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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

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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 8 OF 16
(pp. 2979-3473)

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closed their case.

THE COURT: Well, that they're going to try to introduce. I'm going to hear them out first and make a ruling on that. But I think my ruling is in keeping with the agreement concerning the witness list. So, I overrule your objection at this point. All right.

MR. CHURDAR: And those are the categories, not the broad categories. Those are the categories.

THE COURT: You can call him.

MR. CHURDAR: Okay. Mr. Stout.

COURT REPORTER: Stout, S-T-O-U-T?

MR. STOUT: Yes, ma'am.

COURT REPORTER: Chris.

MR. STOUT: Christopher. Chris.

COURT REPORTER: Thank you. Do you solemnly swear the testimony you're about to give in this matter is the truth, the whole truth, and nothing but the truth, so help you God?

MR. STOUT: I do.

COURT REPORTER: Thank you.

MR. CHRISTOPHER STOUT, being first duly sworn, testifies as follows:

MR. STOUT - DIRECT EXAMINATION BY MR. CHURDAR:

Q: All right. Mr. Stout, before we get into the

substance of your testimony, can you please tell the Court about your formal education and background?

A: Yes, I have a Bachelor's degree in marine science from Coastal Carolina University, and I have taken Master's level coursework in marine and wetland studies program at Coastal Carolina University, as well.

Q: Okay. And can you tell the -- the Court about any other coursework that you've taken and certification that you've received?

A: Sure. So, as part of the Bachelor's degree and the Master's level coursework, I had courses in physical oceanography, so, looking at coastal processes, and I also took coursework in wetland plant ecology, marine geology. I've taken the Department lead vegetation -- critical area vegetation training. I have taken training with the U.S. Army Corps of Engineers regarding vegetation and soils related to wetland delineation. I have training with the Department, similar to what was testified to by Mr. Slagel, Ms. Boynton and Mr. Prevost, regarding the use of the RTK -- Trimble RTK GPS units.

THE COURT: Wait a second. Stop for a second. Proceed.

A: I've also, as part of the Master's level coursework, utilized GIS, the geographical information system, and so have some educational background in -- in using that to map different data.

Q: Can you please tell the Court your specific relevant professional positions with the coastal program?

A: Sure. I was hired with the Department in March 2008. I was a project manager within the Critical Area Permitting Section, I believe then it was called the Wetland Permitting Section. I was responsible for the regulatory reviews of applications within the critical areas so that could have been anything from a permit application to a maintenance and repair, delineation of critical area lines.

THE COURT: Stop again; I'm sorry. Okay. I went back into my notes on reply and rebuttal testimony, and I just want you to understand where we're going here. State v. Prather, 422 S.C. 96, held that reply testimony should be limited -- limited to rebuttal of matters

raised by the defense, rather than to complete plaintiff's case in chief. So, if you -- if you question where I was coming from earlier, I really feel like that I want to avoid him doing that. So ---

MR. CHURDAR: I understand.

THE COURT: Okay, I just want to make sure we're on the same page as he goes down this path, it's to respond to matters he presented basically that you could not or would not have known about in your case in chief, and that's what they're getting at here. Rather than complete the plaintiff's case in chief. I just make sure we're all on the same page. All right. Go ahead.

Q: Okay. So, Mr. Stout, I don't know if you had -- you had provided the you're talking about your -- your duties and responsibilities when you were a project manager, I believe was -- had you finished that?

A: I think the only other thing to add to that is I was responsible, you know, as part of those duties is -- is performing GIS reviews, site visits and then also handled consistency review on federal permit applications.

Q: And, excuse me, after -- after being a project manager, what was your next duty or responsibility within the Department?
A: In November 2013, I became team lead for the Critical Area Permitting Section. So, with that, just maintained the same project manager duties, but added some additional responsibilities, representing the Department in -- in meetings in absence of a section manager, helping to transition from our old permitting system into the new, and -- and helping with SOPs and things of that nature.
Q: And then what was your next job for the Department?
A: Sure. In May of 2018 I became the manager for our Coastal Zone Consistency Section. So, with that, I managed a staff of five employees who were responsible for the review of state permit applications, as well as different federal activities with the enforceable policies located within the South Carolina Coastal Management Program document.
Q: And then, after your time as CCC section manager, what was your next responsibility?
A: So, that would be in March of 2024, I assumed

the position of Bureau Chief for the Bureau of Coastal Management. And so, in this role, I work with our senior leadership, the Assistant Bureau Chief, our section managers, to plan and manage the goals of the program, the coastal program. And so that would mean, you know, establishing priorities, objectives to carry out the policies and objectives identified in the statute.

Q: So, in total, Mr. Stout, how long have you been employed with the Department of Environmental Services and Bureau of Coastal Management?

A: A little over 17 years.

Q: Okay. I'd like to shift gears and talk about the penalty calculation Mr. Reddy had brought up yesterday regarding Piping Plover, testified about that. Can you tell the Court which bureau handled the Piping Plover enforcement action?

A: That was handled by the Bureau of Water's enforcement section.

Q: And why would the Bureau of Water be handling the Piping Plover enforcement action? I'm sorry?

A: Sorry. I thought you were saying something

else. I think somebody sneezed. So, the Bureau of Water handled that. There were site visits conducted after the work had started, and there was a determination made that based on the activity and the amount of disturbance of that area, that the work should have received authorization under the Bureau of Water, Storm Water Permitting Section for land disturbing activities. And that permit coverage was not ever applied for or granted. And so they processed the compliance and enforcement action through that.

Q: Is there a difference between enforcement by the Bureau of Water and the Bureau of Coastal Management?

A: There is, yes.

Q: Okay. And can you elaborate on that? What is the difference between those two?

A: So, the Bureau of Water has their own, but they operate under a separate -- but as far as enforcement actions, under a separate uniform enforcement policy than the one that's utilized by our coastal program. And so they would be evaluating for violations of their associated statutes, regulations and any permit

requirements through the Bureau of Water.
Q: Okay.
MS. PEREZ: It doesn't work on yours, right?
THE COURT: Okay. If you -- if y'all need to draw on an exhibit, you can walk around here and use this screen.
MR. CHURDAR: Okay.
THE COURT: You'd have to put it up on the Elmo. Well, it's already on the screen, so, no, you could draw on it over here.
MR. CHURDAR: Okay.
Q: So, Mr. Stout, does the Bureau of Water use the uniform enforcement policy for the Office of Ocean and Coastal Resource Management as part of their enforcement process?
A: They do not.
Q: Okay. And that's what this document is, Joint Exhibit 164?
(Joint Exhibit Number 164 was referenced at this time.)
A: That's correct.
Q: And are you familiar with this uniform enforcement policy for the Office of Ocean and Coastal Resource Management?
A: I am.

Q: Okay. Does the Bureau of Water have the same penalty calculation matrix using the same factors as the Bureau of Coastal Management?

A: They do not. As I testified to earlier, our -- our calculations penalty matrix are -- are derived from the violations of the Coastal Tidelands Wetlands Act, the coastal permitting regulations, and the Bureau of Water's process would look through their statute regulations and then any kind of permit requirements.

Q: Now, last week, Ms. Flake broadly testified about the factors the Department considered in assessing the $289,000 penalty in this case. Yesterday, Mr. Reddy testified about the Piping Plover enforcement action. So, for contrast and comparison to the Bureau of Water's enforcement action, I just ask if you would note which specific factors that are listed on page four of the uniform enforcement policy for OCRM that apply to the Reddy -- Reddys' penalty calculation.

A: Certainly. So, I mean, I think under 1, we'd be looking at, you know, obviously, A, which is to provide uniform and objective criteria against which all penalties are assessed. B,

to deter future violations. C, to ensure that penalties are appropriate for the gravity of the violation that was committed. E, to promote fairness and consistency in the penalties that are assessed through the coastal program's enforcement process.

OBJECTION:

MR. REDDY: Can I object to this?

THE COURT: You may.

MR. REDDY: This is a complete misreading of anything I testified to. I didn't -- I was not testifying to all this stuff he's talking about. I was testifying to the fact that there was no jurisdictional penalty. They handed it off to the Bureau of Coastal Waters, or whatever, the Bureau of Coastal Waters wouldn't apply to me, because I'm only -- I'm only one lot. The only reason it applied to them with the land disturbance permit is they had disturbance across five lots, and I'm not even sure it applied to them, but they did apply it. That's not my question. That was not my testimony. My testimony was, why in the world did they not have a jurisdictional claim. They handed it off to the Bureau of Water. So, I

would love for my case, Your Honor, to be handed to the Bureau of Water. They're strictly the same. That's all. So, I don't know why we -- you know, I've got a child. I want to get back home. I've never left my child -- both of us have never left her alone. We felt it was important to be here, and we're just going off on a tangent here. Nothing, nothing to what I said.

MR. CHURDAR: Your Honor. Mr. Reddy, yesterday, testified and made a point to emphasize the difference in the -- in the enforcement process fine as part of the consent order in Piping Plover versus the fine here. And so, to that extent, I do believe that that -- that issue was was brought up by Mr. Reddy.

THE COURT: Mr. Reddy, I understand your frustration, but I'm going to have to respectfully overrule you on this one. I will say you're going through -- to provide a uniform objective criteria to deter future violations, to ensure penalties are appropriate to the gravity of the violation, promote fairness and consistency in the assessment of penalties. So, I -- are you -- you're offering

this in response to what your -- your division did. I'm not -- can't remember the correct name ---

MR. CHURDAR: Ms. Flake?

THE COURT: No, it's not OCRM.

MR. CHURDAR: Oh, the Bureau of Coastal Management.

THE COURT: Yeah, Bureau of Coastal Management. Are you trying -- are you telling me now, since this is rebuttal, that these are not considerations that y'all make? I'm just curious where you're going with this.

MR. CHURDAR: I'm -- I'm -- I'm not -- I'm not saying these are considered not ---

THE COURT: Well, you're offering it in rebuttal. And he's listing the points that the Bureau of Water made. And I'm just ---

MR. CHURDAR: No, sir, this is -- this is ---

THE COURT: Okay.

MR. CHURDAR: This is the Bureau of Coastal Management.

THE COURT: Oh, this one is, okay.

MR. CHURDAR: Yes, sir.

THE COURT: Okay. I missed that point. Go ahead.

MR. CHURDAR: Well, I'm glad I was able to clarify that.

THE COURT: Yeah.

MR. CHURDAR: Okay.

THE COURT: Go ahead.

Q: So, go ahead, Mr. Stout.

A: In addition to those, I would say under 2, A, just, I don't know, trying to be brief, you know, degree of harm or potential for harm for the public environment or coastal resources; B, extent of deviation from the requirements of the statute and regulation; C, the frequency or the duration of the violations and the amount of time that there has been a violation; G, the degree of willfulness; and then H, just the additional pertinent factors. So, this would be where we've issued multiple cease and desists and had to issue the injunction for relief, just not being the norm.

Q: Mr. Stout, is there anything on any of the following pages, specifically ---

A: I mean, I think it is helpful to point out that 3 does -- does provide the program with the ability to, under certain circumstances, downward adjust the penalty. And so a lot of that gets at the cooperativeness and the efforts to restore an area in a timely fashion.

And so, you know, while what we went through are factors with how we calculate and how we may increase the penalty, there are certainly considerations within the uniform enforcement policy for, you know, ways to reduce that which -- which we did not see in this case.

Q: Okay. Mr. Stout, next, I would like to discuss with you how the beaches critical area permitting process was applied prior to the May 2024 regulation package. Mr. Reddy was testifying about that yesterday. First of all ---

OBJECTION:

MR. REDDY: I object to this, again. This is -- how is this ---

THE COURT: This was your case in chief.

MR. REDDY: This is a broad question.

THE COURT: Mr. Churdar, this is the evidence you should have put up in your case in chief.

MR. CHURDAR: Your Honor, this ---

THE COURT: Are you tell me originally that you were going to put up evidence to respond to the Piping Plover ---

MR. REDDY: Yeah.

THE COURT: --- and now -- and that's where I got

confused a while ago, because you're going through a list of that which you considered in implementing the penalty, and you're right, Ms. Flake testified to that very thoroughly. And now you've got another witness testifying to the same thing, except maybe it's a distinction in the -- something that you didn't put up before. But, again, the case law says you can't use rebuttal to complete your case in chief. I'm allowing you to respond.

MR. CHURDAR: Your Honor, Mr. -- Mr. Reddy had -- had provided testimony yesterday saying that there was a -- I don’t want to misquote him, but my recollection was this is a new application that has been applied, excuse me, to me, and so what I am -- what I am providing in rebuttal to that is Mr. Stout to testify, no, the Department did exercise the statutory critical area jurisdiction of beaches critical area before that May 2024 reg package was submitted. And so, my question -- questions to him are, how -- how did the Department do that.

THE COURT: I'll sustain the objection.

MR. REDDY: Your Honor ---

THE COURT: I sustain the objection.

MR. REDDY: Can I say something else? He's talking about the May 24 reg package. The May 24 package cannot apply to me. I'm '23. So, whatever he did before the submission of May 24 reg package is not the question. My testimony was in response to their -- their -- their testimony, which is Morgan Flake, specifically said, the question was, has any of -- any enforcement action happened this century, in the last 25 years, certainly during her time there, before me, me.

THE COURT: I understand.

MR. REDDY: Not -- before me. And she said, no. So, that's what I was testifying to, that she had already testified no. And I said it hadn't been applied to me. Now, there's something else being introduced that unless it's contradicting Morgan's testimony, you're gonna open up this whole case again. I don't understand what he's saying.

THE COURT: I've ruled, but he kept talking, so you can respond to that.

MR. CHURDAR: Your Honor, Ms. -- Ms. Flake did not say no. She did not say no. Well, I mean -- I mean, what -- what she said is, I don't know

exactly when these other enforcement actions were started if -- I mean, I'm going by my memory, but I'm saying she testified there are other -- there are other properties that are in the beginning of the compliance and enforcement process. And I don't ---

THE COURT: Well, I'm going to -- you said you were going to offer him regarding the Piping Plover. If you want to go down that path, you're allowed to go down that path. You might want to just go down through your list of questions and get to where we need -- need to be.

MR. CHURDAR: So, where are we with -- with -- with the questions that I was getting ready to -- it's three questions, what I was getting ready to ask Mr. Stout with regard to the exercise of beaches critical area, and this is in response to Mr. Reddy.

Q: Prior to the May 2024 package, that would -- that would capture anything that was -- that was done prior to that.

OBJECTION:

MR. REDDY: Objection, Your Honor.

THE COURT: So, you're saying ---

MR. REDDY: That was not my testimony, not prior to

May '24 packet. My testimony was prior to me. Prior to me.

THE COURT: I do remember that.

MR. REDDY: Yes. I don't why he's coming up with all this.

MR. CHURDAR: Because he -- he had testified that the Department took a -- took a new approach and -- and this is -- this is not something that ---

THE COURT: He took a new approach for -- he testified that the Department took a new approach regarding jurisdiction.

MR. REDDY: With me.

THE COURT: But that's been the whole case is what I've -- that's been my struggle is, that's been the -- that was argued from the beginning of this case. So ...

MR. CHURDAR: Okay. Well, I think it is -- I think it is fairly -- and, Your Honor, I mean, whatever -- whatever you rule, obviously, is where we'll go, but I think it is fairly within the scope of the testimony that the Department was not exercising beaches critical area jurisdiction, and that is, I think, a fair inference that I would like to ask Mr. Stout.

MR. REDDY: Mr. -- Your Honor, if he wants to say it's a rebuttal to me, then the question he has to ask is prior to me, which is all I testified. If he's going to rebuttal to say prior to me, that's fine. He wants to bring up stuff that happened after me. That's -- that's -- I never said that. So, how can he rebut something I never said?

MR. CHURDAR: Your Honor, I ---

THE COURT: Whoa, whoa. Go ahead.

MR. CHURDAR: Your Honor, I -- I -- you had also cited State versus Prather before -- after you'd just come back in ---

THE COURT: Uh-huh.

MR. CHURDAR: --- for a moment and -- and the Supreme Court had said in that case that any arguably contradictory testimony is proper on reply.

THE COURT: I'll have to go back and look at that. You can -- you have to read things in context. You want to say any argument -- contradictory testimony is proper in reply, but in the context that it can't be used to complete your case in chief. I mean, both exist at the same time. I just -- trying to follow the case law.

Go ahead.

(Inaudible due to simultaneous speakers.)

THE COURT: I'm just trying to follow the case law.

MR. CHURDAR: I appreciate that. That -- that is -- that's -- that's the only response that I have. So ---

THE COURT: Well, ask your next question.

MR. CHURDAR: Okay.

Q: So, Mr. Stout, were -- were -- has the Department exercised critical area jurisdiction in the beaches critical area since that authority was granted to the Department by the General Assembly?

OBJECTION:

MR. REDDY: Your Honor, he's asking the same question.

THE COURT: I'll overrule that one. Based on what I've learned so far, I'm going to overrule that one. Go ahead.

A: Yes.

Q: Okay. And what was -- what was the his- -- what have permit applications -- what framework has been used for permit applications for activity in beaches critical area, historically, I'm talking about specifically

prior to the reg package?

A: Sure. I mean, so, as with any application, those reviews would occur under, you know, the general considerations within the statute, the regulations, as well as within the policies of the program document. If there are specific project standards depending on the regulations at that time, those would apply. But ---

OBJECTION:

MR. REDDY: Your Honor, object again. What is he rebutting? What is he rebutting?

THE COURT: I'm sitting here as I listen to his testimony thinking I've already heard this in the case in chief, I thought.

MR. REDDY: Yeah.

THE COURT: Did I not?

MR. CHURDAR: Well, Your Honor, this goes back to what I was saying before, and I'll just -- I'll just move on. I'll just move on.

Q: So, Mr. Stout, last week, Ms. Boynton had testified about numerous images that she referred to as geo rectified. Do you know what that term means for something to be geo rectified?

A: Yes, yeah, so, that means orienting it in -- in

-- related to the data for that imagery, in order to map it in its true location, that way you can overlay other data associated with that, and would be able to take measurements and do just different things with that.

Q: Okay.

(Joint Exhibit Number 65 was referenced at this time.)

OBJECTION:

MR. REDDY: I object, Your Honor, these are, again, new slides.

THE COURT: Is this a new slide?

MR. CHURDAR: Your Honor, this is a couple -- couple of responses. This is page five of Joint Exhibit 65, but with some -- with some added data that is intended to respond to Mr. Reddy's testimony that the Department took one data point, and based upon that exercised jurisdiction. And what this slide shows ---

THE COURT: Where I can understand. They argued what you did and used that to make a departmental determination. This exhibit isn't something where he's gone out in the field and done new data points, is it?

MR. CHURDAR: I mean, this -- this is no -- I mean

this was -- this was data -- this is a bench line that -- from December 2023. That's what that teal colored line is.

THE COURT: Mr. Churdar, are you intending this is an exhibit or demonstrative evidence?

MR. CHURDAR: Well, I'd like to -- first of all, I'd like to introduce it into evidence. But before I do that, I think that maybe I was unclear, the -- you can see up there where it says 28 feet, 36 feet, 42 feet, that is -- that is simply to illustrate what the data that was already collected in that was -- that was part of -- part of joint -- excuse me, Joint Exhibit 65.

THE COURT: I'm just curious, why isn't Ms. Flake, if she's the one that testified about the data points, why is she not presenting this evidence? Why have you got someone new who's not out in the field and doesn't -- I mean, Ms. Boynton, excuse me, why have you got somebody that's gone out in the field and done something new testifying about what evidence you present?

MR. CHURDAR: Ms. B- -- Boynton, excuse me, was not available. She's on leave.

MR. REDDY: Your Honor ---

THE COURT: Okay.

MR. REDDY: --- I have no idea how they came up with this. I mean, I -- this is all -- they just -- literally, they've closed their case, and now they got magenta lines and green lines and some other lines, and someone's on leave and some other guy's up here. How am I supposed to deal with this, Your Honor?

THE COURT: At this point in time, I'm going to -- from what I've heard, sustain the objection unless you can offer proof, from what I'm hearing, so.

MR. CHURDAR: Your Honor, the last part of your ruling was I think at this time or until I hear something else, I'd just like to offer this one last thing.

THE COURT: Okay. This is an offer of proof. Go ahead.

MR. CHURDAR: The scale at the bottom left-hand corner was on Joint Exhibit 65.

THE COURT: Yes, sir.

MR. CHURDAR: The -- the square footage is simply for -- for ease of ---

OBJECTION:

MR. REDDY: Objection, Your Honor, it's a different

scale. It's a different scale. He's making up stuff.

THE COURT: This is an offer of proof. Y'all can proffer your response to his offer of proof if you wish. Go ahead.

MR. CHURDAR: The -- using that scale that's at the bottom left-hand corner, that's where those numbers come from. That is -- that is below the teal line, 28 feet and 36 feet and 42 Feet. And -- and it's -- and it's -- it's simply to highlight and illustrate the distance from where the wall is in December of 2023 from the beaches critical area line.

THE COURT: Okay.

MR. CHURDAR: And, particularly, Your Honor, what I said probably ten minutes ago, at least, this is this way to me, the line becomes very blurry when Mr. Reddy is acting as a pro se litigant as to what is -- what is testimony and what is foundation. You know, opening statement, whatever. The -- the line that we have there is a rebuttal or a response to when he said that there was just one data point that was collected ---

THE COURT: Uh-huh.

MR. CHURDAR: --- and to the extent that he said that in his opening statement, that's where I'm saying, it becomes blurry as to ---

THE COURT: Well, I'm not hearing testimony about explaining what the evidence was in your previous document. When you say the line becomes blurry, this isn't Ms. -- pronounce her name again.

MR. CHURDAR: Ms. Boynton.

THE COURT: Boynton. This isn't her presuming this, that's saying -- explaining what she said. Now, you've got someone else coming in and describing the data that the Department collected. And if you want to respond to his testimony about there being only one data point, that's one thing. But this exhibit is -- seems to be going further than that is where my struggle is. If you would just ask more precise questions, I think I would be okay with your question. But I'll allow you to give it another shot.

MR. CHURDAR: Okay.

MR. REDDY: Can I just comment on this, Your Honor? First of all, it's not misleading. That scale is not the scale on the original -- on the

original drawing. Secondly, this is -- we're going down ---

THE COURT: I'm not letting this in at this point.

MR. REDDY: No, we're going down a very slippery slope here. He keeps moving off, and he -- I don't know what he's rebutting. He had three days, three full days, to put on his case. I put mine on in less than one day, and he's talking about pro se, or whatever, that should lead to his advantage, three to one. He's got a 1000 to one advantage on slides. I've used probably one slide to a thousand of his. And I think I'm at a disadvantage, not an advantage. I don't understand what he's saying.

THE COURT: Okay. All right, Mr. Churdar.

Q: So, Mr. Stout, how -- how does this image that's up on the board, this is Petitioner's Exhibit 5, relate or respond to the assertion that the Department exercised jurisdiction based on just one data point?

A: I think a lot of the prior testimony has been focused on the veg scarp line that was collected in September. And so what's shown on this exhibit is that is a veg scarp line

overlaid on imagery from the same date from December 18th, 2023, and this also shows data that we've had for the location of the first wall, as well as the second wall, and the associated wing walls.

Q: Okay.

MR. CHURDAR: Now, can you go to the next -- just go down to page 2. Yeah.

Q: And then there is -- there is this and one more image, and how does that also respond to the question I just asked you?

A: And, again, so, what you're looking at here is the same vegetation escarpment line from December 18th, the same locations for the first and second wall. They're overlaid on new imagery. And so what you can see is the lack of vegetation in this imagery from February 2nd, 2024, and the next page is, is an image from February ...

MS. MAPLES: Your Honor ---

OBJECTION:

MR. REDDY: Objection, Your Honor. This is the pictures taken last week after they closed the case.

A: This image is from February 26, 2024, it is not

from last week.

THE COURT: Okay. Go ahead.

MR. CHURDAR: So, now, at this point, I would offer these three exhibits listed as Petitioner's Exhibit 5 into evidence.

OBJECTION:

MR. REDDY: I object.

THE COURT: How does this reflect the -- respond to him saying there was only one data point ---

MR. REDDY: Yeah.

THE COURT: --- the exhibits? How does it show that there were other data points? Isn't that the response what you're doing right here?

MR. CHURDAR: Yes, sir.

THE COURT: Can you explain that to me?

MR. CHURDAR: Because the line -- the teal line right there, is not the one data point that -- that Mr. Reddy was referring to the other day. This is from December of 2023.

MR. REDDY: Can I respond to that Your Honor.

THE COURT: Yes, sir.

MR. REDDY: So far, just to be clear, and not to get to all this mess they're trying to recreate and redo their story. There's 1255 square feet they claim is beach critical area. That is

their claim. 1255 square feet. My only point is they claim that 1255 square feet after one day, one data point. What he's trying to say is, oh, it's the veg line. Well, that -- if you take the veg line, that's probably 10,000 square feet, or, I don't know, 8,000 square feet. If you can think about it, Your Honor, my property is 105 linear feet all the way across the wall. So, 1200 square feet is about eleven feet in, eleven feet deep. That's all they've claimed. I think he's trying to say, now, oh no, it's not the eleven foot deep, it's all the way back to the green line, 40 feet in. So, this is a new claim they're making to justify that one data point. I have no idea what he's saying. This is why I can't respond to all this mess.

THE COURT: Mr. Churdar?

MR. CHURDAR: Your Honor, the ---

THE COURT: Is this new? Did you present this in your case in chief?

MR. CHURDAR: Well, the -- the first exhibit was -- was part of Joint Exhibit 65 that -- that Ms. Boynton testified to.

THE COURT: This new line -- this new line that

you're showing, was that shown in your case in chief?

MR. CHURDAR: Yes, sir.

THE COURT: Well, that I'm looking at right now, the ---

MR. CHURDAR: The -- yes, sir. The point is that there was -- this is -- this is, I think, using that Prather case, it just says arguably contradictory, arguably contradictory. That's -- that's what I believe I'm showing. And, therefore, I believe that based on what the Supreme Court said in Prather that ---

MR. REDDY: That is not anywhere, Your Honor.

THE COURT: Go ahead and finish.

MR. CHURDAR: That -- -- that -- that based on -- on that standard, it's admissible.

THE COURT: All right. Thank you. So, you're offering these three exhibits?

MR. CHURDAR: Yes, sir.

THE COURT: Anything else after this for this witness?

MR. CHURDAR: Yes, sir.

THE COURT: I'm still going to step out just for a second.

MR. CHURDAR: Okay.

(Off the record from 10:05 a.m. until 10:08 a.m.)

THE COURT: Based on our review of the case law, I'm gonna let his testimony stand. As far as the exhibits, I'm going to deny their admission, in part, because I don't see any evidence in instances like this. Mr. Reddy hasn't been given notice of any new exhibits that you wish to offer and given an opportunity to respond. I don't see any evidence of that at this point in time. So, that's my ruling. All right.

MR. CHURDAR: Your Honor, could I get -- I had mentioned this would be Petitioner's Exhibit 5. Could I get this marked and just proffer it?

THE COURT: Yes, sir.

(Petitioner's Exhibit Number 5 was marked for identification purposes and proffered.)

COURT REPORTER: Thank you.

THE COURT: All right. On to the next subject.

Q: Mr. Stout ---

OBJECTION:

MR. REDDY: Your Honor ---

THE COURT: Yes, sir.

MR. REDDY: This is a picture from May the 14th, after the trial, after they closed their case.

THE COURT: Okay. Well, we hasn't offered it yet.

I'll wait until he offers it. If it was a jury trial, I'd tell him to take it down, but it's not affecting me.

Q: Mr. Stout, do you recognize ---

OBJECTION

MR. REDDY: Same objection, Your Honor, May the 14th.

THE COURT: Overruled at this point. Let him complete his question.

Q: Do you recognize this picture?

A: Yes, I do.

MR. CHURDAR: Can you go to the other two, as well?

Q: Do you recognize this picture?

A: Yes, I do.

MR. CHURDAR: Go to the next.

Q: Do you recognize this picture?

A: Yes, I do.

Q: Did you take these photos?

A: Yes, I did.

Q: And when did you take them?

A: May, 14, 2025.

MR. CHURDAR: These are Petitioner's -- marked as Petitioner's exhibits -- well, I guess they haven't been marked yet, but they may be marked as Petitioner's Exhibits 8, 9, and 10.

Q: Can you ---

COURT REPORTER: Can we back up? Are you using 8, 9, and 10 because you marked each one of these separate?

MR. CHURDAR: No, that -- that is just one exhibit, Petition- -- proffered as one exhibit. That's Petitioner's 5.

COURT REPORTER: Okay. 'Cause you're saying 8, 9, and 10, and I don't have a 6 or a 7.

MR. CHURDAR: Okay. I don't have a 6 or 7 either. Ms. Phelan is going to be offering 6 and 7.

Q: All right. Mr. Stout, these -- these pictures ---

OBJECTION:

MR. REDDY: I'm going to have to object again, Your Honor. Is he going to plan to question him on these pictures that we have no idea where -- these are after -- again, after they closed their case. We have no idea what they -- what these are, what context he's asking them in, or what he's trying to do with them. I -- he -- he -- how can he be using this, Your honor?

THE COURT: Well, I'm going to let him proceed right now.

Q: So, I'm sorry, I don't remember, did I ask you,

did you take these pictures?
A: Yes, I did.
Q: Okay. And when did you take them?
A: On May 14, 2025, last Wednesday.
Q: Okay. And what do these photos show regarding the beaches critical area line?
A: And so in these ---
THE COURT: Go ahead. I'm just ---
A: Well, I was gonna say, I don't know if it helps if I go to that one to draw, I mean -- this -- this particular picture is taken standing on the property to the -- to the south or in front of not on, of 118 Ocean Boulevard, the property that we've been discussing and looking north.
THE COURT: Mr. Churdar, how is this responsive to Mr. Reddy's testimony, and that which you could not have presented in your case in chief?
MR. CHURDAR: Your Honor, Mr. -- Mr. Reddy -- we have to respond to testimony, not to his opening statement. And what Mr. Reddy testified that the Department exercised jurisdiction based on one day, it just asserted jurisdiction, just based -- based on data collected on one day. What ---
THE COURT: You do understand what I -- I'm looking

at this, there's data that you collected that supported your administrative order that you issued, and then now you're bringing in something last week to support your case in chief.

MR. CHURDAR: To rebut.

THE COURT: Okay. That's what I'm getting at. So, my question was, how does this evidence -- one more time, how is this evidence responsive to his testimony that could not have been presented in your case to chief?

MR. CHURDAR: Well ---

THE COURT: Or was not even presented, could be both.

MR. CHURDAR: Your Honor, my ---

(Inaudible due to simultaneous speakers.)

MR. CHURDAR: My -- when something is presented in opening statement, it is ---

THE COURT: I'm asking about his testimony, your case in chief, not about any opening statements.

MR. CHURDAR: Right, in this -- Your Honor, the -- the rebuttal is to show that there has been periodic inundation continuously. It wasn't just exercising jurisdiction based on one day.

The vegetation line has continued to move back over a period of months. And it is a rebuttal ---

THE COURT: Has this been offered to him before you presented it today?

MR. CHURDAR: These -- these pictures, and the other pictures that were proffered just a moment ago, were provided to Mr. Reddy yesterday.

THE COURT: Okay.

MR. CHURDAR: Oh, I'm sorry. I'm sorry, they were -- they -- the hard copies were provided yesterday. They were provided, actually, last week.

MR. REDDY: Your Honor, may I respond to this?

THE COURT: Yes, sir.

MR. REDDY: This in no way rebuts my testimony. I continue to say it is in no way rebutting my testimony. This is just a way for them to try to change the narrative. My testimony was very simple, 1255 square foot, marked with a GIS gun, that's what they have ---

THE COURT: His testimony was based on ---

MR. REDDY: A line.

THE COURT: The fact that the ---

MR. REDDY: The yellow line.

THE COURT: --- your -- the evidence that you presented was inaccurate, and is that ---

MR. CHURDAR: Yeah.

THE COURT: So, how is this rebutting his testimony about the exhibit that you presented?

MR. CHURDAR: Because, Your Honor, and -- whatever else he said, he did testify that the Department asserted jurisdiction -- and I think it's important for -- just to lay it out that, you know, the vegetation line is the basis upon which the Department evaluates periodic inundation.

THE COURT: I understand that and so, and you presented plenty of testimony about that.

MR. CHURDAR: And when it continues to move back, it rebuts the assertion that the Department exercised jurisdiction just based on one day. And this is something -- these are pictures that were taken just last week showing the vegetation line that has moved substantially further landward. That is the rebuttal.

THE COURT: I'll allow you ---

MR. REDDY: Can I respond to that?

THE COURT: Yes, I'm going to sustain the objection.

MR. REDDY: First of all, this is a -- you know, I

said it yesterday, which I wish he'd respond to that, which is, it's a continuous character assassination. What he's showing there, Your Honor, is the thing that their own expert testified to. The Army Corps came in and dumped sand last week. They dumped sand all over that in front of our structure, all over the next structure. They literally pumped sand. It's the intercoastal dredging that Chris Jones talked about in his testimony, that's what they're doing. It's a project that's still ongoing. They're basically putting sand, they're covering up the vegetation that's there. We have pictures. We can start introducing all kinds of evidence now.

THE COURT: Well, we're going down the path to starting an entirely new case.

MR. REDDY: Yeah, entirely new case.

(Inaudible due to simultaneous speakers.)

THE COURT: Can we stop? They had a one and a half years of stuff, and three full days where they had, I don't know how many witnesses, and now they're trying to say, well, you know, my enforcement action is what happened last week.

Well ...

MR. CHURDAR: Your Honor, I have said nothing about Mr. Reddy's character. I mean, I think that's -- that's simply untrue that I have engaged in character assassination.

MR. REDDY: Oh, yes.

MR. CHURDAR: All I was talking about is what he testified to and how I believe this falls underneath the umbrella of Prather, as related to that, related to his testimony. I believe it satisfies that standard and the ---

THE COURT: I tell you what, I'm really -- I think I'm going to just let you go into it. We're just going to start a whole new trial, Mr. Churdar, because I'm going to let him respond. And if he -- whatever he needs to respond to, I'm going to let him respond to all this. So, if that's the path you want to take, that's where we're going. Because it's a -- it is a de novo hearing, and I recognize that. I don't -- we're just starting a whole new case. So, with that -- because this is based on today. So, what you're saying now is I want to try my case in rebuttal based on how it looks last week when everything, all the evidence, all the

discovery, had nothing to do with last week. All the -- everything led up to this trial. So, if that's what -- if that's where we're going, then he has a right to -- we'll just retry the whole case.

MR. CHURDAR: Your Honor, I am going to move on.

THE COURT: Okay.

MR. CHURDAR: Humbly. I'm gonna back away from this.

THE COURT: All right. Go ahead. What's the next area? The next line of questioning?

MR. CHURDAR: Just two questions about the safety concerns. I know that's famous last words.

THE COURT: Okay. Go ahead.

MR. CHURDAR: The safety concerns about not putting sand in front of the first wall.

THE COURT: That's -- that's responsive to his testimony.

MR. CHURDAR: Yes, sir.

Q: So, Mr. Stout, you heard Mr. Reddy testifying yesterday about his safety concerns. To your knowledge, did Mr. Reddy or Mrs. Reddy, anybody, ever inform the Department about the safety concerns with regard to the sand being put in front of his wall?

A: Not that I'm aware of, no.
Q: Okay. When was the first time you heard about these safety concerns?
A: Yesterday during his testimony.
Q: Okay. Thank you. I have no further questions.
THE COURT: All right.
MR. REDDY: Your Honor, can we take a five-minute break?
THE COURT: Yes, we can. We're going to take a five-minute break.
(Off the record from 10:24 a.m. until 10:28 a.m.)
THE COURT: All right.
MR. REDDY: So, Your Honor, I would like to focus on Piping Plover since that's the majority of his testimony.
MR. STOUT - CROSS EXAMINATION BY MR. REDDY:
Q: And I would like to get back my Exhibit Number 45, Respondent's Exhibit Number 45. It's with you. And I like to go, if you will, on 45 to 020033.
(Respondent's Exhibit Number 45 was referenced at this time.)
MR. REDDY: Respondents Exhibit Number 45.
COURT REPORTER: Thank you.
Q: So, Chris, while that's being teed up, you were

familiar with Piping Plover?
A: Yes.
Q: What was your role at Piping Plover?
A: So, at the time of Piping Plover, I was managing the Coastal Zone Consistency Section, so, I assisted in some of the compliance and enforcement with the Bureau of Water, because the land -- the land disturbance permit in the coastal zone triggers the Coastal Zone Consistency review.
Q: Okay.
MR. REDDY: So, ETA on this thing?
THE COURT: It's setting up. That's the Elmo.
MR. REDDY: 020033. Can you enlarge it?
THE COURT: At the top of it.
Q: Can you -- are you familiar with this?
MR. REDDY: Can you -- can you scroll up -- pull it up to the top? Yes, Yeah. Oops. Elmo failed.
THE COURT: Great.
MR. REDDY: Your system is not working either?
THE COURT: Oh, there you go.
MR. REDDY: Can you straighten it up any? More. Come up with it, all the way down. No, keep coming.
THE COURT: Talk real fast before my system fails

again.

Q: So, you recognize any of the names on that list?

A: I do, yes.

Q: Can you tell me who they are?

A: No.

Q: Dave Henderson, is he with DHEC?

A: I do not -- I don't know David Henderson, no.

Q: Trent Shaw?

A: Trent Shaw was a project manager in our Critical Area Permitting Section.

Q: Was he Matt's boss?

A: No, he was not.

Q: Okay. So, all of these people were given final design drawings for the seawall to go in front of one, two, three, four and five Piping Plover. Do you see that?

A: I do.

Q: Okay. Can you go to the -- flip the page over, please?

OBJECTION:

MS. LENHARDT: Your Honor, he hasn't offered this exhibit yet and he's asking him to publish the contents of it.

MR. REDDY: What's that? Yeah, I offered the

exhibit into evidence.

THE COURT: No, you haven't. Well, you did earlier and I withheld my ruling.

MR. REDDY: I'm sorry. Oh.

THE COURT: Remember I said during the lunch break. So, now, you're wanting to offer it. Is it marked?

MR. REDDY: Yes.

MR. REDDY: It's Respondent's Exhibit Number 45.

THE COURT: Are you offering it into evidence?

MR. REDDY: Yes, sir, I am.

OBJECTION:

MS. LENHARDT: Object on grounds of hearsay. The email is actually from -- if you can scroll up, Ms. Reddy, from Bert Ellis, who was a defendant in this Hilton Head case, sent to Matt.

THE COURT: So, it's not from the Department?

MS. LENHARDT: No, no. Now, there may be a chain where there is some from Mr. Slagel, but that email right there is from Bert Ellis, who is the defendant and is not ---

MR. REDDY: It doesn't matter, Your Honor. Let's flip the page. The same exhibit on 45 that we offered. It's working? Okay. Can you put it up? Okay. So, can you -- can you go to the

next one, which is from Matt, get to the bottom of the page.

COURT REPORTER: Yours went out too, right?

MR. REDDY: Okay.

A: Mine's not been working the whole time.

MR. REDDY: 02 -- no. 020033, get to the bottom of 020033.

Q: Okay. So, this is from Matt Slagel, who's -- who's the Department, back to all the people at Hilton Head. And can you read what it says, Chris, if it shows up on your screen?

OBJECTION:

MS. LENHARDT: Your Honor, I have other objections.

MR. REDDY: No, no, not again.

THE COURT: All right. So, she's objecting now to that exhibit.

MS. LENHARDT: I'm objecting to the entire exhibit, mainly on hearsay, also relevance. I don't think that these emails back and forth between DHEC and defendants in another case makes it more or less likely that you're going to make any finding relating to how DHEC treated Mr. Reddy. I don't think it goes to that. I think it's unnecessarily cumulative. We have been presented with twelve exhibits relating to

Piping Plover case, and there may be some that we would not object to.

THE COURT: How about the fact that Mr. Churdar just put this evidence up, I mean, about Piping Plover and had him testify about ---

MS. LENHARDT: Well, I ---

THE COURT: --- Piping Plover?

MS. LENHARDT: And, certainly ---

THE COURT: Let me finish. Let me finish.

MS. LENHARDT: Yes, sir.

THE COURT: And that's okay, but so, he put the evidence up, there's wide latitude on cross examination. And so, he's asking him about further -- here, again, I don't know all the history on all this. So, it appears to me, he's asking him about the decision making process is, -- is -- is this part of that chain?

MS. LENHARDT: Well, I don't know the Mr. Stout -- he wasn't involved. He's not in those lists. I would -- I would -- I understand that you wanted to hear some facts about Piping Plover.

THE COURT: Well ---

MS. LENHARDT: However ---

THE COURT: I allowed it.

MS. LENHARDT: You indicated in your order that further inquiry into the facts about ---

THE COURT: Yeah, okay.

MS. LENHARDT: --- Piping Plover was ---

THE COURT: Well, I don't know if that was it, but go ahead.

MS. LENHARDT: So, we understand that, but there are just a tremendous amount -- it's going to be confusing and prejudicial to have all of these documents. We're not trying that case here.

THE COURT: I'm not going to let all of these documents in. I would normally let statements by the Department, since they're an -- an admission of a party opponent, so, that's what I would normally let in. So, when you say all of these exhibits.

MS. LENHARDT: Well, just the ones ---

THE COURT: We're asking about this one.

MS. LENHARDT: --- in the group. With regard to this one, if -- if Your Honor would just clarify that the pieces that are not from OCRM.

THE COURT: I will clarify that. Do you understand that, Mr. Reddy?

MR. REDDY: Yep. Yes, Your Honor. First of all, they opened this up on penalties. All I'm

trying to say is that they were given every opportunity here to assert jurisdiction and assert a penalty, and they did not. They kicked it over. I'm going to show, if you follow my chain, I'm going to show ---

THE COURT: I'll let you present the statements by the Department.

MR. REDDY: I am. Okay. I'll focus on that.

Q: So, this is a email from Mr. Slagel, who's in the Department, saying, is there an aerial photo site map or something similar you could email me? I need to see where the bulkhead would be installed in relation to the DHEC OCRM setback line and where the equipment is. So, I'm now going to go to the next communication from Mr. Slagel. The next communication ---

THE COURT: Is that a question to him or ---

MR. REDDY: I'm going to have a question after I show it to him.

Q: I'm going to go to the next communication, then I'm going to question you, Chris.

MR. REDDY: So, if you can go to the next communication from Mr. Slagel, now that the information he requested have been sent to him. Show -- show it's from Mr. Slagel. So, we're

clear it's from the Department.
Q: Can you read the first sentence?
A: Sure, it says, "This proposed project will not require separate authorization from DHEC-OCRM."
Q: Okay. So, what would you conclude from this sequence of events where he asks to be sent aerial photographs; he was given design drawings; and then he reviews it, and he says, hey, I want to make sure it's behind the set -- landward of the setback line; and then he says, "This proposed project will not require separate authorization from DHEC-OCRM"?
A: Can you repeat your question?
Q: So, what would you conclude from Matt being given design -- the whole Department being given design drawings; he then goes back and says, do you have aerial photos to show that the bulkhead, the wall, in this case, the five-person wall, is going to be behind the setback line; and then they send him the information. I have the whole sequence here, but obviously, if they're sending it, she -- by the way, again, I'll go back to, I'm not sure why she's involved in this. So, I will -- and now he responds back to all of these people, including

you can see several people in DHEC copied on it, and says, "This proposed project" that he saw, the design drawings, that he's seen the aerial photographs, that is now behind the setback line, "will not require separate authorization from DHEC-OCRM"?

A: Sure. So, the conclusion from that is that it didn't require a permit being landward of the setback line, and as Matt testified to, Mr. Slagel testified to earlier in this trial, that that was an error, that there should have been a requirement.

Q: Okay. So, I'm going to ---

MR. REDDY: Your Honor, I am going to request that this be entered into evidence.

THE COURT: The -- what's the exhibit?

COURT REPORTER: 45.

MR. REDDY: 45.

THE COURT: All right. Respondent's 45 ---

MS. LENHARDT: You admitted it ---

THE COURT: --- I'm going to allow the admission of it into evidence regarding the Department statements that have been referenced so far.

MS. LENHARDT: That's -- that's fine.

THE COURT: Any other objection?

MS. LENHARDT: Other than the ones we've already said?

THE COURT: Cumulative?

MS. LENHARDT: Yes.

THE COURT: I overrule that one.

(Respondent's Exhibit Number 45 admitted into evidence (Only the Department statements referenced so far are admitted).)

MR. REDDY: Okay. So, now, I am going to -- I would like to ask Mr. Chris ---

MR. CHURDAR: Just -- just for clarification. So, 45 -- everything that is not from Mr. Slagel ---

THE COURT: No, everything that is from Mr. Slagel.

MR. CHURDAR: Oh, I was saying it backwards. Everything from -- not from him is being ---

THE COURT: Oh, excluded, yeah.

MR. CHURDAR: Excluded, whatever?

THE COURT: Yeah.

MR. CHURDAR: Okay.

MR. REDDY: I would like to introduce into evidence Exhibit Number 75. Someone has it over here.

THE COURT: If they can pull it up on the screen.

MR. REDDY: Can you put it up on the screen, please? Okay. You have it on the screen.

(Respondent's Exhibit Number 75 was referenced at this time.)

Q: So could you read -- do you know this guy is, Dan Burger at DHEC?

A: Dan used to work for the Department. He was over our Coastal Services Division, so non-regulatory.

Q: So, it says he's Director, Coastal Services Division, OCRM. I don't know what that means, but okay, so, he's obviously someone qualified. Could you read the two sentence he writes?

THE COURT: This is another exhibit?

OBJECTION:

MS. LENHARDT: Your Honor, I just for the record would like to offer -- object based on cumulative relevancy. Rob Young is not and never has been a DHEC employee.

MR. REDDY: This is not Rob Young. This is from Dan Burger.

MS. LENHARDT: I'm looking at Rob Young on the screen.

MR. REDDY: I'm sorry. I'm -- I'm looking at the piece that says from Dan Burger. Yeah, from Dan Burger.

THE COURT: See that little small snippet?

MR. REDDY: It's really small.

MS. LENHARDT: Right. I do see that, part of it.

MR. REDDY: Yeah, so, the middle of it. See, it says ---

THE COURT: Well, let her finish her objection.

MS. LENHARDT: But this is just a cumulative -- I think Mr. Reddy's trying to get the facts surrounding Piping Plover and this is just not necessary to have those, you know, before you.

THE COURT: All right.

