, 375, 412 S.E.2d 406, 407 (1991) (trial *de novo* is one in which “the whole

case is tried as if no trial whatsoever had been had in the first instance.”). With the litigation on the merits concluded, there is no need to consider whether the Act and implementing regulations grant the Department jurisdiction to require Respondent to obtain a permit for construction and reconstruction landward of the setback line.

Furthermore, neither Respondent nor the Department have invoked a declaratory judgment action. Therefore, although there is a reasonable question whether the General Assembly intended to grant the Department permitting authority in area landward of the setback line as “beach critical area,” in light of this Court’s *de novo* determination, any determination on this issue would be merely advisory since there is no longer a justiciable controversy. *E.g.*, *Jones v. Dillon-Marion Hum. Res. Dev. Comm’n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982) (“Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.”); *see Power v. McNair*, 255 S.C. 150, 155, 177 S.E.2d 551, 553 (1970) (Courts refuse to enter the field of advisory opinion”).

Interpretation of the Term “Periodic” in Subsection 48-39-10(H)

Respondent contends the Court failed to apply the applicable canons of statutory construction in construing “periodic,” including the principles of construing land use statutes strictly, the rule of lenity, and the canon of constitutional avoidance which require a strict construction of the definition of “beaches” and “periodic” in favor of Respondent.

I disagree and do not find that the Court misconstrued or misinterpreted the term, “periodic.” At the outset, Respondent’s arguments are not supported by any reference to citations of legal authority. *Cf. Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 506, 812 S.E.2d 438, 441 (Ct. App. 2018) (“When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue.”). Furthermore, this case is not a criminal case and thus the rule of lenity is inapplicable. *See State v. Miles*, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017), *reh’g denied* (Oct. 19, 2017) (“This rule of lenity applies when a criminal statute is ambiguous, and requires any doubt about a statute’s scope be resolved in the defendant’s favor.”).

Likewise, the avoidance canon only comes into play where an otherwise acceptable construction of a statute raises serious constitutional problems. *See* 16 C.J.S. *Constitutional Law* § 248. Here, Respondent argues the Court’s interpretation of “periodic” is so vague and ambiguous that it required him to guess as to what constitutes “beaches” critical area and also

increases the likelihood that the Department’s jurisdiction may expand by a singular storm event. Importantly, “[a] law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application.” *Curtis v. State*, 345 S.C. 557, 572, 549 S.E.2d 591, 598 (2001). However, “[a] statute is not unconstitutionally vague simply because it ‘uses undefined terms or could have been drafted more precisely.’” *Whitehurst v. Town of Sullivan’s Island*, 446 S.C. 137, 150, 919 S.E.2d 402, 410 (2025) (quoting in part *State v. Lewis*, 434 S.C. 158, 863 S.E.2d 1 (2021)). In fact, the requirement that a statute reasonably convey its obligations is satisfied by its use of ordinary terms or terms whose meaning can be determine by reference to “other definable sources.” *Id.* Furthermore, “[w]here a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.” *Lee v. Thermal Eng’g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002).

Here, 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.

Turning to the application of the statute in this case, the Court did not determine whether Respondent’s hard structure should be removed based on its location in the statutorily defined beaches. Thus, whether the structure was subject only to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established was not specially decided by the Court. *See* S.C. Code Ann. § 48-39-10(H) (defining “beaches” as “those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.”). Rather, the Court considered whether removal of Respondent’s hard structure was warranted based upon the adverse effects to the public beach due to inundation interacting with Respondent’s hard structure. Certainly this would include waves and tidal action as well as storms and king tides which are episodic in nature, as each are a part of the natural coastal environment and, as the evidence in this case displayed, they occur from time to time.

The Rulemaking Process under the Administrative Procedures Act

Respondent argues the Court erred in failing to rule on whether the Department failed to comply with the rulemaking process required under the APA when it abandoned its long-standing policy of not asserting jurisdiction landward of the setback line. He contends this issue applies equally to any attempt by the Department to order the removal of an erosion control structure under subsection 49-38-120(C). As stated in the Final Order, the Department's actions fell within statutory authorities under subsection 48-39-120(C) of the South Carolina Code. Furthermore, the Court's determination was not based upon the regulations promulgated by the Department but rather the statutes enacted by the General Assembly. As such, any procedural irregularities by the agency are moot. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (moot case exists where judgment will have no practical legal effect upon existing controversy); *v. Dillon-Marion Hum. Res. Dev. Comm'n*, 277 S.C. at 535, 291 S.E.2d at 196.

SCCCL's Arguments

Implication of the Court's Statement that It "Need Not Consider" Further Jurisdictional Arguments under the CTWA

SCCCL appears to seek clarification as to whether this Court's April 24, 2025 Summary Judgment Order constitutes a final and enforceable finding that the beaches critical area encompasses the active beach and adjacent beach/dune system extending from the mean high-water mark landward to the setback line. Significantly, the Court's April 24, 2025 Order denied Respondent's Motion for Summary Judgment. Importantly, the denial of a motion for summary judgment decides nothing about the merits of the case but simply decides if the case should proceed to trial. *E.g., Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994).

Reliance on the Department's Past Enforcement Practices to Mitigate Penalties

SCCCL contends the Court erred in relying on the Department's past enforcement practices to mitigate or eliminate penalties. The Court has addressed this issue in its Amended Final Order to the extent the arguments in this section changed or informed this Court's reasoning.

Consideration of Willfulness Under Subsection 48-39-130(C)

SCCCL argues the Court erred in considering willfulness when it rejected the civil penalty imposed under subsection 48-39-130(C) of the South Carolina Code. However, I do not find that the Court erred. In fact, the Court's discussion of the willful nature of Respondent's actions was

merely responsive to the basis for which the Department argued the civil penalty was appropriate.⁵ Nevertheless, the Court has addressed this issue in its Amended Final Order to further clarify its reasoning.

Implication of Respondent’s Belief that the Department Lacked Authority

SCCCL contends the Court erred in relying on Respondent’s good faith belief that the Department lacked authority. However, SCCCL misinterpreted the Court’s analysis of the issue. Nevertheless, the Court has clarified its reasoning in its Amended Final Order to avoid any misinterpretation.

Status of the Department’s July 1, 2024 Administrative Order.

SCCCL avers that the Court’s Final Order creates uncertainty since it neither “affirms nor vacates” the Department’s July 1st Administrative Order—an ambiguity which SCCCL argues to be inconsistent with “the statute’s mandatory structure.” The Court is uncertain from where this “mandatory structure” SCCCL speaks of derives. Even so, the Court sits as the adjudicatory body in all contested cases involving the Department. *See* S.C. Code Ann. § 1-23-600(A) (Supp. 2025); S.C. Code Ann. § 44-1-60(G) (2018) (allowing applicants, permittees, licensees, or affected persons to file a request for a contested case hearing with the ALC in accordance with the statute); *see also Marlboro Park Hosp. v. S.C. Dep’t of Health & Env’t Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (Ct. App. 2004). A contested case hearing is distinguishable from judicial review in that this Court conducts a *de novo* hearing complete with the presentation of evidence and testimony.” *Engaging & Guarding Laurens Cnty.’s Env’t (“EAGLE”) v. S.C. Dep’t of Health & Env’t. Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014). Indeed, as the sole finder of fact, this Court considers the matter anew, freely substituting its own judgment as if no trial whatsoever had been had in the first instance. *S.C. Dep’t of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 731 S.E.2d 330 (Ct. App. 2012). The Court is thus bemused why SCCCL believes it is necessary for the Court to either vacate or affirm the Department’s July 1st Administrative Order considering that the Legislature designated this Court to preside over contested cases of this kind.

To the extent SCCCL’s Motion reiterates its argument that the Department’s Administrative Order and the \$289,000 penalty should remain in effect, the Court has given the

⁵ While it does not carry the force of law, OCRM’s Civil Penalty Assessment Guidelines nevertheless considers the “degree of willfulness or negligence” when calculating the appropriate upward adjustment factor.

weight the evidence deserves, made finding of facts thereupon and applied those facts to the law. *S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co.*, 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992) (“As the trier of fact, it is the role of this Court, among other things, to determine the probative force to be given to testimony and evidence and to draw conclusions of law based upon the evidence before it.”).

Effect the Final Order on Mrs. Renee Reddy

SCCCL maintains that because Mrs. Reddy did not file a request for a contested case hearing regarding the Department’s July 1, 2024 Administrative Order it became final and enforceable as to her. Nonetheless, as referenced in this Court’s Final Order, the Court lacks personal jurisdiction over Ms. Renee Reddy. *See Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) (finding an administrative agency is deprived of *procedural* jurisdiction if the appeal request is defective, stating “the question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction”). Since the Court is wanting of jurisdiction over Mrs. Renee Reddy, it lacks the authority to pass judgment on the effect of the status of the July 1 Administrative Order on Mrs. Reddy.

Consideration of the Agency’s Specialized Knowledge

SCCCL argues that the Court’s Final Order “minimized DES’s technical analyses while simultaneously relying on them to establish jurisdiction, producing internal inconsistency.” SCCCL thus requested that the Court confirm that the appropriate weight was accorded to the agency’s expertise in evaluating the evidence.

Subsection 48-6-30(D)(2) of the South Carolina Code (Supp. 2025) establishes that when reviewing a decision of the Department in a contested case this Court “shall give consideration to the provisions of Section 1-23-330 regarding the department’s specialized knowledge.” Importantly, subsection 1-23-330(4) of the South Carolina Code (2005) provides that in contested cases, “notice **may be taken** of generally recognized technical or scientific facts within the agency’s specialized knowledge.” (emphasis added).

At the outset, the Court did not take notice of any cognizable facts. Moreover, the term “may” in subsection 1-23-330(4) of the South Carolina Code implies that the Court’s consideration of the Department’s specialized knowledge is discretionary when considering the evidence presented to the Court. *Kennedy v. S.C. Ret. Sys.*, 345 S.C. at 352–53, 549 S.E.2d at 250. Nonetheless, the Court considered the Department’s testimony in light of its specialized

knowledge and gave the testimony of the Department's witnesses, the weight it deserves. *Florence Cnty. Dep't of Soc. Servs. v. Ward*, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992); *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). Indeed, "[t]he judging of the credibility of witnesses and the weighing of evidence in a law case are uniquely functions of the trial court." *Bivens v. Watkins*, 313 S.C. 228, 235, 437 S.E.2d 132, 136 (Ct. App. 1993). Further, the Court is "in a superior position to judge the witnesses' demeanor and veracity and, therefore, his findings should be given broad discretion." *Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996).

Department's Arguments

Application of Subsection 48-39-210(C)

The Department contends subsection 48-39-210(C) of the South Carolina Code only applies for critical area delineations of the **coastal waters and tidelands** critical areas and not for the beach/dune system critical area which are governed by subsection 48-39-280(C) of the South Carolina Code. The Court has addressed this issue in its Amended Final Order to the extent the arguments in this section changed or informed this Court's reasoning.

Evidence Regarding the Location of the Original Hard Erosion Control Structure and the Active Beach.

The Department's Motion reiterates its argument that activities related to the construction of the original erosion control structure constructed in October 2023, the strengthening and fortification to that structure in late January and February of 2024, and the construction of the second hard erosion control structure in February 2024, each occurred on active beach.

To the contrary, Respondent argues that the location of the hard structure relative to the "active beach" is irrelevant to the issues in this case. In addition, Respondent contends the "active beach" should not be construed as a separate jurisdictional area but rather a term to guide the establishment of the baseline for the beach/dune system and permitting decisions related to "structures other than erosion control structures within the beach/dune system."

As asserted in the Department's reply, the active beach is a subset of the beaches and therefore is relevant to this case. To the extent the Department argues the Court should have relied on certain evidence, I reiterate that this Court reviews this matter *de novo*. The Court is thus charged with weighing the evidence based upon a preponderance of the evidence. *E.g., Corely v. Rowe*, 312 S.C. 338, 340, 312 S.E.2d 720, 722 (Ct. App. 1984); *Bivens v. Watkins*, 313 S.C. at

235, 437 S.E.2d at 136 (“[t]he judging of the credibility of witnesses and the weighing of evidence in a law case are uniquely functions of the trial court.”). Nevertheless, I have addressed this issue in the Amended Final Order to the extent the arguments in this section changed or informed the Court’s reasoning.

Jurisdictional Lines on the Isle of Palms

The Department contends there are no exhibits or testimony to support the findings regarding the location of the 1999 and 2008 setback lines and baselines and that the Court should reconsider its findings since the 2008 lines moved landward at the northern half of the Reddy’s property. However, the Department has failed to meet its burden to show that the probative evidence supports its proposed findings. Notably, this Court cannot make a finding that the 2008 lines move landward because there is not sufficient evidence of the location of the 2008 setback and baselines.

Beach Critical Area Determination

The Department’s Motion seems to interpret footnote five of the Final Order as a finding that the beaches lie entirely within the beach/dune system and thus requests that the Court reconsider the Final Order to clarify that the beaches is a critical area distinct from the beach/dune system critical area. To support its argument, the Department asserts that a portion of the beaches is always outside of the beach/dune system since the beach/dune system starts at the high-water mark whereas the beaches critical area begins at the low-tide mark since it is subject to periodic inundation. The Department contends that the Coastal Zone Management Program Document carries the force of law and further supports that the beaches does not lie entirely within the beach/dune system since the beaches 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 OCRM’s direct permitting authority.” The Department further avers that by having “three separate critical areas on the beachfront that overlap by definition, the General Assembly has provided the Department with broad authority to comprehensively manage the beach.”

In response, Respondent argues that contrary to the Department’s claim, the area between the low-tide mark and high-tide mark is not “beaches” as defined by the Act. In addition, Respondent contends that the Department’s reliance on the Coastal Zone Management Program

Document is improper since it was neither presented as evidence at the hearing nor discussed during any testimony.

The Court recognized in the Final Order that the Act sets forth separate definitions of “beaches” and the “beach/dune system”. Indeed, the Court did not find that the beaches lies entirely within the beach/dune system nor did the Court rule that the beaches and beach/dune system constitute one discrete critical area. Rather, the Court merely observed ambiguity in the Act regarding whether the Department has the authority to require a permit in the beaches even though the beaches may lie within an area for which a baseline and setback line has been established to designate a regulatory process for permitting for construction and reconstruction.

Nevertheless, I have addressed this issue in the Amended Final Order to the extent the arguments in this section changed or informed this Court’s reasoning.

Clerical Errors

The Department requests that the Court reconsider and/or clarify some clerical errors. The Court has addressed this issue in its Amended Final Order.

The Department’s Jurisdiction in the Beaches Critical Area

The Department asserts that the Act clearly defines the beaches critical area and expressly and unambiguously gives the Department jurisdiction over this area. The Department invites the Court’s attention to testimony of the Department’s witnesses, which it contends is consistent with the statutory grant of jurisdiction in the beaches critical area. In 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 or make an adjudication where there remains no actual controversy.”).

Appropriateness of the Assessed Penalties

The Department’s Motion reiterates arguments advanced during the contested case regarding the appropriate sanction in this case. The Department contends there were multiple violations of the Act including construction of two walls, repair work, and the placement of other non-beach compatible materials including rip rap in the beaches critical area and active beach and

therefore requests that the Court reconsider whether a violation of the Act occurred and the appropriate penalty.

The Court considered the evidence and assigned the weight to it that it deserved. *Bivens v. Watkins*, 313 S.C. at 235, 437 S.E.2d at 136; *Woodall v. Woodall*, 322 S.C. at 10, 471 S.E.2d at 157. Furthermore, the Department failed to establish any error in the Court's decision or identify any point that was overlooked or misapprehended by the Court.

Scope of the Corrective Action Plan

The Department and SCCCL request that the Court amend its Final Order and include a Corrective Action Plan (CAP) which provides additional guidance including timelines for the remove of the hard erosion control structures and other non-beach compatible materials at the Site.

The Department's Motion sets forth a schedule which Respondent argues is not warranted under subsection 48-39-120(C) of the South Carolina Code because the statute was improperly invoked and since the Department has not promulgated regulations "outlining the contours of § 48-39-120(C)'s scope, including how it could apply to the so-called 'beaches critical area or beyond.'" In addition, Respondent contends the Department "goes even farther" by also seeking removal of all "unauthorized non-beach compatible materials," when the Court made no findings that the hard structure was either within the beach/dune system or "beaches critical area" or that non-beach compatible materials were installed in an area subject to the Department's jurisdiction. As such, Respondent requests the Court reject the Department's proposal to modify the CAP because it is not a "respectful" exercise of its authority.

As stated in the Final Order, the Department's request for Respondent's hard structure to be removed falls within statutory authorities arising under subsection 48-39-120(C) of the South Carolina Code. Additionally, the Department "is not required to enact a companion or explanatory regulation in order to enforce a statute." *Sloan v. S.C. Bd. of Physical Therapy Examiners*, 370 S.C. 452, 476, 636 S.E.2d 598, 611 (2006), *overruled on other grounds by Joseph v. S.C. Dep't of Lab., Licensing & Reg.*, 417 S.C. 436, 790 S.E. 2d 763 (2016). Furthermore, the authority to "exercise all incidental powers necessary to carry out the provisions of this chapter" which certainly extends to establishing timelines necessary to effectuate not only this Court's Final Order but more importantly timelines and standards necessary to reduce the impact of the hard structure on the public. *See* S.C. Code Ann. § 48-39-50(O) (2008). While Respondent may disagree with

the legal basis for the removal of his hard structure, he did not present any specific arguments in opposition to the deadlines or restoration standards set forth in the proposed CAP.

In sum, the Court has clarified the scope of the CAP in its Amended Final Order, including the materials which must be removed and the timelines which the Court deems reasonable for compliance.

ORDER

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

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Ralph King Anderson, III". The signature is fluid and cursive, with the last name "Anderson" being the most prominent part.

Ralph King Anderson, III
Chief Administrative Law Judge

December 30, 2025
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy,)
)
Respondent.)
_____)

Docket No. 24-ALJ-07-0232-CC

AMENDED FINAL ORDER

Appearances:

For DES: Bradley D. Churdar, Esq.
Sallie Phelan, Esq.
For SCCCL: Leslie S. Lenhardt, Esq.
Lauren Milton, Esq.
For Respondent: *Pro se*¹

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to a request for contested case filed by Respondent Rom Reddy² pursuant to subsection 1-23-600(A) of the South Carolina Code (Supp. 2025) and section 44-1-60 of the South Carolina Code (2018).

Respondent challenges the administrative order issued by the South Carolina Department of Environmental Services (DES or Department) wherein it found Respondent violated the South

¹ Mr. Reddy represented himself during the hearing. However, he retained Brandon Gaskins to represent him in submitting his Motion for Reconsideration and responding to the other parties' motions.

² Originally, this case was captioned to include Mrs. Renee Reddy as a Respondent. During the hearing, Rom and Renee Reddy moved the Court to remove Mrs. Renee Reddy due to a lack of standing. Importantly, Mrs. Reddy did not file a request for a contested case hearing in this matter. See S.C. Code Ann. § 48-6-30(D)(2) (Supp. 2024); S.C. Code Ann. Regs. 30-8(F)(4) (2011) (providing that "[a]ny persons to whom an order is issued may appeal it pursuant to applicable law, including S.C. Code Title 48, Chapter 6; Title 1, Chapter 23; and Title 48, Chapter 39;" see also Rule 11(c), SCALCR (providing requests for contested case hearing must be filed and served within thirty (30) days after actual or constructive notice of the agency's final decision). In addition, the evidence did not show Mrs. Reddy was directly involved in the alleged violations. Indeed, Mrs. Reddy's name is not listed on the deed to the property at issue in this case nor is her name listed on the invoices for the construction of the activity discussed herein. Furthermore, Mrs. Reddy's removal from this contested case hearing will not prevent the Department from pursuing civil action against Mrs. Reddy. For these reasons, I find good cause for the removal of Mrs. Reddy from this matter.

ROA 000124



Carolina Coastal Zone Management Act (Act) and the South Carolina Code of Regulations when he installed non-beach compatible materials and excavated substantial amounts of substrate with heavy machinery in the “beaches critical area” without a permit. As a result of these violations, the Department assessed a \$289,000.00 civil penalty and requested that Respondent submit a Corrective Action Plan (CAP) and upon approval immediately remove all non-beach compatible materials and restore the affected area.

The Court conducted a hearing on the merits in Columbia, South Carolina from May 6-8 and 19-20, 2025. On October 23, 2025, a Final Order was issued. On November 3, 2025, the parties filed Motions for Reconsideration (Motions). On November 10, 2025, the Court rescinded its Final Order to give it more latitude to thoroughly consider and respond to the parties’ Motions and responses.³ Then, on November 13, 2025, the parties each filed Responses to the Motions. Petitioners then filed replies to Respondent’s Response on November 20, 2025. The Court now issues this Amended Final Order.

FINDINGS OF FACT

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

Procedural Background

In September 2023, the Department became aware that Respondent, through his contractor BluTide Marine Construction (contractor), was intending to perform beachfront activities at his property without any Department review or authorization.⁴ As a result, the Department sent a letter to Respondent notifying him that any unauthorized work within the State’s critical areas, including the beach/dune system and beaches, would be a violation of the Act. Thereafter, the

³ See Rule 29(D)(2), SCALCR (providing that “[i]f no action is taken by the administrative law judge within the applicable period [thirty days from the filing of a motion for reconsideration or following responses to such motion], the inaction shall be deemed a denial of the relief sought in the motion.”); *see also* Rule 3(B), SCALCR (“For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law.”).

⁴ The Department’s Beachfront Section Manager, Matthew Slagel, testified that it was his understanding that Respondent intended to place clay material within the beaches critical area. As Section Manager, Mr. Slagel reviews permit applications for activity along the beachfront, conducts site visits to ensure that proposed activity does not occur within the active beach or beaches critical area, and measures the location of the vegetation line.

Department met with Respondent on site to discuss his anticipated project objectives.⁵ The parties discussed the Department's jurisdictional authority, specifically as it related to the location of the setback line for the beach/dune critical system and the fact that the beaches were landward of that line.⁶ The Department informed Respondent that the placement of clay in that area or the active beach would not be considered beach-compatible.

Shortly thereafter, the Department determined that non-beach compatible materials were used at Respondent's property and, on October 20, 2023, it issued a Notice to Comply requiring Respondent to remove all non-beach compatible fill and other materials and marine debris that had been placed on the active beach and/or beaches critical area. The Department subsequently issued Cease and Desist orders on January 25, 2024 and February 2, 2024, seeking to enforce its determination. On February 9, 2024, the Department filed a Petition for Injunctive Relief and Motion for Temporary Restraining Order and Preliminary Injunction with this Court, citing public safety hazards and blocked access to beachgoers. A third Cease and Desist order was later issued on March 1, 2024. On May 22, 2024, the Department sent Respondent a Notice of Alleged Violation/Admission Letter (NOVAL), setting forth the facts and grounds of the alleged violations and providing notice of an enforcement conference. On June 7, 2024, Respondent submitted a response which the Department deemed insufficient to resolve the Department's concerns. As a result, the Department issued an Administrative Order on July 1, 2024.

The Department found Respondent violated subsections 48-39-130(A), (C) of the South Carolina Code (2008) and regulation 30-2(B) of the South Carolina Code of Regulations (2011 &

⁵ On September 19, 2023, Respondent requested a minor beach renourishment emergency order which was issued by the Department on September 21, 2023. This emergency order (EO) allowed Respondent to conduct minor renourishment, install sand fencing, and/or plant native dune species. It also prohibited the covering or burying of any portion of an erosion control structure and required that renourishment sand originate from an upland source approved by the Department as beach compatible. Notably, this EO had an expiration date of October 21, 2023. Nevertheless, it appears Respondent did not return a signed copy of the permit nor did he obtain approval from the Department for the placement of beach-compatible renourishment materials to the area of his property threatened by erosion. Accordingly, there is insufficient evidence before this Court to determine if the EO ever became effective.

⁶ The Act restricts the use of the critical area absent a permit from the Department. S.C. Code Ann. § 48-39-130(A) (2008). Critical area means any of the following: coastal waters; tidelands; beaches; and beach/dune system which is "the area from the mean high-water mark to the setback line as determined in Section 48-39-280." S.C. Code Ann. § 48-39-10(J) (Supp. 2025). As will be discussed further in this Order, the Department asserts jurisdiction over Respondent's activity because it occurred in the beaches critical area. Although the critical area may mean beaches, the term "beaches critical area" does not exist as a specific term under the Act. This distinction is significant because the question before the Court is whether the statutory definition of beaches confers permitting jurisdiction, even though the beach may lie within an area for which a baseline and setback line has been established to designate a regulatory process for permitting for construction and reconstruction in the beach/dune system.

Supp. 2025) by installing non-beach-compatible materials in the beaches critical area without a permit. The Department further found Respondent violated subsection 48-39-130(D)(6) of the South Carolina Code (2008) because Respondent's repair of the hard structure was not an exempted activity nor was notice provided to the Department of Respondent's repair of the hard structure or alteration of the critical area. The Department also found that Respondent neither obtained prior approval nor used materials compatible in grain size and color with the native beach and, that materials used resulted in marine debris. In addition, the Department found Respondent violated the EO issued on September 21, 2023 when he covered an unauthorized erosion control structure and failed to ensure that his contractors were in direct consultation with the South Carolina Department of Natural Resources (SCDNR) concerning SCDNR's Marine Turtle Conservation Program. The Department further found Respondent violated regulation 30-13(N)(3)(c) of the South Carolina Code by strengthening the unauthorized concrete erosion control structure with metal screw piles, steel mending plates and associated bolts, and spray foam. Lastly, the Department found Respondent failed to follow directives set forth in the January, February and March 2024 Cease and Desist orders. As a result of these violations, the Department assessed a \$289,000.00 civil penalty and directed that Respondent submit a Corrective Action Plan (CAP) and,⁷ upon approval of the CAP, immediately remove non-beach compatible materials in the beaches critical area and restore the affected area.

Respondent did not factually contest that the hard structure was constructed with non-beach compatible materials. Rather, Respondent challenges: 1) whether the Department has jurisdiction over areas landward of the setback line; 2) whether the activity occurred in the beaches critical area; 3) whether the Department violated the Administrative Procedures Act (APA) when it took enforcement action based upon its interpretation of beaches critical area; and 4) whether the assessed civil penalty is reasonable.⁸

⁷ The Department directed that the submission of the CAP was due within fifteen days, was to address plans for the removal of all unauthorized non-beach-compatible materials and the restoration of the beaches critical area, including submission of samples of sand material to be used. Upon approval of the CAP, Respondent was ordered to remove all unauthorized non-beach compatible materials within fifteen days and immediately restore the affected area with approved beach-compatible sand to the same elevation and slope of adjacent properties. Respondent was further directed to notify the Department of the scheduled commencement date and any changes, should they occur. Written notice of completion was due within three days of completion. Modifications to these timelines and standards were proposed as part of the Department's Motion for Reconsideration.

⁸ In his request for a contested case hearing, Respondent also argued that the Department's actions amounted to a taking. Not only did Respondent not address this issue in his proposed order but more importantly this Court lacks

Respondent's Ownership of the Property

Respondent Rom Reddy purchased 118 Ocean Boulevard, Isle of Palms, Charleston County, SC (PID 5680900155) (property) on September 24, 2014.⁹ The property is located in the coastal zone on the south end of Isle of Palms, approximately a half mile from Breach Inlet and northward of Wild Dunes. It is located in an unstabilized inlet zone,¹⁰ adjacent to the beach, where the predominant wave direction occurs from the southeast.¹¹ Respondent's property line extends from Ocean Boulevard to the mean high-water line.

Nonetheless, the property is subject to easements, restrictions, reservations and conditions, including conditions of the Act.¹² Indeed, the plat reflects a twenty-foot no construction area immediately seaward of the house structure and disclosures that the property may not be buildable according to the South Carolina Coastal Council Regulations.¹³ Additionally, because of the property's proximity to the Atlantic Ocean, the title to the property indicates that "depending on the location of the baseline and setback line, the construction, repair, reconstruction and modification of habitable structures improvements and erosion control devices may be prohibited or severely restricted." While Respondent construed the disclosure to imply that his property rights were bounded by the baseline and setback line, he contends the disclosure merely provides notice that his useful rights to the property are subject to limitations. Moreover, even if the baseline and

jurisdiction to hear a takings' claim under either the South Carolina Constitution or the United States Constitution. Accordingly, this issue will not be addressed any further.

⁹ The plat for the property is recorded in the Office of the RMC for Charleston County in Plat Book EC at page 209. Respondent's property is bounded by the mean high-water line as of October 1986 and it demarcates a setback and baseline and twenty (20) foot no construction area.

¹⁰ Under the Act, there are three primary zones: standard erosion zones, unstabilized inlet zones, and stabilized inlet zones. In contrast to stabilized zones, unstabilized inlet zones are more susceptible to dynamic shoreline change. The baseline for unstabilized inlet zones is determined by the Department as the most landward point of erosion at any time during the past forty years, unless the best available scientific and historical data of the inlet and adjacent beaches indicate that the shoreline is unlikely to return to its former position. S.C. Code Ann. § 48-39-280(A)(2) (Supp. 2025).

¹¹ The Department measures beach profiles and elevations at survey monuments on an annual basis. The closest survey monuments to Respondent's property are 3105B and 3100B, each approximately 100 feet from Respondent's property. Beach profiles are used to compare coastline changes over time.

¹² Interestingly, the plat for Respondent's property includes a designation from the Isle of Palms of its strong opposition for future permitting of any kind of beach erosion control structure on the property.

¹³ The South Carolina Coastal Council was the predecessor agency to the Department's Office of Ocean and Coastal Resource Management and was the regulatory agency responsible for administering and enforcing the Act. Later, the South Carolina Department of Health and Environmental Control (DHEC) assumed this regulatory responsibility. During the course of this case, DHEC was restructured, and its powers were transferred to DES. Act 60, 2023 S.C. Act 60; *see* S.C. Code Ann. § 1-30-140 (Supp. 2024). In the interest of clarity and convenience, the term "Department" may refer to DES or its predecessor agencies.

setback line established the outer limits of Respondent's right to construct, repair, and modify structural improvements and erosion control structures, the baseline and setback line shown on the plat has since been reestablished. *See* S.C. Code Ann. § 48-39-280(C) (Supp. 2025) (providing that baselines and setback lines remain in effect until reestablished).

Prior to the erosive events discussed below, Respondent's property was protected by a "sacrificial dune," and his back yard was landscaped with vegetation including a palm plant.

Baseline and Setback Line

The General Assembly implemented the baseline and setback line as part of its creation of the management of the "beach/dune system" in 1988. *See* Act No. 634, 1988 S.C. Laws Act 634 (codified at S.C. Code Ann. §§ 48-39-270-360). The Department last established a baseline and setback line for Isle of Palms (City) in 2018. Significantly, Respondent's property is located in close proximity to the beach/dune system and, since 1991 the setback line and baseline for the City has gradually shifted seaward from the boundary reflected on Respondent's plat.¹⁴ There is also no dispute between the parties that Respondent's hard structure was installed landward of the setback line.

General Characteristics of the Isle of Palms Shoreline

The area of the City at issue in this case has historically experienced dynamic shoreline movement. Aerial photographs illustrate that the beaches adjacent to Respondent's property have advanced and retreated through time. Still, the shoreline in the vicinity of Respondent's property is generally accretional in nature with vacillating periods of accretion and erosion lasting anywhere from one to several years. For instance, the Department's Coastal Services Section Manager, Ms. Jessica Boynton, commented that the area at issue has been in an erosional cycle since 2016 and Mr. Slagel indicated that as of September 2023, the beaches extended landward of the setback line. Yet, as highlighted by the Department's expert witness, Christopher P. Jones, P.E.,¹⁵ the City's beaches have recently started to accrete.

¹⁴ Notably, the vegetation/escarpment line along the City's coastline has also moved landward between 2006 and December 2023.

¹⁵ Christopher P. Jones was qualified as an expert in coastal engineering, coastal processes and management with a focus on storm impacts and erosion control structures.

Episodic Events

The area surrounding Respondent's property as well as the adjacent shoreline has recently been impacted by a series of episodic events.¹⁶ For instance, on May 18, 2023, a nor'easter hit the South Carolina coast, decimating the dune on the beaches adjacent to Respondent's property. Not long thereafter, on August 30-31, 2023, Tropical Storm Idalia hit the South Carolina coastline, causing a 9.23-foot surge along the City.¹⁷ Later that year, a third coastal storm impacted the City and produced the highest non-tropical tide of record, measuring 9.86 feet.

Erosion and Renourishment Efforts

Following the May 2023 nor'easter, Respondent contacted the Department to express concerns regarding erosion and the vulnerability of his property due to the loss of the "sacrificial" dune.¹⁸ Indeed, photographic evidence showed that tidal and wave action swelled up to Respondent's property depositing wrack and dead marsh grass onto Respondent's yard. In an effort to protect the newly exposed escarpment,¹⁹ Respondent removed most of the seaward line of vegetation on his property, with the exception of a palm plant, and draped artificial turf over the slope of the recently exposed escarpment. In addition, Respondent met with the Department to discuss other permissible activities he could take to further protect his property. At that time, the Department informed Respondent by email that "[h]ard erosion control structures such as seawalls, bulkheads, or revetments have been prohibited **seaward** of the [DES] OCRM setback line since 1988 with the passage of the S.C. Beachfront Management Act[.]" (emphasis added). The Department further directed Respondent to the Department's jurisdictional line website for information on the current baseline and setback line which, it indicated, "do not change in between line review cycles."²⁰

¹⁶ Episodic events include occasional or intermittent weather events and storm surges. Obviously, these events can affect shoreline change.

¹⁷ Hurricane Idalia was classified as a category 4 hurricane on August 30, 2023. The hurricane made landfall near Keaton Beach, Florida but rapidly weakened and fell below hurricane strength. Nonetheless, the storm produced large areas of heavy rains and tropical-storm-force winds across southeastern Georgia and eastern portions of the Carolinas, including the City, from August 30-31, 2023.

¹⁸ Initially, Respondent applied for a general permit on May 22, 2023. The Department subsequently withdrew Respondent's permit due to the subsequent issuance of a general permit to the City for minor beach renourishment.

¹⁹ Later that summer, Respondent commissioned 3W Engineering & Surveying, LLC, for a professional survey of his property. Notably, the survey shows that the escarpment was landward of the setback line. An escarpment is the vertical cut into the beach from tidal and wave action.

²⁰ The Department's jurisdictional line website provides a GPS viewer where homeowners can view the location of

Shortly thereafter, on June 30, 2023, the Department issued a General Permit to the City to perform minor beach renourishment from 100 to 402 Ocean Boulevard, Isle of Palms, which includes Respondent's property. Renourishment efforts were to include placement of Department-approved beach-compatible sand along 3,400 linear feet of beachfront and construction of a six-foot dune with a fifteen-foot-wide dune crest and slope of 1:4.

On August 30, 2023, Tropical Storm Idalia ushered additional damage and erosion to Respondent's property. On September 1, 2024, Ms. Boynton and Mr. Slagel visited the shoreline near Respondent's property to assess damage and collect data on shoreline erosion.²¹ In addition, the Department issued an EO to the City to address conditions arising from the storm. Specifically, the Department authorized the City to scrap no more than one foot of sand from the intertidal beach extending from 100 to 314 Ocean Boulevard and 11 Beachwood East, Isle of Palms, for placement against an eroded escarpment or, to replace an eroded dune seaward of a threatened structure. The EO restricted the dune height to no more than six-feet above grade or twenty-feet in width as measured from dune toe-to-dune toe and no sand was to be placed landward of an existing functional erosion control structure.²² As a result of the City's efforts, a dune was fully constructed seaward of Respondent's property by September 11, 2023.²³

Installation of the First Concrete Structure²⁴

Despite receiving notification from the Department that "any unauthorized work within the State's critical area, which include the beach/dune system and beaches, will be considered a violation of the S.C. Coastal Tidelands and Wetlands Act," Respondent took action to protect his

the "jurisdictional lines" in correlation to one's property.

²¹ The Department used a Global Navigation Satellite System (GNSS) unit to demarcate the landward extent of erosion at that time. Data points for the location of the escarpment/vegetation line were collected manually, on site, using a handheld GPS. While GIS and GPS field collection, shoreline change, and feature identification may be important tools in the establishment of the escarpment/vegetation line, the Department's specialized knowledge is limited to the establishment of the baseline and setback line. §§ S.C. Code Ann. 48-6-30 (2018) & -39-280 (Supp. 2024); S.C. Code Ann. § 1-23-330(4) (2005). After all, the Legislature has entrusted the Department with the responsibility to establish a baseline and setback line.

²² An additional EO was issued on September 29, 2023 to address ongoing conditions associated with Tropical Storm Idalia and subsequent king tide events. Similar to the August EO, the September EO permitted the City to scrape sand from the intertidal beach between 100 and 314 Ocean Boulevard for placement against an eroded scarp or dune, seaward of threatened structures. An EO was also issued on September 21, 2023 for sand scraping yet it was limited to beaches facing the Atlantic Ocean at 130, 132, and 202 Ocean Blvd., Isle of Palms.

²³ By mid-October, the City had completed the construction of a continuous sand dune extending north and south of Respondent's property.

²⁴ Hereinafter, I will refer to this structure as ERC-1.

property. Specifically, he contracted for the removal and relocation of approximately 300 cubic yards of existing sand to the “critical line berm” and installation of approximately 410 cubic yards of approved clay up to the critical line. In addition, Respondent replaced the artificial turf that overlayed his yard, resulting in the repositioning of his tile pavers which led to the beach. Nonetheless, the artificial turf began to wrinkle. In an effort to stabilize the turf, Respondent, through his contractor, dug a 2’ x 130’ foot trench adjacent to the beach, approximately six feet deep. The trench was filled with concrete to form a ninety-two linear foot wide, four foot tall, two to three feet deep structure, consisting of woven geotextile fabric and wire mesh, with landward extending wing walls; materials which the Department witnesses asserted are non-compatible beach materials.

While Respondent did not offer evidence to dispute that ERC-1 was constructed with non-beach compatible materials, he maintains that it is not an erosion control structure because it was not engineered to withstand the forces of water.²⁵ Mr. Jones nevertheless explained that ERC-1 is an erosion control structure because it was designed to retain fill material and thus was a bulkhead.²⁶ Indeed, based upon Respondent’s own accounting, ERC-1 was constructed to retain his yard, an outcome which he achieved by filling concrete approximately six feet below grade.

Ongoing Erosion and Renourishment Efforts

On November 15, 2023, the Department determined that conditions along the shoreline continued to expose and create an imminent threat to the City’s beach front properties. The Department issued a fourth EO to the City to remove or maintain existing sandbags or place new sandbags on the beaches from 120 to 206 Ocean Blvd., Isle of Palms.

Thereafter, on December 17, 2023, a nor’easter hit, which further eroded the beaches and also left ERC-1 exposed to the surf. Following that storm, Respondent attempted to place half a million cubic yards of beach compatible sand in the area near ERC-1 in an effort to replenish the sand on the adjacent beach. However, while the fifth EO issued to the City authorized sand scraping from the intertidal beach between 112 to 308 Ocean Boulevard, Isle of Palms, it specifically excluded sand scraping seaward of 118 and 122 Ocean Boulevard, purportedly due to

²⁵ As will be discuss further below, Respondent subsequently modified ERC-1 to ensure that it would not fall as a result of exposure to tidal and wave action.

²⁶ See S.C. Code Ann. § 48-39-270(1)(b) (2008) (defining bulkhead as “a retaining wall designed to retain fill material but not to withstand wave forces on an exposed shoreline.”).

the presence of “unauthorized erosion control structures.” Accordingly, Respondents’ efforts were halted by the City Administrator who informed Respondent that he was prohibited from placing additional sand and other non-beach compatible materials to cover up ERC-1.

Interestingly, Compliance and Enforcement Section Manager for the Department, Morgan Flake, acknowledged that she was the person who informed the City that sand could not be placed in front of ERC-1. Ms. Flake averred that these provisions were put in place because “covering up a violation does not compel compliance, [and], in this instance, it wouldn’t allow the Department to further assess and really understand the extent of the structure that had been recently uncovered that was in the critical area.” Nevertheless, I find her contentions to be questionable, in fact, the Department’s directive appears to have further exposed 118 and 122 Ocean Boulevard to additional erosional forces as Ms. Flake acknowledged that the configuration across a dune must be contiguous. This was even more disconcerting because ERC-1 was starting to appear unstable. In fact, Respondent feared that “if this wall starts to move, there’s no telling what it’s going to do. ... if there’s a pet there, if there’s a person there, it could kill them....”

Yet, the City’s EO expressly prohibited sand scraping seaward of an erosion control structure unless it was proven that the erosion control structure was in danger of collapsing **and** within ten feet of the habitable structure. Therefore, although ERC-1 was in danger of collapsing and thus posing a threat to the public, the express terms of the City’s EO precluded the City from sand scraping in front of Respondent’s property since ERC-1 was more than ten feet from Respondent’s home. Thus, to remediate the perceived hazard, Respondent aligned non-beach compatible rip-rap along the seaward edge of ERC-1. The Department nonetheless disagreed with his actions because the rip-rap could impact sea turtle nesting and public access and safety.

In sum, Respondent believed his actions were necessary because the Department prohibited him from protecting his property and mitigating safety concerns related to ERC-1.

Construction of the Second Structure

By mid-January, ERC-1 started to develop cracks and further tilt forward towards the beach. Respondent hired CNT to straighten and repair ERC-1. The contract described the scope of work to include:

[i]ninstall underpinning brackets in an inboard/outboard pattern, 6’ on center of entirely existing wall. Brackets to be mechanically attached to wall all thread and epoxy. Bracket to be “pinned” through the t-pipe and pile connection and to prevent up lift. Piles to extend 10’ below grade. Install steel mending plates (4) at each

joint. Plate to be approximately 3' in length $\frac{3}{4}$ ' thick. Two plates bolted inboard of joint and two plates to be bolted outboard of joints. Anticipated 4 joints. Rent large excavator, move approximately 450 cubic yards of soil. Excavation to be to inboard plane of new wall. Contract with Penhall concrete cutting and section existing wall into manageable pieces. Attempt to right existing wall into a plumb postilion.

Additionally, expanding polyurethane structural foam was applied to fill the cracks in ERC-1. However, Respondent indicated that he was later informed by CNT that, notwithstanding the repairs, ERC-1 would not withstand the wave forces. Respondent thus amended the contract to provide for the installation of a "real wall" landward of ERC-1 as "it [was] very important to [him] that this thing does not fall down."²⁷ While the second structure was constructed landward of ERC-1, the April property survey shows that ERC-1 and the second structure form one contiguous hard structure.²⁸ Based upon Respondent's own accounting, the hard structure is a seawall,²⁹ which is also considered a hard erosion control structure, since the second structure was specifically installed to ensure that ERC-1 would not just retain Respondent's yard but also withstand normal wave forces.

Regulation of the Erosion Control Structure

Utilization of the Critical Area

The Department determined that it had the authority to enforce the provisions of the Act because Respondent installed non-beach compatible materials and excavated substantial amounts of substrate with heavy machinery in the "beaches critical area." The Department reached this conclusion based upon the Department's then acting Compliance Project Manager Jacques Prevost's observation that the hard structure was seaward of the observed vegetation at adjacent properties as well as the Department's June and September vegetative escarpment line.

Mr. Slagel explained that the beaches critical area is "where the sand and vegetation boundary exists ... using that vegetation as an indicator for the periodic inundation that is

²⁷ During the course of this work, Mr. Prevost visited the property several times, observing non-beach compatible materials including rip-rap debris, larger granite rocks, geo textile fabric, clay and marine debris scattered in the vicinity of the hard structure as well as along the adjacent beach. While Respondent did not deny the use of non-beach compatible materials to construct the hard structure, he disputed the allegation that the unauthorized materials scattered along the adjacent beach were attributable to his actions. Notably, the Department failed to convincingly establish a nexus between Respondent's actions and the non-compatible materials observed along the adjacent beach.

²⁸ Collectively referred to as a hard structure hereinafter.

²⁹ See S.C. Code Ann. § 48-39-270(1)(a) (defining seawall as "a special type of retaining wall that is designed specifically to withstand normal wave forces[.]").

occurring.”³⁰ He further expounded that in instances where landscape has been heavily manipulated or vegetation has been removed, the Department looks for established vegetation at the adjacent properties.

At the time Ms. Boynton assessed the September 1, 2023 vegetative escarpment line,³¹ a lone palm stood along the seaward edge of Respondent’s property. Despite recognizing that the palm was “non littoral” vegetation, Ms. Boynton’s disregarded Respondent’s palm because she believed it was not in good health due to inundation.³² As a result, the location of the vegetation/escarpment line was marked slightly landward of the location of Respondent’s palm. Overlaying the location of ERC-1 on the September 1, 2023 vegetative escarpment line, Ms. Boynton averred that ERC-1 was approximately ten to twelve feet seaward of the vegetative escarpment line.

Respondent criticized Ms. Boynton’s testimony, arguing that her demarcation of the vegetative escarpment was unduly subjective and based on arbitrary factors not encompassed within the statutory definition of beaches. However, Respondent overlooks that Ms. Boynton’s consideration of the presence of vegetation on September 1, 2023 was for purpose of identifying the vegetative escarpment line or, in other words, the most landward point of erosion at any time in the last forty years. Nevertheless, the Department’s reliance on the vegetation line to determine the location of the beaches critical area line is dubious. First, the Department collected the vegetative escarpment line the day after Tropical Storm Idalia and the Department’s own expert witness acknowledged that through the definition of the beaches, the beaches critical area line could effectively change day-by-day based upon the category of a storm and its effects on the shoreline. Moreover, the Department marks the vegetative escarpment line using GPS vegetation line surveys, escarpment mapping, elevation data, tidal records, and comparison with adjacent

³⁰ While the Department relies on the vegetation line to determine the most landward point of erosion, Ms. Boynton indicated that it also considers other indicators to discern the presence of inundation, including the presence of an escarpment line, accumulation of wrack, organic material and dead marsh grass indicators.

³¹ While I found Ms. Boynton’s testimony to be generally credible, I do not find her experience and specialization expands to the use of GIS, GPS field collection, shoreline change, or feature identification. Indeed, the Department has been entrusted to establish the baseline and setback line. While GIS and GPS field collection, shoreline change, and feature identification may be important tools in the establishment of these lines, Ms. Boynton’s specialized knowledge is limited to the establishment of the baseline and setback line. §§ S.C. Code Ann. 48-6-30 (2018) & -39-280 (Supp. 2024); S.C. Code Ann. § 1-23-330(4) (2005).

³² Ms. Boynton indicated that when marking the vegetation line consideration is given to the existence of a root system and health of any observed vegetation since it “takes more than five minutes for a plant to die.”

undisturbed properties where vegetation has not been obscured. While I find GPS units to be accurate, the Department's identification of the vegetation line in this case was subjective. Nevertheless, Ms. Boynton averred that the Department considers other indicators to discern the presence of inundation, including the accumulation of wrack, organic material and dead marsh grass indicators. However, the Department's isolated observations on September 1, 2023 do not establish that ERC-1 was subject to periodic inundation nor that it is in the statutorily defined beaches which again, requires evidence of a lack of nonlittoral vegetation.

Feature Analysis

To further show that ERC-1 was located in the beaches critical area, the Department conducted a feature analysis using aerial imagery from June, October, and November 2023.³³ Since only the June 2023 aerial image was georectified, Ms. Boynton relied on Respondent's tile pavers to establish a unit of measurement to gauge the location of ERC-1 during October and November 2023.³⁴ To account for any tile movement, Ms. Boynton used the fixed location of the pool at the adjacent property to establish a 2.7 foot average tile size and spatial unit of measurement. To ensure the accuracy of her estimated 2.7 foot unit of measurement, Ms. Boynton replicated this process on georectified imagery from January and March 2023 and September and February 2024. Notably, while three of the four images produced an average tile and spacing of 2.7 feet, the February 2024 image resulted in an average tile and spacing of 2.65 feet. Nonetheless, Ms. Boynton selected an average tile and spacing unit of 2.7 feet since she believed it produced a more "conservative estimate" of the location of ERC-1. Based upon the 2.7-foot unit of measurement, Ms. Boynton opined that during October and November 2023, ERC-1 protruded approximately four to five feet into the beaches critical area, a conclusion which Mr. Jones found to be reliable.

However, Respondent convincingly established the unreliability of the Department's feature study. The variation in the average tile and spacing corroborates Respondent's indication

³³ A feature analysis uses remotely sensed imagery to interpret the relationship between observable natural and man-made features and extrapolate measurements and form hypotheses therefrom. The June 2023 aerial image contains georectified spatial data, effectively giving the observed features real-world coordinates. While the October and November aeriels were not georectified, Ms. Boynton used them since they depicted the area in question before and after the construction of ERC-1. Notably, the feature interpretation also incorporated Respondent's July survey data.

³⁴ Ms. Boynton explained that she selected the tile pavers because they were consistent in size and spacing and apparent in all three images.

that the tiles were moved after Tropical Storm Idalia. While Mr. Jones believed the feature analysis to provide a reliable indicator of the location of ERC-1, he did not provide a sufficient basis for his opinion, in fact he did not even visit the area in question. Furthermore, I am wary of Ms. Boynton “conservative” selection of the 2.7-foot unit of measurement. Although Ms. Boynton believed it to produce a conservative estimate, it seemed to position ERC-1 farther seaward, a result which is indisputably favorable to the Department’s position in this case. As such, I find the probative value of the feature analysis is de minimis.

Expert Testimony

Both parties engaged experts to assist the Court in its consideration of the presence of periodic inundation for purpose of determining whether Respondent’s hard erosion control structure was in the “beaches” as designated by statute. On behalf of the Department, Mr. Jones testified as an expert in coastal engineering, coastal processes and management, particularly on storm impacts and erosion control structures. Mr. Jones’s work has been heavily concentrated on South Carolina coastal environments, and he convincingly described the effects of storms and erosion control structures on the City’s beaches. Notwithstanding his work on the development of the State’s interim baseline and involvement in drafting the City’s 2008, 2017, and 2022 long-term beach management plan, he was, nevertheless, not qualified in coastal policies. Additionally, Mr. Jones has neither visited the property nor been to the City since 2018. Rather, Mr. Jones’ opinion was founded upon his review of the Department’s photographic evidence from May 2023 through October 2024. Based on that evidence, he opined that Respondent’s hard structure was periodically inundated.³⁵ As such, he further opined that the structure was in the beaches critical area.