MS. LENHARDT: And it's also hearsay.

THE COURT: I'm at another disadvantage now. My screen is gone, so I can't look at my old screen. I really can't read that from here.

MR. REDDY: Would you like me to read it, Your Honor?

THE COURT: Yeah.

MR. REDDY: Okay.

THE COURT: Not publishing it, reading it.

MR. REDDY: So, this is from Mr. Dan Burger, who's -- who's at DHEC. He's the director ---

THE COURT: Why don't they blow it up? That says, ao the new seawall?

MR. REDDY: Yeah. "So the new seawall," yeah, this sentence here. "So the new seawall". "So the

new seawall is landward of our setback line, thus removing it from our critical area jurisdiction on the beach."

THE COURT: Was -- can I ask the witness something? Was this part of the Piping Plover ---

A: Yes.

THE COURT: --- decision making process?

A: Not part of the decision making process, no.

THE COURT: Then you're gonna need to lay a foundation.

MR. REDDY: Okay. So, I'm going to -- if you -- if you want it to be part of the decision making process, I would like to introduce exit (sic) numbers -- Respondent's Exhibit Number 79 from Mr. Trent Shaw, who was a direct contact prior to Mr. Slagel, and the employee of DHEC. Can you -- can you please put up Mr. Trent Shaw? I'd like to introduce that into evidence, Your Honor, number 79.

(Respondent's Exhibit Number 79 was referenced at this time.)

Q: So, this Trent Shaw all was, who is a front guy on this says, what does he say, Chris?

A: All right. Are you asking me to read the email?

Q: Would you mind reading it into the record?
MS. LENHARDT: Your Honor, have we ---
THE COURT: No, it's not been introduced.
MS. LENHARDT: We were talking about another exhibit. Now, we're talking about this exhibit. Have we -- have you ruled on the prior one?
THE COURT: We've moved on from that one, right?
MS. LENHARDT: Okay. The one -- okay.
OBJECTION:
MR. CHURDAR: Your Honor, until -- until it's been admitted, I would object to publishing it.
THE COURT: Okay. Are you offering it?
MR. REDDY: I'm offering this into evidence and the previous one if it's not admitted, I'd like to proffer it. That is on Exhibit 75, I'd like to proffer it.
THE COURT: Exhibit 75 is -- I haven't ruled yet against you.
MR. REDDY: Yeah.
THE COURT: You don't have to proffer yet. Can you lay a -- can you lay a foundation for this exhibit?
MR. REDDY: Yes.
THE COURT: Do you know what I mean there?

MR. REDDY: The entire -- the entire reason he was brought up here is to say that the fine against me was justified versus the fine on -- on Hilton Head, and the justification, I believe, he provided, was this was a Water Bureau fine that has nothing to do with how we fine. My foundation is they chose not to fine. They -- that is a choice they made not to exert their authority to issue a fine, and in that same situation with me, they are choosing to fine. So, this basically establishes the fact that they used certain criteria here to say, I will not fine you because it's outside of my jurisdiction.

THE COURT: I got it. So, now ---

OBJECTION:

MS. LENHARDT: Your Honor, I understand why he wants it in, but he didn't -- that's not a foundation for it. And some of these -- particularly the earlier email, had nothing to do with ---

THE COURT: Well, we've moved on from that one.

MS. LENHARDT: Okay, I thought -- I apologize. But for this one, the same objections that I've raised.

THE COURT: Cumulative.

MS. LENHARDT: Cumulative, relevancy, unnecessary, confusion.

MR. CHURDAR: Your Honor, you said ---

MS. LENHARDT: Hearsay.

MR. CHURDAR: --- we've moved on from 75 or are we on 75?

MR. REDDY: No.

THE COURT: We're on this ---

MR. REDDY: 79.

THE COURT: This email.

MR. CHURDAR: I don't know how we -- when we switched.

THE COURT: Please -- please let me just stay within the parameters of that which is in front of me, Mr. Churdar. That's all I'm trying to do.

MR. CHURDAR: Okay.

THE COURT: When I say I've moved on, whatever is in front of me that Mr. Reddy is offering I'm ruling on. So ...

MR. REDDY: This is an opposing party email for the guy directly involved in the decision making at Piping Plover.

THE COURT: Do you recognize this email or does this the email appear to be an email by the Department?

A: This is an email by the Department. This was sent by Trent Shaw, who was a project manager in the Beaufort Regional Office, to Rocky Browder, who worked with the Town of Hilton Head.

THE COURT: And this email is in Respondents' ...

COURT REPORTER: 79.

THE COURT: Okay. I -- I'm going to allow you to proceed or introduce this into evidence, this particular email.

(Respondent's Exhibit Number 79 - particular email - was admitted into evidence.)

Q: So, would you go ahead and read it, please?

A: Sure. "In all my conversations with these folks, I have stated that any part of this proposed riprap or bulkhead would need to be entirely landward of our jurisdiction. Also, on site you and I both stated multiple times that any hard erosion control structure (riprap or seawall) seaward of the setback line, would not be allowed. The proposed location of the wall appears to be landward and the cross section shows the riprap being landward of the setback line as well but the property owners must be clear that everything needs to be

landward of the setback line, not the baseline as stated in that email." "Copying Matt Slagel on this email as he will be the project manager handling any beachfront activities moving forward."

Q: Can you read the top of that email?

A: In blue?

Q: Yes.

MS. LENHARDT: Your Honor, that's ---

THE COURT: Yeah, I don't know ---

MS. LENHARDT: --- hearsay.

MR. REDDY: It is to Trent Shaw, right? Yeah. And copy to Matt Slagel and I believe ---

Q: Do you know who Blair Williams is?

A: Blair is the manager of the Critical Area Permitting Section.

Q: He is -- he's the mana- -- he's the chief head boss of Slagel and Trent?

A: At that time, he was, yes.

Q: Okay. Can you -- can you read that, please?

MS. LENHARDT: Your Honor, it's from Rocky Browder, who is not with DHEC.

THE COURT: Okay.

MS. LENHARDT: So, who wrote it is hearsay.

MR. REDDY: But it's been -- my point, Your Honor,

is they're saying they made a mistake. So, what I'm trying to say is a lot of people are involved in this mistake. They all received this email. This is the opposing party receiving an email. Clearly -- first of all, Trent Shaw writing the email, and then a receipt of the email back that -- that says what it says.

THE COURT: Is -- I have to read all this later. I'm going to allow this in, not for the truth of the matter asserted, only to the extent that it may provide context as to the email by the Department. So, that -- I'm sustaining it somewhat on the hearsay ground and I'm not allowing it in for any truth of the matter asserted.

MR. CHURDAR: Just so we're clear, when you said earlier, I'm going to allow in that email, there is ---

THE COURT: There's a lot of -- I recognize there's a lot of emails in this particular ---

MR. CHURDAR: Okay.

THE COURT: --- exhibit, and I'm limiting it to the exhibit -- the emails that are in front of me.

(Respondent's Exhibit Number 79 (only emails before

the Judge) was admitted into evidence to provide context, not for the truth of the matter asserted.)

MR. CHURDAR: Thank you. Thank you.

THE COURT: Mr. Churdar.

MR. CHURDAR: I just want to be clear for the record.

THE COURT: Yeah.

MR. REDDY: So, for the record, Exhibit 75 that was not allowed in or we -- you didn't rule on it, I'm past that, Your Honor ---

THE COURT: I understand.

MR. REDDY: --- but I just like to proffer it.

THE COURT: Okay.

MR. REDDY: If it's okay.

THE COURT: All right.

(Respondent's Exhibit Number 75 was proffered at this time.)

MR. REDDY: Okay. So, Exhibit 75 is proffered. Exhibit 79, is it okay to enter it into evidence, the one in front of you?

THE COURT: Yeah, that -- that particular email.

MR. REDDY: Thank you, Your Honor. Let me have that. Do you have it?

COURT REPORTER: 75 and 79?

MS. LENHARDT: These aren't our copies?

MR. REDDY: No, no, these are the marked copies.

MS. LENHARDT: Okay.

MR. REDDY: 79.

COURT REPORTER: Thank you.

MR. REDDY: Your Honor, I would also like to enter into evidence Respondent's Exhibit Number 44, that is also a opposing party communication.

THE COURT: Well, you have to lay the foundation for it.

MR. REDDY: The foundation for it is ---

THE COURT: No, through the witness.

MR. REDDY: What is that?

MR. CHURDAR: I was just saying just give me a second to get to it. I'm there. 44.

THE COURT: Mr. Reddy?

MR. REDDY: Okay. So, if you could go to the bottom of that, please. Scroll.

(Respondent's Exhibit Number 44 was referenced at this time.)

Q: Yeah. This is from Ms. Emily Cedzo, who was at CCL, sent to Curtis Joyner, who is with -- do you know who Curtis Joyner was?

A: Curtis Joyner was with the Department. He was the prior manager of the Coastal Zone Consistency Section before I took over that

position.

Q: Thank you. And if -- I want to point out to the second paragraph, it says, "I understand" ---

OBJECTION:

MR. CHURDAR: Your Honor, if I could object. It hasn't been admitted into evidence. It is hearsay from Emily Cedzo.

MR. REDDY: Hearsay.

OBJECTION:

MS. LENHARDT: Same objection.

MR. REDDY: She's the 30(b)(6) witness for them, Your Honor.

MR. CHURDAR: From our perspective, she's not a Department employee. Emily Cedzo does not work for BCM.

THE COURT: Where -- who does she work for?

MR. REDDY: CCL.

THE COURT: Who does she work for?

MS. LENHARDT: The Coastal Conservation League.

THE COURT: Oh, okay. I remember now. All right. Any response to their hearsay objection?

MR. REDDY: Well, the opposing party, as well, right? She's been objecting and asking me questions and asking me about permits and all

that.

THE COURT: Any -- is that an admission of a party opponent?

MS. LENHARDT: I don't believe it is. His allegations are relative to the Department.

MR. REDDY: This is from one opposing party to the other. Oh, yeah -- this -- this was actually tendered in, actually when we tendered the deposition.

MS. LENHARDT: Your Honor, the exhibits attached or -- they -- they were identified, I guess, in the deposition. Those were not offered along with the deposition, so those are not in evidence. I also, raise my cumulative, irrelevant objections to this, also.

THE COURT: I overrule those at this point, recognizing that is a party opponent. I'm going to allow this in in that regard. So go ahead, proceed.

(Respondent's Exhibit Number 44 was admitted at this time.)

Q: So, would you read the first sentence of the second paragraph, please?

A: "I understand that the wall is landward of the jurisdictional lines and above the" mean high

water "putting it outside of critical area."
Q: Okay. Can we go to the top, see who it's -- keep -- keep coming so we can see who it's from? Who is that from?
A: That email is from Curtis Joyner.
MR. REDDY: Okay. So, this is the connection we're going to make to what Chris earlier testified to.
Q: So, go ahead read that.
A: "The need for a permit to disturb land for the construction of" a "bulkhead landward of OCRM's beachfront baseline and setback line needs to be answered by Bureau of Water - Coastal." I've "copied Shannon Hicks and she should be able to answer the question provided there is an understanding of total acreage to be disturbed. The Coastal Zone Consistency review would only be triggered if an NPDES permit is required."
Q: So, who is Mr. Curtis Joyner? Is that -- says, "Manager, Coastal Zone Consistency" OCRM. Is that a senior position?
A: So, I testified to that just a little bit ago. Curtis was the prior manager for the Coastal Zone Consistency Section. I replaced Curtis in

May, with his retirement happening at the end of June of 2018.

Q: So, would you say Curtis' understanding from that email to Emily is that the bulkhead is landward of OCRM's beachfront baseline and setback line?

A: I don't want to speculate on what Curtis thought about this email.

Q: No, I'm just saying what does it read to you? What is -- if you -- what does it say?

A: I mean, based on the evidence provided, the work is landward of the setback line and baseline.

Q: Okay, good. And so he hands it over, says, hey, this is not for us, because it's landward of the base -- baseline and setback line. So, let's kick it over to the Bureau of Water Coastal or whatever it is they are, correct?

A: So, I guess maybe to add some light to that aspect of this, the Coastal Zone Consistency review is not a permit. There is not an application for a permit solely through the Coastal Zone Consistency process. It is triggered by requests for certain state permits, as well as federal activities. So, in

the event that there is a permit needed, it is not that determination by the Coastal Zone Consistency section. It goes to whoever that permitting group would be. In this case, it's the Coastal Stormwater Section within the Bureau of Water.

Q: I understand. My question is different. My question is she called it cumulative. I just was showing that there was a bunch of people involved in this decision making that concluded that this was outside of the OCRM beachfront baseline and setback lines, and, therefore, as Matt said in Exhibit 45, did he not, that no further approval is needed?

A: From the OCRM, that’s -- that is correct, and that is also what Mr. Slagel testified to as being the mistake that was made.

Q: A mistake. Let's talk about the mistake. So, all of this went on -- when did the wall go in? I'm sorry, going back to that 45 -- number 45 exhibit that we jumped in. When was the -- when was the -- when did that communication happen saying you don't need any further approval from us? What timeframe?

A: I think it was all early 2018.

Q: Correct. When did the wall go in?
A: I -- I don't know off the top of my head.
Q: Would you be surprised if I told you August 2018?
A: I mean, that sounds about right, but I'm not certain.
Q: Okay. And when did the consent order get signed?
A: I believe based on your testimony, it was in 2019.
Q: One year after the wall went in. One and a half years after Matt said, no further approval is needed.
A: Uh-huh.
Q: Do you know one of the signatories for the consent agreement?
A: I mean, at that time, those -- those were being signed by Myra Reese, who was over the Environmental Programs for DHEC.
Q: What is her position today?
A: She is the Director for the South Carolina Department of Environmental Services.
Q: So, pretty senior person to sign a consent order one and a half years after they were told no further approval is needed, the mistake

happened. But one and a half years later, she signs the consent order. By the way, did that consent order ever allege anything about jurisdictional issues, or it just addressed the issue you addressed on -- on the stormwater permit?

A: It only addressed the stormwater permit issues.

Q: Okay. So, you went through one and a half years of a mistake; consent order was signed; mistake not corrected. Has that mistake been corrected yet? Today -- as of today?

A: What do you mean by has the mistake been corrected?

Q: Has someone gone back and said, hey, remember this thing, we made a mistake. So, we're going to come back and ask you to take the wall down. You can't have it?

A: No, the Department has not taken that position.

Q: So, seven years later, the mistake still stand.

A: The wall is still in place, yes.

Q: So, are you -- are you -- is it your testimony that it was a mistake, or are you just saying that was Matt's testimony it was a mistake?

A: I wasn't involved in that decision as to whether or not it was critical area or not.

So, I can't speak to what the decision process was as far as determining critical area. I would say from, you know, it certainly was Mr. Slagel's testimony it was a mistake. I've looked at the photos recently, just preparing for trial. I would say, yeah, it looked like that was beaches critical area.

Q: Okay. Let's go to that, though, because he was starting to ask you that. But I want to ask you directly to my testimony, have -- prior to me -- again, remember the time frame ---

A: Uh-huh.

Q: --- prior to me, which is 2023, in this century, have you enforced any jurisdiction or structure landward of the setback line?

A: I -- I -- I don't know.

Q: You don't know. But yet you were going to testify on that, rebutting my testimony?

A: Well, you're talking about an enforcement action that was issued for a structure landward of the setback line. And for that, I don't know. I mean ---

Q: I thought that's what you were rebutting. That's why you said you were rebutting something about what I said had never been

done, is what Morgan testified. He said -- he said he was going to somehow rebut it. So, you don't think you -- you know anything about that?

A: I -- I thought I was rebutting some of the testimony regarding the review of Piping Plover.

Q: Okay. Good. And I think you did a good job with that. So, I want to ask you a question, sometime in 2024, you put out a communication to all municipalities, including Isle of Palms, where you revised their general permit. Do you recall that?

A: Yes, I do.

Q: What was the revision for?

A: The revision for that general permit, if I recall correctly, was to update the general permit as it relates to the recent regulation package that was approved in May 2024.

Q: Specifically, what was the update for the general -- what did your memo say on that? What was the update that you made to the general permit?

A: So, the update to the general permit was to include references to beaches critical area, in

addition to the beach/dune system critical area.

Q: Did you say in that the general permit had to be updated because prior to the update, it only covered landward -- seaward of the setback line, and it had to be updated to cover the new beaches critical area landward of the setback line? Did you say that in the cover?

A: I -- I don't recall what was in that email, specifics. What I would say is that prior to the May 2024 regulatory package update, there were no specific project standards to be applied for a project within beaches critical area landward of the setback line. So, part of that regulation package was to update and provide clarity on project standards for beaches critical area. And so as such, we needed to update the general permit, because the only reference to critical area in the general permit was the beach/dune system, and needed to include the beaches.

Q: So, were you involved yesterday -- there were -- you were here. I know you were here. There were two exhibits entered into evidence, Respondent's Exhibits Number 71 and 72, which

was the sworn testimony on Piping Plover, Hilton Head, from DHEC to CCL. Were you involved in those responses at all?

(Respondent's Exhibit Numbers 71 and 72 were referenced at this time.)

A: I was because, as I stated earlier, I was managing the Coastal Zone Consistency Section, and so one of those had questions related to the Coastal Zone Consistency review and the Department.

Q: So, what did you -- what was your reaction to the question where they said they didn't even have a methodology, or any method to actually permit anything landward of the setback line?

OBJECTION:

MR. CHURDAR: Your Honor, I object to that characterization.

MR. REDDY: Shall we -- shall we put it up? We can put it up. Let's put it up.

THE COURT: Well, your question was what was his reaction.

MR. REDDY: Ah, yeah. Let's go to question seven that we put into evidence yesterday. Yes. Stop.

Q: So, can you read the question and read the

answer and tell me what it means?

A: Sure. So, the question for number seven is, "Please describe in detail the process utilized by Defendant to evaluate whether an oceanfront project is occurring within "beaches" critical area, including any documents or guidance relied upon by Defendant." "Answer: DHEC does not have a formal process for evaluating whether an oceanfront project is occurring within "beaches" critical area as compared to beach/dune system critical area. The Beach/dune system critical area is defined in S.C. Code Regs. 30-1(D)(5) as "all lands from the mean high water mark of the Atlantic Ocean landward to the 40-year setback line described in 48-39-280."

Q: Does this sound very similar to your general permit update that you put out that essentially saying you did not -- you did not even have a process for evaluating whether an oceanfront project is occurring within beaches critical area?

A: So, what I would say is, what this is getting at is partially what I was explaining with the update to the general permit, that prior to the

May 2024, there were not specific project standards for projects within beaches critical area landward of the setback line. So, there wasn't a formal set of project standards within regulation. Not that we didn't have jurisdiction, but there were not specific standards for that. So, those projects would be evaluated under the general considerations that are referenced in the statute and in the regulations.

Q: Excellent. So, let's read the question six then.

A: "Please identify any project undertaken within the last 10 years for which Defendant has required a permit for alteration of "beaches" critical area. Please name the location, the permit applicant, and the permit number." "Answer: DHEC is unaware of any permits issued specifically for alterations of "beaches" critical area. Because of the innumerable permits that have been issued for alterations of the beach/dune system critical area over the last 10 years, Department Counsel asserts that this request is overly broad and unduly burdensome and requests that opposing counsel

narrow the scope of" the -- "of this interrogatory."

Q: So, the way I read it, and you tell me if you're reading it differently, it says there are lots and lots and lots of permits issued for alterations of the beach/dune system critical area, but last ten years, the sworn judicial pleading, DHEC is unaware of any permits issued specifically for alterations of beaches critical area. So, with all of that said, I just want to ask you, what -- do you feel that based on this, based on what you said with the general permit, that based on all the history you talked about that you even couldn't recall and some of the stuff we've discussed here, do you feel I'm a test case of opening this thing up that's never been done before?

OBJECTION:

MR. CHURDAR: Your Honor, what Mr. Stout feels about Mr. Reddy being a test case is not relevant to the issue before the Court.

MR. REDDY: I withdraw the question. And I have no further questions for this fine gentleman.

THE COURT: All right. I never asked, do you have any questions?

MS. LENHARDT: No questions, Your Honor.

THE COURT: Okay, you can ---

MR. CHURDAR: I just have a follow ---

THE COURT: Okay. Just -- I'll stop saying briefly, but I do think it will be brief.

MR. STOUT - RE-DIRECT EXAMINATION BY MR. CHURDAR:

Q: So, Mr. Stout, following up on Mr. Reddy's question about the -- the Piping Plover wall, he asked you about has the Department taken any action after the Bureau of Water enforcement action, and you said, no. Can you elaborate on that, please?

A: So, what I would say is the Piping Plover wall that there was communications with the Department beforehand regarding any requirements for critical area. The Department provided guidance that no permit was necessary. That guidance was acted on in good faith, and they moved forward with their project. And so, but I think that's -- that's sort of the issue there, is the Department is standing with that, given that there's already been a consent order or agreement taken with the parties and the Department.

Q: Now, you have testified about the ten general

considerations, both when I had asked you on direct and then on cross. And I'm not sure that -- I think it'll be helpful to flesh out a little bit what you're talking about when you talk about these ten general considerations. I know you mentioned ---

MR. REDDY: Your Honor, is this -- is this specific to something I crossed on? Or ---

MR. CHURDAR: Yes, sir.

THE COURT: In his question that he is giving right now, he said that to be the case. Go ahead.

Q: So -- so, the -- can you elaborate on that when you -- when you referred to activities undertaken in a critical area and the ten general considerations, please?

A: So ---

OBJECTION:

MR. REDDY: Objection, Your Honor, I did not ask him about the ten considerations.

MR. CHURDAR: Your Honor, I'm sorry, I didn't mean to interrupt you.

THE COURT: I haven't said anything.

MR. CHURDAR: Okay.

THE COURT: I looked at my staff -- go ahead. You were responding.

MR. CHURDAR: Well, his -- his question elicited an answer about the ten general considerations. While -- while he may not have specifically said, what are the ten general considerations, his question about interrogatory number 7, and some follow-up about that naturally elicited that from -- from Mr. Stout. And so I just think it would be helpful to -- to have him expand on what that means when he's talking about the ten general considerations.

MR. REDDY: Your Honor, I don't even know what the ten general considerations are. I have no idea what he's talking about. I never asked him a question about the ten general considerations. I was just putting up the thing on Piping Plover and he simply said there were no permitting guidelines, and that's it. So, the ten general considerations, I have no idea what those are. I never asked about it.

THE COURT: I'm going to let him go into this. I overrule.

A: So, what I would say is the ten -- ten general considerations, they are referenced in statute 48-39-150(A). I think they're 1 through -- 1 through 10, and they're also in regulation R30-

11(A). And they are very broad considerations that are made for all projects and ensuring responsible development and limiting any kind of broad environmental impact or un- -- undue impact within the critical areas on -- on the public and the environment.

Q: So, would it be a fair characterization or summary within your response to Mr. Reddy's question about interrogatory response number 7 that -- that -- that you just mentioned, the ten general considerations, have always been applied in beaches critical area impact?

OBJECTION:

MR. REDDY: This is leading, Your Honor. He's -- he's leading him.

THE COURT: Well, he's asking about your question first and then -- rephrase the question.

MR. CHURDAR: Okay.

Q: When Mr. Reddy was asking you about it -- the Department's response to interrogatory number 7, and, in particular, the no formal process language in that response, and you mentioned the ten general considerations, my question is, is -- is it -- is it a fair -- were you saying that the ten general considerations have always

been applied to activities in the beaches critical area evaluating with the ten general considerations?

A: Yeah. Yes, those ten general considerations are applied to all projects in all four critical areas.

Q: Okay. Thank you.

THE COURT: Okay. You may step down. Call your next witness.

MS. PHELAN: Your Honor, we would call Chris Jones to the stand.

COURT REPORTER: I swore him before.

THE COURT: You're still under oath, Mr. Jones.

MR. JONES - DIRECT EXAMINATION BY MS. PHELAN:

Q: Mr. Jones, did you assess Mr. Goodrich's determination of periodic inundation?

A: I did.

Q: And what did he conclude?

A: He concluded that the limit of periodic inundation was 5.5 feet NAVD, and I concluded that that was too low.

Q: What -- can you give us an overview of what opinions you have of his assessment?

A: Can you ask again?

Q: Sure. What opinions do you have of Mr.

Goodrich's assessment of the 5.5?

A: Well, I think that he did several things or failed to do several things. One was he included astronomical tides only in his assessment. Second, was he used average wave conditions. The third was he ignored storms. And the fourth was he ignored vegetation.

Q: Okay. Let's talk -- let's talk about those things then. Can you -- before we go into that, let's just talk about what -- do you have an opinion as to whether a wave run-up analysis is a good measure of periodic inundation?

A: I do not believe it is sufficient to ---

OBJECTION:

MR. REDDY: Objection, Your Honor, he's already testified to all this. He's a rebuttal witness. If he's got something specifically on what our expert testified that he wants to rebut, it's fine. But he's ---

THE COURT: It's my understanding that he's testifying about the wave run-up ---

MR. REDDY: Which he's already done.

THE COURT: --- that Mr. Goodrich testified to.

MR. REDDY: Yes, but he's already testified wave run-up. All I'm saying is, if Mr. Goodrich

testified to something in wave run-up that he disagrees with, he's welcome to testify and rebut it, but not cover the entire wave run-up testimony ---

THE COURT: Okay.

MR. REDDY: --- that he's already done.

THE COURT: I get your point. Any response?

MS. PHELAN: We're specifically rebutting Mr. Goodrich's use of wave run-up calculation ---

THE COURT: How about ask a question so I can be clear. Let's keep moving.

Q: Do you have an opinion as to whether Mr. Goodrich's use of a wave -- wave run-up calculation is a sound procedure for determining periodic inundation?

A: It is not. Both his January 9th, 2025 procedure and the procedure that he -- the new procedure he applied last week after our trial.

THE COURT: Have what?

A: He performed some additional wave run-up calculations ---

THE COURT: I just didn't hear the last three words you said.

A: After our last trial.

THE COURT: After, okay.

Q: All right. Do you have an opinion as to whether a theoretical -- theoretical approach to determine periodic inundation is how that compares with these on the ground observations?

A: I think the field observation would reveal a better estimate of periodic inundation than a run-up calculation.

OBJECTION:

MR. REDDY: I have to object, Your Honor. This is all -- I read his entire transcript last night. He's already testified to all of this. So, my issue is, why are we going over all this again? Is there something specific -- he actually already testified to what he disagreed with Mr. -- Mr. Goodrich's thing the first time. But the question is, after Mr. Goodrich's testimony yesterday, is there something new he has to add, and are we just going to go back over this 179 pages that I read last night?

MS. PHELAN: Your Honor, he did not present information - if you recall, we spe- -- I specifically reserved putting Mr. Jones up to rebut Mr. Goodrich's analysis and we will present information on that.

THE COURT: Overrule your objection, as long as

we're staying on rebuttal of what Mr. Goodrich testified.

Q: Could you please provide just a summary of what Mr. Goodrich's theoretical run-up calculation was?

A: The original run-up calculation we use is a model called EurOtop, or procedure called EurOtop, for European overtopping. And the procedures he applied last week were using two other programs, ACES, Automated Coastal Engineering System, and Runup 2.0, both used by FEMA.

Q: Okay. Could you go through what he did in his initial evaluation that was portrayed in his report of the EurOtop wind calculation, briefly?

A: Originally, he applied the EurOTop model, he used a slope of 0.03 you asked him yesterday, which is a slope of one foot rise on 33 foot horizontal, one on 33. And based on that, he came up with one foot of wave run-up, which should be added to the highest astronomical tide at Charleston adjusted for sea level. That was the original procedure. And he arrived at 5.5 feet NAVD.

Q: And what are the -- what are the limitations you're using of wave run up calculations ...
A: In general, I would say that they are limited by three principal factors, the slope of the ground, the input wave height for wave conditions, and the porosity, or the roughness, of the object that's -- where the wave is running up.
Q: Okay. And does that relate to whether they're a good procedure to measure periodic inundation?
A: Well, I've already said that I don't think application of a run-up model is sufficient to determine periodic inundation.
Q: Does the wave run up calculation consider a uniform profile?
A: It depends on the model, but most of the models, the EurOtop model that he used, and the ACES model that he used, require a uniform slope.
Q: Okay. And is there a uniform slope on a beach, such as the one that the Reddy's ---
A: There is not. We've showed beach profiles before. They show the variation, ground elevations, as you start at the dune and

proceed seaward. One thing Mr. Goodrich said yesterday was that I think that the Department supplied the slope. The Department supplied the beach profile data, but not the slope. The slope was selected by Mr. Goodrich.

Q: And you testified you worked for the Federal Emergency Management Agency?

A: I have.

Q: Could you just briefly remind us of that experience?

A: As a contractor, I've done several things for them over the last 30 years. One is I have helped to develop flood mapping guidance.

OBJECTION:

MR. REDDY: Objection, Your Honor, cumulative.

MS. PHELAN: It's just a basis background for the next question I'm asking. But we can move on, Your Honor.

THE COURT: Take no position. I'll let him go into just background.

MR. REDDY: We -- we already approved him as the -- as the -- as an expert, unlike them who attacked our expert. I was happy to have him as an expert, given that he worked on the IOP line report, so, we're good with that. What I

want to hear is what is he saying that rebuts what Matt said yesterday. Matt did not rebut his qualifications.

THE COURT: If you ask my opinion, I'd like to keep it moving, but I'll allow you to ask the question.

Q: Speaking -- speaking to use -- the use of the wave run-up models, as Goodrich testified, has FEMA encountered any issues with the use of those models?

A: Yes, they have. And in the wave run-up guidance document from 2023, FEMA published a flow chart which is divided into coastal structures and beaches, and they select, or they provide a list of applicable wave run-up models for each scenario. The EurOtop model is not recommended for beaches and is recommended for structures.

MS. PHELAN: Can you put up 183?

Q: Is this the EurOtop cover of the manual?

(Joint Exhibit Number 183 was referenced at this time.)

A: It is.

Q: And can you just read what the title of that is?

A: Manual on Wave Overtopping of Sea Defenses and Related Structures.
Q: So, the wave run-up model that Mr. Goodrich initially used was not recommended and used for beaches?
A: Not by FEMA, no.
Q: Okay, that was Exhibit 183. I am now going to ask you to look at Exhibit 188.
THE COURT: Is this already in evidence?
MS. PHELAN: These are all Joint Exhibits.
Q: Okay. And do you recognize this?
(Joint Exhibit Number 188 was referenced at this time.)
A: Yes, this is the wave run-up guidance provided by FEMA from 2023.
Q: Okay. Can you go to page two, please? Mr. Jones, if you need to have that larger, just let Ms. Debruhl know. There's also a hard copy in front of you. It's Exhibit 188.
A: I'm okay on this one.
Q: Okay. Can you tell us what this shows?
A: This is the flow chart that I mentioned earlier that lays out the overtopping or the run-up procedures that are applicable to different scenarios, beaches versus structures.

Q: Okay. And on the left I -- well, I see at the top it says, shoreline settings?
A: Correct.
Q: And -- and that's divided into beaches and shore barriers?
A: Correct.
Q: And then what does FEMA recommend you use for beaches?
A: They -- they recommend several procedures. Stockton ACES, which I mentioned, Runup 2.0, which I've mentioned, Seashore, which is a USGS -- US Geological Survey program.
Q: And are the ACES and the Runup 2.0 the ones that you -- you evaluated and ran?
A: Yes.
Q: And we see to the right of this shore -- it says, shore barriers. Where does EurOtop appear in this diagram?
A: Directly below that.
Q: So, it was not one of the -- one of the recommended procedures for wave run-up models for beaches?
A: It was not.
Q: As part of your assessment, did you run your own run-up calculations to evaluate Mr.

Goodrich's results?
A: I did.
Q: And I believe we just -- you used ACES and Runup 2.0 recommended by FEMA?
A: Correct.
MS. PHELAN: Pull up Joint Exhibit 184, please.
Q: And you'll look at Joint Exhibit 184. And do you recognize this document? The second page.
(Joint Exhibit Number 184 was referenced at this time.)
A: It's wave run-up calculations using ACES program that I sent you in February.
Q: Okay. And what does this show?
A: The top screen shows the inputs, the bottom screen shows the outputs. The inputs were consistent with the geometry the Matt Goodrich used in his EurOtop procedure.
Q: And why did you use the same inputs as Mr. Goodrich?
A: Because I wanted to demonstrate the different models yield different results given the same inputs.
Q: And what did the ACES -- the Aces wave run-up calculations tell you?
A: It showed that where Matt Goodrich predicted

one foot of run-up. And I can't draw on the screen, but if you look in the lower panel, there's an R max, an R2, an R10, and so forth. If you look at the R2, I predicted 2.2 feet of run-up.

Q: And why are we looking at the R2?

A: Because that's the metric that Matt Goodrich used.

Q: So, it predicted in this calculation over twice the footage that Matt ---

A: Correct.

Q: --- Mr. Goodrich's analysis? Let's look at Exhibit 190, please. Do you recognize this?

(Joint Exhibit Number 190 was referenced at this time.)

A: I do.

Q: What is it, please?

A: This is the input and output from the Runup 2.0 calculation I performed.

Q: What did you learn from this -- this assessment?

A: This model predicted 1.3 feet of wave run-up. I think if you go to the next page, next page, there you go. This model yields a different metric of run-up. It yields the average run-

up, which is multiplied by 2.2 to yield the R 2 percent run-up. And based on that, I got 1.3 feet of wave run-up. So, whereas Matt Goodrich predicted 5.5, I would have predicted 5.8 to 6.7 feet of wave run-up elevation.

Q: At the contour?

A: Yeah.

(Inaudible due to simultaneous speakers.)

Q: --- elevation?

A: Yeah.

Q: Did you compare ---

MS. LENHARDT: Can you pull up Exhibit 185, please?

Q: Did you compare your run-up calculations to see if they were consistent with the berm analysis?

(Joint Exhibit Number 185 was referenced at this time.)

A: I did.

Q: You did?

A: I did. The berm profile analysis was the analysis of ten years of beach profile data at survey station 3100B and 3105B. And based on that, I predicted the toe of the dune or the bottom of the scarp would be 6 to 6.6 feet NAVD, which is generally consistent with the run-up calculations that I performed.

Q: Do you have any -- do you have any explanation as to why Mr. Goodrich's number of 5.5 you found to be lower than those that you got using the other two models?
A: Because the run-up predictions from his model -- the run-up prediction from his model was lower than the ones from my models.
Q: And what is -- what does that tell us when we have three different models and three different outputs?
A: That's exactly what it tells us. Different models yield different results. I believe Matt said yesterday with the correct inputs, the results are reasonable. And all of these are reasonable results. They're all low values of run-up in the range of one to two feet. So, I think it tells us that the results depend upon the run-up model and the inputs that are used. This is one reason that FEMA produced the guidance that they produced. They found that people doing map challenge -- club map challenges or appeals or revisions, were shopping for models. They would search out a model that gave them the result they liked.
Q: Have you looked at Mr. Goodrich's mean wave

run-up calculations based on the ACES and Runup?

A: I have.

Q: Did you form an opinion as to whether those calculations were correct?

A: I did.

Q: And I'm going to show you an excerpt from the shore protection manual that you had sent to me and that you thought would help explain and demonstrate your testimony. Do you recognize this?

(Petitioner's Exhibit Number 7 was referenced at this time.)

A: Yes.

MS. PHELAN: Can you go to page two, please?

Q: Can you explain -- can you explain what this shows us and how it relates to your opinion related to Mr. Goodrich's ---

A: Well, last week, Mr. Goodrich provided certain excerpts from the shore protection manual. He did not provide the figure that's shown at the top of the page, where, if you'll note, can -- I can't circle, but if you can find the word foreshore, would you want me to point on the screen?

THE COURT: You can walk over here if you want to. You can also mark on that screen right there.

A: Mine doesn't ---

THE COURT: Okay.

A: This is the word foreshore. And at trial last week, Mr. Reddy asked me a question about, did I use a foreshore slope in my model, and I said I used the same slope that Matt Goodrich used. Matt Goodrich used 1 on 33, so that's what I used. But the foreshore is the area that extends from the highest elevation reached by waves during normal high tide, whatever that means, seaward to the ordinary low water line. The foreshore is usually the steepest part of the beach. So, the foreshore is this area right here (indicating).

Q: Okay. Do you recognize this, Mr. Jones?

A: Yes, this is the graph that I extracted from Matt Goodrich's work last week.

Q: And was this to help demonstrate your testimony today?

A: Yes.

Q: Can you explain to us what this shows, please?

A: The tan line represents the slope that Matt Goodrich used when he ran the ACES model for

the first time last week -- or the first time in this case last week. And he had a slope of one on 119, a very shallow slope. And you'll see that that intersects at elevation zero, and what Matt termed the mean low -- mean low or low water. The dash red line is the foreshore slope that I would have selected, that I did select, for the same profile.

Q: And why would you have selected that foreshore slope?

A: Because that extends from the limit of wave run-up down. It doesn't go all the way to low water, but it goes pretty close. There's a sandbar that is coming in. It is the steepest part of the beach profile.

Q: And is that -- is using that steepest part of the beach profile, foreshore profile, consistent with the methodology that is used in the wave run-up calculations?

A: In which calculations? In -- in the ACES ---

Q: The slope that you're supposed to use.

A: The ACES model calls for use of the foreshore slope.

Q: Okay.

A: Now, the one on 27 is different than the one on

33 that Matt used previously, but they're pretty close.

Q: Okay. And if you'd explain -- do you have anything else to say about your analysis of his ACES?

A: Well, if you scroll down to the output on the top of the screen, you can see my output, on the bottom of the screen, you can see Matt Goodrich's output using different slopes as inputs. The one on 119 for Matt at the bottom, the one on 27 for me. And if you look at the R2 values, you see I estimated 2.5. This compares with my 2.2 at a slightly different slope in my original ACES run. And for Matt, you can see that he produced .9 feet. So, again, using what I think is the proper slope, I produced a value that was higher than Matt's one foot value.

Q: Okay. Did you -- did you also look at his Runup 2.0 evaluation?

A: I did.

Q: And what did you learn from reviewing that?

A: The Runup 2 calculation that Matt Goodrich ran last week produced results in the neighborhood of .7 or .8 feet of run-up, which -- and I was

able to duplicate his results using the profile.

Q: All right. Let's turn to the other issue that you made for us, I believe you said that Mr. Goodrich failed to use very important factors in determining periodic inundation. And one of the things that you said that he used the highest astronomical tides instead of observed tides. Can you expand on that?

A: Yes. Matt Goodrich started with predicted astronomical tides. He looked at the highest predicted astronomical tide at Charleston, which was 4.11 feet. To that, he added a sea level rise correction, and to that he added his one foot of run-up. Now, he claimed that only astronomical tides were periodic, and any other tide caused by weather should be ignored. And I disagree.

Q: And why do you disagree?

A: Because if you are on the ground out on the beach, you do not see predicted tides; you see observed tides; you see the results of astronomical tides in whatever weather is going on.

Q: To your knowledge, does the statute -- the

statutory language have anything about predicted versus actual tides?

A: It does not. Periodic inundation references -- periodic -- references tides and waves. It doesn't say astronomical tides and average waves.

Q: I'm showing you what's been -- what's been entered as Joint Exhibit 181, now. Do you recognize this?

(Joint Exhibit Number 181 was referenced at this time.)

A: I do.

Q: Can you tell us what this shows?

A: This is the tabulation of king tide frequency over the three years, 2022 through 2024. In the second and third column, I guess, predict-- predicted king tides has got numbers and observed king tides in the next column. And when you add those up, there were 80 predicted king tides in that three-year period. There were 451 observed in that same period. So, it went from two a month to over twelve a month, or, on average, about one every three days -- one every two to three days.

Q: Do you have an opinion as to whether these king

tides should be considered in determining the periodic inundation?

A: I think they should. I think observed tides should be considered.

Q: And would you consider a tide that occurs one in every approximately three days -- I thought -- I thought you said a pretty frequent event?

A: Yes, it would be frequent.

Q: And I'm sorry if I missed it, did you talk about the observed tides that exceeded the highest astronomical tides?

A: No, I did not comment on that. Well, I said that there were 451 king tides versus 80 predicted. And of the 36 months, there were 30 months where there were observed king tides that exceeded the 4.11 highest astronomical tide.

Q: And was that what Mr. Goodrich used, the 4.11?

A: Yes.

Q: And so he ignored all the -- he ignored 30 of the 36 months of his calculations that had higher -- higher tides than that?

A: Well, he -- he ignored all observed tides.

Q: Would it be a sound practice not to consider something such as king tides that is occurring

so frequently when determining whether an area is getting periodically inundated?

A: I do not think it would be prudent, no.

Q: And do you state that opinion to a reasonable degree of certainty in your field of expertise?

A: I do.

Q: Is there anything else you'd like to say about this table?

A: No.

Q: Okay. I want to look at Mr. Goodrich's report for a minute. Do you recognize this as his report?

(Joint Exhibit Number 189 was referenced at this time.)

A: I do.

MS. PHELAN: And can you please go to page 11?

Q: And I believe you wanted to point out something using these figures in his report.

A: Yes. Matt Goodrich claims that only astronomical tides are periodic, but I claim that both astronomical and observed tides are periodic. These two graphs show two -- show predicted, which are the blue line, I believe, and the green line, which is the observed tide, for two storms in 2023. And if you look at the

time between low waters, or time between high waters for the predicted and the observed, I would assert that both are periodic using Matt's definition. So, my conclusion is that observed tides are as periodic as astronomical tides.

Q: What causes the difference between predicted and observed tides?

A: Mostly wind, but some barometric pressure. It's weather effects.

Q: Weather effects?

A: Yes.

Q: And I believe you heard Mr. Goodrich testify that he didn't -- he didn't consider any weather effects?

A: Correct. He did not.

Q: Well, let's talk about waves. That was the second thing that you said that Goodrich did not consider, and I believe Goodrich said yesterday that consideration of wave run-up is, quote, an extra measure of conservatism, close quote. What is your opinion on that?

A: My opinion is that he is incorrect on that. Waves are required by the statute to be considered. They're not an extra measure of

conservatism. They're a part of the process, the evaluation process.

Q: Did he consider all waves?

A: He considered average waves offshore in a buoy. And you had asked him about average condition -- average wave conditions, how often they would be exceeded. They -- by definition, they were exceeded half the time.

Q: Now, is it your opinion a storm should have been considered in Mr. Goodrich's analysis?

A: Yes. As a matter of fact, if you look at the figures still on the screen, you can see the results of a storm on the water level.

Q: Can you point that out to us? Oh, I'm sorry.

A: Fine. If you look at the peak, you can see the difference between the predicted and the astronomical tide, that was due to a storm effect.

Q: And is it your opinion that storms occur periodically?

A: I think storms occur so frequently that they can be considered periodic.

Q: And what's the basis of that opinion?

A: Most storms do, at least. I'm not talking about the Hugos here or the catastrophic

events. I'm talking about the more garden variety storm.

OBJECTION:

MR. REDDY: Your Honor, this is all cumulative. He keeps saying the same thing and she keeps asking the same questions. We get it. He uses storms. He doesn't -- he uses storms. The other guy doesn't use storms. Can we just say there's a difference and move on? It's repeating the same horse to death. Your honor, you had insomnia. I didn't get much sleep. We're both gonna fall asleep at this point.

THE COURT: Any response? How much further you got?

MS. PHELAN: I mean, I've got a little -- I'm almost -- I'm close.

THE COURT: Okay. I'll let her go, then.

Q: Did you have anything else to add about the storms?

A: I don't remember where we were, but I think that a storm such as we have seen at the Isle of Palms in the last few years, we've seen in South Carolina for the last few years, should be considered in definition of periodic inundation.

Q: And then I think the fourth thing that you said

is that Mr. Goodrich didn't consider nonlittoral vegetation. And what's your basis for that?

A: My basis is the reading of the statute which requires that that be considered.

Q: And I believe -- I'm not going to go into it, but I believe on the first day we covered that it's your opinion that vegetation is a good indicator of periodic inundation?

A: Yes, especially on an eroding shoreline, vegetation is a good indicator of erosion or wave run-up or periodic inundation. They all coincide.

Q: Can you please just summarize your opinion as it relates to the factors that Mr. Goodrich ignored to factor in?

A: Well, he ignored observed tides. I'd say observed tides should be included. He used average waves. I'd say higher waves should be included because waves are correlated with observed tides. He said that storms should be excluded. I'd say storms such as we see here should be included. He said vegetation is not a good indicator. I'd say vegetation is.

Q: All right. I want to talk about the -- can you

state these opinions to a reasonable degree of certainty?

A: I do.

Q: And I wanted to finally talk about his 5.5 contour in comparison to some of the data that we collected. Can you briefly just remind us what the contour is?

A: The 5.5 contour is the intersection of the 5.5 foot elevation above sea level, above NAVD. It's the intersection of that with the beach profile. So, it's a line on the beach basically.

Q: I'm showing you Joint Exhibit 55. Can you tell us what this shows?

(Joint Exhibit Number 55 was referenced at this time.)

A: It shows the 5.5 foot contour which was taken from various LIDAR samples from 2017, 2010, 2006, going back in time.

OBJECTION:

MR. REDDY: Your Honor, how is this relevant to rebutting Mr. Goodrich's testimony?

THE COURT: Can you respond?

MS. PHELAN: Yes. Mr. Goodrich, his whole testimony was that the 5.5 contour was a reliable

indicator for periodic inundation.

THE COURT: He's responding to that?

MS. PHELAN: He is.

THE COURT: Let me hear the questions.

Q: How does this -- how does this -- how does this relate to Mr. Goodrich's opinion that the 5.5 contour is a good indicator of where periodic inundation is physically reaching on the beach?

A: Well, if we look at the yellow line on the grass, that was September 1st, 2023, that was the 5.5 foot contour. And the vegetation line, which we can see, is further landward.

Q: Okay. And go to page two, please.

MS. PHELAN: All right. Let's go to Exhibit 56, please.

(Joint Exhibit Number 56 was referenced at this time.)

Q: Can you just quickly walk us through what these show?

A: I believe these are comparisons of the 5.5 foot contour and the vegetation line as we go through time. This is in 2006. Next, 2000- -- -

OBJECTION:

MR. REDDY: Where are we headed with this, Your

Honor?

MS. PHELAN: Your Honor, if he would -- if he would stop interrupting ---

MR. REDDY: This is not a rebuttal.

MS. PHELAN: --- I would -- I would get there.

MR. REDDY: We didn't go to 2006. We didn't go to any of it. How -- how does this relate to Mr. Goodrich's -- rebuttal of Mr. Goodrich's testimony? Is there any rebuttal here that we can hear without going back? I think the last time he went back to 1953.

THE COURT: Where is this rebutting Mr. Goodrich's testimony?

MS. PHELAN: Mr. Goodrich produced these images. Well, Mr. Goodrich has said that the 5.5 contour is a good indicator of periodic inundation and the series -- these series of figures show that the 5.5 contour is always well seaward of the actual physical -- physical data that's being collected on the beach, which is the vegetation line, which is what we were supposed to ---

MR. REDDY: Mr. Goodrich did not talk about vegetation, Your Honor.

MS. PHELAN: It challenges the accuracy of his 5.5

contour.

MR. REDDY: Your Honor, his 5.5 as -- as Chris correctly testified, is simply a theoretical calculation. He says, here is the average wave, here is the sea level rise, here is this. And he came up with a number. He is not in any way going back and looking at all these actual numbers, because he disagrees that storms should be included. Same point I brought up, that there's a fundamental difference in what Chris is saying and what he's saying. Chris says storms should be included, which is going to give you a different number. He's saying, I just did a calculation. I took the highest -- the highest astronomical tide, I added sea level rise, I did wave run-up two different ways. I came up with this number. That's all he's saying. He's not at all going into all of this actual and all that that includes storms.

THE COURT: On one hand, I overrule his objection. On the other hand, for me, there was a lot of this from his previous testimony, so.

MS. PHELAN: Okay. I -- how about if I just a- ---

Q: Can you please just summarize your opinions related to the 5.5 contour and the vegetation

lines that are shown on these ---

A: The 5.5 contour is always on the beach. It is always seaward of the vegetation line in which the Act requires be considered.

Q: Was there a pattern or a trend that was shown through where the 5.5 contour was?

A: Well, we saw the 5.5 contour moving landward as the shoreline eroded.

Q: Okay. I would -- this is Joint Exhibit 50.

MS. PHELAN: Janet, if you'll zoom in on the middle part, right here.

Q: This is Joint Exhibit 50, the 3W Engineering plat. And does this have any information on it that helps you assess Mr. Goodrich's 5.5 contour and how that would relate to the wall?

(Joint Exhibit Number 50 was referenced at this time.)

A: It does. The 3W survey was performed by a licensed land surveyor and it shows the top of the bank and the bottom of the bank. The bottom of the bank is below Matt's elevation, 5.5 over almost all its length.

Q: What does that tell us about periodic inundation at that point in time?

A: It tells us that before any work was done on

the property at elevation 5.5, we've been hitting the slope, the scarp.

Q: And this is a document produced by an official surveyor?

A: Yes.

MS. PHELAN: If you'll go to page two, please.

Q: Do you recognize this as page two of the 3W Engineering survey?

A: I do, and I can almost see it.

MS. PHELAN: A little bigger.

Q: Tell us how this relates to Mr. Goodrich's 5.5 contour.

A: If we look at the purple text, the X is just in front of the wall. The red -- the wall is in red. We see elevations 3.2, 3.5, 3.7. Those are ground elevations taken by the surveyor just seaward of the wall. And, again, Matt Goodrich's 5.5 elevation, even though I think that is low, would have captured the wall in the area subject to periodic inundation.

Q: So, even using Mr. Goodrich's 5.5 elevation, is it your opinion we'd still have periodic inundation in this location?

A: Yes, and that was April of 2024.

Q: And the last -- the last page we saw was dated

July 5th of 2023?
A: Correct.
Q: And you heard -- let me just summarize this or how do you summarize? We've looked at the -- we've talked about the physical evaluations versus the theoretical evaluation of Mr. Goodrich and the factors that he ignored, can you just briefly sum up what your opinions are regarding this 5.5 contour?
A: Well, as I said, the 5.5 foot elevation contour is too low, is an indicator of periodic inundation. And the last three figures -- the last two figures we have looked at with the surveys, have shown that the elevations of the beach have been below the -- Matt's 5.5 foot elevation.
Q: And you heard Mr. Reddy's testimony yesterday that it was physically impossible to remove the wall?
A: I did.
Q: Do you have -- do you agree with that?
A: I do not. I think it is possible to remove that wall. He probably did as much work to stabilize the wall as it would have taken to take -- to remove that wall.

Q: Have you -- have you reached these opinions to a reasonable degree of certainty that you stated here today for this Court in your field of expertise?

A: I have.

Q: No further questions.

THE COURT: Ms. Lenhardt ---

MS. LENHARDT: No questions.

THE COURT: Okay. There you go.

MR. JONES - CROSS EXAMINATION BY MR. REDDY:

Q: So, Chris, we're gonna keep it short. His Honor and myself neither of us slept too much. So ---

A: Then it's three of us.

Q: Yeah, three of us. Good. So, let me -- let me just ask you a simple question. I'm going to -- I'm going to back back into this vegetation thing you're talking about. Matt Goodrich and you, is there a -- am I hearing a fundamental difference that he believes vegetation could disappear with washout, just like a pool could disappear, a home could disappear, a roof could disappear. It could literally wash the soil out, and vegetation can disappear through just salt water toxicity? Is that -- is that a

fundamental difference between the two of you?
A: No, it is not.
Q: Okay. So, what is the difference? Because Matt addressed that about episodic -- he used the word episodic inundation, which he described as soils washing out.
A: I don't believe he described episodic inundation as erosion.
Q: He did.
A: Well, we disagree.
Q: Okay. So, let me -- let me back up again. Do you -- the -- are you saying that if Hurricane Hugo came through and literally washed out soil and, therefore, took away plants, that would be -- the vegetation line could move to the other side of the street?
A: Or you could bury the -- bury the plants.
Q: Well, let's -- let's assume it just eroded all that soil 'cause it's so vicious, and it -- it went -- it went to the other side of the street. So, it just literally washed out soil. You know, you saw what happened in the nor'easter. Washed out pools, washed out gazebos.
A: And the question?

Q: My question is, would you then say the vegetation line, as y'all are describing it, has moved to the other side of the road?
A: We need two factors to establish the critical line. We need periodic inundation. We need an absence of -- or an establishment of vegetation.
Q: So, periodic, that would mean what? You need two Hugos?
A: No.
Q: What would you need? I just said one Hugo washed it out, all the way to the other side of the street, took the soil out.
A: It would depend upon the elevation, but as you describe it, I would say that the critical line would move back to the street.
Q: Okay. Because you testified -- I read your thing last night, which is what kept me awake, in your testimony that you gave that you really look at established as present. You said it is what it -- I have it written down if you'd like me to pull it up. But it basically says, when you show up if there's no vegetation, and I ask the question, so, you look at established as present, and you said, yes.

A: Correct.
Q: Okay. So, that's a fundamental difference. So, you take that fundamental difference, when Matt feels that salt water toxicity is where he looks at periodic inundation. Doesn't all this last hour and a half kind of come into it -- come -- all kind of work out? I mean, he says periodic inundation is just, you know, up and down, up and down, astronomical tides. You're putting in storm factors in there, high winds and so on and so forth. And you're saying, if it moves the vegetation line back and it's not there when I show up, well, that's the new vegetation line.

OBJECTION:

MS. PHELAN: Objection to form. I'm not sure there's a -- Objection. I'm not sure there was a question, but I think he misstated it.

MR. REDDY: I didn't misstate it.

THE COURT: I thought the last part -- was that a question right at the end?

MR. REDDY: Well, I'm summarizing what he said. I'm saying is that what you're saying.

A: Could you repeat that?

Q: Come on, man.

A: No, I'm serious. You say -- you say so much.
Q: All right. All right. So, I think what you said, I'm just repeating -- tell me if I'm wrong. You said, if a storm comes through and washes out the soil, and, hence, washes off the vegetation, takes the line back, you would consider that periodic inundation because it's not present when you go to inspect it?
A: Correct.
Q: Okay. So, if this -- if this -- theoretically, say 20 -- I don't know the example, 22 homes on the southern part of Isle of Palms, how many of these calculations would you need to do on wave run-up? Would it be two -- covers 22 homes, five, ten, how many? How many wave run-ups if everyone was looking to say -- if everyone, God forbid, showed up in front of this Court and said, what was the wave run-up, could you say, hey, I did the wave run-up on 118 Ocean. We can use that for 112 Ocean, or would you do a separate wave run-up?
A: I'm not sure I understand the question, because you're assuming that wave run-up is an indication of what?
Q: No, I'm asking you a question. So, you're in

here and there's 10 homes, 15 homes that are having the same issue now, because we have stepped past the setback line, and it's random. So, there's 15 homes with enforcement actions. As an expert, would you say each of these 15 homes, which are all in a line down Isle of Palms, would require separate wave run-up calculations?

A: No.

Q: No, you'd have one calculation for all homes.

A: It would depend, but generally speaking, more than one home would be covered by a calculation. The calculation was run on a monument that wasn't on your property, on a survey that wasn't on your property.

Q: So, if it's 20 homes, how many calculations would you run?

A: I don't know.

Q: Okay.

A: It would depend where they are.

Q: Okay. So, more than one?

A: If they were close to the end, then more than one, yes. But a wave run-up calculation doesn’t give you a result that may be reliable.

Q: I understand that, which is my next question.

If I remember Matt's number, if I remember your numbers today, his number started at .7, .9, 1.0. Today, you said 1.3 and 2.2, so, it can go from -- it's too bad we don't have a third and a fourth expert, we'd probably get a few more numbers, but if it's -- you're saying the range could be .7 to 2.2?

A: Correct.

Q: Okay. And what did you find wrong yesterday Matt's testimony about he said, if Chris had not used my number and had used an average number, our numbers would have been right in line? What did you find wrong about that?

A: That was in reference to the Runup 2.0 model.

Q: Uh-huh.

A: And he said that had I used the actual profile instead of the assumed slope, that the numbers would have been close ---

Q: Yeah.

A: --- and I confirm Matt's calculation.

Q: And you think that -- you think that's right?

A: I think the calculation is the calculation. I don't think that that is necessarily an indication of periodic run-up.

Q: No, I agree with that. I'm just -- I'm just

looking at mathematically, you're saying that that would say that y'all are close?

A: On that one model. On the ACES model, we were far apart.

Q: Okay. So, he gave -- I think he used three. He had one in the report, and then he verified it based on the stuff he saw from you is what he testified yesterday. So, if you look at -- and his numbers, I believe, range from .7 to 1. So, you're saying you had a problem in all three other than the storm -- not using storm data. So, I think you testified today that he used average tides, average waves. In other words, he didn't take into account storms. So, with that one factor where y'all clearly disagree, you know, including or not including storms, if you took out the storms issue, would you say that those three models he used were more or less correct?

A: No, I wouldn't, because he used average wave conditions.

Q: And average wave conditions don't take into account what, storms?

A: The shoreline does not respond to average wave conditions.

Q: No, I understand.
A: Shoreline responds to more severe events.
Q: I understand that, but what is the difference between average wave condition and actual wave condition? Average wave that he used.
A: And what actual?
Q: What you're saying it should be.
A: He was using an average wave condition offshore. He was then transforming that wave across what could be complex symmetry in front of your house, because the inlet. He calculated a starting wave at the base of the slope, and then he calculated the run-up. My point is that that is a lot of work when you can go out in the field and you can observe the scarp line on an eroding shoreline. You don't need the run-up calculation.
Q: But you testified that you actually never visited the site. So, when you say you can go on in the field and observe, you mean observe what they sent you, or, like, what are you talking about?
A: I have been by the site. I have been over the site many times.
Q: When was the last time you went?

A: 2017 or '18.

OBJECTION:

MS. PHELAN: Objection, Your Honor, this is cumulative.

MR. REDDY: No, I'm just trying to understand. He says it's field observation, right?

A: There have been enough photos and survey ---

THE COURT: I'll allow him ---

Q: So, I just want to confirm when you say you can go off and do a direct exam with field observation, I wrote down your words, you meant a direct exam with pictures they sent you?

A: With photos and surveys that they sent me and my knowledge of the Isle of Palms, I felt that I had sufficient information.

Q: Yeah. I only have one last question. How does all of this stuff, the wave run-up and all these things we're doing right now, and vegetation and all that, how did that relate to the work you did at IOP when you were establishing baselines and setback lines?

A: The inland lines in 1988?

Q: Yeah. And you were involved after that, right, to do the IOP beach management plans with the setback line?

A: Yeah, but the lines were 1988. They were the interim lines, and they were established based on the historical record, which at that time was a few historic aerial photos, from which we looked at the dune crest and the vegetation line.

Q: So, you're not familiar with how they update those lines every seven to ten years?

A: I am.

Q: Okay. So, were you involved in any of that?

A: I was not. I helped to establish the initial lines, the interim lines, and that was all.

Q: So, if it is your testimony now that you really want to look at, I think you said, vegetation lines as an indicator of erosion, the vegetation lines are being defined the vegetation line, as you just testified, that might include a storm that washes out the soil, what is the purpose of these setback lines? I don't know how many millions of dollars of taxpayer money is going into it. Why? Why even bother? Why should the General Assembly even bother with this?

OBJECTION:

MS. PHELAN: Objection, Your Honor, calls for

speculation.

MR. REDDY: But he was involved with it.

THE COURT: No, he's asking ---

MS. PHELAN: Why would the General Assembly bother ---

THE COURT: Well, that ---

MR. REDDY: Okay. I won't say why the General Assembly. Why would we ---

THE COURT: Yeah.

Q: You were involved in the original setup of setback lines; you've been involved with the IOP beach management plans where they talk about the setback lines, and actually they talk about it like you testified as being the limit of jurisdiction. So, why go through that ---

A: Call it the Beach Management Act.

Q: Why go through that?

A: Limit of jurisdiction per the Beach Management Act, is what the plan says.

Q: Correct. Yeah, which is part of the statute.

A: Right.

Q: So, why go through all that heartache? Why don't we just say, listen, we can save millions of dollars and just look at the vegetation line, like you said, which includes storms and

all this other kind of stuff?
A: I indicated last time that there are two ways to establish setbacks. One is to do it whenever anyone submits a permit application or is interested in establishing the line, you go out in the field and you set the line. The other way is to establish jurisdictional lines, such as a baseline and setback line. Over time, in unstabilized and erosion zones, the setback lines become obsolete because the beach can proceed landward of the setback line. That's the point. So, South Carolina ---
Q: Wait, wait, wait. A setback -- are you testifying ---
MS. PHELAN: He interrupted.
Q: --- that setback lines become obsolete?
A: They can.
THE COURT: Were you finished with your answer a while ago?
A: Yeah, I'm done.
THE COURT: Okay. Go ahead.
Q: Are you saying the setback lines become obsolete?
A: They can.
Q: They can, but then they're updated again. When

is the next update due at IOP?
A: Soon. I don't know the exact year.
Q: 2026?
A: Yeah.
Q: Okay. So, they are updated again in 2026, right?
A: Presumably.
Q: And do you know -- you mentioned unstabilized inlet zone, which is -- which is true, in an unstabilized inlet zone, do you know that they still have setback lines in there, that's the -- supposed to be the 40-year erosion limit, right?
A: Correct.
Q: Correct. So, it's updated?
A: Correct.
Q: So, why do we have to do this home by home, variable jurisdiction, discussing wave run-ups that vary all over the place, vegetation lines that could be impacted by storms, or some experts say not impacted by storm, why should we do all this, home by home, variable by variable, storm by storm, when there is a process in place that changes it every seven years.

A: My point was that even with the process every seven to ten years, the beach can proceed landward of the setback on certain occasions, and there are other critical areas that will come into play, the beaches critical area. That's my point.

Q: But you've testified earlier, yesterday or the day before, I think you said, think your words were, it's erosional, but accretive sometimes. So, you're saying it could erode, it could accrete, and -- and -- and isn't that the reason that you want to look at it over some period of time, and not day by day?

A: Trying to think how to respond. The setback lines are based on the most landward point of erosion in the last 40 years.

Q: Correct.

A: It is my opinion that the 40-year look back period is insufficient in some of these unstabilized inlet erosion zones. That or the seven to ten year reset period is too long.

Q: Very well ---

A: If the look back period exceeded 40 years, or if the frequency of updates was shorter, we wouldn't have the problem such as we're facing

right now.
Q: I don't disagree with you, but that's -- we're a country of laws. That's what the General Assembly would have to assess and say, you know what, this is not right. We're gonna change it. We can't change it.
A: I agree.
Q: Okay. So, the last question I have for you is simply this, that survey that you put up, that you talked about earlier, is that the survey the Department did?
A: The July 23 survey?
Q: Any of the surveys, any ---
A: No, they are not.
Q: --- of the professional ---
A: The Department did not those.
Q: Okay. Do you know where the survey came from?
A: I thought they came from you.
Q: Thank you.
MR. REDDY: No questions, Your Honor.
THE COURT: Re-direct on questions he asked.
MS. PHELAN: No further questions, Your Honor.
THE COURT: You may step down. Any more witnesses?
MS. PHELAN: No, Your Honor.
THE COURT: All right. We discussed doing closing

arguments, but I also said I had to break at 12:30. So, we can come back at 1:30. Okay. How is that?

MR. REDDY: Your Honor, we -- just some clean up items. We do want to get the rest of those exhibits that they have after lunch ---

THE COURT: Okay.

MR. REDDY: --- at least proffered.

THE COURT: Okay.

MR. REDDY: And then we would like to make a couple of directed verdicts, as well.

THE COURT: Okay.

MR. REDDY: If you don't mind.

THE COURT: All right.

MS. LENHARDT: Can we have just a few more minutes at lunch if we need to go through those exhibits?

THE COURT: Want to make it ---

MS. LENHARDT: I mean, just a few, not a ---

THE COURT: I said 1:30, you want to make it 1:45?

MS. LENHARDT: That'd be great.

THE COURT: Okay. 1:45 it shall be.

(Off the record from 12:20 p.m. until 1:48 p.m.)

COURT REPORTER: All rise.

THE COURT: Hey, y'all. Be seated. Maybe for the

last time. Give me a chance to get logged in. Okay. We're back on the record.

ADMINISTRATIVE MATTERS:

MR. REDDY: Your Honor, this was a question I'd asked Chris Stout this morning. I showed the exhibit to plaintiff and they have no objection to entering into the record.

THE COURT: Respondent.

MR. REDDY: That's Exhibit number -- Respondent Exhibit Number 57.

THE COURT: Okay.

COURT REPORTER: Thank you.

MR. REDDY: We'd like to get these other ---

THE COURT: No -- no objection?

MS. LENHARDT: No objection.

THE COURT: It's admitted.

(Respondent's Exhibit Number 57 was admitted into evidence.)

MR. REDDY: Still have the stack from this morning we'd like to get, Your Honor.

THE COURT: Well, how much of that stack have we already knocked out? Okay.

MR. REDDY: They've seen it all.

THE COURT: Okay.

MS. LENHARDT: Well, first of all, Your Honor, he

doesn't have anybody on the stand. He's rested his case. To lay a foundation or authenticate any of those documents.

THE COURT: Okay.

MS. LENHARDT: That's the first ---

MR. REDDY: I'm fine with that. We'd like to proffer.

THE COURT: Okay. Do you want to go ahead and have them ---

MR. REDDY: Oh, sorry.

THE COURT: Yeah.

MR. REDDY: It's reading in the numbers 36 -- respon- -- all things are Respondent's, 36, 41, 43, 67, 73, 74, 76, 77, 78, 80, 81, 94, 93, 95, 96, 97, 98, 99.

THE COURT: All right. Those are all proffered.

(Respondent's Exhibit Numbers 36, 41, 43, 67, 73, 74, 76, 77, 78, 80, 81, 93, 94, 95, 96, 97, 98, and 99 were proffered at this time.)

MR. REDDY: Thank you.

THE COURT: All right. He said -- now, normally, people don't make a -- you make a directed verdict motion in litigation involving -- civil litigation by a jury trial, you don't have to -- you don't have to make a motion -- DV motion

in these proceedings to preserve your issues. And at a jury trial, if you don't make it -- don't know what the phrase is, you're out of luck, but so ...

MR. REDDY: Your Honor, in the interest of time, I'm happy to just ---

THE COURT: Well, it's up to you. I'm just letting you know you don't have to, but if you wish to make ---

MR. REDDY: Your Honor, can I make a brief ---

THE COURT: Yeah.

MR. REDDY: --- make it brief? I won't make it long. Keep it -- I know we're all tired, and so can I make it brief?

THE COURT: Yes, sir.

MOTION:

MR. REDDY: I'd like to -- I'd like to make this motion as to both plaintiffs to focus on three issues for which they have the burden of proof. Number one, access landward of the setback line. Number -- Number two is beaches, assuming that they go landward of the setback line. And number three, my right to have equal protection under the law. And to do that, I'm briefly going to put up a couple of slides,

just to make it easy, demonstrative slides. If you could, tee it up.

THE COURT: Hopefully they work.

MR. REDDY: So, I want to talk about the -- the first one we talked about, which I do believe is a guiding -- guiding statute here, which is that no agency shall adopt a rule or regulation that is unduly restrictive. And it's the only place in this -- in the entire Act that the word Constitution shows up. Unduly restrictive, of course, would be that a claim of each critical area and then say you can only put beach compatible sand, no grass, no dirt, no plants, no pine straw, no play set, none of that.

THE COURT: Can I stop you for just a second? I'm not sure who you are, but you can't use that camera unless you've been granted permission and I ---

MALE SPEAKER: Okay.

THE COURT: --- don't think I granted it. Oh, he's with you.

MALE SPEAKER: Yes, sir, Your Honor.

THE COURT: Oh.

MALE SPEAKER: We submitted a 605, I believe,

yesterday.

THE COURT: Yes, sir. I didn't know who he was. I didn't know who he was.

MALE SPEAKER: Oh. Thank you, Your Honor.

THE COURT: Can you go get in the corner? Not 'cause you're bad, but because ---

MALE SPEAKER: Yeah, I'll go wherever you need me to go, Your Honor.

THE COURT: Over there in the corner.

MALE SPEAKER: Over there, it's easy enough.

MR. REDDY: Can we go to the next slide? This is something, Your Honor, I really want us to focus on in this motion, which is the statutory construction considerations for beaches. There's -- there's Supreme Court law, there's South Carolina law, it says, once a term is defined, the -- that term controls, the definition controls. And the statutory definition supersedes the ordinary meaning of the word wherever the definition applies. So, there is so much of history here; there's so much of law here. I put up some of the -- some of it, I honestly don't know, Your Honor -- I know we spent a lot of time. There's about three train fulls of boxes here. I don't know

how -- how you can actually get past this.

So, let's go to the next slide. Oops. Equipment malfunction. Okay.

So, this one is 48-39-10. I think -- I think it's important to follow the alphabetical nature. It says -- F says, coastal waters means the boundary, tidelands means at the boundary, beaches means at the boundary, dune means at the boundary, critical area means the four -- the four critical areas. We have no dispute with the four critical areas. I know it's been talked about time and again that these areas are -- why would you have four critical areas. All I'm saying is, if you take the word beach in number four and substitute the statutory construction of beach in number four, then it simply says that that statutory construction is restricted to the setback line. So, the -- I don't know how you can get past this. And the -- and the third item there, the beach there is essentially a catch all term for areas, almost 30 percent of the coast when the Act went in that did not have setback lines and still don't. Some of them still don't. I feel like this is a crucial element of what we're

talking about. And everything we talked about, run-ups, this, that, all these different things. I don't know how you get there without getting past this and basically saying, we are going to override a historical law on this where the legislature defines a term, that term controls throughout the document. We're going to say, no, in this case, it doesn't. I -- I -- I can't get my mind past that. As matter of fact, when I first took this over from my lawyers, I looked at this and said, how the heck do you get past that?

So, the second -- the second issue, I said, is, if you get past that, then you got the issue of -- of having to prove it's a beach. Essentially what you heard today in some of the testimony is the beach definition is quote, unquote vegetation line. And as the expert testified twice, initially and in the rebuttal, the vegetation line is a combination of tides and storms and washouts and everything else in answer to a specific question, what if the storm washes out the vegetation line to the other side of the road? Well, that's where the vegetation line is. That's where beach

critical area is. This is unlimited, untethered jurisdiction. It is -- it's one of those things that can take down the U.S. Constitution, the South Carolina Constitution and the Act, all in one fell swoop. And this is the reason why, that we can get into all the run-ups and the wave heights and the wave things and all of these things, are we really gonna do this, property by property, day by day, storm by storm, throughout the entire coast of South Carolina? Can you imagine the nightmare we'll have? We'll have a lot more office buildings for a lot more people, and lot more courts, as well, because everyone is gonna be in here talking about wave run-ups.

The third, if you can -- if you can keep going. This is one thing I want to make sure we understand. This is Joint Exhibit Number 53 that we saw.

(Joint Exhibit Number 53 was referenced at this time.)

MR. REDDY: I want -- I draw your attention to those three pieces of vegetation in the corners, including the O.J. Simpson palm in the middle, and but also the three pieces of vegetation in

the corner. Now, keep going. I want to now show you that this is after Idalia, the three pieces of vegetation circled in the red, after Idalia.

(Joint Exhibit Number 65 was referenced at this time.)

MR. REDDY: Remember, the vegetation line between those two -- those three under testimony we showed was we removed it in June to staple the turf. And you can see the stapled turf in between those two -- those three areas. And now, unlike -- what I said, you see the little squiggly yellow line, that is the line that was used with one day's data, regardless of what was said. One -- one day's data. It was used with a handheld G- -- GPS unit to claim jurisdiction. Now, I want -- I want to -- why that would not be verified by a surveyor, I do not know. We can't -- you can't register property in a county office with a handheld GPS. You need a licensed surveyor. That -- that is the situation where government agencies using their own agent to use a handheld GPS and claim jurisdiction on private property. That alone is a conflict of interest. They should

have an independent evaluation of that.

So, I'm going to go -- we did use a licensed surveyor, Joint Exhibit Number 49, as you can see, this is the same exhibit Chris used this morning. So, you have Joint Exhibit Number 49 that -- and then you have Joint Exhibit Number 50.

(Joint Exhibit Numbers 49 and 50 were referenced at this time.)

MR. REDDY: Now, if you see the little cross green lines over there, that's the fence line. Yeah. Then you see the little palm over there ---

THE COURT: Wait a minute. So, the light green is -- or the green that goes almost straight across?

MR. REDDY: It's the fence line.

THE COURT: Okay.

MR. REDDY: The little palm is the J -- O.J. Simpson palm. And all we did is we took the Exhibit 49 and Exhibit 50, and literally did a demonstrative slide overlaying them. And you can see what happens when you overlay a professional surveyor, as opposed to counting tiles that were replaced three times and doing handheld GPS. You see the bottom of the wall,

you see the line of the fence, and you see the O.J. Simpson palm. So, again, this is -- this so-called structure ... First of all, I don't know how you get here. Like I said, you can't get past the statute. But if you got here, and if we went into this unlimited jurisdiction of beach critical areas, that would unleash a storm all through the state, well, even then, that's where we are.

THE COURT: That exhibit -- so, that is not an exhibit in evidence. That's a combination of two exhibits?

MR. REDDY: That's a combination of 49 and 50. Just an overlay demonstrative slide to overlay the two.

THE COURT: I normally could take a picture of that, is it demonstrative exhibit -- I can't do it. I might ask for that to be submitted later on.

MS. PHELAN: We'd like -- we'd like a copy, too, because I can't see ---

MR. REDDY: Sure. Yeah, sure.

Lastly, I would say the burden is to show that we have the right for the laws to be applied equally to all citizens. And I think that's a -- that's a -- that's a fundamental

right. I think that supersedes almost any other right. And -- and what you're going to see is Mr. Chris this morning, Chris Stout, Ms. Flake, none of them could come up with one example this century, prior to me, prior to me. This is very important. So, I'm -- I'm saying me backwards. And in the last 25 years where this was actually enforced. This morning, you saw which was introduced into evidence, all the Hilton Head documents, five walls, their own agency studying those and saying, we don't have jurisdiction. We don't have jurisdiction. We don't have jurisdiction. And turning out -- turning it over to the Water Bureau, or whatever other bureau, for -- for -- for some -- for some sort of enforcement. And then you -- then you -- then you continually hear -- you keep hearing this thing about the case is not relevant. The case is not -- irrelevant. I don't know how it's not. And, so, you combine all these things and you say, okay, you've never enforced this before. Whatever things are changed in ‘24 can’t apply retroactively. Hilton Head, clearly, is the most direct example, and you openly claim that there was no

jurisdiction. Your own settlement agreement says there's no jurisdiction. And now, you take a different position with me, and you say that's not equal treatment, regardless of what's going on, I don't -- I don't -- I don't -- I don't understand that, Your Honor, and I think the burden of proof is on them to show that, in fact, it is, and they fail to do it.

Finally, I would like to say under Rule 20(B), Coastal Conservation League has not shown an interest not adequately represented by the existing party. Other than being assistant and aiding them, I'm not sure that can happen, that a private charity can aid a government agency in an enforcement action. They have to show an interest not adequately represented by an existing party. And the only thing we've heard so far in all the testimony is they have three or 4000 members whose interests are not met, what those interests are, I don't know. The only -- there was no proof of it. The only thing we vaguely heard was access. The access, there was testimony that we have provided access from the road to the beach, six feet, three on either side, three for me, three for

my neighbor. Once you get to the beach, the only access the State has land in trust on the Public Trust Doctrine, seaward of the mean high tide line. The structure has never been seaward of the mean high tide line. 48-39-120 clearly says the mean high tide line for this -- for these purposes, for this -- for the purposes of the State trust, does not change based after it was initially developed, which puts it 250 feet past seaward of the wall, on which, by the way, I've been paying taxes the entire time I've owned the property. The entire time, all the way out. So, if they have a public trust doctrine issue with me, they have no standing for a private entity to litigate a PTD issue with a private citizen. Only the State. They have an issue with the State. They can certainly sue the State, saying the State's not doing their job enforcing public trust doctrine. They can't sue me as a private citizen saying I'm somehow encroaching on the public trust doctrine. It is no standing. They have not shown that they belong in this case, or they have interest other than CCL. As you noticed yesterday,

their attorney's asking me about permits. What -- should I request a permit from them? This -- this is -- this is -- this is -- this is -- this is nothing but a -- they do not belong in this case, and they should be dropped. They should never have been there. I should have fired my lawyers earlier. That's all I have to say, Your Honor.

THE COURT: All right. Any response?

RESPONSE TO MOTION:

MS. PHELAN: First, I'd just like to just point out that equal protection was not in the request for a contested case. It does not belong in this proceeding. He did not bring that. To the extent that he did, the Sunrise Corporation case stands basically for the proposition that a mistake of an agency does not equate to an equal protection violation. The beaches landward of the setback line, we believe that the statute -- the plain language of the statute defines beaches very clearly to be periodic inundation by tidal and wave action, so that no nonlittoral vegetation is established. It doesn't give us unfettered discretion. The General Assembly has told the

Department what the Department is to look for. You're supposed to look for periodic inundation by tidal and wave actions and no nonlittoral vegetation is established. It doesn't say anything about wave run-up calculations or anything along those lines.

There's been a lot of conversation about no enforcement actions of the beaches critical area. He has split -- he's splitting a hair here. He's saying because there's no enforcement actions of the beaches critical area landward of the setback line means that we've never enforced it. The enforcement actions that we have taken on the beach side have been of the beach/dune system and the beaches critical area because, as you've heard testimony, that in the vast number of cases, the beaches critical area is contained within the beach/dune system. So, those enforcement actions were to enforce violations on both the beach/dune and the beaches critical area. Because of -- you've heard testimony that because of the changing land conditions now, we're seeing a little bit more of this situation where the beaches has overtaken the

beach/dune system and has moved landward. It does not mean that we didn't assert authority in the past. It doesn't mean that we didn't have authority. The statute gave us authority. The regulations call out in their title, beaches and beach/dune system. He argues that beach/dune system they -- was -- was to combine those two, but the regulation doesn't combine those. The regulations talk about beaches and beach/dune system.

A lot of the -- a lot of the talk about what the General Assembly intended with the beach/dune lines, there has been no evidence presented to support those -- that speculation of why the General Assembly did it. And the General Assembly intended that the beach/dune system supplant and pretty much eradicate our jurisdiction -- Department's jurisdiction in the beaches critical area. They did not delete the definition out of the statute and 48-39-130 gives us specific permitting authority over the critical areas. If we don't have that jurisdiction in the beaches critical area, then we can't accomplish some of the policies that we've been -- that the Act is meant to provide.

48-39-30(B)(1) says the Coastal Tidelands and Wetlands Act establishes policies, including to protect sensitive -- sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to construction in the critical areas, plural, of the coastal zone. If we cannot -- if the Department does not have jurisdiction of the beaches landward of the setback line, it means that there -- we have no permitting authority, direct permitting authority, in some of the most vulnerable places, because that's where the erosion and the shoreline has moved most. It's the most dynamic. And so we can't -- there's no way that we could meet the mandate to establish policies to protect sensitive and fragile areas from inappropriate development of environmental safeguards.

We have presented evidence that we have -- we have continued to reserve authority in the beaches critical area. We have issued renourishment permits in the beaches critical area, including landward -- landward of the setback lines. There's emergency orders that we've heard a lot about, that people come to us

and we tell them whether they can do minor renourishment, sand fencing, sand scraping and vegetation planting. This is all a lot of times in beaches critical area landward of the setback line. It is not a new development that we have had this permitting authority and exerciser authority.

He's asserted 48-39-30(C) that no agency shall adopt a rule or regulation or issue or any order that is unduly restrictive. That's not this case. I mean, he -- he is saying that we've issued these rules, but he never came to us. He never -- he never applied for a permit. He just did what he wanted to do. So -- and I think that the -- I don't think that we've adopted a rule. We are following the actual statutory language and the regulations the best that we can as the General Assembly has provided to us.

He has also said that we have, quote, unfettered and untethered jurisdiction. Again, the General Assembly told us what to look for. They told us to look for periodic inundation, tidal and wave action, vegetation. That’s not unfettered. We have guidelines and parameters

of how to define the beaches critical area.

The focus so far of the respondents has been on that September collection, saying that there was one day that we claimed a jurisdiction. I would just like to point out all the testimony of all the other days that we've shown, the photographic evidence and all the other data that has been collected through December and January and February. January and February was when some of the most egregious alterations of the critical area occurred. It was when he -- he repaired his wall. It's when he built another second wall that was much more robust than the first wall. And those all occurred months later, after the September data -- or September day that he first ---

That's all I have, Your Honor.

MS. MILTON: Your Honor, I don't know to the end that this even requires a response from me, but I'm going to go ahead and give one. By my count, this is now the third time that Mr. Reddy has had an argument about the League's intervention in this case. I would like to yet again remind the Court that he consented to this a long time ago and is yet again raising

it. The rules are pretty clear. I think it's 43(I) that says, counsel shall not attempt to further argue any matter after he has been heard, and the ruling of the Court has been pronounced, and yet we're now on the third time where we're arguing about the League's intervention. Your Honor, he consented to the League's intervention.

Second, if he does not like being questioned on why didn't he obtain a permit and is trying to characterize that as us not having interest different than the Department, someone applying for a permit actually gives everybody, including organizations like the Coastal Conservation League, an opportunity to follow procedure to challenge that permit in accordance with the law. We choose to do things in accordance with the law. Just because he does not, he cannot use that against my client now because we ask him why he didn't apply for a permit.

Nothing further, Your Honor.

COMMENTS BY THE COURT:

THE COURT: I've heard from the motion, I'm gonna take it under advisement. I'm gonna allow

y'all to present proposed orders so I can better even understand your arguments. So, I'm not gonna make a ruling on your motion. Now, that places me in an interesting situation. You made -- all of y'all have made arguments, but I'm still -- if you're doing your closing argument. So, if we're going to hear closing arguments, you have the burden of proof. You may go first, last or both. So, are we still at the stage of doing closing arguments, Mr. Reddy?

MR. REDDY: We're good.

MS. PHELAN: While he's coming up, can I just ask for clarification? You want a proposed order on the directed verdict motion and as well as ---

THE COURT: No, on the case. No.

MS. PHELAN: Okay. That's -- I was getting a little confused.

CLOSING STATEMENTS:

MR. CHURDAR: May it please the Court.

THE COURT: Yes, sir.

MR. CHURDAR: Your Honor, the General Assembly has given the Department regulatory jurisdiction over four critical areas. One of those

critical areas, as you have heard probably 100 times in this -- in this proceeding, is 48-39-10(H), beaches critical area means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established. This definition contains no language limiting the landward extent of beaches critical area to the setback line. As a state agency, the Department cannot read words into the definition that are plainly not there. What the evidence has shown today, I'll start with Matt Slagel, the former Beachfront Section manager, he testified that when he learned that the Reddys may be planning to do work in the beaches critical area, He sent a letter to them and to their contractor, BluTide Construction, advising that, quote, any unauthorized work within the State's critical areas, which include the beach/dune system and beaches, will be considered a violation of the Coastal Tidelands and Wetlands Act, and may be -- and may result in an enforcement action being initiated by the Department. End quote. Thereafter, the Department staff met with the Reddys and their neighbors on September 11th,

2023. At that meeting, Mr. Slagel testified that the area that they wanted to put the clay in was beaches critical area and that they were not authorized to do that. He also explained that clay would be harmful to sea turtles. And despite this notification, as well as the Department's subsequent NOAV AL, three cease and desist directives and a petition for injunctive relief, the Reddys' contractors performed the following work in the beaches critical area without a critical area permit. They installed two sea walls, clay, gravel, filter fabric, artificial turf, metal screw piles, rebar, riprap and concrete, amongst other things, on the beach. Mr. Slagel also testified that the Department's efforts to assist the Reddys as to what actions were permissible in the beaches critical area, specifically, Mr. Slagel issued a Department emergency order, which was Joint Exhibit Number 37, allowing the Reddys to conduct minor renourishment, install sand fencing and/or plant native dune species at the site. The dates of this emergency order would -- was in effect are significant. It was -- the window

of time was September 21st to October 21st, 2023. The reason it's significant is because it was during this window of time that the Department proved -- provided permissible options to protect their property, and instead, during this time, on behalf of the Reddys, Mr. Jose Cruz installed non-beach compatible fill in the first erosion control structure in the beaches critical area. When the first wall started cracking and falling down, instead of removing the wall, the Reddys dug out behind the wall, pulled it back up and level -- and put metal pins on the front and back to keep it from falling, and installed metal mending plate brackets on the front of the wall where it was cracking. The Reddys then built a second wall to fortify the first wall. Ms. Morgan Flake testified that the combined footprint of the two walls was approximately nine feet wide and 100 feet long, not including the wing walls. Mr. Jacques Prevost testified that after learning of the Reddys' installation of clay, the Department issued a notice to comply to remove the unauthorized materials. And when they learned that the Reddys were fortifying

the original wall, the Department issued the first cease and assist directive. And when the Reddys built the second wall, the Department issued a second cease and desist directive. And then when the Reddys continued to alter the area with landscaping and more artificial turf, the Department issued a third cease and desist directive.

Mr. Prevost provided extensive testimony and photographic evidence regarding all of his site visits and how the water was reaching landward of the wall. Ms. Flake testified to the administrative order and all supporting evidence. She testified regarding the Reddys' violations. Quote, she said, to my knowledge and my experience, this is the most egregious action that I've seen in the Compliance and Enforcement section. Mr. Reddy asserted that, other than the Summer House case, this enforcement action is the first time the Department has exercised beaches critical area jurisdiction landward of the setback line. In contrast to this, Ms. Flake testified about a number of other oceanfront property owners where the beaches critical area has migrated

landward of the setback line, and when these property owners were told that hard erosion control structures were not permitted. She said -- she testified that these property owners stopped building their seawalls, and they are, quote, still working through those actions, so, penalties have not been assessed and those orders are not that -- those orders are not resolved. Ms. Jessica Boynton, the Department's Coastal Services Manager, testified to the shoreline changes in the movement of the beaches critical area landward over the last several years at the south end of Isle of Palms. She also testified about her feature identification study of where the beaches critical area was during the October 2023 time period when the Reddys first constructed the wall. And she further testified that the Department did not use a single data point, but many points collected on multiple days. And regarding periodic inundation over a year's time period, Ms. Boynton also testified, and this is a quote from her, she said, we heard testimony yesterday and the day before from Mr. Slagel,

Mr. Prevost and Ms. Flake about inundation. We saw photos over a number of different timeframes, and my testimony is focused on the data and the feature analysis showing periodic inundation. All of those collectively showed repeated inundation, which would be periodic, sufficient to resist the growth of vegetation landward of the wall, seaward of the wall, and at adjacent sites.

THE COURT: So, how do y'all define periodic inundation at this point?

MR. CHURDAR: Well, I -- well, I believe that the testimony that Mr. Jones testified to and I -- rather than summarizing it and characterizing it, I would just let the -- I prefer to just argue that in the proposed final order. I mean, that that's the way that we normally do that. And, you know, submit final orders. So ---

THE COURT: Well, you can't give me a definition at this point, though?

MR. CHURDAR: Well, I mean, I believe ---

THE COURT: I look in Merriam -- Merriam Webster, and they define it as, you know, regular, inunda- -- or periodic, meaning something that

occurs on a regular basis.

MR. CHURDAR: Well ---

THE COURT: Do I go with that? I mean, how does that fit in with the episodic events where -- is that periodic inundation? I recognize you're not going to say that, obviously, but there's -- there's a window there that I have to figure out at what point do I reach and I say, okay, this is periodic inundation in this case.

MR. CHURDAR: Right. Your Honor, we -- after now four and a half days of testimony, I -- I don't want to give a definition that would limit something that I don't remember at this point, that from -- from one of our witnesses, but certainly, what I would say is that the vegetation, and I believe that Mr. Reddy concurred with this actually, that the vegetation is directly connected to how that periodic inundation is determined. I mean, the Department is not out at properties all up and down the coastline. It is the lack of that vegetation or that vegetation line that makes the determination of what is periodic.

THE COURT: So, okay. Where I can be clear, under

the Department's definition, if there is no vegetation, then is that area in essence subject to periodic inundation?

MR. CHURDAR: Well, can you flesh out your ---

THE COURT: Well, you just said the lack of -- your phrase -- phraseology was a lack of vegetation reflects periodic inundation.

MR. CHURDAR: Uh-huh.

THE COURT: So, logically, then that would mean that anywhere that I do not find vegetation, that means that it is subject to periodic inundation, whether I see evidence of water movement or not. Therein lies my struggle about -- about this. Trying to come up with a definition.

MR. CHURDAR: I believe that the -- considering why the vegetation is not there is a component of that that ---

THE COURT: I agree with you on that.

MR. CHURDAR: --- that I ---

THE COURT: But I still think I -- it's still -- this seems to me that I need to determine whether the area is subject to periodic inundation, and that another level would be so that that no nonlittoral vegetation is growing,

and what I'm asking is, do I have to make that first level determination of periodic inundation first?

MR. CHURDAR: Well, I think it's like two sides of the same coin. I mean, you know, it is the so that is -- is the reflective -- reflection of the lack of -- I mean, is a reflection of the periodic inundation, the lack of -- I mean, where the vegetation line starts. I -- I don't know how to -- to just do one analysis of one of one half of that definition without it being absolutely tied to the second half.

THE COURT: All right. Move on.

MR. CHURDAR: Okay. I'm not sure where I stopped with my quote from Ms. Boynton, but I'll just go -- go to this point. She says, all of those collectively show repeated inundation, which would be periodic sufficient to restrict the growth of vegetation, landward of the wall. And I think she's correcting herself. See -- well, landward of the wall, seaward of the wall and at an adjacent site. And the timeframe runs from May 2023, we see that again in June of 2023, and I think Mr. Jones will talk about July of 2023. We've seen September 2023. I've

just talked about October and November. We've also seen December of 2023, and other dates in 2024. And my site visit was in October of 2024 indicating periodic inundation over more than a year's period of time. That was directly from Jessica Boynton.

This Court has also recognized Chris Jones as an expert in coastal processes and coastal engineering. Mr. Jones testified about his familiarity with the Isle of Palms shoreline and about the instability of this area over time. He gave us his assessment of where the beaches critical area was applying the statutory definition at each of the relevant time periods and Reddys -- and that the Reddys did their alterations. He backed up his assessments with the collected data from the Department showing where the dunes are located. He also provided expert testimony in response to the respondent's expert Matt Goodrich's opinion related to the upward limits of periodic inundation at the Reddy site. Regarding Mr. Jones' description of the dunes as sacrificial to protect the property, Ms. Flake testified that the Reddys had flattened

some of the dunes to extend their yard. And while this activity was landward of the critical area and, thus, outside the Department's regulatory jurisdiction, Ms. Flake testified that the result of flattening these dunes was to reduce the sacrificial protection in front of the Reddys' house, as Mr. Jones had testified. Doug Truslow has also testified at trial. He's a resident of the Isle of Palms, and testified as to how the Reddys' wall has impacted his enjoyment of the beach. He testified that there have been times that he had been able -- unable to get past the wall without getting in the ocean.

Your Honor, the Department has met its burden of proving that Mr. -- Mr. Ready's and Mrs. Ready's wall alter beaches critical area with a -- without a permit, as articulated in the administrative order before this Court. And, accordingly, we would ask the Court to find the -- for the Department and enforce the administrative order.

THE COURT: One last area, Mr. Jones testified that the current -- the current structure is up to five feet into the critical area, but he's not

sure. If the current structure is not in the critical area, what should my actions be?

MR. CHURDAR: Well, Your Honor, that's -- that's what the exhibit this morning was, Petitioner's Exhibit 6, showed the vegetation line in December of 2023.

OBJECTION:

MR. REDDY: Object, Your Honor. It's not in the evidence. He's talking about what he put up this morning from last week.

THE COURT: Well ---

MR. CHURDAR: Well -- I'm sorry.

THE COURT: Go ahead. I'll allow you to give your closing argument in this area, and I'll make a determination of that when I write the order.

MR. CHURDAR: Okay. Well, page five of Joint Exhibit 65 which was -- was the same aerial image from December of 2023, what we -- what we saw -- what Mr. -- Mr. Stout testified to, was the vegetation line in December 2023, in Exhibit 6 that the Department had provided for. And all work that was done seaward of that line would have been work in beaches critical area.

THE COURT: In the past, but I was asking now.

MR. CHURDAR: I'm sorry?

THE COURT: I'm asking if it's not in the critical area now, or if it's five foot into the critical area.

MR. CHURDAR: Well ---

THE COURT: When you say you presented these exhibits, I've still got -- I've got the testimony of Mr. Jones, who y'all put up, and his testimony was basically took all the exhibits that y'all had presented and combined that together to come up with an expert opinion. And that's why I'm asking about that. What do I do with the structure?