Nonetheless, Mr. Jones was unable to state with a reasonable degree of certainty the extent to which Respondent’s hard structure encroaches into the beaches critical area. In fact, he indicated that the critical area has moved over time and that at some point in the future Respondent’s hard structure may even cease to be in the beaches critical area. Even more

³⁵ Mr. Jones highlighted various characteristics captured between May 2023 and October 2024, including a vertical scarp, lack of nonlittoral vegetation on the scarp and base of the dune, accumulation of wrack and continued indication of water reaching the base and behind Respondent’s hard structure. However, Mr. Jones also opined that the vegetation line is a “good indicator” of periodic inundation, particularly on an eroding shoreline. This opinion is not in keeping with the specificity of the statutory definition of a beaches which requires both periodic inundation and non littoral vegetation.

disconcerting, Mr. Jones opined that due to the episodic nature of storms, the Department's jurisdiction could change day-by-day or storm-by-storm based upon the statutory definition of the beaches. In other words, neither the Court nor a landowner could consistently determine, with a reasonable degree of certainty, whether a permit is required. Yet still, the Department's witnesses averred that while the vegetation line is the biological indicator of the landward extent of regular inundation, it also considers other indicators such as the accumulation of dead marsh grass or an escarpment to discern whether periodic inundation is present.

On the other hand, Matthew Goodrich was qualified as an expert on periodic inundation, how its calculated, and its relationship to vegetation on behalf of Respondent. While he was qualified as an expert, it is nonetheless notable that Mr. Goodrich's work has been heavily concentrated on engineering projects on estuarine or riverine environments rather than open beaches and thus he lacks experience in coastal management and in the identification of vegetation and delineation of critical area lines along shorelines.

Mr. Goodrich opined that the establishment of vegetation is determined by the limit of periodic inundation, something which he averred is a factor of ground elevation. He opined that periodic inundation results from the periodic rising and falling of water, an occurrence which he believed to be caused by astronomical tides. Based upon these principles, he calculated that the maximum elevation of the tides at Respondent's property was a 5.5-foot elevation contour NAVD (North American Vertical Datum of 1988), an elevation which he further found to be insufficient to produce periodic inundation at the location of Respondent's hard structure.

To arrive at his estimate, Mr. Goodrich considered available information from the National Oceanic and Atmospheric Administration (NOAA) on tidal water levels. However, Mr. Goodrich's conclusion unreasonably disregarded the effect of episodic events on the City's shoreline. Furthermore, Mr. Goodrich's simulated wave-run up calculation is unreliable as these calculations are highly variable depending on the selected model and inputs. Here, Mr. Goodrich relied on the equation extracted from the EurOtop manual and his calculations were a derivative of the average offshore waves at the Charleston House gauge and a uniform slope of a .03. However, this data is not representative of the limit of periodic inundation as reflected on the beach profiles near Respondent's property.³⁶ In addition, even were the Court to assume Mr. Goodrich's

³⁶ Notably, the beach profiles illustrate that the slope of the foreshore is not uniform and that the reach of periodic inundation ranges from six to 6.6-feet NAVD.

5.5-foot elevation contour NAVD to be accurate, periodic inundation would have overrun Respondent's hard structure considering that its highest elevation as measured by Respondent's surveyor was 3.9-feet NAVD. Thus, the data applied by Mr. Goodrich is not reflective of the maximum elevation of inundation at Respondent's property.

I also found that Mr. Goodrich too easily dismissed consideration of vegetation, particularly considering that he was unable to account for the thirty-four-foot variance between his theoretical estimate of the landward extent of periodic inundation and the vegetative escarpment line collected on September 1, 2023. In fact, Mr. Goodrich even acknowledged that the vegetation line can be an indicator of the landward extent of the water's reach where erosion has eroded the soil and removed vegetation. Therefore, while Mr. Goodrich testified in detail and with reasoning that made him persuasive in some areas, his theoretical approach was not an accurate reflection of conditions depicted, time and again, in the photographic evidence.

In sum, I did not find either expert to be entirely convincing. Therefore, I have made my factual analysis based upon the aspects of each expert's testimony I found convincing. *See Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 470, 494 S.E.2d 835, 846 (Ct. App. 1997) ("Where the expert's testimony is based upon facts sufficient to form the basis for an opinion, the trier of fact determines its probative value."); *see also Altama Delta Corp. v. Comm'r*, 104 T.C. 424, 465–66 (1995) ("We are not bound by the opinion of any expert witness, but will consider that opinion based on our analysis of the evidence in the record and applying our judgment in consideration of that evidence.") ("While we may choose to accept the opinion of one expert in its entirety, we may also be selective in the use of any portion of that opinion.").

Active Beach

Relatedly, "active beach" also has a regulatory function. It is the "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). Mr. Jones indicated that the active beach is a subset of the beaches critical area, specifically the area of the beaches which moves frequently.

Georectified Imagery from October 10, 2023 and Ortho Imagery on December 18, 2023 shows that the stable nature vegetation was considerably landward of ERC-1 and Respondent did not present any evidence to establish that the escarpment was seaward of the stable nature vegetation at that time. Likewise, site photographs from December 28, 2023 illustrate that the escarpment at the neighboring property was landward of ERC-1 and Respondent did not present

any evidence to show the presence of stable nature vegetation seaward of the escarpment or ERC-1. In addition, Mr. Jones testified that the Department's February 1, 2024 site photographs show that ERC-1 was on active beach. Moreover, Respondent's April 4, 2024 property survey displays segments of the hard structure on active beach as the hard structure is depicted seaward of the top of the bank which again is, the top of the escarpment and, significantly, Respondent did not produce any evidence to show the presence of nonlittoral vegetation seaward of the escarpment.³⁷ Nevertheless, as explained by Mr. Jones the active beach moves frequently—indeed, even man-made events such as sand scraping or minor renourishment projects can alter the location of the active beach.

Conclusion

The Department determined that it had the authority to enforce the provisions of the Act because Respondent engaged in activity in the beaches critical area without first obtaining a permit from the Department. Beaches are “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). Likewise, the expert testimony was centered upon whether ERC-1 and the hard structure were subject to periodic inundation and the existence of nonlittoral vegetation for purpose of determining whether Respondent's hard erosion control structure was in the “beaches” as designated by statute. Nevertheless, the dynamic nature of the shorelines manifests the difficulty in making a determination of the presence of periodic inundation under the facts of this case. Although “periodic” is not specifically defined under the Act, periodic inundation includes wave and tidal action that occurs from time to time. Yet, this term is difficult to quantify in the context of the coastal environment. Clearly, inundation resulting from regular tides that occur along the shoreline would be characterized as periodic. Conversely, since storms are episodic in nature and do not occur in a consistent and predictable cycle, the inundation from a singular storm would not be considered periodic; even though storms are nevertheless reoccurring. King 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

³⁷ The 3W's survey only portrays a segment of the hard structure seaward of the top of the bank. Nonetheless, at the time the survey was completed, portions of Respondent's hard structure were situated seaward of the top of the escarpment.

periodic. Indeed, while at one point ERC-1 and the hard structure may have encroached onto beaches, even the Department's own witness could not confirm where the "beaches" is now.

Nonetheless, 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." Yet still, all of the events addressed above are a regular and natural part of the coastal environment. In fact, they showcase the dynamic nature of the shoreline. Therefore, while episodic events and king tides are not necessarily determinative of what constitutes periodic inundation for purpose of identifying the beaches as designated by statute, these events are nevertheless a part of my consideration of the effects of Respondent's hard structure on the adjacent beach. In other words, in determining the adverse effects of Respondent's structure to the public beach, the nature of the inundation is inconsequential, rather it is the substantive effects of the tidal and wave action which present an adverse effect to the public beach.

Adverse Effects of Hard Erosion Control Structures

There is no dispute that the beach adjacent to Respondent's property is readily accessed and enjoyed by the public. Here, the evidence established that the land where Respondent constructed ERC-1 and the hard structure has been subject to subject to inundation. Indeed, the evidence shows water reaching Respondent's property at varying times throughout the Department's investigation.³⁸ For instance, the evidence of the accumulation of wrack and saturated sand at the base and around the wing walls of both ERC-1 and the hard structure reflected the structure has been exposed to tidal wave action. In fact, both experts agreed that the presence of wrack is suggestive of tidal and wave action having reached up to the location of the wrack. Furthermore, the April 4, 2024 survey of Respondent's property shows that portions of the hard structure are seaward of the top of bank and landward of the toe of the dune. The top of the bank marks the top of the escarpment, a feature which also indicates the occurrence of erosive forces such as wave and tidal action having reached the area in question. In addition, ERC-1 and the hard structure have been on the active beach and therefore were subject to inundation.³⁹

³⁸ Although the Department presented evidence of water reaching Respondent's property at varying times, it is notable that most of this evidence was following episodic storm events and king tides.

³⁹ Importantly, the active beach moves frequently. Thus, while the active beach may be a subset of the beaches and therefore evince the exposure to tidal and wave action, the presence in the active beach does not establish that the inundation was periodic for purpose of determining whether an area in in the beaches as designated by statute.

The repeated interaction of tidal and wave action with Respondent's hard structure is significant because, it caused a "significant amount of erosion or scour" on the adjacent public beach. As a result, Respondent's hard structure has accelerated erosion of the adjacent beach and, in doing so, adversely affected the public. As explained by Mr. Jones, hard erosion control structures like Respondent's restrict the natural flow of sediment and induce scour onto adjacent properties, a fact which Respondent did not dispute. Naturally, this accelerated erosion contributes to increased deterioration of the adjacent beach; a loss, which adversely affects public access laterally along the beach adjacent to the structure.

Ms. Flake also averred the environmental impacts of the installation of the hard structure have been significant. Indeed, the photographic evidence shows that the footprint of Respondent's hard structure extends farther seaward into the adjacent beach than any neighboring structure and, as stated by Mr. Slagel, in cases such as here, where a beach continues to erode, hard structures like Respondent's cause a loss of dry sand in adjacent areas—a consequence which will result in further loss of public access laterally along the beach adjacent to Respondent's hard structure.

In addition, both experts agreed that episodic events are a natural part of the coastal environment. Those storm events have been commonplace in the City and it thus appears that they will persist in the future. Moreover, when a storm hits, Respondent's hard structure will have a further detrimental impact because it will cause scour and additional erosion to occur.

Sanctions

The Department determined a \$289,000.00 civil penalty was appropriate based upon its Civil Penalty Assessment Guidelines. In support of that determination, Ms. Flake averred that Respondent's actions were the most egregious she has seen throughout her tenure with the Department's Compliance and Enforcement section. She indicated that each alteration of the hard structure amounted to its own violation. Ms. Flake further stated that a maximum penalty of \$1,000 per day was assessed because, notwithstanding advice from the Department as to its jurisdiction over the area landward of the setback line, Respondent installed a structure to protect his property with non-beach compatible materials, without first obtaining Department approval. Ms. Flake also asserted that the purpose of assessing penalties is to deter future non-compliance and she believed that if the Department had not assessed a "meaningful penalty" for Respondent's actions, the "cumulative impacts of other people thinking that they can ignore Department []

directives and authority in the critical area ... could lead to astronomical critical area impacts that negatively impact – affect all of South Carolina, all of the citizens, all the visitors of the state.”

At the outset, the Department did not produce any credible evidence that it has historically required a permit for the construction of an erosion control structure landward of the setback line nor could it confirm whether it has assessed a civil penalty for activity landward of the setback line.⁴⁰ To the contrary, Respondent introduced evidence that the Department, at least on one occasion, did not require a critical area permit for construction of an erosion control structure landward of the setback line.⁴¹ While Mr. Slagel professed that action “was a mistake by the Department,” he nevertheless acknowledged that he informed the homeowners that no Department approval was required for the construction of a seawall landward of the setback line.⁴²

It is also significant that Department initially informed Respondent by email that “[h]ard erosion control structures such as seawall, bulkheads, or revetments have been prohibited **seaward** of the [DES] OCRM setback line since 1988 with the passage of the S.C. Beachfront Management Act[]” and, in turn, directed Respondent to the Department’s “jurisdictional line website” for information regarding the current baseline and setback line which, it declared, “do not change in between line review cycles.” (emphasis added). Notably, this guidance appears consistent with the introductory section of the Department’s Beachfront Jurisdictional Line Stakeholder Workgroup May 2019 Final Report and the Beachfront Jurisdictional Lines Background provided to the Senate Subcommittee (collectively referred to hereinafter as Reports), which also imply that the extent of the Department’s direct permitting authority over beachfront activity is established by the location of baseline and setback lines.

⁴⁰ Indeed, the Department’s March 4, 2024, April 3, 2024, and June 6, 2024 photographs also show an escarpment line and accumulated wrack and/or organic material at the base and around the wings of Respondent’s hard structure, evidence which clearly establishes that tidal and wave action reached the hard structure.

⁴¹ This matter was repeatedly referenced as the Piping Plover case.

⁴² 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.

Lastly, Ms. Flake further indicated that Respondent's installation of the second structure after issuance of the first cease and desist order and construction of that structure during the night evidenced Respondent's deceptive conduct. Yet, the Department failed to corroborate this allegation with any direct evidence of work having been performed at night or Respondent placing sand atop of either of his hard structure.

ISSUES

1. Does the Department have jurisdiction over the critical area where the beaches have eroded landward of the beach/dune system?
2. Is the Department precluded from enforcing its jurisdiction because it failed to promulgate a regulation amending its long-standing policies in areas landward of the setback line?
3. Whether the activity occurred in the Beaches Critical Area?
4. Whether the proposed sanctions are arbitrary and capricious?

CONCLUSIONS OF LAW

Standard of Review

Pursuant to the Administrative Procedures Act, the ALC conducts its review *de novo*. *Engaging & Guarding Laurens Cnty. Env't (EAGLE) v. S.C. Dep't of Health & Env't Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014); *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. at 54, 766 S.E.2d at 728 (2014) ("The General Assembly specifically granted ALCs the significant right to render final decisions based on *de novo* review."). Therefore, in contested cases such as here, the ALC serves as the sole finder of fact and considers the matter anew, freely substituting its own judgment as if no trial whatsoever had been had in the first instance. *S.C. Dep't of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 731 S.E.2d 330 (Ct. App. 2012). Consequently, this Court may exercise its own independent judgment as to both the law and the facts on the evidence presented to it and the record made before it.

Furthermore, the burden of proof in a contested case hearing is by the preponderance of the evidence. *Nat'l Health Corp. v. S.C. Dep't of Health & Env't Control*, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989). "In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof." *Sierra Club v. S.C. Dep't of Health & Env't Control*, 426 S.C. 236, 257, 826 S.E.2d 595, 67 (2019) (citation omitted); Rule 29(B), SCALCR ("In matters involving the assessment of civil penalties, the imposition of sanctions, or the

enforcement of administrative orders, the agency shall have the burden of proof.”). When applicable, the Court “shall give consideration to the provisions of § 1-23-330 with regards to the Department’s specialized knowledge.” S.C. Code Ann. § 44-1-60(F)(2); *see also* S.C. Code Ann. § 48-6-30.

Additionally, “[t]he qualification of a witness as an expert in a particular field is within the sound discretion of the trial judge.” *Risher v. S.C. Dep’t of Health & Env’t Control*, 393 S.C. 198, 206, 712 S.E.2d 428, 432 (2011). Where the expert’s testimony is based upon facts sufficient to form the basis for an opinion, the trier of fact determines its probative weight. *Bass v. S.C. Dep’t of Soc. Servs.*, 414 S.C. 558, 780 S.E.2d 252 (2015). Furthermore, the trier of fact is not compelled to accept an expert’s testimony, but he may give it the weight and credibility he determines it deserves. *Florence County Dep’t of Soc. Servs. v. Ward*, 310 S. C. 69, 425 S. E.2d 61 (Ct. App.1992). The trier of fact may accept one expert’s testimony over that of another. *S.C. Cable Television Ass’n v. S. Bell Tel. and Tel. Co.*, 308 S.C. 216, 417 S. E.2d 586 (1992).

Here, there is no dispute between the parties that Respondent constructed a hard structure without first obtaining a permit from the Department nor that he used non-beach compatible materials. Rather, at the heart of this case is a disagreement between the parties as to the scope of the Department’s jurisdictional authority under the Act. In the alternative, Respondent argues that even if the Department has jurisdiction, it has failed to meet its burden to show that the hard structure is in the “beaches” critical area. Lastly, Respondent contends that the assessed civil penalty imposed is unreasonable.

Department’s Jurisdiction over the Beaches in Coastal Zone

Statutory Framework

In 1977, the South Carolina General Assembly enacted the Coastal Zone Management Act (Act) to “protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone.” S.C. Code Ann. § 48-39-30(A) (2008). Among other things, the Act provided that “no person shall fill, remove, dredge, drain or erect any structure on or in any way alter any critical area without first obtaining a permit from the department.” S.C. Code Ann. § 48-39-130(C). The Act originally defined “critical area” to mean “coastal waters, tidelands, beaches, and primary ocean front sand dunes.” S.C. Code Ann. 48-39-10(J) (1977). Previously, “[p]rimary oceanfront sand dunes” was defined in the Act as “those dunes which constitute the front row of dunes adjacent to the Atlantic Ocean.” S.C. Code Ann. 48-39-10(I) (1977), amended

by Act No. 634 § 4, 1988 S.C. Laws Act 634. “Beaches,” however, was, and remains, defined in the Act as “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) (1977) (current version at S.C. Code Ann. § 48-39-10 (Supp. 2025)).

In 1988, the General Assembly adopted the Beachfront Management Act (BMA), based, in part, on a finding that the Act did “not provide adequate jurisdiction to the [Department] to enable it to effectively protect the integrity of the beach/dune system.” Act No. 634, § 1 (1988), 1988 S.C. Laws Act 634. The BMA amended the definition of “critical area” by replacing “primary oceanfront sand dune” with the “beach/dune system,” which is designated as “the area from the mean high-water mark to the setback line as determined in Section 48-39-280.” *Id.* at § 4 (codified as amended at S.C. Code Ann. § 48-39-10(J)) (1988)). In turn, the BMA called for the creation of baselines and setback lines on portions of the shoreline, depending on whether they are in a “standard erosion zone” or an “inlet erosion zone.” *Id.* at § 3 (codified as amended at S.C. Code Ann. § 48-39-280(A) (1988)). The Department is required to establish the baseline based on the “best available information and data,” and the setback is to be landward of the baseline at a distance of forty times the annual erosion rate as determined by historical and other scientific evidence. *Id.* Importantly, the BMA recognizes the dynamic nature of shorelines and thus provides for the periodic revision of these lines.⁴³ *Id.*

The BMA further added section 48-39-330 of the South Carolina Code (1988), which requires that any contract of sale and any deed with respect to transfers of real property located in whole or in part seaward of the setback line disclose the following:

[A] contract of sale or transfer of real property located in whole or in part seaward of the setback line or the jurisdictional line must contain a disclosure statement that the property is or may be affected by the setback line, baseline, and the seaward corners of all habitable structures referenced to the South Carolina State Plane Coordinate System (N.A.D.-1983) and include the local erosion rate most recently

⁴³ As originally enacted, the baseline and setback line were to be revised no less than five years nor more than ten years from the reset date. The frequency of revision of the baseline and setback line was subsequently amended and today provides for reestablishment every seven to ten years. S.C. Code Ann. § 48-39-280(C) (1988), amended by Act No. 173, § 4, 2018 S.C. Laws Act 173. The BMA also created a right for affected landowners to contest the Department’s establishment of the setback line, baseline, or erosion rate. Act No. 634 § 3 (1988), 1988 S.C. Laws Act 634. (codified as amended at S.C. Code Ann. § 48-39-280(E)). Thereafter, in 2018, the General Assembly enacted the Beachfront Management Reform Act (the “BRMA”), which added detailed procedures under which adversely affected landowners could request review of the establishment of the baseline and setback line, including the right to request a contested case hearing before the Administrative Law Court. Act No. 173, § 4, 2018 S.C. Laws Act 173 (codified as amended at S.C. Code Ann. § 48-39-280(F)).

made available by the department for that particular standard zone or inlet zone as applicable. Language reasonably calculated to call attention to the existence of baselines, setback lines, jurisdiction lines, and the seaward corners of all habitable structures and the erosion rate complies with this section.

S.C. Code Ann. § 48-39-330 (2008).

Lastly, the BMA pronounced a policy of strictly discouraging new construction of “new erosion control devices” in proximity to the beach/dune system. Act No. 634, §§ 1, 2, 3 (1988), 1988 S.C. Laws Act 634.

Parties Contentions

SCCCL and the Department contend that the Department has jurisdiction to enforce the July 1, 2024 administrative order against Respondent because it has permitting authority over the beaches critical area. Specifically, they argue that the plain language of subsection 48-39-10(J) of the South Carolina Code (Supp. 2025) classifies “beaches” and “beach/dune system” as separate critical areas. Therefore, they contend the Department has jurisdiction over “beaches” even if it is within the area for which a setback line has been statutory prescribed. In other words, it is the Department’s position that even though the BMA added the “beach/dune system” to the Act and further established a regulatory process for determining a baseline and setback line to effectuate a regulatory process to provide for beach protection, it nonetheless has jurisdiction landward of the “beach/dune system,” if it can demonstrate that the area meets the statutory definition of beaches.⁴⁴

⁴⁴ Interestingly, under the standard of review set forth in its proposed order, the Department cites case law on agency deference. Presumably, the Department believes its interpretation of the scope of its regulatory authority over the beaches critical area is entitled to agency deference. Indeed, the South Carolina Supreme Court has repeatedly found that “where the construction of the statute has been uniform for many years in administrative practice and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons.” *E.g., Charleston Cty. Assessor v. Univ. Ventures, LLC*, 427 S.C. 273, 289, 831 S.E.2d 412, 420 (2019) (internal quotation and citation omitted) (emphasis added); *see also Media Gen. Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 140, 694 S.E.2d 525, 526 (2010) (agency’s long-standing interpretation is usually entitled to deference). Nevertheless, this deference has its limits.

Here, we see not only the limits of agency deference but the need to circumscribe its application. As readily apparent from the evidence introduced in this case, the Department has previously informed other homeowners that no Department approval is required for the construction of an erosion control structure landward of the setback line. While the Department maintains this was an isolated oversight by the Department, the Department’s Reports correspond with the indication that the baseline and setback line represent the extent of the Department’s jurisdiction. Although the Department’s witnesses maintain that it has always exercised jurisdiction based upon the statutory definition of “beaches,” the Department failed to substantiate the adoption of a formal interpretation or longstanding policy. After all, it is the uniform interpretation adopted by the agency, not its staff, that is entitled to a degree of deference. *See also S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’t Control*, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005) (“The Panel, not OCRM staff, is entitled to deference from the courts.”). Indeed, this case displays the Department’s blind indifference to the legal principles from which agency deference sounds. *Charleston Cty. Assessor v. Univ. Ventures, LLC*, 427 S.C. at 289, 831 S.E.2d at 420; *see e.g., Harry v. S.C. Dep’t of Health and*

See S.C. Code Ann. §§ 48-39-10(H), (J); *see also* -280-90. In accordance with that interpretation of its jurisdiction, the Department contends Respondent is in violation of the Act because permits are required to alter or utilize any critical area. S.C. Code Ann. §§ 48-39-130(A) (providing that “no person shall utilize a critical area for a use other than the use the critical area was devoted to on such date unless he has first obtained a permit from the department.”), -210(A) (2008) (providing “department is the only state agency with authority to permit or deny any alteration or utilization within the critical area”).

To the contrary, Respondent contends that since the “beach/dune system,” which encompasses both beaches and dunes, is a specifically defined term in the Act, the Department’s jurisdiction is limited to areas seaward of the setback line as provided under section 48-39-290 of the South Carolina Code (2008 & Supp. 2025). More specifically, Respondent asserts that the Department lacks the authority to regulate any activity which occurs landward of the setback line because the Department’s jurisdiction over the “beaches” is limited by the statutorily designated boundaries of the “beach/dune system,” which is the area between the mean high-water mark to the setback line. He argues that his interpretation is supported by the General Assembly’s disuse of the term “means” to define “beach/dune system.” According to Respondent, by failing to use “means” in designating the “beach/dune system,” the General Assembly did not attempt to define that term but rather intended to establish the “geographic scope of the Department’s jurisdiction over beaches and dunes and their associated system.”

Respondent further contends that the inclusion of “beaches” as a separate critical area is not rendered meaningless since the Act provides for regulation of areas of the coastal zone for which a baseline or setback line is not established. Said differently, it is Respondent’s contention that it was the Legislature’s intent to retain “beaches” as a separate critical area to ensure that the Department would retain jurisdiction in the areas of the coastal zone that are exempted from the “beach/dune system” regulation. *See* S.C. Code Ann. § 48-39-280(E)(3) (Supp. 2025) (providing that the department may exempt specifically described portions of the coastline from monumented and controlled survey points requirements).

Moreover, Respondent contends the Court should find that his interpretation is consistent with the Legislature’s intent because it is congruent with the Department’s practice for the past

Env’t Control, Docket No. 09-ALJ-07-0255-CC (July 15, 2010) (setting forth the hazard of errantly granting agency deference).

twenty-five years and is also supported by the General Assembly’s inclusion of the term “beach” in “beach/dune system.” He also argues his interpretation was favorably viewed in *Braden’s Folly, LLC v. City of Folly Beach*, 439 S.C. 171, 886 S.E.2d 674 (2023).

Yet still, Respondent argues that the rules of statutory interpretation also support the conclusion that the Department’s jurisdiction is limited to the geographic bounds of the “beach/dune system.” Specifically, he contends his interpretation is consistent with Act’s general goal of balancing economic and social development of the coastal zone with preservation of this State’s coastal resources as it advances general notice and due process requirements, it avoids regulatory takings and is consistent with the State’s adoption of a policy of beach renourishment and increased public access to South Carolina beaches. Lastly, Respondent argues indication of the General Assembly’s intent can be gleaned from statutory provisions which establish procedures for claims to land seaward of the baseline or setback line and requirements for disclosure of the setback line and baseline on contracts of sale or transfer of property.

Analysis

The facts of this case reveal a unique factual circumstance in which the beaches adjacent to Respondent’s property extend landward of the setback line. In that light, the question presented to this Court by the parties is whether the laws establishing the setback line preclude the Department from exercising its permitting authority landward of that line even if the area meets the statutory definition of “beaches.” In reviewing that question the Court is faced with determining the implication that the Act sets forth separate definitions for “beaches” and the “beach/dune system” yet also defines each to mean a critical area that is irrefutably subject to the Department’s regulation.

In addressing this issue, the Court first notes that Respondent misreads the reach of the Supreme Court’s opinion in *Braden’s Folly*.⁴⁵ In that case, the Supreme Court considered whether Folly Beach’s enactment of a property merger ordinance amounted to an unconstitutional regulatory taking. Importantly, in setting forth the background of the case, the Court explained that the General Assembly exempted Folly Beach from part of the requirements set forth under the BMA and it granted Folly Beach the authority to act in the State’s stead when protecting the beach. Importantly, the Supreme Court recognized that since no setback line was established for Folly

⁴⁵ 439 S.C. 171, 886 S.E.2d 674

Beach, the City had the sole discretion to allow for all types of development that would otherwise be precluded under section 48-39-290 of the South Carolina Code. The Supreme Court did not, however, consider the Department's jurisdiction in areas other than those strictly regulated under sections 48-39-280 and 48-39-290 of the South Carolina code from which Folly Beach was explicitly exempted.

Furthermore, regarding Respondent's contention that this Court should adopt his interpretation of the Department's jurisdictional authority because it is consistent with the Department's prior practice of only regulating areas seaward of the setback line, I find that 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."). Rather, it is the Legislature that confers powers onto the Department. *City of Rock Hill v. S.C. Dep't of Health & Env't Control*, 302 S.C. 161, 165, 394 S.E.2d 327, 330 (1990) (citing *City of Columbia v. Board of Health and Env't Control*, 292 S.C. 199, 355 S.E.2d 536 (1987)).

Turning to SCCCL and the Department's claims, the Court initially notes that as a creature of statute, regulatory bodies such as the Department possess only those powers which are specifically delineated. *Id.* In implementing those laws, agencies must consider the policies the General Assembly has set forth as undergirding the law. See *S.C. State Highway Dep't v. Harbin*, 226 S.C. 585, 86 S.E.2d 466 (1955) (citing *State v. Stoddard*, 126 Conn. 623, 13 A.2d 586, 588) (administrative bodies must conform with statutes which declare legislative policies). Admittedly, the policies which underlie the Act may arguably be viewed as supporting Petitioners' contention that the Department has permitting jurisdiction over the beaches critical area. Indeed, subsection 48-39-250(8) of the South Carolina Code (2008) sets forth that "[i]t is in the state's best interest to protect and to promote increased public access to South Carolina's beaches for out-of-state tourists and South Carolina residents alike." S.C. Code Ann. § 48-39-250(8). Coastal Zones are defined as "all coastal waters and submerged lands seaward to the state's jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas." S.C. Code Ann. § 48-39-10(B) (Supp. 2025). It is therefore reasonable to assume that if the challenged

activity occurred in the area statutorily defined as “beaches,” it is in keeping with this State’s policy that the Department has permitting authority since it could not otherwise protect the entirety of the coastal zone if it were unable to exercise regulatory authority over the beaches, irrespective of the location of the setback line.⁴⁶

Nevertheless, the Court cannot ignore that there must have been a legislative purpose for the establishment of the baseline and setback line. *See* S.C. Code Ann. § 48-39-280. While the BMA does not specifically set forth the purpose of the baseline and setback lines, its purpose is apparent from an analysis of the law. The baseline and setback lines are statutorily established and are subject to a required review of their continued application after a specific period of time. S.C. Code Ann. § 48-39-290(C). In light of the establishment and review cycles, it can be reasonably inferred that the lines exist to establish consistency in coastal zone regulation. Interpreting the BMA as establishing a limit to the Department’s jurisdiction landward of the setback line would logically achieve that legislative purpose. Indeed, the Court’s understanding of the reasonableness of a landward limitation was revealed from the Department’s own evidence. For instance, as acknowledged by the Department’s own expert witness, the beaches critical area changes significantly from month-to-month or storm-by-storm and the extent of the change could be minor or significant depending upon the intensity of the storm. Undeniably, if there is no consistent delineation of the Department’s permitting authority along the shoreline, permissive use or alteration of the critical area will be constantly in a state of flux. This would create an undesirable result, leaving the Department’s permitting authority ever changing with no certainty to either landowners’ or this Court as to whether a permit is required.⁴⁷ Presumably, the legislature recognized the importance of avoiding such uncertainty when it established the baseline and setback line.

Additionally, the BMA established a public notice and participation process as a necessary component to the establishment of the baseline and setback line under section 48-39-280 of the South Carolina Code. Surely, this review provides the public with not only an understanding of the location where construction or reconstruction is permissible but also an opportunity to challenge the Department’s proposed baseline and setback line when adversely effected by their

⁴⁶ It is nonetheless important to recognize that in this case, the Department’s expert was uncertain whether the structure was still in the “beaches” critical area at the time of trial.

⁴⁷ Notably, Mr. Jones opined that there should be at least one growing season before vegetation is considered.

establishment. *See* S.C. Code Ann. § 48-39-280(F) (Supp. 2025). Consistent with the BMA’s notice provision, the Act also requires that any contract of sale or transfer of real property “located in whole or in part seaward of the setback line or jurisdictional line” contain a disclosure that the property is or may be effected by the baseline and setback line determination and notice of the local erosion rate which, could presumably effect the locations of the baseline and setback line. S.C. Code Ann. § 48-39-330. The BMA did not, however, require disclosure that the property may also be subject to the Department’s determination of beaches critical area. The fact that the General Assembly did not require such a disclosure could reflect that it did not intend for the Department’s jurisdiction to extend landward of the setback line.

Although these considerations present a challenge in determining whether the General Assembly intended to generally limit the Department’s permitting authority to areas seaward of the setback line, the Department’s request for an order to remove Respondent’s hard structure and restore the affected area must be viewed within the broader context of the “basic state policy” to “protect the quality of the coastal environment” and likewise, the use of erosion control structures. S.C. Code Ann. § 48-39-30(A) & -250-60. In other words, the policies and findings regarding the regulation of the coastal zone and the laws concerning erosion control structures necessitate that this Court consider whether Respondent’s placement of the erosion control structures in the coastal zone is consistent with the policies and laws codified by the Act. Indeed, this Court has in the past found that the Department was precluded from regulating the construction of erosion control structures outside of the critical area. *S.C. Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, 15-ALJ-07-0369-CC, 2018 WL 4854113 (S.C. Admin. Law Ct. Sept. 24, 2018). However, the South Carolina Supreme Court disagreed with that interpretation in *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, holding that consideration must be given to the impact an erosion control structure will have on the critical area, even when built outside of the critical area.⁴⁸ 434 S.C. 1, 862 S.E.2d 72 (2021). Certainly, this holding confirms that the policies undergirding the Act must be a central part of the Court’s analysis of the facts presented. Therefore, the Court now turns to an examination of the policies and law regarding erosion control devices.

⁴⁸ The Legislature’s decision to repeal section 48-39-200 from the Act reflects the Department currently has regulatory authority over the entirety of the coastal zone, even if activity occurs outside of the critical area. S.C. Code Ann. § 48-39-200 (*repealed by* 1993, Act No. 181, § 1235, effective from and after July 1, 1994).

Regulation of Erosion Control Structures

Erosion Control Structures

The Department has the power to enforce the Act and compel compliance with each of its provisions, including those related to erosion control structures. S.C. Code Ann. § 48-39-50(I). Pursuant to the Act, erosion control structures include:

- (a) seawall: a special type of retaining wall that is designed specifically to withstand normal wave forces;
- (b) bulkhead: a retaining wall designed to retain fill material but not to withstand wave forces on an exposed shoreline;
- (c) revetment: a sloping structure built along an escarpment or in front of a bulkhead to protect the shoreline or bulkhead from erosion.

S.C. Code Ann. § 48-39-270(1). Initially, Respondent argues that neither ERC-1 nor the hard structure are erosion control structures. Nevertheless, he agreed that ERC-1 was originally designed to retain material and, as such, it is a bulkhead which is defined under subsection 48-39-270(1)(b) of the South Carolina Code (2008) as an erosion control structure. Moreover, Respondent attested that the second structure was installed for the purpose of reinforcing ERC-1 so that it could remain water-facing. As such, based on Respondent's own testimony, I conclude that the addition of the second structure augmented ERC-1, transforming it into a seawall since its enhanced design was not only to retain Respondent's yard but to withstand normal wave forces. *See* S.C. Code Ann. § 48-39-270(1)(a) (2008). In sum, the structures constructed by Respondent are hard erosion control structures.⁴⁹ *See* S.C. Code Ann. § 48-39-270(1) (2008).

Adverse Effects

The Act specifically provides that the Department has "the authority to remove all erosion control structures which have an adverse effect on the public interest." S.C. Code Ann. § 48-39-120(C) (2008). Yet, Respondent argues in his Motion for Reconsideration that this statutory provision does not apply in this case since there is nothing to suggest that the General Assembly intended to expand the Department's jurisdiction over erosion control structures beyond the critical areas. Specifically, Respondent contends that through the enactment of the BMA, the Legislature amended the Department's "prior authority" over erosion control structures and implemented specific provisions for the removal and repair of erosion control structures through the

⁴⁹ As stated earlier in this Order, the second structure and ERC-1 are conterminous, thus, forming one hard erosion control structure.

promulgation of subsection 48-39-290(B)(2) of the South Carolina Code (2008 & Supp. 2025) limited the Department's authority over erosion control structures to areas seaward of the setback line. I disagree.

In implementing the Act, the General Assembly declared that it is the "basic state policy ... to protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and of all the people in the State." S.C. Code Ann. § 48-39-30(A). The General Assembly then set forth specific state policies to protect the State's coastal zone, including "to protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations[]." S.C. Code Ann. § 48-39-30(B)(2) (2008). The General Assembly later amended the Act, declaring that:

(3) Many miles of South Carolina's **beaches have been identified as critically eroding.**

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(5) The use of armoring in the form of hard erosion control devices such as **seawalls, bulkheads,** and rip-rap to protect erosion-threatened structures **adjacent to the beach has not proven effective.** These armoring devices have given a false sense of security to beachfront property owners. In reality, these hard erosion control structures, in many instances, have increased the vulnerability of beachfront property to damage from wind and waves while **contributing to the deterioration and loss of the dry sand beach** which is so important to the tourism industry.

(6) **Erosion is a natural process which becomes a significant problem for man only when structures are erected in close proximity to the beach/dune system. It is in both the public and private interests to afford the beach/dune system space to accrete and erode in its natural cycle. This space can be provided only by discouraging new construction in close proximity to the beach/dune system.**

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(8) It is in **the state's best interest to protect and to promote increased public access to South Carolina's beaches** for out-of-state tourists and South Carolina residents alike.

S.C. Code Ann. § 48-39-250 (1976) (amended by Act No. 607, § 1, 1990 S.C. Acts) (emphasis added).

In recognition of these policies, the General Assembly outlined specific state policies pertaining to the use of hard erosion control structures, stating in part that the Department must:

(3) **severely restrict the use of hard erosion control devices** to armor the beach/dune system and to encourage the replacement of hard erosion control devices with soft technologies as approved by the department which will provide for the protection of the shoreline without long-term adverse effects;

(4) encourage the use of erosion-inhibiting techniques which do not adversely impact the long-term well-being of the beach/dune system. . . .

S.C. Code Ann. § 48-39-260 (2008) (emphasis added). While subsection 48-39-290(B) of the South Carolina Code sets forth specific restrictions on the “construction, reconstruction, or alterations between the baseline and the setback line” of erosion control structures, subsection 48-39-290(B)(2)(d) of the South Carolina Code provides that “[t]he provisions of [48-39-290(B)(2)(d)] **do not affect or modify the provisions of Section 48-39-120(C).**” (emphasis added).

Nonetheless, Respondent argues that the Department failed to show that his hard erosion control structure has or will adversely affect the public’s interest. I respectfully disagree. It is undisputed that Respondent’s property is in the coastal zone. S.C. Code Ann. § 48-39-10(B). In fact, Respondent’s property is situated in a highly dynamic area where the beach has historically undergone cyclical periods of extensive erosion. Generally, the General Assembly has declared that it is in the public’s interest to protect natural processes like cyclical erosion. S.C. Code Ann. § 48-39-250(6). And here, while the City’s beaches may have recently entered an accretional cycle, the dynamic nature of the shoreline suggests that it is only a matter of time before the shoreline is further scoured as a result of the presence of Respondent’s hard structure.

As to Respondent’s structure, the policies and findings under the Act set forth that hard erosion control devices are commonly regarded in this State as harmful to the coastal environment, particularly when placed in close proximity and/or adjacent to the beach. In this case, the evidence unequivocally shows that Respondent’s hard structure is adjacent to the beaches. In fact, Respondent’s hard structure protrudes farther seaward into the adjacent beach than any neighboring structure. Importantly, the General Assembly also found that hard erosion control structures like Respondent’s are not only ineffective when placed adjacent to the beach but that they create a “significant” erosion problem. S.C. Code Ann. § 48-39-250(5), (6). Correspondingly, Mr. Jones explained that hard erosion control structures restrict natural processes as they impede sediment flow and produce scour. Indeed, this likelihood was demonstrated by the photographic evidence which shows that the tidal and wave action reaching Respondent’s hard structure has induced erosion and scouring on the adjacent beach.

The impacts of Respondent’s structure must also be viewed in light of the State’s policies. Specifically, the General Assembly has pronounced that “[i]t is in the state’s best interest to protect and to promote increased public access to South Carolina’s beaches for out-of-state tourists and

South Carolina residents alike.” S.C. Code Ann. § 48-39-250(8). It is undisputed that the beach adjacent to Respondent’s hard structure is a well-used destination for public recreation. Moreover, based on the uncontroverted testimony, during future erosive cycles, the public’s access to the adjacent beach will continue to deteriorate because of a loss of dry sand laterally along the beach past the structure.

This Court is also well aware of the Supreme Court’s emphasis in considering the public’s interest and its predilection toward denying erosion control structures when balancing economic and social development in the coastal zone. In *Kiawah Development Partners, II v. S.C. Department of Health & Environmental Control*, the Supreme Court held that “**the public’s interest must be the lodestar** which guides our legal analysis in regard to the State’s tidelands.” 411 S.C. 16, 29, 766 S.E.2d 707, 715 (2014) (emphasis added). Later in *South Carolina Coastal Conservation League v. South Carolina. Department of Health & Environmental Control*, the court addressed this ALC’s approval of a permit to KDP to construct an erosion control device outside of the critical area. Notwithstanding the fact that the structure was outside of the critical area, the Supreme Court again held that, in light of the overarching policy to protect the coastal zone, the ALC erred in upholding the Department’s issuance of a permit because the erosion control device would ultimately have an impact on the critical area. 434 S.C. 1, 862 S.E.2d 72, *reh’g denied*, (September 1, 2021) (2021).

Furthermore, the Department presented credible evidence to show that the hard structure has been on active beach. Active beach is specifically 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. Respondent’s April 4, 2024 property survey shows that segments of the hard structure were situated seaward of the top of the bank which again is, the top of the escarpment and, significantly, Respondent did not produce any evidence to show the presence of stable natural vegetation seaward of the escarpment. The fact that the hard structure has been on active beach is noteworthy to this Court considering that the General Assembly circumscribed stringent restrictions against construction and reconstruction in this area. S.C. Code Ann. § 48-39-290. Specifically, subsection 48-39-290(D)(1) of the South Carolina Code (2008) sets forth that:

[i]f an applicant requests a permit to build or rebuild a structure other than an erosion control structure or device seaward of the baseline that is not allowed otherwise pursuant to Sections 48-39-250 through 48-39-360, **the department**

may issue a special permit to the applicant authorizing the construction or reconstruction if the structure is not constructed or reconstructed on a primary oceanfront sand dune or on the active beach and, if the beach erodes to the extent the permitted structure becomes situated on the active beach, the permittee agrees to remove the structure from the active beach if the department orders the removal. However, the use of the property authorized under this provision, in the determination of the department, must not be detrimental to the public health, safety, or welfare.

(emphasis added). Therefore, a landowner cannot even obtain a special permit to build a structure if it is “on a primary oceanfront sand dune or on the active beach.” In fact, the Department even has the authority to order the removal of a structure “if the beach erodes to the extent the permitted structure [later] becomes situated on the active beach.” S.C. Code Ann. § 48-39-290(D)(1). Furthermore, even when construction is generally permissible under subsection 48-39-290(D)(1), it is not authorized if it would be detrimental to the public welfare. *Cf. S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’t Control*, 354 S.C. 585, 589, 582 S.E.2d 410, 413 (2003) (holding “BMA authorized OCRM to issue groin permits in furtherance of the State’s policy of encouraging certain types of erosion-inhibiting techniques and promoting beach renourishment **where appropriate.**”) (emphasis added). The Legislature’s admonishment against issuance of special permits for structures on “primary oceanfront sand dune or on the active beach” further informs my consideration of the adverse effects of Respondent’s hard structure.

In sum, reverberating throughout the Act is the fundamental responsibility of the Department, and therefore this Court, to protect the public’s interests in the coastal zone even if that protection may be detrimental to the property owner’s interest. Significantly, in this case, since Respondent installed the structure without any review by the Department, there has been no analysis as to whether soft solutions referenced in the law would be viable to protect his property. Moreover, Respondent did not refute the legislative findings discussed above. *See also Bauer v. S.C. State Hous. Auth.*, 271 S.C. 219, 229, 246 S.E.2d 869, 875 (1978) (citing *Velishka v. Nashua*, 99 N.H. 161, 106 A.2d 571, 573, 44 A.L.R.2d 1406, 1411 (1954)) (“[L]egislative findings and declarations have no magical quality to make valid that which is invalid but they are entitled to weight....”). Thus, taking into consideration the findings codified by the General Assembly and evidence regarding the adverse effect of Respondent’s hard structure on the public interest—specifically, the threat of accelerated erosion, intrusion on the natural erosive cycle, and the reduction in public access to the beaches, I conclude that the preponderance of the evidence establishes that the public interests protected by the Act override Respondent’s interest to retain

the hard structure. S.C. Code Ann. §§ 48-39-30 & -260. As such, I conclude that the hard structure must be removed. S.C. Code Ann. § 48-39-120(C).

In addition, in exercising the authority to order the removal of the hard structure, the Court recognizes that the Department, and therefore this Court, has been granted the power to “exercise all incidental powers necessary to carry out the provisions of this chapter.” S.C. Code Ann. § 48-39-50(O) (2008). Accordingly, the Court finds it necessary to order that Respondent submit a CAP consistent with the schedule set forth in this Order for the removal of the hard structure and restoration of the affected area. *See also* S.C. Code Ann. § 48-39-30(B)(2) (providing that it is this state’s policy “to protect and, where possible, to restore or enhance the resources of the State’s coastal zone for this and succeeding generations).

The Department’s Proposed Sanctions

Parties Contentions

Respondent contends that the Department failed to establish that the proposed penalties are fair, consistent, and reasonable under the circumstances of this case. Respondent interprets the Act to confine the Department’s jurisdictional authority to areas landward of the setback line. He maintains his construction of the Act is supported by the Department’s inaction for at least twenty-five years against structures built landward of the setback line. Respondent also argues that the assessed penalty is significantly harsher than that which was imposed for a similar offense in the *Piping Plover* matter and that the Department failed to provide any evidence of comparable fines for similar enforcement matters. Respondent further contends that while he may disagree with the Department’s interpretation of the Act, his discord cannot be construed as a disregard for the Department’s jurisdiction, nor does it justify the imposition of a \$289,000 fine.

Conversely, the Department asserts that it adhered to its uniform enforcement policy and civil penalty assessment guidelines and that the assessed penalties are reasonable in light of Respondent’s willful conduct and the extent of the multiple unpermitted alterations he made in the beaches critical area without a permit. Specifically, the Department contends Respondent disregarded its guidance and advice regarding allowable activity in the critical areas and instead, installed two substantial structures and other non-beach compatible material which interfered with the public’s use and enjoyment of the beach and exacerbated erosional conditions.

The Department further contends Respondent has been on notice of restrictions regarding erosional control structures since the purchase of his property, yet he installed two hard structures,

willfully concealed his activities from the Department and disregarded its communications to cease and desist. In addition, the Department argues Respondent violated its September 21, 2023 Emergency Order directing him not to place sand on the beach to cover or bury any portion of an erosion control structure.

The Department also asserts that the assessed penalty is neither retaliatory nor inequitable. The Department contends that it has not changed its practice and that the *Piping Plover* matter is distinguishable from this case because the activity in *Piping Plover* occurred in a standard erosion zone, public access was not an issue, and the homeowners cooperated during the enforcement action. Furthermore, the Department argues Respondent has not received disparate treatment as it imposed a far higher penalty against the Ocean Club condominium for similar violations, specifically Ocean Club's unpermitted construction in a critical area, despite its heightened awareness of the Department's jurisdiction.

Lastly, SCCCL argues that the Administrative Order is enforceable against Ms. Reddy. SCCCL asserts Ms. Reddy was a named addressee of the Administrative Order, and that she actively participated in, financed, and directed unpermitted activities in the beaches critical area. SCCCL argues the Administrative Order is final and immediately enforceable against Ms. Reddy because she did not file a timely request for a contested case. SCCCL further contends that Ms. Reddy's lack of title to the property is no shield against the Department's order to remove the unauthorized structure, restore the affected critical area, and pay the assessed civil penalties.

Analysis

"Inherent in and fundamental to the powers of an Administrative Law Judge, as the trier of fact in contested cases under the Administrative Procedures Act, is the authority to decide the appropriate sanction when such is disputed." *Walker v. South Carolina Alcoholic Beverage Control Comm'n*, 305 S.C. 209, 407 S.E.2d 633 (1991); *Berry v. S.C. Dep't of Health & Env't Control*, 402 S.C. 358, 364, 742 S.E.2d 2, 5 (2013) ("[R]eview of the agency's enforcement order and its imposition of civil fine is an administrative matter that falls squarely within the ambit of a contested case as defined in the APA."). In assessing a penalty for violation of environmental statutes, each fine must be analyzed individually to determine if it is appropriate under the circumstances. *Midlands Utility, Inc. v. S.C. Dep't of Health and Env't Control*, 313 S.C. 210, 212, 437 S.E.2d 120, 121 (1993). Subsection 48-39-170(C) of the South Carolina Code (Supp. 2024) 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.” See S.C. Code Regs. Ann. 30-8(D) (2011); *see also Midlands Util., Inc. v. S.C. Dep’t of Health & Env’t Control*, 313 S.C. 210, 212, 437 S.E.2d 120, 121 (Ct. App. 1993) (civil penalties are intended to deter future non-compliance). In addition, the Department may issue an order requiring such person to comply with such permit, regulation, standard, or requirement, including an order requiring restoration when deemed environmentally appropriate by the department. S.C. Code Ann. § 48-39-170(C); S.C. Code Ann Regs. 30-8(F) (2011).

Considering the disposition of this matter, it is questionable whether the penalty provisions apply. Indeed, I have not found that Respondent is in direct violation of any permit, nor have I found that he violated a regulation, standard, or requirement under the Act. Nonetheless, even if I were to assume Respondent was in violation of a provision of the Act, I conclude that the Department’s assessment of a \$289,000 penalty is not appropriate under the facts of this case.