MR. CHURDAR: Just a second. Your honor, Mr. Jones was asked about the September imagery. And so, you know, to the extent that the -- his testimony is limited by what he was asked about, I would just simply say that the beaches critical area, I believe, based on the testimony of Jessica Boynton and by the documents and the photographs and everything that was provided by Mr. Prevost, the Department has shown that the activity was in beaches critical area.

THE COURT: Okay. All right. Ms. -- who's going to give a closing argument for the ...

MS. MILTON: Thank you, Your Honor. At its core, this case is about whether one property owner can defy the law, privatize a public beach, and the answer under South Carolina law and under the public trust doctrine and under all the facts presented in this trial is a resounding no. This case is about upholding the long-standing and established legal framework that is designed to protect one of South Carolina's most precious resources, our beaches. Mr. Reddy built multiple walls in beaches critical area without permission, defied repeated lawful orders, and then has lashed out here at the public officials, experts and neighbors who've done their jobs with professionalism and integrity and tried to hold him accountable. South Carolina law has long drawn a clear distinction between private property and public land. Seaward belongs to the public, and the State holds it in trust for all South Carolinians. This principle is older than any plaque, and in Kiawah Development Partners, the Court reaffirmed ---

THE COURT: When you say seaward, though, I mean, if I go back to the Kings Grant law ---

MS. MILTON: Yes.

THE COURT: --- that's -- that's mean high water, is it not? So, I mean seems like there's a distinction between the Kings Grant means high water public trust doctrine and what's occurring here, because this is landward of the mean high water line, I think.

MS. MILTON: I would urge Your Honor to look at all the photographs that have been entered into evidence during this entire case and look where the water has been coming and all of the evidence that's been presented in this case about where the water is repeatedly coming in this case.

THE COURT: Well, have I heard any testimony about what is mean high water, other than the plat shows that?

MS. MILTON: You've got the plat, you've got where the water is routinely coming up with everything that Mr. Jones has put into the record.

THE COURT: I know, but as the judge, can I look at the flow of water, the tidal flow of water, and make a determination of mean high water?

MS. MILTON: You can absolutely ---

THE COURT: I mean, I don't even know if that's an issue.

MS. MILTON: --- look at the data that he's presented, and the data that Ms. Boynton presented, the data that Mr. Jones has presented. You could weigh that against the evidence that Mr. Goodrich.

THE COURT: Okay. I stopped you.

MS. MILTON: So, beachfront property -- private property ownership comes with risks. And at the end of the day, it's an investment. And Mr. Reddy clearly does not like the investment that he made. A beachfront owner can benefit from natural accretion, but they must also accept the consequences -- consequences of erosion. And as the McQueen and Tanny cases affirm, if rising tidal waters transformed dry land into tidelands, that now belongs to the public. But Mr. Reddy did not just respond to these changes. He did not just accept the consequences of his investment. He tried to engineer his way out of them against South Carolina law. He elevated sand. He's created the illusion of upland, and then he's used that manufactured condition to justify his illegal

seawall. As Mr. Jones explained, the sand buildup was rapid and unnatural. This is textbook avulsion, not accretion, and under well established law, land forms suddenly, especially by human activity, remains public. As far back as the 1880s South Carolina courts have barred any use of public land that impairs access, navigation, water quality or fisheries. And in Horry County versus Tillman, the Court made clear an upland owner may not create land and then claim it. That is not accretion. That is appropriation. DES' jurisdiction follows natural coastal features, not shifting ambitions. And as Mr. Truslow reminded this Court, this is what's really at stake. It is the families, the neighbors and the beach goers who can no longer safely walk a stretch of sand that once belonged to all of us. This is not a close call. South Carolina prohibits landowners from expanding into the ocean via artificial means, and that is what Mr. Reddy has attempted here, not by mistake, but by design. The people of South Carolina do not need a deed to walk their own beach. That is what DES is enforcing here, and that is what

every witness in this case has stood up to defend, even as Mr. Reddy has worked to tear them down professionally and personally. And let's be clear, this is not a neighborly misunderstanding, and this is not confusion. This is a calculated effort to seize public land and disparage those who said no. South Carolina law draws a line, literally and legally, between private property and public land, and Mr. Reddy has crossed that line. He's ignoring the law. He's undermined enforcement. We're asking the Court to draw that line again, to affirm the rule of law and to protect public access to land that belongs to every South Carolinian, not just the loudest litigant. Because in South Carolina, the beach belongs to all of us, not just those who build walls. Thank you, Your Honor.

THE COURT: Mr. Reddy.

MR. REDDY: Your honor, I've never been in court before, but my understanding is they have to prove their case, not use this to make a speech not based in law. So, I'm just going to answer some questions that apparently they're not aware of. But I stayed up and read Chris's

testimony. I thought you asked a couple of questions. Page 45, line 24 on Chris's testimony. Does it make sense to use the vegetation or lack of nonlittoral vegetation as a delineation of beach critical area? Answer, it does. That's one of the questions you asked. How is he doing that. Page 175, line 15, it is my opinion that we should have at least one growing season before we count vegetation as established. The question is, what is a growing season. And the answer was, growing season is April through October. The Court asked on page 172, you're telling me now, you can't discern how far this retaining wall encroaches into the beach. Is that what you're telling me now? Next question, does it encroach now? Answer, I don't know what it is now. So, hopefully, that provides some perspective on some of the questions you were asking.

Honor, first of all, Your Honor, I want to say it's a real joy to have been here. I've never been here, and this Court has been extremely kind to me, and thank you for doing that and accommodating us. It's very unusual

for both of us to leave our 14 year-old daughter. We've never done that, actually. But we felt it was important to be here. Our attorneys told us it would take us $200,000 additional to get through this trial and our chances of prevailing in this Court were low. I disagree. That's why I'm here. And everything I've experienced here tells me that we have a voice and we are going to be heard. We stand before this Court today not to win a technical argument on inundation or wave run-up or vegetation or any of these things, but to fight for property rights for the citizens of this State that could be subject to unlimited, variable, property by property, storm by storm, confiscation, in the name of preservation. I actually, if Your Honor remembers, I offered to give up the fee. I said, pay whatever fee, because I'm not here to get a reduction in fees or to pay for some little thing to be given back on wave run-up. I'm here to say our founding fathers did not want this. They did not want government to be stepping into private property and taking it. It start all the way with the Fifth Amendment of the U.S.

Constitution, and it's followed all the way through. On page 133 of his testimony, their expert said it right. He said, jurisdiction by agency can change day by day, storm by storm, is that -- is that on the -- on the eve of our 250th anniversary? It's perhaps a good time to remind ourselves of our founders. In Federalist 84 Hamilton said, the security of our property is essential to the security of liberty. George Washington said freedom and property rights are inseparable. They believe arbitrary confiscation or unequal legal -- legal protection was tyranny. We are still a traditional family, God, family and Constitution. We believe the same, Your Honor. That's why I'm here. I'm not here to argue about the technical aspects of this.

The burden of proof is upon them to show three things. What I heard was essentially re-reading their Complaint. And the three things was jurisdiction landward of a state approved setback line on private property that is updated by the General Assembly every seven to ten years, recognizing that, you know, water is dynamic. Can they now be given, which they

have never exercised, they claim they have, statutory justification to hijack the General Assembly process? The statutory definition of beach, which I will go to shortly, restricts beach to the setback. It doesn't matter what we think it is. It doesn't matter what we all might assign to different meanings. That is a statutory consideration. And I really don't -- I couldn't get my head to get past that, honestly.

THE COURT: How do you get to the interpretation?

MR. REDDY: I'm going to get -- I'm going to get to a slide.

THE COURT: Okay, well, I'll wait a little longer.

MR. REDDY: I'm going to get to a slide. Assuming -- assuming now we get past that, then their ability to assume jurisdiction using the term beach allows them unlimited jurisdiction with undefined criteria, as you saw. Each expert has a different version of what it is. After five days of testimony, they couldn't even tell you what their definition of periodic inundation is. They also finally have to show that they're making a good faith attempt to treat me no different -- me and my family, no

different than other citizens, and apply the same laws to me that they did to others. We have a right to equal legal protection. On all three counts, they failed to meet the burden of proof.

So, now I'm going to answer the question you asked. If you can tee up the slide.

THE COURT: I don't know if I finished it. My question was going to be because I see reasoning in your argument, I'm just having trouble finding the foundation in the statute and your argument is that the beach/dune system, where they set forth the setback lines, that applies to beach/dune system, and you don't get to the definition of beach unless there is no setback line. All right. That makes sense, but where is it in the statute? Where in the law can I find the provision and say, okay, there's support for that?

MR. REDDY: Yeah. It's a great question, and I'm going to answer it. And I'm not going to answer it by making it very, very complicated. So, all I'm going to do your honor is if I simply took -- may I point to this?

THE COURT: Yes, sir.

MR. REDDY: --- if I simply went to number four, right here, and I said, beach is a defined term. It ha- -- it established -- it has to be used the way the legislature defined it. The way the legislature defined it is exactly that's been talked about 100 times here, those lands subject to periodic tidal and wave inundation, so that no nonlittoral vegetation is established. So, you just take out the word beach, and you put in the statutory definition. Those lands subject to periodic tidal and wave inundation, so that no nonlittoral vegetation is established is the area from the mean high water mark to the setback line. You literally substitute the statutory definition of beach, which, if you get -- can you go back to the previous slide? On the previous slide, you can see it says that -- there's actually a case in South Carolina, it says, where the legislature has provided a specific definition of a term, that definition controls. A statutory term is not to be given a different meaning merely because its definition is at odds with its ordinary usage. A statutory -- this is U.S. Supreme Court, a statutory definition

supersedes the ordinary meaning of the word wherever the definition applies. So, anywhere in the statute that the definition applies, it has to be the definition of beaches means. Beaches means. It's a defined statutory construction consideration. Beaches means. So, I'm just going to go back to the next slide. I'm going to take the definition for beaches and I'm going to substitute it in here, because we don't have the freedom to decide what beaches. It's a defined term. So, if I substitute it in there, number four would read, those lands subject to periodic tidal and wave inundation, so that no nonlittoral vegetation is established is the area from the mean high water mark to setback line. You are -- we are collectively stuck with that definition. We cannot substitute a different meaning for beach. This is statutory law, as you saw, it's also business law. I've used this in business. You know, we say working capital. Working capital is accounts receivable minus accounts payable. So, if I see the word working capital somewhere else in the document, I can't go in there and say, oh no, it is accounts

receivable, minus accounts payable plus inventory. I have to use the statutory definition of the word beach. So, I just take the statutory definition of the word beach and substitute it in four. And when you substitute it in four, it restricts it, that definition, to the setback line. The -- we -- the only way you can say -- the only way you can say this exists, is if you say, oh, no, I'm going -- beach here means something else. It can't. Beach here simply means, what is the -- what beaches is defined as, which is, is land subject to periodic tidal and wave inundation, so that no nonlittoral is established. So, you take that, you can copy it, paste it, and put it into four. And when you do that, it restricts it to the setback line. And this is that -- this -- we -- I don't see how to get past this. I mean, I stopped there. I said, how can you get past this when it -- when it says a statutory definition supersedes the meaning of the word and the step when the -- where the legislature -- not South Carolina, where the legislature has provided a specific definition, that definition controls. So, we

have to take that definition and just stick it in there. And you take that definition and stick it in there, it restricts it to that.

Can we go back to that? And then you say, the next obvious question. Okay. I put that definition in there and it restricts it to this. So, what the heck do we have that for? That's this unrestricted thing. Well, the reason we have that is that when the Act was first formulated, 30 percent of the coast didn't have a setback line, including many parts of Georgetown, Charleston, Edisto, Debordieu, portions of Port Romain, which still don't have a setback line, those didn't have -- so that beaches is a catch all. You -- and that beaches is the same definition. It's no -- it doesn't mean anything different. But you can't say it means something in three, and it means something different in four. You have to use statutorily the same definition. And when you statutorily use the same definition, it simply means beach is restricted to the setback line where there is a setback line. That's all. And that's -- and that -- and honestly, Your Honor, everything I say past this is a

stretch, because I -- my business mind, my little legal mind, none of it can get past this, especially if you go back to the previous page and see the -- see the entire clear definition of how a statutory definition and a statutory construction applies.

Now, does that answer your question, Your Honor?

THE COURT: I can't respond to that.

MR. REDDY: Okay. And, so, I'm going to keep -- I'm going to keep moving. Can you -- can we keep moving? So, now -- yeah, yeah, keep going forward. Keep going. Okay. Now, I also want to address something that they -- they brought up, which is 48-39-120(B). It says that no person or governmental agency may develop oceanfront property created by natural forces, which we agree with that -- CCL for a change, or as the result of permitted or non-permitted structures beyond the mean high water mark as it existed at the time the oceanfront property was initially developed or subdivided, and such property shall remain the property of the State, held in trust, for the people of the State. So, it says the so called public trust

doctrine is not a moving line. It is a fixed line at the time that the property was initially developed. That also makes sense, because we have been paying taxes on it. We continue to pay taxes on it to the original line that was initially developed or subdivided. So, making these type of comments and making them publicly like, oh, it's the -- it's the mean high tide or whatever, that's it. We pay -- that's how it's -- that's how it's defined in the statute. That's how it's supposed to be. And, you know, there was some discussion about what's the mean high water mark? Well, the mean high water mark is not the high water mark. The mean high water mark is an 18.6 year average calculated by NOAA. It's an 18.6 year average calculated by NOAA. And that -- and that mean high water mark can, regardless of what it moves, it says it does not move the trust. It doesn't move the public trust, because you run into the same issue, Your Honor, that I put up in the first slide. You run into a takings issue. The State can't say, oh, the water moved, so I'm taking it, but I'm not paying you for it, and you will

continue to pay taxes on it. That's a -- that's an indefensible position. The people who don't pay taxes or who live on the public dole and taxpayer funded charities, they don't understand that. This is -- this is -- this is the law. This is how it's set up. On the mean high water mark, it's a -- it's a -- it's public information. It's that 18.6 year NOAA average. Not all this hocus pocus they keep talking about. So, now, if you buy into the fact that the General Assembly is very concerned about not taking the hatchet to the U.S. Constitution, the South Carolina Constitution and the Act all in one, then everything else flows. Then, 48-39-280 defines, that's the wording from the thing, defines a policy for beach preservation. It uses dynamic setback lines that are adjusted every seven to ten years. You don't have the situation, Chris Jones was right when he testified this morning, there's two ways to do it. You can -- you can have a line adjusting every so frequently. Or you can do property by property, day by day, storm by storm, and create chaos in the State. The General

Assembly has chosen to do that. Now, they don't like that, and they say, oh, the beaches are moving more. There's too many storms. They've got to go back to the General Assembly and say, hey, your seven to ten years is no good. Let's do it every three years. They can't just say, I don't like that seven to ten years. Somebody ignore it, and I'm going to start doing it day by day, property by property, storm by storm, with different guys, different experts saying different things. So, that ---

THE COURT: If it doesn't have a setback line and you're using just the term beaches, the definition of beaches. So ...

MR. REDDY: I'm not -- I'm not using ---

THE COURT: No, I'm asking you a question. I hadn't finished it. So, on your theory, you only apply the definition of 30 -- of number three If you don't -- if you don't have the setback line.

MR. REDDY: Go back to the next slide. Yeah.

THE COURT: All right.

MR. REDDY: There you go.

THE COURT: So, are you saying then that if you're

using the term beaches in an area where there is no setback line, is that chaos?

MR. REDDY: No, I'm saying there is no chaos.

THE COURT: Why would -- why would it -- 'cause you've got a situation where you don't have a setback line.

MR. REDDY: Yes.

THE COURT: And you were just saying, if you don't have a setback line, then you have chaos. So, I'm trying to figure out how all this fits together.

MR. REDDY: So, when -- when the Act was first put in place in 1988, 1990, they did not have the data at that time. You have -- you can't set a setback line. A setback line has to look at what's been going on with erosion and this and that, and inlet movement and sediment movement, all of these things. They didn't have the data for many parts of the beach. They estimated -- it's on -- it's on DHEC's publicly available information at that time. They estimated around 30 percent of the coast did not have enough data to develop a setback line. Since then, they've slowly been adding setback lines. But now, today, you have things like Cape

Romain Wildlife Refuge. Theoretically, today, to my knowledge, again, I haven't actually looked into the details of it, most areas that have been developed have setback lines. They've added setback lines as they went over the last whatever, 20-some years. There are some areas now, like wildlife refuges and stuff like that that don't have -- still don't have setback lines. So, it's just a catch all. It simply said, when we set up this Act in 1988, that number four applied to about 70 percent. We had the other pieces that as we went along, we're going to start moving them from three to four. But, right now, if you just left four in place, then what happens to those that don't have a setback line? If you have left three in place, what happens to those that have a setback line? It obsoletes the need for a setback line, because if you just did this, if you said, let's get rid of this, let's get rid of that, that obsoletes the need. It'll just be property by property, day by day, people going out there and saying, do you see vegetation? Is that vegetation period- -- all the same discussions we've been having for six

days, you know. It's only with one exception. You'll now be doing it by homeowner. So, can we move forward now? So, that follows to 280 which -- which -- which basically says, this is how we set up setback lines in different areas, and they recognize erosion, accretion must be looked at over a longer period. And to have some certainty for commercial purposes, I mean, if I wanted to sell my house, and you were to come buy my house, and you signed an agreement and you then go to close, and I said, oops, sorry. Your Honor, the vegetation got overrun or something, so your line has moved. And you say, what, my wife can put a space up there. Said, no, you can't. Deal is off. So, this -- this is -- this is -- this is why you have to have some type of commercial survey. You can't do what they're doing, which is -- and the General Assembly recognizes that.

So, then -- and then 290 basically says, hey, we have basically control from the setback line on. So, let us make sure that we have some criteria as to what you can do or cannot do in that area. So, everything makes sense. Everything starts to actually flow and make

sense. So, if you read it this way, then you don't violate 48-39-30(C). You don't have any of these issues of property takings. You make -- it definitely makes -- it -- you know, but if you read it their way, man, you've got all kinds of issues, unlimited. It obsoletes the need for setback lines. It's -- it's chaos.

You know, I'll also read, you know, these type of statements. This is again, the expert, page 27, line 8, on his testimony, says, currently, it's erosional, although it's accreting slightly. What? So, what does that mean? And then, at a different point in time, Your Honor, you asked him about the, you know, where is the wall and he couldn't say.

So, you can, if you can, move forward. So, these -- again, I want to focus on the law, you know. I don't want to focus on all of the other stuff. All of the other stuff really comes into play more on equal protection, but the law has to prevail. And I think that's what we talked about, is the law, the law, the law. Now, these are all the regulations that flowed from the law, and these -- every one of these regulations that were in place in 2023,

now, they modified one of those in 2024, but everything that was in place in 2023 has been in place for quite a while, since '99, I believe. And every one of those talk about limiting to the setback line. Every -- all the guidance they had talks about that. You saw a lot of what happened, some of the guidance they provided in the judicial depositions in Hilton Head got limited to the setback line. So, everything in place, all consistent with the correct reading of the statute. Now you change it, everything changes.

If you can go to the next slide, please. So, now let's assume, Your Honor, we step past this big barrier of the statute, which I think is a huge barrier. Now, you get into a whole different area, which is beaches. What does beaches mean? Now, you get into wave run-up and this and that, and all these other kind of stuff. So, I'll only say one thing. Pre Idalia, they have never been -- and they have never claimed I've never had any inundation by water. Idalia was the first storm that we experienced with no dune. The vegetation line pre Idalia, we will show you shortly that I

showed you in the directed verdict, remain post Idalia. Beach area that they claimed was right after the storm, and beach with one dune. So, I want to address something that they kept bringing up over and over and over again. They said, over one year -- one year, including last week when the Army Corps had gone out there and put sand in, they sent pictures out there and -- and they said, oh, it's all moving around. This is the question. There have not been claims of critical area. There have not been any claims of critical area made, other than one claim that was made on October the 20th letter that Mr. Jacques sent to us. Okay. That is it, at 1255 square feet. That's that same 1255 square feet we follow all the way into this trial. So, all this stuff they're talking about, look at all this inundation; look at all the lines moving around. Well, did you claim more -- more property? Did you claim more beach critical area? Is there any claim beyond the 1255 that you claimed on October 20th? And my point was that 1255 was claimed with one day's worth of data, the day after the storm, one day, that's it. Now, they can say,

oh, look at it, over years, including last week, it moved somewhere. Okay, this is Ms. Flake's testimony. You know, again, I want to keep your knowledge, ten-year timeframe, do you ever know that if we were ever cited for some of the things y'all say we shouldn't have done? Were we ever cited for we shouldn't have moved dirt inside your yard landward of the setback line, not by BCM? No, sir.

So, here -- here is the issue we face. What is it that suddenly says now, I claimed 1255 on October 20th, after one day's worth of data, which is the same 1255 we followed till now, and what are we supposed to believe? That they're not going to claim 50,000, 20,000 some unknown number, because they got some more pictures they keep taking every week? I have no idea. I shouldn't be subject to that kind of craziness by a government.

So, I would say, I feel like this is a very, very important point I want to make, Your Honor. In addition to any of these arguments that they have made on the statute, I've made a clear, lucid argument based on statutory considerations. I don't believe you can get

past that. If you get past that, then you go into, okay, what is their definition of beaches. Well, we just said it's random, it's unlimited. And then they say, well, they have all kinds of data for their claim. Well, they have one data point. That's the only one they claimed, which was the day after the storm. They sent a letter a month after -- little over a month after the storm, and that's the same letter we followed for a year and a half. So, this is the same overlay. We will provide it to you guys from the same survey we showed in the earlier slide. See the wall, see the fence line, see the palm. And so my question is that 1255 square feet they claim, which has resulted in hundreds of thousands of dollars of money on all sides, including, Your Honor, the right to stand in front of you in this Court, not counting trial costs, is six times the median family income of the South Carolina family. Six times. How is that justice, Your Honor? We did all of this for 1255 square foot. So, if you say it's 105 linear feet, roughly, that's for about eleven feet of argument of a beach critical area, that's -- that's what this

is all about. And they keep telling you about all these other things and vegetation lines moving and all that, it's still the same 1255.

So, I want to talk, you know, about experts. I love experts. Experts are wonderful people and very expensive also. You know, one says periodic is astronomical. One says periodic includes storms. One says astronomical tides cause salt water toxicity, so vegetation cannot be established. One says storms washout the vegetation, and he basically says, I have substituted the word established for present. He said, when we walk out there, if there's no vegetation present, I'm going to say that's the new beach critical area. You heard me ask this morning, so Hugo washes you out across the road, washes out the soil, washes out everything, and takes you across the road. Is that all now beach critical area? And the answer was yes. So, that's -- that's one expert. You heard testimony, I think it said on page 30, line 5, of his testimony said, well, the first thing I did was I went to the dictionaries to see the definition of periodic and it boils down to two usages. Just two.

That's good. If we had a third expert, maybe we have a different opinion.

Now, one thing you can think about if this visible vegetation, including storms, is the guideline they're using, they have not shown that that's not unlimited jurisdiction. What -- what limits that? Nothing. Could go across the street, he just testified to that. So, I will say, Your Honor, the good news is the very good news, by the way, that none of their experts, or my expert, for that matter, in any of their dictionary look ups ever said periodic was one storm, one storm. Their own witness, Ms. Boynton, that they talked about, said that a certified surveyor is more accurate than a handheld GPS, and it's more important that the hand holding the GPS is not an opposing party, which is a conflict, to start with. And our certified surveyor -- we used certified surveyors, by the way, that's what it shows.

The bigger issue is, Your Honor, do we want to subject the citizens of the State to this? Their land could be lost or severely restricted by all these different definitions and experts, and -- who can afford these

people? You know, he test- -- one of the guys said he paid him $30,000 to be here. $58,000 the median family income for a family of four. I -- they needed to prove there was periodic inundation prior to them claiming that 1255 square feet of critical area to one storm. They never ever did that. They showed you -- we lost the slide thing, by the way, you know, 500 to 1. They had 500 times as many slides as we did, but they never showed you that that was anything to do -- no proof that it was more inundation or prior inundation that caused them to claim that 1255. They showed a year and a half of pictures after that, but nothing to do with -- exactly. They have some knowledge that somehow they're going to use all these future storms to claim something from the past. They needed to show vegetation could not be established. It's not. I walked up there and I didn't see it. Not only didn't they show that, we showed you clear visible lines where the -- pictures where the little squiggly yellow line went landward of the vegetation. But what basis was that? Why should a citizen have to fight that?

Finally, Your Honor, on the last count, the laws must be applied evenly. The 14th Amendment of the U.S. Constitution, Article I of the South Carolina Constitution, and even the uniform enforcement policy, says that is something you have to do. How is that --how do you -- how do you say this is right? DHEC is unaware of any permits issued for alteration of beaches critical area. DHEC does not have a formal process for evaluating whether an oceanfront project is occurring within beaches critical area. This is their sworn judicial pleading to CCL in the Hilton Head case, and somehow that situation changed with me. Wow.

So, after the nor'easter, they said that they repeatedly denied me the ability to bring in sand. If they had not, I wouldn't have had an issue. In this hearing, over three full days that they took of testimony, I had one or less than one. Over three full days of testimony, did they show that me not allowing to bring sand in tied to some statute? Doesn't exist. Because no one seems to read the statutes, but I do. I actually studied them. It doesn't exist. So, if they had allowed me to have,

what did they say, Your Honor, they said, oh, we're going to deny it because it goes seaward of the neighbors. We showed you a picture. The neighbors were well seaward. They said, we're going to deny it because there's debris on the beach with two little stones where people are covering up docks with this -- with their scrapings. So, all of this stuff makes me say, why are you coming after us? What is your basis? And should we give government that type of power over the citizen? I don't think that's right, Your Honor. I don't think government should have that type of power over the citizen. It's police powers gone -- gone amok.

And, you know, like I said, Ms. Flake testified, Mr. Chris testified that they couldn't think of a single case in this century until me. You know, there's always some talk in the background, oh, there's an enforcement audit. They did this all after me so they could justify me, but nothing before me. Certainly, nothing that they proved.

They continually said Hilton Head was irrelevant and a mistake. Mr. -- Mr. Slagel

confirmed and Mr. Chris went through all the plans this morning. His bosses were copied in March. All his bosses were copied with the design plans and all that for the wall. They respond back saying, we -- you don't need any approvals from us. Go ahead. Six months after that, in August, the wall gets built. One year after that, there is a consent agreement signed, signed by the great Myra Reese, who's the current head of DHEC. So, a year and a half into this thing, a mistake. Was anyone fired for this mistake? Suddenly, it's a mistake that has still, after seven years, not been corrected. Those people are sitting there with a smile on their face, with walls that are 30-foot into the ground, sheet pile, protecting their homes with vegetation and sand. Does anyone -- does my wife actually think that we are being protected equally under the law? And you saw the -- these -- all of this -- these statements they made.

Finally, I ask you -- ask, Your Honor, in addition to the arguments made by my previous counsel, I believe I'm making some unique arguments on the statute. I ask that you do

not follow what Mr. Brad was saying yesterday, which is based ---

THE COURT: Excuse me?

MR. REDDY: --- what Mr. Brad said yesterday, that he thought that your ruling in the summary judgment had closed the issue on jurisdiction. I would ask that that issue not be closed, because I am not here, Your Honor, to win a reduction in fine, or to say the wave run-up didn't come to my property. I am here for one reason only. Like I said, we have -- we've been together for God knows how many years, but we have a daughter who's 14 years old, and we have never left her without one of us in there. This is the first time we've done that. And the reason I'm doing that is because this is a citizen rights issue. This is what our forefathers died for, and we're sitting here saying we want to hand this over, property rights so tied to liberty, over to a government that uses police powers and would have unlimited jurisdiction. Your Honor, you and this Court can stop this madness. I -- I -- I ask you to please reconsider some of these decisions and some of these things we've talked

about in the statute. I ask you if you get past that, and I hope you don't get past the statute, because that, to me, is important, that whatever expert you choose to believe, and I really don't care if you believe him or you believe my guy, or you believe some other expert, no one testified that periodic is one. No one. Apparently, none of the dictionaries they consulted said periodic was one.

And finally, I would ask that in the interest not only of my family, but in the interest of family in this state, that we make it clear with your ruling that citizens feel like they are going to be protected equally under the law, regardless of variation in ideologies or variations in belief.

Thank you, Your Honor. You've been very kind to us, and I appreciate very much.

THE COURT: Any rebuttal?

MR. CHURDAR: Just briefly, Your Honor. When we get down to the -- the -- kind of the base of this situation, what we have is just four critical areas. One critical area in particular here, beaches critical area, is one of the four. That requires a permit. The Reddys' impact of

the beaches critical area was without a permit. I mean, got put down to its most skeletal form. That's what the issue is. I feel like to go into a lot of details is just to repeat what I said when I first stood up, and I don't want to do that. So, I want to hit a couple of points. Mr. Reddy was talking about his cross examination of Mr. Stout this morning with regard to Interrogatory number 7, and what Mr. Stout testified to is prior to the 2024 reg package, when there was a desire to impact beaches critical area, the way the Department handled that was by applying the ten general considerations. It's not that -- that this is something new, that this is something that has never been done before, I mean, in fact, what -- what Ms. Morgan Flake testified to with regard to the other properties that were currently in a compliance action with the Department is when they had beaches critical area overrun the setback line and began to build walls, the Department said stop, and then they stopped. I mean, that's -- that's a very different fact pattern from what we have here. That's all I'll say. Thank you.

THE COURT: I missed the point earlier that I wanted to ask about, and that is during Mr. Reddy's testimony, he pointed out how the dirt had been brought in for neighbors on both sides, you can see it mounded way up, but no dirt was allowed in front of his property. Why was that? Or was that an action by the Isle of Palms?

MR. CHURDAR: I do not recall that -- that testimony from the Department, I'm sorry, Your Honor.

MS. PHELAN: Would you like me to answer?

THE COURT: Go ahead and stand.

MS. PHELAN: Your Honor, at the point that that occurred, the wall had -- they just discovered the wall in December, the Department had not had a chance to even assess what was out there. There was debris and other things that they were worried about safety issues, and there -- and the water was coming up to the wall. And so the instruction was, is they couldn't put the sand down in front of the wall, because it would cover up the unlawful activities. What the Department felt like were unlawful activities.

THE COURT: That's what I was wondering, but, I

mean, could you not just treat him equally, put the dirt up there and then let -- and then require him, later on, to dig out the wall?

MS. PHELAN: Well, that's -- he could have removed the wall, and we would treated him equally, and he could have put all the sand he wanted in that area. And I believe that Matt Slagel showed some conditions in a permit issue way before, in June, before he built the wall and the conditions for renourishment is that they have to -- they have to be, you know, lined up. It has to be lined up with the adjacent properties. There's nowhere to put the sand to line up with the adjacent properties, because the wall jutted out into the beach zone. So, that condition could have been met. Now, at very -- you know, in a relatively short time period after that, the Reddys came through -- I believe it was through the City, came back and asked, said that they were seeing some scour because of ---

THE COURT: Yeah.

MS. PHELAN: --- the sand, and so we'll -- the Department said, we'll tie it into the wall then, so, that there's not that -- any damage

happening. And so we did allow ---

THE COURT: So, pictures that I saw was before that. Later on, there was sand ---

MS. PHELAN: I think ---

THE COURT: --- sand that was allowed to be tied in?

MS. PHELAN: I don't think I can answer that, because there's been a lot of pictures, and there was ---

THE COURT: Well, it would have to be on what's in evidence anyways, so.

MS. PHELAN: Right. There's -- there was scraping a lot of different times, and, frankly, that sand that got -- you know, created that dune, got washed out in a pretty quick fashion a lot of times.

THE COURT: The sand that I saw along -- in front of his was his neighbor's property that used to be his property, you're saying that sand got washed out? I'm just trying to understand what you just said.

MS. PHELAN: I think -- I think, Your Honor, that there has been numerous attempts to -- to renourish sand that it has been -- I think Matt Slagel testified, actually, he showed pictures of a month apart. I'm trying to think when --

I think it was in October and November of 2024, where -- where all the sand that had been deposited had been washed out by -- in about two weeks.

THE COURT: Okay.

MS. PHELAN: So, but at that point, there was really no room to put sand in front of the wall, because the wall -- the water was coming out that would have just washed out. And so we -- and we had some safety concerns, because there was some metal sticking out and riprap and everything else. If it was covered, that the beach walkers wouldn't see it when they were trying to get around the wall with the water coming up to the wall.

ADJOURNMENT:

THE COURT: All right. Well, I'm going to issue a decision, like I said, in writing. I've told you the timeframes. So, with that said, thank y'all very much. This hearing's adjourned.

MS. PHELAN: Thank you, Your Honor.

MR. REDDY: Thank you, Your Honor.

THE COURT: Did I say adjourned? Everything's over. Y'all can move on.

(There being nothing further, the hearing concluded

at 3:26 p.m.)

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CERTIFICATE

This is to certify that the within hearing consisting of one thousand five hundred and twelve (1,512) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on July 3, 2025.

Amanda J. Creel Godfrey
Court Reporter

Notary Public for South Carolina
My Commission Expires: May 27, 2031

Caption:	SCDES and SCCCL v Rom Reddy and Renee Reddy	**Date/Time:**	5/6-8/25
Docket No:	24-ALJ-07-0232-CC	**Judge:**	ANDERSON

Joint:	Description	Marked	Admitted	Proffered
1	Petitioner's TRO & Petition for Inj Relief	X	X	
2	Reddy v. DHEC & IOP (2024-CP-10-01681)	X	X	
3	Photos of C&D placards	X	X	
4	10/20/2023 NTC (cover letter, signed doc.)	X	X	
5	1/25/2024 1st C&D	X	X	
6	2/2/2024 2nd C&D Reddy	X	X	
7	2/2/2024 Cease and Desist to CNT	X	X	
8	3/1/2024 3rd C&D	X	X	
9	6/7/2024 Response to NOAV/AL	X	X	
10	5/22/2024 NOAV/AL	X	X	
11	7/1/2024 Administrative Order w/ cover ltr	X	X	
12	5/20/2023-05-20 to 5/31/2023 Slagel & OConnor emails to Reddys re EO & GP	X	X	
13	2023-08-29 Slagel to Reddy email thread describing sandbag rules w Statute attached	X	X	
14	09/07/2023 Slagel letter to Blutide & Reddys	X	X	
15	2023-09-11 email from Matt to Phelan to forward to Ross Appel re: 9/11/2023	X	X	
16	2023-09-18 Renee Reddy to Slagel email and response sand fencing and veg.pdf	X	X	
17	9/21/23 Slagel email to Rom & Renee Ready – attaching EO, How to Build A Dune guide	X	X	
18	2023-09-29 Reddy to Slagel sandbags EO request and response	X	X	
19	2023-10-04 Slagel to OCRM October 3, 2023 site photos	X	X	

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Joint:	Description	Marked	Admitted	Proffered
20	10/22/2023 Reddy and JPrevost re: NTC	X	X	
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	X	X	
22	1/29/2024 & 1/30/2024 email Phelan &Abney and Smith	X	X	
23	2024-07-23 to 2024-07-28 Renee Reddy & Slagel email thread re renourishment sand fencing veg	X	X	
24	2024-09-26 Slagel and Reddy email exchange sand scraping	X	X	
25	9/8/2023 email RAppel to BChurdar SPhelan advising he represents Reddy with 2 sketches attached (added in 2/10/2025 depo)	X	X	
26	2/3/2024 email Reddy to neighbors re: Governor, DHEC Board chair, Env'l Director and attachments	X	X	
27	6/20/2023 email RReddy to SMislock MMislock RVanderham Csolomon, PJorgensen	X	X	
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	X	X	
29	08/01/2024 Reddy email	X	X	
30	06/16/2023 Appel email to Mac Mcquillin re "erosion emergency" with video attached	X	X	
31	Attachment to 6/16/2023 email above – Video of waves striking broken wooden stairs	X	X	
32	12/18/2023 Reddy and Kerr emails	X	X	
33	10/11/2023 thru 6/21/2024 email thread DFragoso to DKerr re beach erosion mitigation efforts; RReddy to DKerr, DFragoso, Renee, attaching OCRM04742 permit for 404-522 Ocean Blvd.; OCRM04706 for 100-402 Ocean Blvd.	X	X	
34	Isle of Palms Emergency Orders and Permits Table	X	X	
35	Reddy's 5/22/2024 application for minor beach renourishment w/ 3 attached photos	X	X	
36	8/31/2023_23-EO-008 City of IOP Hurricane Idalia Scraping	X	X	
37	9/21/2023_23-EO-011 118 Ocean Blvd-Minor Renourishment, Plantings, Sand fencing	X	X	
38	09/21/2023_23-EO-012 City of IOP Idalia Scraping Round 2 – 130, 132 & 202 Ocean Boulevard	X	X	

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Joint:	Description	Marked	Admitted	Proffered
39	09/29/2023_23-EO-015 City of IOP Scraping Breach Inlet 100 to 314	X	X	
40	11/15/2023_23-EO-016 City of IOP Sandbags Breach Inlet 120-206	X	X	
41	12/23/2023_23-EO-021 City of Isle of Palms Scraping Breach Inlet 112 to 308, excluding 118 & 122	X	X	
42	8/13/2024 EO sandbags EO (24-EO-008) 130 to 304	X	X	
43	6/8/2017 CA 2016-00803 2018 IOP Beach Renourishment Wild Dunes	X	X	
44	6/30/2023 OCRM04706 IOP Minor Renourishment 100-402 Ocean Blvd.	X	X	
45	7/26/2023 OCRM04742 IOP Minor Renourishment 404-522 Ocean Blvd	X	X	
46	08-16-2024 GP BCM05503 issued to City of IOP for minor renourishment	X	X	
47	8/14/2024 GP-24-SMD, Sand Fences, Minor Renourishment, Dune Construction & Dune Veg	X	X	
48	2/17/1992 Plat by Charles Dawley Jr.	X	X	
49	3W Engineering Plat	X	X	
50	Fence Line Exhibit & Survey drawing with 3W surveying information on 7/05/2023 & from 04/04/2024	X	X	
51	1991 Line Overlays a) 118OceanBlvd_1991Lines_2024Overlay2.pdf b) BreachInlet_1991Lines_2024Overlay.pdf c) BreachInlet_1991Lines_parcel.pdf d) 118OceanBlvd_1991Lines_CSE_Sept202 3.pdf	X	X	
52	Wall Point Imagery a) Feb2024Imagery_Jan2024wall.pdf b) Jan_March2023Imagery.pdf	X	X	
53	June 2023 Imagery a) June2023Imagery.pdf b) June2023Imagery_Dec2023wall.pdf c) 2023/06/09 Site Photo.pdf	X	X	
54	3W Survey Data a) 3WSurveyData_7_5_2023_SeptImagery_r evised.pdf b) 3WSurveyData_7_5_2023_Wall_revised. pdf	X	X	
55	5.5 Contour a) 5.5Contour_wall_JuneImagery.pdf b) 5.5Contour_wall_SeptImagery.pdf	X	X	

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Joint:	Description	Marked	Admitted	Proffered
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	X	X	
57	Veg Lines Imagery a) VegLines_SeptImagery_revised.pdf b) VegLines_SeptImagery_w1977revised.pdf c) SeptImagery_SeptVeg_Wall.pdf	X	X	
58	Jessica Monument Aerials a) 118OceanBlvd_BeachZone_Monuments.pdf b) 118OceanBlvd_BeachZone_Monuments_ zoom.pdf	X	X	
59	1949 IOP Oblique image.pdf	X	X	
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	X	X	
61	Jessica Historical Imagery a) Imagery1953.pdf b) Imagery1953_street.pdf c) Imagery1963.pdf d) Imagery1963_2024.pdf e) Imagery1973.pdf	X	X	
62	Beachfront CriticalAreas.pdf	X	X	
63	BeacheslandwardActiveBeach.pdf	X	X	
64	Feb2024Imagery_DecWall_DecVeg.pdf	X	X	
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)	X	X	
66	7/29/2014 Auction Purchase Agreement	X	X	
67	9/24/2014 Title to Real estate	X	X	
68	2/6/1989 Title to Real Estate	X	X	
69	Ware to Tyer email forwarding 4/19/2022, 5/20/2023, 6/14/2023 vegetation images	X	X	
70	8/31/2023, 9/11/2023, 9/14/2023 and undated photographs	X	X	

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Joint:	Description	Marked	Admitted	Proffered
71	9/11/2023 Slagel Photos	X	X	
72	9/11/2023 Visit Matt, Sallie, Rom, Renee (video)	X	X	
73	omitted			
74	Image of wall right after built	X	X	
75	02/2023 00227 images of property	X	X	
76	aerial map given to us by MSlagel 2/10/2025	X	X	
77	Drone images in Reddy's Suppl production – undated	X	X	
78a	2023-05-20 Rom and Renee Photos.pdf	X	X	
78b	2023-06-09 MRO Photo.pdf	X	X	
78c	2023-06-16 Renee Reddy Photo.pdf	X	X	
78d	2023-09-01 MSlagel Photos.pdf	X	X	
78e	2023-10-05 JPrevost Photo.pdf	X	X	
78f	2023-11-17 Drone Photo.pdf	X	X	
78g	2023-12-17 December Nor-Easter	X	X	
78h	2023-12-18 MSlagel Photo.pdf	X	X	
78i	2023-1-02 Text photo (BCM Reddy 020208)	X	X	
78j	2024-01-10 Drone Photo.pdf	X	X	
78k	2024-02-01 JPrevost Photos.pdf	X	X	
78l	2024-02-09 Drone Photo.pdf	X	X	

Caption:	SCDES and SCCCL v Rom Reddy and Renee Reddy	**Date/Time:**	5/6-8/25
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Joint:	Description	Marked	Admitted	Proffered
78m	2024-04-09 MSlagel Photo.pdf	X	X	
78n	2024-05-01 MSlagel Photo.pdf	X	X	
78o	2024-06-06 JPrevost Photos.pdf	X	X	
78p	2024-08-09 Photo MFlake.pdf	X	X	
78q	2024-09-19 MSlagel Photos.pdf	X	X	
78r	2024-10-10 MSlagel Photos.pdf	X	X	
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)	X	X	
80	Video Waves Hitting Wall and Scour 02.09.2024.MOV	X	X	
81	2023-06-16 Video Renee Reddy.MP4	X	X	
82	6/9/2023 Department photos	X	X	
83	8/31/2023 IOP Photos to Slagel from Desiree	X	X	
84	9/1/2023 Department photos	X	X	
85	9/06/2023 Department photos 3097-3118 sandscraping only	X	X	
86	12/18/2023 Site visit - Department photos	X	X	
87	1/25/2024 IOP photos	X	X	
88	1/31/2024 CCL photos	X	X	
89	2/23/2024 Site Visit	X	X	
90	4/09/2024 Site Visit	X	X	

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Joint:	Description	Marked	Admitted	Proffered
91	8/21/2024 Site Visit	X	X	
92	9/19/2024 Site Visit6/	X	X	
93	10/29/2024 Site Visit	X	X	
94	11/15/2024 Site Visit	X	X	
95	10/9/2024 Site Visit	X	X	
96	BCM REDDY a) 9/01/23 photo b) 9/11/23 photo	X	X	
97	Jacques Prevost Description of observation of site conditions between 10.05.2023 and 02.01.2024	X	X	
98	10/5/2023 & 10/6/2023 Inspection Report.pdf	X	X	
99	12.13.2023Site Photos from.pdf	X	X	
100	12.20.2023 Inspection Report.pdf; Reddy Property [describing debris and an exposed, previously not visible erosion control structure]	X	X	
101	Site Photos from 12.20.2023.pdf	X	X	
102	12.28.2023 Inspection Report.pdf; inspection report	X	X	
103	12.28.2023 118 Ocean Blvd, IOP Onsite Evaluation Memo.	X	X	
104	Representative Site Photos from 12.28.2023.pdf	X	X	
105	01.11.2024 Inspection Report.pdf; Reddy Property – finding a 92LF seawall and wooden Panels	X	X	
106	Site Photos from 01.11.2024 construction at 118 Ocean Blvd	X	X	
107	01.25.2024 Inspection Report.pdf; Reddy Property [finding unauthorized stabilization work on seawall and riprap/fill work]	X	X	
108	01.29.2024 Inspection Report.pdf; Reddy Property	X	X	
109	01.29.2024 Onsite Memo.pdf;	X	X	

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Joint:	Description	Marked	Admitted	Proffered
110	02.01.2024 Inspection Report.pdf; Reddy Property	X	X	
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	X	X	
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]	X	X	
113	Log and description of calls to OCRM (Jacques Prevost especially) regarding 118 Ocean Blvd. Calls received between 2/1/2024 & 2/2/2024	X	X	
114	Email from Patsy Hindman [relaying Jimmy Carroll's photos of activity/site]	X	X	
115	photos sent by Patsy Hindman of construction activity and debris at 118 Ocean Blvd	X	X	
116	Ryan Buckhannon and Jacques Prevost [Discussion of photos taken of activity and cease desist letter at IOP property]	X	X	
117	Ryan Buckhannon photos of activity/workers sent to J. Prevost	X	X	
118	Complainant texts and photos sent to J. Prevost regarding activity at 118 Ocean Blvd.	X	X	
119	12.27.2023 to 12.28.2023 Emails.pdf, Email JPrevost DKerr DFragoso MFlake MSlagel mentioning backfilling and extension of wall within critical area	X	X	
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.	X	X	
121	2023-09-19 Rom Reddy OCRM EO Application	X	X	
122	2023-09-21 MSlagel email re: DHEC OCRM Emergency Order: Minor Renourishment, Sand Fencing, Vegetation	X	X	
123	2023-10-03 Site photos submitted to MSlagel and forwarded to C&E on 2024-10-04	X	X	
124	2023-10-05 JPrevost Site Photos	X	X	
125	2023-10-06 JPrevost Site Photos	X	X	
126	Map of 118 Ocean Blvd (Excerpt of 2024-05-22 NOAV/AL)	X	X	
127	2023-10-20 JPrevost email attaching Notice to Comply AI-0007507 and email read receipt	X	X	
128	2023-11-14 MFlake Site Photos	X	X	