Here, the Department’s imposition of a civil penalty was predicated on three prongs. The Department first contends Respondent willfully disregarded the Department’s directives. Unquestionably, Respondent’s actions contravene guidance provided by Department staff. Yet, Respondent’s actions must be considered in light of the ambiguity in the Act regarding whether the General Assembly intended to confine the Department’s permitting authority to areas seaward of the setback line. In addition, the guidance provided to Respondent in this case, appears to contradict the Department’s Reports and the Department’s representation of the jurisdictional line website, each of which seem to convey that the purpose of the baseline and setback line are to delineate **the extent of the Department’s direct permitting authority** for activities within the defined beaches and beach/dune system critical areas. Moreover, although the Department’s witnesses testified that the coastal environment has changed and erosion has increased causing the setback line to no longer represent the most landward jurisdictional line, the regulations in effect at the time enforcement action was pursued against Respondent seem consistent with the representations set forth in the Reports.⁵⁰ *E.g.*, S.C. Regs. Ann. 30-21(H)(3) (providing jurisdiction

⁵⁰ The Department’s regulations were amended in 1999 to add the beaches to the regulatory definition of the critical areas. For purpose of determining the boundaries of the “Beaches and Beach/Dune System,” regulation 30-10(B) of the South Carolina Code of Regulations (2011) provides that “the Department will be guided by Section 48-39-270, Section 48-39-280 and Section 48-39-360” or, in other words, the statutes establishing the baseline and setback lines. While the Department’s regulations are not determinative of the Department’s jurisdiction, a review of the regulatory history alludes to the bounds of the Department’s jurisdiction limits.

on beaches is determined by the location of the setback line) (2011); S.C. Code Ann. Regs. 30-13(N)(3)(a) (listing project standards for erosion control structures or devices) (amended by SCSR 48-5 Doc. No. 5200, 2024 SC Reg Text 636980, eff May 24, 2024). Thus, while the Department may not have expressly stated that the baseline and setback line define the scope of the Department's permitting authority, Respondent's inference that it was limited to the area seaward of the setback line is understandable, especially in light of the ambiguity in the Act, as discussed above.

In addition, while described as an oversight by the Department, Mr. Slagel nevertheless acknowledged that he informed the homeowners in the *Piping Plover* that **no Department approval was required for the construction of a seawall landward of the setback line**. Furthermore, Ms. Flake was unable to identify one instance in the last twenty-five years where the Department imposed a civil penalty for activity landward of the setback line. Considering these facts, the assessment of a \$289,000 fine certainly does not appear to be fair.

The Department also contends the penalty is warranted considering Respondent's deceptive conduct. However, the Department's characterization of Respondent's actions is based upon the allegation that he took steps to conceal the installation of the second structure by conducting work into the night. Nonetheless, the Department did not present any evidence of personal observations of work being conducted at night nor Respondent placing sand atop of the hard structure. In fact, the evidence shows that Respondent has been responsive to the Department. Indeed, Respondent halted his efforts to place sand in front of ERC-1 when directed. Moreover, although Respondent did not agree with the Department's directives, he responded to each cease and desist order, albeit consistently stating his position that the construction activity did not occur within the critical area. Furthermore, the September 21, 2023 Emergency Order was never fully executed and thus, any requirements or restrictions set forth therein are not enforceable against Respondent.

In addition, I do not find the assessment of penalties in either the Ocean Club or the *Piping Plover* matters to be instructive. In contrast to the matter before this Court, there is no evidence to suggest that the activity occurred landward of the setback line. In addition, as explained by Mr. Stout, the *Piping Plover* enforcement matter was handled by the Department's Bureau of Water who has a different process and policy for assessment of penalties.

The Department also contends the penalty is appropriate in light of the egregious nature of the alterations to the beaches critical area. As discussed above, the construction of the hard structure has disrupted the equilibrium of the adjacent beach and has adversely affected the public's use and enjoyment of the beach and exacerbated erosional conditions. Although the impact of Respondent's hard structure on the adjacent beach is significant, removal of the hard structure and restoration of the affected area eliminates the impact on the coastal zone.

For the foregoing reasons, I conclude that the assessment of a civil penalty is not appropriate.

Other Issues

In the alternative, Respondent argues that the Department failed to meet its burden of proof to show that the hard structure was built in the beaches critical area because the Department failed to prove that inundation reached the property and that nonlittoral vegetation had been well established for an extended period prior to September 1, 2023.

Respondent also argues that to the extent that the Act could be interpreted as ambiguous, the Department failed to promulgate regulations through the APA process. Specifically, Respondent asserts that the Department did not comply with the rulemaking process required under the APA when it abandoned its apparent long-standing policy of not asserting jurisdiction landward of the setback line and took enforcement action against Respondent. In support of his argument, Respondent stressed the Department's inability to identify a case, since 1999, where it exercised permitting authority landward of the setback line. In addition, Respondent points to the Department inaction in the *Piping Plover* matter wherein the Department did not require homeowners to obtain a permit for the construction of a seawall landward of the setback line in beaches critical area.

Respondent further argues that the Department's exercise of jurisdiction landward of the setback line is also inexplicable because it is inconsistent with the City's 2017 Local Comprehensive Beach Management Plan and Department regulations in effect at the time enforcement action was taken in this case. Specifically, Respondent asserts that the combined heading of "Beaches and "Beach/Dune System" and the singular use of "critical area" in regulation 30-10(B) of the South Carolina Code of Regulations (2011) imply that the Department construed "beaches" and "beach/dune system" as a single critical area. Likewise, Respondent asserts that regulation 30-21(H) of the South Carolina Code of Regulations (2011) belies the Department's

current jurisdictional policy as it provides that the Department's "permitting jurisdiction on beaches is determined by the location of the setback line." As such, Respondent contends the Department should be precluded from enforcing its jurisdiction in this case.

However, I need not consider these issues because the Department, and thus this Court, has the authority to order the removal of hard structures in the coastal zone whether or not they are in the beaches critical area or landward of the setback line.

Finally, as stated in my findings of fact, Ms. Reddy did not file a request for a contested case hearing in this matter. *See* S.C. Code Ann. § 48-6-30(D)(2) (Supp. 2024). Therefore, since she is not a party to the underlying matter this Court lacks the authority to determine the status of the July 1 Administrative Order on Mrs. Reddy.

ORDER

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

IT IS THEREFORE ORDERED that within sixty (60) days of the issuance of this Order, Respondent shall submit a Corrective Action Plan (CAP) to the Department for 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.

IT IS FURTHER ORDERED that the Corrective Action Plan shall include a plan for the removal of the hard structure and any non-beach compatible materials that may have been used for its construction. The CAP must include a schedule for the completion of the removal of the hard structure and non-beach compatible materials and the methods that will be used to ensure beach stabilization during removal to minimize further beach impacts. It must also include the source of beach compatible materials that will be utilized to restore the affected area once excavation/removal of the hard structure is complete.

IT IS FURTHER ORDERED that the sand used in the restoration of the affected area must be compatible in size and grain color, from an upland source.

IT IS FURTHER ORDERED that the scheduled activities must comply with the South Carolina Department of Natural Resources Marine Turtle Conservation Program.

IT IS FURTHER ORDERED that within ninety (90) days of Department's approval of the CAP and sand sample, Respondent shall commence implementation of removal of the hard structure and all non-beach compatible that were for its construction and restoration of the affected

area with approved beach-compatible materials. Respondent shall complete the scope of work outlined in the approved CAP within thirty (30) days from the commencement of the work.

IT IS FURTHER ORDERED that Department shall provide a liaison for the Respondent to contact should he or his representative have questions or concerns during this process to assist him in obtaining the information needed to address the questions or concerns and to arrange meetings between the Department and Respondent or his representative to discuss the CAP and associated work, as appropriate.

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Ralph King Anderson, III". The signature is written in a cursive, flowing style with a horizontal line underneath it.

Ralph King Anderson, III
Chief Administrative Law Judge

December 30, 2025
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy,)
)
)
Respondent.)
_____)

Docket No. 24-ALJ-07-0232-CC

**ORDER DENYING MOTIONS
FOR RECONSIDERATION**

This case is before the South Carolina Administrative Law Court (Court or ALC) pursuant to Motions for Reconsideration (Motions) filed by the South Carolina Department of Environmental Services (Department) and South Carolina Coastal Conservation League (SCCCL) (collectively, Petitioners) on January 9, 2026. Petitioners move this Court pursuant to Rule 29(D) of the Rules of Procedures for the Administrative Law Court (SCALC Rules) and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRPC) to reconsider and amend the Amended Final Order (Amended Order) dated December 30, 2025. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) (“A motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule.”). On January 20, 2026, Rom Reddy (Respondent) filed a Response to the Motions (Response). On January 26, 2026, SCCCL filed a reply to Respondent’s Response.

Having reviewed the Petitioners’ Motions and the Response, the Court does not find that it overlooked, misinterpreted, or failed to apply South Carolina law and/or overlooked or misunderstood certain evidence, points, and arguments presented. Nevertheless, I issue this Order regarding the arguments set forth in the parties’ Motions, to further explain my application of the facts and the law in the Amended Final order.

DISCUSSION

SCCCL’s Arguments

SCCCL contends clarification of the Amended Order is necessary to ensure that the Court’s factual findings align with the statutory framework governing coastal development under the South

ROA 000165



Carolina Coastal Tidelands and Wetlands Act (the Act). SCCCL focuses on the Court's statutory interpretation of the term "periodic inundation" and the additional findings of the presence of tidal and wave action at the area in question and a lack of stable natural vegetation or nonlittoral vegetation seaward of the escarpment. However, as stated in the Amended Order, the dynamic nature of the shorelines evince the difficulty in making a determination of the presence of "periodic inundation" under the particular facts of this case. For instance, a wealth of the photographic evidence was taken in the aftermath of storms and king tides and as stated in the Amended Final order:

since storms are episodic in nature and do not occur in a consistent and predictable cycle, the inundation from a singular storm would not be considered periodic; even though storms are nevertheless reoccurring. King 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. ... Therefore, while episodic events and king tides are not necessarily determinative of what constitutes periodic inundation for purpose of identifying the beaches as designated by statute, these [isolated] events are nevertheless a part of my consideration of the effects of Respondent's hard structure on the adjacent beach.

Furthermore, because of the disposition of the case, I did 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." Moreover, motions for reconsiderations "may not be used to relitigate old matters." *See* Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2810.1 (2d ed. 1995) [hereinafter Wright & Miller].

SCCCL also requests clarification to ensure that the Court's finding that Respondent did not violate a regulation, standard, or requirement under the Act is not misconstrued in light of the substantial record evidence of unpermitted construction and alteration activity. I do not find further clarification to be necessary. While subsections 48-39-130(A), (C) of the South Carolina Code (2008) establish limitations on activities and uses of critical areas, under the fact of this case, there is no need to reconcile whether Respondent violated the Act when he failed to obtain a permit for the construction and alternation activity that ultimately resulted in the installation of the hard erosion control structure. The Act ultimately authorizes the Department to order the removal of all erosion control structures, such as Respondent's hard structure, which have an adverse effect on the public interest. S.C. Code Ann. §48-39-120(C) (2008) ("The department shall have the

authority to remove all erosion control structures which have an adverse effect on the public interest.”).

Finally, SCCCL seeks clarification to ensure that the Amended Order is not construed to foreclose the Department’s civil penalty authority in future cases, or to diminish the Department’s statutory role in enforcing the Act through the full range of remedies authorized by the General Assembly. I do not find further clarification is needed. As clearly stated in the Amended Order, “the Department’s assessment of a \$289,000 penalty is not appropriate **under the facts of this case.**” (emphasis added).

Department’s Arguments

The Department’s Specialized Knowledge

First, the Department contends that its qualifications and experience, including those of Ms. Boynton, extend beyond the establishment of just the baseline and setback line. Thus, the Department argues that the Court should reconsider the limitations on the Department’s specialized knowledge for purpose of its evaluation of the evidence and recognize that the specialized knowledge and skills used in setting the baseline and setback line are the same skills that the Department uses in determining the escarpment and vegetation lines for other purposes.

The Department’s argument appears to be a convoluted challenge to the credibility assigned to the testimony of Ms. Boynton. Initially, as addressed in the Court’s Order on the parties’ first Motion for Reconsideration, the term “may” in subsection 1-23-330(4) of the South Carolina Code (2005) implies that the Court’s consideration of the Department’s specialized knowledge is discretionary when considering the evidence presented to the Court. *See Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352–53, 549 S.E.2d 243, 250 (2001) (“The use of the word “may” in a statute signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute.”). To the extent the Department yet again asserts that the Court should have relied on Ms. Boynton’s testimony since GIS, GPS field collection, shoreline change, and feature identification are a part of her Departmental duties, motions for reconsiderations “may not be used to relitigate old matters.” *See Wright & Miller*. Moreover, as the trier of fact, the Court may give testimony, the weight that he or she determines it deserves, *Florence County Department of Social Services v. Ward*, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992), and may accept the testimony of one expert over that of another, *South Carolina Cable Television Association v. South Bell*

Telegraph & Telephone Co., 308 S.C. 216, 417 S.E.2d 586 (1992); *Bivens v. Watkins*, 313 S.C. 228, 235, 437 S.E.2d 132, 136 (Ct. App. 1993) (“[t]he judging of the credibility of witnesses and the weighing of evidence in a law case are uniquely functions of the trial court.”); *Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996) (the Court is “in a superior position to judge the witnesses’ demeanor and veracity and, therefore, his findings should be given broad discretion.” Finally, there is insufficient evidence for this Court to conclude that **Ms. Boynton’s** use of GIS, GPS, and feature analysis established the location of the Beaches Critical Area in this case, which is distinct from the regulatory determination of the baseline and setback line. *See* S.C. Code Ann. § 1-23-330(4) (providing that “[t]he agency’s experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.”).

Non-Compatible Materials

The Department requests the Court find that Respondent violated the Act when, prior to the installation of the hard erosion control structure, Respondent installed non-beach-compatible materials without a permit and failed to comply with its October 20, 2023 Notice to Comply. In addition, the Department requests that the Court order the removal of the non-beach-compatible materials that were installed during October 2023 because they are adverse to the public interest, threatening the endangered sea turtles and causing public access and safety concerns for the public.

However, the continued existence of non-compatible materials unassociated with those used in the construction of the hard erosion structure was not established by the evidence. For instance, non-compatible materials are not shown in later photographic evidence of the site. Indeed, a drone photo taken in November 2023 does not show any non-beach compatible materials near Respondent’s property or along the adjacent beach. Similarly, other photographic evidence taken after the installation of the hard erosion control structure and the Department’s June 6, 2024 inspection report does not show the presence of non-compatible materials scattered along the adjacent beach. Thus, beyond its determination to order the removal of the seawall, the Court does not find sufficient evidence to order the requested relief.

The Department also requests that the Court reconsider its finding that there was no nexus between Respondent’s actions and the non-compatible materials laden along the beach. However, the Department has too broadly construed the Court’s finding. While the Amended Order included a finding that the Department failed to convincingly establish a nexus between Respondent’s actions and the non-compatible materials observed along the **adjacent beach**, Respondent’s

concession of the use of non-beach compatible materials in the construction of the hard structure implies that the materials directly contiguous to the hard structure were attributable to his actions. Importantly, the Amended Order specifically orders “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.” Thus, reconsideration of this issue would have no practical impact on the outcome of this case. *E.g., Jones v. Dillon-Marion Hum. Res. Dev. Comm’n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982) (“Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.”).

Expert Witness Testimony

Next, the Department contends the Court drew an adverse inference from Mr. Jones’s testimony when it found that “even the Department’s own witness could not confirm where the ‘beaches’ is now.” The Department argues the Department did not retain Mr. Jones to evaluate the beaches critical area **at the time of trial** nor was he provided with any evidence related to current conditions at the site at the time of trial. In addition, the Department avers that it was prepared to call Mr. Christopher Stout to testify as to where the critical area was **at the time of trial** but decided that it was best to move on since the primary issue before the Court was whether the alterations were in beaches critical area at the time of their installation.

I do not find that the Court erred. The Court’s reference to Mr. Jones testimony was not intended to establish where the beaches critical area is now but rather to illustrate, as emphasized by Mr. Jones, the manner in which “jurisdiction, through the beaches definition, changes.” As stated in the Amended Order, “this would create an undesirable result, leaving the Department’s permitting authority ever changing with no certainty to either landowners’ or this Court as to whether a permit is required.” Even so, if Mr. Stout could have rebutted Mr. Jones’s testimony, the Department should have called him to testify. The Department cannot use evidence it failed to present to illustrate an error in the Court’s reasoning.

September 1, 2023 Observations

Lastly, the Department argues the Court’s finding related to “the Department’s isolated observations on September 1, 2023” is not consistent with the testimony presented at the hearing of the case. The Court does not find that it erred. A complete reading of the Amended Order leaves no doubt that Court considered not only the Department’s observations on September 1, 2023 but also all of the evidence before it, including but not limited to the June and September

vegetative escarpment lines, Ms. Boynton's feature analysis, the photographic evidence in the record, and Respondent's July 2023 and April 2024 property surveys.

ORDER

IT IS THEREFORE ORDERED that the Motions for Reconsideration are **DENIED**.
AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Ralph King Anderson, III". The signature is written in a cursive, flowing style.

Ralph King Anderson, III
Chief Administrative Law Judge

January 27, 2026
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy,)
)
Respondent.)
_____)

Docket No. 24-ALJ-07-0232-CC

ORDER

A hearing was held in this matter from May 6-8 and 19-20, 2025 at the Administrative Law Court (ALC or Court). This Court issued an Amended Final Order and Decision on December 30, 2025. In the Amended Final Order, the Court ordered that, within 60 days of the issuance of that order, Respondent Rom Reddy must submit a Corrective Action Plan (CAP) to be approved by the Department for the removal of the structure, including all non-beach compatible materials that were used for its construction. Thereafter, on January 9, 2026, the South Carolina Department of Environmental Services and the South Carolina Coastal Conservation League each filed a Motion for Reconsideration (Motion). Then, on January 15, 2026, Respondent filed a Motion to Stay and for Supersedes of the Court's Amended Final Order of December 30, 2025 ordering the removal of Reddy's structure (Motion to Stay).¹ On January 20, 2026, Respondent filed a Response to the Motion.

Given the fact that Respondent's timeframe to submit a CAP for the removal of the structure has begun, the Court finds it prudent to stay its existing Amended Final Order in this matter until it ultimately issues a decision on the merits of Respondent's Motion to Stay, if a party appeals this Court's decision.²

¹ The Motion to Stay was filed pursuant to Rule 29(E) of the Rules of Procedures for the Administrative Law Court (SCALC Rules) and Rule 241 of the South Carolina Appellate Court Rules (SCACR).

² However, if an appeal is not filed by a party, the stay of the Amended Final Order shall be lifted.

ROA 000171



IT IS THEREFORE ORDERED that the Amended Final Order and Decision is hereby stayed pending a decision on the merits of Respondent's Motion to Stay.

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Ralph King Anderson, III". The signature is written in a cursive, flowing style with a horizontal line underneath.

Ralph King Anderson, III
Chief Administrative Law Judge

January 27, 2026
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy,)
)
Respondent.)
_____)

Docket No. 24-ALJ-07-0232-CC

**ORDER GRANTING
MOTION TO STAY**

This matter comes before the South Carolina Administrative Law Court (Court or ALC) pursuant to a Motion to Stay and for Supersedeas (Motion) filed by Rom Reddy (Respondent) on January 15, 2026. Respondent seeks to stay this Court's Amended Final Order of December 30, 2025,¹ to avoid having to remove his hard erosion control structure and perform other related activities. Respondent argues a stay is necessary to: (1) preserve the status quo and provide the parties with a meaningful opportunity for judicial review; (2) prevent irreparable harm to his property; (3) protect public access to, and use of, the beach adjacent to his property and (4) to avoid potential threats to the safety of the public and the contractors who will be involved in the removal of his hard erosion control structure. On January 26, 2026, the South Carolina Department of Environmental Services (DES or Department) and South Carolina Coastal Conservation League (SCCCL) (collectively, Petitioners) filed responses to the Motion. Then, on February 2, 2026. Respondent filed a reply to Petitioners' respective responses.

¹ Respondent filed an appeal of this Court's December 30, 2025 Amended Final Order to the South Carolina Court of Appeals on January 28, 2026. Notice of Appeal, *S.C. Dep't of Env't Servs. and S.C. Coastal Conservation League v. Rom Reddy*, Appellate Case No. 2026-000221. Then, on January 29, 2026, SCCCL appealed this Court's December 30, 2025 Amended Final Order and the January 27, 2026 Order denying its Motion for Reconsideration. Notice of Appeal, *S.C. Dep't Env't Servs. and S.C. Coastal Conservation League v. Rom Reddy*, Appellate Case No. 2026-000221. That same day, the Department also filed an appeal of the December 30, 2025 Amended Final Order and January 27, 2026 Orders on their Motions for Reconsideration. Notice of Appeal, *S.C. Dep't Env't Servs. and S.C. Coastal Conservation League v. Rom Reddy*, Appellate Case No. 2026-000221.



ROA 000173

BACKGROUND

This matter originally came before the Court pursuant to a request for contested case hearing filed by Respondent, challenging the administrative order issued by the Department wherein it found Respondent violated the South Carolina Coastal Zone Management Act (Act) and the South Carolina Code of Regulations when he installed non-beach compatible materials and excavated substantial amounts of substrate with heavy machinery in the “beaches critical area” without a permit. As a result of these violations, the Department assessed a \$289,000.00 civil penalty and requested that Respondent submit a Corrective Action Plan (CAP) and, upon approval, immediately remove all non-beach compatible materials and restore the affected area.

The Court conducted a merits’ hearing in Columbia, South Carolina from May 6-8 and 19-20, 2025. On October 23, 2025, a Final Order was issued. On November 3, 2025, the parties each filed Motions for Reconsideration. On November 10, 2025, the Court rescinded its Final Order to give it more latitude to thoroughly consider and respond to the parties’ Motions and responses.² Then, on November 13, 2025, the parties each filed Responses to the Motions, to which Petitioners replied. On January 27, 2025, the Court issued an Amended Final Order and Decision finding that the Department had the authority under the Act to order Respondent to remove his hard erosion control structure and all non-beach compatible that were used for its construction and to restore the affected area with approved beach-compatible materials once the excavation/removal is complete. To effectuate its Order, the Court further ordered that, within sixty (60) days of the issuance of the Amended Final Order, Respondent submit a CAP to the Department outlining the plan for removal, schedule for completion, and the methods and materials that will be used to ensure beach stabilization and minimization of further beach impacts.

DISCUSSION

“A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals.” S.C. Code Ann. § 1-23-600(H)(5) (Supp. 2025). Pursuant to Rule 29(E) of the Rules of Procedure for the South

² See Rule 29(D)(2), SCALCR (providing that “[i]f no action is taken by the administrative law judge within the applicable period [thirty days from the filing of a motion for reconsideration or following responses to such motion], the inaction shall be deemed a denial of the relief sought in the motion.”); *see also* Rule 3(B), SCALCR (“For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law.”).

Carolina Administrative Law Court (SCALC Rules), “[a]n administrative law judge who issues a final order subject to judicial review may in the order stay its effect.” More specifically,

[a]t any time prior to the filing of a petition for judicial review, and upon the motion of any party, with notice to all parties, the administrative law judge may stay the final order upon appropriate terms. The filing of a motion for a stay does not alter the time for filing a petition for judicial review.

Id. Furthermore, “[this Court] retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.” Rule 241(a), SCACR; *see* Rule 241(b)(11) (providing appeals from administrative tribunals are an exception to the automatic stay in appeals); *see* S.C. Code Ann. §§ 1-23-600(H) & -610(A) (Supp. 2025).

In determining whether to grant the Motion, Rule 241 of the South Carolina Appellate Court Rules (SCACR) governs the imposition of a supersedeas or lifting of the automatic stay in appeals. Except in extraordinary circumstances, a petition for a supersedeas must first be made before this Court. *See* Rule 241(d)(1), SCACR (providing “application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal.”). The party seeking the writ of supersedeas “must file a written petition verified by the client.” Rule 241(d)(3), SCACR. And, if the facts are subject to dispute, “the petition shall be supported by affidavits or other sworn statements.” Rule 241(d)(4), SCACR.

When determining whether to grant the petition for supersedeas or stay pursuant to Rule 241(c)(2) of the South Carolina Appellate Court Rules, the Court “should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR. *See Associated Receivables Funding, Inc. v. Dunlap, Inc.*, 443 S.C. 568, 575, 905 S.E.2d 816, 819 (Ct. App. 2024), *reh’g denied* (Sept. 18, 2024) (recognizing that the word should connote a duty or obligation). Therefore, in appellate matters, the purpose of a supersedeas is to prevent the occurrence of an event that would render judgment or relief, and thus the appeal, meaningless. *See Skydive Myrtle Beach, Inc. v. Horry Cty.*, 424 S.C. 298, 818 S.E.2d 224, 227 (Ct. App. 2018), *reh’g denied* (Sept. 20, 2018) (“A case becomes moot when judgment, if rendered, will have no practical effect upon the existing controversy.”) (“Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.”).

Additionally, the Court has the authority to condition the granting of the supersedeas upon such terms which it may deem appropriate, including the filing of a bond. Rule 241(c)(3), SCACR. The burden of proof rests on the party seeking the stay. *See Midlands Util., Inc. v. S.C. Dep't of Health & Env't Control*, 287 S.C. 483, 486, 339 S.E.2d 862, 864 (1986).

Having reviewed the applicable law, the Court turns to the arguments supporting Respondent's Motion.

Mootness

Respondent argues that compliance with the Amended Final Order would require him to take the exact action which he argues on appeal is unsupported by the law. In addition, Respondent contends he would also sustain "financial and personal injury of spending invaluable time and resources to remove the structure" and, if successful on his appeal, "lose the money he initially spent on the structure." As such, Respondent argues a stay is necessary to preserve the status quo and provide the parties with a meaningful opportunity for judicial review. To support his argument, Respondent cites to *Friends of Coastal South Carolina v. South Carolina Department of Environmental Services*, Memo. Op. No. 2025-MO-046 (S.C. Sup. Ct. Dec. 18, 2025).

However, Petitioners argue that Respondent failed to identify any circumstance in which appellate review would be impossible. First, SCCCL contends that Respondent's characterization of the unlawful structure as the "status quo" is legally incorrect since the last, actual, non-contested condition was "the natural beach as it existed before Respondent's unlawful construction [of the hard erosion control structure]." SCCCL therefore argues "[b]ecause preserving the status quo is the effect of granting a supersedeas, it cannot be invoked to authorize the continued existence of an unpermitted structure that adversely affects the public interest." In addition, the Department contends, regardless of whether the hard erosion control structure is removed, the controversy over the Department's authority, Respondent's rights to install an erosion control structure, and whether the Department's penalties are supported by Respondent's violations of the Act, all still remain justiciable issues.

Initially, Respondent's reliance on *Friends of Coastal S.C. v. South Carolina Department of Environmental Services* is misplaced. Not only does that memorandum order carry no precedential value under Rule 268(d)(2), SCACR, but it also arose in a pre-merit hearing posture. *See* § 1-23-600(H)(4)(a) (setting forth standard of review for lifting automatic stay). Conversely, in this case, a merits hearing has been held, and a final order has been issued. *See also* Rule

241(b)(11) (providing appeals from administrative tribunals are an exception to the automatic stay in appeals); *see also* S.C. Code Ann. § 1-23-600(H) & 610(A).

Moreover, whether to preserve the status quo is not a consideration contemplated by Rule 241; rather, preserving the status quo is the effect of granting a supersedeas. *Melton v. Walker*, 209 S.C. 330, 336, 40 S.E.2d 161, 164 (1946) (holding “[t]he general rule is that the effect of a supersedeas or stay is to suspend proceedings and preserve the status quo pending the determination of the appeal or proceeding in error”). Nevertheless, Respondent must show that, under the facts of this case, a stay of the ALC’s decision is necessary to preserve the appellate court’s jurisdiction or to prevent an issue from becoming moot. Rule 241, SCACR.

Turning to the doctrine of mootness, “[a] case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” *Curtis*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (quoting *Mathis v. South Carolina State Highway Dept.*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)); *see Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981) (“The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation. Accordingly, cases or issues which have become moot or academic in nature are not a proper subject of review.”).

Throughout the litigation of this case, numerous issues were in dispute, including the controversy over the Department’s authority to order the removal of Respondent’s hard erosion control structure, whether the hard erosion control structure was installed in the critical area, and whether the assessed penalties were supported by Respondent’s violations of the Act. Yet, at its core, the controversy between the parties centered upon whether the Department had jurisdiction over Respondent’s hard erosion control structure and thus, the authority to order the removal of Respondent’s hard erosion control structure which, importantly, was constructed prior to the filing of the underlying contested case. Indeed, in his request for a contested case hearing Respondent requested, in addition to other relief, that this Court issue an Order finding that “the Department does not have jurisdiction over the Structure.” Significantly, while Petitioners demand enforcement of the order for Respondent to remove his hard erosion control structure, they do so without offering a bond. Accordingly, if Respondent prevails on appeal, the practical effect of requiring him to remove his hard erosion control structure at this time would be that Respondent

would have to pay for its removal and then pay for its reconstruction. Thus, if Respondent's Motion is denied, it would be impossible for the South Carolina Court of Appeals to grant any effectual relief on this specific issue and therefore any subsequent review of the matter would be merely academic. *Sloan v. Greenville Cnty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003) ("The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation. Accordingly, cases or issues which have become moot or academic in nature are not a proper subject of review.").

Public Interest

The Department nonetheless argues that the case will not be mooted by the removal of the hard erosion control structure because review of this matter falls under the "public importance" exception to mootness since the extent of the Department's authority in the coastal zone is of great importance to the public. It thus argues the stay should be denied for multiple reasons, including to "protect the public's right of access and use and enjoyment of the beach; to prevent further erosional impacts due to scour caused by the walls...." In support of this contention, SCCCL submitted the affidavit of Robert S. Young, a licensed professional geologist in the State of South Carolina with experience in beachfront processes and coastal management, and the Department submitted the affidavit of its Director of the Critical Area Permitting Division in the Bureau of Coastal Management, Blair Williams. Petitioners contend these affidavits are evidence that public harm will occur if Respondent's Motion is granted—harm which SCCCL further contends cannot be cured because the "naturally functioning coastal system . . . [will have] been altered or degraded." On the other hand, SCCCL argues Respondent's hard erosion control structure can be rebuilt if he prevails on appeal.

Meanwhile, Respondent contends the public interest would be better served by granting a stay. Respondent asserts that staying the removal of his hard erosion control structure will not interfere with public access to the beach nor will it have any negative impact on neighboring properties. Conversely, if the hard erosion control structure is removed, Respondent argues resulting erosion would imminently endanger his neighbors' properties and likely impede public access to the beach path. In addition, Respondent asserts that the removal of his hard erosion control structure also presents potential threats to the safety of the public and the contractors who will be involved in its removal. Therefore, he contends, "it would be in the public's interest for

the removal to be delayed at least until the City of Isle of Palms can increase the elevation of the beach adjacent to Reddy's property in its planned beach renourishment, which is scheduled to begin in 2026."

At the outset, the Court recognizes that the "public importance" exception is not a means of determining that a case is **not** moot but rather a doctrine that allows a case to be adjudicated despite its mootness. Specifically, under the "public importance" exception to the mootness doctrine an "appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Curtis v. State*, 345 S.C. at 568, 549 S.E.2d at 596. It is thus not a legal theory of declaring—as the Department asserts—that the case will not be mooted by the removal of Respondent's hard erosion control structure.

Nevertheless, even if this Court were to apply the underlying reasoning of the doctrine to this case, "[t]he determination whether a particular suit raises 'questions of imperative and manifest urgency' must be decided on an individual basis." *Sloan v. Greenville Cty.*, 361 S.C. at 570–71, 606 S.E.2d at 466 (2004) (quoting *Curtis v. State*, 345 S.C. at 568, 549 S.E.2d at 596). Generally, the "public importance" exception is applied in a "limited nature." *Sloan*, 361 S.C. at 571, 606 S.E.2d at 466. Here, while the Department's authority in the coastal zone is a matter of general public importance, the question as to whether the Department has jurisdiction over **Respondent's hard erosion control structure**, is simply not a matter of "imperative and manifest urgency." Furthermore, Petitioners have not identified a "manifest urgency to establish a **rule for future conduct** in matters of important public interest." *Curtis v. State*, 345 S.C. at 568, 549 S.E.2d at 596. In fact, as the ALC decision explained, the Department has previously suggested that no Department approval was required for the construction of a seawall landward of the setback line. Moreover, our courts have previously issued judicial guidance regarding the Department's authority in the coastal zone. *See, e.g., South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, 434 S.C. 1, 862 S.E.2d 72 (2021) (discussing Department's permitting authority outside of the critical area); *Kiawah Development Partners, II v. S.C. Department of Health & Environmental Control*, 411 S.C. 16, 29, 766 S.E.2d 707, 715 (2014) (discussing Department's authority within the larger coastal zone). As such, this case does not fall under the "public importance" exception doctrine.

Accordingly, although I recognize that until Respondent's hard erosion control structure is removed, scour and erosion of the public beach will persist, removal of the hard erosion control

structure will moot Respondent's appeal. Thus, while I am remorseful that the public beach may suffer in the interim, Respondent's Motion must be granted. *See* Rule 241(c)(2).

Imminent Harm

Respondent also argues that a stay should be granted pursuant to subsection 1-23-600(H)(4) of the South Carolina Code (Supp. 2025) because he will suffer from actual and imminent harm of losing a significant portion of his property to erosion. In support of his Motion, Respondent submitted an affidavit with photographs of his and the neighboring properties, the public access and an unsigned letter from Teresa McCan, property owner of 120 Ocean Blvd, Isle of Palms.³ Respondent argues that the erosion has worsened and that his hard erosion control structure is the only thing preventing his yard from collapsing onto the beach and taking with it the artificial turf, polypropylene pad, fabric, plants, and gravel in his yard. Thus, Respondent argues that "[u]ntil the City of Isle of Palms addresses its substantially declining beach elevations, removal of his structure will unreasonably expose him and his property to irreparable damage." Finally, Respondent contends that he will also suffer financial and personal injury of spending invaluable time and resources to remove the structure as well as money initially spent on the structure, should he prevail on appeal.

Significantly, in contrast to stays reviewed under subsection 1-23-600(H)(4), Rule 241 of the South Carolina Appellate Court Rules do not direct the Court to consider irreparable harm. Thus, Respondent's arguments are misplaced.

ORDER

IT IS THEREFORE ORDERED that Respondent's Motion to Stay and for Supersedeas is **GRANTED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

March 11, 2026
Columbia, South Carolina

³ The Court notes that it did not receive an original affidavit from Respondent.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Health and
Environmental Control,

Petitioner,

v.

Rom Reddy and Renee Reddy,

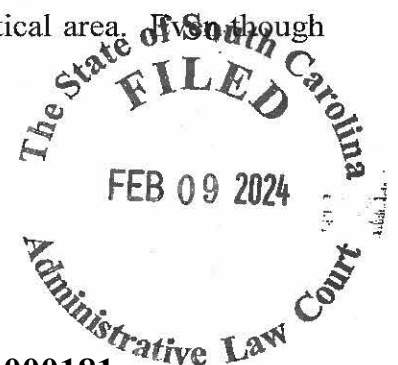
Respondents.

Docket No.: 24-ALJ-07-____-CC

**DHEC'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
AND MEMORANDUM IN
SUPPORT**

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, S.C. Code Ann. § 1-23-600(F), and S.C. Code Ann. § 48-39-10, et seq., the Petitioner South Carolina Department of Health and Environmental Control ("DHEC" or "Department" or "OCRM") moves for a temporary restraining order and preliminary injunction prohibiting the Respondents Rom Reddy and Renee Reddy from continuing to install a hard erosion control structure adjacent to their home at 118 Ocean Boulevard, Isle of Palms, SC without a permit from OCRM despite a Notice To Comply and two Cease and Desist Directives from the Department. If an injunction is not issued, the public will suffer immediate and irreparable harm by the blockade created by the Reddy's unauthorized wall in the critical area and the threat of harm due to the unsafe, dangerous conditions.

As detailed below, the Department is likely to succeed on the merits of its claim for permanent injunction because, as demonstrated by Matt Slagel's and Jacques Prevost's Affidavits, the Reddys continue to perform work in the beaches critical area. If so, though



the balancing of equities test is not required here,¹ the balance of equities does tip decidedly in favor of the Department, and issuance of an injunction would serve the public interest.

This motion is supported by the Memorandum that follows, the Petition for Injunctive Relief with attachments, the affidavits and exhibits attached to this motion, and the arguments, authorities, any “live” witness testimony and any other evidence presented at a hearing of this matter.

FACTUAL BACKGROUND

To avoid redundancy, the Department incorporates by reference the factual background, photographs and timeline provided in the Petition for Injunctive Relief.

ARGUMENT

- I. The Department is entitled to a temporary restraining order and preliminary injunction prohibiting the Reddys from continuing to work in the critical area without a permit.

The Supreme Court has recognized that “the purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it” during the pendency of the action to ensure the court's ability to render a meaningful judgment on the merits.² Compton v. S.C. Dep't of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). Similarly, a temporary

¹ See Jennings-Dill, Inc. v. Israel, No. 2021-001137, 2024 WL 252953, at *6 (S.C. App. Jan. 24, 2024) (citing Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010)).

² “Given the purpose of a preliminary injunction and the requirement that the facts *alleged* are sufficient to support a prima facie showing, *it is appropriate for a circuit court to rely on hearsay and speculative statements* when deciding whether a party has met their burden of demonstrating a likelihood of success on the merits.” Jennings-Dill, Inc. v. Israel, No. 2021-001137, 2024 WL 252953, at *5 (S.C. App. Jan. 24, 2024) (Emphasis added) (citing Univ. of Tex. v. Camenisch, 451 U.S. 390, 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981) “The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits”).

restraining order is designed to preserve the status quo until there is an opportunity to hold a hearing on the application for a preliminary injunction. See Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001).

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 1-23-600(F), the Department petitions this Court for a temporary restraining order and preliminary injunction against the Reddys because, as demonstrated by the timeline in the Petition for Injunctive Relief, no matter how many times the Department directs them to stop their unauthorized work, they continue to perform work in the beaches critical area without a permit. Their recalcitrance will cause the public irreparable injury and per Matt Slagel's Affidavit, has encouraged other beachfront property owners to take similar unauthorized action. See Rule 65, SCRPC; see also Heyward v. Crosby, No. 02-CP-10-1483, 2002 WL 34226433 (S.C. Com. Pl. Apr. 04, 2002) (granting request for temporary restraining order because it was "clear from the [m]otion, [a]ffidavit, and [c]omplaint that immediate and irreparable injury, loss or damage has and will continue to occur before the Defendant ... can be served notice and a hearing had thereon").

A plaintiff seeking injunctive relief must establish that (1) he or she is likely to succeed on the merits, (2) he or she is likely to suffer irreparable harm in the absence of preliminary injunctive relief, and (3) there is inadequate remedy at law.³ AJG Holdings, LLC v. Dunn, 382 S.C. 43, 51,

³ "[T]he 'balancing the equities' requirement is neither necessary nor appropriate in a preliminary injunction case[] where the three requirements (irreparable harm, success on merits, and inadequate remedy at law) are well established and clearly delineate the burden of proof and of persuasion. Moreover, the balancing requirement is subsumed by the irreparable harm and inadequate remedy at law components of the three-part test." Jennings-Dill, Inc. v. Israel, No. 2021-001137, 2024 WL 252953, at *6 (S.C. App. Jan. 24, 2024) (citing Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010)). "[T]here is no separate requirement that a judge perform such a balancing before deciding to issue a preliminary

674 S.E.2d 505, 508 (Ct. App. 2009). Other factors such as the public interest also play a role in the determination of whether to grant a temporary injunction. See Hazardous Waste Treatment Council v. State of S.C., 945 F.2d 781, 787 (4th Cir. 1991).

In this case, the main point of contention is the Department's critical area jurisdiction. Matt Slagel states in paragraphs 18 and 21 of his attached Affidavit that the Reddy's hard erosion control structure is being installed in beaches critical area. Opposing counsel insists that the Department does not have jurisdiction to require the Reddys to apply for a critical area permit because the structure is landward of the setback line.⁴ This assertion is irrelevant to the Department's beaches critical area jurisdiction and is without merit. S.C. Code Ann. § 48-39-130(C) plainly requires that *any* critical area alteration (including beaches critical area) must be permitted by OCRM.

The Reddys do not have a permit for their work and as Mr. Slagel notes in paragraph 22 of his Affidavit, the Reddy's unauthorized activity in the beaches critical area is currently impeding the public's use of the dry sand beach and is encouraging other beachfront property owners to consider installing hard erosion control structures. The people Mr. Slagel has spoken to told him that "they may reevaluate their desire to install an erosion control structure at their property if the unauthorized erosion control structure at Respondent's' property were not present." (Matt Slagel Affidavit, paragraph 22).

injunction." Jennings-Dill, Inc. v. Israel, No. 2021-001137, 2024 WL 252953, at *6 (S.C. App. Jan. 24, 2024) (citing Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. at 586, 694 S.E.2d at 17).

⁴ Since Act 173 took effect in 2018, thus legislatively mandating the location of the setback line, the issue of beaches critical area moving landward of the setback line has been a recurring issue for the Department.

Using the standard in *Peek v. Spartanburg Reg 'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36-37 (Ct. App. 2005), the Department has demonstrated by the attached Affidavits of Matt Slagel and Jaques Prevost that the relief sought is warranted and necessary.

A. The Department and the public will suffer irreparable harm absent issuance of injunctive relief.

The Department must show that there is a "likelihood that immediate, irreparable harm will occur" absent injunctive relief *Hodges v. Abraham*, 253 F. Supp. 2d 846, 864 (D.S.C. 2002); *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). The allegations set forth in the preceding paragraphs are incorporated as if fully restated herein.

Without entry of a temporary restraining order and preliminary injunction, the public⁵ will suffer imminent and irreparable harm due to the Reddy's continuing critical area alterations and building up of their hard erosion control structure. In addition to the above-referenced harm, the Reddy's wall is

- (1) interfering and disrupting the City of Isle of Palm's efforts to protect the beach;
- (2) harming the public's access and use of the dry sand beach (see attached Affidavit of Jacques Prevost, paragraphs 22 and 23);
- (3) undermining the State's authority in the critical area by representing to other beachfront homeowners who are anxious about erosion that they can engage in substantial critical area alterations on the beach without authorization; they can disregard Cease and Desist Directives and engage in other violations of the Act to

⁵ The Supreme Court said that "the public's interest must be the *lodestar* which guides our legal analysis in regards to the State's tidelands." *Kiawah Dev. Partners, II v. S.C. Dept. of Health and Env'tl. Control*, 766 S.E.2d 707, 715 (S.C. 2014) (Emphasis added).

protect their property with little to no immediate repercussions (see attached Affidavit of Jacques Prevost, paragraph 29); and

(4) creating hazardous conditions that could result in serious injury to the public (see attached Affidavit of Jacques Prevost, paragraphs 20, 22, 24 and 25).

Regarding the irreparable harm caused by diminished access to use and enjoyment of the dry sand beach, Jacques Prevost stated in paragraph 22 of his Affidavit that

“I observed the high tide wash coming up to and impacting the toe of the seaward side of the hard erosion control structure. Additionally, I observed water breaching underneath the center of the structure from the seaward side to the landward side and pooling on top of recently-added concrete within wooden forms at the bottom of an approximately 7-foot-deep excavation. I also observed significant pooling of water landward of the east and west wingwalls.”

He further states in paragraph 23 of his Affidavit that

“[o]n February 1, 2024, at approximately 11:45AM during a high tide of approximately 4.2 feet, according to Tide Charts mobile application Breach Inlet tide gauge data, I could not walk around the seaward side of the hard erosion control structure without walking through water. The tide was high enough to overtop and fill the inside of my approximately 8-inch-tall boots while I was walking on the seaward side of the structure.”

In *AJG Holdings, LLC v. Dunn*, 674 S.E.2d 505 (S.C. App. 2009), the South Carolina Court of Appeals addressed whether interference with the right to use and enjoyment of property amounts to irreparable harm. In that case, the Plaintiffs were a group of subdivision property owners who brought an action against Levon and Pamela Dunn for operating a bed and breakfast in the subdivision in violation of the restrictive covenants. *AJG Holdings, LLC v. Dunn*, 674 S.E.2d 505 (S.C. App. 2009). The Plaintiffs sought a preliminary injunction barring any commercial use of the bed and breakfast owners' property. *Id.* In opposing the preliminary injunctive relief, the Dunns tried to minimize the harm they were causing by stating that the Plaintiffs “would merely suffer some inconvenience from their commercial activity.” *AJG Holdings, LLC*, 674 S.E.2d at

509. However, the Court of Appeals upheld the injunctive relief and found that “the commercial activity on the Dunns' land caused noise and traffic in the neighborhood” and that “[t]his activity interfered with their right to the use and enjoyment of their property and is sufficient to prove Respondents suffered an irreparable harm.” *Id.*, 674 S.E.2d at 509. If running a bed and breakfast business in a subdivision caused irreparable harm by interfering with the other property owners’ use and enjoyment of their property, then as Jacques Prevost’s above-referenced Affidavit testimony demonstrates, the public’s right to use and enjoy the dry sand beach is unquestionably impeded by the Reddy’s wall. This amounts to irreparable harm.

Jacques Prevost mentioned the following hazards to the public that he observed in the beaches critical area during his numerous site visits:

- The unauthorized activity detailed in the January 25, 2024 Cease and Desist Directive included the installing of metal screw piles below grade seaward of the structure in beaches critical area and/or on active beach. (Affidavit, paragraph 20).
- Water breaching underneath the center of the structure from the seaward side to the landward side and pooling on top of recently-added concrete within wooden forms at the bottom of an approximately 7-foot-deep excavation. (Affidavit, paragraph 20).
- Exposed unprotected rebar sticking approximately two [2] feet vertically out of the top of a concrete slab immediately landward of the hard erosion control structure and at the bottom of an approximately 7-foot-deep excavation. The unprotected rebar posed a significant public and onsite safety hazard. I also saw the exposed tops of the metal screw piles that were installed by the toe of the seaward face of the structure and scattered rip-rap which has created a hazardous and unsafe

condition to the members of the public who are attempting to use that area of the beach. Additionally, there appeared to be no safe/established method of access into/out of the excavation area and pits landward of the east and west wingwalls. (Affidavit, paragraph 24); and

- The depth of the excavation areas landward of the structure and the pits landward of the east and west wingwalls pose a significant safety concern due to the minimal protection around these areas and the unstable nature of the soil. Also, no collapse-protection measures were observed at the excavation area and pits landward of the east and west wingwalls. (Affidavit, paragraph 25).

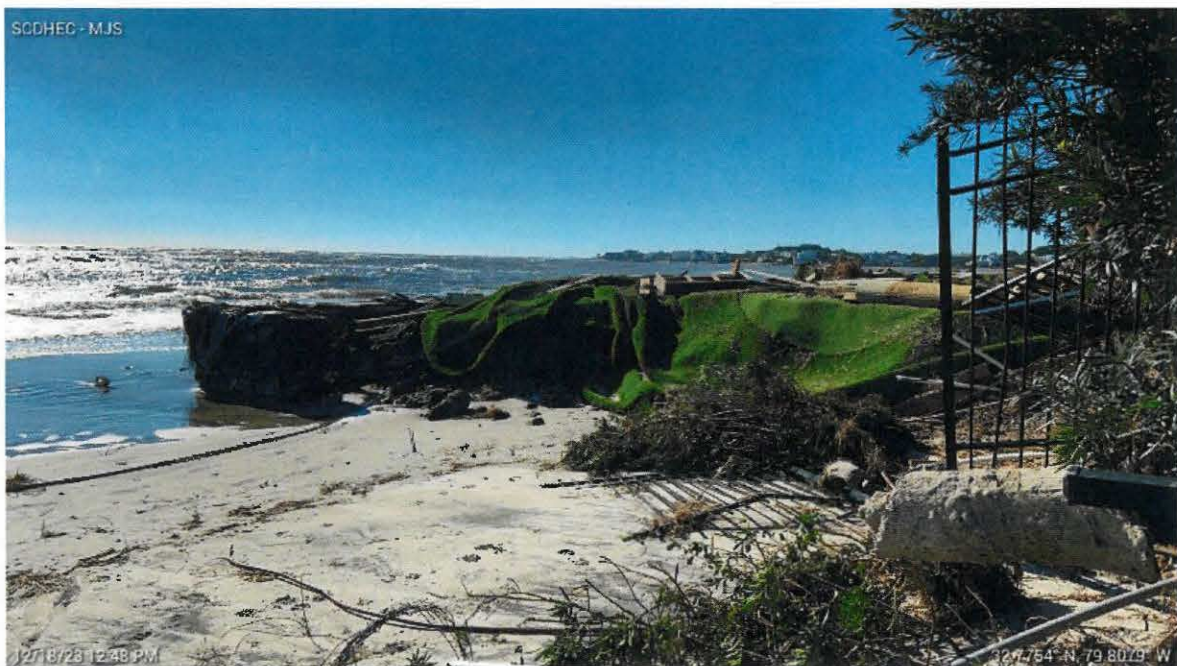
Without injunctive relief, the public will continue to be exposed to this immediate and irreparable harm.

B. The Department is likely to succeed on the merits.

The South Carolina Court of Appeals recently provided additional guidance regarding the second prong of this three-prong test by stating that “a plaintiff seeking a preliminary injunction need not prove an absolute legal right; a plaintiff need only present a ‘fair question to raise as to the existence of such a right.’” *Jennings-Dill, Inc. v. Israel*, No. 2021-001137, 2024 WL 252953, at *4 (S.C. App. Jan. 24, 2024) (citing *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15, 17 (2010)). “Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.” *Helsel v. City of North Myrtle Beach*, 307 S.C. 29,

32, 413 S.E.2d 824, 826 (1992)⁶ (citing Columbia Broadcasting System, Inc. v. Custom Recording Co., Inc., 258 S.C. 465, 471–72, 189 S.E.2d 305, 308 (1972)).

The Reddy's counsel erroneously asserts that their hard erosion control structure was not placed in the beaches critical area as defined in S.C. Code Ann. Sec. 48-39-10(H).⁷ Instead, he contends that the Reddy's hard erosion control structure is located in their yard (see attached January 30, 2024 email correspondence from Merritt Abney). According to opposing counsel's email, OCRM "lacks jurisdiction over the structure or the work for which the agency has issued a cease and desist directive." This assertion is directly at odds with paragraphs 18 and 21 of Matt Slagel's attached Affidavit as well as the picture below which plainly demonstrates that the Reddy's structure is in the critical area.



⁶ The purpose of the temporary injunction is not to decide the controversy, but only to protect a party from immediate and irreparable harm until the action may be heard and resolved in an orderly and deliberate fashion, affording all parties an opportunity to be heard. *Helsel*, 307 S.C. at 32, 413 S.E.2d at 826.

⁷ S.C. Code Ann. § 48-39-10(H) "Beaches" means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.

Regardless of opposing counsel's apparent belief that once beaches critical area migrates landward of the setback line, the Department loses critical area jurisdiction, this is simply not true. S.C. Code Ann. § 48-39-130(C) established the scope of the Department's critical area jurisdiction in 1977 and the General Assembly has never repealed that jurisdiction. There is no statutory exemption from the requirement to obtain a critical area permit if the beaches critical area is landward of the setback line.

S.C. Code Ann. § 48-39-210(B) is instructive regarding the General Assembly's intentions about the scope of the Department's critical area jurisdiction. This statute requires that every new critical area delineation certified by OCRM have the following statement in bold type under the Project Manager's signature:

"The area shown on this plat is a representation of department permit authority on the subject property. **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.**" (Emphasis added).

The Supreme Court's *Tenney* decision related to the public trust doctrine reinforces the Department's continuously-changing jurisdiction in this highly dynamic critical area. In that case, the Court said "[w]e decline to diminish the bright line of the public trust doctrine with a test that requires case by case determination. Coastal lands are notoriously subject to the volatility of changing tides, erosion, and accretion. Landowners and potential landowners are well aware of the long-standing principle that the State is presumptive owner of lands below the high water mark. Accordingly, a person who possesses title to land especially vulnerable to this volatility takes title with the knowledge their land is at risk of loss to the State by natural forces." *Est. of Tenney v. S.C. Dept. of Health and Env'tl. Control*, 712 S.E.2d 395, 399 (S.C. 2011).

Based upon the above authority, the Department has established that it is likely to succeed on the merits of its claim.

C. The Department has no adequate remedy at law.

Temporary injunctive relief is also warranted because the Department does not have an adequate remedy at law. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455-56, 626 S.E.2d 34, 36 (Ct. App. 2005). No matter how many times the Department directs the Reddy's to Cease and Desist their unauthorized work, they continue to significantly impact the critical area and perform massive amounts of work to enlarge and fortify the unauthorized erosion control structure in the beaches critical area without a permit. Accordingly, issuance of an injunction is appropriate.

WHEREFORE, the Department respectfully requests the Court grant a temporary restraining order and preliminary injunction prohibiting the Respondents from continuing to perform work in the critical area without a permit.

Respectfully Submitted,



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February 9, 2024
Charleston, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Health and
Environmental Control,

Petitioner,

v.

Rom Reddy and Renee Reddy,

Respondents.

Docket No.: 24-ALJ-07-____-CC

AFFIDAVIT OF JACQUES PREVOST

PERSONALLY appeared before me, Jacques P. Prevost, Compliance Project Manager in the Office of Ocean and Coastal Resource Management at the South Carolina Department of Health and Environmental Control (“Department”), being duly sworn, avers and states that:

1. My name is Jacques P. Prevost, and I am submitting this affidavit in support of the Department’s Motion for Temporary Restraining Order.

2. I have worked for the Department since January 2023 in the Office of Ocean and Coastal Resource Management (“OCRM”). Previously, I have worked for Path Light Pro as a Compliance Field Consultant from January 2022 to December 2022. My previous position’s responsibilities included conducting site safety inspections to document compliance with OSHA Regulations and providing guidance to improve environmental health/safety.

3. In my capacity as Compliance Project Manager in the Compliance and Enforcement Section of OCRM, I am familiar with legislation and regulations pertaining to regulatory jurisdiction and compliance requirements, including but not limited to the following: the Coastal Zone Management Act (S.C. Code Ann. §§ 48-39-10 et seq.) and Coastal Division Regulations

(S.C. Code Ann. Regs. §§ 30-1 et seq.) My position's responsibilities include, but are not limited to: site evaluations, damage assessments, and responding to complaints.

4. I have been to 118 Ocean Boulevard, Isle of Palms ("Site") on at least ten [10] separate occasions from October 20, 2023 up to and including February 1, 2024. During the site visits, I observed the current site conditions, collected photographs, and investigated the complaints that I received for the work being done at the Site.

5. On October 5, 2023, I observed and photographed non-beach-compatible materials and various types of marine debris from the Respondents' construction at and adjacent to the Site in the beaches critical area (which includes active beach).

6. On December 13, 2023, I observed and photographed non-beach-compatible materials and marine debris from the Respondents' construction at and adjacent to the Site in the beaches critical area (which includes active beach).

7. On December 20, 2023, I observed and photographed non-beach-compatible materials and various types of marine debris from the Respondents' construction at and adjacent to the Site in the beaches critical area (which includes active beach).

8. On December 28, 2023, I observed and photographed non-beach-compatible materials and various types of marine debris from the Respondents' construction at and adjacent to the Site in the beaches critical area (which includes active beach).

9. On January 11, 2024, I observed and photographed non-beach-compatible materials and various types of marine debris from the Respondents' construction at and adjacent to the Site in the beaches critical area (which includes active beach).

10. On January 25, 2024, I observed and photographed non-beach-compatible materials and various types of marine debris from the Respondents' construction at and adjacent

to the Site in the beaches critical area (which includes active beach). The Respondents' contractors, among other things, were installing metal screw piles on the seaward side of the hard erosion control structure.

11. On January 29, 2024, I observed and photographed non-beach-compatible materials and various types of marine debris from the Respondents' construction at and adjacent to the Site in the beaches critical area (which includes active beach).

12. On February 1, 2024, I observed and photographed non-beach-compatible materials and various types of marine debris from the Respondents' construction at the Site in the beaches critical area (which includes active beach).

13. On the dates of October 5, 2023; December 13, 20, 28, 2023; January 11, 25, 29, 2024; and February 1, 2024, referenced above in 5 through 12, I observed and photographed at least one the following non-beach-compatible materials and/or marine debris from the Respondents' construction at and/or adjacent to the Site in the beaches critical area (which includes active beach): gravel/rock, riprap, fill, clay, set concrete, recently-added concrete, metal screw piles, rebar, artificial turf grass, geotextile fabric, plastic mesh/geogrid, plastic sheeting/tarps, plastic mesh fencing, metal fencing, and wood.

14. Since December 20, 2023, every time I have visited the Site, the public beach access between 118 and 120 Ocean Boulevard has been blocked by the Respondents' metal fencing debris on the seaward end of the beach access pathway, preventing access to the beach from the pathway.

15. On December 20, 2023, I personally observed, photographed, and documented the unauthorized hard erosion control structure at the Site for my first time. I previously visited the Site on December 13, 2023 and did not see the structure. Upon information and belief, the hard erosion control structure was present on December 13, 2023, however due to sand cover at the

time the structure was not visible. I was made aware that the structure was first observed by OCRM staff on December 18, 2023 during a beachfront assessment after the December 17, 2023 Nor'easter exposed the previously-hidden hard erosion control structure.

16. Since my first observations of the hard erosion control structure on December 20, 2023, it has been in beaches critical area. During each site visit on and after December 20, 2023, I have observed the structure being inundated by the tides or have observed evidence of the high tide wash reaching the structure. Additionally, the structure was installed in a location with no established nonlittoral vegetation.

17. On December 20 and 28, 2023, and January 11, 2024, there was evidence of significant tidal/wave action adjacent to and landward of the east and west wingwalls of the hard erosion control structure.

18. On January 29, 2024, there was evidence of significant tidal/wave action adjacent to the west wingwall of the hard erosion control structure.

19. On February 1, 2024, I observed areas immediately adjacent to the east and west wingwalls of the hard erosion control structure where a significant amount of sand had been removed by erosion and/or excavation. The impacted area on the west side of the structure spanned beyond the extended property line between 116 and 118 Ocean Boulevard and into the extended property lines of 116 Ocean Boulevard.

20. While at the Site on January 29, 2024, I observed a Bobcat skid-steer on the seaward side of the hard erosion control structure in beaches critical area installing/screwing metal piles below grade immediately landward of the structure. I then spoke with the onsite supervisor who refused to tell me his name or company. I told the unnamed supervisor that there was a January 25, 2024 OCRM Cease and Desist Directive issued for unauthorized activity in the beaches critical

area and/or on active beach related to construction on the hard erosion control structure. The unauthorized activity detailed in the January 25, 2024 Cease and Desist Directive included the installing of metal screw piles below grade seaward of the structure in beaches critical area and/or on active beach. The supervisor confirmed that he was aware of the January 25, 2024 Cease and Desist and claimed that all work that was the subject of that Cease and Desist was completed prior to actually receiving the Cease and Desist. I asked the supervisor for clarification on the current activity at the time of inspection. The supervisor would not elaborate on the current construction activity and said that I would have to speak with the attorneys for any information.

21. OCRM continued to attempt to ascertain information regarding the contractors' identities and activity at the Site on January 29, 2024. Subsequently on January 30, 2024, I was forwarded an email chain between DHEC Assistant General Counsel Sallie Phelan, and Rom Reddy's attorneys. In the forwarded email chain, Ms. Phelan stated "Please instruct you[r] client to comply immediately with the [January 25, 2024] Cease and Desist Directive. Furthermore, please provide information related to the activities as well as the identity of the contractors and their company who were working at the site". In the email response forwarded to me on January 30, 2024, Mr. Reddy's attorney Merritt Abney responded "The Reddys did not tell any contractor not to identify themselves or not to disclose the work they were doing. However, we decline your request to name workers who were onsite". Additionally, in the email response forwarded to me on January 30, 2024, Mr. Abney did not elaborate or provide any information on the work being conducted at the Site on January 29, 2024. (Exhibit A.)

22. On February 1, 2024, at approximately 11:45AM during a lower-than-average high tide of approximately 4.2 feet¹, according to Tide Charts mobile application Breach Inlet tide gauge data, I observed the high tide wash coming up to and impacting the toe of the seaward side of the hard erosion control structure. Additionally, I observed water breaching underneath the center of the structure from the seaward side to the landward side and pooling on top of recently-added concrete within wooden forms at the bottom of an approximately 7-foot-deep excavation. I also observed significant pooling of water landward of the east and west wingwalls.

23. On February 1, 2024, at approximately 11:45AM during a high tide of approximately 4.2 feet, according to Tide Charts mobile application Breach Inlet tide gauge data, I could not walk around the seaward side of the hard erosion control structure without walking through water. The tide was high enough to overtop and fill the inside of my approximately 8-inch-tall boots while I was walking on the seaward side of the structure.

24. Also on February 1, 2024, I observed exposed unprotected rebar sticking approximately two [2] feet vertically out of the top of a concrete slab immediately landward of the hard erosion control structure and at the bottom of an approximately 7-foot-deep excavation. The unprotected rebar posed a significant public and onsite safety hazard. I also saw the exposed tops of the metal screw piles that were installed by the toe of the seaward face of the structure and scattered rip-rap which has created a hazardous and unsafe condition to the members of the public who are attempting to use that area of the beach. Additionally, there appeared to be no safe/established method of access into/out of the excavation area and pits landward of the east and west wingwalls.

¹ Based on NOAA Tides & Currents data, the mean high water for the current tidal epoch of 1983-2001 at Breach Inlet, SC station is 5.13ft. Additionally, the mean higher-high water for the current tidal epoch of 1983-2001 at Breach Inlet, SC station is 5.51ft. Therefore a 4.2ft. high tide is below mean high tide for the area for the current tidal epoch.

25. During my time at the Site on February 1, 2024, I intentionally kept my distance from the edges of the excavation area landward of the hard erosion control structure and the pits landward of the east and west wingwalls. The depth of the excavation areas landward of the structure and the pits landward of the east and west wingwalls pose a significant safety concern due to the minimal protection around these areas and the unstable nature of the soil. Also, no collapse-protection measures were observed at the excavation area and pits landward of the east and west wingwalls.

26. Multiple complainants have contacted me expressing concerns that other property owners may construct additional unauthorized structures on the Isle of Palms beachfront given the continued construction activity at the Site. Multiple complainants have commonly expressed to me that not enough is being done to stop the unauthorized activity.

27. From February 1 to 2, 2024, I received seven [7] phone calls/voicemails from separate complainants regarding concerns with the construction activity at 118 Ocean Boulevard and the continued activity at the Site following my posting of Cease and Desist notices onsite the morning of February 1, 2024.

- Multiple complainants pleaded for OCRM to stop the activity at 118 Ocean Boulevard.
- Multiple complainants stated that work had continued following the Cease and Desist notices being posted at the Site on the morning of February 1, 2024. Some complainants also said that the Cease and Desist notices were removed.
- Multiple complainants contacted me saying that multiple concrete trucks had come and poured concrete at the Site following Cease and Desist notices being posted onsite on February 1, 2024.
- Outside of February 1 and 2, 2024, I have also received numerous complaints regarding the unauthorized structure and associated activity, as well as the perceived lack of response by OCRM to this issue.

Additionally, other OCRM staff received two [2] additional complaint phone calls/voicemails on February 1, 2024 with concerns of the activity at 118 Ocean Boulevard.

28. The Respondents have refused to acknowledge OCRM's authority in the beaches critical area landward of the Setback Line. They have repeatedly disregarded issued and posted Cease and Desist Directives and have been unwilling to seek resolution of the issues at the Site through the compliance assistance or prescribed enforcement processes. The Respondents have continued to conduct unauthorized activity at the Site, resulting in extensive alterations to the critical area and creating safety hazards. Also, the Respondents' continued actions have undermined the public opinion of OCRM. I have received multiple communications claiming that OCRM's response to the activity at the Site is insufficient. For example, in an email I received on January 31, 2024, a complainant stated "[t]he lack of clarity and responsibility among governing bodies regarding enforcement is leading to a loss of faith among residents. We cannot stand idly by while this property owner continues to upkeep his wall throughout the upcoming beach season." (Exhibit B.) As a Compliance Project Manager, I have exhausted all compliance assistance efforts to resolve this matter.

29. I certify that the forgoing statements made by me are true.

Further the deponent sayeth not.


Jacques Prevost

SWORN TO BEFORE me this
9th day of February, 2024.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/12/33

From: [Phelan, Sallie P.](#)
To: [Flake, Morgan](#); [Slagel, Matt](#); [Prevost, Jacques P.](#)
Subject: Fw: 118 Ocean Boulevard - staff site visit today
Date: Tuesday, January 30, 2024 10:26:52 AM

[REDACTED]

-Sallie

Sallie P. Phelan
Assistant General Counsel
SC Department of Health and Environmental Control
1362 McMillan Avenue
Suite 400
Charleston, SC 29405
Office: (843) 953-0229
Fax: (843) 953-0201
Connect: www.scdhec.gov

From: Merritt Abney <merritt.abney@nelsonmullins.com>
Sent: Tuesday, January 30, 2024 10:21 AM
To: Phelan, Sallie P. <phelansp@dhec.sc.gov>
Cc: Churdar, Bradley <churdabd@dhec.sc.gov>; Jack Smith <jack.smith@nelsonmullins.com>
Subject: RE: 118 Ocean Boulevard - staff site visit today

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Sallie – This email responds to your letter of January 25, 2024, and your email below. As you know from my prior correspondence, we disagree that the Reddy's retention wall was erected within the critical area. The wall is located in the Reddy's yard, which was not "beach" as defined in S.C. Code Ann. Sec. 48-39-10(H), and the recent work that OCRM observed on January 25 occurred underneath and landward of the wall. OCRM therefore lacks jurisdiction over the structure or the work for which the agency has issued a cease and desist directive.

The work at issue in your letter of January 25 was necessary to secure the retention wall. That work is complete, such that the directive is now moot.

I will also note that this work was necessitated only because OCRM directed the Town not to place sand seaward of the Reddy's property and to refuse the Reddy's request to be allowed to place beach-compatible sand in front of their property at their own expense. We are aware of no authority for OCRM to deny the Reddys the ability to place beach-compatible sand in front of their property. As a result of these OCRM directives, the Town has refused to place sand seaward of the Reddy's property, or to allow the Reddys to do so, and has left large gaps between the sand placed on either side of the Reddy's property and the retention wall, threatening the integrity of the wall.

As shown on the attached photo taken today, the retention wall is located landward of the line of artificial dunes placed by the Town. The Reddys could place sand along this line without impeding beach access, which I understood from your prior correspondence to be an issue of concern for the agency. We therefore again request that OCRM inform the Town that it may permit this to occur.

The Reddys did not tell any contractor not to identify themselves or not to disclose the work they were doing. However, we decline your request to name workers who were onsite.

Finally, the day after we received your January 25 letter, Mr. Reddy was approached by a news outlet which had obtained a copy of the letter and asked Mr. Reddy to confirm its authenticity. The Town assured us that it did not supply the letter to any news outlet. Please let us know if OCRM did supply it and provide any Freedom of Information Act requests that may have called for its production.

Best regards,

Merritt



MERRITT G. ABNEY **PARTNER**
merritt.abney@nelsonmullins.com

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From: Phelan, Sallie P. <phelansp@dhec.sc.gov>
Sent: Monday, January 29, 2024 5:15 PM
To: Merritt Abney <merritt.abney@nelsonmullins.com>; Jack Smith <jack.smith@nelsonmullins.com>
Cc: Churdar, Bradley <churdabd@dhec.sc.gov>
Subject: Re: 118 Ocean Boulevard - staff site visit today

Merritt & Jack-

As indicated in my email below sent earlier today, Jacques Prevost (Compliance Project Manager) visited 118 Ocean Boulevard to collect additional data. He discovered that the Cease & Desist Directive issued last Thursday (January 25, 2024) is not being complied with and your client is continuing to engage in unauthorized activities in the beaches

ROA 000201

critical area and on active beach. Jacques also observed the contractors working with heavy equipment in the critical area installing metal poles. It is my understanding that Jacques attempted to speak with one of the workers and was informed that they were instructed not to talk to him. Jacques asked for the supervisor who refused to identify himself or the company, would not explain what they were doing, acknowledged that there was a Cease & Desist Directive issued for the property and said that Jacques would have to speak with "the attorneys" if he wanted any information.

Please instruct your client to comply immediately with the Cease and Desist Directive. Furthermore, please provide information related to the activities as well as the identity of the contractors and their company who were working at the site.

Please don't hesitate to call me at (843) 953-0229 if you would like to discuss this further or have any questions.

Sallie

Sallie P. Phelan
Assistant General Counsel
SC Department of Health and Environmental Control
1362 McMillan Avenue
Suite 400
Charleston, SC 29405
Office: (843) 953-0229
Fax: (843) 953-0201
Connect: www.scdhec.gov

From: Phelan, Sallie P.
Sent: Monday, January 29, 2024 12:14 PM
To: Merritt Abney <merritt.abney@nelsonmullins.com>
Cc: Jack Smith <jack.smith@nelsonmullins.com>
Subject: 118 Ocean Boulevard - staff site visit today

Good Afternoon-

It is my understanding that you have requested to be notified when staff inspects/visits 118 Ocean Boulevard. Jacques Prevost, the project manager for this site, plans to be out there today sometime between 1:00 p.m. and 4:00 p.m. He plans to take additional GPS data from the seaward side of the wall, however, he may need to inspect the top of the wall as well so I wanted to let you know.

Please feel free to give me a call if you would like to discuss any of this further or have

ROA 000202

any questions.

Best regards,

Sallie

Sallie P. Phelan
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SC Department of Health and Environmental Control
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Re: Isle of Palms,

Wed 1/31/2024 3:14 PM

To: Prevost, Jacques P. <PrevosJP@dhec.sc.gov>

📎 16 attachments (2 MB)

Outlook-0jpzaq4e.jpg; IMG_20240131_143203.jpg; IMG_20240131_143210.jpg; IMG_20240131_143142.jpg; IMG_20240131_143156.jpg; IMG_20240131_143221.jpg; IMG_20240131_143219.jpg; IMG_20240131_143217.jpg; IMG_2255.jpg; IMG_20240131_143215.jpg; IMG_2258.jpg; IMG_20240131_143213.jpg; IMG_20240131_143208.jpg; IMG_2255 (1).jpg; IMG_2254.jpg; IMG_2256.jpg;

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
Jacques,

I must impress upon you the urgency and gravity of our situation. It is imperative that this message is escalated to the highest levels. The current stance taken by OCRM/DHEC, which permits the use of public beach paths for heavy equipment to construct or reinforce hard erosion control walls, is setting a dangerous and unacceptable precedent. This leniency is openly flouting the law and encouraging similar lawless behavior among other residents, as there appear to be no consequences for such actions.

The lack of clarity and responsibility among governing bodies regarding enforcement is leading to a loss of faith among residents. We cannot stand idly by while this property owner continues to upkeep his wall throughout the upcoming beach season. This not only poses a significant inconvenience to beachgoers but also presents a real danger to those on the beach and using the beach paths.

Immediate and decisive action is required to address this issue. Those in authority must recognize the seriousness of this matter and take appropriate steps to rectify it.

Sincerely,

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Health and
Environmental Control,

Petitioner,

v.

Rom Reddy and Renee Reddy,

Respondents.

Docket No.: 24-ALJ-07-____-CC

AFFIDAVIT OF MATTHEW SLAGEL

PERSONALLY appeared before me, Matthew J. Slagel, Manager of the Beachfront Management Section in the Office of Ocean and Coastal Resource Management at the South Carolina Department of Health and Environmental Control ("Department"), being duly sworn, avers and states that:

1. My name is Matthew J. Slagel, and I am submitting this affidavit in support of the Department's Motion For Temporary Restraining Order and Preliminary Injunction.
2. I hold a Bachelor of Science degree in Environmental Sciences from the University of Virginia and a Master of Science degree in Ocean Sciences from the University of California, Santa Cruz.
3. I first started working for the Department in August 2007 in the Office of Ocean and Coastal Resource Management ("OCRM") in Charleston. I worked for North Carolina's Coastal Management Program for approximately three years, but the remaining time until the present has been spent with OCRM. In January 2018, I started working exclusively on beachfront permitting and policy matters for OCRM. In July 2022, I became the Manager of the Beachfront Management Section.

4. The Beachfront Management Section reviews permit applications or service requests within three of the four critical areas defined in statute: coastal waters (from the shoreline to 3 nautical miles offshore), the beach/dune system, and beaches. In my capacity as the Manager of the Beachfront Management Section, I am familiar with the laws, regulations, and policies governing beachfront permitting reviews, including but not limited to the following: the Coastal Tidelands and Wetlands Act (S.C. Code Ann. §§ 48-39-10 et seq.), the Coastal Division Regulations (S.C. Code Ann. Regs. 30-1 et seq.), and the Coastal Zone Management Program (CZMP) Document.

5. The Coastal Tidelands and Wetlands Act directs the Department to develop a comprehensive coastal management program and to establish regulations and policies for reviewing projects within the Department's critical area authority and within the Department's indirect authority in the coastal zone.

6. The four types of critical areas where the Department has direct permitting authority are listed and defined in S.C. Code Ann. § 48-39-10. The four types of critical areas are coastal waters, tidelands, beaches, and the beach/dune system. Any utilization or alteration of any of these four critical areas requires permitting or authorization from OCRM.

7. The term "beaches" is defined in S.C. Code Ann. § 48-39-10(H) as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established."

8. The term "beach/dune system" is defined in S.C. Code Ann. § 48-39-10(J)(4) as "the area from the mean high-water mark to the setback line as determined in Section 48-39-280."

9. Beaches critical area is not tied to the beachfront baseline or setback line. Depending on the location, beaches critical area can be found seaward of or landward of the

setback line. Since beaches critical area is one of the state's four critical areas, OCRM has permitting authority over activities within this critical area.

10. Beaches critical area is not tied to repeated and temporary emergency protection measures like trucking in sand or scraping sand from the beach itself. Rather, the location of beaches critical area is determined by the presence or absence of nonlittoral vegetation. Nonlittoral vegetation cannot survive, or become reestablished, in areas subject to periodic inundation by tidal and wave action. A sandy area adjacent to the ocean is classified as beaches critical area if it is not vegetated, regardless if repeated and temporary emergency protection measures are ongoing.

11. The term "active beach" is defined in S.C. Code Ann. § 48-39-270(13) as "that area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean." Active beach is always found within beaches critical area, but the beaches critical area may extend beyond active beach.

12. Vegetation is one primary indicator for determining whether a given area is beaches critical area and/or active beach. Again, the term "beaches" is defined in statute as "those lands subject to periodic inundation by tidal and wave action so that no *nonlittoral vegetation* is established." The term "active beach" is defined in statute as "that area seaward of the escarpment or the first line of *stable natural vegetation*, whichever first occurs, measured from the ocean."

13. Erosion control structures or devices are listed in S.C. Code Ann. § 48-39-270(1) and include seawalls, bulkheads, and revetments. New erosion control structures or devices have been prohibited along South Carolina's beachfront since 1988, based on legislative findings that the use of such structures has not proven effective, provides a false sense of security, and contributes to the loss of the dry sand beach which is so important to the tourism industry.

14. In 2007, OCRM established the Shoreline Change Advisory Committee (SCAC), an external advisory panel made up of 23 scientists, agency researchers, municipal officials, and various stakeholders to discuss the past two decades of experiences under the SC Beachfront Management Act and to identify potential research and policy needs for the coming decades. I provided staff support to the SCAC. The SCAC released a final report in April 2010, which contains four goal chapters, 13 general recommendations, and numerous sub-recommendations. The third goal chapter is titled "Goal 3: Maintain Prohibitions and Further Restrict the Use of Hard Stabilization Structures." The final report of the SCAC is available on OCRM's website: <https://scdhec.gov/sites/default/files/Library/CR-009823.pdf>.

15. In 2010, the DHEC Board selected the membership of the Blue Ribbon Committee on Shoreline Management (BRC), including five state legislators. The BRC followed up the work of the SCAC to develop specific regulatory recommendations to enhance the management of South Carolina's shorelines. I provided staff support to the BRC. The BRC released a final report in February 2013, which is available on OCRM's website: <https://scdhec.gov/sites/default/files/Library/CR-010631.pdf>. The BRC noted that "Research and field verification substantiate the observation that oceanfront erosion control devices exacerbate erosion rates and often result in the loss of dry sand beach for recreational use and natural habitat."

16. In 2022, OCRM convened a SC Beach Preservation Stakeholder Workgroup to gain input and diverse perspectives on the state policy of beach preservation. I provided staff support to the Workgroup. The Workgroup released a final report in January 2023, which is available on OCRM's website:

https://scdhec.gov/sites/default/files/media/document/OCRM_SCBeachPreservationStakeholderWorkgroupFinalReport_January2023.pdf. The Workgroup members reached consensus that

shore-parallel erosion control structures do not support beach preservation, and they agreed that the prohibition of new erosion control structures should be continued within the beaches critical area, including areas landward of the beach/dune system.

17. On June 9, 2023, I collected position data using a Trimble GeoXT handheld GPS unit to document the location of the existing escarpment or line of vegetation at that time from Breach Inlet to 6th Avenue on Isle of Palms. 118 Ocean Boulevard was included along this length of shoreline. Since artificial turf grass was present at this property, I collected data along the escarpment in the beaches critical area. As noted above, active beach is within the beaches critical area.

18. Following Tropical Storm Idalia, I collected position data on September 1, 2023 using a Trimble GeoXT handheld GPS unit to document the location of the existing escarpment or line of vegetation at that time from Breach Inlet to 6th Avenue on Isle of Palms. 118 Ocean Boulevard was included along this length of shoreline. Since artificial turf grass was present at this property, I collected data along the escarpment in the beaches critical area.

19. On September 11, 2023, I met the Respondents Mr. and Mrs. Reddy at their property located at 118 Ocean Boulevard, at their request, to discuss their concerns and allowable options to mitigate erosion. OCRM counsel, the Reddys' counsel, and the Reddys' contractors were also present. The Reddys stated that they wanted to add non-beach-compatible clay and other non-beach-compatible materials to the sandy area landward of the setback line. I informed them that only beach-compatible sand and other dune restoration activities could be permitted within the beaches critical area. The Reddys asserted that OCRM does not have permitting jurisdiction landward of the OCRM setback line. I explained, based on existing site conditions and GPS data that I had collected on September 1, 2023, that beaches critical area exists landward of the

beach/dune system critical area. The beach/dune system critical area is tied to the OCRM setback line, but the beaches critical area is not. I further explained that the activities they were proposing were prohibited as the area they wanted to alter was in the beaches critical area. Therefore, I informed the Reddys that they could apply for a General Permit from OCRM to add beach-compatible sand to the area in question, along with beach/dune vegetation and/or sand fencing if they desired. Subsequently, Jacques Prevost (OCRM Compliance Project Manager) conducted an inspection and informed me that non-beach-compatible materials including filter fabric, timber, geogrid, metal fencing, artificial turf grass, clay, and gravel/rock had been placed in the beaches critical area and/or on active beach.

20. Following a Nor'easter storm, I collected position data on December 18, 2023 using a Trimble GeoXT handheld GPS unit to document the location of the existing escarpment or line of vegetation at that time from Breach Inlet to 6th Avenue on Isle of Palms. 118 Ocean Boulevard was included along this length of shoreline. During this site visit, I observed that a new hard erosion control structure had been built within the beaches critical area. I also observed that the erosion control structure jutted out a significant distance onto the beach and into the intertidal zone, erosion had occurred on either side of it, and lateral access seaward of the erosion control structure was restricted at the time of my site visit.

21. The figure below depicts the escarpment or line of vegetation position data that I collected on June 9, 2023 (turquoise line), September 1, 2023 (yellow line), and December 18, 2023 (purple line). The OCRM baseline and setback line, which delineates the landward extent of the beach/dune system critical area, are shown as a red line and blue line, respectively. The turquoise line delineates the landward extent of the beaches critical area at the time of my site visit on June 9, 2023. The yellow line delineates the landward extent of beaches critical area at the time

of my site visit on September 1, 2023. Jacques Prevost (OCRM Compliance Project Manager) collected the green data points associated with non-beach-compatible fill materials and the orange data points associated with the erosion control structure. The Respondents installed the unauthorized non-beach-compatible fill materials in about early October 2023 within the beaches critical area as these activities were seaward of the turquoise line representing the landward extent of the beaches critical area on June 9, 2023. The Respondents installed the unauthorized erosion control structure within beaches critical area, and mostly seaward of the yellow line representing the landward extent of the beaches critical area on September 1, 2023 as shown in the figure below. On the adjacent properties to the northeast and southwest of 118 Ocean Boulevard, a comparison of the yellow line from September 1, 2023 and the purple line from December 18, 2023 reveals that the shoreline eroded approximately 30 feet over this time frame at the adjacent properties. Based on the best scientific data that we have, the erosion control structure was more likely than not entirely within the beaches critical area at the time the Respondents installed it.

Also demonstrated by the figure below is that the Respondents could have elected to install the erosion control structure at a much more landward position outside of the beaches critical area to protect their habitable structure. Instead, they chose to build the erosion control structure much farther seaward, presumably to protect what they describe as their backyard.



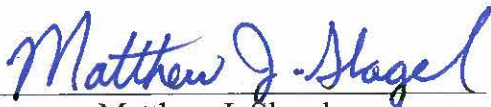
22. It is my understanding that Respondents' counsel has alleged that the area landward of the unauthorized erosion control structure, which was previously inundated by tidal and wave action prior to installation of the unauthorized erosion control structure, is no longer beaches critical area due to the installation of the unauthorized erosion control structure. The erosion

control structure was installed within the beaches critical area without Department review or authorization, and Respondents continue to strengthen and fortify it within the beaches critical area. The installation of an unauthorized erosion control structure does not change the location of the beaches critical area when the erosion control structure was installed within beaches critical area in the first place.

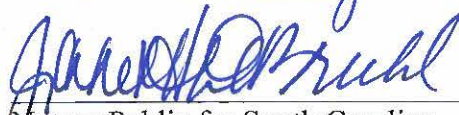
23. On February 7, 2024, a property owner along the Breach Inlet shoreline of Isle of Palms called me to discuss the potential for installing a hard erosion control structure. The property owner stated that they feel compelled to protect their property due to the presence of the unauthorized erosion control structure at Respondents' property. They further stated that they may reevaluate their desire to install an erosion control structure at their property if the unauthorized erosion control structure at Respondents' property were not present. I am aware that other property owners along the Breach Inlet shoreline of Isle of Palms are also interested in installing erosion control structures. The cumulative impacts of multiple erosion control structures along this stretch of shoreline have the potential to be significant.

24. I certify that the forgoing statements made by me are true.

Further the deponent sayeth not.


Matthew J. Slagel

SWORN TO BEFORE me this
9th day of February, 2024.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 10/12/2033

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Health and
Environmental Control,

Petitioner,

v.

Rom Reddy and Renee Reddy,

Respondents.

Docket No.: 24-ALJ-07-____-CC

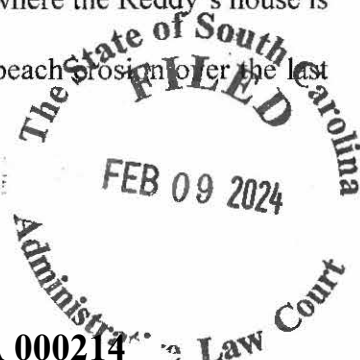
**DHEC'S PETITION FOR
INJUNCTIVE RELIEF**

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Petitioner South Carolina Department of Health and Environmental Control ("DHEC," "Department" or "OCRM"), pursuant to S.C. Code Ann. § 44-1-60, S.C. Code Ann. § 1-23-505(3), S.C. Code Ann. § 1-23-600, S.C. Code Ann. § 1-23-630(A), S.C. Code Ann. § 48-39-10, et seq. and Administrative Law Court Rule 11, hereby requests a Contested Case Hearing in connection with DHEC's issuance of two Cease and Desist directives to the Respondents on January 25, 2024 (Exhibit 1) and February 2, 2024 (Exhibit 2) along with numerous emails to Respondents' counsel between January 25, 2024 and February 2, 2024 (Exhibit 3). This Court has subject matter jurisdiction over the underlying matter (the Reddy's failure to comply with the Department's Cease and Desist directives) and has authority to provide injunctive relief pursuant to S.C. Code Ann. § 1-23-600(F).

FACTUAL BACKGROUND

1. Mr. Rom Reddy and Mrs. Renee Reddy ("Respondents" or "Reddys") own an oceanfront home at 118 Ocean Boulevard on the Isle of Palms. The section of Isle of Palms where the Reddy's house is located is within an Unstabilized Inlet Zone and has sustained significant beach erosion over the last several months.



2. Consequently, on September 11, 2023, Matt Slagel (OCRM Manager of the Beachfront Management Section) along with OCRM's counsel met with the Reddys and their prior attorney (Mr. Ross Appel) along with the Reddys' contractors at the property to discuss whether the Reddys could bring non-beach-compatible fill in and to discuss other options to help protect their yard from erosion. After observing site conditions, Mr. Slagel told the Reddys and their counsel that fill and other non-beach-compatible materials could not be placed in the area where they were proposing as the area was in the beaches critical area even if it were placed landward of the setback line. Mr. Slagel further informed the Reddys, Reddys' counsel and the Reddys' contractors that they could apply for a permit to conduct minor renourishment, sand fencing and dune plantings to attempt to stabilize the area. The below photograph was taken by Mr. Slagel documenting that the location where the Reddys were requesting to make modifications was dry sandy beach devoid of vegetation.



September 11, 2023

3. On September 29, 2023, Mr. Reddy emailed Mr. Slagel requesting an Emergency Order for sandbags. Mr. Slagel explained that he was not eligible since the erosion had to be within twenty (20)

feet of the habitable structure.¹ At the time of this request, the erosion was much farther than twenty (20) feet from the structures as required by the regulations.

4. On October 4, 2023, OCRM staff was made aware of the placement of non-beach-compatible fill and other materials in the beaches critical area adjacent to 118 Ocean Boulevard. The photos below depict filter fabric, timber, geogrid, metal fencing, artificial turf grass, clay and gravel/rock that was placed on the beaches critical area. The gravel/rock and clay balls had been entrained in the tide and resulted in marine debris scattered along the beach.



October 4, 2023



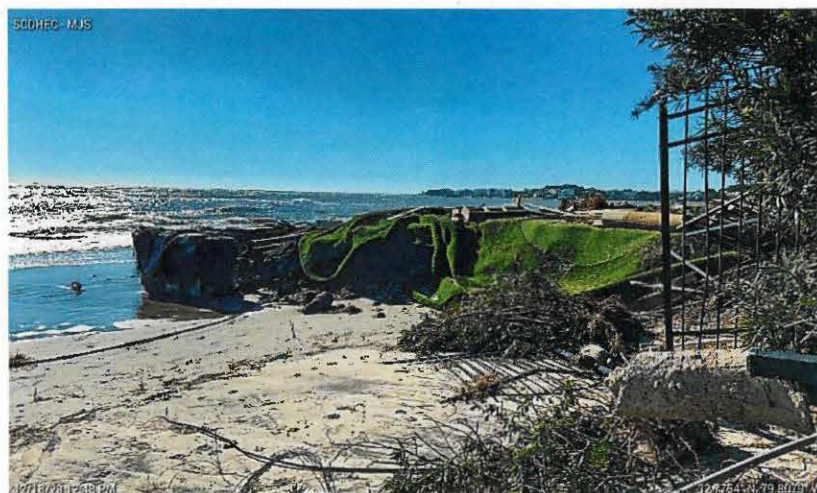
October 4, 2023

¹ S.C. Code Regs. 30-15(H) states that “[a] structure is determined to be in imminent danger when the erosion comes within twenty feet of that structure.”

5. On October 5-6, 2023, OCRM staff visited the site and confirmed these unauthorized activities including the placement of an approximately 1,255 square foot area of non-beach compatible fill and other materials.
6. On October 20, 2023, OCRM issued a Notice to Comply directing the Respondents to remove the unauthorized materials. The Department further advised the Respondents that they could apply for a General Permit for activities such as a minor beach renourishment and dune vegetation project in an effort to help protect the site.
7. On October 27, 2023, November 13, 2023, and December 11, 2023 OCRM staff and/or counsel discussed with the Respondents' new attorneys (Mr. Merritt Abney and Mr. Jack Smith) the Notice to Comply and OCRM's jurisdiction over the beaches critical area. The staff also showed Respondents' counsel photos of conditions and alterations at the site and referred them to the four distinct critical areas as defined by the Coastal Tidelands and Wetlands Act, S.C. Code Ann. § 48-39-10(H) & (J).
8. On November 20, 2023, Respondents' counsel requested an extension until after the holidays to respond to the Notice to Comply.
9. On December 18, 2023, Mr. Slagel inspected the subject property after the storm and high tides on December 17, 2023. He discovered a new hard erosion control structure had been constructed in the beaches critical area on active beach at the site. Upon information and belief, and based on staff's observations, the hard erosion control structure was installed sometime after OCRM communicated to the Respondents that work was not authorized or permitted in this area. The first image below depicts scouring adjacent to the erosion control structure.



December 18, 2023



December 18, 2023

The second photo provides a closer view of the erosion control structure with wingwall, as well as undermined artificial turf grass and miscellaneous debris at the site.

10. Although the hard erosion control structure depicted in the above picture was installed landward of the beach/dune critical area defined by the jurisdictional lines, it was nonetheless in the beaches critical area.

11. On December 19, 2023, Morgan Flake (the OCRM Compliance and Enforcement Section Manager) had a phone conference with Douglas Kerr (Deputy City Administrator & Director of Building, Planning and Licensing for the City of Isle of Palms) about the ongoing sand scraping project on the south end of Isle of Palms. Ms. Flake explained that the non-beach-compatible materials and structures located at the site and shown above are within OCRM's jurisdiction, are the subject of

ongoing compliance efforts, and therefore could not be covered by sand. Consequently, Ms. Flake advised Mr. Kerr that the Reddy's property should be skipped during the City's sand scraping efforts until the Reddys removed the unauthorized non-beach compatible materials.

12. On December 20, 2023, Respondents' counsel requested that OCRM confirm the instruction to the City of Isle of Palms regarding the sand scraping efforts and again requested the basis of OCRM claiming jurisdiction over this wall which was landward of the jurisdictional lines.

13. On December 21, 2023, OCRM's counsel reiterated the information that had been conveyed in the prior two conferences with Respondents' counsel and OCRM staff again explained that OCRM has jurisdiction over the "beaches" critical area and not just the "beach/dune system" critical area pursuant to the plain meaning of the Coastal Tidelands and Wetlands Act. OCRM also reemphasized that construction is prohibited on active beach. The Respondents were also directed to refrain from placing sand which would cover up the myriad of violations of the Act including non-compatible fill, artificial turf, the erosion control structure and fencing. It was also noted that as of OCRM's December 2023 inspection there did not appear to be anywhere to place additional sand that would not bury these non-beach-compatible materials that must be removed from the beaches critical area.

14. Respondents' counsel and OCRM's counsel continued to communicate throughout January 2024 regarding the unauthorized activities, OCRM's jurisdiction and OCRM's direction related to covering non-beach-compatible materials with sand. Respondents' counsel continued to take the position that the area from the hard erosion control structure landward was in the Reddys' yard and that OCRM had no jurisdiction.

15. On December 28, 2023, Mr. Jacques Prevost (OCRM Compliance Project Manager) conducted a site inspection and collected survey-grade GPS data for the location of the erosion control structure. The below photo depicts the eastern side of the erosion control structure, with added plywood which appears to be an attempt to extend the wingwall and prevent flanking.



December 28, 2023

16. On December 29, 2023, Respondent's counsel asserted to OCRM's counsel that OCRM did not have jurisdiction as "both projects had occurred in the Reddy's yard" and disputed that this area was subject to periodic inundation. He asserted that OCRM's December 19, 2023 direction to the City of Isle of Palms not to place scraped sand in front of the Reddys' property nor to allow sand to be brought in by Mr. Reddy "has exacerbated conditions there and undermined the effectiveness of the Town's [sic] erosion control efforts in the area."

17. On January 7, 2024, OCRM staff was made aware that unauthorized rip rap was installed at the base of the Respondents' unauthorized erosion control structure. See picture below.



January 7, 2024

18. On January 11, 2024, OCRM staff conducted a site inspection and observed that Respondents' unauthorized erosion control structure was collapsing seaward. Tarps and plastic sheeting had been placed atop fill materials landward of the erosion control structure in an apparent attempt to further protect those materials. The following two pictures are from that site inspection.



January 11, 2024



January 11, 2024

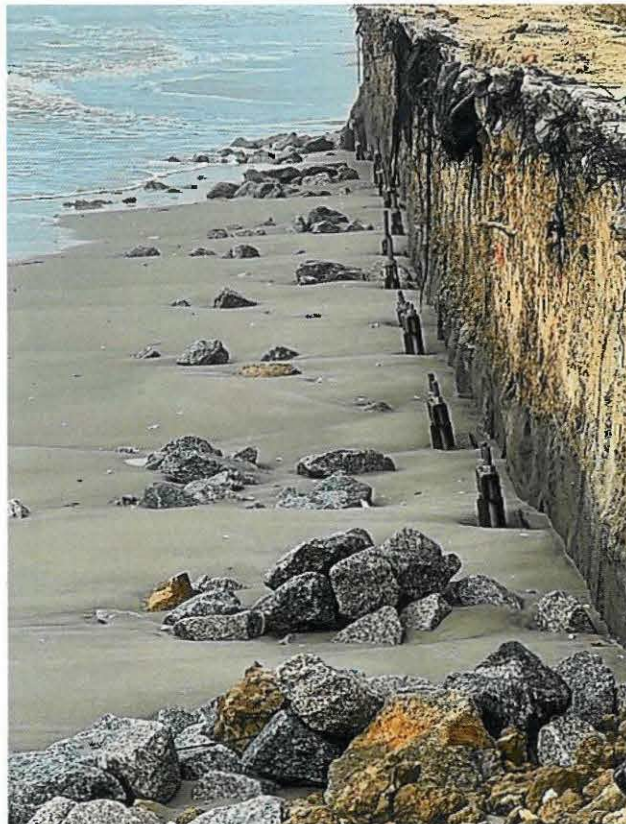
19. On January 12, 2024, Mr. Slagel responded to a request from Mr. Kerr (City of Isle of Palms) and informed him that OCRM did not object to the City scraping sand to fill in the gaps between the existing scraped sand and the erosion control structure in an attempt to provide better protection to the properties adjacent to the Respondents' property. Mr. Kerr had conveyed an adjacent property owner's concern that the gap left between the sand scraped by the City of the Isle of Palms and the properties was leaving the adjacent properties more exposed. Mr. Slagel advised Mr. Kerr that before scraping sand to fill in the gaps between the existing scraped sand and erosion control structure any unauthorized materials and/or debris on these adjacent properties should be removed prior to the City placing sand in these areas.

20. On January 24, 2024, OCRM received notification that it appeared the Respondents' unauthorized erosion control structure had been repositioned and backfilled behind it.

21. On January 25, 2024, OCRM received pictures from a private citizen depicting the unauthorized erosion control structure and active placement of screw piles at the seaward base of the structure. Staff conducted a site inspection the same day, and a Cease and Desist Directive was issued after OCRM staff observed unauthorized structures and materials in the beaches critical area that included an

approximately 92 linear foot erosion control structure, metal screw piles and scattered clay and rip-rap debris. Department staff concluded that metal screw piles were being installed below grade on the seaward side of the erosion control structure in the beaches critical area at the Site without authorization from the Department.

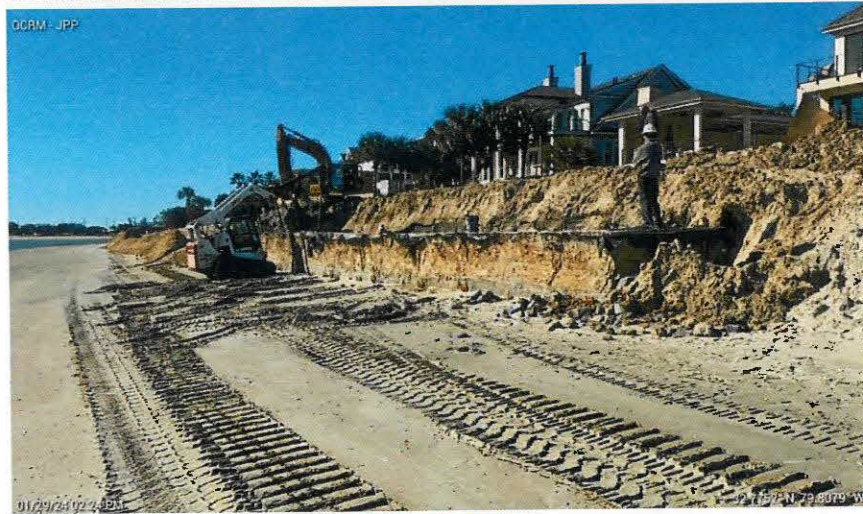
22. The below photograph taken of the hard erosion control structure on January 27, 2024 shows the metal screw piles installed seaward of the erosion control structure, and the scattered, non-beach-compatible materials on the beach. Both of these conditions pose a risk of serious harm to the public who attempt to get around the wall during higher tides when these materials may not be apparent. The photograph further shows that near high tide there is no dry sand seaward of the wall, and the use and enjoyment of the beach by the public has been substantially impacted.



January 27, 2024

23. On January 29, 2024, Mr. Prevost visited the site and found that the Respondents were continuing to alter the critical area without authorization. He took the below pictures while he was at

the site. The contractors on site refused to identify themselves and informed Mr. Prevost that they were directed not to speak to him and that he would have to speak to the Reddys' attorney.



January 29, 2024

24. On January 30, 2024, Respondents' counsel sent an email stating, the following: "[a]s you know from my prior correspondence, we disagree that the Reddy's retention wall was erected within the critical area. The wall is located in the Reddy's yard, which was not 'beach' as defined in S.C. Code Ann. Sec. 48-39-10(H), and the recent work that OCRM observed on January 25 occurred underneath and landward of the wall. OCRM therefore lacks jurisdiction over the structure or the work for which the agency has issued a cease and desist directive. The work at issue in your letter of January 25 was necessary to secure the retention wall. That work is complete, such that the directive is now moot."

25. On January 31, 2024, OCRM received information that work was continuing at the site. According to this report, there were four pieces of heavy equipment on the beach and six to seven feet of fill on top of the wall and "gray dirt" had been deposited on active beach in front of the wall. Later that day OCRM received a second report that the Respondents' contractors were placing rebar and pouring concrete.

26. On February 1, 2024, Mr. Prevost posted a Cease and Desist Directive in several locations on the site, including on pieces of heavy machinery, that directed that all unauthorized activity in the beaches critical area and/or active beach cease. Mr. Prevost also observed that the wall was cracking in places. The contractor was identified to OCRM as CNT Foundations, LLC. Mr. Prevost also observed that there were exposed unprotected rebar sticking out from the structure, deep excavations, exposed metal screws seaward of the wall, and scattered rip rap which created an unsafe hazardous condition for the public.

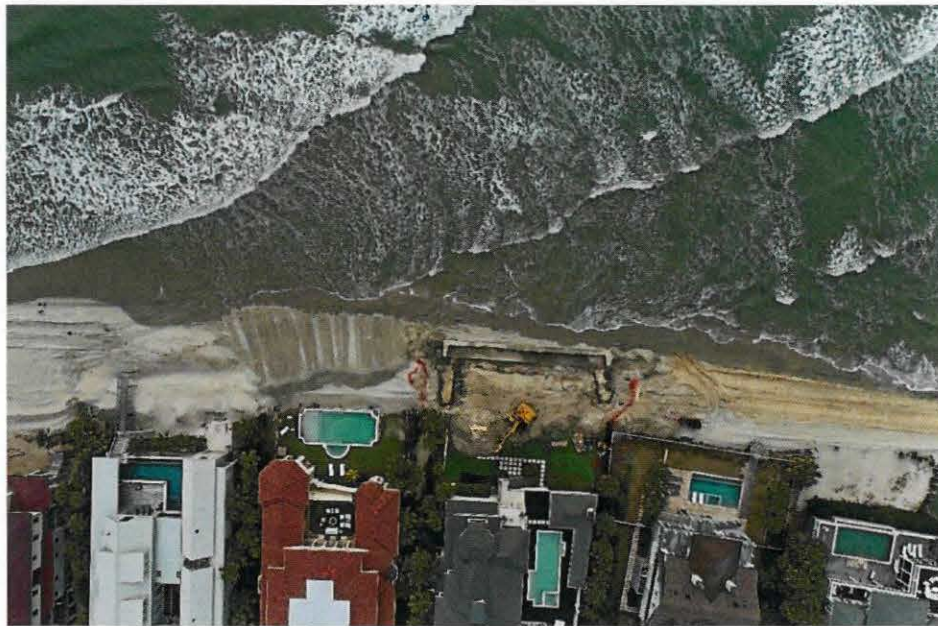
27. On February 2, 2024, DHEC staff collected drone photos and video to further assess the site conditions and impacts from the Respondents' unauthorized activities and construction of the hard erosion control structure. Pictures were taken close to high tide which was lower that day than the average high tide this area experiences.