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Joint:	Description	Marked	Admitted	Proffered
129	2024-10-23 SPhelan Email Establishing Date of Photos	X	X	
130	2023-11-20 email thread SPhelan MAbney JSmith re extension request; SPhelan fwd to staff 11-27-2023	X	X	
131	2023-12-06 JPrevost Inspection Report 118 Ocean Blvd	X	X	
132	2023-12-06 JPrevost Site Photos	X	X	
133	2023-12-11 Meeting Memo between OCRM Staff and Nelson Mullins Staff	X	X	
134	2023-12-13 JPrevost Site Photos	X	X	
135	2023-12-18 OCRM Emergency Operations Inspection and Photos 118 Ocean Blvd	X	X	
136	ePermitting Log Entry Department Communications with Reddy and IOP 2023-12- 19 to 2023-12-21	X	X	
137	2023-12-28 JPrevost Site Photos	X	X	
138	2024-01-11 JPrevost Site Photos	X	X	
139	2024-01-25 JPrevost Site Photos	X	X	
140	2024-01-29 JPrevost Site Photos	X	X	
141	2024-01-31 Construction Image	X	X	
142	2024-02-01 JPrevost Site Photos	X	X	
143	2024-02-02 MFlake Site Photos	X	X	
144	2027-02-07 SPhelan email re: Isle of Palms	X	X	
145	2024-02-05 Inundation Images	X	X	
146	2024-02-23 Resp.s Response and MIO to DHEC's 2024-02-09 Petition for IJ	X	X	
147	2024-02-13 JPrevost Site Photos	X	X	

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Joint:	Description	Marked	Admitted	Proffered
148	JPrevost Site Inspection 118 Ocean Blvd 2024-02-13	X	X	
149	2/21/2024 Site Photos	X	X	
150	2/21/2024 Inspection Report	X	X	
151	2/26/2024 Site Photos	X	X	
152	2/26/2024 Inspection Report	X	X	
153	2/29/2024 Inspection Photos	X	X	
154	2/29/2024 Inspection Report	X	X	
155	3/4/2024 Site Photos	X	X	
156	3/4/2024 Inspection Report	X	X	
157	4/3/2024 Site Photos	X	X	
158	4/3/2024 Inspection Report	X	X	
159	5/22/2024 email sending NOAV/AL, 5/28/2024 WM reply, USPS Delivery Rcpt	X	X	
160	6/6/2024 JPrevost 118 Ocean Blvd Site Photos	X	X	
161	6/6/2024 J. Prevost Inspection Report	X	X	
162	S. Phelan letter to accompany AO	X	X	
163	Civil penalty calculation worksheet	X	X	
164	Uniform Enforcement Policy	X	X	
165	Civil penalty assessment guideline	X	X	
166	9/7/2023 email Rom to MSlagel Blutide Renee MFlake re not working in critical areas	X	X	

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Joint:	Description	Marked	Admitted	Proffered
167	1/24/2024 email RBuckhannon to JPrevost re repositioning of wall	X	X	
168	1/25/2024 email thread RBuckhannon JPrevost w photos depicting install of screw piles	X	X	
169	1/31/2024 1st complaint email w photos	X	X	
170	1/31/2024 2nd complaint email w photos	X	X	
171	2/5/2024 Email thread SPhelan MAbney re 2nd C&D	X	X	
172	2/8/2024 email from IOP re wingwall construction	X	X	
173	2/28/2024 email from MMcQuillin re new placement of riprap	X	X	
174	3/5/2024 email thread SPhelan Eware re 3rd C&D	X	X	
175	Aerials supporting 2019 seaward expansion of yard and dune destruction	X	X	
176	5/25/2023 IOP photos	X	X	
177	6/9/2023 MO'Connor email to Reddy	X	X	
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	X	X	
179	December 2023 CSE Drone Imagery.pdf	X	X	
180	Coastal Program Damage Assessment Deployments Sheet.pdf	X	X	
181	King Tides Excel Combination.pdf	X	X	
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	X	X	
183	Eurotop Manual.pdf	X	X	
184	2025-02-20 Wave Runup Calcs.pdf	X	X	

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Joint:	Description	Marked	Admitted	Proffered
185	2025-02-21 Dune Toe Elev.pdf	X	X	
186	Chris Jones C/V and History.pdf	X	X	
187	Chris Jones Expert History Sheet.pdf	X	X	
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	X	X	
189	WEC Matt Goodrich Report.pdf	X	X	
190	CJones Alternate Runup ~~a) Atlantic Ocean and Gulf of Mexico Coastal Guidelines Update (Feb 2007).pdf~~ b) ~~CHAMP 2.0 User Manual.pdf~~ (omitted per SPP 5/1/2025) c) RUNUP 2.1 calcs - C Jones - 3-2-25.pdf	X	X	
191	Invoice 23-147 $71,200; Invoice 23-157 $36,668	X	X	
192	8/15/2023 – 9/30/2023 Reddy texts with Rakes of Blutide	X	X	
193	9/17/2023 email from Reddy to Rakes -	X	X	
194	CNT Contract for $109,292	X	X	
195	Texts from CNT subpoena	X	X	
196	1/29/2024 email from Reddy to Bedson	X	X	
197	2/6/2024 text 00334-00336 site photos attached to text;	X	X	
198	Photo of Flooded Trench produced by Charlie Krawczyk on 2025-03-03	X	X	
199	2/8/2024 Pic of seawall under construction w/ contractors present	X	X	
200	3/20/2024 email thread RReddy TBedson.	X	X	
201	CNT photos supplied 1/20/2025	X	X	
202	5/20/2023- 5/2/2024 texts with Rom Reddy	X	X	

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Joint:	Description	Marked	Admitted	Proffered
203	ProGreen photos	X	X	
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	X	X	
205	10/9/2023 to 12/29/23 texts Reddy and Jose re construction of original wall	X	X	
206	Zorro Concrete LLC $ 27,000	X	X	
207	1/26/2023 structural design with email to Rom dated 2/13/2024	X	X	
208	Aes Structural Design letter rev. 1 Revised 2024- 02-19	X	X	
209	Photos produced in response to AES Subpoena produced 2025-02-28	X	X	
210	Invoice No. 04082024-REDDY Invoice No. 07242023-REDDY	X	X	
211	Fence Line Exhibit	X	X	
212	Survey drawing with 3W surveying information on 7/05/2023 & from 04/04/2024	X	X	
213	Renee Reddy emails	X	X	
214	4/11/2024 email Renee Reddy to RReddy fwdg new survey-	X	X	
215	BCM Reddy 015243-49; DES Chronology	X	X	
216	BCM Reddy 012775-84; Photos	X	X	
217	S.C. Code Ann. § 48-39-10, et seq	X	X	
218	S.C. Code Ann. Regs. Ch. 30 (effective up to May 24, 2024)	X	X	
219	S.C. Code Ann. Regs. Ch. 30 (effective after May 24, 2024)	X	X	
220	Goodrich Sub 1553-58; Vegetative Line Photos/Charts	X	X	
221	BCM Reddy 016435-41; Emails: General Permits	X	X	

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Joint:	Description	Marked	Admitted	Proffered
222	BCM Reddy 016953-59; Emails: 116 Ocean Blvd.	X	X	
223	BCM Reddy 000023-27, 000142-47, and 000182-85; Emails: Attorney Correspondence	X	X	
224	No Bates; DES Penalty Policy	X	X	
225	BCM Reddy 012511-12; Email: RFRs	X	X	
226	BCM Reddy 016374-75; Request for Construction Placard	X	X	
227	BCM Reddy 019293-96, 019304-07, 19335-38, and 19412-19415; Staff Evaluations of Re- Vegetation	X	X	
228	BCM Reddy 018076-79; Critical Area Activity Application	X	X	
229	BCM Reddy PST 001754-001851; Army Corps. Definitions	X	X	
230	BCM Reddy 016305-16 and 016320-54; Reddy Application to add sand/veg. and photos	X	X	
231	No Bates; 42 Fed. Reg. 37122, 37129; Army Corp Wetland definition 1977	X	X	
232	BCM Reddy 17991-18009; IOP Beach Preservation Presentation (by CSE)	X	X	
233	BCM Reddy O19196-99; von Kolnitz Letter to the Board dated 11/13/2023	X	X	
234	BCM Reddy 002903 -002930; DES Motion for TRO 2/9/2024	X	X	
235	No Bates; 1State Register 1995 Final Rule	X	X	
236	BCM Reddy 2886, 2887, and 2890; Photos dated 9	X	X	
237	BCM Reddy 173; Photo	X	X	
238	BCM Reddy 012764-84; Photos of Department Data Collection	X	X	
239	BCM Reddy 14619; Emails regarding Isle of Palms beach issues – sandscraping from CSE to Morgan Flake	X	X	
240	BCM Reddy 000182-000185; Emails; DES and Nelson Mullins (M. Abney)	X	X	

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Joint:	Description	Marked	Admitted	Proffered
241	BCM Reddy 009924-27; Emails: 2023 Update to Local Comprehensive – Cjones to Salter/Bode - Beachfront Management Plan ("LCBMP")	X	X	
242	BCM Reddy 010109-12; Emails: Final Draft of 2023 LCBMP Update – 12/19/2022	X	X	
243	BCM Reddy 021139-021140; Emails: Definition of "Periodic"	X	X	
244	BCM Reddy 021225-68; Emails: U.S. Army Corps. Definition of"Periodic"	X	X	
245	M. Goodrich Deposition; Petitioner Exhibit 8 - Resp Witness List	X	X	
246	M. Goodrich Deposition; Petitioner Exhibit 210 12/31/2024 DES lt to WM w NOD Goodrich	X	X	
247	M. Goodrich Deposition; Petitioner Exhibit 213 CV	X	X	
248	M. Goodrich Deposition; Petitioner Exhibit 214 WEC Goodrich Proposal to WM 7/16/2024	X	X	
249	M. Goodrich Deposition; Petitioner Exhibit 215 8/9/2024 Goodrich email to Ware w invoice	X	X	
250	M. Goodrich Deposition; Petitioner Exhibit 216 – Report 01-09-2025	X	X	
251	M. Goodrich Deposition; Petitioner Exhibit 218 Weathers Survey – w/o TOB/BOB	X	X	
252	M. Goodrich Deposition; Petitioner Exhibit 219 – 1/11/2018 Plat from Ware to Goodrich in email	X	X	
253	M. Goodrich Deposition; Petitioner Exhibit 220 10/9/2024 email Ware to Goodrich w Bryngelson diagram attached	X	X	
254	M. Goodrich Deposition; Petitioner Exhibit 221 Reg 30-10 w/ highlights	X	X	
255	M. Goodrich Deposition; Petitioner Exhibit 222 7/16/2024 Digital Coast Data Team to Goodrich re processing request	X	X	
256	M. Goodrich Deposition; Petitioner Exhibit 224 10/7/2024 DES lt to WM w 6th production	X	X	
257	M. Goodrich Deposition; Petitioner Exhibit 227 Idalia Report	X	X	
258	M. Goodrich Deposition; Petitioner Exhibit 228 Goodrich_Sub_1346 – 1366 site photos 118	X	X	
259	M. Goodrich Deposition; Petitioner Exhibit 230 Goodrich_Sub_01553-01558 veg line charts	X	X	

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Joint:	Description	Marked	Admitted	Proffered
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	X	X	
261	M. Goodrich Deposition; Petitioner Exhibit various aerials 232	X	X	
262	M. Goodrich Deposition; Petitioner Exhibit 233 Contour diagrams	X	X	
263	M. Goodrich Deposition; Petitioner Exhibit 234 2017-2022 Veg seaward limit line diagrams	X	X	
264	M. Goodrich Deposition; Petitioner Exhibit 235 Imagery collected by Kucera International w band imagery (No Bates)	X	X	
265	M. Goodrich Deposition; Petitioner Exhibit 236 More aerial diagrams w location of wall(No Bates)	X	X	
266	M. Goodrich Deposition; Petitioner Exhibit 237 Topo Survey Results 12/7/2023 and 12/8/2022(No Bates)	X	X	
267	M. Goodrich Deposition; Petitioner Exhibit 238 Topo Survey Results 12/7/2023 and 12/8/2022(No Bates)	X	X	
268	M. Goodrich Deposition; Petitioner Exhibit 239 Goodrich_Sub_1063 and 1140 strange black ink marks in middle of pages	X	X	
269	M. Goodrich Deposition; Petitioner Exhibit 241 Wave Dissipation Report	X	X	
270	M. Goodrich Deposition; Petitioner Exhibit 243 US Army Corps of Engineers – Distribution Restriction Statement 1/31/1995	X	X	
271	M. Goodrich Deposition; Respondent Exhibit 1 1/28/2025 WM lt to SPP regarding issues with DES' 17th production	X	X	
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	X	X	

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Respondent(s):	Description	Marked	Admitted	Proffered
1	Deposition Transcript - Slagel (April 8, 2024)	X		
2	Penalty Calculation Worksheet	X		
3	OCRM Penalty Policy	X		
4	Email: ePermitting Record	X		
5	M. Goodrich Report (Rev.)	X		
6	NOAA 2020 Final Evaluation Findings	X		
7	Department of Environmental Services 30 (b)(6) Deposition Transcript, dated February 6, 2025, February 12, 2025 and February 13, 2025.	X		
8	Email: Request for Emergency Order	X		
9	Emails: Request for Emergency Order	X		
10	Emergency Order 23-EO-O11	X		
11	Emails: Sand Bag Permit	X		
12	Meeting Memo; DES and Nelson Mullins	X		
13	Updated IOP Beach Management Plan	X	X	
14	LCBMP Comment Chart	X		
15	Final Draft of 2023 LCBMP Update	X	X	
16	Final Approved 2023 Update to LCBMP	X	X	
17	Emails: Definition of "Periodic"	X		
18	Deposition Transcript of Matt Goodrich	X		
19	Petitioner Exhibit 217	X		

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Respondent(s):	Description	Marked	Admitted	Proffered
20	Petitioner Exhibit 229	X		
2l	Petitioner Exhibit 240	X		
22	Reddy Request for Emergency Order	X		
23	Reddy Emergency Order Application	X		
24	Emails: Reddy Emergency Order	X		
25	Emails: Reddy Sand Bag Application	X		
26	DES Motion for TRO	X		
27	Notice of Alleged Violation/ Admission Letter	X		
28	42 Red. Reg. 37122, 37129; Army Corp Wetland Definition	X		
2,9	1987 Proposed Rule	X		
30	1999 State Register	X		
3 l	IFact Sheet: Beachfront Management	X		
32	2019 Line Report Isle of Palms	X		
33	urisdictional Line Stakeholder Workgroup ("JLWG") Email: Website Language Full Chain	X		
34	LWG Email: Drafting Final Report	X		
35	1LWG Final Report	X	X	
36	Piping Plover ("PP") Complaint	X		
37	PPNOAV	X		
38	PP Consent Order	X		

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Respondent(s):	Description	Marked	Admitted	Proffered
39	SC DHEC Board Meeting Transcript (April 11, 2024)	X	Published Portion Pg 115-116	Whole Document
4o	PP Images of Land Disturbance	X		
4l	PP Design Documents	X		
42	PP Site Photos	X		
43	PP Emails: Location of Wall	X		
44	PP Emails: Need for Permit	X		
45	PP Emails: Bert Ellis	X		
46	PP Emails: Dismissal	X		
47	PP Emails: SCELP PR	X		
48	PP Case Status Update	X		
49	PP Emails: Dismissal	X		
50	BPWG Meeting for Materials	X		
51	BPWG Meeting 5 Materials	X		
52	BPWG Final Report	X		
53	2023 Proposed Rule	X		
54	2024 Final Rule	X		
55	SC DHEC Board Meeting Transcript (June 13, 2023)	X		
56	SC DHEC Board Meeting Transcript (October 12, 2023)	X		
57	Emails: General Permits	X		

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Respondent(s):	Description	Marked	Admitted	Proffered
58	Emails: 116 Ocean Blvd.	X	X	
59	12/12/2019 SCDHEC Meeting Minutes	X		
60	12019 State Register	X		
61	Email: re House Subcommittee	X	Background Page	Whole Document
62	Army Corps. Definitions	X		
63	NOAA 2020 Final Evaluation Findings	X		
64	42 Red. Reg. 37122, 37129; Army Corp Wetland Definition	X		
65	BPWG Meeting 4 Process Flow	X		
66	Webpage: Beachfront Jurisdictional Lines Stakeholder Workgrouo	X		
67	Von Kolnitz Letter to the Board	X		
68	Boynton Email: Regulatory Amendments	X		
69	Emails: Senate meeting on JLWG Issues	X		
70	Slagel Emails: PP Authorization	X		
71	DHEC's Answers to 1st Interrogatories from Plantiffs dated October 13, 2020	X		
72	DHEC's Answers to Defendants' Requests for Admission dated August 7, 2020	X		
73	Matthew Slagel Deposition (October 19, 2020)	X		
74	rrrent Shaw Deposition (December I 0, 2020)	X		
75	Burger Email: Permitting Authority	X		
76	DES Emails: Permitting Authority	X		

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Respondent(s):	Description	Marked	Admitted	Proffered
77	CCL Letter to DES re Piping Plover	X		
78	Shaw Emails: Setback Line	X		
79	Shaw Emails: Setback Line	X		
80	CCL Emails: "innovative legal theory"	X		
81	CCL Emails: "test case"	X		
82	Coastal Conservation League 30(6)(6) deposition transcript, dated February 20, 2025	X		
83	Elizabeth Von Kolnitz deposition transcript, dated Pebruarv 19, 2025	X		
84	1995 Final Rule	X		
85	!2023 Notice of Drafting	X		
86	Piping Plover Stipulation of Dismissal	X		
87	Email from M Slagel to Reddy's re: Emergency Order and General Permitting	X		
88	City of Isle of Palms General Permit	X		
89	Beachfront General Permit	X		
90	omitted			
91	Shahid presentation before DHEC Board	X		
92	City of Isle of Palms Permit 2016-00803 Beach Renourishment	X		
93	Photo of Piping Plover before Hurricane Matthew	X		
94	Photo of Piper Plover after Matthew	X		
95	Photo of Piping Plover after Irma	X		

Caption:	SCDES and SCCCL v Rom Reddy and Renee Reddy	**Date/Time:**	5/6-8/25
Docket No:	24-ALJ-07-0232-CC	**Judge:**	ANDERSON

Respondent(s):	Description	Marked	Admitted	Proffered
96	Photo of Piping Plover after Irma	X		
97	Photo of Piping Plover after Irma	X		
98	Photo of Piping Plover after Irma	X		
99	Photo of Piping Plover after Irma	X		
100	Aerial photo 2021	X		
101	Aerial photo 2004	X		
102	Aerial photo 2009	X		
103	Aerial photo 2012	X		
104	Aerial photo 2015	X		
105	Aerial photo 2017	X		
106	Aerial photo 2019	X		
107	Aerial photo 2021	X		
108	Aerial photo 2023	X		

Caption:	SCDES and SCCCL v Rom Reddy and Renee Reddy	**Date/Time:**	5/6-8/25
Docket No:	24-ALJ-07-0232-CC	**Judge:**	ANDERSON

Petitioner(s):	Description	Marked	Admitted	Proffered
1	Phtotgraph – WITHDRAWN	X		
2	Periodic definition CJones 2025-04-29 – DEMO ONLY	X		
3	BERM_Elevations – DEMO ONLY	X		
4	Final Agency Decision	X	X	

Message

From: von Kolnitz, Elizabeth [vonkoleb@dhec.sc.gov]
Sent: 4/21/2021 6:42:52 PM
To: Sproles, Rebecca [SPROLEMR@dhec.sc.gov]
Subject: Jx Line Background for House subcommittee mtg
Attachments: JX Line Background SenateCommittee.pdf

Rebecca - The attached is what was provided to the Senate committee for their discussions. It is a very basic background and I'm available to answer any specific questions. It can be a VERY confusing process and definitely needs the SME to address any questions to ensure that things don't get misconstrued. Lots of stakeholders were involved, lots of eyes watching this one, and this is a priority for Senator Campsen.
evk

Elizabeth B. von Kolnitz
Chief, Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0252
Mobile: (843) 870-3299
Email: vonkoleb@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter





DHEC Beachfront Jurisdictional Lines

BACKGROUND

DHEC's Office of Ocean and Coastal Resource Management (OCRM) is required by SC Law §48-39-280 to establish and review the position of the state's beachfront jurisdictional lines every seven to ten years.

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.

South Carolina's beachfront jurisdictional lines enable DHEC OCRM to implement laws and regulations that support the state's beachfront management goals and protect vulnerable shorelines and natural ecosystems.

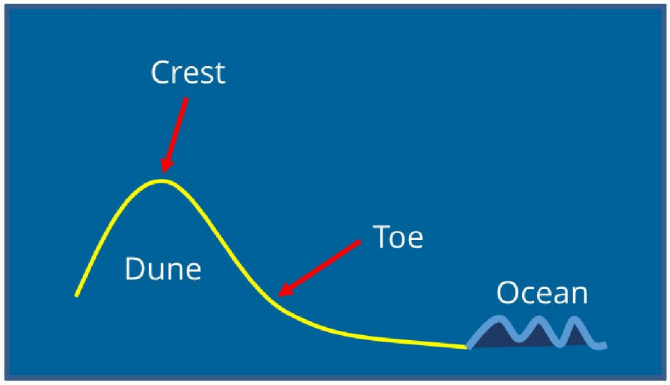
There are two lines of beachfront jurisdiction - the baseline and the setback line. The baseline is the more seaward (towards the ocean) of the two jurisdictional lines, while the setback line is the more landward (towards the land) line.



DHEC has conducted jurisdictional line reviews during the following years:

- 1990-1991
- 1999-2001
- 2008-2010
- 2016-2018

In standard and stabilized inlet zones along the shoreline, the baseline is set at the crest of the primary oceanfront sand dune.[1]



In unstabilized inlet zones, the baseline is established at the most landward point of erosion over the last 40 years (using modern and historic shoreline locations).



The jurisdictional setback line is established landward of the baseline a distance of 40 times the erosion rate, with a minimum distance of 20 feet.

[1] R.30-1.D(43) Primary Oceanfront Sand Dunes - those dunes that constitute the front row of dunes adjacent to the Atlantic Ocean. For the purposes of establishing the jurisdictional baseline, the dune must have a minimum height of thirty-six (36) inches, as measured vertically from the seaward toe to the crest of the dune. The dune must also form a nearly continuous dune ridge for 500 shore parallel feet and may exhibit minimal breaks such as those resulting from pedestrian or emergency vehicle access points. This dune typically exhibits the presence of stable, native vegetation, and is not scarped, eroded, or overtopped by the highest predicted astronomical tides. However, this dune may be inundated by storm surge which normally accompanies major coastal storm events."

Act 173 of 2018, the Beachfront Management Reform Act, established the position of the jurisdictional lines for the 2018 establishment cycle. Jurisdictional lines were established as the most-seaward baseline and setback line of either the 2008-2010 lines or the proposed 2017 lines.

Act 173 also includes a section that requires DHEC OCRM to promulgate regulations to guide implementation of future line review processes.

BEACHFRONT JURISDICTIONAL LINE WORKGROUP

To initiate input into this process, DHEC OCRM convened a Beachfront Jurisdictional Line Stakeholder Workgroup (Workgroup) between October 2018 and February 2019 which was composed of 13 members.

The Workgroup examined an extensive amount of background information and available data to assist with member participation and discussion. A summary of this information and details of the Workgroup's discussions are documented in a Final Report that is available on the DHEC website.

The Workgroup made a series of recommendations for implementing Act 173. Several of the recommendations were promulgated as Department Regulations under Document Number 4897 during the 2020 legislative session. Additional Workgroup recommendations require statutory amendments.

The Workgroup acknowledged that there are areas of the state's coastline where the baseline cannot be successfully established by using the primary oceanfront sand dune and considered additional options in scenarios where a) the primary dune is significantly landward of a low dune field, and b) there are limited or no primary oceanfront sand dunes present. These recommendations are presented in the Final Report.

Workgroup Members

Mr. C.W. "Rocky" Browder III - Town of Hilton Head Island
Ms. Blanche Brown - Debordieu Colony Community Association
Ms. Emily Cedzo - Coastal Conservation League
Mr. Ray E. Chandler - Chandler and Jennings
Mayor Jane S. Darby - Town of Edisto Beach
Ms. April Donnelly, J.D. - The Nature Conservancy
Mr. Josh Eagle, J.D. - University of South Carolina School of Law
Mr. Bill Eiser - Eiser Coastal Consulting
Dr. Jean Ellis, Ph.D. - University of South Carolina Department of Geography
Mr. Ryan Fabbri - Town of Pawleys Island
Dr. Timothy W. Kana, P.G., Ph.D. - Coastal Science and Engineering
Dr. Michael Katuna, Ph.D. - College of Charleston Department of Geology and Environmental Geosciences
Mr. Nick Kremydas, Esq. - South Carolina Realtors

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Karen Wells and the Coastal Conservation League, Plaintiffs, vs. William Oberheim, Nancy Oberheim, LTI Enterprises Inc., Snow Family LLC, David Garvey, Cynthia Garvey, and Bertram Ellis, Jr., and South Carolina Department of Health and Environmental Control, Defendants.	IN THE COURT OF COMMON PLEAS IN THE FOURTEENTH CIRCUIT C/A No.: 2019-CP-07-02544 **DEFENDANT DHEC'S ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

TO: LESLIE S. LENHARDT, ESQUIRE AND MICHAEL G. CORLEY, ESQUIRE, ATTORNEYS FOR PLAINTIFFS KAREN WELLS AND THE COASTAL CONSERVATION LEAGUE:

Defendant South Carolina Department of Health and Environmental Control ("Department" or "DHEC"), answers the Interrogatories of the Defendants as follows:

1. Give the names and addresses of persons, regardless of whether Defendant intends to have such persons testify at trial, known to the Defendant or its counsel as having knowledge or information of the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: **Matt Slagel, SCDHEC-OCRM**
Blair Williams, SCDHEC-OCRM
Christopher Stout, SCDHEC-OCRM
Shannon Hicks, SCDHEC-BOW
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405
(843) 953-0200

Daniel Trevor Rabon, SCDHEC-OCRM
104 Parker Dr.



Beaufort, SC 29906

Trent Shaw, SCDHEC-OCRM
3433 Grier Mursery Rd.
Street, MD 21154

Jill Stewart, SCDHEC-BOW
Ann Clark, SCDHEC-BOW
Dr. Michael Marcus, SCDHEC-BOW
Adam Cannon, SCDHEC-BOW
2600 Bull St.
Columbia, SC 29201

No written or recorded statements have been taken at this time.

2. List the names and addresses of any expert witnesses whom the Defendant proposes to use as a witness at the trial of the case. With respect to each such witness, please do the following:

a. list the name and address of each expert;

b. identify the subject matter upon which the expert is expected to testify; and

c. state the opinions to which the expert is expected to testify.

ANSWER: DHEC has not retained any expert witness at this time. DHEC reserves the right to add additional expert(s) and will supplement if necessary.

3. For each person known to the Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER: **Matt Slagel is the Beachfront Permitting Project Manager in the Critical Area Permitting Section of SCDHEC OCRM and is familiar with the subject of this contested case and DHEC's Regulations.**

Blair Williams is the Manager of the Critical Area Permitting Section of SCDHEC OCRM and is familiar with the subject of this contested case and DHEC's Regulations.

Christopher Stout is the Manager of Coastal Zone Consistency program in the Regulatory Division at SCDHEC and is familiar with the subject of this contested case and DHEC's Regulations.

Shannon Hicks is the Manager of the Coastal Stormwater Permitting Section and participated in meetings regarding this matter.

Daniel Trevor Rabon is in OCRM's Compliance and Enforcement Section and conducted inspections of the site.

Trent Shaw is currently a part-time contract employee of OCRM but was previously a Project Manager of the Critical Area Permitting Section of SCDHEC-OCRM and is familiar with the subject of this matter and DHEC's Regulations.

Jill Stewart is the Director of the Dam Safety and Stormwater Permitting Division and participated in meetings regarding this matter.

Ann Clark is the Assistant Bureau Chief for the Bureau of Water and participated in meetings regarding this matter.

Dr. Michael Marcus, SCDHEC-BOW is the Chief of the Bureau of Water and participated in meetings regarding this matter.

Adam Cannon is the Manager of the Water Pollution Enforcement Section and participated in meetings regarding this matter.

4. Please describe any factual or legal support of which Defendant is aware for the proposition that the seawall at issue in this case is not constructed within a "Critical Area," as defined by the regulations of SCDHEC.

ANSWER: **Beach nourishment and periodic renourishment projects funded and implemented entirely at the local level by the Town of Hilton Head Island have resulted in the storm-impacted shoreline at Piping Plover Road being restored. The seawall itself is located landward of the DHEC OCRM setback line, which defines the landward limit of the beach/dune system critical area.**

5. Please identify and describe with specificity any sand moving project permitted or authorized by the Defendant on the beach at Piping Plover Road, Hilton Head, within the last seven

years. Please describe the nature of the project and identify the entity funding or undertaking such project.

ANSWER: **Permit Number 2014-00680-1W was issued by DHEC to the Town of Hilton Head Island on June 2, 2015 for beach renourishment. The original permit allowed the offshore dredging and placement of 2.0 million cubic yards of sand along four reaches of Hilton Head Island shoreline, totaling 40,000 linear feet. The permit was amended on September 1, 2016 to authorize an increase in the total allowable sand placement volume from 2.0 million cubic yards to 2.3 million cubic yards as a result of sand loss following Hurricane Joaquin in October 2015. The permit was amended on December 7, 2016 to authorize an increase in the total allowable sand placement volume from 2.3 million cubic yards to 2.8 million cubic yards as a result of sand loss following Hurricane Matthew in October 2016. The permit was amended on February 13, 2017 to authorize the placement of 250,000 cubic yards of sand along 6,800 feet of beach along the South Beach Lane area of Hilton Head Island (including Piping Plover Road). The additional 250,000 cubic yards of sand increased the total allowable sand volume under Permit Number 2014-00680-1W to 3.05 million cubic yards. The funding entity for the beach renourishment projects described above was the Town of Hilton Head Island.**

6. Please identify any project undertaken within the last 10 years for which Defendant has required a permit for alternation of "beaches" critical area. Please name the location, the permit applicant, and the permit number.

ANSWER: **DHEC is unaware of any permits issued specifically for alterations of "beaches" critical area. Because of the innumerable permits that have been issued for alterations of the beach/dune system critical area over the last 10 years, Department Counsel asserts that this request is overly broad and unduly burdensome and requests that opposing counsel narrow the scope of this interrogatory.**

7. Please describe in detail the process utilized by Defendant to evaluate whether an oceanfront project is occurring within "beaches" critical area, including any documents or guidance relied upon by Defendant.

ANSWER: **DHEC does not have a formal process for evaluating whether an oceanfront project is occurring within "beaches" critical area as compared to beach/dune system critical area. The beach/dune system critical area is defined in S.C. Code Ann. Regs. 30-1(D)(5) 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."**

8. Please identify any other new oceanfront seawalls permitted or authorized by Defendant in the last 10 years, including the date, location, and applicant.

ANSWER: None.

9. Please identify any oceanfront seawall for which Defendant has evaluated Coastal Zone Consistency in the last 10 years, whether or not Defendant ultimately certified structure as consistent.

ANSWER: None.

Respectfully submitted,

s/Bradley D. Churdar_____
Bradley D. Churdar (SC Bar #12829)
Associate General Counsel
South Carolina Department of Health and Environmental Control
1362 McMillian Ave, Suite 400
Charleston, SC 29405
churdabd@dhec.sc.gov

Stephen P. Hightower (SC Bar # 72265)
Assistant General Counsel
South Carolina Department of Health and Environmental Control
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hightosp@dhec.sc.gov

October 13, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Karen Wells and the Coastal Conservation League, Plaintiffs, vs. William Oberheim, Nancy Oberheim, LTI Enterprises Inc., Snow Family LLC, David Garvey, Cynthia Garvey, and Bertram Ellis, Jr., and South Carolina Department of Health and Environmental Control, Defendants.	IN THE COURT OF COMMON PLEAS IN THE FOURTEENTH CIRCUIT C/A No.: 2019-CP-07-02544 **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she has this day served copies of the ***DEFENDANT DHEC'S ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES*** via electronic mail on the following parties and counsel of record listed below:

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Angelica M. Colwell, Esquire
Michael S. Traynham, Esquire
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Leslie Lenhardt, Esquire
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Pawleys Island, SC 29585
michael@scelp.org; leslie@scelp.org

Janet H. DeBruhl
Janet H. DeBruhl

October 13, 2020
Charleston, South Carolina

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

Lawyers for the Wild Side

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Of Counsel
Lauren Megill Milton | lauren@scelp.org

Our Mission We use our legal expertise to protect land, water and communities across

May 1, 2025

VIA EMAIL and U.S MAIL
The Honorable Ralph King Anderson, III
Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, SC 29201

Re: *SCDES and CCL v. Reddy*
24-ALJ-07-0232-CC

Dear Judge Anderson,

Please find enclosed for filing *Petitioner CCL's Deposition Page and Line Designations*. By copy I am serving all parties of record as outlined in the attached Certificate of Service. Thank you very much for your kind consideration and please don't hesitate to reach out if you need anything else.

With deep respect and kind regards, I remain;

Sincerely,

Lauren Megill Milton

Enclosures
cc: Bradley D. Churdar, Esq.
Sallie P. Phelan, Esq.
Rom and Renee Reddy

Board of Directors -Jerry Schulze, Chairperson, J. Mac Bennett, Keith Bowers, Ernie Csiszar, Jamelle Ellis, Amy Fabri, Terry Grayson-Caprio, Liz Igleheart, Tom Kester, Bess Lochocki, Michelle Mapp, Carla Pinckney, Cynthia Powell, Greg VanDerwerker, Davis Whitfield-Cargile
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department Environmental Services and South Carolina Coastal Conservation League, Petitioner(s), vs. Rom Reddy, Respondent(s).	Docket No.: 24-ALJ-07-0232-CC **PETITIONER CCL'S DEPOSITION PAGE AND LINE DESIGNATIONS**

TO: HONORABLE RALPH K. ANDERSON, III AND COUNSEL:

Petitioner, South Carolina Coastal Conservation League (hereinafter "Petitioner") pursuant to SCRCP 32 hereby files their Deposition Page and Line Designations designating the following deposition testimony:

1. **SCRCP 30(b)(6) Deposition of Emily Cedzo from February 20, 2025**
   - 1:1-13:2
   - 13:17-13:22
   - 66:17-67:14
   - 69:8-70:5
   - 72:19-21
   - 73:4-6; 73:11-13
   - 83:8-85:17

Respectfully submitted,

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

Lauren Megill-Milton

Amy Armstrong, Esq.
Leslie Lenhardt, Esq.
Lauren Megill Milton, Esq.
P.O. Box 1380 | Pawleys Island, SC 29585
Tel: (843) 527-0078 | Fax: (843) 527-0540
Attorneys for Petitioner CCL

Columbia, S.C.
May 1, 2025

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department Environmental Services and South Carolina Coastal Conservation League, Petitioner(s), vs. Rom Reddy, Respondent(s).	Docket No.: 24-ALJ-07-0232-CC **CERTIFICATE OF SERVICE**

I hereby certify that on this date I have served Petitioner's CCL's Deposition Designations by email and also by depositing the same in the U.S. Mail to the parties, addressed to:

S.C. Department of Environmental Services
Sallie P. Phelan, Esq.
Bradley D. Churdar, Esq.
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

The Honorable Ralph King Anderson, III
Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, SC 29201

Rom and Renee Reddy
118 Ocean Blvd
Isle Of Palms, South Carolina 29451

Respectfully submitted this 1st day of May, 2025,

Jaya Wragg, SCELP Legal Assistant

STATE OF SOUTH CAROLINA
BEFORE THE ADMINISTRATIVE LAW COURT

SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES AND SOUTH CAROLINA COASTAL CONSERVATION LEAGUE,

Petitioners,

vs. DOCKET NO. 24-ALJ-07-0232-CC

ROM REDDY,

Respondent.

30(B)(6) VTC DEPOSITION OF: COASTAL CONSERVATION LEAGUE
BY: EMILY KRISTINA CEDZO

DATE: February 20, 2025

TIME: 10:06 AM

LOCATION: COASTAL CONSERVATION LEAGUE
131 Spring Street
Charleston, SC

TAKEN BY: Counsel for the Respondent

REPORTED BY: MICHAEL DAVID ROBERTS,
Court Reporter

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PETITIONER
SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES:
SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES
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SOUTH CAROLINA COASTAL CONSERVATION LEAGUE:

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AND

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APPEARANCES OF COUNSEL CONT.:

ATTORNEYS FOR THE RESPONDENT ROM REDDY:

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wdubose@williamsmullen.com

(INDEX AT REAR OF TRANSCRIPT)

EMILY KRISTINA CEDZO
being first duly sworn, testified as follows:
THE COURT REPORTER: State your full name for the record.
THE WITNESS: Emily Kristina Cedzo.
THE COURT REPORTER: Thank you.
EXAMINATION
BY MR. KURIGER:
Q. Ms. Cedzo, my name is Bill Kuriger. I'm an attorney at the law firm of Williams Mullen based in Columbia, South Carolina. We represent Mr. Rom Reddy in this contested case involving his challenge through an administrative order issued by the Department of Environmental Services alleging he constructed a structure in the beaches critical area on his property at 118 Ocean Boulevard, Isle of Palms without a permit.
Before we begin, I have to describe a few rules of civil procedure for you related to the procedure requirements for this deposition. First, you're to direct any questions or requests for clarifications, definitions or explanations of anything I say today to me rather than your lawyer.
Do you understand?
A. Yes.

Q. Second, your counsel may object to my questions today. If they object, you still have to answer my question unless the objection is based on the attorney-client privilege or a limitation on evidence directed by the court or if your attorney intends to introduce a motion under Rule 30.

Do you understand?

A. Yes.

Q. Third, counsel and the witness shall not engage in off the record private conversations related to the substance of your testimony today. For example, if you and Ms. Lenhardt discuss your testimony over a break, I'm entitled to ask you about that discussion even though it was with your lawyer. Do you understand?

A. Yes.

Q. Do you understand today that you're testifying as a 30(b)(6) witness of the Coastal Conservation League?

A. Yes.

Q. And do you understand that means you're speaking for the organization today?

A. Yes.

Q. Okay. And did you receive a notice of deposition listing topics to be discussed during

this deposition?
A. Yes.
Q. And have you reviewed the exhibits for this deposition that were provided to your counsel earlier this week?
A. Yes.
Q. Did you do anything else to prepare for this deposition, excluding discussions with your attorneys?
A. No.
Q. Okay. You didn't speak to anyone at the league?
A. No.
Q. Anyone at the department?
A. No.
Q. And where are you taking this deposition today?
A. At the Coastal Conservation League's office in Charleston.
Q. And if I say department, DES or DHEC today, will you understand that I'm talking about the Department of Environmental Services formerly the Department of Health & Environmental Control also known as DHEC?
A. Yes.

Q. If I say BCM, OCRM or the bureau, do you understand I mean the Bureau of Coastal Management formerly the Office of Ocean and Coastal Resource Management?

A. Yes.

Q. And lastly, if I say setback line today, do you understand I mean the line of jurisdiction established in Section 48-39-280 of the South Carolina Coastal Tidelands and Wetlands Act?

A. Yes.

Q. Okay. All right. So I would like to get some background information on you starting with your education as early as college.

Where did you go to school?

A. I went to UNC Asheville.

Q. Okay. And what did you study?

A. Environmental studies.

Q. And what year did you graduate?

A. 2012.

Q. Have you obtained any other degrees since then?

A. Yes.

Q. Where from?

A. Duke.

Q. Duke. And what did you study?
A. I received my master of environmental management.
Q. Okay. And what year did you receive that?
A. 2016.
Q. Do you have any other certifications? Do you have any other certifications or degrees?
A. No.
Q. What was the focus of your degree from -- at UNC Asheville?
A. Environmental studies.
Q. Okay. Was there any focus on coastal issues?
A. No.
Q. No, you never took a coastal science class or something similar?
A. No.
Q. What was your first job after college?
A. After college, I was still working in Asheville before going to grad school. I was working in a restaurant.
Q. Sure. Your first job after college using your environmental background?
A. It would have been after grad school,

which was with the Coastal Conservation League.
Q. And what role was that?
A. Air, water and --
Q. What position?
A. Air, water and public health project manager.
Q. Okay. Was there any coastal focus to that role?
A. Yes.
Q. Was the role broader than just the coast?
A. Yes.
Q. Is that the position you hold now?
A. No.
Q. Between then and the position you hold now, have you worked anywhere besides the Coastal Conservation League?
A. No.
Q. Okay. Can you walk me through your progression through the Coastal Conservation League, which positions you've held?
A. Sure. After my project manager position, I became the program director. And the program was renamed to be called land, water and wildlife, so my position was land, water and

wildlife program director. Later promoted to become the senior program director of land, water, wildlife.

Later on was still the senior director of land, water, wildlife while also the interim director to support our north and south coast offices. And then finally promoted to my current position, which is director of conservation programs and policy.

Q. Broadly speaking, what does the Coastal Conservation League do?

A. We advocate to protect South Carolina's coastal plain for the benefit of all.

Q. Is part of what they do monitoring the coast for potential legal issues?

A. Yes.

Q. And included in those potential legal issues the league monitors for, would that include erosion control structures --

A. Yes.

Q. -- along the shore?

A. Yes.

Q. How did -- sorry. Are you familiar with this lawsuit involving Mr. Reddy?

A. Yes.

Q. How did this case come to your attention?
A. We received emails from residents on Isle of Palms that they noticed an erosion control structure being built on the beach.
Q. Okay. Could you describe that structure for me?
A. Well, I believe the material of the structure has evolved over time. Initially, we received reports that there were all -- all kinds of materials being used to construct some sort of erosion control and later on came to understand that it was made out of concrete and other materials. And it spans one -- one lot.
Q. And that is your understanding of the structure as it exists today?
A. Yes.
Q. Where is the structure located relative to the setback line?
A. It is landward of the setback line.
Q. I would like to ask you a couple of general questions about the South Carolina Coastal Tidelands and Wetlands Act. If you need to refer to it, it's Exhibit 8.
MS. LENHARDT: Bill, I don't -- I

didn't print the act because I just didn't want to use all the paper. So I thought we were going to --

We aren't going to pull anything up online?

THE COURT REPORTER: That's totally up to him.

MS. LENHARDT: I'm sure Emily has a copy of it, but we may have to take a second and go get it.

MR. KURIGER: Yeah, I think it's best -- we'll get deeper into it later, I think, so it'd be good to have it.

(Off-the-record conference.)

BY MR. KURIGER:

Q. Ms. Cedzo, you've got the statute in front of you?

A. Yes.

Q. Okay. Are you familiar with this statute?

A. Yes.

Q. How long have you been working with this statute?

A. Seven years.

Q. So 2018 would be about when you got an

understanding of the statute?

A. Yes, I believe so.

[redacted]

BY MR. KURIGER:

Q. So would you say critical areas are subject to department direct permitting authority?

A. Yes.

Q. And what other types of critical areas?

A. Coastal waters, tidelands, beaches, and the beach/dune system.

[redacted]

[redacted]

Q. Is it the Coastal Conservation League's position that Mr. Reddy's structure at 118 Ocean Boulevard was constructed in beaches critical area?

A. Yes.

Q. How did the league make that determination?

A. I believe we determined that, best to my recollection, through DES' determination of it.

Q. So the league, as I understand what you

just told me, did not go out to the site, for example, and measure periodic inundation or track the vegetation line; is that correct?

A. We do -- that is correct. We do not do that.

Q. You relied on DES' evaluation of whether or not it was beaches critical area?

A. Yes.

Q. Did the fact the May 24, 2024 regulations have not yet become effective factor into your reliance on the department's determination that the wall was built in beaches critical area?

A. No.

[redacted]

[redacted]

BY MR. KURIGER:

Q. Ms. Cedzo, does the structure on Mr. Reddy's property at 118 Ocean Boulevard, does that affect the public trust in any way?

A. Yes.

Q. How so?

A. Seawalls can contribute to the loss of the dry sand beach which in turn impacts the ability for folks to access and utilize the beach.

Q. What is the dry sand beach?

A. The beach in front of an erosion control structure.

Q. Is every dry sand beach in front of an erosion control structure?

A. Generally there is at some point a beach there.

Q. But can dry sand beach exist in a location that has no erosion control structure?

A. Yes.

Q. How far landward does the public trust reach?

A. I couldn't tell you the specifics that are within the public trust doctrine because I am not an attorney.

[redacted]

[redacted]

19 Do you understand the public to have a
20 right to access public trust areas?
21 A. Yes.

[redacted]

[redacted]

Q. Do you know if there are any designated public access points along Isle of Palms?

A. Yes.

[redacted]

Q. Are there any you would consider close to Mr. Reddy's property?

A. Yes.

[redacted]

[redacted]

EXAMINATION

BY MS. LENHARDT:

Q. Ms. Cedzo, I just have a couple of questions because I think we're going to be using your deposition transcript at the hearing in this matter. You understand the hearing in this case, which is the case involving Mr. Reddy, is taking place in May; is that right?

A. Yes.

Q. And you currently have plans to be on maternity leave in May, correct?

A. Yes.

Q. Okay. And the hearing is actually taking place in Columbia. Is that your understanding?

A. Yes.

MS. LENHARDT: Bill, would you be so kind as to pull up Exhibit 26 for me?

MR. KURIGER: Of course. Just let me

know if I need to scroll --

MS. LENHARDT: Thank you.

MR. KURIGER: -- or zoom.

MS. LENHARDT: Thank you.

BY MS. LENHARDT:

Q. Okay. You remember this email that you sent? It was a back-and-forth between you and Curtis Joyner; is that right?

A. Yes.

Q. Okay. And what's the date on the first email you sent to him?

A. It's Wednesday, May 30th, 2018.

Q. Okay. At the time you sent that email, did you have an understanding of exactly where on the beach the wall was being constructed?

A. No.

Q. And at the time you sent the email, what investigation had you or anyone at the league been able to undertake relating to the construction of the wall?

A. I do not recall that we were able to even be out there in person yet. But it's been many years, so I cannot remember specifically dates.

Q. Okay. And do you remember when you

sent the email if you had considered whether the wall was being constructed in beaches critical area or not?

A. I don't remember.

Q. And does the league have members who use or otherwise recreate on the Isle of Palms where this seawall is located?

A. Yes, we do.

Q. And have they been impacted by the construction of the seawall by Mr. Reddy and his agents?

A. Yes.

Q. And how have they been impacted?

A. By the wall's presence limiting their ability to utilize the beach as they normally would through public access, recreation, enjoyment of the resource.

[redacted]

SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

FINAL AGENCY DECISION

BOARD DOCKET NUMBER: 24-RFR-47

Identification of landward limit of Beaches Critical Area at 130 Ocean Boulevard, Isle of Palms, Charleston County

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Party Requesting Board Review: Cindi Solomon, 130 Ocean Boulevard, Isle of Palms, Charleston County, South Carolina

Appearances:

Mary D. Shahid, Esquire; Francis Way, PE, CFM; Christopher Moore, PE; and Cindi Solomon, for Requestor

Matt Slagel and Sallie P. Phelan, Esquire, for South Carolina Department of Health and Environmental Control

This matter comes before the South Carolina Board of Health and Environmental Control ("Board") for final review pursuant to S.C. Code Ann. § 44-1-60. Requestor seeks review of the Department's Beaches Critical Area jurisdictional line determination at the Requestor's property. The matter under review is governed by the *South Carolina Coastal Zone Management Act*, S.C. Code Ann. § 48-39-10, *et seq.*, which includes the Beachfront Management Act.

BACKGROUND

Requestor owns beachfront property at the address stated above near Breach Inlet on the Isle of Palms, South Carolina. The South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department") and the City of Isle of Palms ("City") have taken steps to mitigate erosion in this area of the Isle of Palms. From June 2023 to the present, the Department's and City's efforts have resulted in issuing several general permits for beach renourishment, several emergency orders for sand scraping and an emergency

Petr's 4

order for sandbags. On February 20, 2024, the City approved Emergency Ordinance No. 2024-01, which allows homeowners to seek City permits to construct erosion control structures landward of the State's critical areas. The City Emergency Ordinance provides "seawalls and revetments shall be installed entirely landward of the critical area markers placed by OCRM or the setback line marked by a surveyor, whichever is farther landward, on the Resident's property …" As part of the requirements in seeking these permits, the homeowners were required to arrange for the Department staff to flag the Beaches Critical Area to ensure that the construction of a seawall or revetment will be outside of the State's jurisdiction.

On February 26, 2024, Chris Moore from Jon Guerry Taylor & Associates, Inc., on behalf of the property owner of 130 Ocean Boulevard, requested the staff to flag the Beaches Critical Area at the property. On February 27, 2024, very shortly after receiving the request, staff flagged the landward limit of Beaches Critical Area at the subject property. The Beaches Critical Area boundary, as determined by staff, is located in close proximity to the Requestor's habitable structure. The Department received a timely request for final review of staff's decision from Requestor. On April 11, 2024, the Board conducted a Final Review Conference.[1] Requestor argued the staff did not properly flag the Beaches Critical Area and the staff decision was not consistent with the applicable statutes and regulations. At the RFR conference, the Requestor asked the Board to overturn the staff determination of the Beaches Critical Area and move the flagged location of the landward boundary of the Beaches Critical Area twenty feet seaward from the foundation of Requestor's structure so that Requestor would have sufficient space to construct a seawall at the property pursuant to the City of Isle of Palm's Emergency Ordinance.

[1] Although the RFRs were not consolidated, one Final Review Conference was held to address 24-RFR-47, 24-RFR-48, 24-RFR-49, and 24-RFR-50.

DISCUSSION

Pursuant to S.C. Code Ann. Section 48-39-130 and Section 48-39-210, the Department is authorized to permit or deny alterations or utilizations within the state's critical areas. S.C. Code Ann. Section 48-39-10(J) sets forth four critical areas over which the Department has direct regulatory authority: (1) coastal waters; (2) tidelands; (3) beaches; and (4) the beach/dune system, the area from the mean high-water mark to the setback line as determined in Section 48-39-280. S.C. Code Ann. Section 48-39-10 (H) defines "Beaches" as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." Section 48-39-210(B) provides that "[c]ritical 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."

Staff asserts that in the area adjacent to Requestor's habitable structure, the Beaches Critical Area is located landward of the Beach/Dune System Critical Area. During the Final Review Conference, Department staff described the method used in flagging the Beaches Critical Area. At Requestor's agent's request, Department staff went to the Requestor's property and assessed the site for nonlittoral vegetation. Department staff placed orange flags marked "SC DHEC OCRM" in the ground where nonlittoral vegetation first appeared moving landward from the beach. Department staff documented the location of the flags using a survey-grade RTK-GPS unit and by taking site photographs. Once they returned to the office Department staff also completed an Inspection Form and created figures to show the flagged locations in reference to current drone images captured on December 18, 2023 (presented at the RFR conference) and

February 26, 2024, the day before the property was flagged (presented in Exhibit C of Department's staff summary).

Department staff's position is their methodology to demarcate the Beaches Critical Area is in keeping with the plain meaning of the statutory definition of "Beaches." Department pointed out that the definition of "Beaches" uses the presence or absence of nonlittoral vegetation as a key indicator in determining whether there is periodic inundation. This indicator allows staff to assess the Beaches Critical Area when they are called out to a site to make a jurisdictional line determination. The Department argued that its interpretation and methodology are consistent with the language in the "Beaches" definition that refers to "periodic inundation … so that no nonlittoral vegetation is established."

Requestor's position is the Department incorrectly demarcated the Beaches Critical Area. Requestor argued that this area was not subject to periodic inundation, alleging that the only time the tides reached the area was during the December 17, 2023, nor'easter which had a very high tide. Requestor showed aerials to demonstrate there was vegetation in this area after both Hurricane Matthew in 2016 and Tropical Storm Irma in 2017. Requestor also stated Requestor's property had not been damaged by Hurricane Matthew or Tropical Storm Idalia.

Department staff explained that they reviewed aerial imagery and created maps showing the vegetation and/or escarpment lines collected during the last eighteen years (presented at the RFR conference.) Department staff stated that the aerial review and analysis demonstrated that the shoreline in the area of the Requestor's property had been eroding since 2006. The Department stated that while Hurricane Matthew and Tropical Storm Idalia may not have reached the Requestor's structure, these storms eroded the shoreline towards it, adding to the disappearance of the nonlittoral vegetation and the shrinking of dry sand beach in front of the Requestor's property.

The Department emphasized the importance of the dry sand beach as expressed throughout the South Carolina Coastal Zone Management Act, including its recreational value to South Carolina residents, its contribution to the State's financial health through tourism, and its provision of valuable habitat. Also, the Department noted seawalls can decrease the dry sand beach which can potentially eliminate public access.

Requestor stated that erosion from the December nor'easter should not be considered pursuant to the S.C. Coastal Zone Management Act, referencing the statutory provision for setting the baselines. S.C. Code Ann. Section 48-39-280((E)(4) provides "[i]f an erosion zone incurs extraordinary erosion due to the impact of a storm system or event named by the National Weather Service … then data collected from the erosion zone within eighteen months of the date of impact of the storm system or event must not be used to locate the crests of primary oceanfront sand dunes or to establish baselines pursuant to subsection (A)(1) and (A)(3)." Staff pointed out that Requestor's property is located in an Unstabilized Inlet Erosion Zone which is addressed by Section 48-39-280(A)(2) of the statute and is specifically excluded from this statutory provision allowing storm events not to be considered.

Requestor also argued that there probably was nonlittoral vegetation that was in the area in question but that got covered up with the sand scraped by the City. The Department presented photographs at the RFR conference that showed that there was no vegetation in this area in December 2023 prior to the sand being placed.

BOARD DECISION

The Board recognizes the Department's permitting authority includes the Beaches Critical Area pursuant to Section 48-39-10(J)(3), Section 48-39-130 and Section 48-39-210 and that Department staff correctly determined the location of the Beaches Critical Area using the

nonlittoral vegetation and the conditions at the site. However, based on the facts of this Request for Final Review, the Board has determined the Requestor should have the opportunity to install native beachfront plant species and see if nonlittoral vegetation can become established in the subject area.

CONCLUSION

After reviewing the written materials submitted to the Board and considering all arguments and evidence presented at the Final Review Conference, the Board finds that this matter is remanded to staff to work with Requestor for replanting and resurvey at the subject property within the next 30 to 60 days.[2] This decision will provide Requestor an opportunity to plant vegetation away from the habitable structure where Requestor thinks vegetation will survive, and have staff resurvey the area.

AND IT IS SO ORDERED

Seema Shrivastava-Patel, Chairman
Board of South Carolina Health and
Environmental Control

May 2, 2024

[2] Because this provides for the re-evaluation of the Beaches Critical Area jurisdictional line, a permit is not required.

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. § l-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. Even though

Joint Ex 001

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. § l-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, SCRCP; *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 public[5] 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 Envtl. 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. <u>The Department is likely to succeed on the merits</u>.

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.'" <u>*Jennings-Dill, Inc. v. Israel*</u>, No. 2021-001137, 2024 WL 252953, at *4 (S.C. App. Jan. 24, 2024) (citing <u>*Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*</u>, 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." <u>*Helsel v. City of North Myrtle Beach*</u>, 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 Exhibit A in Jacques Prevost's Affidavit [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 Envtl. 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,



Sallie P. Phelan, SC Bar # 14150
Bradley D. Churdar, SC Bar # 12829
South Carolina Department of Health and Environmental Control
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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 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

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 **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 feet[1], 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

EXHIBIT A

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
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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

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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

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 you 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

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
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EXHIBIT B

Re: Isle of Palms,

[redacted]

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;

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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,

[redacted]

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2024-10-_____
Rom Reddy and Renee Reddy, Plaintiff, vs. South Carolina Department of Health and Environmental Control and The City of Isle of Palms, Defendants.	**SUMMONS** **(JURY TRIAL REQUESTED)**

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the Plaintiffs' attorneys at their office, 4000 Faber Place, Suite 450, N. Charleston, South Carolina, 29405, or to otherwise appear and defend the action pursuant to applicable court rules, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,

FINKEL LAW FIRM LLC

s/ Johnny J. Stewart
Gerald M. Finkel (SC Bar #2013)
Charles Krawczyk (SC Bar #16832)
Johnny J. Stewart, Jr. (SC Bar #102842)
Rachel L. Ferguson (SC Bar #75224)
Finkel Law Firm LLC
4000 Faber Place Drive, Suite 450
North Charleston, South Carolina 29405
Email: jstewart@finkellaw.com
Phone: (843) 577-5460
Attorneys for the Plaintiffs

March 39, 2024
North Charleston, South Carolina

Joint Ex 002

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2024-10-_____
Rom Reddy and Renee Reddy, Plaintiff, vs. South Carolina Department of Health and Environmental Control and The City of Isle of Palms, Defendants.	**COMPLAINT** **(JURY TRIAL REQUESTED)**

Plaintiffs, by and through their undersigned counsel, complaining of Defendants avers and alleges as follows:

PARTIES

1. Plaintiffs are citizens and residents of Charleston County, residing at 118 Ocean Blvd, Isle of Palms, South Carolina.

2. DHEC is a public authority and political subdivision of the state of South Carolina organized and existing pursuant to the laws of the State of South Carolina.

3. City of Isle of Palms (Defendant City) is a political subdivision of the State of South Carolina organized and existing pursuant to the laws of the State of South Carolina. Defendant City is a required party to this action due to S.C.R.C.P. 19(a)(1)(B)(ii).

JURISDICTION

4. This Court has subject matter jurisdiction in this case pursuant to S.C. Code § 48-39-305(A) and S.C. Code § 48-39-160.

5. DHEC and the City of Isle of Palms are political subdivisions of the state of South Carolina and can sue and be sued.

6. This Court has personal jurisdiction over the parties and venue is proper in

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Charleston County.

FACTS

Plaintiff incorporates and realleges all allegations in the Complaint where not inconsistent as if fully set forth herein.

7. The Beachfront Management Act provides DHEC and Defendant City with the authority to carry out provisions of the SC Code Section 48-39 ("Beachfront Management Act").

8. DHEC, through its Office of Ocean and Coastal Resource Management, is responsible for replenishing, renourishing, and maintaining the beach at all tides. S.C. Code § 48-39-270.

9. DHEC, through its Office of Ocean and Coastal Resource Management, is responsible for maintaining the beach dune system. S.C. Code § 48-39-250 and S.C. Code § 48-39-160.

10. The Defendant City has submitted a Beach Management Plan as required by S.C. Code § 48-39-350. The State and City Beach Management Plan calls for replenishment and renourishment of the beaches to maintain a dry sand beach at all tides and a viable dune at all times.

11. Per SC Code Section 48-39-350(A)(3),(5),(7), Defendant City's expressed powers related to beach management are restricted to the Setback Lines established by DHEC and voted on by the South Carolina General Assembly.

12. Defendant City passed City Ordinance 5-4-15, entitled Beach Regulations, which prohibits erosion control structures from being situated in whole or in part landward of the "critical area," specifically, the area defined by SC Code Section 48-39-10(J)(3), as "beaches" which is vaguely defined as "lands subject to periodic inundation by tidal wave action so that no non littoral vegetation is established." SC Code Section 48-39-10(H).

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13. The Defendant City and DHEC have failed to follow their own legislative guidelines and have caused the beach level to drop due to the lack of sand. **(See Exhibit A).**

14. Keeping with longstanding Common Law doctrine that statutes must clearly state what acts are prohibited and permitted *Connally v. General Construction Co.*, 269 U.S. 385 (1926), The Beachfront Management Act provides homeowners assurances as to where their property is located by establishing jurisdictional setback and baselines. SC Code Section 48-39-280.

15. The Beachfront Management Act restricts homeowners, such as Plaintiffs, from constructing structures seaward of the established baselines and constructing structures between the Baselines and the Setback Lines. SC Code Section 48-39-290.

16. These Baselines and Setback Lines were proposed by DHEC on October 6, 2017, pursuant to the power provided to DHEC by the Beachfront Management Act. SC Code Section 48-39-280.

17. The Baselines and Setback lines were established using the best available historical and scientific data. SC Code Section 48-39-280(B).

18. The Baselines and Setback Lines were published and the public was invited to provide input on the Baselines and Setback Lines. 48-39-280(D)(1)(b).

19. Homeowners, such as the Reddys, affected by these Baselines and Setback Lines are required to disclose the existence of these Baselines and Setback Lines to buyers when they sell their homes. SC Code Section 48-39-330.

20. If an "Erosion Zone" experiences extraordinary erosion due to a storm system, DHEC is forbidden from using data collected within 18 months after the storm system to establish a Baseline or a Setback Line. SC Code Section 48-39-280(E)(4).

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21. In 2014, Plaintiffs purchased the home at 118 Ocean Boulevard. At the time of the purchase, the dune system was well maintained, and vegetation was clearly established in the area that DHEC claims jurisdiction over. As you can see below, vegetation was abundant in the area where the retaining wall was constructed.



Charleston County, South Carolina, GIS Map (2015), available at [https://gisccweb.charlestoncounty.org/public_search/] (last visited [February 19, 2024]).

22. In 2016, Hurricane Matthew struck the Isle of Palms, leaving a path of destruction in its wake. Additionally, in 2017, Hurricane Irma struck Isle Palms leaving a similar path of destruction. However, despite a significant storm surge, the location where this retaining wall was constructed was untouched, and vegetation remained.

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Charleston County, South Carolina, GIS Map (2017), available at [https://gisccweb.charlestoncounty.org/public_search/] (last visited [February 19, 2024]).

23. By April 2023, DHEC and the City were on notice that beach levels had dropped significantly, leaving Plaintiffs to plead to the City to repair the dunes; however, nothing was done. **(See Exhibit B).**

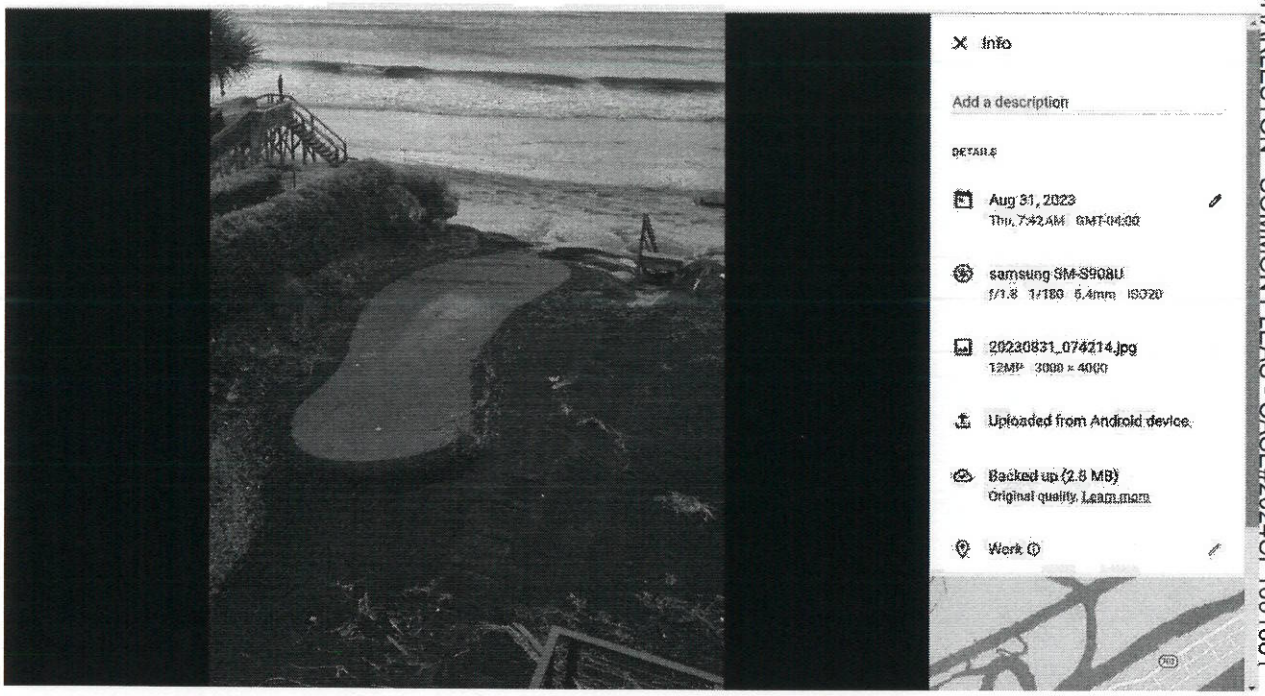
24. Seeing that DHEC and the City were not working to protect Plaintiffs' property, Plaintiffs continued to compel the City of Isle of Palms to apply for permits through DHEC. Once the permits were received, the City continued to do nothing to renourish the beach and Plaintiffs' property continued to be damaged; no sand was added and no dunes were restored. **(See Exhibit C).**

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25. Due to the low level of the beach and the destruction of the protective dunes, Plaintiffs' property was damaged by Hurricane Idalia, which had a storm surge of 9.2 feet.

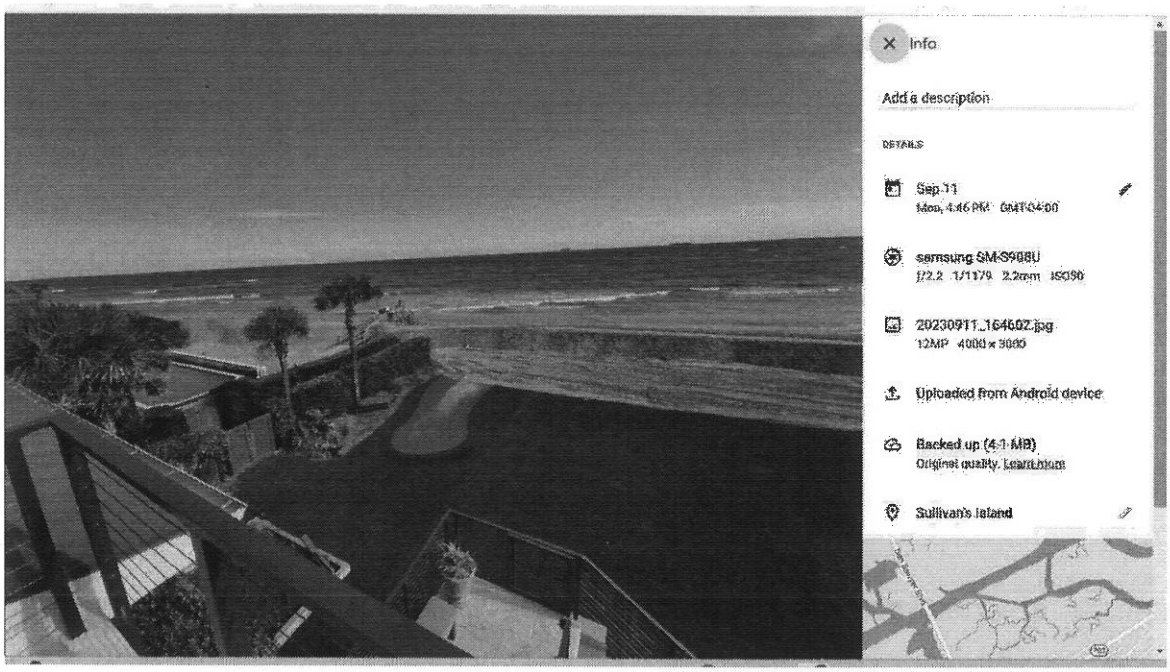
26. Hurricane Matthew and Hurricane Irma had similar storm surges to Idalia (9.3 feet and 9.9 feet respectively); however, due to the intact dune, Plaintiffs' home was left unbothered by those storms.

27. On August 31, 2023, Tropical Storm Idalia struck the Isle of Palms and caused damage to Plaintiffs' property as depicted below.

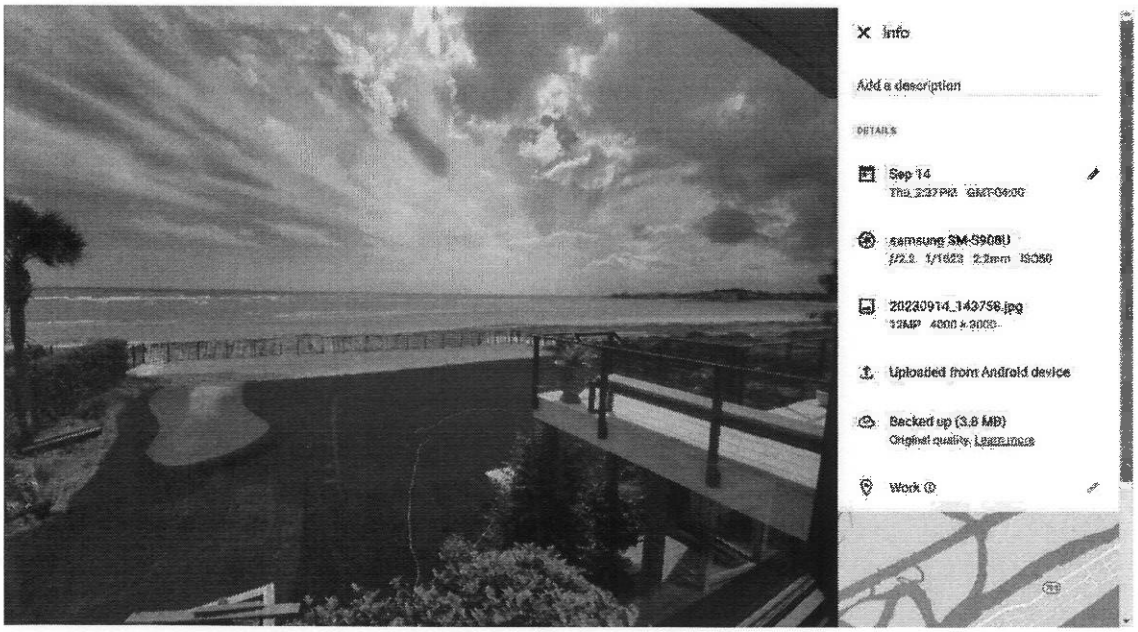


28. Plaintiffs began repairs to their property following the storm, with all repairs being landward of the Defendant City's dune and DHEC's setback lines as seen below.

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29. As repairs progressed, Plaintiffs placed a temporary fence, which would not have been able to sustain the **periodic** inundation needed to be considered a "beach" under S.C. Code § 48-39-10(H), behind the dune and landward of the setback line set by the South Carolina State General Assembly as seen below.



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30. In October 2023 Plaintiffs installed an inward facing retaining wall well behind the dunes, setback lines and critical areas. The intent was that the wall would stabilize the foundation of the home and the yard. The wall was never intended to be used as an erosion control device or to be ocean-facing. In addition, the wall was within the borders of the Property and substantially behind the "critical area" line as defined by S.C. Code § 48-39-10(J).

31. On February 2, 2024, DHEC sent Plaintiffs the attached cease and desist letter. In said letter, DHEC demanded petitioners "to immediately cease and desist all work in the beach's critical area and/or on active beach that is in violation of act." **(See Exhibit D).**

32. DHEC does not have a right to exercise this type of jurisdiction over Plaintiffs' property as this area is not the "beach" as defined by SC Code § 48-39-10(H).

33. In S.C. Code § 48-39-10(H), a "Beach" is defined as "lands subject to periodic inundation by tidal and wave action so that no nonliteral vegetation is established." The area where this retaining wall was built does not meet this definition.

34. DHEC claimed that since this area was hit by the tidal wave, it was now considered beach despite there not being a **periodic** inundation by tidal and wave action preventing vegetation to be established.

35. DHEC is attempting to assert control over Plaintiff's private property following **one** such encounter, which was clearly not intended by statute.

36. This retention wall is also well within the setback line established by the South Carolina General Assembly.

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37. Despite the disputed area not being in the critical area and not being within DHEC's jurisdiction, if this area was considered to be in the critical area as defined by statute, it would only be in the critical area due to the failure of DHEC and the City to maintain the beach, by renourishing and replenishing the beach.

38. Following Hurricane Idalia, DHEC authorized Defendant City to perform "emergency scrapings" that were meant to be short term emergency measures as opposed to a policy change.

39. Defendant City has continued to perform these scrapings with DHEC's blessing since this emergency ordinance was passed.

40. These scrapings have lowered the beach significantly and have left Plaintiffs and all other beachside Isle of Palms residents in danger of property damage.

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41. , Rather than perform its statutory duty to replenish and renourish the beach by rebuilding dunes in front of residents' property, the City, with DHEC's permission continued with improper scraping to push sand in front of residents' property.

42. Because of Plaintiffs' proper and legal wall, DHEC instructed Defendant City to intentionally neglect Plaintiffs' property, leading to more and continued extensive property damage..

43. Because the City and DHEC refused the renourish Plaintiffs' property, the Plaintiffs' wall was subject to damage and began to fail.

44. The City's and DEHE's intentional actions created the necessity of the Plaintiffs to repair the wall and install a new retaining wall landward of the old wall on their own private property.

FIRST CLAIM FOR RELIEF
INVERSE CONDEMNATION
(Violation of the United States Constitution and the South Carolina Constitution)

45. Plaintiffs re-allege and repeat the foregoing allegations to the extent required by but not inconsistent with the following allegations:

46. DHEC has appropriated Plaintiffs' private property for public use and has caused Plaintiffs to expend monies because of DHEC's actions.

47. The South Carolina Constitution, Section Article 1 provides, *inter alia*, that private property shall not be taken for public use without the consent of the owner nor for the public use without just compensation being paid.

48. Because this action is necessitated by the actions of a State Agency, Plaintiffs are entitled to recover attorney's fees.

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49. DHEC and City failed to follow their own legislative regulatory scheme to replenish or renourish the affected areas of the beach forcibly converting the Plaintiffs' private property to the State for public use. S.C. Code § 48-39-270(4).

50. DHEC failed to follow its own legislative regulatory scheme to protect the dune system, which is meant to "contribute to shoreline stability." S.C. Code § 48-39-250(1)(a).

51. DHEC failed to follow its own legislative regulatory scheme by continuing to authorize and re-authorize numerous "emergency scrapings" since September 2023 that continue to drop the level of the beach, causing damage to DHEC's property.

52. DHEC engaged in the additional affirmative, positive, aggressive act of prohibiting the Defendant City of Isle of Palms from renourishing the beach as statutorily required of them, placing sand in front of Plaintiffs' property. **(See Exhibit E).**

53. DHEC engaged in the affirmative, positive, aggressive act of demanding that Plaintiffs tear down the retaining wall, meant to stabilize Plaintiffs' yard. **(See Exhibit D).**

54. As a result of DHEC's affirmative, positive, and aggressive actions, Plaintiffs have lost significant portions of his property, turning Plaintiffs' property into a public beach without just compensation in violation of the Takings Provision of the United States Constitution.

55. DHEC's taking of Plaintiffs' Property, by causing Plaintiffs' yard to become a public beach, has a high degree of permanence.

56. DHEC's demand that Plaintiffs tear down their retaining wall, meant to stabilize the soils in their yard, amounts to a taking and inverse condemnation.

57. The demand to destroy the retaining wall has a high degree of permanence.

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58. That such affirmative acts amount to a taking under the Fifth Amendment of the United States Constitution and Article 1, § 13 of the South Carolina Constitution for which compensation must be provided.

59. Pursuant to South Carolina Code Section 28-11-30(3), Plaintiffs are entitled to reimbursement for its reasonable costs, disbursements, and expenses, including reasonable attorney's fees incurred because of DHEC and the City's actions and omissions.

SECOND CLAIM FOR RELIEF
TRESPASS

Plaintiffs re-allege and repeat the foregoing allegations to the extent required by but not inconsistent with the following allegations:

60. DHEC directed the Defendant City of Isle of Palms to prohibit Plaintiffs from placing new sand on their property that is well south of the Setback Line established by the General Assembly. **(See Exhibit E).**

61. Due to Defendant City's interest in the contested property, it is a necessary party to this action due to S.C.R.C.P 19(a)(1)(B)(ii).

62. This action had the effect of undermining the integrity of the retention wall that was constructed due to DHEC and the City's failure to renourish the beach.

63. DHEC further directed the Defendant City of Isle of Palms to cease placing sand on either side of the retention wall, leaving a six to ten foot gap on either side of the retention wall. **(See Exhibit D).**

64. This direct action of DHEC caused Plaintiffs' property to flood, causing significant erosion and damage to the foundations of the wings of the retaining wall.

65. That such actions by DHEC and the City constitutes a wrongful interference with the Plaintiffs' right to possession of Plaintiffs' property.

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66. That such action has caused repeated and multiple trespasses and are likely to continue into the future, constituting a continuing trespass.

67. That as a result of the wrongful action by the Petitioner, Plaintiffs incurred actual damages, which are likely to increase throughout the course of this lawsuit.

68. That Plaintiffs are entitled to recover prejudgment interest from Petitioner from the earliest date that Plaintiffs' trespass is determined to have occurred.

69. In addition to the actual damages, Plaintiffs have incurred and will continue to incur incidental damages and expenses as a result of Petitioner's actions.

THIRD CLAIM FOR RELIEF
RECOVERY OF ATTORNEYS FEES
(Recovery of Attorney's Fees under S.C. Code § 15-77-300 *et seq.*, (as amended))

Plaintiffs re-allege and repeat the foregoing allegations to the extent required by but not inconsistent with the following allegations:

70. That the actions of DHEC and the City as previously alleged herein, are without substantial justification.

71. That there are no special circumstances that would make an attorneys fee award unjust.

72. In the event that Plaintiffs are the prevailing party, that Plaintiffs should be awarded reasonable attorney's fees pursuant to the provisions of S.C. Code § 15-77-300.

FOURTH CLAIM FOR RELIEF
DECLARATORY JUDGEMENT
(The City of Isle of Palms's City Management Act is Facially Unconstitutional)

Plaintiffs re-allege and repeat the foregoing allegations to the extent required by but not inconsistent with the following allegations:

73. As required by the Beach Front Management Act, the City passed the Local Comprehensive Beach Management Plan.

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74. In the Local Comprehensive Beach Management Plan, the City has forbid the use of structures meant to protect private property from catastrophic events.

75. The Local Comprehensive Beach Management Plan allows the Defendant City to remove these structures without a method for providing just compensation for the removal, which amounts to a regulatory takings, which is a violation of the United State Constitution and the South Carolina Constitution.

76. Per the City's Local Comprehensive Beach Management Plan, the City has required property owners "to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40 (1960).

77. Additionally, the City has claimed jurisdiction of property that supersedes the Setback Lines established by the South Carolina State General Assembly.

78. The City cannot enact ordinances in direct conflict with South Carolina state law. McAbee v. S. Ry. Co., 166 S.C. 166, 168, 164 S.E. 444, 444 (1932) ("The government of a municipality is created by the laws of the State of South Carolina, and the creature cannot be greater than its creator, and the laws of a municipality to be good must not be inconsistent with the laws of the State.").

79. As the City's alleged jurisdiction supersedes the Setback Lines established by the South Carolina State General Assembly, this ordinance should be void and unconstitutional on its face and as applied to Plaintiffs.

FOR A FIFTH CAUSE OF ACTION
DECLARATORY JUDGEMENT

(Defendant City is Preempted by the Beachfront Management Act from Claiming Jurisdiction Over Property that is Landward of the Setback Lines and Critical Areas)

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Plaintiffs realleges and incorporates the allegations of the preceding paragraphs as if fully contained herein.

72. Defendant City's jurisdiction as to beach management is derivative of the Beachfront Management Act. SC Code Section 48-39-350.

73. Defendant City has no authority to expand its jurisdiction sua sponte.

74. Defendant City Ordinance 5-4-15(B) prohibits erosion control structures built landward of the "Critical Areas" and the Setback Lines.

75. Defendant City Ordinance 2024-01 provides Defendant City with the power to regulate and provide permits for erosion control devises built landward of the Critical Areas.

76. The Beachfront Management Act provides DHEC with the authority to regulate the areas seaward of the Setback Lines and the vaguely described "critical areas" solely through the Beachfront Management Act.

77. The Beachfront Management Act was passed by the South Carolina General Assembly and only a law of equal or greater dignity can establish greater jurisdiction than what is provided.

78. Defendant City's Ordinances attempt to grant Defendant City control over Plaintiffs' property landward of the Critical Areas, when that power was not provided to it by the Beachfront Management Act.

79. Defendant City is preempted from providing itself with subject matter jurisdiction and police power over an area that the General Assembly excluded from the Beachfront Management Act.

80. Plaintiffs are entitled to declaratory relief from this Honorable Court which declares that Defendant City Ordinance 5-4-15(B) and Defendant City Ordinance 2024-01 unenforceable

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as the Ordinances are preempted by The Beachfront Management Act.

FOR A SIXTH CAUSE OF ACTION
DECLARATORY JUDGEMENT

(SC Code Section 48-39-10(H) and SC Code Section 48-39-10(J)(3) violate the Due Process Clause of the United States Constitution)

Plaintiffs realleges and incorporates the allegations of the preceding paragraphs as if fully contained herein.

81. The Beachfront Management Act provides the government with the ability to levy fines and imprison citizens for "utilizing the critical areas."

82. The Beachfront Management Act has criminal elements, as it considers violations of the statute to be misdemeanors.

83. The Beachfront Management Act defines the critical area in part as "beaches," which are defined as "lands subject to periodic inundation by tidal wave action so that no non littoral vegetation is established." SC Code Section 48-39-10(H) and SC Code Section 48-39-10(J)(3).

84. The Beachfront Management Act does not define the term "periodic" nor does the Act apply a reasonable standard to guide homeowners to know what is and what is not permitted.

85. SC Code Section 48-39-10(H) and SC Code Section 48-39-10(J)(3) have impermissibly delegated basic policy matters to DHEC for resolution on an ad hoc and subjective basis.

86. Plaintiffs are entitled to declaratory relief from this Honorable Court which declares that SC Code Section 48-39-10(H) and SC Code Section 48-39-10(J)(3) are unconstitutional as they violate the Due Process Clause of the United States Constitution.

WHEREFORE, the Plaintiffs pray for the following relief:

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a) That this court deny DHEC's petition for a Temporary Restraining Order and Petition for Injunctive Relief;

b) That Plaintiffs request a jury trial on all causes of action in the Counterclaims and Third Party Claims;

c) That Plaintiffs be granted judgement against Defendant City and DHEC for actual damages, consequential damages, and prejudgment interest;

d) That Plaintiffs be awarded reasonable attorney's fees, appraisal and engineering fees in the event that Plaintiffs are determined to be entitled to compensation for the unlawful taking by the either or both of the Defendants City and DHEC pursuant to S.C. Code § 28-2-510;

e) That Plaintiffs be awarded reasonable attorneys' fees to be taxed as costs against the Defendants City and DHEC in the event that it is the prevailing party in this action pursuant to the provisions of S.C. Code § 15-77-300.

f) That this Court issue an Order declaring Defendant City Ordinance 5-4-15(B) and Defendant City Ordinance 2024-01 unenforceable and void, as the Ordinances are preempted by The Beachfront Management Act, which provides DHEC with jurisdiction over the "critical areas," property seaward of the "critical areas," and land seaward of the Setback Lines.

g) That this Court issue an Order declaring SC Code Section 48-39-10(H) and SC Code Section 48-39-10(J)(3) unconstitutional, as the definition of "beaches" is vague and fails to provide affected homeowners with a reasonable standard to know which areas may and which areas may not be utilized.

h) That the Court grants such other and further relief as it deems just and proper.

Respectfully Submitted,

FINKEL LAW FIRM LLC

s/ Johnny J. Stewart
Gerald M. Finkel (SC Bar #2013)
Charles Krawczyk (SC Bar #16832)
Johnny J. Stewart, Jr. (SC Bar #102842)
Rachel L. Ferguson (SC Bar #75224)
Finkel Law Firm LLC
4000 Faber Place Drive, Suite 450
North Charleston, South Carolina 29405
Email: jstewart@finkellaw.com
Phone: (843) 577-5460
Attorneys for the Plaintiffs

March 39, 2024
North Charleston, South Carolina

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

EXHIBIT A

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

Beach Volume Change – Nourishments Removed

South Carolina Beach Volume Change from Prior Year - Nourishment Removed										
	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
Daufuskie	-73,556	-202,352	-178,168	-148,629	-135,228	-116,667	-30,653	-104,189	-131,567	-1,121,008
Hilton Head	115,122	-778,398	-943,266	601,462	-228,264	163,337	-347,982	-303,272	35,391	-1,685,869
Fripp	252,162	37,056	-81,342	-41,381	366,156	416,855	174,613	-7,410	71,283	1,187,992
Hunting	-47,566	-230,950	-326,823	-442,498	-63,613	-97,223	-205,366	-278,785	-222,812	-1,915,638
Harbor	48,929	56,976	-52,422	-8,744	-55,570	17,036	27,720	-44,511	54,750	44,164
Edisto	-77,130	228,240	10,318	-192,099	-87,103	3,013	-66,612	199,046	20,807	38,480
Seabrook	-118,830	-62,381	-113,901	36,720	-6,094	27,241	-22,550	-69,476	-69,737	-399,008
Kiawah	-51,233	-172,402	-688,518	-68,160	166,786	-382,848	78,733	115,057	205,289	-797,297
Folly Beach	-518,800	-432,273	-469,742	418,065	-195,435	-397,729	-221,476	-240,393	-441,288	-2,499,071
Sullivans	295,121	247,454	603,578	68,654	304,530	625,355	95,115	378,604	211,765	814,168
Isle of Palms	224,918	-20,701	53,241	-240,314	-166,279	36,499	-94,112	-504,805	-450,085	-1,161,637
Dewees	-175,302	-178,219	-332,618	-1,782	-89,611	-110,884	-53,526	-99,783	-229,195	-1,270,922
Debordieu	29,034	-33,297	-412,216	97,802	-157,278	-197,462	-244,810	11,957	218,501	-687,770
Pawleys	21,892	54,939	-228,032	-1,565	42,247	-92,761	-111,164	81,673	-61,546	-294,318
Litchfield	51,349	16,752	-172,599	-97,838	88,814	-187,413	13,049	-101,600	-38,520	-428,005
Garden City	-97,275	23,247	-106,868	215,400	304,113	-76,167	-75,635	56,671	7,283	250,769
Surfside	-734	-200,561	301,157	-335,747	36,148	-69,466	-9,840	-10,204	-69,963	-359,210
Myrtle Beach	-71,034	-137,302	-334,099	117,326	431,471	-139,183	39,082	-304,838	18,211	-380,365
Arcadian	-73,840	-161,523	-64,023	2,001	27,538	74,383	-48,285	-13,697	-51,262	-308,707
NMB	-237,694	-266,853	-311,832	557,537	-108,287	23,432	-137,125	-12,893	-74,948	-568,664
Waties	62,003	181,251	-226,991	337,783	-10,296	-141,583	56,652	139,497	-55,109	343,206
Total	-992,706	-2,526,204	-4,069,168	744,685	-344,313	-620,733	-1,224,174	-1,113,353	-1,052,751	-11,198,717

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ROA 003303

EXHIBIT B

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

McCULLOUGH • KHAN • APPEL

Ross A. Appel
Direct: (843) 937-9798
Fax: (843) 937-0706
ross@mklawsc.com

June 16, 2023

VIA E-MAIL ONLY
Stafford J. ("Mac") McQuillin, III
Haynsworth Sinkler Boyd, P.A.
134 Meeting Street, 3rd Floor
Charleston, SC 29401
mmcquillin@hsblawfirm.com

Re: Isle of Palms Erosion Emergency / Demand for Immediate Action

Dear Mac:

I hope this finds you well. Our firm represents Renee and Rom Reddy, the owners of 118 Ocean Blvd., Isle of Palms, SC 29451. The Reddys, along with several other similarly situated front beach property owners on the southern end of the island, are experiencing extreme and worsening oceanside erosion. The enclosed video demonstrates how severe the situation has become. This emergency necessitates immediate action by the City to protect the life, health, and safety of my clients, their neighbors, and the general public who enjoy public access and use of the beach.

The south end erosion stems from the City's 2018 beach renourishment project. According to the enclosed Coastal Science & Engineering, Inc. ("CSE") PowerPoint presentation, that renourishment involved depositing approximately 1,676,518 cubic yards of sand on the north end of the island in front of Wild Dunes. Since completion, approximately 960,000 cubic yards of sand from the project site has drifted southward, creating shoaling on the north end of Sullivan's Island. This has caused "shoal-created erosion" on the other side of Breach Inlet. Essentially the inlet's channel is migrating northward. CSE has concluded that "emergency measures may be effective for short term, but additional sand is likely to be required."

We understand CSE, on behalf of the City, recently submitted an emergency permit application to DHEC-OCRM for minor beach renourishment on the southern end of the island. This project entails trucking in sand to reestablish dune systems that have been washed away. For this project to be successful, a fifteen hundred (1,500) linear foot berm of sand must be deposited seaward of my clients' and their neighbors' properties. **My clients call on the City to take all available steps to expedite this permitting process.** There is no time to waste, especially with Hurricane Season having recently started.

My clients also seek clarity on project logistics and funding. The City should have the trucks and other resources available to hit the ground running once the permit is approved. My

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FEB 26 2024
Administrative Law Court

clients expect the City to pay for the entirety of this project for several reasons. First, the erosion experienced on the south end of the island is not natural. Instead, it is the result of the City's 2018 beach renourishment project. Second, the minor renourishment project is essential to preserve and maintain the *public beach*. Finally, the City's taking the lead eliminates the possibility of private homeowner holdouts, which would compromise the integrity of the aforementioned fifteen hundred (1,500) linear foot berm of sand and cause unacceptable delays. The City has the resources and means to complete this critical, short-term project via the beach renourishment fund and otherwise.

Time is of the essence to address this pressing and exigent crisis. Once the short-term challenges have been addressed, we will need to pivot towards exploring longer term solutions for this part of the island.

Our preference is to work through these issues collaboratively with the City. That said, we are prepared to take legal action if compelled to do so. My clients' and their neighbors' property – not to mention the public beach – cannot be allowed to become the collateral damage of the 2018 renourishment project. My clients reserve all rights. If you have any questions, please do not hesitate to contact me.

With kind regards,

MCCULLOUGH • KHAN • APPEL

Ross A. Appel

Enclosures – as stated

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ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

romreddy@gmail.com

From: Rom Reddy
Sent: Tuesday, June 20, 2023 10:20 AM
To: citycouncil@iop.net
Cc: Rom Reddy
Subject: Beach issues- URGENT

Honorable Council Members, we reside at 118 Ocean Boulevard. We understand Council has beach erosion on the entire southern end of the island from 6th avenue to Breach inlet on the agenda for the June 27th meeting. We would like to make the following points for the Council's consideration;

1) This is not a protection of ocean front homeowners' issue as much as a beach and coastline maintenance issue. There literally are no dunes left in portions of this coastline causing large chunks of contiguous land to fall into the ocean at a tide of 6 feet or higher. **The City's engineers CSE have informed us that individual homeowners trucking sand in (without a continuous berm) would literally wash out in the very near term as the water is so high that it would easily get behind individual dunes and erode them rapidly. The only effective short-term solution is to have a continuous berm of 1500 to 2000** feet. A portion of this berm will wash out pushing the water back and re-establishing the beach, the dunes, the eco system associated with the dunes etc. Even if no homes existed on the ocean front, the beach and dune system would need to be maintained. If this was turned into a protection of ocean front homeowners' issue, then obviously the homeowners would not use sand that will wash away but would use a retaining structure to protect their property. Since many of these properties are well landward of the OCRM setback, this can in theory be done. However, there is a **city ordinance that prevents homeowners from taking these types of protective steps. Should homeowners not have the protection of a continuous berm, then they will have no option other than to challenge these ordinances that appear to supersede State ocean front management laws and prevent homeowners from protecting their property while declining to provide the continuous berm that is the only other short term solution.**

2) In addition to the danger posed by not having any dune protection, the **water poses a threat to the safety of beach goers who have trouble getting back to their cars or rental homes when the tide is 6 feet or higher as the waves crash against the property lines for a couple of hours before and after high tide posing a real danger to beach goers especially children and pets.** Once again, the only way to move this water back in the near term is a continuous berm that erodes out over a few months re-establishing the beach.

3) The issue of who pays for this should also be clear. **This is a 100 percent public beach not a private beach for ocean front homeowners**. The provisions of multiple access paths and increased parking at Breach and other locations have created a beach that is used more by visitors and off ocean renters than ocean front residents. There is little or no precedent in the State for ocean front owners to maintain and renourish a public beach used by many. The Wild Dunes example is brought up which is addressed below but there are extensive renourishments done in Myrtle Beach and other places **where non private community based public beaches are almost always renourished with public funds.** Where private funds are used, **all users contribute not just ocean front users**. This is essentially a form of taxation to maintain a public beach just like maintaining a public road. Homeowners do not maintain a public road in front of their homes. Our understanding is that **a beach renourishment fund** has been established through the accommodations tax largely paid by users of the beach. This should be the source of funding for a fully public beach. The City also has many options to seek State or Federal funds as well. **However, homeowners without HOA's or similar entities have no way of getting funding from all residents who have access to the beach or even from all ocean front owners even if that actually made sense.**

4) **The Wild Dunes issue** is often brought up. Even though the beach there is " public", the only realistic access to the beach especially the northern end that was renourished , is through a gate . The beach therefore is largely for residents and wild dunes renters. **Therefore, ALL residents (not Ocean Front) were assessed a very small portion of the total renourishment paid.** That example does not apply here as we are not gated and have no HOA that can realistically assess all residents a fee and collect it. There is no option to maintaining a public beach coastline other than with public funds.