February 2, 2024

The above pictures show the substantial impacts to the beaches critical area that the Respondents' have continued to do. The photographs also depict the large craters that have been excavated that pose a serious dangerous safety hazard to the public who are using the beach.

The below picture also taken by the drone on February 2, 2024, demonstrates that there is almost no room to place sand in front of the hard erosion control structure even at a below average high tide. Any sand placed would be very temporary and would be washed out with the next tide cycle.



February 2, 2024

28. Also, on Friday, February 2, 2024, DHEC/OCRM staff, counsel, two board members, Douglas Kerr (Deputy City Administrator of the Isle of Palms), Desirée Fragoso (City Administrator of the Isle of Palms) and various property owners met on the Isle of Palms and walked down to 118 Ocean Boulevard to observe the conditions along this stretch of the beach. It appeared that the work at 118 Ocean Boulevard had been stopped as the heavy equipment had been removed except for one large excavator located landward of the erosion control structure and there were no workers on site. OCRM staff observed that the Cease and Desist Directives that had been posted on February 1, 2024 had been removed from the site and equipment. OCRM staff also observed that metal plates had been secured

into the seaward side of the erosion control structure in an apparent attempt to stabilize and reinforce the wall where it was cracking.

29. During this site visit DHEC and the City of Isle of Palms attempted to answer questions and discuss any concerns that the property owners had. Ms. Reddy attended this visit and engaged with DHEC/OCRM in these discussions. DHEC/OCRM personnel left the site around 3:15 p.m. that afternoon.

30. DHEC issued a second Cease and Desist Directive dated February 2, 2024 to follow the Cease and Desist Directive that had been physically posted at the site and was removed.

31. In the afternoon of Saturday, February 3, 2024, OCRM was notified that after OCRM left the site on February 2, 2024, the contractors returned to the site and continued working in the critical area. According to the report, work was actively occurring at the Site on the night of February 2, 2024 and on the morning of February 3, 2024, four concrete trucks were mobilized to the site and that the work was continuing. Photographs of unauthorized work were also provided to OCRM.

32. Keystone Concrete Services was identified as the concrete contractor on site by logos on the concrete truck.

33. On February 5, 2024, Respondents' counsel reiterated their position that the work at issue is landward of the erosion control structure and that "the retention wall lies landward of the critical area and outside of the agency's jurisdiction. The same is true for the work described in this letter" [The Second Cease and Desist Directive dated February 2, 2024.]

34. On February 7, 2024, OCRM received a report that the Respondents were pouring more concrete and additional photographs showing the continuing unauthorized work by the Respondents in the beaches critical area.



February 7, 2024

35. On February 8, 2024, OCRM received a report that the Respondents were building wingwalls that would further violate the Act and may violate the City of Isle of Palms code. As OCRM just received this report, OCRM has not yet investigated further.

36. There are ongoing reports from members of the public to DHEC, the City of Isle of Palms and conservation groups expressing concerns about the unauthorized work at 118 Ocean Boulevard and the Respondents' disregard of the Cease and Desist Directives. Members of the public also have been asking why the Respondents have not been stopped by either the City of Isle of Palms or DHEC/OCRM from these significant alterations on the beach.

37. In the last several days the Department also received reports that there are unauthorized activities occurring at other properties near Breach Inlet including the placement of riprap and hard erosion control structures. The Department has not yet been able to fully investigate these reports.

38. The Department incorporates by reference as if fully stated herein the Motion for Temporary

Restraining Order and Preliminary Injunction, the Supporting Memorandum and Affidavits attached thereto.

LEGAL FRAMEWORK

39. A person seeking to alter a “critical area” within the coastal zone must first obtain a Critical Area Permit from DHEC. The S.C. Coastal Zone Management Act (Act), S.C. Code § 48-39-130 and 48-39-210(A). The Act defines four critical areas over which OCRM has authority: “coastal waters,” “tidelands,” “beaches,” and the “beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.” S.C. Code § 48-39-10(J).

40. The “beaches” critical area is defined as “those lands subject to periodic inundation by tidal and wave action so that no non-littoral vegetation is established.” S.C. Code § 48-39-10(H). While the “beach/dune system” critical area is tied to the jurisdictional lines set by DHEC, the “beaches” critical area is not.

41. The Act and its implementing regulations, S.C. Code Reg. §§ 30-1 et seq., also prohibit construction on the active beach which is within the beaches critical area. 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 § 48-39-270(13).

42. The legislative declaration of findings in the Act has declared that “the coastal zone and the fish, shellfish, other living marine resources and wildlife therein, may be ecologically fragile and consequently extremely vulnerable to destruction by man’s alterations.” S.C. Code 48-39-20(D).

43. New hard erosion control structures are strongly disfavored by the Act. The General Assembly included a legislative finding in Section 48-39-250(5) that:

(5) The use of armoring in the form of hard erosion control devices such as seawalls, bulkheads, and rip-rap to protect erosion-threatened structures adjacent to the beach has not proven effective. These armoring devices have given a false sense of security to beachfront property owners. In reality, these hard structures, in many instances, have

increased the vulnerability of beachfront property to damage from wind and waves while contributing to the deterioration and loss of the dry sand beach which is so important to the tourism industry.

44. OCRM also has the duty to protect the public trust property. "The State has the exclusive right to control land below the high water mark for the public benefit, ... and cannot permit activity that substantially impairs the public interest in marine life, water quality, or public access." *McQueen*, 354 S.C. 142, 149, 580 S.E.2d 116, 119-120 (2003) (citations omitted).

45. At the times the Respondents engaged in unauthorized activities at the site, the area of construction was subject to regular inundation of the tide, was devoid of vegetation, and was sandy oceanfront beach. As set forth above, the Respondents' activities on the beaches critical area included excavating, operating heavy machinery, placing fill and other non-beach-compatible materials on the beach, constructing a hard erosion control structure, covering the structure with artificial turf and fill, placing rip rap on the seaward side of the structure, installing metal screw piles to support the wall when the wall began to collapse, installing rebar and filter fabric, pouring concrete and engaging in other alterations.

46. The most recent georeferenced aerial taken by OCRM staff on February 2, 2024 demonstrates the fallacy of the Respondents' position. If the Respondents' are allowed to engage in whatever actions they desire landward of the setback line regardless of where the beaches critical area is located, OCRM would have no authority whatsoever to protect the coast or the public's interest as they were mandated to do by the Act.



February 2, 2024

47. The plain meaning of the Act gives OCRM permitting authority over the beaches critical area when erosion overtakes the setback line, and therefore, the Respondents' should be stopped from engaging in unauthorized activities that are detrimental to the public's interests.

FOR A FIRST CAUSE OF ACTION
(Preliminary Injunction)

48. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully restated herein.

49. By this Complaint, and Motion for Temporary Restraining Order and Preliminary Injunction filed simultaneously herewith, Petitioner respectfully requests that the Court enter an order prohibiting the Respondents or their authorized agents, from continuing work on the project or otherwise engaging

in unauthorized activities in the beaches critical area without a permit.

50. A court, in its discretion, may enter an injunction to prevent irreparable harm by the Petitioner.

51. Without entry of a Temporary Restraining Order and Preliminary Injunction, the public will suffer imminent and irreparable harm² due to the continuing critical area alterations and fortification of the hard erosion control structure including:

- a. substantially impacting the public's access and use and enjoyment of the dry sand beach;
- b. interfering and disrupting the City of Isle of Palm's efforts to protect the beach and landward habitable structures;
- c. disbursing non-beach-compatible materials in the critical area;
- d. giving the inaccurate impression to other homeowners that they can engage in substantial critical area alterations on the beach without authorization, can disregard Cease and Desist Directives, repeatedly engage in other violations of the Act and thwart OCRM's and the City's attempts to manage and protect the beach for the public;
- e. detrimentally impacting the reputation of South Carolina beaches including but not limited to the Isle of Palms which will impact tourism in those areas;
- f. creating hazardous conditions that could result in serious injury to the public; and
- g. any other harm that is shown at the hearing of this case.

52. Under South Carolina law, the denial of a party's right to use and enjoy its property constitutes irreparable harm for purposes of injunctive relief. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). The members of the public are being denied the use of the beach by the beach access being blocked off and by the hard erosion control structure that juts out into the water and cannot be navigated around except through the tides at and around high tide.

² The Supreme Court said that "the public's interest must be the *lodestar* which guides our legal analysis in regards to the State's tidelands." *Kiawah Dev. Partners, II v. S.C. Dept. of Health and Envtl. Control*, 766 S.E.2d 707, 715 (S.C. 2014) (Emphasis added).

53. Due to the Respondents' egregious disregard of OCRM's Notice to Comply and the two Cease and Desist Directives, the Department has no adequate remedy at law other than to seek judicial intervention to compel the Respondents to immediately cease their unauthorized actions in the critical area.

54. As established above, and in the Department's Motion for a Temporary Restraining Order and Preliminary Injunction and Memorandum in Support which is incorporated herein by reference, the balance of factors to be considered in determining whether to grant an injunction demonstrates that the injunction should be granted because (i) the Department is likely to succeed on the merits; (ii) the public will be irreparably harmed if the injunction is not granted; (iii) the Department has no adequate remedy at law; and (iv) the balance of hardships and the public interest favors granting the Department's motion.

FOR A SECOND CAUSE OF ACTION
(Permanent Injunction & Order to Remove Wall and Other
Non-Beach-Compatible Materials from The Critical Area)

55. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully restated herein.

56. By this Complaint, and Motion for Temporary Restraining Order and Preliminary Injunction filed simultaneously herewith, the Department respectfully requests that the Court enter an order permanently enjoining the Respondents from engaging in any future construction or alteration of the beaches critical area without a permit. The Department further requests that the Respondents be ordered to remove the unauthorized erosion control structure and other non-beach-compatible materials from the beaches critical area.

57. A permanent injunction is an appropriate remedy if the plaintiff will suffer irreparable harm without such relief, the plaintiff lacks an adequate remedy at law for the Respondents' wrongdoing, and equity favors the granting of such relief.

58. Without entry of a permanent injunction, the public will suffer irreparable harm³ due to the continuing critical area alterations and fortification of the hard erosion control structure including:

- a. interfering and disrupting the City of Isle of Palm's efforts to protect the beach and landward habitable structures;
- b. substantially impacting the public's access and use and enjoyment of the dry sand beach;
- c. disbursing non-beach-compatible materials in the critical area;
- d. giving the inaccurate impression to other homeowners that they can engage in substantial critical area alterations on the beach without authorization, can disregard Cease and Desist Directives, repeatedly engage in other violations of the Act and thwart OCRM's and the City's attempts to manage and protect the beach for the public;
- e. detrimentally impacting the reputation of South Carolina beaches including but not limited to the Isle of Palms which will impact tourism in those areas;
- f. creating hazardous conditions that could result in serious injury to the public;
- g. accelerated erosion at and near the erosion control structure causing loss of beach;
- h. scouring around the hard erosion control structure which accelerates the erosion near the wall, disrupts sand transport on the beach and increases risk to the nearby properties;
- i. the likelihood of cumulative impacts when other homeowners facing these challenges of increasing erosion adjacent to their property engage in unauthorized alterations of their own without seeking a critical area permit;
- j. any other harm that is shown at the hearing of this case.

59. Under South Carolina law, the denial of a party's right to use and enjoy its property constitutes irreparable harm for purposes of injunctive relief. *Id.*

60. Due to the Respondents' egregious disregard of OCRM's Notice to Comply and the two Cease and Desist Directives, the Department has no adequate remedy at law other than to seek judicial

³ The Supreme Court said that "the public's interest must be the *lodestar* which guides our legal analysis in regards to the State's tidelands." *Kiawah Dev. Partners, II v. S.C. Dept. of Health and Env'tl. Control*, 766 S.E.2d 707, 715 (S.C. 2014) (Emphasis added).

intervention to compel the Respondents to immediately and permanently cease their unauthorized actions in the beaches critical area unless they receive a permit from the Department.

61. The Department also respectfully requests that the Court order the Respondents to remove the hard erosion control structure and other non-beach-compatible materials associated with their unauthorized activities. The Department further requests that the Court order the impacted area be returned to the condition that it was prior to Respondents' unauthorized activities. The Department also requests that the Respondents be ordered to ensure that the site is left in as safe a condition as possible during the period of time they are performing work at the site pursuant to the Court's Order.

62. As established above, and in the Department's Motion for a Temporary Restraining Order, which is incorporated herein by reference, the balance of factors to be considered in determining whether to grant an injunction demonstrates that the injunction should be granted because (i) the Department is likely to succeed on the merits; (ii) the public will be irreparably harmed if the injunction is not granted; (iii) the Department has no adequate remedy at law; and (iv) the balance of hardships and the public interest favors granting the Department's motion.

WHEREFORE, the Department respectfully requests the Court to enter an Order for the following relief:

- (1) temporary injunctive relief to:
 - a. immediately cease and desist all work in the beaches critical area,
 - b. Immediately remove any unsecured non-beach-compatible materials; and
 - c. ensure that there are no unsafe conditions at the site that pose a threat of harm to the public.
- (2) Permanent injunctive relief and an Order to:
 - a. Enjoin the Respondents from further alteration of the beaches critical area, unless the Respondents seek and are issued a permit by the Department;
 - b. Require the Respondents to remove the hard erosion control structure from the site,

- c. Require the Respondents to remove any other non-beach compatible materials from the site associated with Respondents' unauthorized alterations of the beaches critical area,
- d. Require the Respondents to coordinate with the Department and restore the beach and surrounding area to the extent practicable to its condition prior to the Respondents' activities;
- e. Allow the Department to seek penalties for the Respondents' violations of the Act and the disregard of the two Cease and Desist Directives;
- f. Any other relief the Court deems just and proper.

Respectfully Submitted,

Sallie Phelan with permission

Sallie P. Phelan, SC Bar # 14150
Bradley D. Churdar, SC Bar # 12829
South Carolina Department of Health and
Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(843) 953-0213
Attorney for Respondent SCDHEC [mailto:](mailto:churdbd@dhec.sc.gov)
churdbd@dhec.sc.gov
debruhjh@dhec.sc.gov

February 9, 2024
Charleston, South Carolina

CEASE AND DESIST DIRECTIVE

VIA EMAIL: MERRITT.ABNEY@NELSONMULLINS.COM

January 25, 2024

Rom L. Reddy
c/o Merritt Abney, Esq.
118 Ocean Blvd
Isle of Palms, SC 29451

RE: Unauthorized Activity

Dear Mr. Reddy,

On January 25, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) staff conducted an inspection at your property located on and adjacent to the Atlantic Ocean at 118 Ocean Blvd, Isle of Palms, Charleston County, SC (PID 5680900155) (Site). During the inspection, Department staff observed unauthorized structures and materials in the beaches critical area and/or on active beach that included an approximately 92 LF erosion control structure, metal screw piles, and scattered clay and riprap debris. As a result of this inspection, Department staff concluded that metal screw piles were being installed below grade on the seaward side of the erosion control structure in the beaches critical area and/or on active beach at the Site without authorization from the Department.

Such activity is a violation of the South Carolina Coastal Tidelands and Wetlands Act (Act) and Coastal Division Regulations (Regulations) which require that any utilization/alteration of the critical area be permitted or otherwise legally authorized by the Department prior to performing the activity.¹ As a result, the Department is required to take appropriate corrective action and may assess civil penalties.

You are hereby directed to immediately cease and desist all work in the beaches critical area and/or on active beach that is in violation of the Act. The Department is issuing this directive as authorized by S.C. Code Ann. Regs. 30-8(B), *as amended*. If you do not comply with this directive, please be advised that the Department, pursuant to S.C. Code Ann. §48-39-160, may seek relief in the appropriate Circuit Court. If you have any questions or concerns regarding this directive and notice, you may contact me at (843) 709-3998 or prevosjp@dhec.sc.gov.

¹S.C. Code Ann. §48-39-130(A) & S.C. Code Ann. Regs. 30-2(B)

Respectfully,



Jacques P. Prevost
Compliance Project Manager
Office of Ocean and Coastal Resource Management

ec: Morgan H. Flake, Manager, Compliance and Enforcement Section
Matt Slagel, Manager, Beachfront Management Section

ec: Douglas Kerr, Deputy City Administrator, City of Isle of Palms
Desiree Fragoso, City Administrator, City of Isle of Palms

CEASE AND DESIST DIRECTIVE

VIA EMAIL: MERRITT.ABNEY@NELSONMULLINS.COM

February 2, 2024

Rom L. Reddy
c/o Merritt Abney, Esq.
118 Ocean Blvd
Isle of Palms, SC 29451

RE: Unauthorized Activity

Dear Mr. Reddy,

On January 25, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) issued a Cease and Desist Directive to you for unauthorized activity in the beaches critical area and/or on active beach at 118 Ocean Blvd, Isle of Palms, Charleston County, SC (PID 5680900155) (Site). The January 25, 2024 Cease and Desist Directive identified an unauthorized erosion control structure and active installation of metal screw piles, among other things, and specifically directed that you immediately cease and desist **all work** in the beaches critical area and/or on active beach that is in violation of the Act. The Department received notification that unauthorized activities had not ceased at the Site. As a result, Department staff conducted an additional inspection on February 1, 2024, and confirmed that unauthorized activities continued to occur at the Site. These observed activities included excavation of the beaches critical area and/or active beach, installation of rebar, wood forms and supports, and newly-poured concrete immediately landward of the unauthorized erosion control structure and in beaches critical area and/or on active beach.

Such activity is a violation of the South Carolina Coastal Tidelands and Wetlands Act (Act) and Coastal Division Regulations (Regulations) which require that any utilization/alteration of the critical area be permitted or otherwise legally authorized by the Department prior to performing the activity.¹ As a result, the Department is required to take appropriate corrective action and may assess civil penalties.

You are hereby directed to immediately cease and desist all work in the beaches critical area and/or on active beach that is in violation of the Act. The Department is issuing this directive as authorized by S.C. Code Ann. Regs. 30-8(B), *as amended*. If you do not comply with this directive, please be advised that the Department may seek relief in the appropriate court. If you have any questions or concerns regarding this directive and notice, you may contact me at (843) 709-3998 or prevosjp@dhec.sc.gov.

¹S.C. Code Ann. §48-39-130(A) & S.C. Code Ann. Regs. 30-2(B)

Respectfully,



Jacques P. Prevost
Compliance Project Manager
Office of Ocean and Coastal Resource Management

ec: Morgan H. Flake, Manager, Compliance and Enforcement Section
Matt Slagel, Manager, Beachfront Management Section

ec: Douglas Kerr, Deputy City Administrator, City of Isle of Palms
Desiree Fragoso, City Administrator, City of Isle of Palms

Re: 118 Ocean Boulevard - Ongoing Unauthorized Alteration of the Critical Area

Phelan, Sallie P. <phelansp@dhec.sc.gov>

Wed 1/31/2024 6:33 PM

To: Merritt Abney <merritt.abney@nelsonmullins.com>

Cc: Churdar, Bradley <churdabd@dhec.sc.gov>; Jack Smith <jack.smith@nelsonmullins.com>

Good Evening-

OCRM has received reports that Mr. Reddy continues to have work done in the critical area without authorization and is not abiding by the Cease and Desist Directive issued January 25, 2024. OCRM again requests that your client Cease and Desist from **"all work in the beaches critical area and/or on active beach that is in violation of the Act"** as directed in the Cease and Desist Directive.

I also am writing to notify you, as your client requested, that we will have a project manager inspecting the site and the ongoing activities tomorrow, Thursday, February 1, 2024.

Please don't hesitate to call me if you have any questions or would like to discuss this further.

Best regards,

Sallie Phelan

Sallie P. Phelan

Assistant General Counsel

SC Department of Health and Environmental Control

1362 McMillan Avenue

Suite 400

Charleston, SC 29405

Office: (843) 953-0229

Fax: (843) 953-0201

Connect: www.scdhec.gov

From: Merritt Abney <merritt.abney@nelsonmullins.com>

Sent: Tuesday, January 30, 2024 10:21 AM

To: Phelan, Sallie P. <phelansp@dhec.sc.gov>

Cc: Churdar, Bradley <churdabd@dhec.sc.gov>; Jack Smith <jack.smith@nelsonmullins.com>

Subject: RE: 118 Ocean Boulevard - staff site visit today

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Sallie – This email responds to your letter of January 25, 2024, and your email below. As you know from my prior correspondence, we disagree that the Reddy's retention wall was erected within the critical area. The wall is located in the Reddy's yard, which was not "beach" as defined in S.C. Code Ann. Sec. 48-39-10(H), and the recent work that OCRM observed on January 25 occurred underneath and landward of the wall. OCRM therefore lacks jurisdiction over the structure or the work for which the agency has issued a cease and desist directive.

The work at issue in your letter of January 25 was necessary to secure the retention wall. That work is complete, such that the directive is now moot.

ROA 000242

I will also note that this work was necessitated only because OCRM directed the Town not to place sand seaward of the Reddy's property and to refuse the Reddy's request to be allowed to place beach-compatible sand in front of their property at their own expense. We are aware of no authority for OCRM to deny the Reddys the ability to place beach-compatible sand in front of their property. As a result of these OCRM directives, the Town has refused to place sand seaward of the Reddy's property, or to allow the Reddys to do so, and has left large gaps between the sand placed on either side of the Reddy's property and the retention wall, threatening the integrity of the wall.

As shown on the attached photo taken today, the retention wall is located landward of the line of artificial dunes placed by the Town. The Reddys could place sand along this line without impeding beach access, which I understood from your prior correspondence to be an issue of concern for the agency. We therefore again request that OCRM inform the Town that it may permit this to occur.

The Reddys did not tell any contractor not to identify themselves or not to disclose the work they were doing. However, we decline your request to name workers who were onsite.

Finally, the day after we received your January 25 letter, Mr. Reddy was approached by a news outlet which had obtained a copy of the letter and asked Mr. Reddy to confirm its authenticity. The Town assured us that it did not supply the letter to any news outlet. Please let us know if OCRM did supply it and provide any Freedom of Information Act requests that may have called for its production.

Best regards,

Merritt



MERRITT G. ABNEY PARTNER

merritt.abney@nelsonmullins.com

LIBERTY CENTER | SUITE 600

151 MEETING STREET | CHARLESTON, SC 29401

T 843.534.4110 F 843.722.8700

NELSONMULLINS.COM [VCARD](#) [VIEW BIO](#)

From: Phelan, Sallie P. <phelansp@dhec.sc.gov>

Sent: Monday, January 29, 2024 5:15 PM.

To: Merritt Abney <merritt.abney@nelsonmullins.com>; Jack Smith <jack.smith@nelsonmullins.com>

Cc: Churdar, Bradley <churdabd@dhec.sc.gov>

Subject: Re: 118 Ocean Boulevard - staff site visit today

Merritt & Jack-

As indicated in my email below sent earlier today, Jacques Prevost (Compliance Project Manager) visited 118 Ocean Boulevard to collect additional data. He discovered that the Cease

ROA 000243

& Desist Directive issued last Thursday (January 25, 2024) is not being complied with and your client is continuing to engage in unauthorized activities in the beaches critical area and on active beach. Jacques also observed the contractors working with heavy equipment in the critical area installing metal poles. It is my understanding that Jacques attempted to speak with one of the workers and was informed that they were instructed not to talk to him. Jacques asked for the supervisor who refused to identify himself or the company, would not explain what they were doing, acknowledged that there was a Cease & Desist Directive issued for the property and said that Jacques would have to speak with "the attorneys" if he wanted any information.

Please instruct your client to comply immediately with the Cease and Desist Directive. Furthermore, please provide information related to the activities as well as the identity of the contractors and their company who were working at the site.

Please don't hesitate to call me at (843) 953-0229 if you would like to discuss this further or have any questions.

Sallie

Sallie P. Phelan

Assistant General Counsel

SC Department of Health and Environmental Control

1362 McMillan Avenue

Suite 400

Charleston, SC 29405

Office: (843) 953-0229

Fax: (843) 953-0201

Connect: www.scdhec.gov

From: Phelan, Sallie P.

Sent: Monday, January 29, 2024 12:14 PM

To: Merritt Abney <merritt.abney@nelsonmullins.com>

Cc: Jack Smith <jack.smith@nelsonmullins.com>

Subject: 118 Ocean Boulevard - staff site visit today

Good Afternoon-

It is my understanding that you have requested to be notified when staff inspects/visits 118 Ocean Boulevard. Jacques Prevost, the project manager for this site, plans to be out there today sometime between 1:00 p.m. and 4:00 p.m. He plans to take additional GPS data from the seaward side of the wall, however, he may need to inspect the top of the wall as well so I wanted to let you know.

Please feel free to give me a call if you would like to discuss any of this further or have any questions.

Best regards,

Sallie

ROA 000244

Sallie P. Phelan

Assistant General Counsel

SC Department of Health and Environmental Control

1362 McMillan Avenue

Suite 400

Charleston, SC 29405

Office: (843) 953-0229

Fax: (843) 953-0201

Connect: www.scdhec.gov

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

ROA 000245

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: Reddy	First: Rom	Middle: ☒ Mr. ☐ Miss ☐ Mrs. ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: 118 Ocean Boulevard		City: Isle of Palms	State and Zip: SC 29451
Home Number: n/a	Work Number: 803-409-1597	Cell Number: 803-409-1597	*E-Mail Address: romreddy@gmail.com

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

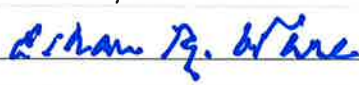
REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No	
Are you represented by an Attorney? ☒ Yes ☐ No	Name of Attorney: Ethan R. Ware, Williams Mullen
Attorney Mailing Address: 1230 Main Street, Suite 330	City, State and Zip: Columbia, SC 29201
Attorney Work Number and Cell Number: W: (803) 567-4610; C: (803) 727-7624	Attorney E-Mail Address: eware@williamsmullen.com

CASE INFORMATION

Name of Agency that Issued the Decision: (Example – Dept. of Revenue, Dept. of Insurance, DHEC) Dept. of Environmental Services f/k/a Dept. of Health and Environmental Control	
In order to have your case processed, you must attach the agency decision. Is it attached?: ☒ Yes ☐ No	If no, please explain:
Date the decision was issued: July 1, 2024	Date the decision was received: July 1, 2024
Please provide a brief statement regarding why the hearing is being requested and the relief sought:	

See Attachment A.

Payment via ☒ Check ☐ Money Order ☐ Cash for \$ submitted today to the Administrative Law Court via  X Your Signature or Signature of Attorney	(applicable filing fee pursuant to ALC Rule 71) is being ☒ U.S. Postal Service ☐ Hand-delivery July 15, 2024 Date
--	---

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Sara H. Tyler		Date: 7.18.2024	City: Columbia	State: SC
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):				
Department of Environmental Services	1362 McMillan Avenue, Suite 400	Charleston, SC 29405		
Name and/or Agency Name	Address	City, State and Zip		
Name and/or Agency Name	Address	City, State and Zip		
 X Your Signature or Signature of Attorney		7.18.2024 Date		

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

ROA 000246

Attachment A to Request for Contested Case Hearing

Statement Regarding Why the Relief is Requested and the Relief Sought

This contested case involves a structure Petitioner erected (the “Structure”) on his property at 118 Ocean Boulevard, Isle of Palms, Charleston County, South Carolina 29451 (the “Property”). Respondent Department of Environmental Services (the “Department”) issued an Administrative Order, No. AF-0000960 (“Administrative Order”), alleging Petitioner unlawfully constructed the Structure in “beaches critical area” in violation of certain South Carolina statutes, regulations, and cease and desist directives and orders, namely S.C. Code Ann. Title 48, Chapter 39 (the “Act”).

Petitioner requests a Contested Case Hearing because (1) the Structure is not in or on “beaches” or “beaches critical area” under the plain meaning of the Act; (2) the Act and implementing regulations do not grant the Department jurisdiction to require a permit for utilization of the areas of the Property where the Structure was built; (3) the Act is unconstitutionally vague and certain provisions, including the definition of “beaches,” do not afford due process; (4) the Department’s interpretation and implementation of the Act and its regulations violates existing statutes and regulations and is not entitled to deference under the facts of this case; (5) the Department failed to follow requirements of the Administrative Procedures Act by its enforcement of this case, including but not limited to enforcement of terms and requirements as regulations, which have not yet been through the administrative process and promulgated as regulations, including but not limited to regulations differentiating “beaches” and “beach/dune systems;” (6) Department decisions and actions result in a regulatory and actual taking of Respondent’s property without just compensation in violation of the U.S. and State Constitutions, and (7) the Administrative Order seeks to penalize conduct for which the

Department has already initiated enforcement proceedings, which may result in double-penalties for the same alleged violations and facts.

Petitioners request the Court offer the following relief: (1) vacate the Administrative Order; (2) issue an Order finding Petitioner's Structure does not occur in "beaches" or "beaches critical area" and the Department does not have jurisdiction over the Structure; (3) award reasonable attorney fees and costs; (4) find the Department actions have resulted in a taking of Respondent's property without just compensation; and (5) grant other relief the Court deems just and proper.



SC DEPARTMENT of
**ENVIRONMENTAL
SERVICES**

Morgan Flake
Bureau of Coastal Management
1362 McMillan Ave, STE 400
Charleston, SC 29405

July 1, 2024

Rom and Renee Reddy
VIA HAND DELIVERY and EMAIL
c/o Charles A. Krawczyk, Esq. (CKRAWCZYK@FINKELLAW.COM)
Johnny J. Stewart, Jr., Esq. (JSTEWART@FINKELLAW.COM)
Rachel L. Ferguson Bailey, Esq. (RBAILEY@FINKELLAW.COM)
Finkel Law Firm LLC
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405

VIA HAND DELIVERY AND EMAIL
c/o Ethan R. Ware, Esq. (EWARE@WILLIAMSMULLEN.COM)
Williams Mullen
1230 Main Street, Suite 330
Columbia, SC 29201

Re: **Administrative Order AF-0000960**
Rom and Renee Reddy, 118 Ocean Boulevard
Charleston County

Mr. and Mrs. Reddy:

Enclosed, you will find a certified true copy of Administrative Order AF-0000960 (Order) regarding unauthorized activities in the Beaches Critical Area. This Order was signed by the South Carolina Department of Environmental Services' Interim Director on July 1, 2024.

Please comply with the requirements of the Order as outlined on pages twenty-five through twenty-seven (25 – 27). S.C. Code Ann. §48-6-30(D)(2) provides, "Within thirty calendar days after the mailing of a decision [pursuant to S.C. Code Ann. § 48-6-30(D)(1)], an applicant, permittee, licensee, certificate holder, or affected person desiring to contest the department decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act."

On July 1, 2024, the S.C. Department of Health and Environmental Control (SC DHEC) became two separate agencies: S.C. Department of Environmental Services (SCDES) and S.C. Department of Public Health (DPH). Old SC DHEC email addresses will still route for the time being, but please make note of the new contact information for SCDES.

info@des.gov | des.sc.gov | 803.898.3432

ROA 000249

Thank you for your prompt attention to this matter. If you have any questions, you may contact Sallie Phelan at Sallie.Phelan@des.sc.gov or (843) 953-0229.

Respectfully,

A handwritten signature in blue ink, appearing to read "Morgan A. Flake".

Morgan Flake

Manager, Compliance and Enforcement Section
Bureau of Coastal Management

Enclosures (1) Administrative Order AF-0000960

**STATE OF SOUTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL SERVICES
BUREAU OF COASTAL MANAGEMENT**

**IN RE: ROM L. REDDY
RENEE REDDY
PID 5680900155
CHARLESTON COUNTY**

**ADMINISTRATIVE ORDER
AF-0000960**

Rom L. Reddy and Renee Reddy are responsible for unauthorized non-beach-compatible fill materials (including two [2] erosion control structures), excavation, and other unauthorized activity in the Beaches Critical Area regulated by the South Carolina Department of Environmental Services' Bureau of Coastal Management ("SCDES" or "Department"). In accordance with Department regulations and enforcement policy, this Administrative Order (Order) is now being issued to include the following:

FINDINGS OF FACT

1. Rom L. Reddy is the current owner of certain property, a portion of which is in the Beaches Critical Area including the active beach regulated by the Department, located on and adjacent to the Atlantic Ocean at 118 Ocean Boulevard, Isle of Palms, Charleston County, SC (PID 5680900155) (Site). Renee Reddy, his spouse, also lives at the property. The Reddys are responsible for the unauthorized activity described herein.
2. On September 24, 2014, Mr. Reddy purchased the property at the Site.
3. Department staff's review of CONNECTExplorer™ Pictometry© aerial imagery and Google Earth Pro™ aerial imagery, indicates that between January 10, 2019 and February 15, 2019, the Reddys graded the landscape landward of the Department's setback line at the Site. In addition to re-grading the previously existing sod and plantings, this aerial imagery depicts that the Reddys graded approximately fifteen to twenty feet (15' – 20')

farther seaward. This seaward expansion resulted in the destruction of an approximately 1,577 sq. ft. area of dunes which appear to have been mostly covered by vegetation.

4. On May 22, 2023, the Department received a Critical Area General Permit application from Mr. Reddy. The project details, as submitted by Mr. Reddy, stated that “[o]ne hundred percent of the dunes on the ocean side of the property have been destroyed from the high tides. Conduct minor beach renourishment by trucking in compatible sand rebuilding the dunes in the absence of which the property is not protected.” Three (3) photographs of the Site were included in this application submission. The photographs depict an erosional escarpment at the Site, where artificial turf grass and landscape plantings are undermined. Additional landscape plantings and portions of fence from the Site are visible as debris in the Beaches Critical Area and on active beach.
5. Photographs taken by the City of Isle of Palms (“City”) on May 25, 2023 depict an erosional escarpment at the Site that is consistent with the photographs provided by Mr. Reddy as part of his May 22, 2023 application submission.
6. On June 9, 2023, Matt Slagel (Department Beachfront Management Section Manager) and McKenzie O’Connor (previous Permitting Project Manager) met with Mrs. Reddy and other Isle of Palms property owners at their request to discuss allowable options for protecting their properties from ongoing erosion. After this onsite meeting, Ms. O’Connor sent a follow-up email to Mr. Reddy in which she noted that, following the discussion on the beach earlier in the day, she wanted to take the opportunity to provide some additional information and resources that may be useful to him as a beachfront property owner. Within this email, Ms. O’Connor also noted that the Department would continue processing a permit application submitted by the City for minor beach renourishment and that the [May 22, 2023] application submitted by Mr. Reddy would be withdrawn since the Site was included in the application submitted by the City.
7. On June 30, 2023, the South Carolina Department of Health and Environmental Control’s Office of Ocean and Coastal Resource Management (predecessor to the Department’s Bureau of Coastal Management) issued General Permit #OCRM04706 to the City, which authorized minor beach renourishment from 100 to 402 Ocean Boulevard. Since this

authorization included the Site, Mr. Reddy's May 22, 2023 application submission was withdrawn by the Department.

8. On August 30, 2023, the South Carolina coast was impacted by Tropical Storm Idalia.
9. On September 1, 2023, Department staff conducted field work to collect the extent of landward erosion within the unstabilized inlet erosion zone¹ adjacent to Breach Inlet on the Isle of Palms, including at the Site. A Global Navigation Satellite System (GNSS) unit was used to collect this data.
10. On September 7, 2023, Mr. Slagel sent a letter via email to Mr. and Mrs. Reddy and their contractor, BluTide Marine Construction, informing them that it had come to the Department's attention that they may be intending to perform beachfront activities at the Site without any Department review or authorization. Mr. Slagel further advised that any unauthorized work within the State's critical areas, which include the Beach/Dune System and Beaches, will be considered a violation of the S.C. Coastal Tidelands and Wetlands Act ("Act") and may result in the Department initiating an enforcement action. Mr. Reddy sent a reply email to Mr. Slagel that same day which stated "...we are making sure we do not do any work in the critical areas. The only work being done is to repair our yard from extensive damage due to a complete lack of dunes for 4 months." Mr. Reddy further identified Merritt Abney, Esq. at Nelson Mullins as his legal counsel and stated that "if there is a legal issue that needs to be resolved, Merritt will be in touch."
11. On September 8, 2023, Mr. Ross Appel, Esq., of McCullough, Khan, Appel, sent an email to Department legal counsel stating that "I represent Rom Reddy, the owner of 118 Ocean Blvd. on the Isle of Palms, which is on the front beach." Mr. Appel stated that his "client is performing restoration work within his property line" and that "[t]his area is well landward of the OCRM baseline and setback lines." Mr. Appel further asked for clarity on the Department's jurisdiction.

¹ S.C. Code Ann. §48-39-270(7) defines an inlet erosion zone as "a segment of shoreline along or adjacent to tidal inlets which is influenced directly by the inlet and its associated shoals."

12. In response to Mr. Appel's September 8, 2023 email, and at the request of the Reddys' contractor, BluTide Marine Construction, Department staff then scheduled a September 11, 2023 visit/onsite meeting at the Site. On September 10, 2023, Sallie Phelan, Esq., Department Assistant General Counsel, sent an email to Mr. Appel notifying him of her planned attendance at this scheduled meeting.

13. On September 11, 2023, Mr. Slagel and Ms. Phelan met with Mr. and Mrs. Reddy, Mr. Appel and two BluTide Marine Construction representatives to discuss whether the Reddys could bring non-beach-compatible fill on to the Site and to discuss other options to help protect the Reddys' yard from erosion. Mr. Slagel discussed the Department's authority in both the Beach/Dune System and Beaches Critical Areas. After observing Site conditions, Mr. Slagel informed the Reddys and Mr. Appel that the proposed clay fill or other non-beach-compatible materials could not be placed in the proposed area since it was Beaches Critical Area and within the Department's direct critical area permitting authority. Mr. Slagel stated that any fill material would need to be beach-compatible and would need to be properly reviewed and authorized by the Department. Mr. Reddy asserted that the area in question is not within Department jurisdiction because it is landward of the setback line. Mr. Slagel reiterated that given the existing Site conditions, it is Beaches Critical Area that is landward of the setback line. Photographs were taken during this Site meeting and depict the location where the Reddys were requesting to make modifications, which was sandy beach devoid of vegetation.

After the Site visit, Mr. Slagel memorialized this discussion in a follow-up email to Ms. Phelan, who forwarded it to Mr. Appel that same day. This email noted the sand scraping efforts being undertaken by the City to build a protective berm/dune and provided additional information about planting dune vegetation in an effort to restore and stabilize the area, including how to apply for a General Permit to conduct minor renourishment, sand fencing and/or dune vegetation plantings.

14. On September 19, 2023, the Department received a request from Mr. Reddy for a minor beach renourishment emergency order that would allow for the inclusion of sand fencing and dune vegetation plantings at the Site.

15. On September 21, 2023, Mr. Slagel issued Department Emergency Order 23-EO-011 which allowed Mr. Reddy to conduct minor renourishment, install sand fencing, and/or plant native dune species at the Site. This Emergency Order had an expiration date of October 21, 2023.
16. On September 29, 2023, Mr. Reddy sent an email to Mr. Slagel which stated that “the king tide cycle has removed the post Idalia remediation and put us back where we were after the Hurricane” and requested an Emergency Order for sandbags at the Site. Mr. Slagel replied to Mr. Reddy that same day and explained that the Site was not eligible for a sandbag Emergency Order since the erosion was not within twenty (20) feet of the habitable structure.²
17. On October 4, 2023, Department staff were made aware of the placement of non-beach-compatible fill and materials in the Beaches Critical Area at and adjacent to the Site, in contravention to the Department’s direction to the Reddys and its contractor. Photographs provided at that time depict filter fabric, timber, plastic mesh/geogrid, metal fencing, artificial turf grass, clay and gravel/rock that was placed in the Beaches Critical Area. The photographs also depict clay balls and gravel/rock that had been entrained by tidal waters and deposited as scattered marine debris along the beach.
18. On October 5, 2023, Jacques Prevost, Department Compliance Project Manager, conducted a Site inspection and observed non-beach-compatible materials, including gravel/rock, fill, clay, artificial turf grass, geotextile fabric, plastic mesh/geogrid, metal fencing, and timber wood at and adjacent to the Site in the Beaches Critical Area without Department authorization. Mr. Prevost also observed wood and clay marine debris from the unauthorized activities at the Site. During this inspection, Mr. Prevost used a GNSS unit to collect location data along the seaward edge of the identified non-beach-compatible materials at the Site. Photographs were taken during this inspection.

² S.C. Code Regs. 30-15(H) states that “[a] structure is determined to be in imminent danger when the erosion comes within twenty feet of that structure.”

After comparing this data to escarpment data collected on September 1, 2023, the Department determined that approximately 1,255 square feet of Beaches Critical Area at the Site had been filled with non-beach-compatible materials.

19. On October 6, 2023, Mr. Prevost conducted an additional Site inspection and observed that the seaward edge of the non-beach-compatible materials identified on October 5, 2023 was no longer visible as it had been covered by sand, presumably placed by the City as part of their property protection efforts. Photographs were taken during this Site inspection.
20. On October 20, 2023, Mr. Prevost sent Notice to Comply AI-0007507 (Notice) via certified mail to Mr. Reddy which required the removal of the unauthorized non-beach-compatible materials from the active beach and/or Beaches Critical Area at the Site within thirty (30) days of receipt of the Notice. This Notice again informed Mr. Reddy that authorization for minor beach renourishment activities and dune vegetation plantings to help stabilize the Site may be pursued by submitting a General Permit application to the Department. Mr. Prevost also sent this Notice to Mr. Reddy and Mr. Appel via email. A read receipt from the email server indicates that Mr. Reddy received and read the Notice the same day.
21. On October 22, 2023, Mr. Reddy confirmed receipt of the Notice via email reply to Mr. Prevost. In Mr. Reddy's response to the Notice, he copied Mr. Abney and stated that Mr. Abney, as his attorney, could be contacted for further clarification of the Notice. Mr. Prevost sent an email to Mr. Reddy the following day which noted the Department's previous correspondence with Mr. Appel and requested clarification on inclusion of Mr. Appel in future correspondence. On October 23, 2023, Mr. Reddy clarified that Mr. Abney would be representing him on this matter.
22. On October 27, 2023, Ms. Phelan had a phone conference with Mr. Abney and Jack Smith, Esq. also with Nelson Mullins, to discuss the Department's jurisdiction over Beaches Critical Area and referred them to the four distinct critical areas as defined by the Act.³ Mr. Abney and Mr. Smith asked Ms. Phelan about what information the Department had to

³ S.C. Code Ann. §48-39-10(J) defines "Critical area" as any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.

support the Department's assertions that the Reddys had altered the area at issue. Ms. Phelan explained that the information included data that was collected soon after Tropical Storm Idalia, data collected after the Reddys had modified their property, and photographs that the Department had taken. It was decided that the best course of action would be to set up a conference with the Department staff so that they could show Mr. Abney and Mr. Smith the photographs and answer any questions.

23. On November 13, 2023, Ms. Phelan, Mr. Prevost, Mr. Slagel and Morgan Flake, Department Compliance and Enforcement Section Manager, participated in a virtual meeting with Mr. Abney and Mr. Smith to answer additional questions regarding the Department's jurisdiction. During this meeting, Department staff shared photographs and survey data taken of the Site. The Reddys' legal counsel requested an electronic copy of the photographs and data presented during this meeting. Ms. Phelan subsequently sent an email to Mr. Abney and Mr. Smith to provide this information.
24. On November 14, 2023, representatives of the South Carolina Department of Health and Environmental Control ("DHEC") conducted a visit to the south/west end of the Isle of Palms near Breach Inlet. During this visit, Ms. Flake took photographs that depict large mounds of sand placed seaward of the non-beach-compatible fill materials at the Site. These mounds of sand obscured the view of the Site from the beach. At the seaward base of these sand mounds, Ms. Flake observed filter fabric and timber wood marine debris from the Reddys' unauthorized construction embedded within the sand on the active beach.
25. On November 20, 2023, Mr. Abney sent an email to Ms. Phelan stating that he was still gathering information to be able to respond [to the Notice] and noted that due to travel plans, he would appreciate the opportunity to provide a response after the holiday.
26. On December 6, 2023, Mr. Prevost conducted a Site inspection and took photographs that depict large mounds of sand placed seaward of the non-beach-compatible fill materials at the Site. These mounds of sand obscured the view of the Site from the beach. Mr. Prevost additionally observed that, in comparison to the Site on October 6, 2023, new non-beach-compatible materials including pine straw, dirt and landscape plantings had been added at the seaward edge of the Site.

27. On December 11, 2023, Ms. Phelan, Mr. Prevost, and Ms. Flake had an additional virtual meeting with Mr. Abney and Mr. Smith to answer further questions they had regarding the Department's jurisdiction, including questions about "active beach." Department staff provided background on the beachfront jurisdictional lines and critical areas and further clarified what is depicted by the Site photographs previously provided on November 13, 2023. Mr. Abney stated he would have to reconvene with his client regarding his current understanding of the Department's assertions regarding the backfilling of Beaches Critical Area with unauthorized non-beach-compatible materials.
28. On December 13, 2023, Mr. Prevost conducted a Site visit and took photographs which depict non-beach-compatible materials and various types of marine debris from construction at the Site, including gravel/rock, clay, and artificial turf grass at and adjacent to the Site in the Beaches Critical Area and/or on active beach.
29. On December 17, 2023, the passing of a coastal storm, a "nor'easter", impacted the South Carolina coast. According to the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service, nor'easters are not uncommon along the Atlantic Coast of North America.
30. On December 18, 2023, Mr. Slagel conducted field collection of escarpment data using a GNSS unit at properties along Ocean Boulevard on the Isle of Palms. While conducting this field work, he discovered that a new hard erosion control structure had been constructed in the Beaches Critical Area and was on active beach at the Site. Upon information and belief at this time, and based on staff's observations, the hard erosion control structure was installed sometime after staff communicated to Mr. Reddy that work was not authorized or permitted in this area. During this field work, Mr. Slagel took photographs of the Site which depict the unauthorized erosion control structure and erosion of adjacent properties to the north and south of the erosion control structure.
31. On December 19, 2023, Ms. Flake participated in a phone conference with City representatives Douglas Kerr and Desirée Fragoso. Mr. Kerr is the Isle of Palms' Deputy City Administrator & Director of Building, Planning and Licensing, and Ms. Fragoso is

the appointed City Administrator. Mr. Kerr stated that Mr. Reddy made a recent request to the City regarding placement of sand at the Site. Ms. Flake explained that the recently discovered erosion control structure and other non-beach-compatible materials at the Site are within the Department's jurisdiction and are the subject of ongoing compliance efforts; therefore, these materials could not be covered by sand. Consequently, Ms. Flake advised Mr. Kerr that the Site should be skipped during the City's sand scraping efforts until the Reddys removed the unauthorized non-beach-compatible materials.

32. On December 20, 2023, Mr. Prevost conducted a Site inspection and took photographs and measurements to document the exposed approximately 92 linear foot ("LF") shore-parallel concrete erosion control structure with an 8.5 LF wingwall on the eastern end and an 8 LF wingwall on the western end of the structure. Mr. Prevost also documented that pieces of woven geotextile fabric and wire mesh were embedded within the erosion control structure and observed wire mesh, dirt, gravel, and clay as debris seaward of the erosion control structure. The areas adjacent to the wingwalls and immediately landward of the shore-parallel segment of the erosion control structure appeared to have been washed out by recent tides. Photographs of the Site further depict other non-beach-compatible materials previously identified, including gravel/rock, fill, clay, artificial turf grass, metal fencing and geotextile fabric at and adjacent to the Site in the Beaches Critical Area and/or on active beach.

That same day, Mr. Abney requested that Department legal counsel confirm staff's December 19, 2023 instruction to the City regarding their sand scraping efforts and requested the "...basis on which DHEC claims jurisdiction over this wall, which is well landward of the jurisdictional lines...".

33. On December 21, 2023, Ms. Phelan sent a reply email to Mr. Abney wherein she reiterated information previously conveyed by the Department in phone calls, conferences, and email communications. Specifically, Ms. Phelan explained that while the Beach/Dune System Critical Area is tied to the setback line, the Beaches Critical Area is not and the Department has jurisdiction over both pursuant to the plain meaning of the Act. Ms. Phelan then noted staff's December 18, 2023 observation that an unauthorized erosion control structure had been recently constructed at the Site "in contravention to [DHEC] OCRM's specific

instructions that were given to Mr. Reddy, his contractors, and Mr. Appel (who was the attorney representing him in this matter at the time) on site in September of this year.” Ms. Phelan reiterated the staff directive that Mr. Reddy should refrain from placing sand which would cover up the myriad of violations including non-beach-compatible fill, artificial turf, the erosion control structure, and fencing. Ms. Phelan further noted that as of the Department’s December 2023 inspection there did not appear to be anywhere to place additional sand that would not bury these non-beach-compatible materials that must be removed from the Beaches Critical Area.

34. On December 28, 2023, Mr. Prevost conducted a Site inspection and used a GNSS unit to collect location data along the seaward/outer edge of the erosion control structure, including the wingwalls. Mr. Prevost took photographs during this inspection which depict the other types of non-beach-compatible materials previously documented at the Site, including gravel/rock, clay fill, artificial turf grass, and geotextile fabric. Wooden plywood panels were additionally observed to be placed in line with and creating a landward extension of the concrete erosion control structure wingwalls with a backfill of dirt, gravel, riprap and clay. The photographs depict shredded geotextile fabric pieces, clay balls, metal and splintered wood as marine debris at and adjacent to the Site in the Beaches Critical Area and/or on active beach.
35. On December 29, 2023, Mr. Abney sent an email response to Ms. Phelan’s December 21, 2023 email wherein he stated that neither the recent work [to construct the erosion control structure] nor the work identified by the Notice occurred in critical area and that OCRM did not have jurisdiction as “both projects occurred in the Reddy’s [sic] yard...”. Mr. Abney disputed that this area was subject to periodic inundation. He then asserted that the Department’s direction to the City not to place scraped sand in front of the Reddys’ property nor to allow sand to be brought in by Mr. Reddy “has exacerbated conditions there and undermined the effectiveness of the Town’s [sic] erosion control efforts in the area.” The sand scraping efforts and sand placement is meant to protect property from erosion and other adverse impacts due to tidal inundation.