5) Please note all of this is a short-term issue and provides protection to the coastline for maybe 9 to 12 months. During this time, a **longer-term plan needs to be established** to dredge sand or use Army Corp sand in substantially larger quantities than being discussed above. CSE has confirmed this **sudden and rapid erosion in a matter of weeks is caused by movement of sand at Breach inlet essentially pushing the inlet on to the south side of the island.** This is visually apparent when you look at the massive and sudden increase in the Sullivans beaches and party sand bars. There is growing evidence that a substantial portion of the Wild Dunes renourishment has drifted south and instead of attaching to the southern side of the island (as anticipated by the engineers) briefly stopped here before attaching itself to Sullivans . Therefore, a long-term dredging project must be initiated immediately. We are told this is essential to a long-term solution but **permitting could take up to a year. We urge council to address this permitting issue immediately.**

Finally, we were informed by the City Administrator that the cost to maintain this public beach and reestablish the dunes and coastline would be the responsibility of ocean front homeowners. For all the reasons explained above, this is neither legal nor enforceable. A group of us were therefore forced to hire representation in the form of Ross Appel. While our name appears on the letter to Council since one of my companies has the engagement, several residents (including non-ocean front owners) are supportive of and participating in this effort. We restricted the size of the group for now to not slow down decision making. Others supporting the representation currently are the Kays, Vanderhams, Jorgensens, Solomons, Gandolfo's, Steins, Teresa Charles and Mislocks. Of course, all of us want a litigated solution to be the last option as it does not help this community but believe it is in our interest to have Mr. Appel guide us toward a negotiated solution as soon as possible. Thank you for your consideration and look forward to a positive vote to use beach nourishment funds immediately to solve this emergency.
Regards,
Renee and Rom Reddy

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

EXHIBIT D

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

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Healthy People. Healthy Communities.

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.

The State of South Carolina
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[1] S.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

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EXHIBIT C

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June 30, 2023

SEE SPECIAL CONDITION(S)

City of Isle of Palms
c/o Douglas Kerr
P.O. Drawer 508
Isle of Palms, SC 29451

9171 7199 9991 7030 0132 0855

Re: OCRM04706—GP-SMD-17 for Minor Beach Renourishment at Breach Inlet, Isle of Palms SC

Dear Mr. Kerr:

The Office of Ocean and Coastal Resource Management (the Department) has reviewed your application to perform minor beach renourishment at Breach Inlet, Isle of Palms, Charleston County, South Carolina and has issued a permit for this work. You should carefully read the description of the authorized project and special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and **return it to this Department. Keep the photocopy for your records.**

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, OR appealed within 15 days as described on the enclosed "Guide to Board Review", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Guide to Board Review" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required. Please return the signed permit to the following address:

Office of Ocean and Coastal Resource Management
1362 McMillan Ave, Suite 400
Charleston, SC 29405

Sincerely,

McKenzie O'Connor
Project Manager
Beachfront Management Section

The State of South Carolina
FILED
FEB 26 2024
Administrative Law Court

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

dhec
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SEE SPECIAL CONDITION(S)

July 26, 2023

City of Isle of Palms
c/o Douglas Kerr
P.O. Box 508
Isle of Palms, SC 29451

9L 7199 9991 7030 0132 1326

Re: OCRM04742

Dear Mr. Kerr:

The Office of Ocean and Coastal Resource Management (the Department) has reviewed your application to perform minor beach renourishment at 404 Ocean Blvd through 522 Ocean Blvd, Isle of Palms, Charleston County, South Carolina and has issued a permit for this work. You should carefully read the description of the authorized project and special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and **return it to this Department. Keep the photocopy for your records.**

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, OR appealed within 15 days as described on the enclosed "Guide to Board Review", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Guide to Board Review" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required. Please return the signed permit to the following address:

Office of Ocean and Coastal Resource Management
1362 McMillan Ave, Suite 400
Charleston, SC 29405

Sincerely,

McKenzie O'Connor
Project Manager
Beachfront Management Section

EXHIBIT E

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

ELECTRONICALLY FILED - 2024 Mar 29 12:19 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1001681

romreddy@gmail.com

From: Douglas Kerr <dkerr@iop.net>
Sent: Monday, December 18, 2023 12:23 PM
To: romreddy@gmail.com
Cc: Desiree Fragoso
Subject: RE: [EXTERNAL] Permit

Rom- this is a directive from OCRM that the SC Statute prohibits scraping or trucking in front of erosion control devices. Their staff is evaluating the beach in your area either this afternoon or tomorrow morning and they are going to advise us on how to proceed and what can be done that would not violate the SC Code. I will follow up with you and Karl and let you know what they say once we hear their determination.

Thanks, Douglas

Douglas Kerr
Deputy City Administrator
Director of Building, Planning and Licensing City of Isle of Palms P.O. Drawer 508 Isle of Palms, SC 29451
(p) 843-886-6428
(f) 843-886-8005

*** WARNING *** All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA).

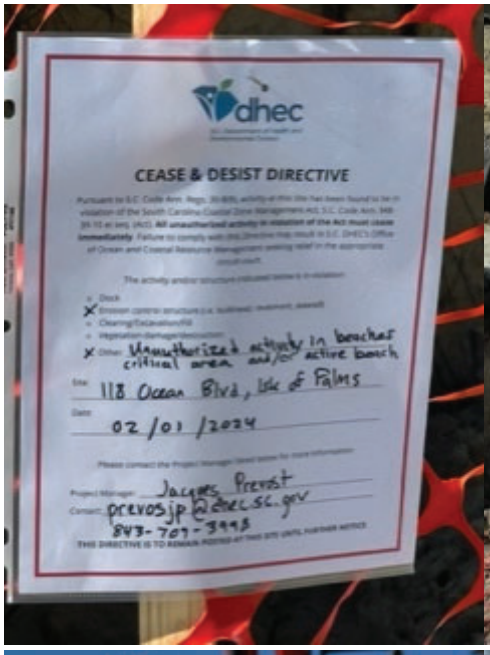
-----Original Message-----
From: romreddy@gmail.com <romreddy@gmail.com>
Sent: Monday, December 18, 2023 12:16 PM
To: Douglas Kerr <dkerr@iop.net>
Cc: Desiree Fragoso <desireef@iop.net>
Subject: [EXTERNAL] Permit

*** [EXTERNAL] ***

Doug, in order to redeem this disaster in the beach, I asked Karl Rakes at Blue Tide to clean up the mess in my yard from various washed out docks and the debris on the beach and then put in half a million cubic yards of sand at my expense to stem further destruction. He said he discussed with you and you refused to give him a permit saying i had a solid structure and you were " not going to let Rom do anything". Can you please respond to me on what basis you denied a permit to put beach compatible sand down in my yard well south of any set back lines. Are u saying u will skip having any dunes in front of 118 because that would cause the integrity of the entire dune system to be breached ? What is your intent in denying a permit that would add sand to a disastrous beach situation.
Rom Reddy





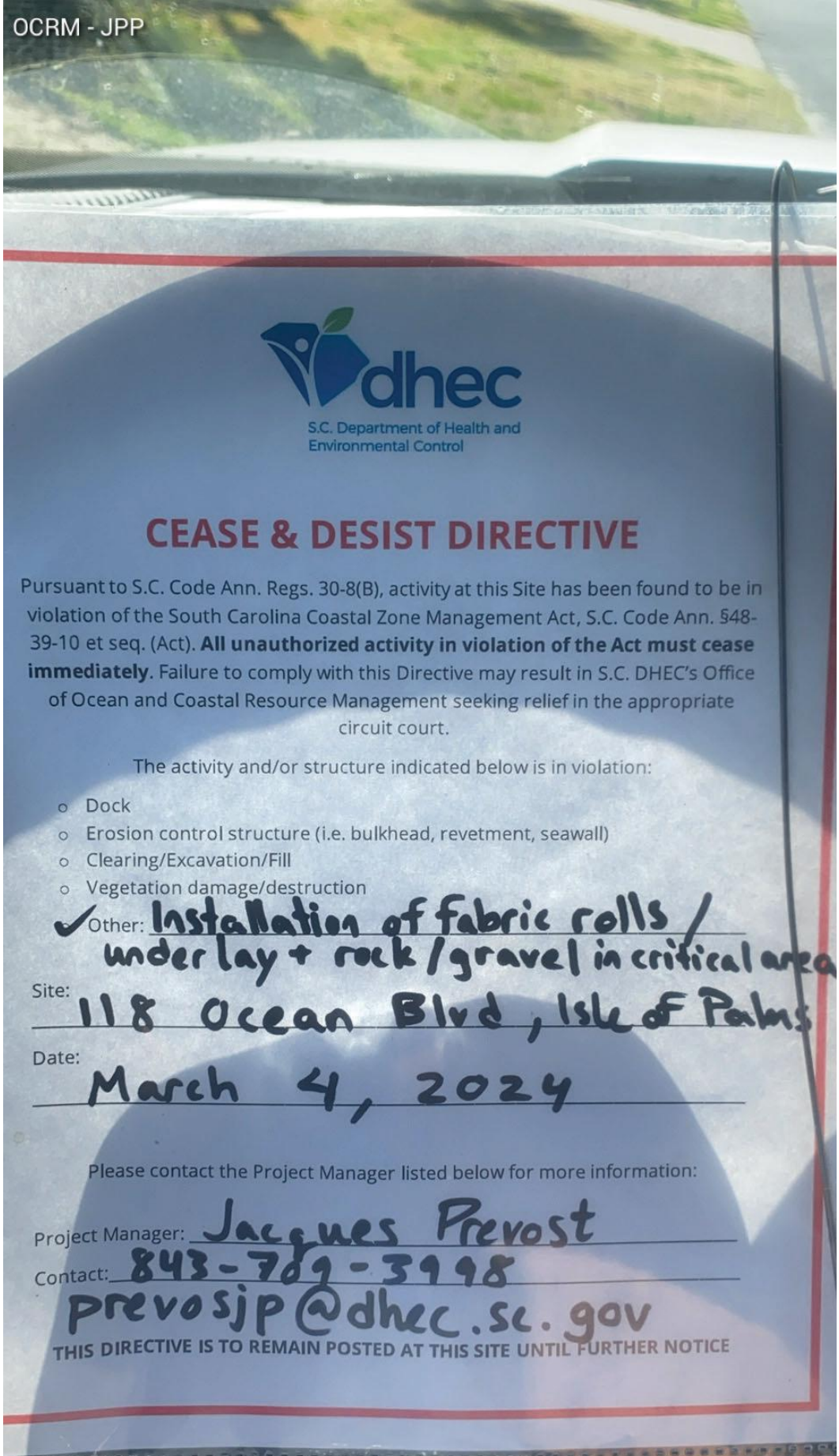

dhec
CEASE & DESIST DIRECTIVE
X Unauthorized activity in beaches critical area and/or active beach
118 Ocean Blvd, Isle of Palms
02/01/2024
Jacques Prevost
prevosjp@dhec.sc.gov
843-709-3993




dhec
CEASE & DESIST DIRECTIVE
118 Ocean Blvd, Isle of Palms
02/01/2024
Jacques Prevost
prevosjp@dhec.sc.gov
843-709-3993



Joint Ex 003



dhec
S.C. Department of Health and Environmental Control

CEASE & DESIST DIRECTIVE

Pursuant to S.C. Code Ann. Regs. 30-8(B), activity at this Site has been found to be in violation of the South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-10 et seq. (Act). **All unauthorized activity in violation of the Act must cease immediately**. Failure to comply with this Directive may result in S.C. DHEC's Office of Ocean and Coastal Resource Management seeking relief in the appropriate circuit court.

The activity and/or structure indicated below is in violation:

- ○ Dock
- ○ Erosion control structure (i.e. bulkhead, revetment, seawall)
- ○ Clearing/Excavation/Fill
- ○ Vegetation damage/destruction
- ✓ Other: Installation of fabric rolls / underlay + rock / gravel in critical area

Site: 118 Ocean Blvd, Isle of Palms

Date: March 4, 2024

Please contact the Project Manager listed below for more information:

Project Manager: Jacques Prevost

Contact: 843-789-3998

prevosjp@dhec.sc.gov

THIS DIRECTIVE IS TO REMAIN POSTED AT THIS SITE UNTIL FURTHER NOTICE

dhec
Healthy People. Healthy Communities.

October 20, 2023

CERTIFIED MAIL ARTICLE NO.: 91 7199 9991 7030 0132 3450

Rom L. Reddy
118 Ocean Blvd
Isle of Palms, SC 29451

Re: NOTICE TO COMPLY AI-0007507
Unauthorized Utilization/Alteration of Critical Area

Dear Mr. Reddy,

On October 4, 2023, staff of the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) became aware of non-beach compatible fill and materials placed on active beach and/or beaches critical area at your property located on and adjacent to the Atlantic Ocean at 118 Ocean Boulevard, Isle of Palms, Charleston County, SC (PID 5680900155) (Site). On October 5 & 6, 2023, Department staff conducted inspections at the Site. During the Site inspections, and as part of staff's review of Site conditions, the following was confirmed to have been placed on active beach and/or beaches critical area without authorization from the Department and contrary to the Department's express instruction to you during an on-site meeting at your property on September 11, 2023:

- Approximately 1,255 square foot area of non-beach compatible fill and other materials (including clay, gravel/rock, artificial turf grass, metal fencing, filter fabric, geogrid and timber)
- Marine debris resulting from tidal and wave interaction with the non-beach compatible fill and materials

The South Carolina Coastal Tidelands and Wetlands Act (Act) and Coastal Division Regulations (Regulations) require that any utilization/alteration of the critical area be permitted or otherwise legally authorized by the Department prior to performing the activity.[1] The Act and Regulations define beaches as lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established,[2] and active beach is defined as the area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, as measured from the ocean.[3] By way of this notice, the Department is asserting violations of the Act. In order to be in compliance with the Act and Regulations, you must remove the non-beach compatible fill and other materials, in their entirety, from the active beach and/or beaches critical area.

[1] S.C. Code Ann. §48-39-130(A) & S.C. Code Ann. Regs. 30-2(B)
[2] S.C. Code Ann. §48-39-10(H)
[3] S.C. Code Ann. §48-39-270(13) & S.C. Code Ann. Regs. 30-1(D)(2)

Joint Ex 004

Please be advised that adding sand to the critical areas through a coordinated minor beach renourishment and dune vegetation project to build a stabilized, vegetated dune at the Site may possibly result in Site conditions changing significantly enough such that areas within the Site may no longer be considered active beach and/or beaches critical area. Authorization for these types of activities may be pursued by submitting an administratively complete General Permit application to the Department.

Please contact me at (843) 709-3998 or prevosjp@dhec.sc.gov so that we can work to resolve this matter through the compliance assistance process. Failure to comply with this directive within 30 days of your receipt of this letter may result in an enforcement action being initiated by the Department which can include the assessment of civil penalties.[4] Thank you for your cooperation and I look forward to hearing from you regarding the resolution of this matter.

Respectfully,

Jacques Prevost
Compliance Project Manager
Office of Ocean and Coastal Resource Management

ec: Ross Appel, Esq., McCullough Khan, LLC, ross@mklawsc.com
Desiree Fragoso, City Administrator, Isle of Palms, desiree@iop.net
Douglas Kerr, Deputy Administrator, Isle of Palms, dkerr@iop.net

[4] S.C. Code Ann. §48-39-170

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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.

[1] S.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

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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.

[1] S.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

dhec
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CEASE AND DESIST DIRECTIVE

CERTIFIED MAIL ARTICLE NO. 91 7199 9991 7030 0132 5096

February 2, 2024

CNT Foundations LLC
c/o Christopher T. Bedson, Registered Agent
3362 Navajo Street
Charleston, SC 29405

RE: Unauthorized Activity

Dear Mr. Bedson,

On February 1, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) staff conducted an inspection at property located on and adjacent to the Atlantic Ocean at 118 Ocean Blvd, Isle of Palms, Charleston County, SC (PID 5680900155) (Site). As a result of this inspection, Department staff concluded that there were unauthorized activities occurring in the beaches critical area and/or on active beach 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. The Department has determined that CNT Foundations LLC was the contractor conducting this work 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 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.

[1] S.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: CNT Foundations LLC, Info@yourfoundationexperts.com

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

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CEASE AND DESIST DIRECTIVE

VIA EMAIL: JSTEWART@FINKELLAW.COM; CKRAWCZYK@FINKELLAW.COM

March 1, 2024

Rom L. Reddy
c/o Johnny J. Stewart, Jr., Esq. and Charles Krawczk, Esq.
118 Ocean Blvd
Isle of Palms, SC 29451

RE: Unauthorized Activity

Dear Mr. Reddy,

Previously on January 25, 2024 and February 2, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) issued Cease and Desist Directives to you for unauthorized activities in the beaches critical area and/or on active beach at 118 Ocean Blvd, Isle of Palms, Charleston County, SC (PID 5680900155) (Site). These Cease and Desist Directives 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. On February 29, 2024, the Department received notification that unauthorized activities had not ceased at the Site and, as a result, Department staff conducted an inspection that same day. As a result of the February 29, 2024 inspection, Department staff confirmed that unauthorized activities continued to occur in the critical area at the Site. These observed activities included, but are not limited to, installation of fabric rolls/underlay and rock/gravel landward of the erosion control structure in the beaches critical area.

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 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.

[1] S.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
Desirée Fragoso, City Administrator, City of Isle of Palms

WILLIAMS MULLEN

Ethan R. Ware, Esquire
Direct Dial: 803.567.4610
eware@williamsmullen.com

SETTLEMENT DISCUSSIONS ONLY
NOT ADMISSIBLE UNDER SCRE408

June 7, 2024

Sallie P. Phelan, Esquire
Assistant General Counsel
SC Department of Health and Environmental Control
1362 McMillan Avenue
Suite 400
Charleston, South Carolina 29405

RE: Notice of Alleged Violation/Admissions Letter
Enforcement Action No. AI-000-8331 (May 24, 2024)
Mr. and Mrs. Reddy
118 Ocean Boulevard
Isle of Palms, Charleston County, South Carolina

Dear Ms. Phelan:

As you may recall, we have been retained to assist Mr. and Mrs. Reddy ("Reddy's") respond to the Notice of Alleged Violation/Admissions Letter, Enforcement Action No. AI-000-8331 ("NOV") issued by the South Carolina Department of Health and Environmental Control ("Department") dated May 24, 2024. We are writing to provide information requested by the NOV in an effort to resolve this matter without the costs and expense of litigation.

The NOV is issued to the Reddy's for alleged violations of the Coastal Tidelands and Wetlands Act, S.C. Code Ann. 48-39-10 to 360 ("Act"). Your cover letter requests the Reddy's review allegations in the NOV and admit or deny the allegations; we understand the response by the Reddy's will be used as admissions of law in a pending unilateral order to be issued by the Department. The NOV also requests the Reddy's attend an enforcement hearing on June 4, 2024, which the Reddy's could not attend.

We are enclosing a proposed response to the alleged findings of fact and conclusions of law included with the NOV. As you can see, we have evaluated each finding of fact and conclusion of law in the NOV Admissions Letter. Where the Reddy's deny or lack sufficient information to admit a finding of fact or conclusion of law, the allegation is deleted by "strike-out." If an informal resolution can be reached for the alleged violations, the Reddy's agree to not contest those findings of fact and conclusions of law not deleted in the attached redline document. Much of the confusion in the draft NOV as written by the Department is caused by use of terms and conditions not in applicable law and regulations.

Joint Ex 009
ROA 003329BCM Reddy 016897

SETTLEMENT DISCUSSIONS ONLY
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As discussed with you June 1, 2024, neither the Reddy's nor our law firm was available for an enforcement hearing on June 4, 2024. The Reddy's request their right to an enforcement hearing under Department procedures be preserved. Due to scheduled trips, the Reddy's will not be available until after June 31, 2024, for the enforcement hearing, however, so please provide a time for the hearing after that date. We ask any unilateral order or consent agreement be held in abeyance pending the scheduled hearing.[1]

It is the objective of any enforcement action to properly interpret and apply the laws of the State of South Carolina. Our edits to the NOV properly apply the law and facts in this matter. We are happy to review the law and facts with you in anticipation of the enforcement hearing and in an effort to resolve this matter short of the costs and expense of litigation.

Sincerely,

Ethan R. Ware

ERW/kmr
Enclosure: As referenced.

[1] We realize there are multiple actions involving the disputed facts and law in the NOV in the Administrative Law Court and Circuit Courts of the State. The parties are not prejudiced by holding the enforcement hearing scheduled at a time convenient to all parties.

NOT ADMISSIBLE UNDER SCRE408
JUNE 7, 2024

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

IN RE: ROM L. REDDY
RENEE REDDY
PID 5680900155
CHARLESTON COUNTY

NOTICE OF ALLEGED VIOLATION/ADMISSION LETTER
AI-0008331

ROM L. REDDY and RENEE REDDY are HEREBY NOTIFIED that an enforcement conference has been scheduled for Tuesday, June 4, 2024 at 9:00 a.m. at the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management, 1362 McMillan Avenue, Suite 400, Charleston, South Carolina. Mr. and Mrs. Reddy have the opportunity to be present at this conference to discuss alleged violations of the South Carolina Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10, *et seq.*, *as amended*, cited herein.

Mr. and Mrs. Reddy may attend the conference either virtually and/or by phone and may be accompanied at the conference by legal counsel. If Mr. and Mrs. Reddy are unable to attend the scheduled enforcement conference, they may be represented by their legal counsel. The enforcement process, including Enforcement Orders, may be discussed. Mr. and Mrs. Reddy may also waive the conference and the Department will continue with the enforcement process.

Mr. and Mrs. Reddy deny those findings of fact and conclusions of law not expressly admitted herein. Allegations and conclusions for which Mr. and Mrs. Reddy expressly deny or lack sufficient information to admit are subject to strike-out in this document. Because the Department has given legal terms inaccurate, incomplete, or erroneous definitions and meaning, the remaining findings of fact and conclusions of law are denied.

This Notice of Alleged Violation/Admission Letter is based upon the following findings of the Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department" or "DHEC OCRM"):

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.~~

~~2. Department staff's review of CONNECTExplorer™ Pictometry© aerial imagery and Google Earth Pro™ aerial imagery, indicates that b~~

~~3.~~ Between January 10, 2019 and February 15, 2019, the Reddys graded the landscape landward of the Department's active beach 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.~~3. 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~~. The City of Isle of Palms ("City") received Department General Permit #OCRM04706 on June 30, 2023, which authorized ~~minor~~ beach renourishment from 100 to 402 Ocean Boulevard. Since this authorization included the Site, the Department cancelled Mr. Reddy's May 22, 2023 application ~~submission was~~

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withdrawn without his knowledge.

5. Photographs taken by the 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.

6.4. On June 9, 2023, Matt Slagel (Department Beachfront Management Section Manager) met with Mrs. Reddy and other Isle of Palms property owners to discuss allowable options for protecting their properties from ongoing erosion.

7.5. On August 30, 2023, the South Carolina coast was impacted by Tropical Storm Idalia.

8. On September 1, 2023, Department staff conducted field work to collect the extent of landward erosion within the unstabilized inlet erosion zone[1] 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.

6.

9.7. 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 from unidentified sources that they may be intending to perform beachfront activities landward of the setback line at the Site without any Department review or authorization. Mr. Slagel further advised that he believed without citing to legal authority 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."

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~~10.~~8. 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.

~~11.~~9. 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.,

[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."

Department Assistant General Counsel, sent an email to Mr. Appel notifying him of her planned attendance at this scheduled meeting.

~~12.~~ 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 made claims about~~discussed~~ the Department's alleged authority in both the Beach/Dune System ~~and Beaches~~ and Critical Areas but not as to permitting under the Beach Management Act. ~~After observing Site conditions,~~ Mr. Slagel informed the Reddys and Mr. Appel that in his opinion and interpretation of applicable law and regulations 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 required a separate permit from ~~and~~permitting requirements prescribed by the Beach Management Act, which he acknowledged do not apply. ~~within the Department's direct critical area permitting authority.~~ Mr. Slagel stated that any fill material covered by this "critical area permit" would need to be beach-compatible and would need to be properly reviewed and authorized by the Department. Mr. Reddy and his legal counsel asserted that the area in question is not within Department jurisdiction because it is construction 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 dry sand beach devoid of vegetation.~~

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Commented [WE2]: There is no geological term "Beaches Critical Area" in statutes or regulations. We believe you mean to use the term "critical area."

10. After the Site visit, Mr. Slagel memorialized this discussion in a follow-up email sent 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. Mr. Slagel did not explain why the Department had unilaterally cancelled the Critical Area General Permit application filed by Mr. Reddy for this work.

~~13.~~11. 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 and in accordance with his prior application.

NOT ADMISSIBLE UNDER SCRE408
JUNE 7, 2024

~~14.~~12. 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. Mr. Reddy was advised the City would perform this work.

~~15.~~13. 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] At no time did Mr. Slagel measure the distance between the erosion and habitable structures.

~~16.~~14. On October 4, 2023, Department staff stated without providing evidence or support that it was~~were~~ made aware of the placement of non-beach- compatible fill and materials in the ~~Beaches~~ Critical Area at and adjacent to the Site landward of the setback line, in contravention to the Department's direction to the Reddys and its contractor but not in contravention of the Beach Management Act permitting program. Photographs provided at that time depict filter fabric, timber, plastic mesh/geogrid, metal fencing, artificial turf grass, clay and gravel/rock in the ~~that was placed in the Beaches~~ Critical Area, but landward of the setback line [Attachment A]. The photographs also depict clay balls and gravel/rock at the same location ~~that had been entrained by tidal waters and deposited as scattered marine debris along the beach~~.

~~17.~~15. 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 but landward of the setback line ~~without Department authorization~~. Mr. Prevost also observed wood and clay marine debris ~~from the unauthorized activities at the Site~~landward of the setback line. 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.

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After comparing this data to ~~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 [Attachment B] but landward of the setback line.

[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."

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JUNE 7, 2024

~~18.~~16. 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. p~~Photographs were taken during ~~this~~yet another a Site inspection.

~~19. 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.~~

~~20.~~17. ~~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.

Commented [WE3]: It is not clear this information is accurate, but at best it is not necessary to the conclusions of law.

~~21.~~18. 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 alleged jurisdiction over ~~Beaches~~ beaches in a Critical Area, which is otherwise not subject to permitting under the Beach Management Act,[1] ~~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 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

[1] S.C. Code Ann. 48-39-260 to 290, 360; S.C. Code Ann. Regs. 30-21.H(3)

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JUNE 7, 2024

would be to set

[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.

up a conference with the Department staff so that they could show Mr. Abney and Mr. Smith the photographs and answer any questions.

~~22.~~19. 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 electronic copies of photographs and data presented during the meeting~~this information~~.

~~23.~~ On November 14, 2023, representatives of the Department ~~South Carolina Department of Health and Environmental Control ("DHEC")~~ conducted another 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 but could not determine by who or when the mounds were placed there. ~~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, all of which was landward of the setback line. ~~from the Reddys' unauthorized construction embedded within the sand on the active beach.~~

20.

~~24. 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.~~

~~25.~~ On December 6, 2023, Mr. Prevost conducted yet another ~~a~~ Site inspection and took photographs that depict large mounds of sand placed seaward of the non-beach-compatible fill materials at the Site but could not determine by who or when the mounds were placed there, all of which was landward of the setback line. ~~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.~~

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21.

~~26.~~22. 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 asserted that the Coastal Zone Management Act has two permitting schemes: one permit is required for anyone that may "utilize critical areas" (S.C. Code Ann. 48-39-130) and another perimt for "construction" on a beach seaward of the setback lines (S.C. Code Ann. 48-39-290). The Department acknowledged Mr. and Mrs. Reddy's alleged conduct did not require a permit under the Beach Management Act in S.C. Code Ann. 48-39-290 because it is all landward of the setback line.

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~~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~~, which is not otherwise prohibited by the Beach Management Act.

~~27.~~23. 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 but landward of the setback line.

~~28.~~24. 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.

~~29.~~25. 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 without notice and without permission from Mr. or Mrs. Reddy. 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~~but not within the permitting jurisdiction of the Department under the Beach Management Act. ~~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~~.

~~30.~~26. 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 she believed ~~that the~~ recently discovered ~~erosion control~~ structure and other non-beach-compatible materials at the Site are within the Department's permitting jurisdiction for utilization of "critical areas" 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 that were landward of the setback line.

~~31.~~27. 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 landward of the setback line with an 8.5 LF wingwall on the eastern end and an 8 LF wingwall on the western end of the structure landward of the setback line [Attachment C]. ~~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, but not seaward of the setback line.

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…".

~~32.~~28. 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 acknowledged construction of a structure landward of the setback line under the Beach Management Act does not require a permit. 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.

~~33.~~29. On December 28, 2023, Mr. Prevost conducted an unannounced Site inspection without notice and without permission from Mr. or Mrs. Reddy 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 all landward of the setback line. 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 but also landward of the setback line.

30. 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…" landward of the setback line. 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.

~~34.~~31. Neither the Department staff nor Ms. Phelan admitted, however, the existing work did not violate Department regulations, which state "[t]he Coastal Council's permitting

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jurisdiction on beaches is determined by the location of the setback line" and not the critical area. S.C. Code Ann. Regs. 30-21.H (3). Without that explanation, Mr. Reddy and his legal counsel were left without clarification as to the exact permitting program the Department intended to enforce.

~~35. 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.~~

~~36. 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.~~

~~37.~~32. On January 10, 2024, this matter was referred to enforcement for further Department action.

~~38.~~33. On January 11, 2024, Mr. Prevost conducted a Site inspection without notice and without permission from Mr. or Mrs. Reddy. 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 but still landward of the setback line. 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, all of which was not landward of the setback line. Riprap was visible at the seaward base and concrete wingwalls and plywood wingwall extensions of the ~~erosion control~~ structure landward of the setback line. Tarps and plastic sheeting were also observed to have been placed atop fill materials landward of the ~~erosion control~~ structure and setback line. ~~in an apparent attempt to further protect those materials.~~ Photographs were taken during this inspection.

~~39.~~34. ~~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 without further clarification 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, but which Ms. Phelan admitted is not a violation of the Beach Management Act.

~~40.~~35. 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.

~~41.~~36. 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, which was landward of the setback line. Subsequently, Mr. Prevost conducted an inspection after issuing notice of enforcement and without notification in violation of Department enforcement procedures ~~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 but landward of the setback line. ~~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 setback line and ~~erosion control~~ structure. Riprap and clay materials/debris were observed in the ~~Beaches~~ Critical Area on the seaward side of the

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~~erosion control~~ structure, including the wingwalls but landward of the setback line.

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~~ believed to be within its 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; Ms. Phelan and the Department admit all of these features are landward of the setback line.~~,~~ 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 even though it was landward of the setback line. Mr. Abney confirmed receipt of the January Directive via an email reply on January 26, 2024. The January Directive does not allege the structures violate the Beach Management Act. ~~,~~

42.37. On January 29, 2024, Mr. Prevost conducted another Site inspection after issuing notice of enforcement and without notification in violation of Department and used a GNSS unit to collect location data for the metal screw piles installed seaward of the erosion control structure landward of the setback line and to also collect updated location data for the the erosion control structure. During this inspection, Mr. Prevost found that unauthorized alterations of the critical area at the Site continued to occur but no construction was seaward of the setback line. He documented that a Bobcat skid steer located seaward of the unauthorized erosion control sstructure at the Site but landward of the setback line was actively installing metal screw piles on the landward side of the erosion control structure and landward of the setback line, 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 and setback line 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 but landward of the setback line. 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 landward of the setback line. 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.

43. 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

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~~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."~~

~~44.~~38. 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 landward of the setback line. Later that day, OCRM received a second report that the Reddys' contractors had placed rebar and were pouring concrete at the Site landward of the setback line.

~~45.~~39. On February 1, 2024, Mr. Prevost conducted an inspection at the Site after initiating enforcement and without notice in violation of Department procedures. Upon arrival, he observed contractors actively working with a large excavator to remove and relocate materials landward of the setback line and ~~erosion control~~ structure and setting screws on wooden form supports landward of the setback line. Shortly after his arrival, active construction stopped and did not resume for the remainder of the inspection. Upon entering into Mr. Reddy's private property, 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 but landward of the setback line. During his inspection on Mr. Reddy's property~~.~~ Mr. Prevost additionally observed tidal waters reaching and interacting with the erosion control structure. Near the center of the ~~erosion control~~ structure Mr. Provost observed~~:~~ from Mr. Reddy's property 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 but landward of the setback line cease.~~.~~

~~46.~~40. In 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 12:45PM, Ms. Flake entered Mr. Reddy's property and conducted a Site visit without notice after initiating enforcement in violation of Department procedures 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 setback line and ~~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 but landward of setback line 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 landward of the setback line and 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—all landward of the setback line. 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 but landward of the setback line.

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 Shrivastava-Patel; DHEC Board Member Sonny Kinney; DHEC Director Dr. 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 but at no time was the Department able to identify any construction seaward of the setback line at Mr. Reddy's property.

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47.41. 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 setback line and unauthorized ~~erosion control~~ structure. The February Directive directed Mr. Reddy to immediately cease and desist all work in the ~~Beaches C~~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.~~

48.42. 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.

49.43. 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 but landward of the setback line.

~~50.~~44. ~~On February 8, 2024, the Department received a report regarding the Reddys' construction of wingwalls on the erosion control structure at the Site~~.

~~51.~~45. On February 9, 2024, the Department filed a Petition for Injunctive Relief and Motion for TRO and Preliminary Injunction 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.

~~52.~~46. On February 13, 2024, Mr. Prevost conducted an inspection at the Site after initiating enforcement without notice and in violation of Department procedures. ~~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 landward of the setback line and was now located immediately seaward of a new, unauthorized concrete erosion control structure that was also landward of the setback line [Attachment D]. The new landward erosion control structure was shore-parallel with wingwalls extending landward at the east and west ends of the Site and the setback line~~.~~ 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 C~~Critical Area at and/or adjacent to the Site but landward of the setback line. Photographs were taken during this inspection.

~~53.~~47. 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

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Stewart" of Finkel Law Firm LLC.

~~54.~~48. On February 21, 2024, Mr. Prevost conducted a Site inspection after initiating enforcement and without notice in violation of Department procedures. 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, which is landward of the setback line. Mr. Reddy disputes whether the access pathway is interrupted or restricted.

~~55.~~49. ~~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~~.

~~56.~~50. 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 after initiating enforcement and without notice in violation of Department procedures 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 but landward of the setback line. 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 well landward of the setback line.

~~57.~~51. 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 back yard of the Reddy residence and not in an active

beachthe 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.

58. On March 4, 2024, Mr. Prevost conducted a Site inspection after initiating enforcement and without notice in violation of Department procedures and observed contractors actively installing fabric rolls/underlay and artificial turf grass landward of the unauthorized erosion control structures in the Beaches Critical Areaand landward of the setback line. 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."

52.

Mr. Prevost posted Cease and Desist Directives at the Site that same day.

Formatted: List Paragraph, Justified, Indent: Left: 0.83", Hanging: 0.25", Right: 0.18", Space Before: 3.95 pt, Line spacing: 1.5 lines, Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 0.83" + Indent at: 1.05", Tab stops: 1.08", Left

59.53. 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.

60. 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. 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."

61.54. On April 3, 2024, Mr. Prevost conducted a Site inspection after initiating enforcement and without notice in violation of Department procedures 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 landward of the setback line. The tops of the metal screw piles located on the seaward side of the original/seaward erosion control structure but landward of the setback line were visible. Exposed wooden forms on the outside/seaward side of the new erosion control structure were visible and separated from the concrete but landward of the setback line. 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 landward of the setback line. The area landward and within the bounds of the ~~erosion control~~ structure was fully covered in artificial turf grass and landscaping landward of the setback line. 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.

Based on the above findings, it appears that Rom L. Reddy and Renee Reddy have violated:

1. **The South Carolina Coastal Tidelands and Wetlands 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, 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 yd^3 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 Tidelands and Wetlands 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.~~1. **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.~~2. **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.~~3. **Emergency Order 23-EO-11, Requirement #9**, required that contractors performing work be in direct contact with the SC DNR 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.[4]

~~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.~~

NOT ADMISSIBLE UNDER SCRE408
JUNE 7, 2024

[4] Sea Turtle nesting season occurs annually in South Carolina from May 1 through October 31.

~~7.~~4. **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 shall cease the unauthorized activity. Specifically, Mr. and Mrs. Reddy failed to follow the Cease and Desist Directive issued in January 2024.

~~8.~~5.**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 shall cease the unauthorized activity. Specifically, Mr. and Mrs. Reddy failed to follow the Cease and Desist Directive issued in February 2024.

~~9.~~6.**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 shall cease the unauthorized activity. Specifically, Mr. and Mrs. Reddy failed to follow the Cease and Desist Directive issued in March 2024.

Be advised that:

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.

S.C. Code Ann. §48-39-120(C), *as amended*, provides the Department the authority to remove all erosion control structures which have an adverse effect on the public interest.

S.C. Code Ann. §48-39-130(A), *as amended*, requires that ninety days after July 1, 1977, no person shall utilize a critical area for a use other than the use the critical area was devoted to on such date without first obtaining a permit from the Department.

S.C. Code Ann. §48-39-130(C), *as amended*, requires that ninety days after July 1, 1977, 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. §48-39-160, *as amended*, provides that the Department may complete restoration of the affected critical area at the expense of the person altering the area in which case suit for recovery of the amount so expended may be brought in any court having jurisdiction to restrain a violation.

S.C. Code Ann. §48-39-170(C), *as amended*, 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 provides that the Department may bring a civil enforcement action, as well as seek appropriate injunctive relief under §48-39-160.

S.C. Code Ann. §48-39-170(C), *as amended*, also provides that any person determined by the Department to be in violation 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.

S.C. Code Ann. Regs. 30-8(F), *as amended*, directs the Department to issue an Admission Letter setting forth all facts and grounds for violation and further allows the responsible party to send the Department their version of the facts within fifteen (15) days from receipt of the Admission Letter.

YOU ARE NOTIFIED that this Notice of Alleged Violation/Admission Letter is being issued, along with the enclosed Findings of Fact, which have been drafted after an investigation by

Department staff. S.C. Code Ann. Regs. 30-8(F)(2), *as amended,* provides that the responsible party must either admit these facts or send the Department their version of the facts. **Any additional facts that you deem pertinent may be submitted in writing to 1362 McMillan Ave., Suite 400, Charleston, SC 29405 within fifteen (15) days of receipt of this Notice of Alleged Violation/Admission Letter.** A failure to respond will result in a conclusion by the Department that you admit the truth of these facts.

YOU ARE FURTHER NOTIFIED that your failure to attend the scheduled conference will likely result in the issuance of an Administrative Order without your consent. Such an Order may contain the above findings as findings of fact and will likely impose monetary penalties.

This Notice of Alleged Violation/Admission Letter is made pursuant to S.C. Code Ann. §48- 39-170, *as amended,* and S.C. Code Ann. Regs. 30-8, *as amended,* which authorize the Department to issue orders and assess civil penalties.

dhec
Healthy People. Healthy Communities.

May 22, 2024

CERTIFIED MAIL ARTICLE NO. 91 7199 9991 7030 0132 6727

Rom and Renee Reddy
c/o Charles Krawczyk, Esq. and Johnny J. Stewart, Jr., Esq.
Finkel Law Firm LLC
4000 Faber Place Drive
Suite 450
North Charleston, SC 29405

Re: **NOTICE OF ALLEGED VIOLATION/ADMISSION LETTER**
Enforcement Action **AI-0008331**
118 Ocean Boulevard, Isle of Palms, SC
Charleston County

Mr. and Mrs. Reddy:

Enclosed, please find a Notice of Alleged Violation/Admission Letter. Please be advised that an enforcement conference has been scheduled for **TUESDAY, JUNE 4, 2024 at 9:00AM Eastern Standard Time** at the Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) located at 1362 McMillan Avenue, Suite 400, North Charleston, SC 29405.

You may attend the conference in person, virtually and/or by phone and may be accompanied at the conference by legal counsel. If you are unable to attend the scheduled enforcement conference, you may be represented by legal counsel. The conference will provide the named party and the Department the opportunity to discuss the alleged violations and enforcement process, including Enforcement Orders. You may also waive the conference and the Department will continue with the enforcement process. Please contact Sallie Phelan at phelansp@dhec.sc.gov or (843) 953-0229 to discuss how you would like to proceed in this matter.

Respectfully,

Morgan H. Flake
Manager, Compliance and Enforcement Section
Office of Ocean and Coastal Resource Management

Enclosure (1)

Joint Ex 010

VIA EMAIL: CKRAWCZYK@FINKELLAW.COM; JSTEWART@FINKELLAW.COM

May 22, 2024

Rom and Renee Reddy
c/o Charles Krawczyk, Esq. and Johnny J. Stewart, Jr., Esq.

Re: **NOTICE OF ALLEGED VIOLATION/ADMISSION LETTER**
Enforcement Action **AI-0008331**
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Respectfully,

Morgan H. Flake
Manager, Compliance and Enforcement Section
Office of Ocean and Coastal Resource Management

Enclosure (1)

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

IN RE: ROM L. REDDY
RENEE REDDY
PID 5680900155
CHARLESTON COUNTY

NOTICE OF ALLEGED VIOLATION/ADMISSION LETTER
AI-0008331

ROM L. REDDY and RENEE REDDY are HEREBY NOTIFIED that an enforcement conference has been scheduled for Tuesday, June 4, 2024 at 9:00 a.m. at the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management, 1362 McMillan Avenue, Suite 400, Charleston, South Carolina. Mr. and Mrs. Reddy have the opportunity to be present at this conference to discuss alleged violations of the South Carolina Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10, *et seq*., *as amended*, cited herein.

Mr. and Mrs. Reddy may attend the conference either virtually and/or by phone and may be accompanied at the conference by legal counsel. If Mr. and Mrs. Reddy are unable to attend the scheduled enforcement conference, they may be represented by their legal counsel. The enforcement process, including Enforcement Orders, may be discussed. Mr. and Mrs. Reddy may also waive the conference and the Department will continue with the enforcement process.

This Notice of Alleged Violation/Admission Letter is based upon the following findings of the Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department" or "DHEC OCRM"):

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. The City of Isle of Palms ("City") received Department General Permit #OCRM04706 on June 30, 2023, 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.

5. Photographs taken by the 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) met with Mrs. Reddy and other Isle of Palms property owners to discuss allowable options for protecting their properties from ongoing erosion.

7. On August 30, 2023, the South Carolina coast was impacted by Tropical Storm Idalia.

8. On September 1, 2023, Department staff conducted field work to collect the extent of landward erosion within the unstabilized inlet erosion zone[1] 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.

9. 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."

10. 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.

11. 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.,

[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."

Department Assistant General Counsel, sent an email to Mr. Appel notifying him of her planned attendance at this scheduled meeting.

12. 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 dry sand beach devoid of vegetation.

    After the Site visit, Mr. Slagel memorialized this discussion in a follow-up email sent 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.

13. 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.

14. 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.

15. 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]

16. 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 [Attachment A]. 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.

17. 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.

    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 [Attachment B].

[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."

18. 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.

19. 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.

20. 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.

21. 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 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

[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.

up a conference with the Department staff so that they could show Mr. Abney and Mr. Smith the photographs and answer any questions.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 [Attachment C]. 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…".

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. On January 10, 2024, this matter was referred to enforcement for further Department action.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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. 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.

43. 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."

44. 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.

45. 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.

46. In 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 12:45PM, 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 Shrivastava-Patel; DHEC Board Member Sonny Kinney; DHEC Director Dr. 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.

47. 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.

48. 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.

49. 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.

50. On February 8, 2024, the Department received a report regarding the Reddys' construction of wingwalls on the erosion control structure at the Site.

51. On February 9, 2024, the Department filed a Petition for Injunctive Relief and Motion for TRO and Preliminary Injunction 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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. 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."

61. 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.

Based on the above findings, it appears that Rom L. Reddy and Renee Reddy have violated:

1. **The South Carolina Coastal Tidelands and Wetlands 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, 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 yd^3 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 Tidelands and Wetlands 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 SC DNR 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.[4]

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.

[4] Sea Turtle nesting season occurs annually in South Carolina from May 1 through October 31.

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 shall 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 shall 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 shall cease the unauthorized activity. Specifically, Mr. and Mrs. Reddy failed to follow the Cease and Desist Directive issued in March 2024.

Be advised that:

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.

S.C. Code Ann. §48-39-120(C), *as amended*, provides the Department the authority to remove all erosion control structures which have an adverse effect on the public interest.

S.C. Code Ann. §48-39-130(A), *as amended*, requires that ninety days after July 1, 1977, no person shall utilize a critical area for a use other than the use the critical area was devoted to on such date without first obtaining a permit from the Department.

S.C. Code Ann. §48-39-130(C), *as amended*, requires that ninety days after July 1, 1977, 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. §48-39-160, *as amended*, provides that the Department may complete restoration of the affected critical area at the expense of the person altering the area in which case suit for recovery of the amount so expended may be brought in any court having jurisdiction to restrain a violation.

S.C. Code Ann. §48-39-170(C), *as amended*, 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 provides that the Department may bring a civil enforcement action, as well as seek appropriate injunctive relief under §48-39-160.

S.C. Code Ann. §48-39-170(C), *as amended*, also provides that any person determined by the Department to be in violation 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.

S.C. Code Ann. Regs. 30-8(F), *as amended*, directs the Department to issue an Admission Letter setting forth all facts and grounds for violation and further allows the responsible party to send the Department their version of the facts within fifteen (15) days from receipt of the Admission Letter.

YOU ARE NOTIFIED that this Notice of Alleged Violation/Admission Letter is being issued, along with the enclosed Findings of Fact, which have been drafted after an investigation by

Department staff. S.C. Code Ann. Regs. 30-8(F)(2), *as amended*, provides that the responsible party must either admit these facts or send the Department their version of the facts. **Any additional facts that you deem pertinent may be submitted in writing to 1362 McMillan Ave., Suite 400, Charleston, SC 29405 within fifteen (15) days of receipt of this Notice of Alleged Violation/Admission Letter.** A failure to respond will result in a conclusion by the Department that you admit the truth of these facts.