36. Mr. and Mrs. Reddy's legal counsel and Ms. Phelan communicated throughout January 2024 regarding the unauthorized activities at the Site, the Department's jurisdiction and the Department's direction related to covering non-beach-compatible materials with sand.
37. On January 7, 2024, Department staff were made aware that unauthorized riprap was installed at the base of the unauthorized erosion control structure at the Site.
38. On January 10, 2024, this matter was referred to enforcement for further Department action.
39. On January 11, 2024, Mr. Prevost conducted a Site inspection. While onsite, and prior to initiating his inspection, Mr. Prevost encountered Mr. and Mrs. Reddy in an outdoor meeting with individuals who appeared to be contractors. Mr. Prevost introduced himself and stated his purpose for being at the Site. Mr. and Mrs. Reddy acknowledged Mr. Prevost prior to continuing their onsite meeting with the unknown individuals. Mr. Prevost proceeded to observe and photograph that the unauthorized erosion control structure was tilting/collapsing seaward. Additional photographs taken during this inspection depict that the area immediately landward of the erosion control structure had been inundated and washed out. This documentation indicates that tidal waters had recently flanked the wingwalls of the erosion control structure. He observed other previously identified non-beach-compatible materials and marine debris in the Beaches Critical Area and/or on active beach at the Site, including gravel/rock, fill, clay, artificial turf grass, riprap, geotextile fabric, metal fencing and wood. Riprap was visible at the seaward base and concrete wingwalls and plywood wingwall extensions of the erosion control structure. Tarps and plastic sheeting were also observed to have been placed atop fill materials landward of the erosion control structure in an apparent attempt to further protect those materials. Photographs were taken during this inspection.
40. On January 12, 2024, Mr. Slagel responded to a recent inquiry made by Mr. Kerr. Mr. Kerr had relayed an adjacent property owner's concern that the adjacent properties were more exposed to the waves given the gap left by the City's sand scraping efforts between the Site and those properties. Mr. Slagel informed Mr. Kerr that the Department did not object to the City scraping sand to fill in the gaps between the existing scraped sand and the erosion

control structure in an attempt to provide better protection to the properties adjacent to the Site. Mr. Slagel advised Mr. Kerr that before scraping sand to fill in the gaps between the existing scraped sand and erosion control structure any unauthorized materials and/or debris on these adjacent properties should be removed prior to the City placing sand in these areas.

Additionally on January 12, 2024, Ms. Phelan sent a response email to Mr. Abney's December 29, 2023 email and informed Mr. Abney that the Department is pursuing enforcement action on this matter since Mr. Reddy has refused to comply with the Department's directives and has continued to alter the critical areas without authorization.

41. On January 24, 2024, the Department received notification that it appeared the unauthorized erosion control structure at the Site had been repositioned and backfilled landward of the structure.

42. On January 25, 2024, Department staff received photographs depicting the unauthorized erosion control structure and active placement of screw piles at the seaward base of the structure at the Site. Subsequently, Mr. Prevost conducted an inspection at the Site and observed the concrete erosion control structure with contractors actively working to install metal screw piles on the seaward side of the structure using a Bobcat skid steer, which was also located seaward of the structure in Beaches Critical Area and on active beach. An onsite contractor informed Mr. Prevost that the exposed metal pieces in the sand were the tops of 14' deep screw piles. Mr. Prevost observed a large excavator staged landward of the erosion control structure at the Site. Non-beach-compatible materials, including fill, clay, geotextile fabric and plywood were visible in the Beaches Critical Area landward of the erosion control structure. Riprap and clay materials/debris were observed in the Beaches Critical Area on the seaward side of the erosion control structure, including the wingwalls.

Subsequently, on January 25, 2024, the Department issued a Cease and Desist Directive (January Directive) to Mr. Reddy which was sent via email to Mr. Abney and Mr. Smith. This January Directive identified unauthorized structures and materials in the Department's jurisdiction to include the erosion control structure, metal screw piles, and scattered clay

and riprap debris and further documented staff's observation that metal screw piles were being installed below grade on the seaward side of the erosion control structure without authorization. This January Directive directed Mr. Reddy to immediately cease and desist all work in the Beaches Critical Area and/or on active beach that was in violation of the Act. Mr. Abney confirmed receipt of the January Directive via an email reply on January 26, 2024.

43. On January 29, 2024, Mr. Prevost conducted a Site inspection and used a GNSS unit to collect location data for the metal screw piles installed seaward of the erosion control structure and to also collect updated location data for the erosion control structure. During this inspection, Mr. Prevost found that unauthorized alterations of the critical area at the Site continued to occur despite the Department's January Directive. He documented that a Bobcat skid steer located seaward of the unauthorized erosion control structure at the Site was actively installing metal screw piles on the landward side of the erosion control structure, all in Beaches Critical Area. Mr. Prevost informed the contractors that the Department had issued the January Directive, asked them to identify themselves, and inquired about the activity they were doing onsite with the heavy equipment. The contractors would not provide a name, company affiliation, or a description of the work being performed. They informed Mr. Prevost that they were instructed not to speak to him and that he would have to speak to Mr. Reddy's attorneys for any other information. While at the Site, Mr. Prevost further observed a large, excavated area landward of the erosion control structure with pooling water at the bottom of this excavated area. He documented other previously identified non-beach-compatible materials and/or marine debris, including fill, clay, riprap, artificial turf grass, geotextile fabric, and wood at and adjacent to the Site in the Beaches Critical Area and/or on active beach. Photographs were taken during this inspection.

After this inspection, Ms. Phelan sent an email to Mr. Abney and Mr. Smith informing them of Mr. Prevost's findings that contractors continued to work with heavy equipment in the critical area to install metal screw piles. Ms. Phelan additionally informed the Reddys' legal counsel that Mr. Prevost was informed by an onsite worker that they (the contractor) were instructed not to talk to him. Ms. Phelan requested Mr. Abney and Mr.

Smith instruct their client to immediately comply with the January Directive and furthermore, to provide information related to the activities being conducted at the Site and the identity of the contracting companies working at the Site.

44. On January 30, 2024, Mr. Abney sent a reply email to Ms. Phelan wherein the Reddys' legal counsel continued to disagree that the "retention wall was erected within the critical area" and asserted that the Department "lacks jurisdiction over the structure or the work for which the agency issued [the January Directive]." Mr. Abney further stated that "[t]he Reddys did not tell any contractor not to identify themselves or not to disclose the work they were doing. However, we decline your request to name workers who were onsite."
45. On January 31, 2024, the Department received information that work was continuing at the Site. According to this report, there were four pieces of heavy equipment on the beach and six to seven feet of fill on top of the wall and "gray dirt" had been deposited on active beach in front of the wall. Later that day, OCRM received a second report that the Reddys' contractors had placed rebar and were pouring concrete at the Site.
46. On February 1, 2024, Mr. Prevost conducted an inspection at the Site. Upon arrival, he observed contractors actively working with a large excavator to remove and relocate materials landward of the erosion control structure and setting screws on wooden form supports. Shortly after his arrival, active construction stopped and did not resume for the remainder of the inspection. Mr. Prevost then observed a large, excavated area, estimated to be about 7' deep, immediately landward of the concrete erosion control structure where wooden forms contained a recently added concrete slab. Pooling water was visible on top of this recently added concrete slab and unprotected, exposed rebar was sticking vertically out of this newly poured concrete. Extending landward from each wingwall of the erosion control structure, Mr. Prevost identified large pit areas that were inundated with water. Orange plastic mesh material mostly surrounded these pit areas. The tops of the previously identified metal screw piles were visible at the seaward toe of the erosion control structure and other previously identified non-beach-compatible materials and debris were documented at the Site in the Beaches Critical Area and/or on active beach. During his inspection, Mr. Prevost additionally observed tidal waters reaching and interacting with the erosion control structure. Near the center of the erosion control structure, tidal waters were

observed running underneath the structure and into the wooden forms containing the recently added concrete. Mr. Prevost posted a Cease and Desist Directive in several locations at the Site, including on pieces of heavy machinery, which directed that all unauthorized activity in the Beaches Critical Area and/or active beach cease.

47. On the morning of February 2, 2024, Department staff collected drone photographs and video to further assess the Site conditions and impacts from the Reddys' unauthorized activities, including construction of the concrete erosion control structure. The drone flight was conducted close to high tide, which was lower that day than the average high tide this area experiences. The photographs and video demonstrate that there is almost no room to place sand seaward of the hard erosion control structure even at a below average high tide. Any sand placed would be very temporary and would be washed out with the next tide cycle.

At approximately 12:45 PM, Ms. Flake conducted a Site visit and observed that the Cease and Desist Directive that had been posted in multiple locations at the Site on February 1, 2024, had been removed from the Site and equipment. It appeared that the work at the Site had been stopped as the heavy equipment had been removed except for one large excavator located landward of the erosion control structure. No workers were onsite. Ms. Flake also observed that steel mending plates had been secured into the seaward side of the erosion control structure in an apparent attempt to stabilize cracks and reinforce the erosion control structure. The large pit areas extending landward from each wingwall of the erosion control structure which were documented the previous day by Mr. Prevost, were observed by Ms. Flake to be inundated with water. Ms. Flake also observed that within each of these pit areas there were two (2) parallel rows of metal piles that had been installed below grade into the sand substrate - the tops of these metal piles were sticking out of the water in the bottom of the pits. Geotextile fabric consistent with the materials at the Site, was observed as marine debris embedded in the sand seaward of the erosion control structure in Beaches Critical Area and on active beach.

Subsequently, at 1 PM, a meeting commenced on the Isle of Palms where attendees walked from 3rd Avenue to Breach Inlet to observe the conditions along this stretch of the beach. Present at this meeting were: DHEC Board Chairwoman Seema Shrivastava-Patel; DHEC

Board Member Sonny Kinney; DHEC Director Dr. Edward Simmer; DHEC Environmental Affairs Director Myra Reece; DHEC OCRM representatives, including Ms. Flake; City representatives Mr. Kerr and Ms. Fragoso; and various property owners, including Mrs. Reddy. During this meeting, DHEC and City representatives attempted to answer questions and discuss property owner concerns. Mrs. Reddy engaged with DHEC representatives during this meeting.

48. On the morning of February 3, 2024, Ms. Phelan sent an email to Mr. Abney wherein she attached a Cease and Desist Directive (February Directive) dated February 2, 2024 and addressed to Mr. Reddy. This correspondence followed the Cease and Desist Directive that had been physically posted at the Site on February 1, 2024 and was removed. This February Directive identified unauthorized activities in the Department's jurisdiction to include the excavation of the beaches critical area and/or active beach, installation of rebar, wood forms and supports, and newly-poured concrete immediately landward of the unauthorized erosion control structure. The February Directive directed Mr. Reddy to immediately cease and desist all work in the Beaches Critical Area and/or on active beach that was in violation of the Act. Mr. Abney confirmed receipt of the February Directive via reply email on February 5, 2024.

On the afternoon of February 3, 2024, OCRM was notified that after OCRM left the Site late in the afternoon of February 2, 2024, the contractors returned to the Site and continued working in the critical area. According to the report, work was actively occurring at the Site on the night of February 2, 2024 and on the morning of February 3, 2024, including the mobilization of four concrete trucks to the Site and that the work was continuing. Photographs depicting unauthorized work were also provided to the Department.

49. On February 5, 2024, Mr. Abney confirmed receipt of the February Directive via reply email to Ms. Phelan. The Reddys' legal counsel reiterated their client's position that the work at issue in the February Directive is "outside of the agency's jurisdiction."

Photographs taken by the City on February 5, 2024 depict that tidal waters had recently interacted with and flanked the erosion control structure. A new erosional escarpment is evident landward of the structure at the Site.

50. On February 7, 2024, the Department was made aware that more concrete was being poured at the Site. Photographs provided with the report depict wooden forms landward of the erosion control structure with concrete being piped into this rebar reinforced gap between the existing erosion control structure and the wooden forms in the Beaches Critical Area.
51. On February 8, 2024, the Department received a report regarding the Reddys' construction of wingwalls on the erosion control structure at the Site.
52. On February 9, 2024, the Department filed a Petition for Injunctive Relief and Motion for Temporary Restraining Order and Preliminary Injunction with the Administrative Law Court requesting a hearing in connection with the Department's issuance of the Notice to Comply on October 20, 2023 and the Cease and Desist Directives dated January 25, 2024 and February 2, 2024. This filing provided a detailed account of the Department's position with corroborating photographs and data collected by the Department and identified violations of the South Carolina Coastal Zone Management Act, section 48-39-10 et al. On February 23, 2024, the Reddys filed a Response to the Department's Petition and Motion wherein they set forth allegations relating to their activities at the Site, and their basis for the challenge to the Department's jurisdiction in the Beaches Critical Area which included photographs.
53. On February 13, 2024, Mr. Prevost conducted an inspection at the Site. While onsite, Mr. Prevost observed Mrs. Reddy come out of her home and appeared to use her cell phone to record Mr. Prevost for the duration of the inspection. Mr. Prevost documented that the original concrete erosion control structure remained at the Site and was now located immediately seaward of a new, unauthorized concrete erosion control structure [Attachment D]. The new landward erosion control structure was shore-parallel with wingwalls extending landward at the east and west ends of the Site. This landward erosion control structure was approximately two to three feet (2' – 3') taller than the original/seaward structure. Photographs taken during this inspection also depict a green pipe embedded vertically into the north/east wingwall of the new structure. The metal plate reinforced cracks in the original/seaward erosion control structure that were previously

observed by Department staff on February 2, 2024, were now observed by Mr. Prevost to have been injected with foam to fill the cracks. Mr. Prevost also observed other non-beach-compatible materials, including riprap, clay, and orange plastic mesh, in the Beaches Critical Area at and/or adjacent to the Site. Photographs were taken during this inspection.

54. On February 20, 2024, Ms. Phelan sent an email to Mr. Abney to document previous phone correspondence regarding this matter. In response, Mr. Abney emailed Ms. Phelan informing that he and Mr. Smith “no longer represent Mr. Reddy in this matter. Please direct all future correspondence regarding this matter to Charlie Krawczyk and Johnny Stewart” of Finkel Law Firm LLC.
55. On February 21, 2024, Mr. Prevost conducted a Site inspection. In addition to his most recent observations of February 13, 2024, Mr. Prevost documented black metal fencing debris originating from the Site that restricted the use of the beach access pathway between the Site and the adjacent property to the north/east.
56. On February 26, 2024, Mr. Prevost conducted a Site inspection and documented similar conditions to previous inspections. Marine debris materials at and adjacent to the Site included tarp/liner material, artificial turf grass, riprap, concrete and clay. Additionally, clay and rock were observed scattered along the beach as marine debris from the adjacent property to the north/east of the Site all the way south/west to Breach Inlet.
57. On February 28, 2024, the Department received a report of potential unauthorized riprap addition at the Site. Subsequently on February 29, 2024, Mr. Prevost conducted a Site inspection and was unable to determine whether the visible rocks were newly added or were previously there and uncovered by recent erosion. He additionally observed contractors installing fabric rolls/underlay materials on top of rock/gravel landward of the erosion control structures in Beaches Critical Area. Clay, riprap, and gravel remained scattered along the beach as marine debris and was observed from the adjacent property to the north/east all the way south/west to Breach Inlet.
58. On March 1, 2024, the Department issued a Cease and Desist Directive (March Directive) to Mr. Reddy which was sent via email from Ms. Phelan to Johnny J. Stewart, Jr., Esq. and

Charles Krawczyk, Esq. with Finkel Law Firm LLC. This March Directive noted that, despite the January and February Directives, the Department confirmed in a February 29, 2024 Site inspection that unauthorized activities continued to occur in the critical area at the Site. The March Directive identified that the unauthorized activities included, but were not limited to, installation of fabric rolls/underlay and rock/gravel landward of the erosion control structures in the Beaches Critical Area. This March Directive directed Mr. Reddy to immediately cease and desist all work in the Beaches Critical Area and/or on active beach that was in violation of the Act. Ms. Phelan received notification of delivery via the email server that same day.

59. On March 4, 2024, Mr. Prevost conducted a Site inspection and observed contractors actively installing fabric rolls/underlay and artificial turf grass landward of the unauthorized erosion control structures in the Beaches Critical Area. These alterations were in direct contravention to the March Directive, which was the third cease and desist directive issued to the Reddys. Mr. Prevost remained on the sandy beach adjacent to the erosion control structures for the duration of this Site inspection. After collecting photographs of the Site, Mr. Prevost was approached by Mrs. Reddy from the landward side of the erosion control structures and was instructed/told by Mrs. Reddy to "get off my yard buddy."

Mr. Prevost posted Cease and Desist Directives at the Site that same day.

60. On March 5, 2024, Ms. Phelan sent a subsequent email to Mr. Stewart and Mr. Krawczyk regarding their client's continued work in the Beaches Critical Area and receipt of the March Directive. In a reply email, Mr. Krawczyk acknowledged receipt of the March Directive.
61. On March 29, 2024, Finkel Law Firm LLC, on behalf of Mr. and Mrs. Reddy, filed a Summons & Complaint in the Court of Common Pleas against the Department - *Rom Reddy and Renee Reddy vs. the South Carolina Department of Health and Environmental Control and The City of Isle of Palms*, 2024 CP-10-01681. This Complaint, among other things, set forth allegations relating to the Reddys' activities at the Site and the Reddys' challenge to the Department's assertion of jurisdiction in the Beaches Critical Area. The

Reddys alleged in this Complaint that “[i]n October 2023 [the Reddys] installed an inward facing retaining wall well behind the dunes, setback lines and critical areas.”

62. On April 3, 2024, Mr. Prevost conducted a Site inspection and took photographs of the Site. The original/seaward erosion control structure and new landward erosion control structures remained in the Beaches Critical Area at the Site. The tops of the metal screw piles located on the seaward side of the original/seaward erosion control structure were visible. Exposed wooden forms on the outside/seaward side of the new erosion control structure were visible and separated from the concrete. The previously observed metal fencing debris in the beach access pathway between the Site and the adjacent property to the north/east was no longer present. Riprap was observed adjacent to the wingwalls and within the extended property lines of each adjacent property. The area landward and within the bounds of the erosion control structure was fully covered in artificial turf grass and landscaping. Specifically, the outer edge of the area bounded by the new landward erosion control structure had been landscaped with small woody plants and pine straw.

63. On May 22, 2024, Notice of Alleged Violation/Admission Letter AI-0008331 (NOAV/AL), including proposed Findings of Fact, was sent via certified mail to Mr. and Mrs. Reddy c/o Mr. Krawczyk and Mr. Stewart. The NOAV/AL was additionally sent via email to Mr. and Mrs. Reddy via Mr. Krawczyk, Mr. Stewart and Rachel Bailey, Esq. with Finkel Law Firm LLC. Delivery of the NOAV/AL sent via email occurred on May 22, 2024, as confirmed by the email server. Delivery of the NOAV/AL sent via certified mail occurred on May 28, 2024, as confirmed by USPS Tracking®. The NOAV/AL scheduled an enforcement conference⁴ for June 4, 2024.

64. On May 28, 2024, Ms. Phelan received an email from the office of Williams Mullen which included an attached letter from Ethan R. Ware, Esq. In this correspondence, Mr. Ware informed the Department that Mr. and Mrs. Reddy had requested assistance from Williams Mullen in responding to the NOAV/AL. Mr. Ware further informed the Department that Williams Mullen would be working in tandem with Finkel Law Firm on this matter. Mr.

⁴ An enforcement conference is not required by S.C. Code Regs. 30-8(F). Rather, it is a voluntary, informal meeting offered by the Department between Department staff and the responsible party to discuss the NOAV/AL.

Ware requested additional time to prepare for the scheduled enforcement conference and provide response to the NOAV/AL. Specifically, Mr. Ware requested that the Department allow Mr. Reddy until the first week of July to respond to the Admission Letter and meet with SCDHEC regarding the alleged violations.

That same day, Ms. Phelan acknowledged Mr. Ware's request and informed him that the timeline for response to the Admission Letter is set by R.30-8(F)(2), which requires that "[w]ithin 15 days from receipt of the Admission Letter, the responsible party must either admit the contents to be true or send the Department their version of the facts setting forth why the Department's facts are incorrect. Failure to respond shall result in a conclusion by the Department that the contents of letter are true."

65. On June 4, 2024, Ms. Phelan sent an email to Mr. Ware which provided the Department's availability to reschedule the enforcement conference. These dates included two (2) days within the last two weeks of June and the first two (2) days of July 2024.
66. On June 6, 2024, Mr. Prevost conducted a Site inspection and took photographs of the Site. The original/seaward erosion control structure and new landward erosion control structures remained in the Beaches Critical Area at the Site. The exposed steel mending plates and associated bolts on the original/seaward erosion control structure were observed with rust corrosion. On the seaward face of the original/seaward erosion control structure, there was exposed woven geotextile fabric material with frayed ends covered in a layer of concrete. A flagpole and flag were also observed in the location of the previously identified green pipe that was vertically embedded near the seaward extent of the north/east wingwall of the new landward erosion control structure.
67. On June 7, 2024, Mr. Ware submitted a Response to the NOAV/AL (NOAV/AL Response). In his cover email to Ms. Phelan, Mr. Ware requested that the Department not proceed issuing an Administrative Order "until we have had an opportunity to hold the enforcement conference, which may be the end of June or first of July." In the attached cover letter to the NOAV/AL Response Mr. Ware indicated that the Reddys would not be available until after June 31, 2024 for a conference. Mr. Ware did not respond or indicate his availability as to the dates the Department already offered in July.

68. On June 26, 2024, Ms. Phelan sent Mr. Ware an email stating that the Department intends to proceed with issuing an Administrative Order and further informed Mr. Ware that the Department would continue to work with Mr. and Mrs. Reddy and their legal counsel in seeking a mutually agreeable resolution. Ms. Phelan also provided three additional dates in July that the Department was available to hold a conference towards this end and asked for alternative dates of availability if these dates would not work. As of the signing of this Order, Mr. Ware has not provided any dates of availability for a conference.
69. In addition to other information the Department has considered prior to the issuance of this Order, the Department has also reviewed documents provided pursuant to subpoena requests from several of the Reddys' contractors and/or subcontractors involved with the alterations at the Site. The Department has also reviewed the Reddys' discovery responses in the pending Administrative Law Court matter.

Based on the above findings, Rom L. Reddy and Renee Reddy have violated the following:

1. **The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-130(A) & (C) and S.C. Code Ann. Regs. 30-2(B), as amended,** require that any utilization/alteration of any critical area be permitted by the Department. Specifically, Mr. and Mrs. Reddy altered Beaches Critical Area by installing non-beach-compatible materials including clay, dirt, gravel/rock, riprap/rock, woven geotextile fabric, plastic mesh/geogrid, artificial turf grass, metal fencing, wire mesh, concrete, orange plastic mesh/fencing, metal screw piles, rebar, steel mending plates with associated bolts, spray foam, green pipe with flag pole, wood materials (including timber, plywood panels, forms and supports), tarps, plastic sheeting, metal piles, nonwoven geotextile fabric/fabric rolls/underlay, pine straw, and landscape plantings. Mr. and Mrs. Reddy further utilized and altered Beaches Critical Area by operating heavy machinery to carry out installation of non-beach-compatible materials and excavating substantial amounts of substrate. According to an invoice from one of the Reddys' contractors, 450 yd³ of critical area substrate was excavated. All this activity in the Beaches Critical Area occurred without a permit from the Department.

2. **The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-130(D)(6), as amended**, provides an exemption to a permit for emergency repairs to an existing bank, dike, fishing pier, or structure, other than oceanfront erosion control structures or devices, which has been erected in accordance with federal and state laws or provided for by general law or acts passed by the General Assembly, if notice is given in writing to the Department within seventy-two hours from the onset of the needed repairs. Specifically, this provision expressly removes oceanfront erosion control structures or devices from consideration for a permit exemption for emergency repairs. The erosion control structure at the Site was not erected in accordance with federal or state laws or provided for by general law or acts passed by the General Assembly; therefore, the Reddys' repair of the structure was not an exempted activity. Furthermore, the Reddys failed to provide any notice to the Department of the repairs and additional activity that they undertook to alter the critical area.
3. **S.C. Code Ann. Regs 30-15(H)(5)(a), as amended**, requires that renourishment sand must originate from an upland source and be approved by the Department as compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material. Furthermore, **Emergency Order 23-EO-11, Requirement #2**, requires renourishment sand originate from an upland source and be approved by the Department as beach-compatible in size and grain color. Material must be clean and free of any debris. Specifically, Mr. and Mrs. Reddy did not obtain approval from the Department for renourishment materials and did not use materials compatible in grain size and color with the native beach sand. The materials used by Mr. and Mrs. Reddy resulted in marine debris.
4. **Emergency Order 23-EO-11, Requirement #4**, prohibited the covering or burying of any portion of an erosion control structure. Specifically, Mr. and Mrs. Reddy covered an unauthorized erosion control structure at the Site.
5. **Emergency Order 23-EO-11, Requirement #9**, required that contractors performing work be in direct contact with the SCDNR Marine Turtle Conservation Program

representative each morning prior to any work being performed on the beach. Specifically, neither Mr. and Mrs. Reddy, nor their contractor, were in contact with SCDNR to assess sea turtle activity prior to any work being performed on the beach.⁵

6. **S.C. Code Ann. Regs. 30-13(N)(3)(c), as amended**, prohibits erosion control structures or devices from being enlarged, strengthened, or rebuilt and further requires that repairs be made with materials similar to those of the structure or device being repaired. Specifically, Mr. and Mrs. Reddy strengthened the unauthorized concrete erosion control structure using metal screw piles, steel mending plates and associated bolts, and spray foam at the Site.
7. **S.C. Code Ann. Regs. 30-8(B), as amended**, provides that when any person is found altering a critical area without a permit and such activity is not exempted by Section 48-39-130(D), the Department may issue a cease and desist directive. This directive shall inform the person that he is in violation of the Act and he is to cease the unauthorized activity. Specifically, Mr. and Mrs. Reddy failed to follow the Cease and Desist Directive issued in January 2024.
8. **S.C. Code Ann. Regs. 30-8(B), as amended**, provides that when any person is found altering a critical area without a permit and such activity is not exempted by Section 48-39-130(D), the Department may issue a cease and desist directive. This directive shall inform the person that he is in violation of the Act and he is to cease the unauthorized activity. Specifically, Mr. and Mrs. Reddy failed to follow the Cease and Desist Directive issued in February 2024.
9. **S.C. Code Ann. Regs. 30-8(B), as amended**, provides that when any person is found altering a critical area without a permit and such activity is not exempted by Section 48-39-130(D), the Department may issue a cease and desist directive. This directive shall inform the person that he is in violation of the Act and he is to cease the

⁵ Sea Turtle nesting season occurs annually in South Carolina from May 1 through October 31.

unauthorized activity. Specifically, Mr. and Mrs. Reddy failed to follow the Cease and Desist Directive issued in March 2024.

The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-50(I), as amended, provides the Department the power to enforce the provisions of this chapter and all rules and regulations promulgated by the Department and institute or cause to be instituted, in courts of competent jurisdiction, legal proceedings to compel compliance with the provisions of this chapter. Section 48-39-170(C), *as amended*, provides that any person determined to be in violation of any provision of this chapter shall be liable for, and may be assessed, a civil penalty of not less than one hundred dollars nor more than one thousand dollars per day of violation. It also provides that whenever the Department determines that any person is in violation of any permit, regulation, standard, or requirement under this chapter, the Department may issue an order requiring the person to comply with such permit, regulation, standard, or requirement, including an order requiring restoration when deemed environmentally appropriate by the Department. In addition, §48-39-170(C), *as amended*, provides that the Department may bring a civil enforcement action under this section as well as seeking appropriate injunctive relief under §48-39-160.

NOW, THEREFORE, IT IS ORDERED that Rom and Renee Reddy shall:

1. Within fifteen (15) days of the effective date of this Order, submit to the Department a Corrective Action Plan (CAP) to address, but not be limited to, the following regarding removal of all unauthorized non-beach-compatible materials and restoration of the Beaches Critical Area at the Site: timing; beach access method; machinery/equipment to be used; location of unauthorized materials to be placed/stored once removed; methods deployed to ensure beach stabilization during removal to minimize further beach impacts; coordination with the SC Department of Natural Resources Marine Turtle Conservation Program and Nest Protection Project Leaders; best management practices used to ensure that debris will not result from the project; and the source of beach compatible materials that will be utilized to restore the Beaches Critical Area once excavation/removal of the unauthorized erosion control structures and other non-beach-compatible materials is complete.

2. Within fifteen (15) days of the effective date of this Order, submit to the Department a sample of the sand material that will be used to restore the Beaches Critical Area at the Site. This sand must be: compatible in size and grain color; from an upland source; and its use approved in writing by the Department prior to placement in the Beaches Critical Area.
3. Within seven (7) days of receipt of any written comments from the Department regarding the CAP and/or sand sample, adequately revise and resubmit the CAP and/or address concerns regarding the sand sample. Once reviewed and accepted by the Department, the CAP will become a fully enforceable part of this Order.
4. Within fifteen (15) days of Department approval of the CAP and sand sample, remove the unauthorized non-beach-compatible materials in their entirety from the Beaches Critical Area at the Site. The unauthorized non-beach-compatible materials known to the Department include clay, dirt, gravel/rock, riprap/rock, woven geotextile fabric, plastic mesh/geogrid, artificial turf grass, metal fencing, wire mesh, concrete, orange plastic mesh/fencing, metal screw piles, rebar, steel mending plates with associated bolts, spray foam, green pipe with flagpole, wood materials (including timber, plywood panels, forms and supports), tarps, plastic sheeting, metal piles, nonwoven geotextile fabric/fabric rolls/underlay, pine straw, and landscape plantings. Any other unauthorized non-beach-compatible materials that may be discovered/uncovered during removal of the above itemized materials in the Beaches Critical Area at the Site must additionally be removed by Mr. and Mrs. Reddy. Any non-beach-compatible materials that originated from the Reddys' unauthorized activities and are observed in Beaches Critical Area in the vicinity of the Site should also be removed.

Immediately upon removal of the non-beach-compatible materials, restore the affected area at the Site with the approved beach-compatible sand to the same elevation and slope of the adjacent properties.

5. Notify the Department of the scheduled commencement date and time for the required removal and restoration work. Such notification shall be made to the Department at least five (5) days prior to the required work so that Department staff may be at the Site at the

time of such activity. Department staff must immediately be made aware of any changes to the scheduled start date/time and must be kept informed of any scheduling modifications.

6. Within three (3) days of completion, notify the Department in writing of the completion of the work required by this Order and set forth in the CAP. Subsequent to the receipt of this notification, the Department will use its best efforts to conduct an inspection of the Site within 7 days of notification to ensure compliance with the Act and the terms of this Order, to include the CAP.
7. Within fifteen (15) days of the effective date of this Order, pay a civil penalty in the amount of two hundred eighty-nine thousand dollars (\$289,000.00) to the Department. The penalty payment shall be in the form of a check made payable to SCDES and reference Order number AF-0000960.
8. Comply with all requirements of the South Carolina Coastal Zone Management Act and Coastal Division Regulations when conducting work in any South Carolina critical area, including the Beaches Critical Area.
9. All requirements of this Order to be submitted shall be addressed as follows:

South Carolina Department of Environmental Services
Bureau of Coastal Management
Attn: Morgan Flake, Compliance and Enforcement Section
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

Or by email at: Morgan.Flake@des.sc.gov

S.C. Code Ann. §48-6-30(D)(2) provides, "Within thirty calendar days after the mailing of a decision [pursuant to S.C. Code Ann. §48-6-30(D)(1)], an applicant, permittee, licensee, certificate holder, or affected person desiring to contest the department decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act." Should this Order not be appealed and the terms of the Order are not satisfied within the specified time frames, the Department may file an action in the appropriate court to enforce this Order.

IT IS FURTHER ORDERED that failure to comply with any provision of this Order within the time specified above shall be grounds for additional daily monetary sanctions and/or the institution of a court action.

IT IS FURTHER ORDERED that this Administrative Order governs only the civil liability imposed upon Rom L. Reddy and Renee Reddy by the Department for civil sanctions arising from the matters set forth herein.

[SIGNATURES ON FOLLOWING PAGE]

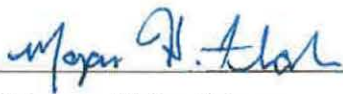
STATE OF SOUTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL SERVICES
BUREAU OF COASTAL MANAGEMENT


Myra C. Reece
Interim Director, SCDES

Date: 7-1-2024


Christopher Stout
Chief

Date: July 1, 2024


Morgan Flake, Manager
Compliance and Enforcement Section

Date: July 1, 2024

Reviewed By:


Sallie P. Phelan, Attorney
Office of General Counsel

Date: July 1, 2024

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Health and
Environmental Control and South Carolina
Coastal Conservation League,

Petitioners,

v.

Rom Reddy and Renee Reddy,

Respondents.

Docket No.: 24-ALJ-07-0032-IJ

South Carolina Department of Environmental
Services,

Petitioner,

v.

Rom Reddy and Renee Reddy,

Respondents.

Docket No.: 24-ALJ-07-0232-CC

JOINT MOTION TO CONSOLIDATE

TO: THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

South Carolina Department of Environmental Services (hereinafter “DES” or “Department” or “BCM”) (f/k/a South Carolina Department of Health and Environmental Control), and Rom and Renee Reddy through their undersigned counsel, move pursuant to Rule 42(a), SCRCF and Rule 19D, SCALC for an order consolidating the two above-captioned cases. With the consent of the parties the South Carolina Coastal Conservation League intends to intervene in the enforcement action captioned above, Docket No.: 24-ALJ-07-02332-CC.

Rule 42(a) provides that “[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the

action; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Rule 42(a), SCRC.P. Similarly, Rule 19D provides that "[w]hen two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the administrative law judge may upon motion by any party or on his own motion order that a consolidated hearing be conducted." Rule 19D, SCALC. Consolidation is within the broad discretion of the trial court. *Keels v. Pierce*, 315 S.C. 339, 433 S.E.2d 902 (Ct. App. 1993).

The consolidation of these cases for the purposes of discovery, trial, and a final order is appropriate, as these cases involve common questions of law or fact, substantially similar evidence, and common parties, and consolidation would avoid unnecessary costs and delay.

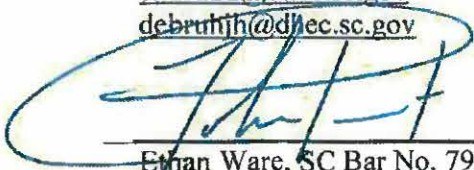
CONCLUSION

The parties respectfully request that the Court issue an Order consolidating the two above-captioned cases.

Respectfully Submitted,

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Williams Mullen

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CONCLUSION

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STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Rom Reddy,

Petitioner,

v.

South Carolina Department Of Environmental
Services f/k/a South Carolina Department of
Health and Environmental Control

Respondent.

Docket No.: 24-ALJ-07-0232-CC

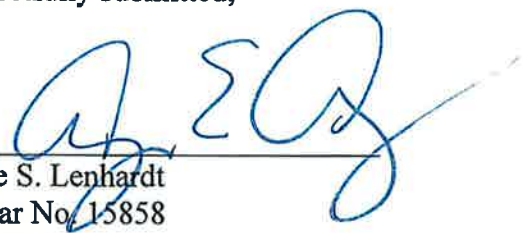
CONSENT MOTION TO INTERVENE

TO: THE ADMINISTRATIVE LAW COURT AND COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the South Carolina Coastal Conservation League, Inc. (the "League" or "Coastal Conservation League") hereby moves this Court, pursuant to Rule 20 of the Rules of Procedure for the Administrative Law Court, for an Order permitting it to intervene in the above-captioned proceeding. This Court has granted intervention in a companion case, *S.C. Department of Health and Environmental Control & Coastal Conservation League v. Rom Reddy*, Docket No. Docket No.: 24-ALJ-07-0032-IJ. Intervenor incorporates by reference the grounds contained in its motion to intervene and the filed affidavit in that case as the basis for intervention in this case.

Counsel for Petitioner Rom Reddy and counsel for Respondent DHEC have consented to intervention.

Respectfully submitted,



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Attorneys for the Coastal Conservation League

August 1, 2024

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioners,)

v.)

Rom Reddy and Renee Reddy,)

Respondents.)

Docket No. 24-ALJ-07-0232-CC

NOTICE OF HEARING

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a request for contested case hearing by Respondents challenging the administrative order issued by the South Carolina Department of Environmental Services (Department) finding Respondents unlawfully constructed a structure in beaches critical area in violations of its cease-and-desist directives, statutory law and regulations.

IT IS ORDERED that a hearing on the merits of this action is scheduled to begin before the undersigned Judge at **10:00 a.m. on Tuesday, February 25, 2025**, and conclude on **Thursday, February 27, 2025**, at the ALC, located at 1205 Pendleton Street, Edgar A. Brown Building, Second Floor, Suite 224, Columbia, South Carolina. All parties shall be present in the courtroom **thirty (30) minutes prior to the hearing** so the original of each exhibit can be marked by the party intending to introduce it into the record at the hearing. During this time, the parties may also share exhibits.

Additionally, the parties shall take note of the following:

1. This hearing will be conducted in accordance with the Rules of Procedure for the Administrative Law Court (SCALC Rules), a copy of which is available from the Clerk of Court or on the Court's website, www.scalc.net.
2. Unless otherwise determined by the presiding Judge, the hearing will proceed as follows:



ROA 000286

- a. Call of the case;
 - b. Motions and other preliminary matters;
 - c. Stipulations, agreements, or consent orders entered into the record;
 - d. Opening statements, with the party requesting the contested hearing proceeding first;
 - e. Presentation of evidence;
 - f. Final arguments, with the party requesting the contested hearing opening and closing.
3. Parties shall bring to the hearing all documents, records, and witnesses needed to present the parties' cases. All exhibits moved for introduction at the hearing must be originals. Upon good cause shown at the hearing, copies may be substituted for original exhibits as provided in the South Carolina Rules of Evidence (SCRE).
Note: If special equipment is required for the presentation of evidence, the party presenting the evidence is responsible for obtaining the equipment and its custody.
4. Subpoenas are available to the parties, pursuant to section 1-23-320(d) of the South Carolina Code (Supp. 2023) and SCALC Rule 22, to compel the attendance of witnesses or the production of documents at the hearing. The parties are responsible for the service of subpoenas.
5. **Failure by a party to appear at the hearing may result in:**
 - a. A finding that the party who fails to appear does not object to the relief of which notice has been given;
 - b. Dismissal of the case of the party who fails to appear;
 - c. Exclusion of evidence proffered by the party who fails to appear; or
 - d. Such other rulings as are deemed appropriate by the presiding judge.
6. For good cause shown, the parties may request a continuance no later than 24 hours prior to the scheduled hearing date. Failure to timely request a continuance may result in the imposition of court costs and court reporter fees.
7. In the case of settlement or dismissal, failure of the parties to inform the Court before the scheduled hearing that the hearing is not necessary may result in the imposition of court costs and court reporter fees.

8. An attorney representing a party must file a Notice of Appearance within ten (10) days of service of this Notice, unless previously filed with the Court. *See* SCALC Rule 8(B)

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Ralph K Anderson III". The signature is written in a cursive, flowing style.

Ralph King Anderson, III
Chief Administrative Law Judge

August 7, 2024
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of)
Environmental Services and South Carolina)
Coastal Conservation League,)
)
Petitioners,)
)
v.)
)
Rom Reddy and Renee Reddy,)
)
)
Respondents.)
_____)

Docket No. 24-ALJ-07-0232-CC

AMENDED NOTICE OF HEARING

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a request for contested case hearing by Respondents challenging the administrative order issued by the South Carolina Department of Environmental Services (Department) finding Respondents unlawfully constructed a structure in beaches critical area in violations of its cease-and-desist directives, statutory law and regulations.

A hearing was originally scheduled for February 25-27, 2025. On November 25, 2024, the parties filed a Consent Motion for Entry of Proposed Second Amended Scheduling Order asserting that the parties are still conducting depositions and need additional time to prepare this case for trial. Thus, the parties request the hearing be continued no earlier than April 29, 2025. Upon consent of the parties,

IT IS ORDERED that the hearing scheduled for February 25-27, 2025, is **RESCHEDULED** for May 20-22, 2025.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 5, 2024
Columbia, South Carolina



ROA 000289

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

	)	Docket No.: 24-ALJ-07-0232-CC
	)	
South Carolina Department of Environmental	)	
Services and South Carolina Coastal	)	
Conservation League,	)	
	)	Respondent's Motion for Summary
Petitioners,	)	Judgment
	)	
vs.	)	
	)	
Rom Reddy,	)	
	)	
Respondents.	)	
	)	
	)	

Pursuant to Rule 19.A of the Rules of Procedure for the Administrative Law Court, Respondent Rom Reddy ("Respondent") moves for summary judgment invalidating as a matter of law an Administrative Order seeking to hold Respondent liable for unlawful construction of a structure in Beaches Critical Area on the following grounds:

1. The plain and ordinary meaning of the South Carolina Coastal Tidelands and Wetlands Act restricts the Department's permitting authority over Beaches Critical Area to areas seaward of the setback line;
2. The Department's practice of enforcement in Beaches Critical Area landward of the setback constitutes a "regulation" which was not promulgated in compliance with the Administrative Procedures Act prior to the alleged violations; and
3. "Beaches Critical Area," as applied in this case, is unconstitutionally vague and therefore the Department's enforcement against Respondent is void.



Undisputed Material Facts

On July 1, 2024, the Department of Environmental Services (“Department” and formerly the Department of Health and Environmental Control or “DHEC”) issued Administrative Order No. AF-0000960 against Respondent (“Administrative Order”).¹ The Administrative Order alleges Respondent violated the South Carolina Coastal Tidelands and Wetlands Act Section 130(A) and (C) for failure to obtain a Critical Area permit for “alteration/utilization” of “beaches critical area” by construction of a concrete structure landward of the state-designated jurisdictional setback line.² The structure was commenced in late 2023 and completed in March of 2024. For purposes of this Motion, Respondent accepts and incorporates the Findings of Fact as stated in the Administrative Order. *See* Ex. 1 at ¶ 1-69.

Department reliance on S.C. Code Ann. Section 48-39-130(A) and (C) makes sense only if this Court ignores other provisions of the Act and Department’s implementing regulations. Because a proper reading of the Act and Department regulations implementing the Act deprives the Department of jurisdiction, the Administrative Order must be dismissed.

Applicable Law

The South Carolina Coastal Tidelands and Wetlands Act (“Act”) grants the Department authority to permit alteration or utilization (including construction) in “critical areas.” S.C. Code Ann. § 48-39-10, *et seq.* The Act creates four critical areas; relevant here are “beaches” and the “beach/dune system.” S.C. Code Ann. § 48-39-10(J). Read in isolation, erection of a structure in these critical areas is unlawful without a Department-issued permit. S.C. Code Ann. § 48-39-130.

¹ A copy of the Administrative Order is attached hereto as **Exhibit 1**.

² *See, e.g.*, DHEC’s Petition for Injunctive Relief, *S.C. Dep’t of Health and Env’t Control v. Rom Reddy and Renee Reddy*, ¶ 10 and attached Affidavit of Matt Slagel, ¶ 21, Case No. 24-ALJ-07-0032-IJ (filed in ALC on Feb. 9, 2024) (“Although the hard erosion control structure . . . was installed landward of the beach/dune critical area defined by the jurisdictional lines, it was nonetheless in the beaches critical area.”).

“Beaches” critical area means “those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established” (“Beaches Critical Area”). S.C. Code Ann. § 48-39-10(H). The Act and implementing regulations do not define key terms in the definition, including, “periodic inundation,” “tidal and wave action,” “nonlittoral vegetation,” and “established.” The “beach/dune system” “is the area from the mean high-water mark to the setback line as determined in Section 48-39-280” (“Beach/Dune System Critical Area”). S.C. Code Ann. § 48-39-10(J)(4); *cf.* § 48-29-270(5).

Department regulations implementing the Act are contained in S.C. Code Ann. Regs. Chapter 30 and include a “Statement of Policy” (Regulation 30-1); “Critical Area Boundaries” (Regulation 30-10); “Project Standards for Beaches and the Beach/Dune System” (Regulation 30-13); and the State’s Beachfront Management Plan (Regulation 30-21 (hereinafter the “Beach Management Plan”)).³ The Critical Area permitting program is administered by the Department’s Bureau of Coastal Management (“Bureau”), formerly the Office of Ocean and Coastal Resource Management (“OCRM”).

Arguments

I. Plain and Ordinary Meaning of the South Carolina Coastal Tidelands and Wetlands Act and Implementing Regulations Restricts Department Permitting Authority to Areas Seaward of the Setback Line.

The Act and implementing regulations limit the geographic jurisdiction and authority of the Department over Beaches Critical Area to those areas seaward of the prescribed setback line:

When construing a statute, a court must seek to ascertain and effectuate legislative intent. The cardinal rule of statutory construction is that words used in a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the operation of the statute. The language must be

³ Because regulations were amended during enforcement of this case (but after alleged violations), the regulations as they existed at the time of the alleged violations are attached hereto as **Exhibit 2**.

read in a sense which harmonizes with its subject matter and accords with its general purpose.

Koenig v. S.C. Dep't of Pub. Safety, 325 S.C. 400, 403-04, 480 S.E.2d 98, 99 (Ct. App. 1996) (citations omitted). The Supreme Court of South Carolina recently noted “[d]eference to an agency’s interpretation is not mandatory.” *Davis v. S.C. Dep’t Corrections*, 444 S.C. 138, 150, 906 S.E.2d 569, 575 (2024); *see also Colonial Pipeline Co. v. S.C. Dep’t of Revenue*, 443 S.C. 448, 458-59, 905 S.E.2d 129, 134 (Ct. App. 2024) (reviewing issue of statutory interpretation pursuant to principles espoused in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S.Ct. 2244 (2024)).

A. The Act establishes the setback line as the landward extent of the Department’s permitting authority.

In 1977, the General Assembly enacted the Act. Under the Act, “no person shall utilize a critical area. . . unless he has first obtained a permit” and “no person shall . . . erect any structure or in any way alter any critical area without obtaining a permit from the Department.” S.C. Code Ann. § 48-39-130(A), (C). At the time of enactment, “critical area” included “beaches” and the “primary ocean front sand dune.”⁴ In 1988, the General Assembly passed the Beachfront Management Act, which replaced “primary ocean front sand dune” with the “beach/dune system” and corresponding setback line.⁵ The National Oceanic and Atmospheric Administration (NOAA), the agency responsible for approving South Carolina’s coastal program, understood the creation of the setback line to expand the Department’s jurisdiction.⁶

⁴ A copy of S.C. Code Ann. § 48-39-10 effective 1977 is attached hereto as **Exhibit 3**.

⁵ A copy of S.C. Code Ann. § 48-39-10 effective 1988 is attached hereto as **Exhibit 4**.

⁶ *See* Nat’l Oceanic and Atmospheric Admin. (NOAA), Final Findings of Approvability (Feb. 15, 1989), attached hereto as **Exhibit 5**.

Rather than defining what it means to “utilize” or “alter” a critical area, or what it means to “erect” a structure, the Act restricts the Department’s permitting authority by explicitly listing what is prohibited: “[n]o new erosion control structures or devices are allowed seaward of the setback line except: [listing exceptions].” S.C. Code Ann. § 48-39-290(B)(2)(a). “All other construction or alteration between the baseline and setback line requires a department permit.” S.C. Code Ann. § 48-39-290(B)(4). No comparable provision of the Act requires a permit for projects located landward of the setback line.

Section 280 of the Act implements the statute’s “preservation policy” applicable to “beaches” (not the “beach/dune system.”). S.C. Code Ann. § 48-39-280(A). This “Beach Preservation Policy” requires the Department establish the setback line as part of the State’s Beach Management Plan for all Beaches Critical Areas along the coast of South Carolina. S.C. Code Ann. § 48-29-280(B). In turn, the Beach Management Plan states: “The [Department]’s permitting jurisdiction on beaches is determined by the location of the setback line.” S.C. Code Ann. Regs. 30-21.H(3). Accordingly, the plain language of the Act precludes Department permitting authority for projects in Beaches Critical Area landward of the set back line.

This Court addressed how to properly read the Act in *Walldorf v. S.C. Dep’t of Health and Env’t Control*, 2011 WL 2413301, Docket Nos. 11-ALJ-07-0002-CC through 11-ALJ-07-0004-CC (Mar. 28, 2011). *Walldorf* stands for the simple proposition that single provisions of the Act may not be read in isolation, and as a result, alteration and utilization activities must be listed in Section 290 to be subject to the Department’s permitting authority. In *Walldorf*, this Court addressed permitting of a structure between the baseline and setback line pursuant to Section 290(B), which lists requirements for certain listed structures, including a catch-all requirement of a permit for “all other construction or alteration between the baseline and setback line.” *Id.* at *5-8. The Court found

“the phrase ‘all other’ in Section 48-39-290(B)(4) clearly refers to construction and alteration activities between the baseline and setback line that are not specifically set forth in subsections (1) through (3) of Section 48-39-290(B).” *Id.* at *7. “Therefore, pursuant to the expression *unius est exclusio alterius* canon, the construction activities . . . that *are* expressly enumerated [in subsections (1) through (3) of Section 290(B)] . . . do not require a permit since they are not mentioned in Section 48-39-290(B)(4).” *Id.*

By including in Section 290 statutory language restricting construction and alteration in the areas between the baseline and setback line and excluding any similar restriction for projects landward of the setback line, here, the General Assembly evidenced its intent that Department permitting authority is restricted by the setback line.⁷ “Because requiring a permit is not an inconsequential matter, the General Assembly’s failure to mention a permitting requirement . . . was doubtfully due to inadvertence.” *Id.* at *6.

B. The Act establishes a Beach Preservation Policy and implements the Policy in regulation and the Beach Management Plan, which restrict Critical Area permitting to areas seaward of the setback line.

Put simply, the setback line has no purpose if it does not establish and delineate the landward extent of the Department’s permitting authority.⁸ The General Assembly intended the

⁷ Similarly, Section 280 provides myriad procedural requirements for establishment of the baseline and setback line, including public notice and participation. *See* S.C. Code Ann. § 48-29-280(D)(1)(a)-(e). There is no equivalent procedural protection for Beaches Critical Area under the Department’s interpretation that “beaches” reach landward of the setback line. The General Assembly’s failure to provide procedural standards for Beaches Critical Area reflects intent permitting over Beaches be restricted by the setback line and subject to its procedural protections – not that the General Assembly intended a purely discretionary permitting scheme free of public notice and participation.

⁸ *See, e.g.*, the Final Report of the Department-organized Beachfront Jurisdictional Lines Stakeholder Workgroup at 1 (May 2019), attached hereto as **Exhibit 6**; (“The purpose of these jurisdictional lines is to delineate the extent of DHEC OCRM’s direct permitting authority for activities within the defined beaches and beach/dune system critical areas.”).

setback line to be the “end-all, be-all” of beachfront permitting. Were that not true, the statute would say so.

The Act declares State policies related to the Coastal Zone, including the requirement to “formulate a comprehensive beach erosion and protection policy including the protection of necessary sand dunes.” S.C. Code Ann. § 48-39-30(B)(4). The Act vests the Department with the power to “promulgate necessary rules and regulations to carry out the provisions of this chapter.” S.C. Code Ann. § 48-39-50(E). The Department must administer its regulatory authority “in accordance with the provisions of [the Act] **and rules and regulations** promulgated thereunder.” S.C. Code Ann. § 48-39-70(A) (emphasis added). The Act further instructs the Department to “[d]evis[e] a method by which the permitting process shall be streamlined and simplified so as to avoid duplication.” S.C. Code Ann. § 48-39-80(B)(10).

The Act requires several Department actions to implement the Beach Preservation Policy. *See* S.C. Code Ann. § 48-39-280. “To implement the beach preservation policy . . . a setback line must be established . . . based upon the best historical and scientific data adopted by the Department as a part of the State Comprehensive Beach Management Plan.” S.C. Code Ann. § 48-39-280(B). Department regulations effectuate its “responsibility to implement the policy of beach preservation by designating a baseline and setback line. . . [.]” and “are to be read as part of, and to be construed with, the policies set forth in the South Carolina Coastal Management Program.” S.C. Code Ann. Regs. 30-1.A(3). Because Section 280 is restricted to “beaches,” no part provides permitting authority for areas other than for Beaches Critical Area.

1. Regulation 30-10.B.

The Department implements the Beach Preservation Policy pursuant to Regulatory Chapter 30. The regulations specify “Critical Area Boundaries” applicable to Beaches Critical Area:

Beaches and Beach/Dune System: The Department has permitting authority over **beaches and the beach/dune system**. In determining the boundaries of **this critical area**, the Department will be guided by Section 48-39-270, Section 48-39-280, and Section 48-39-360.

S.C. Code Ann. Regs. 30-10.B (emphasis added). This regulation has not changed since 1999. *See* 23 S.C. Reg. 104, 130 (June 25, 1999) (“1999 Final Rule”).⁹ Parsing Regulation 30-10.B accurately is crucial to this case.

First, Regulation 30-10.B does not merely list certain “Critical Area Boundaries” for clarification elsewhere; it establishes the Department’s “Critical Area Boundaries” for “**permitting authority** over beaches and the beach/dune system.” *Id.* (emphasis added). By honing in on “permitting authority,” the regulation does not dictate whether an area is a Critical Area, but rather whether projects in a specific critical area (e.g. those within the Beaches Critical Area) require a permit. Therefore, regardless of whether an area meets the definition of Beaches Critical Area, the Department’s permitting authority in Beaches stops at (i.e. is “boundaried” by) the statutory sections cited therein.

Second, Regulation 30-10.B treats Beaches and Beach/Dune System Critical Areas as a single Critical Area for purposes of “permitting authority,” which was the Department’s intent when Regulation 30.10.B was promulgated in its current form. *See* Ex. 7 at 130. The regulation could not be more explicit: the Beaches Critical Area and Beaches/Dune System Critical Areas fall into one Critical Area (i.e. “this critical area”) for purposes of the Department’s permitting authority. *Id.*

⁹ Relevant excerpts of the State Register are attached hereto as **Exhibit 7**. For context, the Department promulgated the 1999 Final Rule in the wake of a 1998 Administrative Law Court decision allowing the Department to enforce jurisdiction over Beaches Critical Area landward of the setback line. *See Summer House Horizontal Prop. Regime v. S.C. Dep’t of Health and Env’t Control*, 1998 WL 268396, Docket No. 97-ALJ-07-0403-CC & -0407-CC (Admin. L.J. Div.). The 1999 Final Rule reflects the Department’s contemporaneous understanding *Summer House* was wrong and inconsistent with statutory intent, hence the inclusion of Beaches Critical Area in Regulation 30-10.B.

Third, Regulation 30-10.B lists three statutes to guide the Department's permitting authority and only one of those sets geographic jurisdictional lines for Beaches. *Id.* Section 280 of the Act requires the Department establish a setback line for the purposes of "Beach" Critical Area preservation (not preservation of the Beach/Dune System Critical Area). *See* S.C. Code Ann. § 48-29-280(A), (B) (establishment of baseline and setback line only for Beaches); *see also* § 48-29-270 (definitions) *and* § 48-29-360 (inapplicable exception to permit requirement).

Regulation 30-10.B therefore requires the Department's permitting authority over Beaches Critical Area be limited to the setback line. Implementing Section 48-39-280(B), the Department lacks jurisdiction to proceed with the Administrative Order.

2. Regulation 30-13.

Moreover, Regulation 30-13, titled "Specific Project Standards for Beaches and the Beach/Dune System," confirms Beaches Critical Area is restricted by the setback line: "No new erosion control structures or devices are allowed seaward of the setback line except to protect a public highway. . . ." Ex. 2 at Reg. § 30-13.N(3)(a) (effective until May 24, 2024). After the alleged violations which are the subject of the Administrative Order, the Department amended this regulation to change "seaward of the setback line" to "within the beaches and/or beach/dune system critical areas." *See* 48 S.C. Reg. 88, 104 (May 24, 2024).¹⁰ Prior to May 24, 2024, no provision of Regulation 30-13 gave permitting authority to the Department landward of the setback line.

¹⁰ Relevant excerpts are attached hereto as **Exhibit 8**.

3. Regulation 30-21.H.

Regulatory Chapter 30 also brings to fruition the “comprehensive, long-range beach management plan” required by statute.¹¹ The General Assembly found the “long-range comprehensive beach management plan is needed . . . to protect and manage effectively the beach/dune system.” S.C. Code Ann. § 48-39-250(11); *cf.* § 48-39-260(2).

The Beach Management Plan (Regulation 30-21) contains unambiguous instruction on the scope of Beaches Critical Area permitting authority:

[The Department]’s permitting jurisdiction on beaches is determined by the location of the setback line. Measured landward from the baseline, the setback line is located at a distance 40 times the annual erosion rate (or at least 20 feet). For instance, if the erosion rate is two feet per year, the setback line is eighty feet landward of the baseline.

S.C. Code Ann. Regs. 30-21.H(3) (emphasis added). The Beach Management Plan also takes care to highlight some of the public notice and procedural safeguards that exist for the setback line, but not for the Department’s interpretation of Beaches Critical Area applied in this case:

The above described [methods for setting and adopting baselines and setback lines] by [the Department] results in a set of maps for each beach which depict line locations, erosion rates and other data. Also, the line reports which describe the procedural methods used to establish the location of the baseline and erosion rates for each beach are available upon request from the [Department] offices.

S.C. Code Ann. Regs. 30-21.H(7); *see also* S.C. Code Ann. § 48-39-280(D) (more procedural safeguards applicable to the Beach/Dune System Critical Area only). This scheme is logical where (1) there is one Critical Area subject to permitting authority – the Beach/Dune System Critical Area; and (2) Beaches Critical Area is a subset of the Beach/Dune System Critical Area.

¹¹ *See* S.C. Code Ann. § 48-39-260(2) (“ . . . the policy of South Carolina is to . . . (2) create a comprehensive, long-range beach management plan. . . .”; § 48-29-320(A) (“The department’s responsibilities include the creation of a long-range and comprehensive beach management plan for the Atlantic Ocean shoreline in South Carolina); *and* § 48-39-320(A)(2) (“The plan must include . . . development of guidelines . . . [for] (b) development of a beach access program to preserve the existing public access . . . (c) maintenance of a dry sand and economically stable beach. . . [and] (d) protection of all sand dunes seaward of the setback line[.]”).

Failure to abide by this scheme for Beaches Critical Areas renders a determination of whether an area is Beaches Critical Area subject to permitting authority entirely discretionary and free of the procedural protections the General Assembly intended to accompany the Beach/Dune System Critical Area, namely public notice and participation. *See* S.C. Code Ann. § 48-29-280(D). Therefore, Department-promulgated regulations, including the Beach Management Plan, confirm the plain and ordinary meaning of the Act: Beaches Critical Area, as a subset of the Beach/Dune System Critical Area, is limited to areas seaward of the setback line, and as a result, summary judgment is required as a matter of law in favor of Respondent.

C. Deposition testimony confirms the Department's interpretation of Beaches Critical Area in this case is not consistent with the "plain and ordinary" meaning of the Act.

The deposition testimony of Mr. Matt Slagel, the Bureau's Beachfront Management Section Manager, shows the Department's position in this case that alteration landward of the setback line requires a permit is not the "plain and ordinary" reading of the Critical Area permitting scheme in that it recognizes (1) the Department's position cannot be read consistently with the Department's regulations; and (2) the Department's regulations cannot be read consistently with the Act.¹²

Asked what "boundaries of the critical area" (referencing the title of Regulation 30-10.B) mean to him, Mr. Slagel responded, "I have no knowledge why this part of the regulation combines those two critical areas . . . I'm relying on statute for where the critical areas are." Ex. 9 at 19:23-20:9.¹³ Asked whether that means the regulation is useless, Mr. Slagel responded, "I don't - - I

¹² A transcript of the deposition of Mr. Slagel is attached hereto as **Exhibit 9**.

¹³ *See also* Ex. 9 at 43:2 to 43:6 (Slagel describing the conflict between Regulation 30-10.B, the statutory definition of "beaches," and Department documents stating, "the purpose of these jurisdictional [base- and setback] lines is to delineate the extent of DHEC/OCRM's direct permitting authority for activities within defined beaches and beach/dune system critical areas": "How it's written in 30-10.B, I - - yes. I - - I can see why you would argue there's a conflict between that and 48-39-10, the definitions.").

wouldn't say any of our regulations are useless. But when there's some sort of question or perceived inconsistency, I - - I believe the Department relies on the statute over the reg." *Id.* at 21:21-22:2.¹⁴ Mr. Slagel continues, admitting he "could see why a homeowner would - would consider [the "beaches" definition as applied to Regulation 30-10.B] vague." *Id.* at 22:17- 23:14.

Mr. Slagel further testified that the Department engaged "an effort to clarify the - the beaches critical area in relation to the beach/dune system critical area." *Id.* at 56:22-57:2. There was a need for clarification because, in part, "[i]t could be confusing, how that specific regulation [30-10.B] lumps the two critical areas into one[.]" *id.* at 57:20-57:22, and then proclaiming Regulation 30-10.B "conflicts with 48-39-10," *id.* at 42:7-43:7 (deposing attorney's language confirmed as "correct" by Mr. Slagel).

Mr. Slagel ignores the obvious: his interpretation of the landward limit of Beaches Critical Area is confusing because it contradicts the Act, the regulations, and the permitting scheme devised by the General Assembly. If the Department acknowledged the plain and ordinary meaning of the Act - beachfront jurisdiction ends at the setback line - there would be no confusion. Because proper application of the Act limits jurisdiction to the setback line, Respondent is entitled to summary judgment as a matter of law.

D. Department interpretive guidance confirms its Critical Area permitting jurisdiction extended landward only to the setback line through January 2023.

The Department published a series of policy and practice requirements for the Act and implementing regulations, which confirm Department's permitting authority terminates at the Act's setback line. And, the Department has had myriad opportunities to provide the public notice

¹⁴ See also Ex. 9 at 88:8 to 88:14 (containing the following exchange on the same issue: "Q: Okay. So the regulation doesn't have any teeth? A: I'm not saying that it doesn't have teeth. But there's - - it - - I - - I admit that it is confusing, that they're lumping two critical areas into one - - Q: Okay. A: - - in this section of the regulation.").

of its new interpretation of the Act, which it did. These policy and practice requirements established the position (correctly) taken by the Department through at least 2023 that the setback line is the landward limit of Beaches Critical Area, hereinafter the “2023 Practice.”¹⁵

The 2023 Practice has its genesis in promulgation of the 1999 Final Rule. *See* Ex. 7. The 2023 Practice of consolidating the Beaches and Beaches/Dune System Critical Area was enforced uniformly from 1999 forward. There are no recorded enforcement actions at the Department for alteration/utilization of a Beaches Critical Area landward of the setback line between 1999 and 2023.¹⁶

Prior to 1999, Regulation 30-10.B established the permitting authority boundaries only for Beach/Dune System Critical Area, not Beaches Critical Area. In response to the 1998 *Summer House* decision, *supra* note 9, the Department revised Regulation 30-10.B to couple Beaches Critical Area with the Beach/Dune System into the same Critical Area for purposes of Department’s “permitting authority” in all Critical Areas. *See* S.C. Code Ann. Regs. 30-10.B. This background lays the foundation for Department guidance following the 1999 Final Rule.

In 2003, the Department, through its Council on Coastal Futures, published a “Fact Sheet” which was intended to be a definitive guide to permitting in critical areas of the State.¹⁷ The Fact Sheet describes only one “beachfront critical area” for Beaches, Beach/Dune System, and adjoining “Coastal Waters” Critical Areas. Ex. 11. Describing “[g]eographic jurisdiction” of the Department’s permitting authority, the Fact Sheet states without reservation, “[t]he landward limit

¹⁵ This Motion juxtaposes the 2023 Practice with the practice enforced against Respondent that Beaches Critical Area may extend landward of the setback line, hereinafter the “Current Practice.”

¹⁶ *See, e.g.*, the transcript of the Department’s Rule 30(b)(6) deposition testimony by Bureau Compliance and Enforcement Section Manager Morgan Flake, attached hereto as **Exhibit 10**, at 46:20-49:8 (Ms. Flake unable to identify any enforcement action in Beaches Critical Area landward of the setback line from 2019 to 2024).

¹⁷ *See* Council on Coastal Futures, **Fact Sheet: Beachfront Management**, (March 7, 2003) (“2003 Fact Sheet”), attached hereto as **Exhibit 11**; *see also* Department, **Council on Coastal Futures** (last visited Feb. 26, 2025), <https://des.sc.gov/programs/bureau-coastal-management/south-carolina-coastal-zone-management-program/council-coastal-futures>.

of [Department] jurisdiction is the setback line, which is mapped by [the Department] based on the long-term erosion rate for each beach.” *Id.*

Beginning in 2017, as part of its duties with respect to setting and the mapping of baselines and setback lines under Section 280 of the Act, the Department issued a series of “Line Reports” for various shorelines across the State, including Isle of Palms, and declared the Current Practice governs Respondent’s property. *See* S.C. Code Ann. Regs. 30-21.H(7) (requirement to make available Line Reports).¹⁸ Specifically, the twice-revised 2019 Line Report for Respondent’s property published the Department’s 2023 Practice as rule of law:

The purpose of these jurisdictional [base- and setback] lines is to implement § 48-39-280(A). . . .

The setback line is the landward line of beachfront jurisdiction. Between the baseline and setback line, the Department exercises regulatory permitting authority.

Ex. 12 at 1.

In 2018, the Department initiated a “Beachfront Jurisdictional Lines Stakeholder Workgroup,” with the express purpose of initiating input into the process of “promulgat[ing] regulations to guide implementation of future [base- and setback] line review processes.”¹⁹ In the early stages, Department staff suggested language for Workgroup informational documents:

The purpose of these [base- and setback] lines is to delineate the extent of DHEC’s direct permitting authority for activities within the defined beach and beach/dune critical areas. South Carolina’s beachfront jurisdictional lines enable DHEC to implement laws and regulations that support the state’s beachfront management goals, and protect vulnerable shorelines and natural ecosystems.

Id.

¹⁸ A copy of the Line Report applicable to Respondent’s property (“IOP Line Report”) is attached hereto as **Exhibit 12**.

¹⁹ *See* email between J. Boynton and E. von Kolnitz (Sept. 4, 2018), attached hereto as **Exhibit 13**.

In its Final Report (“JLWG Final Report”), the Workgroup recited effectively identical language to this email, the 1999 Final Rule, the 2003 Fact Sheet, and the IOP Line Report.²⁰ Nothing in the JLWG Final Report suggests the Department considered areas landward of the setback line as subject to Critical Area permitting. Department representatives Elizabeth von Kolnitz, Matt Slagel, and Jessica Boynton were involved in drafting the JLWG Final Report.²¹ Ms. von Kolnitz later had the Final Report sent to the General Assembly, declaring it to be definitive guidance on how the Department implements its permitting authority under the Act.²²

The Department defended its 2023 Practice until it relented in favor of the Current Practice. In 2019, the Coastal Conservation League initiated a lawsuit which would represent, in Mr. Slagel’s words, “the first time that it really rose to OCRM’s attention that there is this potential issue of beaches critical area landward of the setback line.”²³ This “*Piping Plover*” litigation involved homeowners’ construction of a seawall along Piping Plover Road in Hilton Head, South Carolina. To determine whether a Critical Area permit was required, Mr. Slagel asked:

Is there an aerial photo, site map, or something similar for the area that one of you could email me? **I need to see where the bulkhead will be installed in relation to the DHEC-OCRM setback line** and where equipment will access the site to determine if authorization is needed from my office.^[24]

Upon review of the requested documents, Mr. Slagel stated, “**The proposed project will not require separate authorization** from OCRM.” Ex. 18 (emphasis added). While the Department

²⁰ Compared to the language of Exhibit 13, the JLWG Final Report merely adds “jurisdictional” before the first use of “lines,” and adds “OCRM” after “DHEC.” Ex. 6 at 1.

²¹ See emails between J. Boynton and E. von Kolnitz (Mar. 13, 2019 and Apr. 17, 2019), attached hereto as **Exhibit 14** and **Exhibit 15**.

²² See emails between E. von Kolnitz, R. Caldwell, and Senate and Department staff (May 6, 2019), attached hereto as **Exhibit 16**.

²³ See Department Board hearing transcript (April 11, 2024) attached hereto as **Exhibit 17**, at 88:9-88:22 (also stating, “We’ve taken a closer look at that since that case and that basically where we are here today is we do assert direct critical area permitting authority in the beaches critical area even if it exists landward of the setback line.”).

²⁴ See emails between M. Slagel, R. Browder, B. Ellis, and others (Mar. 13, 2018) (emphasis added), attached hereto as **Exhibit 18**.

later entered a consent order with the homeowners regarding stormwater permitting and associated coastal zone consistency, the Department never required *Piping Plover* landowners to obtain a Critical Area permit because the project was landward of the setback line.²⁵ Coastal Conservation League (“CCL”) agreed with the Department as to the lack of jurisdiction landward of the setback line: “I understand the wall is landward of the jurisdictional lines and above the [mean high water] line, putting it outside of critical area.”²⁶

In late 2019, CCL and a neighbor initiated civil litigation against the Department, alleging the *Piping Plover* project altered Beaches Critical Area without the requisite Critical Area permit.²⁷ Documents produced in this case show the Department and CCL jointly dismissed the *Piping Plover* case upon agreement the Department would promulgate regulations in the future to provide jurisdiction over Beaches Critical Area landward of the setback line:

Leslie, following up our conversation this morning, the below link for the [Beach Preservation] Stakeholder Workgroup Final Report shows their results and recommendations (specifically see pages 24-28). The Notice of Drafting includes Reg. 30-13, so this will allow for revisions like you and Amy talked about during the Piping Plover mediation last march. . . I think things are moving in the right direction, but is this sufficiently satisfactory progress to wrap up the Piping Plover case or do you want to wait until the next legislative session. [²⁸]

Dear Judge Dukes: . . . I am writing to inform the Court of the status of the [Piping Plover] matter. . . . Plaintiffs are seeking a declaration that the Defendant, [DHEC], must assert its jurisdiction over “beaches critical area” . . . Since the mediation, however, Plaintiffs have been made aware of steps that DHEC has taken to move forward with promulgating regulations over “beaches” critical area and has published a Notice of Drafting in the State Register. . . . if regulations are promulgated it would moot the case . . . I have shared this update with opposing counsel who did not indicate any objections to my characterization of the case. [²⁹]

²⁵ See aerial photographs attached hereto as **Exhibit 19** and Consent Order, No. 19-048-W (Aug. 8, 2019) attached hereto as **Exhibit 20**.

²⁶ See emails between E. Cedzo and C. Joyner (May 31, 2018), attached hereto as **Exhibit 21**.

²⁷ See Complaint at ¶ 32-46, *Wells & CCL v. Department*, Case No. 2019-CP-07-02544 (filed Nov. 15, 2019), attached hereto as **Exhibit 22**.

²⁸ See emails between B. Churdar and L. Lenhardt (Feb. 14, 2023), attached hereto as **Exhibit 23**.

²⁹ See Status Update Letter filed by CCL (June 26, 2023), attached hereto as **Exhibit 24**.

We can dismiss this case given the promulgation of the beaches critical area regs. I think we need to do a joint stipulation of dismissal, do y'all agree? [³⁰]

We were thrilled to see our recommendations for regulatory amendments pass . . . the General Assembly. The new regulations shore up the state's jurisdiction over our beaches and close the regulatory gap that led to our challenge to the illegal seawall on Hilton Head Island. With new regulations in effect, we have resolved that controversy. [³¹]

Through 2023, the Department did not interpret the plain meaning of the Act and implementing regulations to provide Critical Area permitting authority landward of the setback line. Confirmed by implementing regulations, the regulatory history, Department guidance, and the Department's actions in and after the *Piping Plover* litigation, the plain and ordinary reading of the Act signals one landward boundary for Beaches Critical Area: the setback line. Therefore, Respondent is entitled to summary judgment finding as a matter of law the Department's enforcement action exceeded the authority of statute and regulations by asserting Critical Area permitting jurisdiction over Beaches Critical Area landward of the setback line.

II. The Department Interpretation that the Act Grants it Critical Area Permitting Authority Over Areas Landward of the Setback Line Constitutes a "Regulation" which Did Not Have Legal Effect at the Time the Alleged Violations Occurred in this Case.

Even if the Department's new interpretation of Beaches Critical Area in this case, the Current Practice, could be justified by statute, the Department's change in policy and practice requirements constitutes a "regulation" for which APA rulemaking is required, including review and approval of the General Assembly.

At some point between 2019 and 2023, the Department changed from a public policy of allowing alterations to shoreline areas landward of the setback line to a covert policy of prohibiting

³⁰ See emails between L. Lenhardt and B. Churdar (June 18, 2024), attached hereto as **Exhibit 25**.

³¹ See email between A. Armstrong and K. Skipper (June 27, 2024), attached hereto as **Exhibit 26**.

alteration of shoreline areas landward of the setback line. This Current Practice was not published as a final regulation until May 24, 2024. *See* Ex. 8 at 88. The Administrative Order alleges violative conduct from September 2023 through April 2024, prior to the effective date of new regulations. Ex. 1 at ¶ 10-62. At all relevant times, the Department maintained those documents which informed the public only of the 2023 Practice, including the 2003 Fact Sheet, the IOP Line Report, and the JLWG Final Report.

While the Department staff attempted to label the new Current Practice a mere “clarification,”³² Department deposition testimony fails to change the underlying conclusion:

- Bureau Compliance and Enforcement Section Manager, Morgan Flake, testified on behalf of the Department that the Current Practice applies across the State and is now “the same for everyone”; Ms. Flake, however, could not identify any enforcement for unpermitted alterations in Beaches Critical Area landward of the setback line in any of the five years prior to enforcement against Respondent. Ex. 10 at 38:13-41:17 and 45:10-49:8.
- The Bureau inspector responsible for Respondent’s property in this case, Jacques Prevost,³³ testified on behalf of the Department that Department staff lack discretion to deviate from the Current Practice and that as an inspector he “appl[ies] it to everything.” Ex. 27 at 85:2-89:22. Yet, Mr. Prevost failed to identify any prior instance of actions for unpermitted alterations on Beaches Critical Area landward of the setback line. *Id.* at 81:4-84:18.
- Bureau Beachfront Management Section Manager, Matt Slagel,³⁴ defended inapplicability of Regulation 30-21.H(3) on grounds it “entered into regulations in the early 1990s and has not

³² *See* Ex. 8 at 94 (listing the change to Regulation 30-13.N(3)(a) as a “revision,” with a description stating, “Amend language to clarify that the Department applies restrictions for erosion control structures consistently within the beaches and beach/dune system critical areas and to conform with the title of R.30-13.”).

³³ A transcript of the Department’s Rule 30(b)(6) deposition testimony by Mr. Prevost is attached hereto as **Exhibit 27**.

³⁴ A transcript of the Department’s Rule 30(b)(6) deposition testimony by Mr. Slagel is attached hereto as **Exhibit 28**.

been updated since whereas other portions of the regulation and statute have been.” Ex. 28 at 54:15-55:11.

- Bureau Coastal Service Section Manager, Jessica Boynton,³⁵ testified on the Department’s behalf the regulations applicable to Respondent “d[id] not include the current scenario [of Beaches Critical Area extending landward of the setback line],” and that the 2023 Practice expressed in the JLWG Final Report is not consistent with the Current Practice. Ex. 29 at 81:19-87-25. Ms. Boynton further noted the General Assembly created the Beach/Dune System and setback line because it “wanted to extend the Department’s authority landward of the beaches critical area. . . . [which] was not considered sufficient.” *Id.* at 110:7-110:19.

- Former Bureau Chief (retired January 2023), Elizabeth von Kolnitz,³⁶ stated the 2023 Practice expressed in the JLWG Final Report is “a mistake” and “very poorly worded.” Ex. 30 at 81:17-83:8.

It is not disputed (nor can it be) the Current Practice was not subject to APA rulemaking procedure until after alleged violations in the underlying Administrative Order in this case. Accordingly, as a matter of law, the 2023 Practice is the only legal requirement in effect at the time Respondent constructed a structure landward of the setback line and thereby, the Administrative Order must be vacated for lack of jurisdiction.

A. Applicable Law.

Justice Kitteridge has described the importance of following proper rulemaking procedures when it comes to an administrative agency’s enforcement actions, policies, and practice requirements, like the Current Practice:

³⁵ A transcript of the Department’s Rule 30(b)(6) deposition testimony by Ms. Boynton is attached hereto as **Exhibit 29**.

³⁶ A transcript of the deposition of Ms. von Kolnitz is attached hereto as **Exhibit 30**.

The ever increasing reach of the so-called Fourth Branch of government presents a threat to our civil society, especially the principle of separation of powers. If the executive branch, through unelected bureaucrats and seemingly countless administrative agencies, is going to set policies having the force of law, the judicial branch must insist on clear delegation from the legislative branch and strict compliance with the APA, including submission of administrative policies having the force and effect of law to the legislature for review.

Joseph v. S.C. Dep't of Labor, Licensing, and Reg., 417 S.C. 436, 465-66, 790 S.E.2d 763, 778-79 (2016) (Kitteridge, J. concurring) (majority holding agency enforcement action must be dismissed because agency's interpretation of implementing statute in "Position Statement" was not promulgated as a regulation at the time of violative conduct).

Specifically, the APA requires "all regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect" to be filed with the Legislative Council and published in the State Register. S.C. Code Ann. § 1-23-40(1). In turn, "'Regulation' means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law." S.C. Code Ann. § 1-23-10(4) (omitting list of things that are not a "regulation," primarily irrelevant, agency-specific actions).

"Whether a particular agency creates a regulation or simply announces a general policy statement depends on whether the agency action establishes a 'binding norm.'" *Joseph*, 417 S.C. at 454 (citing *Home Health Serv., Inc. v. S.C. Tax Comm'n*, 312 S.C. 324, 328, 440 S.E.2d 375, 378 (1994). To determine whether an action is a "binding norm,"

[t]he "key inquiry" is "the extent to which the challenged policy leaves the agency free to exercise its discretion to follow or not follow that general policy in an individual case, or on the other hand, whether the policy so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule's criterion. As long as the agency remains free to consider the

individual facts in the various cases that arise, then the agency action in question has not established a binding norm.”

Id. (quoting *Sloan v. S.C. Bd. of Physical Therapy Examiners*, 370 S.C. 452, 491, 636 S.E.2d 598, 618 (Toal, C.J., dissenting) (quoting *Ryder Truck Lines, Inc. v. U.S.*, 716 F.2d 1369, 1377 (11th Cir. 1983)). “When there is a close question whether a pronouncement is a policy statement or a regulation, the [agency] should promulgate the ruling as a regulation in compliance with the APA.” *Id.* (quoting *Home Health Serv., Inc.*, 312 S.C. at 329, 440 S.E.2d at 378).

B. Development of the Current Practice.

The Current Practice is being used to prosecute Respondents in this case and is a regulation. The Administrative Order was issued July 1, 2024. Ex. 1 at p. 29. Viewing facts most favorable to the Department, the violative conduct alleged in the Administrative Order latest in time would have occurred on or around September 7, 2023. *Id.* at ¶ 10.

At the same time, the Department engaged in APA rulemaking procedures (a fallout from *Piping Plover*) to effectuate the Current Practice pursuant to which the Department asserts jurisdiction over Respondent. See 47 S.C. Reg. 22 (July 28, 2023) (Proposed Rule).³⁷ In June of 2023, the Department Board held a public hearing for initial approval to promulgate regulatory amendments (“June Board Hearing”).³⁸ The Board held a hearing for approval of final regulation in October 2023 (October Board Hearing”).³⁹ Certain Department Board members raised concerns the new regulations would expand jurisdiction, which were reiterated in the October Board Hearing. Ex. 32 at 19:24-21:24, 23:20-24:17, 26:2-29:5, 30:8-30:16, & 36:22-38:10; Ex. 33 at 129:13-130:6.

³⁷ Relevant excerpts are attached hereto as **Exhibit 31**.

³⁸ A transcript of the June Board Hearing is attached hereto as **Exhibit 32**.

³⁹ A transcript of the October Board Hearing is attached hereto as **Exhibit 33**.

In response, then Bureau Chief, Ms. von Kolnitz, sent the Board a letter concerning “the existing authority over the beaches critical area landward of the setback line” (“Letter to the Board”).⁴⁰ The Letter to the Board describes in detail the Current Practice and attempts to couch it as a mere clarification of existing regulations:

OCRM is not expanding its authority through the proposed regulations to R.30 as OCRM has existing authority and a mandate to exercise jurisdiction over the beaches critical area. This is true even when the beaches critical area is landward of the setback line, as it is statutorily defined as a separate and distinct critical area.

Ex. 34.

The Current Practice perpetuates two flaws in the APA procedures: (1) it deftly omits the plain and ordinary reading of Department regulations, namely the Act’s clear limits to the Department’s permitting authority in Sections 280 and 290, the 1999 addition of Beaches Critical Area to the permitting boundaries of Regulation 30-10.B, and Regulation 30-21.H(3)’s unambiguous instruction to limit permitting in Beaches Critical Area to the setback line; and (2) it is irreconcilable with the 2023 Practice. *Compare* Letter to the Board *with* 2003 Fact Sheet; IOP Line Report; *and* JLWG Final Report. The new regulation attempts to fix flaws the Department found in the 2023 Practice, which the Department may do, subject to the bounds of the APA. What the Department may not do, however, is cast aside the 2023 Practice before the Current Practice is law.

The regulatory amendments reflecting the Current Practice stem from the Department-organized Beach Preservation Stakeholder Workgroup, which focused on implementing a new Beach Preservation Policy.⁴¹ Not satisfied with Section 280’s limits on the Beach Preservation Policy, the Workgroup, by its fourth meeting, began devoting substantial time to discussing “[t]he

⁴⁰ A copy of the Letter to the Board is attached hereto as **Exhibit 34**.

⁴¹ A copy of the Beach Preservation Stakeholder Workgroup Final Report (“BPWG Final Report”) is attached hereto as **Exhibit 35**.

State's Role in the Built Environment," meaning Critical Area permitting beyond the traditional boundary of the setback line.⁴² The "Workgroup Discussion" portion of the Department's summary of the fourth meeting reads:

The current definition of "beaches" is inadequate and there is a lack of regulatory specifics to support the state's authority in "beach" areas that are landward of the jurisdictional lines.

- **Recommendation:** DHEC OCRM should assert its regulatory authority in areas that meet the definition of beach/dune system but are currently landward of the setback line (i.e., "beaches critical area").

Defining boundaries based on stabilized vegetation becomes problematic over the long-term as geomorphologic features change. With this in mind, considering jurisdiction between beachfront structure (house, pool) and the mean high-water line for erosion control structures may be an option.

- **Recommendation:** No new erosion control structures should be allowed within the beaches critical area.

Ex. 36.

For the fifth Workgroup meeting, the Department drafted a "process flow" comparable to an agenda for discussion with the workgroup attendees.⁴³ This process flow includes a section devoted to "South Carolina Beaches Critical Area" and notes the changing practice requires a regulation:

Keep in Mind – We would need to promulgate regulation if the [Workgroup] wants OCRM to exert authority in the beaches critical area [landward of the setback line]. Currently no specifics in the policy. There would need to be a recommendation specific to this to move forward, ie '[Workgroup] recommends that OCRM promulgate regulation to x,y,z...'

⁴² See Department Meeting Summary (Sept. 21, 2022), attached hereto as **Exhibit 36**.

⁴³ See Department "Meeting #5 Process Flow" (Oct. 25, 2022), attached hereto as **Exhibit 37**.

Ex. 37 (emphasis added).⁴⁴ The Meeting Summary for the fifth meeting contains one recommendation on this issue: “Change definition of beach/dune system or include ‘beaches critical area’ in existing project standards [i.e. Regulation 30-13].”⁴⁵

The same pattern continued in the sixth meeting, the summary for which notes:

Workgroup members were asked to consider the following:

- Erosion Control Structures
 - Current Law
 - Prohibits new erosion control structures seaward of the setback line.
 - Scenarios to consider within Beaches Critical Area
 - New erosion control structures within the beaches critical area that are landward of the setback line

Workgroup Recommendation

Prohibit new erosion control structures in the beaches critical area. The same, if not greater, provisions that apply to erosion control structures seaward of the setback line should also apply to those within the beaches critical area. Really more of a clarification of legislative intent to capture this gap area. [⁴⁶]

The summary correctly identified “Current Law” when written; the obvious question is why different law applied to Respondent’s erosion control structure.

By January 2023, the Beach Preservation Stakeholder Workgroup issued its Final Report. See Ex. 35. With respect to Beaches Critical Area, the Final Report’s ultimate conclusion is: “DHEC OCRM should assert jurisdiction in the beaches critical area and [] additional specificity is needed in the regulations to support this authority.” Ex. 35 at Section titled, “Beaches Critical Area.” “[W]hile the title of S.C. Code Ann. Regs. 30-13 includes both beaches and beach/dune

⁴⁴ See also Department “Recommendation Analysis” of Workgroup recommendations, attached hereto as **Exhibit 38** (“OCRM Needs Regulations to Support its Jurisdiction in ‘beaches’ critical area (already in statute)[.]”); and Ex. 28 at 125:8-125:24 (“I don’t think the regulation package needed to be successful. It needed to be promulgated in order for us to have jurisdiction in beaches critical area.”)

⁴⁵ See Department Meeting Summary (Oct. 25, 2022), attached hereto as **Exhibit 39**.

⁴⁶ See Department Meeting Summary (Nov. 17, 2022), attached hereto as **Exhibit 40**.

system critical areas, the language within that regulation primarily focuses on the beach/dune system critical area, making it uncertain if erosion control structures are also prohibited in beaches critical areas.” *Id.* at Section titled, “Erosion Control Structures.” The Final Report concludes its discussion of Beaches Critical Area:

Recommendation 6: Prohibit New Erosion Control Structures within the Beaches Critical Area

The Workgroup recommends that new erosion control structures should be prohibited within the beaches critical area landward of the setback line. The same provisions that apply to new erosion control structures within the beach/dune system (seaward of the State’s jurisdictional setback line) should also apply to those within the beaches critical area.

Id. at Section titled, “Beaches Critical Area.” Had Current Practice been a mere “clarification” of the 2023 Practice, Recommendation 6 would not be necessary.

C. Promulgation of the Current Practice.

The Department promulgated regulatory amendments as a result of Beach Preservation Stakeholder Workgroup recommendations as prompted by the *Piping Plover* settlement. *See* Ex. 31 at 23 (“[Workgroup] recommendations and findings were the primary basis for developing the proposed amendments. . . .”). The proposed rule classifies the changes to Regulation 30-13.N(3)(a) as “revision” to “amend language to clarify [the Department] applies restrictions for erosion control structures consistently within beaches and beach/dune system critical areas.” *Id.* at 27-28. The “Determination of Need” bases the regulatory amendments on a need for “consistency” and “clarity.” *Id.* at 30. And, in total the new regulation amended more than 35 provisions of Regulation 30 in accomplishing its goal of rewriting Department jurisdiction. Ex. 8 at 90-96 (table of amendments).

The Department explained the proposed Current Practice regulations in the June and October Board Hearings. *See* Ex. 32 and 33. Asked to address whether pre-proposal Regulation

30-13 “conflicts” itself by governing Beaches Critical Area yet limiting its application to the setback line, then-Bureau Chief von Kolnitz stated:

So it’s not that it necessarily conflicts; it’s just that the [Regulation 30-13] standards were very specifically stated in the regulation that these things happened seaward of the setback. **Because the setback was intended, the way we read it, to have been the most landward critical area.** We are finding that the setback is not the most landward critical area that we regulate. The beaches has become the most landward critical area in some places. So [we attempted] to clarify the language now to make it consistent with the headings so that these activities are regulated in the beaches and beach dunes system where we already have jurisdiction.

Ex. 32 at 46:13-47:2 (emphasis added).

Amy Armstrong, a member of the Beach Preservation Stakeholder Workgroup and counsel to Intervenor Coastal Conservation League in this case, spoke in support of the regulatory package Ex. 33 at 110:6-118:5. Ms. Armstrong noted, “there’s this area of beaches critical area that has not been clearly defined how the Agency is going [to regulate].” *Id.* at 113:7-113:10. “[T]he recommendations that came out of the [Beach Preservation Stakeholder Workgroup] were to make sure we include that - - that beaches critical area when the Agency is making permitting decisions.” *Id.* at 113:11-113:14.

Final regulations codifying the Current Practice became effective May 24, 2024. *See* Ex. 8 at 88. Important amendments include (1) addition of definitions for “beaches” and “beach preservation” in R. 30-1.D(5) and (7); and (2) “amend[ment of] language [of R. 30-13.N(3)(a)] to clarify that the Department applies restrictions for erosion control structures consistently within beaches and beach/dune system critical areas . . .” *Id.* at 90, 94. In reality, the new rules can be summarized by one change: transformation of “seaward of the setback line” to “within the beaches and beach/dune system critical areas.” *See e.g., id.* at 110-11, 30-13.N(3)(a).⁴⁷

⁴⁷ Quizzically, the new regulations do not change Regulation 30-10.B (directing owners of potential Beaches Critical Area to statutory provisions on the baseline and setback line) or Regulation 30-21.H(3) (“[The Department]’s permitting jurisdiction on beaches is determined by the location of the setback line.”).

The Department's acknowledgment of this seismic shift brought by the Current Practice does not end with the regulations. In July of 2024, two months after the new regulations took effect, and after the date of this Administrative Order, Bureau Chief Christopher Stout emailed a potential permittee that the Department's General Permits needed to be updated to reflect the regulatory amendments and such changes must be made before issuing a permit:

I wanted to let you know that we are working to make an update to our [General Permit] for beach renourishment.

The current [General Permit] references that the work is allowed seaward of the Setback and Baseline, but considering the efforts we recently went through with updating our regulations to provide clarification on our beachfront jurisdiction and the [General Permit] needs to be updated to reflect that, as well. We are planning to public notice an amended [General Permit] by the end of the week which will reference the work being allowed within the beaches and beach/dune system critical areas. [⁴⁸]

D. The Current Practice is a "Binding Norm."

The Current Practice is a "binding norm," and therefore a "regulation," because it leaves the Department no discretion to follow or not follow the Practice and application of the Practice merely requires a determination the area is Beaches Critical Area. *See Joseph*, 417 S.C. at 454 (test for "binding norm").

The Department's Rule 30(b)(6) witnesses and former Bureau Chief von Kolnitz **all** testified the Department staff lacks discretion to deviate from the Current Practice in that any and every regulated project in Beaches Critical Area requires a permit. Ms. Von Kolnitz sent the Letter to the Board on November 13, 2023, expressing the Current Practice of the Department in some detail, later testifying that letter to be binding on Department staff and stating the staff had no discretion but to enforce the law as expressed in the letter. *See* Ex. 34 (Letter to the Board) *and* Ex.

⁴⁸ *See* emails between C. Stout and D. Kerr (July 23, 2024), attached hereto as **Exhibit 41**.

30 at 22:18-29:2 and 34:23-37:15 (Ms. von Kolnitz testifying the Current Practice is applied consistently across the State).

The Department staff echoed Ms. Von Kolnitz's adoption of the November 13, 2023 Letter to the Board as the Current Practice. *See* Ex. 28 at 17:14-17:22 & 142:21-144:1 (Mr. Slagel testifying on the Department's behalf that the Current Practice and underlying principles are binding on the regulated community at large); Ex. 10 at 38:5-41:17 (Ms. Flake testifying on the Department's behalf that the Current Practice is "[t]he same for everyone."); Ex. 27 at 85:2-89:22 (Mr. Prevost testifying on the Department's behalf the Current Practice applies to everyone along the coast); and Ex. 29 at 44:17-45:9, 85:15-86:6. (Ms. Boynton testifying on the Department's behalf that the Department "would be required to enforce all regulations" which have gone through the APA rulemaking process, and that any project landward of the setback line in Beaches Critical Area requires a permit.)

Ultimately, faced with an unenforceable policy, the Department identified the new Current Practice with respect to Beaches Critical Area required rulemaking pursuant to the APA. However, the Department did not complete the rulemaking process prior to enforcement against Respondent. *See* Ex. 1 at ¶ 20, 42, 48, 58, and 63 (Notice to Comply, three Cease and Desist Directives, and a Notice of Alleged Violation/Admission Letter issued from October 20, 2023 to May 22, 2024).

Because the Department enforced the Current Practice against Respondent, the Department's enforcement against Respondent is based upon unpromulgated "regulation" and invalid as a matter of law.

III. The Act is Unconstitutionally Vague as Applied to Respondent.

The Act's definition of "beaches" is unconstitutionally vague as applied to Respondent and the Department's enforcement must be dismissed. "A law is unconstitutionally vague if it forbids

or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application.” *S.C. Dep’t of Soc. Servs. v. Michelle G.*, 407 S.C. 499, 506, 757 S.E.2d 388, 392 (2014) (citation omitted). This concept “rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication.” *In re Anonymous Member of S.C. Bar*, 392 S.C. 328, 335, 709 S.E.2d 633, 637 (2011) (citation omitted). “Consequently, a statute may be unconstitutionally vague where (1) ‘it does not provide fair notice of the conduct proscribed,’ or (2) ‘it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed.’” *Michelle G.*, 407 S.C. at 505 (quoting *In re Gentry*, 142 Mich. App. 701, 369 N.W.2d 889, 893 (1985)).

With respect to Beaches Critical Area, the Department did not just fail to “provide fair notice of the conduct proscribed,” it provided notice entirely contradictory to the conduct proscribed by representing the 2023 Practice as law to the regulated community. *See, e.g.*, 2003 Fact Sheet, IOP Line Report, and JLWG Final Report. Regulations 30-10.B and 30-21.H(3) both direct readers to the setback line. If a homeowner reviewed the regulations applicable to Respondent to determine their ability to build without a permit, they would check the setback line. If they went further to check the “Project Standards for the Beaches and Beach/Dune System Critical Areas,” it would confirm the setback line is the test. *See* Ex. 2 at Reg. 30-13.N(3)(a) (effective until May 24, 2024). To the extent the Act itself provided “fair notice of the conduct proscribed,” the Department’s regulations eviscerated it.

The definition of Beaches Critical Area itself is impermissibly vague in that it relies upon the undefined term “periodic inundation.” EPA once proposed including “periodically inundated” as an element of “wetlands,” ultimately removing the phrase due to vagueness concerns:

Both "coastal and freshwater" wetlands as used in the July 25, 1975 regulation require that the area in question be "periodically inundated" by either saline, brackish or freshwater and "normally characterized by the prevalence of" salt or brackish water vegetation or vegetation that requires saturated soil conditions for growth and reproduction. Some felt that the criteria for delineating a wetland should not require both "periodic inundation" and the "prevalence of" vegetation as either condition should suffice from the standpoint of protecting the entire aquatic system. Others raised concern over the vagueness of terms such as "periodically inundated", "normally", and "prevalence", and the lack of any definition for the terms "contiguous" or "adjacent".

In response to these comments . . . [t]he reference to "periodic inundation" has been eliminated. . . . The new definition . . . pertains to an existing wetland and requires that the area be inundated or saturated at a frequency and duration sufficient to support aquatic vegetation.

42 Fed Reg. 37122, 37128 (July 19, 1977).⁴⁹ This was necessary because, where "periodic" modifies "inundation by tidal and wave action," the plain meaning relates to regular tidal cycles, not storms or other one-off events. Here, there is no evidence Respondent's property was inundated by regular, cyclical tidal and wave action, only alleged inundation from irregular named storms. The Act does not provide notice one storm can transform an unregulated area to Beaches Critical Area, or that inundation otherwise may be something different from regular tidal cycles.

Ironically, and further in support of unconstitutional vagueness, the Department does not even look at inundation to evaluate potential Beaches Critical Area. Instead, the Department uses vegetation as an "indicator" of periodic inundation, despite no statutory or regulatory provision providing notice that homeowners should look to vegetation **before** looking to inundation. Ex. 9 at 31:1-31:12 ("[The 'beaches' definition] is using the vegetation as an indicator for where that periodic inundation is occurring."); *see also* Ex. 28 at 158:22-160:3.⁵⁰

⁴⁹ Relevant excerpts are attached hereto as **Exhibit 42**.

⁵⁰ Speaking for the Department, Mr. Slagel relayed that Respondent actually was subject to a test even further removed from the definition of Beaches Critical Area: "I should clarify that at [Respondent's] property, the escarpment was our prime indicator that we were looking at." Ex. 28 at 146:17-146:22.

Because the phrase “so that” establishes a cause and effect relationship between the two elements of Beaches (inundation and lack of vegetation),⁵¹ the definition provides notice only of a two-step process which is markedly different than the Department’s “indicator” approach: (1) determine whether there is periodic inundation by tidal and wave action; and (2) if so, determine whether there is a **resultant** lack of established nonlittoral vegetation. At best, the Department reverses the process. At worst, the Department rewrites Beaches Critical Area.

Similar confusion exists as to the requirement for Beaches Critical Area that no nonlittoral vegetation be “established.” The Department struggled to define what it means for vegetation to be “established,” relying on a series of factors not found in statute, regulation, public-facing guidance, or written internal guidance. Ex. 28 at 144:2-147:22, 154:9-156:9. Perhaps recognizing the unfairness of this ambiguity, the Department Board granted similarly situated property owners thirty to sixty days to attempt to establish vegetation before the Department could exercise Beaches Critical Area authority.⁵² See Ex. 17 at 115:23-118:20. Respondent was not afforded this opportunity, although apparently others were.⁵³

The Department restructured the elements of Beaches Critical Area in a manner divergent from the definition. The Department relied on ambiguous terms subject to a broad range of meanings inconsistent with Department application. Most importantly, the Department’s own

⁵¹ Numerous online dictionaries define the phrase “so that” as establishing a causal relationship. See, e.g., Merriam-Webster, Definition: so that (last accessed Feb. 26, 2025) (listing four examples, all showing a causal relationship), <https://www.merriam-webster.com/dictionary/so%20that>; Dictionary.com, Definition: so that (last accessed Feb. 26, 2025) (defining the phrase as “with the result or consequence that”), <https://www.dictionary.com/browse/so--that>; and Longman Dictionary of Contemporary English, Definition: so (that) (last accessed Feb. 26, 2025) (defining the phrase as “used to say that something happens or is true as a result of the situation you have just stated”), <https://www.ldoceonline.com/dictionary/so-that>.

⁵² The referenced hearing was a Final Review Conference in which the Board heard four property owners’ challenges to the Department’s flagging of the landward limit of Beaches Critical Area on their properties. Ex. 17 at 4:4-4:15. Associated photographs presented to the Board and attached hereto as **Exhibit 43** show the original delineation of Beaches Critical Area reached as far landward as the property owners’ homes.

⁵³ See emails withdrawing similar Requests for Final Review attached hereto as **Exhibit 44**.

regulations and guidance plainly contradict the Department's reading of the Act in this case. The Act and implementing regulations simply fail to provide notice to Respondent that the Department may assert jurisdiction landward of the setback line and upon evaluation solely of vegetation (or escarpment). For these reasons, the Department's application of Beaches Critical Area to Respondent is void for impermissible and unconstitutional vagueness in deprivation of Respondent's due process rights, and therefore, Respondent is entitled to summary judgment as a matter of law.

CONCLUSION

For the reasons stated herein, Respondent respectfully moves the Court for summary judgment invalidating the Administrative Order as a matter of law.

WILLIAMS MULLEN

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March 3, 2025
Columbia, SC

Exhibit 1

**STATE OF SOUTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL SERVICES
BUREAU OF COASTAL MANAGEMENT**

**IN RE: ROM L. REDDY
RENEE REDDY
PID 5680900155
CHARLESTON COUNTY**

**ADMINISTRATIVE ORDER
AF-0000960**

Rom L. Reddy and Renee Reddy are responsible for unauthorized non-beach-compatible fill materials (including two [2] erosion control structures), excavation, and other unauthorized activity in the Beaches Critical Area regulated by the South Carolina Department of Environmental Services' Bureau of Coastal Management ("SCDES" or "Department"). In accordance with Department regulations and enforcement policy, this Administrative Order (Order) is now being issued to include the following:

FINDINGS OF FACT

1. Rom L. Reddy is the current owner of certain property, a portion of which is in the Beaches Critical Area including the active beach regulated by the Department, located on and adjacent to the Atlantic Ocean at 118 Ocean Boulevard, Isle of Palms, Charleston County, SC (PID 5680900155) (Site). Renee Reddy, his spouse, also lives at the property. The Reddys are responsible for the unauthorized activity described herein.
2. On September 24, 2014, Mr. Reddy purchased the property at the Site.
3. Department staff's review of CONNECTExplorer™ Pictometry© aerial imagery and Google Earth Pro™ aerial imagery, indicates that between January 10, 2019 and February 15, 2019, the Reddys graded the landscape landward of the Department's setback line at the Site. In addition to re-grading the previously existing sod and plantings, this aerial imagery depicts that the Reddys graded approximately fifteen to twenty feet (15' – 20')

farther seaward. This seaward expansion resulted in the destruction of an approximately 1,577 sq. ft. area of dunes which appear to have been mostly covered by vegetation.

4. On May 22, 2023, the Department received a Critical Area General Permit application from Mr. Reddy. The project details, as submitted by Mr. Reddy, stated that “[o]ne hundred percent of the dunes on the ocean side of the property have been destroyed from the high tides. Conduct minor beach renourishment by trucking in compatible sand rebuilding the dunes in the absence of which the property is not protected.” Three (3) photographs of the Site were included in this application submission. The photographs depict an erosional escarpment at the Site, where artificial turf grass and landscape plantings are undermined. Additional landscape plantings and portions of fence from the Site are visible as debris in the Beaches Critical Area and on active beach.
5. Photographs taken by the City of Isle of Palms (“City”) on May 25, 2023 depict an erosional escarpment at the Site that is consistent with the photographs provided by Mr. Reddy as part of his May 22, 2023 application submission.
6. On June 9, 2023, Matt Slagel (Department Beachfront Management Section Manager) and McKenzie O’Connor (previous Permitting Project Manager) met with Mrs. Reddy and other Isle of Palms property owners at their request to discuss allowable options for protecting their properties from ongoing erosion. After this onsite meeting, Ms. O’Connor sent a follow-up email to Mr. Reddy in which she noted that, following the discussion on the beach earlier in the day, she wanted to take the opportunity to provide some additional information and resources that may be useful to him as a beachfront property owner. Within this email, Ms. O’Connor also noted that the Department would continue processing a permit application submitted by the City for minor beach renourishment and that the [May 22, 2023] application submitted by Mr. Reddy would be withdrawn since the Site was included in the application submitted by the City.
7. On June 30, 2023, the South Carolina Department of Health and Environmental Control’s Office of Ocean and Coastal Resource Management (predecessor to the Department’s Bureau of Coastal Management) issued General Permit #OCRM04706 to the City, which authorized minor beach renourishment from 100 to 402 Ocean Boulevard. Since this

authorization included the Site, Mr. Reddy's May 22, 2023 application submission was withdrawn by the Department.

8. On August 30, 2023, the South Carolina coast was impacted by Tropical Storm Idalia.
9. On September 1, 2023, Department staff conducted field work to collect the extent of landward erosion within the unstabilized inlet erosion zone¹ adjacent to Breach Inlet on the Isle of Palms, including at the Site. A Global Navigation Satellite System (GNSS) unit was used to collect this data.
10. On September 7, 2023, Mr. Slagel sent a letter via email to Mr. and Mrs. Reddy and their contractor, BluTide Marine Construction, informing them that it had come to the Department's attention that they may be intending to perform beachfront activities at the Site without any Department review or authorization. Mr. Slagel further advised that any unauthorized work within the State's critical areas, which include the Beach/Dune System and Beaches, will be considered a violation of the S.C. Coastal Tidelands and Wetlands Act ("Act") and may result in the Department initiating an enforcement action. Mr. Reddy sent a reply email to Mr. Slagel that same day which stated "...we are making sure we do not do any work in the critical areas. The only work being done is to repair our yard from extensive damage due to a complete lack of dunes for 4 months." Mr. Reddy further identified Merritt Abney, Esq. at Nelson Mullins as his legal counsel and stated that "if there is a legal issue that needs to be resolved, Merritt will be in touch."
11. On September 8, 2023, Mr. Ross Appel, Esq., of McCullough, Khan, Appel, sent an email to Department legal counsel stating that "I represent Rom Reddy, the owner of 118 Ocean Blvd. on the Isle of Palms, which is on the front beach." Mr. Appel stated that his "client is performing restoration work within his property line" and that "[t]his area is well landward of the OCRM baseline and setback lines." Mr. Appel further asked for clarity on the Department's jurisdiction.

¹ S.C. Code Ann. §48-39-270(7) defines an inlet erosion zone as "a segment of shoreline along or adjacent to tidal inlets which is influenced directly by the inlet and its associated shoals."

12. In response to Mr. Appel's September 8, 2023 email, and at the request of the Reddys' contractor, BluTide Marine Construction, Department staff then scheduled a September 11, 2023 visit/onsite meeting at the Site. On September 10, 2023, Sallie Phelan, Esq., Department Assistant General Counsel, sent an email to Mr. Appel notifying him of her planned attendance at this scheduled meeting.
13. On September 11, 2023, Mr. Slagel and Ms. Phelan met with Mr. and Mrs. Reddy, Mr. Appel and two BluTide Marine Construction representatives to discuss whether the Reddys could bring non-beach-compatible fill on to the Site and to discuss other options to help protect the Reddys' yard from erosion. Mr. Slagel discussed the Department's authority in both the Beach/Dune System and Beaches Critical Areas. After observing Site conditions, Mr. Slagel informed the Reddys and Mr. Appel that the proposed clay fill or other non-beach-compatible materials could not be placed in the proposed area since it was Beaches Critical Area and within the Department's direct critical area permitting authority. Mr. Slagel stated that any fill material would need to be beach-compatible and would need to be properly reviewed and authorized by the Department. Mr. Reddy asserted that the area in question is not within Department jurisdiction because it is landward of the setback line. Mr. Slagel reiterated that given the existing Site conditions, it is Beaches Critical Area that is landward of the setback line. Photographs were taken during this Site meeting and depict the location where the Reddys were requesting to make modifications, which was sandy beach devoid of vegetation.

After the Site visit, Mr. Slagel memorialized this discussion in a follow-up email to Ms. Phelan, who forwarded it to Mr. Appel that same day. This email noted the sand scraping efforts being undertaken by the City to build a protective berm/dune and provided additional information about planting dune vegetation in an effort to restore and stabilize the area, including how to apply for a General Permit to conduct minor renourishment, sand fencing and/or dune vegetation plantings.

14. On September 19, 2023, the Department received a request from Mr. Reddy for a minor beach renourishment emergency order that would allow for the inclusion of sand fencing and dune vegetation plantings at the Site.

15. On September 21, 2023, Mr. Slagel issued Department Emergency Order 23-EO-011 which allowed Mr. Reddy to conduct minor renourishment, install sand fencing, and/or plant native dune species at the Site. This Emergency Order had an expiration date of October 21, 2023.
16. On September 29, 2023, Mr. Reddy sent an email to Mr. Slagel which stated that “the king tide cycle has removed the post Idalia remediation and put us back where we were after the Hurricane” and requested an Emergency Order for sandbags at the Site. Mr. Slagel replied to Mr. Reddy that same day and explained that the Site was not eligible for a sandbag Emergency Order since the erosion was not within twenty (20) feet of the habitable structure.²
17. On October 4, 2023, Department staff were made aware of the placement of non-beach-compatible fill and materials in the Beaches Critical Area at and adjacent to the Site, in contravention to the Department’s direction to the Reddys and its contractor. Photographs provided at that time depict filter fabric, timber, plastic mesh/geogrid, metal fencing, artificial turf grass, clay and gravel/rock that was placed in the Beaches Critical Area. The photographs also depict clay balls and gravel/rock that had been entrained by tidal waters and deposited as scattered marine debris along the beach.
18. On October 5, 2023, Jacques Prevost, Department Compliance Project Manager, conducted a Site inspection and observed non-beach-compatible materials, including gravel/rock, fill, clay, artificial turf grass, geotextile fabric, plastic mesh/geogrid, metal fencing, and timber wood at and adjacent to the Site in the Beaches Critical Area without Department authorization. Mr. Prevost also observed wood and clay marine debris from the unauthorized activities at the Site. During this inspection, Mr. Prevost used a GNSS unit to collect location data along the seaward edge of the identified non-beach-compatible materials at the Site. Photographs were taken during this inspection.

² S.C. Code Regs. 30-15(H) states that “[a] structure is determined to be in imminent danger when the erosion comes within twenty feet of that structure.”

After comparing this data to escarpment data collected on September 1, 2023, the Department determined that approximately 1,255 square feet of Beaches Critical Area at the Site had been filled with non-beach-compatible materials.

19. On October 6, 2023, Mr. Prevost conducted an additional Site inspection and observed that the seaward edge of the non-beach-compatible materials identified on October 5, 2023 was no longer visible as it had been covered by sand, presumably placed by the City as part of their property protection efforts. Photographs were taken during this Site inspection.
20. On October 20, 2023, Mr. Prevost sent Notice to Comply AI-0007507 (Notice) via certified mail to Mr. Reddy which required the removal of the unauthorized non-beach-compatible materials from the active beach and/or Beaches Critical Area at the Site within thirty (30) days of receipt of the Notice. This Notice again informed Mr. Reddy that authorization for minor beach renourishment activities and dune vegetation plantings to help stabilize the Site may be pursued by submitting a General Permit application to the Department. Mr. Prevost also sent this Notice to Mr. Reddy and Mr. Appel via email. A read receipt from the email server indicates that Mr. Reddy received and read the Notice the same day.
21. On October 22, 2023, Mr. Reddy confirmed receipt of the Notice via email reply to Mr. Prevost. In Mr. Reddy's response to the Notice, he copied Mr. Abney and stated that Mr. Abney, as his attorney, could be contacted for further clarification of the Notice. Mr. Prevost sent an email to Mr. Reddy the following day which noted the Department's previous correspondence with Mr. Appel and requested clarification on inclusion of Mr. Appel in future correspondence. On October 23, 2023, Mr. Reddy clarified that Mr. Abney would be representing him on this matter.
22. On October 27, 2023, Ms. Phelan had a phone conference with Mr. Abney and Jack Smith, Esq. also with Nelson Mullins, to discuss the Department's jurisdiction over Beaches Critical Area and referred them to the four distinct critical areas as defined by the Act.³ Mr. Abney and Mr. Smith asked Ms. Phelan about what information the Department had to

³ S.C. Code Ann. §48-39-10(J) defines "Critical area" as any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.

support the Department's assertions that the Reddys had altered the area at issue. Ms. Phelan explained that the information included data that was collected soon after Tropical Storm Idalia, data collected after the Reddys had modified their property, and photographs that the Department had taken. It was decided that the best course of action would be to set up a conference with the Department staff so that they could show Mr. Abney and Mr. Smith the photographs and answer any questions.

23. On November 13, 2023, Ms. Phelan, Mr. Prevost, Mr. Slagel and Morgan Flake, Department Compliance and Enforcement Section Manager, participated in a virtual meeting with Mr. Abney and Mr. Smith to answer additional questions regarding the Department's jurisdiction. During this meeting, Department staff shared photographs and survey data taken of the Site. The Reddys' legal counsel requested an electronic copy of the photographs and data presented during this meeting. Ms. Phelan subsequently sent an email to Mr. Abney and Mr. Smith to provide this information.
24. On November 14, 2023, representatives of the South Carolina Department of Health and Environmental Control ("DHEC") conducted a visit to the south/west end of the Isle of Palms near Breach Inlet. During this visit, Ms. Flake took photographs that depict large mounds of sand placed seaward of the non-beach-compatible fill materials at the Site. These mounds of sand obscured the view of the Site from the beach. At the seaward base of these sand mounds, Ms. Flake observed filter fabric and timber wood marine debris from the Reddys' unauthorized construction embedded within the sand on the active beach.
25. On November 20, 2023, Mr. Abney sent an email to Ms. Phelan stating that he was still gathering information to be able to respond [to the Notice] and noted that due to travel plans, he would appreciate the opportunity to provide a response after the holiday.
26. On December 6, 2023, Mr. Prevost conducted a Site inspection and took photographs that depict large mounds of sand placed seaward of the non-beach-compatible fill materials at the Site. These mounds of sand obscured the view of the Site from the beach. Mr. Prevost additionally observed that, in comparison to the Site on October 6, 2023, new non-beach-compatible materials including pine straw, dirt and landscape plantings had been added at the seaward edge of the Site.

27. On December 11, 2023, Ms. Phelan, Mr. Prevost, and Ms. Flake had an additional virtual meeting with Mr. Abney and Mr. Smith to answer further questions they had regarding the Department's jurisdiction, including questions about "active beach." Department staff provided background on the beachfront jurisdictional lines and critical areas and further clarified what is depicted by the Site photographs previously provided on November 13, 2023. Mr. Abney stated he would have to reconvene with his client regarding his current understanding of the Department's assertions regarding the backfilling of Beaches Critical Area with unauthorized non-beach-compatible materials.
28. On December 13, 2023, Mr. Prevost conducted a Site visit and took photographs which depict non-beach-compatible materials and various types of marine debris from construction at the Site, including gravel/rock, clay, and artificial turf grass at and adjacent to the Site in the Beaches Critical Area and/or on active beach.
29. On December 17, 2023, the passing of a coastal storm, a "nor'easter", impacted the South Carolina coast. According to the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service, nor'easters are not uncommon along the Atlantic Coast of North America.
30. On December 18, 2023, Mr. Slagel conducted field collection of escarpment data using a GNSS unit at properties along Ocean Boulevard on the Isle of Palms. While conducting this field work, he discovered that a new hard erosion control structure had been constructed in the Beaches Critical Area and was on active beach at the Site. Upon information and belief at this time, and based on staff's observations, the hard erosion control structure was installed sometime after staff communicated to Mr. Reddy that work was not authorized or permitted in this area. During this field work, Mr. Slagel took photographs of the Site which depict the unauthorized erosion control structure and erosion of adjacent properties to the north and south of the erosion control structure.
31. On December 19, 2023, Ms. Flake participated in a phone conference with City representatives Douglas Kerr and Desirée Fragoso. Mr. Kerr is the Isle of Palms' Deputy City Administrator & Director of Building, Planning and Licensing, and Ms. Fragoso is

the appointed City Administrator. Mr. Kerr stated that Mr. Reddy made a recent request to the City regarding placement of sand at the Site. Ms. Flake explained that the recently discovered erosion control structure and other non-beach-compatible materials at the Site are within the Department's jurisdiction and are the subject of ongoing compliance efforts; therefore, these materials could not be covered by sand. Consequently, Ms. Flake advised Mr. Kerr that the Site should be skipped during the City's sand scraping efforts until the Reddys removed the unauthorized non-beach-compatible materials.

32. On December 20, 2023, Mr. Prevost conducted a Site inspection and took photographs and measurements to document the exposed approximately 92 linear foot ("LF") shore-parallel concrete erosion control structure with an 8.5 LF wingwall on the eastern end and an 8 LF wingwall on the western end of the structure. Mr. Prevost also documented that pieces of woven geotextile fabric and wire mesh were embedded within the erosion control structure and observed wire mesh, dirt, gravel, and clay as debris seaward of the erosion control structure. The areas adjacent to the wingwalls and immediately landward of the shore-parallel segment of the erosion control structure appeared to have been washed out by recent tides. Photographs of the Site further depict other non-beach-compatible materials previously identified, including gravel/rock, fill, clay, artificial turf grass, metal fencing and geotextile fabric at and adjacent to the Site in the Beaches Critical Area and/or on active beach.

That same day, Mr. Abney requested that Department legal counsel confirm staff's December 19, 2023 instruction to the City regarding their sand scraping efforts and requested the "...basis on which DHEC claims jurisdiction over this wall, which is well landward of the jurisdictional lines...".

33. On December 21, 2023, Ms. Phelan sent a reply email to Mr. Abney wherein she reiterated information previously conveyed by the Department in phone calls, conferences, and email communications. Specifically, Ms. Phelan explained that while the Beach/Dune System Critical Area is tied to the setback line, the Beaches Critical Area is not and the Department has jurisdiction over both pursuant to the plain meaning of the Act. Ms. Phelan then noted staff's December 18, 2023 observation that an unauthorized erosion control structure had been recently constructed at the Site "in contravention to [DHEC] OCRM's specific

instructions that were given to Mr. Reddy, his contractors, and Mr. Appel (who was the attorney representing him in this matter at the time) on site in September of this year.” Ms. Phelan reiterated the staff directive that Mr. Reddy should refrain from placing sand which would cover up the myriad of violations including non-beach-compatible fill, artificial turf, the erosion control structure, and fencing. Ms. Phelan further noted that as of the Department’s December 2023 inspection there did not appear to be anywhere to place additional sand that would not bury these non-beach-compatible materials that must be removed from the Beaches Critical Area.

34. On December 28, 2023, Mr. Prevost conducted a Site inspection and used a GNSS unit to collect location data along the seaward/outer edge of the erosion control structure, including the wingwalls. Mr. Prevost took photographs during this inspection which depict the other types of non-beach-compatible materials previously documented at the Site, including gravel/rock, clay fill, artificial turf grass, and geotextile fabric. Wooden plywood panels were additionally observed to be placed in line with and creating a landward extension of the concrete erosion control structure wingwalls with a backfill of dirt, gravel, riprap and clay. The photographs depict shredded geotextile fabric pieces, clay balls, metal and splintered wood as marine debris at and adjacent to the Site in the Beaches Critical Area and/or on active beach.
35. On December 29, 2023, Mr. Abney sent an email response to Ms. Phelan’s December 21, 2023 email wherein he stated that neither the recent work [to construct the erosion control structure] nor the work identified by the Notice occurred in critical area and that OCRM did not have jurisdiction as “both projects occurred in the Reddy’s [sic] yard...”. Mr. Abney disputed that this area was subject to periodic inundation. He then asserted that the Department’s direction to the City not to place scraped sand in front of the Reddys’ property nor to allow sand to be brought in by Mr. Reddy “has exacerbated conditions there and undermined the effectiveness of the Town’s [sic] erosion control efforts in the area.” The sand scraping efforts and sand placement is meant to protect property from erosion and other adverse impacts due to tidal inundation.

36. Mr. and Mrs. Reddy's legal counsel and Ms. Phelan communicated throughout January 2024 regarding the unauthorized activities at the Site, the Department's jurisdiction and the Department's direction related to covering non-beach-compatible materials with sand.
37. On January 7, 2024, Department staff were made aware that unauthorized riprap was installed at the base of the unauthorized erosion control structure at the Site.
38. On January 10, 2024, this matter was referred to enforcement for further Department action.
39. On January 11, 2024, Mr. Prevost conducted a Site inspection. While onsite, and prior to initiating his inspection, Mr. Prevost encountered Mr. and Mrs. Reddy in an outdoor meeting with individuals who appeared to be contractors. Mr. Prevost introduced himself and stated his purpose for being at the Site. Mr. and Mrs. Reddy acknowledged Mr. Prevost prior to continuing their onsite meeting with the unknown individuals. Mr. Prevost proceeded to observe and photograph that the unauthorized erosion control structure was tilting/collapsing seaward. Additional photographs taken during this inspection depict that the area immediately landward of the erosion control structure had been inundated and washed out. This documentation indicates that tidal waters had recently flanked the wingwalls of the erosion control structure. He observed other previously identified non-beach-compatible materials and marine debris in the Beaches Critical Area and/or on active beach at the Site, including gravel/rock, fill, clay, artificial turf grass, riprap, geotextile fabric, metal fencing and wood. Riprap was visible at the seaward base and concrete wingwalls and plywood wingwall extensions of the erosion control structure. Tarps and plastic sheeting were also observed to have been placed atop fill materials landward of the erosion control structure in an apparent attempt to further protect those materials. Photographs were taken during this inspection.
40. On January 12, 2024, Mr. Slagel responded to a recent inquiry made by Mr. Kerr. Mr. Kerr had relayed an adjacent property owner's concern that the adjacent properties were more exposed to the waves given the gap left by the City's sand scraping efforts between the Site and those properties. Mr. Slagel informed Mr. Kerr that the Department did not object to the City scraping sand to fill in the gaps between the existing scraped sand and the erosion

control structure in an attempt to provide better protection to the properties adjacent to the Site. Mr. Slagel advised Mr. Kerr that before scraping sand to fill in the gaps between the existing scraped sand and erosion control structure any unauthorized materials and/or debris on these adjacent properties should be removed prior to the City placing sand in these areas.

Additionally on January 12, 2024, Ms. Phelan sent a response email to Mr. Abney's December 29, 2023 email and informed Mr. Abney that the Department is pursuing enforcement action on this matter since Mr. Reddy has refused to comply with the Department's directives and has continued to alter the critical areas without authorization.

41. On January 24, 2024, the Department received notification that it appeared the unauthorized erosion control structure at the Site had been repositioned and backfilled landward of the structure.
42. On January 25, 2024, Department staff received photographs depicting the unauthorized erosion control structure and active placement of screw piles at the seaward base of the structure at the Site. Subsequently, Mr. Prevost conducted an inspection at the Site and observed the concrete erosion control structure with contractors actively working to install metal screw piles on the seaward side of the structure using a Bobcat skid steer, which was also located seaward of the structure in Beaches Critical Area and on active beach. An onsite contractor informed Mr. Prevost that the exposed metal pieces in the sand were the tops of 14' deep screw piles. Mr. Prevost observed a large excavator staged landward of the erosion control structure at the Site. Non-beach-compatible materials, including fill, clay, geotextile fabric and plywood were visible in the Beaches Critical Area landward of the erosion control structure. Riprap and clay materials/debris were observed in the Beaches Critical Area on the seaward side of the erosion control structure, including the wingwalls.

Subsequently, on January 25, 2024, the Department issued a Cease and Desist Directive (January Directive) to Mr. Reddy which was sent via email to Mr. Abney and Mr. Smith. This January Directive identified unauthorized structures and materials in the Department's jurisdiction to include the erosion control structure, metal screw piles, and scattered clay

and riprap debris and further documented staff's observation that metal screw piles were being installed below grade on the seaward side of the erosion control structure without authorization. This January Directive directed Mr. Reddy to immediately cease and desist all work in the Beaches Critical Area and/or on active beach that was in violation of the Act. Mr. Abney confirmed receipt of the January Directive via an email reply on January 26, 2024.

43. On January 29, 2024, Mr. Prevost conducted a Site inspection and used a GNSS unit to collect location data for the metal screw piles installed seaward of the erosion control structure and to also collect updated location data for the erosion control structure. During this inspection, Mr. Prevost found that unauthorized alterations of the critical area at the Site continued to occur despite the Department's January Directive. He documented that a Bobcat skid steer located seaward of the unauthorized erosion control structure at the Site was actively installing metal screw piles on the landward side of the erosion control structure, all in Beaches Critical Area. Mr. Prevost informed the contractors that the Department had issued the January Directive, asked them to identify themselves, and inquired about the activity they were doing onsite with the heavy equipment. The contractors would not provide a name, company affiliation, or a description of the work being performed. They informed Mr. Prevost that they were instructed not to speak to him and that he would have to speak to Mr. Reddy's attorneys for any other information. While at the Site, Mr. Prevost further observed a large, excavated area landward of the erosion control structure with pooling water at the bottom of this excavated area. He documented other previously identified non-beach-compatible materials and/or marine debris, including fill, clay, riprap, artificial turf grass, geotextile fabric, and wood at and adjacent to the Site in the Beaches Critical Area and/or on active beach. Photographs were taken during this inspection.

After this inspection, Ms. Phelan sent an email to Mr. Abney and Mr. Smith informing them of Mr. Prevost's findings that contractors continued to work with heavy equipment in the critical area to install metal screw piles. Ms. Phelan additionally informed the Reddys' legal counsel that Mr. Prevost was informed by an onsite worker that they (the contractor) were instructed not to talk to him. Ms. Phelan requested Mr. Abney and Mr.

Smith instruct their client to immediately comply with the January Directive and furthermore, to provide information related to the activities being conducted at the Site and the identity of the contracting companies working at the Site.

44. On January 30, 2024, Mr. Abney sent a reply email to Ms. Phelan wherein the Reddys' legal counsel continued to disagree that the "retention wall was erected within the critical area" and asserted that the Department "lacks jurisdiction over the structure or the work for which the agency issued [the January Directive]." Mr. Abney further stated that "[t]he Reddys did not tell any contractor not to identify themselves or not to disclose the work they were doing. However, we decline your request to name workers who were onsite."
45. On January 31, 2024, the Department received information that work was continuing at the Site. According to this report, there were four pieces of heavy equipment on the beach and six to seven feet of fill on top of the wall and "gray dirt" had been deposited on active beach in front of the wall. Later that day, OCRM received a second report that the Reddys' contractors had placed rebar and were pouring concrete at the Site.
46. On February 1, 2024, Mr. Prevost conducted an inspection at the Site. Upon arrival, he observed contractors actively working with a large excavator to remove and relocate materials landward of the erosion control structure and setting screws on wooden form supports. Shortly after his arrival, active construction stopped and did not resume for the remainder of the inspection. Mr. Prevost then observed a large, excavated area, estimated to be about 7' deep, immediately landward of the concrete erosion control structure where wooden forms contained a recently added concrete slab. Pooling water was visible on top of this recently added concrete slab and unprotected, exposed rebar was sticking vertically out of this newly poured concrete. Extending landward from each wingwall of the erosion control structure, Mr. Prevost identified large pit areas that were inundated with water. Orange plastic mesh material mostly surrounded these pit areas. The tops of the previously identified metal screw piles were visible at the seaward toe of the erosion control structure and other previously identified non-beach-compatible materials and debris were documented at the Site in the Beaches Critical Area and/or on active beach. During his inspection, Mr. Prevost additionally observed tidal waters reaching and interacting with the erosion control structure. Near the center of the erosion control structure, tidal waters were

observed running underneath the structure and into the wooden forms containing the recently added concrete. Mr. Prevost posted a Cease and Desist Directive in several locations at the Site, including on pieces of heavy machinery, which directed that all unauthorized activity in the Beaches Critical Area and/or active beach cease.

47. On the morning of February 2, 2024, Department staff collected drone photographs and video to further assess the Site conditions and impacts from the Reddys' unauthorized activities, including construction of the concrete erosion control structure. The drone flight was conducted close to high tide, which was lower that day than the average high tide this area experiences. The photographs and video demonstrate that there is almost no room to place sand seaward of the hard erosion control structure even at a below average high tide. Any sand placed would be very temporary and would be washed out with the next tide cycle.

At approximately 12:45 PM, Ms. Flake conducted a Site visit and observed that the Cease and Desist Directive that had been posted in multiple locations at the Site on February 1, 2024, had been removed from the Site and equipment. It appeared that the work at the Site had been stopped as the heavy equipment had been removed except for one large excavator located landward of the erosion control structure. No workers were onsite. Ms. Flake also observed that steel mending plates had been secured into the seaward side of the erosion control structure in an apparent attempt to stabilize cracks and reinforce the erosion control structure. The large pit areas extending landward from each wingwall of the erosion control structure which were documented the previous day by Mr. Prevost, were observed by Ms. Flake to be inundated with water. Ms. Flake also observed that within each of these pit areas there were two (2) parallel rows of metal piles that had been installed below grade into the sand substrate - the tops of these metal piles were sticking out of the water in the bottom of the pits. Geotextile fabric consistent with the materials at the Site, was observed as marine debris embedded in the sand seaward of the erosion control structure in Beaches Critical Area and on active beach.

Subsequently, at 1 PM, a meeting commenced on the Isle of Palms where attendees walked from 3rd Avenue to Breach Inlet to observe the conditions along this stretch of the beach. Present at this meeting were: DHEC Board Chairwoman Seema Shrivastava-Patel; DHEC

Board Member Sonny Kinney; DHEC Director Dr. Edward Simmer; DHEC Environmental Affairs Director Myra Reece; DHEC OCRM representatives, including Ms. Flake; City representatives Mr. Kerr and Ms. Fragoso; and various property owners, including Mrs. Reddy. During this meeting, DHEC and City representatives attempted to answer questions and discuss property owner concerns. Mrs. Reddy engaged with DHEC representatives during this meeting.

48. On the morning of February 3, 2024, Ms. Phelan sent an email to Mr. Abney wherein she attached a Cease and Desist Directive (February Directive) dated February 2, 2024 and addressed to Mr. Reddy. This correspondence followed the Cease and Desist Directive that had been physically posted at the Site on February 1, 2024 and was removed. This February Directive identified unauthorized activities in the Department's jurisdiction to include the excavation of the beaches critical area and/or active beach, installation of rebar, wood forms and supports, and newly-poured concrete immediately landward of the unauthorized erosion control structure. The February Directive directed Mr. Reddy to immediately cease and desist all work in the Beaches Critical Area and/or on active beach that was in violation of the Act. Mr. Abney confirmed receipt of the February Directive via reply email on February 5, 2024.

On the afternoon of February 3, 2024, OCRM was notified that after OCRM left the Site late in the afternoon of February 2, 2024, the contractors returned to the Site and continued working in the critical area. According to the report, work was actively occurring at the Site on the night of February 2, 2024 and on the morning of February 3, 2024, including the mobilization of four concrete trucks to the Site and that the work was continuing. Photographs depicting unauthorized work were also provided to the Department.

49. On February 5, 2024, Mr. Abney confirmed receipt of the February Directive via reply email to Ms. Phelan. The Reddys' legal counsel reiterated their client's position that the work at issue in the February Directive is "outside of the agency's jurisdiction."

Photographs taken by the City on February 5, 2024 depict that tidal waters had recently interacted with and flanked the erosion control structure. A new erosional escarpment is evident landward of the structure at the Site.

50. On February 7, 2024, the Department was made aware that more concrete was being poured at the Site. Photographs provided with the report depict wooden forms landward of the erosion control structure with concrete being piped into this rebar reinforced gap between the existing erosion control structure and the wooden forms in the Beaches Critical Area.
51. On February 8, 2024, the Department received a report regarding the Reddys' construction of wingwalls on the erosion control structure at the Site.
52. On February 9, 2024, the Department filed a Petition for Injunctive Relief and Motion for Temporary Restraining Order and Preliminary Injunction with the Administrative Law Court requesting a hearing in connection with the Department's issuance of the Notice to Comply on October 20, 2023 and the Cease and Desist Directives dated January 25, 2024 and February 2, 2024. This filing provided a detailed account of the Department's position with corroborating photographs and data collected by the Department and identified violations of the South Carolina Coastal Zone Management Act, section 48-39-10 et al. On February 23, 2024, the Reddys filed a Response to the Department's Petition and Motion wherein they set forth allegations relating to their activities at the Site, and their basis for the challenge to the Department's jurisdiction in the Beaches Critical Area which included photographs.
53. On February 13, 2024, Mr. Prevost conducted an inspection at the Site. While onsite, Mr. Prevost observed Mrs. Reddy come out of her home and appeared to use her cell phone to record Mr. Prevost for the duration of the inspection. Mr. Prevost documented that the original concrete erosion control structure remained at the Site and was now located immediately seaward of a new, unauthorized concrete erosion control structure [Attachment D]. The new landward erosion control structure was shore-parallel with wingwalls extending landward at the east and west ends of the Site. This landward erosion control structure was approximately two to three feet (2' – 3') taller than the original/seaward structure. Photographs taken during this inspection also depict a green pipe embedded vertically into the north/east wingwall of the new structure. The metal plate reinforced cracks in the original/seaward erosion control structure that were previously

observed by Department staff on February 2, 2024, were now observed by Mr. Prevost to have been injected with foam to fill the cracks. Mr. Prevost also observed other non-beach-compatible materials, including riprap, clay, and orange plastic mesh, in the Beaches Critical Area at and/or adjacent to the Site. Photographs were taken during this inspection.

54. On February 20, 2024, Ms. Phelan sent an email to Mr. Abney to document previous phone correspondence regarding this matter. In response, Mr. Abney emailed Ms. Phelan informing that he and Mr. Smith "no longer represent Mr. Reddy in this matter. Please direct all future correspondence regarding this matter to Charlie Krawczyk and Johnny Stewart" of Finkel Law Firm LLC.
55. On February 21, 2024, Mr. Prevost conducted a Site inspection. In addition to his most recent observations of February 13, 2024, Mr. Prevost documented black metal fencing debris originating from the Site that restricted the use of the beach access pathway between the Site and the adjacent property to the north/east.
56. On February 26, 2024, Mr. Prevost conducted a Site inspection and documented similar conditions to previous inspections. Marine debris materials at and adjacent to the Site included tarp/liner material, artificial turf grass, riprap, concrete and clay. Additionally, clay and rock were observed scattered along the beach as marine debris from the adjacent property to the north/east of the Site all the way south/west to Breach Inlet.
57. On February 28, 2024, the Department received a report of potential unauthorized riprap addition at the Site. Subsequently on February 29, 2024, Mr. Prevost conducted a Site inspection and was unable to determine whether the visible rocks were newly added or were previously there and uncovered by recent erosion. He additionally observed contractors installing fabric rolls/underlay materials on top of rock/gravel landward of the erosion control structures in Beaches Critical Area. Clay, riprap, and gravel remained scattered along the beach as marine debris and was observed from the adjacent property to the north/east all the way south/west to Breach Inlet.
58. On March 1, 2024, the Department issued a Cease and Desist Directive (March Directive) to Mr. Reddy which was sent via email from Ms. Phelan to Johnny J. Stewart, Jr., Esq, and

Charles Krawczyk, Esq. with Finkel Law Firm LLC. This March Directive noted that, despite the January and February Directives, the Department confirmed in a February 29, 2024 Site inspection that unauthorized activities continued to occur in the critical area at the Site. The March Directive identified that the unauthorized activities included, but were not limited to, installation of fabric rolls/underlay and rock/gravel landward of the erosion control structures in the Beaches Critical Area. This March Directive directed Mr. Reddy to immediately cease and desist all work in the Beaches Critical Area and/or on active beach that was in violation of the Act. Ms. Phelan received notification of delivery via the email server that same day.

59. On March 4, 2024, Mr. Prevost conducted a Site inspection and observed contractors actively installing fabric rolls/underlay and artificial turf grass landward of the unauthorized erosion control structures in the Beaches Critical Area. These alterations were in direct contravention to the March Directive, which was the third cease and desist directive issued to the Reddys. Mr. Prevost remained on the sandy beach adjacent to the erosion control structures for the duration of this Site inspection. After collecting photographs of the Site, Mr. Prevost was approached by Mrs. Reddy from the landward side of the erosion control structures and was instructed/told by Mrs. Reddy to "get off my yard buddy."

Mr. Prevost posted Cease and Desist Directives at the Site that same day.

60. On March 5, 2024, Ms. Phelan sent a subsequent email to Mr. Stewart and Mr. Krawczyk regarding their client's continued work in the Beaches Critical Area and receipt of the March Directive. In a reply email, Mr. Krawczyk acknowledged receipt of the March Directive.
61. On March 29, 2024, Finkel Law Firm LLC, on behalf of Mr. and Mrs. Reddy, filed a Summons & Complaint in the Court of Common Pleas against the Department - *Rom Reddy and Renee Reddy vs. the South Carolina Department of Health and Environmental Control and The City of Isle of Palms*, 2024 CP-10-01681. This Complaint, among other things, set forth allegations relating to the Reddys' activities at the Site and the Reddys' challenge to the Department's assertion of jurisdiction in the Beaches Critical Area. The

Reddys alleged in this Complaint that “[i]n October 2023 [the Reddys] installed an inward facing retaining wall well behind the dunes, setback lines and critical areas.”

62. On April 3, 2024, Mr. Prevost conducted a Site inspection and took photographs of the Site. The original/seaward erosion control structure and new landward erosion control structures remained in the Beaches Critical Area at the Site. The tops of the metal screw piles located on the seaward side of the original/seaward erosion control structure were visible. Exposed wooden forms on the outside/seaward side of the new erosion control structure were visible and separated from the concrete. The previously observed metal fencing debris in the beach access pathway between the Site and the adjacent property to the north/east was no longer present. Riprap was observed adjacent to the wingwalls and within the extended property lines of each adjacent property. The area landward and within the bounds of the erosion control structure was fully covered in artificial turf grass and landscaping. Specifically, the outer edge of the area bounded by the new landward erosion control structure had been landscaped with small woody plants and pine straw.

63. On May 22, 2024, Notice of Alleged Violation/Admission Letter AI-0008331 (NOAV/AL), including proposed Findings of Fact, was sent via certified mail to Mr. and Mrs. Reddy c/o Mr. Krawczyk and Mr. Stewart. The NOAV/AL was additionally sent via email to Mr. and Mrs. Reddy via Mr. Krawczyk, Mr. Stewart and Rachel Bailey, Esq. with Finkel Law Firm LLC. Delivery of the NOAV/AL sent via email occurred on May 22, 2024, as confirmed by the email server. Delivery of the NOAV/AL sent via certified mail occurred on May 28, 2024, as confirmed by USPS Tracking®. The NOAV/AL scheduled an enforcement conference⁴ for June 4, 2024.

64. On May 28, 2024, Ms. Phelan received an email from the office of Williams Mullen which included an attached letter from Ethan R. Ware, Esq. In this correspondence, Mr. Ware informed the Department that Mr. and Mrs. Reddy had requested assistance from Williams Mullen in responding to the NOAV/AL. Mr. Ware further informed the Department that Williams Mullen would be working in tandem with Finkel Law Firm on this matter. Mr.

⁴ An enforcement conference is not required by S.C. Code Regs. 30-8(F). Rather, it is a voluntary, informal meeting offered by the Department between Department staff and the responsible party to discuss the NOAV/AL.

Ware requested additional time to prepare for the scheduled enforcement conference and provide response to the NOAV/AL. Specifically, Mr. Ware requested that the Department allow Mr. Reddy until the first week of July to respond to the Admission Letter and meet with SCDHEC regarding the alleged violations.

That same day, Ms. Phelan acknowledged Mr. Ware's request and informed him that the timeline for response to the Admission Letter is set by R.30-8(F)(2), which requires that "[w]ithin 15 days from receipt of the Admission Letter, the responsible party must either admit the contents to be true or send the Department their version of the facts setting forth why the Department's facts are incorrect. Failure to respond shall result in a conclusion by the Department that the contents of letter are true."

65. On June 4, 2024, Ms. Phelan sent an email to Mr. Ware which provided the Department's availability to reschedule the enforcement conference. These dates included two (2) days within the last two weeks of June and the first two (2) days of July 2024.
66. On June 6, 2024, Mr. Prevost conducted a Site inspection and took photographs of the Site. The original/seaward erosion control structure and new landward erosion control structures remained in the Beaches Critical Area at the Site. The exposed steel mending plates and associated bolts on the original/seaward erosion control structure were observed with rust corrosion. On the seaward face of the original/seaward erosion control structure, there was exposed woven geotextile fabric material with frayed ends covered in a layer of concrete. A flagpole and flag were also observed in the location of the previously identified green pipe that was vertically embedded near the seaward extent of the north/east wingwall of the new landward erosion control structure.
67. On June 7, 2024, Mr. Ware submitted a Response to the NOAV/AL (NOAV/AL Response). In his cover email to Ms. Phelan, Mr. Ware requested that the Department not proceed issuing an Administrative Order "until we have had an opportunity to hold the enforcement conference, which may be the end of June or first of July." In the attached cover letter to the NOAV/AL Response Mr. Ware indicated that the Reddys would not be available until after June 31, 2024 for a conference. Mr. Ware did not respond or indicate his availability as to the dates the Department already offered in July.

68. On June 26, 2024, Ms. Phelan sent Mr. Ware an email stating that the Department intends to proceed with issuing an Administrative Order and further informed Mr. Ware that the Department would continue to work with Mr. and Mrs. Reddy and their legal counsel in seeking a mutually agreeable resolution. Ms. Phelan also provided three additional dates in July that the Department was available to hold a conference towards this end and asked for alternative dates of availability if these dates would not work. As of the signing of this Order, Mr. Ware has not provided any dates of availability for a conference.

69. In addition to other information the Department has considered prior to the issuance of this Order, the Department has also reviewed documents provided pursuant to subpoena requests from several of the Reddys' contractors and/or subcontractors involved with the alterations at the Site. The Department has also reviewed the Reddys' discovery responses in the pending Administrative Law Court matter.

Based on the above findings, Rom L. Reddy and Renee Reddy have violated the following:

1. **The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-130(A) & (C) and S.C. Code Ann. Regs. 30-2(B), as amended,** require that any utilization/alteration of any critical area be permitted by the Department. Specifically, Mr. and Mrs. Reddy altered Beaches Critical Area by installing non-beach-compatible materials including clay, dirt, gravel/rock, riprap/rock, woven geotextile fabric, plastic mesh/geogrid, artificial turf grass, metal fencing, wire mesh, concrete, orange plastic mesh/fencing, metal screw piles, rebar, steel mending plates with associated bolts, spray foam, green pipe with flag pole, wood materials (including timber, plywood panels, forms and supports), tarps, plastic sheeting, metal piles, nonwoven geotextile fabric/fabric rolls/underlay, pine straw, and landscape plantings. Mr. and Mrs. Reddy further utilized and altered Beaches Critical Area by operating heavy machinery to carry out installation of non-beach-compatible materials and excavating substantial amounts of substrate. According to an invoice from one of the Reddys' contractors, 450 yd³ of critical area substrate was excavated. All this activity in the Beaches Critical Area occurred without a permit from the Department.

2. **The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-130(D)(6), as amended**, provides an exemption to a permit for emergency repairs to an existing bank, dike, fishing pier, or structure, other than oceanfront erosion control structures or devices, which has been erected in accordance with federal and state laws or provided for by general law or acts passed by the General Assembly, if notice is given in writing to the Department within seventy-two hours from the onset of the needed repairs. Specifically, this provision expressly removes oceanfront erosion control structures or devices from consideration for a permit exemption for emergency repairs. The erosion control structure at the Site was not erected in accordance with federal or state laws or provided for by general law or acts passed by the General Assembly; therefore, the Reddys' repair of the structure was not an exempted activity. Furthermore, the Reddys failed to provide any notice to the Department of the repairs and additional activity that they undertook to alter the critical area.
3. **S.C. Code Ann. Regs 30-15(H)(5)(a), as amended**, requires that renourishment sand must originate from an upland source and be approved by the Department as compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material. Furthermore, **Emergency Order 23-EO-11, Requirement #2**, requires renourishment sand originate from an upland source and be approved by the Department as beach-compatible in size and grain color. Material must be clean and free of any debris. Specifically, Mr. and Mrs. Reddy did not obtain approval from the Department for renourishment materials and did not use materials compatible in grain size and color with the native beach sand. The materials used by Mr. and Mrs. Reddy resulted in marine debris.
4. **Emergency Order 23-EO-11, Requirement #4**, prohibited the covering or burying of any portion of an erosion control structure. Specifically, Mr. and Mrs. Reddy covered an unauthorized erosion control structure at the Site.
5. **Emergency Order 23-EO-11, Requirement #9**, required that contractors performing work be in direct contact with the SCDNR Marine Turtle Conservation Program

representative each morning prior to any work being performed on the beach. Specifically, neither Mr. and Mrs. Reddy, nor their contractor, were in contact with SCDNR to assess sea turtle activity prior to any work being performed on the beach.⁵

6. **S.C. Code Ann. Regs. 30-13(N)(3)(c), as amended**, prohibits erosion control structures or devices from being enlarged, strengthened, or rebuilt and further requires that repairs be made with materials similar to those of the structure or device being repaired. Specifically, Mr. and Mrs. Reddy strengthened the unauthorized concrete erosion control structure using metal screw piles, steel mending plates and associated bolts, and spray foam at the Site.
7. **S.C. Code Ann. Regs. 30-8(B), as amended**, provides that when any person is found altering a critical area without a permit and such activity is not exempted by Section 48-39-130(D), the Department may issue a cease and desist directive. This directive shall inform the person that he is in violation of the Act and he is to cease the unauthorized activity. Specifically, Mr. and Mrs. Reddy failed to follow the Cease and Desist Directive issued in January 2024.
8. **S.C. Code Ann. Regs. 30-8(B), as amended**, provides that when any person is found altering a critical area without a permit and such activity is not exempted by Section 48-39-130(D), the Department may issue a cease and desist directive. This directive shall inform the person that he is in violation of the Act and he is to cease the unauthorized activity. Specifically, Mr. and Mrs. Reddy failed to follow the Cease and Desist Directive issued in February 2024.
9. **S.C. Code Ann. Regs. 30-8(B), as amended**, provides that when any person is found altering a critical area without a permit and such activity is not exempted by Section 48-39-130(D), the Department may issue a cease and desist directive. This directive shall inform the person that he is in violation of the Act and he is to cease the

⁵ Sea Turtle nesting season occurs annually in South Carolina from May 1 through October 31.

unauthorized activity. Specifically, Mr. and Mrs. Reddy failed to follow the Cease and Desist Directive issued in March 2024.

The South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-50(I), *as amended*, provides the Department the power to enforce the provisions of this chapter and all rules and regulations promulgated by the Department and institute or cause to be instituted, in courts of competent jurisdiction, legal proceedings to compel compliance with the provisions of this chapter. Section 48-39-170(C), *as amended*, provides that any person determined to be in violation of any provision of this chapter shall be liable for, and may be assessed, a civil penalty of not less than one hundred dollars nor more than one thousand dollars per day of violation. It also provides that whenever the Department determines that any person is in violation of any permit, regulation, standard, or requirement under this chapter, the Department may issue an order requiring the person to comply with such permit, regulation, standard, or requirement, including an order requiring restoration when deemed environmentally appropriate by the Department. In addition, §48-39-170(C), *as amended*, provides that the Department may bring a civil enforcement action under this section as well as seeking appropriate injunctive relief under §48-39-160.

NOW, THEREFORE, IT IS ORDERED that Rom and Renee Reddy shall:

1. Within fifteen (15) days of the effective date of this Order, submit to the Department a Corrective Action Plan (CAP) to address, but not be limited to, the following regarding removal of all unauthorized non-beach-compatible materials and restoration of the Beaches Critical Area at the Site: timing; beach access method; machinery/equipment to be used; location of unauthorized materials to be placed/stored once removed; methods deployed to ensure beach stabilization during removal to minimize further beach impacts; coordination with the SC Department of Natural Resources Marine Turtle Conservation Program and Nest Protection Project Leaders; best management practices used to ensure that debris will not result from the project; and the source of beach compatible materials that will be utilized to restore the Beaches Critical Area once excavation/removal of the unauthorized erosion control structures and other non-beach-compatible materials is complete.

2. Within fifteen (15) days of the effective date of this Order, submit to the Department a sample of the sand material that will be used to restore the Beaches Critical Area at the Site. This sand must be: compatible in size and grain color; from an upland source; and its use approved in writing by the Department prior to placement in the Beaches Critical Area.
3. Within seven (7) days of receipt of any written comments from the Department regarding the CAP and/or sand sample, adequately revise and resubmit the CAP and/or address concerns regarding the sand sample. Once reviewed and accepted by the Department, the CAP will become a fully enforceable part of this Order.
4. Within fifteen (15) days of Department approval of the CAP and sand sample, remove the unauthorized non-beach-compatible materials in their entirety from the Beaches Critical Area at the Site. The unauthorized non-beach-compatible materials known to the Department include clay, dirt, gravel/rock, riprap/rock, woven geotextile fabric, plastic mesh/geogrid, artificial turf grass, metal fencing, wire mesh, concrete, orange plastic mesh/fencing, metal screw piles, rebar, steel mending plates with associated bolts, spray foam, green pipe with flagpole, wood materials (including timber, plywood panels, forms and supports), tarps, plastic sheeting, metal piles, nonwoven geotextile fabric/fabric rolls/underlay, pine straw, and landscape plantings. Any other unauthorized non-beach-compatible materials that may be discovered/uncovered during removal of the above itemized materials in the Beaches Critical Area at the Site must additionally be removed by Mr. and Mrs. Reddy. Any non-beach-compatible materials that originated from the Reddys' unauthorized activities and are observed in Beaches Critical Area in the vicinity of the Site should also be removed.

Immediately upon removal of the non-beach-compatible materials, restore the affected area at the Site with the approved beach-compatible sand to the same elevation and slope of the adjacent properties.

5. Notify the Department of the scheduled commencement date and time for the required removal and restoration work. Such notification shall be made to the Department at least five (5) days prior to the required work so that Department staff may be at the Site at the

time of such activity. Department staff must immediately be made aware of any changes to the scheduled start date/time and must be kept informed of any scheduling modifications.

6. Within three (3) days of completion, notify the Department in writing of the completion of the work required by this Order and set forth in the CAP. Subsequent to the receipt of this notification, the Department will use its best efforts to conduct an inspection of the Site within 7 days of notification to ensure compliance with the Act and the terms of this Order, to include the CAP.
7. Within fifteen (15) days of the effective date of this Order, pay a civil penalty in the amount of two hundred eighty-nine thousand dollars (\$289,000.00) to the Department. The penalty payment shall be in the form of a check made payable to SCDES and reference Order number AF-0000960.
8. Comply with all requirements of the South Carolina Coastal Zone Management Act and Coastal Division Regulations when conducting work in any South Carolina critical area, including the Beaches Critical Area.
9. All requirements of this Order to be submitted shall be addressed as follows:

South Carolina Department of Environmental Services
Bureau of Coastal Management
Attn: Morgan Flake, Compliance and Enforcement Section
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

Or by email at: Morgan.Flake@des.sc.gov

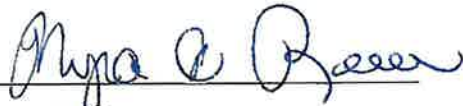
S.C. Code Ann. §48-6-30(D)(2) provides, "Within thirty calendar days after the mailing of a decision [pursuant to S.C. Code Ann. §48-6-30(D)(1)], an applicant, permittee, licensee, certificate holder, or affected person desiring to contest the department decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act." Should this Order not be appealed and the terms of the Order are not satisfied within the specified time frames, the Department may file an action in the appropriate court to enforce this Order.

IT IS FURTHER ORDERED that failure to comply with any provision of this Order within the time specified above shall be grounds for additional daily monetary sanctions and/or the institution of a court action.

IT IS FURTHER ORDERED that this Administrative Order governs only the civil liability imposed upon Rom L. Reddy and Renee Reddy by the Department for civil sanctions arising from the matters set forth herein.

[SIGNATURES ON FOLLOWING PAGE]

STATE OF SOUTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL SERVICES
BUREAU OF COASTAL MANAGEMENT


Myra C. Reece
Interim Director, SCDES

Date: 7-1-2024


Christopher Stout
Chief

Date: July 1, 2024


Morgan Flake, Manager
Compliance and Enforcement Section

Date: July 1, 2024

Reviewed By:


Sallie P. Phelan, Attorney
Office of General Counsel

Date: July 1, 2024