YOU ARE FURTHER NOTIFIED that your failure to attend the scheduled conference will likely result in the issuance of an Administrative Order without your consent. Such an Order may contain the above findings as findings of fact and will likely impose monetary penalties.

This Notice of Alleged Violation/Admission Letter is made pursuant to S.C. Code Ann. §48-39-170, *as amended*, and S.C. Code Ann. Regs. 30-8, *as amended*, which authorize the Department to issue orders and assess civil penalties.

May 22, 2024

Morgan H. Flake
Manager, Compliance and Enforcement Section
Office of Ocean and Coastal Resource Management

ROA 003391 BCM Reddy 002296

Attachment A




N
Attachment B
Legend
Escarpment/Vegetation Line: September 1, 2023
Survey Points: October 5, 2023
Edge of Non-Beach Compatible Fill: October 5, 2023
Area: ~1255 sq. ft.
0
10
20
40 Feet
ROA 003393
BCM Reddy 002298
Imagery collected in 2020 by Kucera International. Imagery is managed by Adam DeMars, South Carolina State GIS Coordinator and hosted by ESRI.

Attachment C



Attachment C



Attachment D



Attachment D



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)
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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:

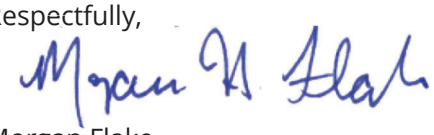
Enclosed, you will find a certified true copy of Administrative Order AF-0000960 (Order) regarding unauthorized activities in the Beaches Critical Area. This Order was signed by the South Carolina Department of Environmental Services' Interim Director on July 1, 2024.

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.

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,



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 zone[1] 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. Krawcyzk, 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 conference[4] 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 yd^3 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 — **Date:** 7-1-2024

Myra C. Reece
Interim Director, SCDES

Christopher Stout — **Date:** July 1, 2024

Christopher Stout
Chief

Morgan F. Flake — **Date:** July 1, 2024

Morgan Flake, Manager
Compliance and Enforcement Section

Reviewed By:

Sallie P. Phelan — **Date:** July 1, 2024

Sallie P. Phelan, Attorney
Office of General Counsel

Re: Request for Emergency order

Rom Reddy <romreddy@sprinturf.com>

Wed 5/31/2023 8:13 AM

To:O'Connor, McKenzie R. <oconnomr@dhec.sc.gov>;Slagel, Matt <slagelmj@dhec.sc.gov>;Renee Reddy <reddyrenee@gmail.com>

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Good morning. Per your request, the ad in the PC starts today and PC will provide us an affadavit. We will also get the certified copies to the 2 neighbors this week. We got back in the US last night to realize we have zero dunes left. Hopefully, we can expedite the permit once the 15 day comment period ends. Most of the debris has been removed with the help of the city as it was a safety hazard. We have talked to Murray sand and they are to meet us this week. We continue to be concerned that the root cause is not addressed. Like the situation at pawley island, our erosion started when massive quantities of sand were pumped ashore on the wild dunes side
Rom
Sent via BlackBerry Hub+ Inbox for Android

From: oconnomr@dhec.sc.gov
Sent: May 24, 2023 3:10 PM
To: romreddy@sprinturf.com; slagelmj@dhec.sc.gov; reddyrenee@gmail.com
Subject: Re: Request for Emergency order

WARNING: This email originated from the Internet. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Mr. Reddy,

Mr. Slagel has assigned your recent permit application to me for review. There are a few additional submission details that are still needed. At your convenience, please provide:

- Information relating to the source of the sand you intend to use and the beach access point that will allow for trucks or other equipment to get to the properties. Additionally, an approximate quantity of sand is needed. You can estimate the volume of sand or number of dump truck loads with the help of your chosen sand provider.
- The scope of work needs to include the possible removal of any debris from the site in conjunction with sand placement.
- The General Permit application process includes notifying adjoining property owners on either side of the project area and the City of Isle of Palms via certified mail, and running a 1-day ad in the Post & Courier, which starts a 15-day public comment period. Once completed, please provide copies of the certified mail receipts along with the affidavit of publication from the newspaper.

Once this information is provided I will coordinate with the SC Department of Natural Resources and U.S. Fish & Wildlife Service regarding any site-specific concerns as Sea Turtle nesting season began on May 1st.

Sincerely,

McKenzie O'Connor
Project Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0692
Connect: www.scdhec.gov Facebook Twitter
DHEC Logo

From: Rom Reddy <romreddy@sprinturf.com>
Sent: Wednesday, May 24, 2023 12:03 PM
To: Slagel, Matt <slagelmj@dhec.sc.gov>; Renee Reddy <reddyrenee@gmail.com>
Cc: O'Connor, McKenzie R. <oconnomr@dhec.sc.gov>
Subject: Re: Request for Emergency order

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
Matt, we have applied for the renourishment permit as you suggested. We got a confirmation back that said you were the assigned contact. As u know, we have zero dunes and no protection and would like to get this permit expedited. I understand that 116 ocean has also applied and we have notified 120 as well. Please let us know what else we need to do.
Regards,
Rom

Sent via BlackBerry Hub+ Inbox for Android

From: slagelmj@dhec.sc.gov
Sent: May 22, 2023 11:05 AM
To: romreddy@sprinturf.com; reddyrenee@gmail.com
Cc: oconnomr@dhec.sc.gov
Subject: Re: Request for Emergency order

WARNING: This email originated from the Internet. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Reddy,

Hopefully new sand would remain in place for some period of time if sufficient sand is placed and with lower predicted high tides. Sand scraping lowers the beach elevations and can actually allow tidal and wave action to reach areas higher on the shoreface (closer to your property). That's one of the reasons that the regulations allow sand scraping only when erosion is within 20 feet of a habitable structure. The City of Isle of Palms or its coastal engineering consultants might have some additional information about erosion in this area.

Thanks,
Matt

--
Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter
DHEC Logo

From: Rom Reddy <romreddy@sprinturf.com>
Sent: Monday, May 22, 2023 9:43 AM
To: Slagel, Matt <slagelmj@dhec.sc.gov>; Renee Reddy <reddyrenee@gmail.com>
Cc: O'Connor, McKenzie R. <oconnomr@dhec.sc.gov>
Subject: Re: Request for Emergency order

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Matt, thanks for your quick response. Given that u all know more about this than we do, if we trucked in sand with no scraping, would the new sand not just wash back out in a few days. Since the water is now coming up to the property at high tide, short of some scraping, not sure how the physics would work. We are happy to listen to all suggestions from anyone who has experienced this before --- a 100 Percent destruction of the dune.
Rom

Sent via BlackBerry Hub+ Inbox for Android

From: slagelmj@dhec.sc.gov
Sent: May 22, 2023 9:32 AM
To: reddyrenee@gmail.com; romreddy@sprinturf.com
Cc: oconnomr@dhec.sc.gov
Subject: Re: Request for Emergency order

WARNING: This email originated from the Internet. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. and Mrs. Reddy,

The eligibility requirements for emergency orders can be found in the Department's Critical Area Permitting Regulations at S.C. Code Ann. Regs. 30-15.H: https://www.scstatehouse.gov/coderegs/Chapter%2030.pdf

Regarding sand scraping, R.30-15.H(4) states: "Sand scraping may be used to construct temporary protection if the Department or local official determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48-39-10(U)." R.30-15.H above states: "A structure is determined to be in imminent danger when the erosion comes within twenty feet of that structure."

In this case, using the seaward edge of the putting green as a rough measurement, the habitable structure is approximately 60 feet from erosion, as shown on the attached Google Earth aerial photo.

While you are currently not eligible to receive an emergency order for sand scraping, you can apply for a General Permit from my office for minor beach renourishment whereby you could truck-in beach-compatible sand from an inland sand mine to restore the dune. Murray Sand has done this type of work on Isle of Palms, and there are likely other sand suppliers in the area as well: https://murraysandcompany.com/

A General Permit application would need to specify the source of the sand you intend to use and the beach access point that will allow for trucks or other equipment to get to the site. Since sea turtle nesting season began on May 1st, my office will also need to coordinate with the SC Department of Natural Resources and U.S. Fish & Wildlife Service regarding any site-specific concerns. If neighboring properties are similarly situated, you could work together on a coordinated application submittal and dune restoration project. The scope of work would need to include the removal of any debris from the site in conjunction with sand placement. The General Permit application process includes submitting an application, notifying adjoining property owners on either side of the project area and the City of Isle of Palms via certified mail, and running a 1-day ad in the Post & Courier, which starts a 15-day public comment period. The attached application packet further explains the process, and it is preferred to apply through our online ePermitting portal: https://scdhec.gov/environment/ePermitting

Thanks,
Matt

--
Matt Slagel
Manager, Beachfront Management Section

Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter
DHEC Logo

From: Renee Reddy <reddyrenee@gmail.com>
Sent: Saturday, May 20, 2023 7:09 AM
To: Slagel, Matt <slagelmj@dhec.sc.gov>
Cc: Rom Reddy <romreddy@sprinturf.com>
Subject: Request for Emergency order

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Matt,

We would like to request an emergency permit to allow us to conduct renourishment and sand scraping to repair/replace the dunes that were completely eroded during the recent high tides and the storm on 5/18/2023 I have attached pictures showing the damage. We are very concerned that our property and home have no protection from the dunes and they are clearly at risk. We are the homeowners of 118 Ocean Blvd, Isle of Palms, SC 29451,

Sincerely,

Renee and Rom Reddy


ROA 003433
BCM Reddy 016938







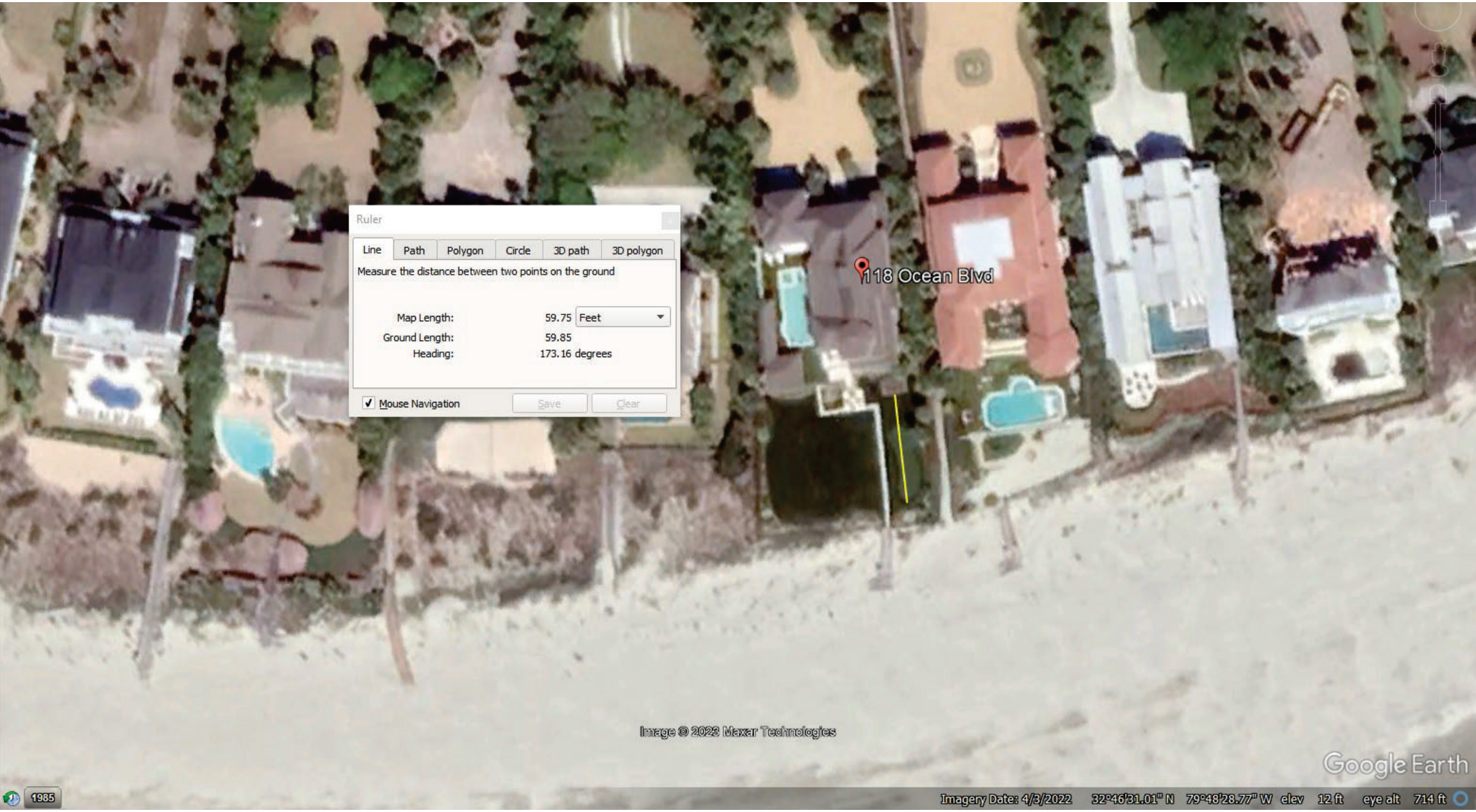











Ruler
Line
Path
Polygon
Circle
3D path
3D polygon
Measure the distance between two points on the ground
Map Length: 59.75 Feet
Ground Length: 59.85
Heading: 173.16 degrees
Mouse Navigation
Save
Clear
118 Ocean Blvd
Image © 2023 Maxar Technologies
Google Earth
1985
Imagery Date: 4/3/2022 32°46'31.01" N 79°48'28.77" W elev 12 ft eye alt 714 ft

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

GENERAL PERMIT APPLICATION



May 2008

This application package is to be used for certain activities (listed herein) in the OCRM Critical Areas within the eight coastal counties, which are:
Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper Counties.

ROA 003443 BCM Reddy 016948

PROCEDURES FOR APPLYING FOR A GENERAL PERMIT:

1.) Complete the attached application.

2) Applicants must notify adjacent property owners within 100 feet of the subject property and the local governing body by certified mail of the proposed project (For the dock general permit, the applicant must notify all adjacent property owners as described in the critical area regulations). Further, for all general application submittals, a public notice must be placed in a newspaper published in the county where the proposed activity is taking place. Proof of publication (notarized affidavit from the newspaper with notice attached) must be forwarded to OCRM before processing can be completed on the application. **It is advised that both notice periods on the certified mailing and the newspaper notice be finished prior to application submittal to OCRM to ensure an efficient review. The permit cannot be issued until the comment period has expired.**

The applicant must use the following format for notification to adjacent property owners and for the newspaper ad:

(Applicant) has applied to the SCDHEC-OCRM for a General Permit to **(description of activity)** at **(address or legal description of property and water body)** in (**City and County)**. Comments on this application must be submitted to OCRM at: 1362 McMillan Avenue, Suite 400, Charleston, S. C. 29405 by **(insert date 10 days after date of certified mailing, 15 days for beachfront activities).**
If applying through a field office, please use the following:
Beaufort address: 104 Parker Drive, Beaufort, S. C. 29906
Myrtle Beach address: 927 Shine Drive, Myrtle Beach, S. C. 29577
Note: This ad must run in the newspaper for one day with the appropriate comment time inserted.

The original certified mail receipts must be submitted to OCRM with the General Permit application package **(Please Note: applicants for the mariculture, soil boring and dune vegetation (GP-06-DV) general permits do not need to notify/submit certified mail receipts for adjacent property owners or local governments.) [Further Note:** For Beachfront GP's, OCRM may at its discretion, require drawings which show the proposed work as well as a survey showing baseline, minimum setback line and 40 year setback line.]

3) Drawings depicting the general location and activity of any of the activities under any general permit must be submitted. Further, drawings submitted for the dock general permit must be computer generated and must depict all relevant information needed for OCRM to act accordingly as directed by current regulations.

4.) The applicant must receive a Construction Placard from OCRM upon issuance of the General Permit before work can commence.

5.) The work must be performed within one year of permit issuance or authorization is void.

6.) All special conditions of the particular General Permit must be complied with. The applicant should ensure all required information has been furnished. The permit will not be issued until all provisions have been fulfilled. The applicant's signature on the information page denotes acceptance and compliance with all permit provisions.

7.) A $100 Administrative Fee is required for the **Dock Additions GP** and must be submitted with the application.

The following is a list of General Permits available for Tideland Critical Areas of the Coastal Zone:

GP-94-001: Special Events

GP-96-001: Directional boring for utilities

GP-00-02: Mariculture

GP-84-264: Soil Borings

GP-03-001: Authorizes the following additions to existing, grandfathered, or previously permitted private docks, both single and joint use and does not conflict with OCRM Regulations: Catwalks 3' wide to existing boatlifts, roofs on existing pierheads (as precedent in the area dictates), handrails, utilities, benches, storage boxes, sinks, and mooring piles. **(NOTE: the dock general permit does not apply to adding boatlifts or making additions that increase the overall square footage of the structure, or for adding floating jet docks (or other similar structures as determined by OCRM). All drawings submitted under this GP must be computer generated.**

The following is a list of General Permits available for the Beach Dune System adjacent to the Atlantic Ocean.

GP-90-A: Installation or repair of underground and overhead water, sewer, gas, electrical, telephone, and cable service lines.

GP-90-B: Drainage Structures.

GP-90-C: Landscaping and/or fill for landscaping.

GP-90-D: Fences, lighting, trash receptacles (dumpsters, etc.), sidewalks, and signs.

GP-90-E: non-attached decks.

GP-90-F: Sand fences, minor beach renourishment, dune revegetation.

GP-90-G: Construction and reconstruction of drives and parking lots.

GP-06-DV Dune vegetation

GENERAL PERMIT APPLICATION

S. C. Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

Charleston	Beaufort	Myrtle Beach
(843)953-0200	(843)846-9400	(843)238-4528
(843)953-0201(fax)	(843)846-9810(fax)	(843)238-4526(fax)

NAME AND MAILING ADDRESS OF APPLICANT:

_____

_____

_____

_____

PHONE #: (Bus.) _____

(Home) _____

(Fax) _____

NAME AND MAILING ADDRESS OF AUTHORIZED AGENT:
(If an agent is listed, all correspondence will be sent to the agent.)

_____

_____

_____

_____

PHONE #: (Bus.) _____

(Home) _____

(Fax) _____

DESCRIBE THE DIMENSIONS, GENERAL SPECIFICATIONS, AND PURPOSE OF THE PROJECT:

_____

_____

_____

_____

TAX MAP NUMBER: _____

LOCATION OF THE PROJECT (Address and directions to the site):

_____

_____

_____

_____ COUNTY: _____

LOCAL GOVERNING BODY WITH JURISDICTION OVER SITE: _____

NAME OF WATERWAY: _____

ROA 003446 BCM Reddy 016951

GENERAL PERMIT APPLICATION

S. C. Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

Charleston	Beaufort	Myrtle Beach
(843)953-0200	(843)846-9400	(843)238-4528
(843)953-0201(fax)	(843)846-9810(fax)	(843)238-4526(fax)

IS ANY PORTION OF ACTIVITY FOR WHICH AUTHORIZATION IS SOUGHT NOW COMPLETE?

YES ☐ NO ☐

IF "YES", GIVE REASONS, INCLUDING THE MONTH AND YEAR ACTIVITY WAS COMPLETED. INDICATE EXISTING WORK ON DRAWINGS.

APPLICATION IS HEREBY MADE FOR A PERMIT OR PERMITS TO AUTHORIZE THE ACTIVITIES DESCRIBED HEREIN. I CERTIFY THAT I AM FAMILIAR WITH THE INFORMATION CONTAINED IN THIS APPLICATION, AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF SUCH INFORMATION IS TRUE, COMPLETE, AND ACCURATE. I FURTHER CERTIFY THAT I POSSESS THE AUTHORITY TO UNDERTAKE THE PROPOSED ACTIVITIES OR I AM ACTING AS THE DULY AUTHORIZED AGENT OF THE APPLICANT.

Signature of Applicant — Date

Signature of Agent (if agent has been listed) — Date

IMPORTANT!! THE APPLICATION MUST BE SIGNED BY THE APPLICANT AND THE AUTHORIZED AGENT (IF AN AGENT HAS BEEN LISTED ON PAGE ONE OF THIS APPLICATION).

The applicant shall permit the SCDHEC Office of Ocean and Coastal Resource Management, the District Engineer, the State Law Enforcement Division, South Carolina Department of Natural Resources, and other State permit inspection agencies, or their representative(s) to make periodic inspection at any time deemed necessary in order to assure that the activity being performed is in accordance with the terms and conditions prescribed herein.

Re: Request for Emergency order

Slagel, Matt <Matt.Slagel@des.sc.gov>

Tue 8/29/2023 2:18 PM

To:Rom Reddy <romreddy@sprinturf.com>

1 attachments (238 KB)

EO requirements and flowchart_A1and2.pdf;

Mr. Reddy,

There are specific requirements for the use of sandbags under a DHEC OCRM emergency order. Please see the information below and attached, which further explains DHEC OCRM's emergency order requirements and bonding process associated with sandbags. If you decide to request an emergency order for sandbags, you will need to submit a written request via email with your contact information, current site photographs, sketches showing the footprint and cross-section of proposed sandbags, the dimensions and type of sandbag that is proposed, the inland sand mine that will be used to fill the bags, and an estimate for the number of sandbags that would be placed.

As background, changes to the process for emergency orders were approved during the 2016 legislative session. These changes to the process for emergency orders were included in S.C. Code of Laws Section 48-39-130(D)(1) and S.C. Code of Regulations Chapter 30 (see attachment). Specifically, the revised language related to emergency orders for the installation of sandbags includes a bonding requirement and additional standards for the use of sandbags. A house must be within 20 feet of erosion to qualify for an emergency order. Among other requirements for sandbags, they must be temporary (not a permanent structure), the size of each bag is limited to one cubic yard, the bags may be placed no farther seaward than necessary to protect the house, the bags cannot be covered with sand, the sandbag revetment is limited to six feet above grade, sandbag fill material must be from an upland source and compatible in grain size and color with the native beach sand, and the property owner is responsible for day-to-day maintenance. Additionally, any installed sandbags would need to be removed before or during a beach renourishment project. If an acceptable plan for beach renourishment is not submitted within 120 days of the issuance of an emergency order, all sandbags would need to be removed at the owner's expense.

To ensure sandbags are not abandoned, recipients of emergency orders for the installation of sandbags are required to provide a bond to reasonably estimate and cover the cost of removal. Within 15 days of receipt of an issued emergency order, the property owner must provide the Department with three written quotes that reasonably estimate the cost of the removal of all sandbags under the order. Based on these quotes, the Department will determine the amount of the required bond and notify the property owner of the amount of the bond to be secured. The property owner must obtain the bond and provide a copy to the Department within 30 days of the notification.

Thanks,
Matt

--
Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter

From: Rom Reddy <romreddy@sprinturf.com>
Sent: Tuesday, August 29, 2023 1:48 PM
To: Slagel, Matt <slagelmj@dhec.sc.gov>
Subject: RE: Request for Emergency order

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
Matt, given that the City of IOP has not yet acted to restore the dune system and our property has no protection from the approaching storm, can we use sandbags to protect our property from what appears to be a combination of a hurricane and a king tide?
Rom Reddy
118 Ocean

From: Slagel, Matt <slagelmj@dhec.sc.gov>
Sent: Monday, May 22, 2023 9:32 AM
To: Renee Reddy <reddyrenee@gmail.com>; Rom Reddy <romreddy@sprinturf.com>
Cc: O'Connor, McKenzie R. <oconnomr@dhec.sc.gov>
Subject: Re: Request for Emergency order

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Mr. and Mrs. Reddy,

The eligibility requirements for emergency orders can be found in the Department's Critical Area Permitting Regulations at S.C. Code Ann. Regs. 30-15.H: https://www.scstatehouse.gov/coderegs/Chapter%2030.pdf

Regarding sand scraping, R.30-15.H(4) states: "Sand scraping may be used to construct temporary protection if the Department or local official determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48-39-10(U)." R.30-15.H above states: "A structure is determined to be in imminent danger when the erosion comes within twenty feet of that structure."

In this case, using the seaward edge of the putting green as a rough measurement, the habitable structure is approximately 60 feet from erosion, as shown on the attached Google Earth aerial photo.

While you are currently not eligible to receive an emergency order for sand scraping, you can apply for a General Permit from my office for minor beach renourishment whereby you could truck-in beach-compatible sand from an inland sand mine to restore the dune. Murray Sand has done this type of work on Isle of Palms, and there are likely other sand suppliers in the area as well: https://murraysandcompany.com/

A General Permit application would need to specify the source of the sand you intend to use and the beach access point that will allow for trucks or other equipment to get to the site. Since sea turtle nesting season began on May 1st, my office will also need to coordinate with the SC Department of Natural Resources and U.S. Fish & Wildlife Service regarding any site-specific concerns. If neighboring properties are similarly situated, you could work together on a coordinated application submittal and dune restoration project. The scope of work would need to include the removal of any debris from the site in conjunction with sand placement. The General

Permit application process includes submitting an application, notifying adjoining property owners on either side of the project area and the City of Isle of Palms via certified mail, and running a 1-day ad in the Post & Courier, which starts a 15-day public comment period. The attached application packet further explains the process, and it is preferred to apply through our online ePermitting portal: https://scdhec.gov/environment/ePermitting

Thanks,
Matt

--

Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter



From: Renee Reddy <reddyrenee@gmail.com>
Sent: Saturday, May 20, 2023 7:09 AM
To: Slagel, Matt <slagelmj@dhec.sc.gov>
Cc: Rom Reddy <romreddy@sprinturf.com>
Subject: Request for Emergency order

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Matt,

We would like to request an emergency permit to allow us to conduct renourishment and sand scraping to repair/replace the dunes that were completely eroded during the recent high tides and the storm on 5/18/2023 I have attached pictures showing the damage. We are very concerned that our property and home have no protection from the dunes and they are clearly at risk. We are the homeowners of 118 Ocean Blvd, Isle of Palms, SC 29451,

Sincerely,

Renee and Rom Reddy

Attachment 1

S.C. Code of Laws §48-39-130(D)(1)

Section 48-39-130(D)(1) of the 1976 Code

"Section 48-39-130. (D)(1) The accomplishment of emergency orders of an appointed official of a county or municipality or of the State, acting to protect the public health and safety, upon notification to the department. However, with regard to the beach and dune critical area, the following techniques or a combination thereof, shall be used in accordance with guidelines provided by the department are allowed pursuant to this item:

(a) sandbags, provided that a bond is supplied to reasonably estimate and cover the cost of removal;
(b) sandscraping;
(c) renourishment;
(d) any other technology, methodology, or structure pursuant to Section 48-39-320(C), provided that:
  (i) the emergency order for use is only issued by the department; and
  (ii) a bond is supplied to reasonably estimate and cover the cost of removal; or
(e) a combination of these techniques."

S.C. Code of Regulations Chapter 30

R.30-1.D(20) definition of Emergency Orders:
(20) Emergency Orders - orders issued in response to an emergency as defined in Section 48-39-10(U), by the Department or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect the public health and safety. With regard to the beach/dune critical area, only the use of sandbags, sand scraping, renourishment, or a combination of them, in accordance with R.30-5 and R.30-15.H, is allowed pursuant to emergency orders.

R.30-5.A(1):
(1) The accomplishment of emergency orders issued by the Department or by an appointed official of a county or municipality or of the state acting to protect the public health and safety. With regard to the beach/dune critical area, only the use of sandbags, sand scraping, renourishment, or a combination of them is allowed, in accordance with R.30-5.B and R.30-15.H.

R.30-5.B:
B. Notification of Emergency Orders to the Department:

(1) As required in R.30-5.A(1) and R.30-15.H, emergency orders for sandbags, sand scraping or renourishment may be issued by an appointed official of a county or municipality or of the state provided:
  (a) the emergency conditions conform with the definition of emergency in Section 48-39-10(U);
  (b) the order is issued to protect health, safety or resources of the residents of the State as provided in Section 48-39-10(U); and
  (c) the order is issued in accordance with R.30-15.H.

(2) The Department must be notified of the issuance of an emergency order by an appointed official of a county or municipality or of the state. Notification to the Department must be made in writing prior to commencement of the activity, if possible, and must state the following:
  (a) the nature of the emergency;
  (b) the substance of the emergency order;
  (c) the time the order will be issued, or if circumstances preclude prior notice, when the order was issued;
  (d) the name of the local official executing the order and the authority under which that person is acting;
  (e) the location of the activity ordered;
  (f) the estimate of when such order shall be withdrawn.

(3) The Department shall be notified within seventy-two hours of the issuance of the emergency order. If the Department is not notified the official issuing such order or ordering such emergency action shall be in violation

of the Act and these rules and regulations. Within seventy-two hours after the issuance of the emergency order, the official ordering the emergency action shall put the elements under R.30-5.B(2)(a)-(f) in writing and file them with the Department.

(4) The official issuing the emergency order shall be deemed in violation of the Act if the emergency conditions do not conform with the definition of emergency in Section 48-39-10(U).

R.30-13.Q(1):

(1) Golf Courses are allowed seaward of the baseline because they can adjust to a changing shoreline more readily than other types of land uses. The use of sandbags is allowed as temporary protection for golf courses located seaward of the baseline if the golf course existed prior to May 24, 1991 and if the emergency condition conforms with the definition of emergency in Section 48-39-10(U), in accordance with R.30-15.H(1). Sand scraping or renourishment may be used as temporary protection for golf courses in accordance with R.30-15.H(4) and (5).

R.30-15.F(4):

(4) In determining whether or not a permit is contrary to the public health, safety or welfare, the Department shall consider:

(a) whether or not the proposed structure would be constructed on renourished beach;

(b) the erosion rate at the site;

(c) how soon the structure will be located on the active beach;

(d) whether or not the proposed structure meets American National Standards Institute building standards; and/or

(e) the potential cumulative effect that similar structures will have upon the beach/dune system.

R.30-15.H:

H. Emergency Orders: Emergency situations before or after a storm event may prompt the Department, or an appointed official of a county or municipality or of the state to issue emergency orders under R.30-5, allowing property owners to construct temporary barriers against wave uprush. A structure is determined to be in imminent danger when the erosion comes within twenty feet of that structure. In an effort to protect Loggerhead turtle nesting sites, emergency orders issued between April 15th and November 1st must be reviewed by the Department prior to actual performance of the activity authorized by the emergency order. The U.S. Army Corps of Engineers must be notified within seventy-two hours of the issuance of an emergency order by the Department if the Department issued the emergency order. If the emergency order is issued by an appointed official such notification must be accomplished by the issuing official. The property owner or other recipient of the emergency order must obtain any additional permit(s) and agency review(s) that may be required by other local, state or federal agencies. All required permits and reviews must be obtained prior to the commencement of work pursuant to the issued emergency order. Unless otherwise approved by the Department, emergency sandbagging, sand scraping and renourishment shall be performed using the criteria established in this section. The Department may apply any requirements under this section to any Department-approved technology that is authorized under an emergency order.

(1) Emergency orders for sandbags may be issued by the Department, or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect public health and safety. Sandbags shall only be used to construct temporary protection for existing habitable structures and critical infrastructure if the Department or appointed official determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48-39-10(U), or as allowed in R.30-13.Q(1). In this section, "critical infrastructure" shall mean utilities, roadways and associated infrastructure necessary to provide for public health and safety, communication, and transportation.

(2) Emergency orders for sandbags shall be subject to the following process:

(a) The Department or an appointed official of a county or municipality or of the state may issue emergency orders for areas specifically included under a state emergency declaration or at the request of a local government or property owner.

(b) Within one hundred twenty days of the issuance of an emergency order for sandbags, the property owner may provide the Department with evidence that their community has a feasible and financially viable renourishment plan for the affected area that is consistent with their approved Local Comprehensive Beachfront Management Plan.

(c) If the property owner has not provided the Department with an acceptable plan for renourishment within one hundred twenty days of the issuance of an emergency order for sandbags, then the emergency order shall expire at the end of the one hundred twentieth day, and the sandbags shall be removed at the property owner's expense.

(d) If the property owner's plan is acceptable and calls for renourishment, then a renourishment permit application shall be submitted to the Department within eighteen months of the issuance of the emergency order.

(i) If the Department approves the renourishment permit, sandbags shall be allowed to remain in place for up to twelve months after the permit is issued to allow sufficient time for the project to be completed, but must be removed at the property owner's expense prior to the placement of renourishment sand at the property, or at the end of the twelve month period, whichever occurs first.

(ii) If the Department denies the renourishment permit application, the sandbags shall be removed within ninety days of the final agency decision, including all appeals, at the property owner's expense.

(iii) If a renourishment permit application is not submitted to the Department within eighteen months of the issuance of the emergency order, the emergency order shall expire at the end of the eighteenth month, and the sandbags shall be removed at the property owner's expense.

(3) To maintain the temporary nature that is intended for the use of sandbags, the following criteria shall be used when issuing emergency orders for sandbags:

(a) The bags shall be commercially manufactured for the purpose of holding sand. Biodegradable bags may be required if deemed appropriate by the Department.

(b) The bags, when filled, shall be a maximum size of one cubic yard.

(c) The bags may be placed no farther seaward than is necessary to protect the existing habitable structure, critical infrastructure or golf course qualified under R.30-13.Q(1). In no case may sandbags be used to protect a dune. Sandbags may not retard normal shoreline movement unless used to protect an existing habitable structure, critical infrastructure or golf course qualified under R.30-13.Q(1).

(d) All sandbags are to be placed parallel to the shoreline. Excavation shall not be allowed below existing beach grade. The toe of the sandbags shall not be buried. At no time shall the sandbags be buried or covered with sand.

(e) Sandbags shall generally be limited to a maximum height of six feet above the beach. The sandbags shall be stacked at an angle no steeper than forty-five degrees.

(f) The Department may consider site specific engineering reports which will improve the effectiveness of sandbag placement for site specific situations.

(g) Sandbag fill material must be from an upland source and compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material. Only clean sand may be placed in the bags.

(h) The property owner is responsible for the day-to-day maintenance of the sandbags to ensure that they remain in the location authorized by the emergency order, above grade and in good repair. Failure to maintain the sandbags may result in the Department requiring the removal of the sandbags at the property owner's expense.

(i) A copy of the issued emergency order shall be in the possession of anyone performing the placement of sandbags.

(4) Emergency orders for sand scraping may be issued by the Department, or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect public health and safety. Sand scraping may be used to construct temporary protection if the Department or local official determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48-39-10(U). The following criteria shall be used when issuing emergency orders for sand scraping:

(a) Sand scraping may only be ordered and performed to protect existing structures. Sand scraping shall not be allowed in front of erosion control structures unless it can be proven that the erosion control structure is itself in danger of collapsing and is within ten feet of the habitable structure.

(b) Sand scraping may be used to provide temporary protection for golf courses pursuant to the requirements of this subsection.

(c) Sand may only be scraped from the intertidal beach and only between extended property lines of the structure receiving the sand. The depth of scraping may not exceed one foot below the existing beach level.

(d) Sand may be placed against an eroded scarp or to replace an eroded dune that is seaward of a threatened structure. The dune shall not exceed six feet above grade or twenty feet in width as measured from dune toe to dune toe.

(e) No sand may be placed landward of an existing, functional erosion control device.

(f) Sand scraping may be performed one time only per property for each emergency order issued by the local official without prior approval by the Department.

(g) A copy of the issued emergency order shall be in the possession of anyone performing sand scraping.

(h) Sand scraping activities shall generally be accomplished through private or local funding unless a state of emergency is declared, then state funding is not precluded.

(5) Emergency orders for renourishment may be issued by the Department, or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect public health and safety. Renourishment may be used to construct temporary protection if the Department or local official determines a structure to be in imminent danger and emergency conditions conform with the definition of emergency in Section 48-39-10(U). The following criteria shall be used when issuing emergency orders for renourishment:

(a) 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.

(b) Sand placed on the beach must be located between the extended property lines of the property receiving the sand.

(c) Sand may be stabilized with sand fencing and beach vegetation pursuant to the permitting requirements in R.30-13.L.

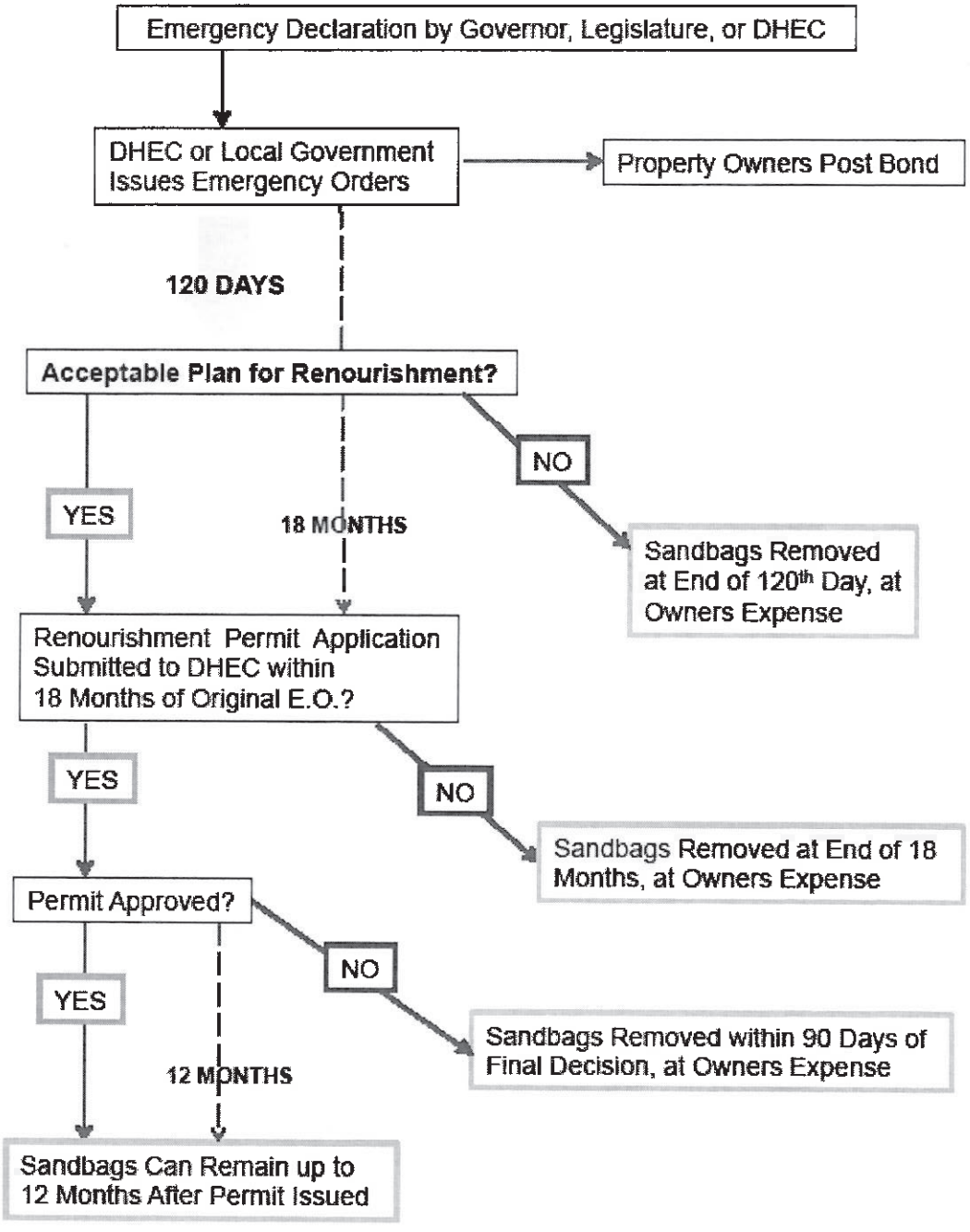
(d) A copy of the issued emergency order shall be in the possession of anyone performing authorized renourishment activities.

(e) Renourishment activities conducted under an emergency order may be used to provide temporary protection for golf courses pursuant to the requirements of this subsection.

(f) Renourishment activities conducted under an emergency order shall generally be accomplished through private or local funding unless a state of emergency is declared, then state funding is not precluded.

Attachment 2

Administrative Process for Issuance of Emergency Orders for Sandbags



June 2016

Healthy People. Healthy Communities.

September 7, 2023

Blu Tide Construction Co.
1038 Jenkins Rd., Suite 104
Charleston, SC 29407

Rom and Renee Reddy
118 Ocean Blvd.
Isle of Palms, SC 29451

Via Email: **blutidemarine@outlook.com**
romreddy@sprinturf.com
reddyrenee@gmail.com

Re: Beachfront Activities at 118 Ocean Blvd., Isle of Palms, Charleston County, SC

Dear Blu Tide Construction Co. and Mr. and Mrs. Reddy:

It has come to our attention that you may be intending to perform activities on the ocean side of the property located at 118 Ocean Blvd., Isle of Palms (PID 5680900155) within the State's critical areas without any review or authorization from the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department).

Please be 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 and may result in an enforcement action being initiated by the Department which can include the assessment of civil penalties.

Please call me at 843-953-0250 or email me at slagelmj@dhec.sc.gov if you have any questions.

Sincerely,

Matthew J. Slagel

Matthew J. Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management

Cc: Morgan Flake, DHEC OCRM Compliance & Enforcement Section Manager (flakemh@dhec.sc.gov)

Joint Ex 014

Outlook

Fw: 118 Ocean Blvd., Isle of Palms - Emergency Request

From Phelan, Sallie P. <phelansp@dhec.sc.gov>
Date Mon 9/11/2023 2:42 PM
To Ross Appel <ross@mklawsc.com>

Hi Ross-

Please see the below email from Matt Slagel. Feel free to call me if you would like to discuss any of this further.

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: Slagel, Matt <slagelmj@dhec.sc.gov>
Sent: Monday, September 11, 2023 2:26 PM
To: Phelan, Sallie P. <phelansp@dhec.sc.gov>
Subject: Re: 118 Ocean Blvd., Isle of Palms - Emergency Request

Sallie,

Please see the below email, if you would like to forward this information to Mr. Appel.

Mr. Appel,

Thank you for meeting with me and Sallie, your clients, and their contractors on the beach this morning at 118 Ocean Blvd., Isle of Palms. As we discussed, the beach/dune system critical area extends to the setback line, however this is only one of four critical areas over which the Office of Ocean and Coastal Resource Management (OCRM) has direct permitting authority. Based on existing site conditions at this property and others nearby, the area where clay is proposed to be placed is currently active beach and/or beaches critical area. S.C. Code Ann. Section 48-39-270(13) defines active beach 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. Section 48-39-10(H) defines beaches as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." -

https://www.scstatehouse.gov/code/t48c039.php Given the lack of vegetation in this area, it is subject to the S.C. Coastal Tidelands and Wetlands Act and within the Department's direct permitting jurisdiction. Therefore, any fill would need to be beach-compatible sand (not clay) and would need to be properly authorized by the Department.

As you know, the City of Isle of Palms is working in this area to scrape sand to build a protective berm/dune. Planting the dune with native vegetation species through a DHEC OCRM General Permit such that the plants and root structures become stable could possibly result in the area in question no longer being considered active beach or beaches critical area. Until that time, clay or other non-beach-compatible materials cannot be placed where proposed.

If your clients want to pursue a General Permit for minor beach renourishment, dune vegetation, and/or sand fencing, Department staff would be happy to discuss that process further. You inquired about the planting aspect specifically. OCRM is aware of two contractors that specialize in dune planting efforts: Coastal Transplants (https://www.coastaltransplants.com/) and EarthBalance (https://www.earthbalance.com/). There may be others. If you decide to submit a General Permit application, you may do so through our online ePermitting portal here: https://scdhec.gov/environment/ePermitting

Thanks,
Matt

--
Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter
DHEC Logo

From: Ross Appel <ross@mklawsc.com>
Sent: Monday, September 11, 2023 8:20 AM
To: Phelan, Sallie P. <phelansp@dhec.sc.gov>
Cc: Slagel, Matt <slagelmj@dhec.sc.gov>
Subject: Re: 118 Ocean Blvd., Isle of Palms - Emergency Request

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Confirmed. And likewise. Thanks!

Ross Appel
Attorney, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | D: (843) 937-9798 | F: (843) 937-0706
E: ross@mklawsc.com | W: www.mklawsc.com
A: 2036 eWall Street, Mount Pleasant, SC 29464

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CONTACT ME. THANK YOU.

From: Phelan, Sallie P. <phelansp@dhec.sc.gov>
Sent: Monday, September 11, 2023 8:17:09 AM
To: Ross Appel <ross@mklawsc.com>
Cc: Slagel, Matt <slagelmj@dhec.sc.gov>
Subject: Re: 118 Ocean Blvd., Isle of Palms - Emergency Request

Good Morning-

Matt and I are available to meet at 11:00 a.m. this morning. Please let your client know and we will see you all then. I am looking forward to meeting you.

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: Ross Appel <ross@mklawsc.com>
Sent: Sunday, September 10, 2023 4:50 PM
To: Phelan, Sallie P. <phelansp@dhec.sc.gov>
Cc: Slagel, Matt <slagelmj@dhec.sc.gov>
Subject: Re: 118 Ocean Blvd., Isle of Palms - Emergency Request

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Thank you. Let's touch base in the morning.

Emergency Order Process- Minor Renourishment, Sand Fencing, Dune Vegetation

Slagel, Matt <Matt.Slagel@des.sc.gov>
Tue 9/12/2023 1:35 PM
To:roddy25@outlook.com <roddy25@outlook.com>

1 attachments (1 MB)
Sand Fencing Diagram.pdf;

Roddy,

As discussed, you can submit an Emergency Order request for each property through our online ePermitting portal here: ePermitting | SCDHEC

Once in ePermitting, you would click on "Start a New Form", then "I want to start a new application", and then "OCRM Emergency Order Application"

The minor beach renourishment emergency order allows for the inclusion of sand fencing and dune vegetation plantings in the project. Sand fencing would need to be installed according to the attached diagram. Native salt tolerant grasses should be used for dune restoration projects: Sea Oats, American Beachgrass, and Bitter Panicum are examples. Additional plantings can be proposed as long as they are native salt tolerant, sand stabilizing perennial grasses.

Soil stabilizing native grasses should be spaced throughout the project area in staggered rows a maximum distance of 18 inches on center for four-inch wide root balls or smaller plugs, or up to 36 inches on center for one-gallon size planting units. Grass planting units should be planted a minimum of six inches deep with slow-release pelletized fertilizer in the planting holes. All planting units should be fertilized and watered-in at the time of installation.

Thanks,
Matt

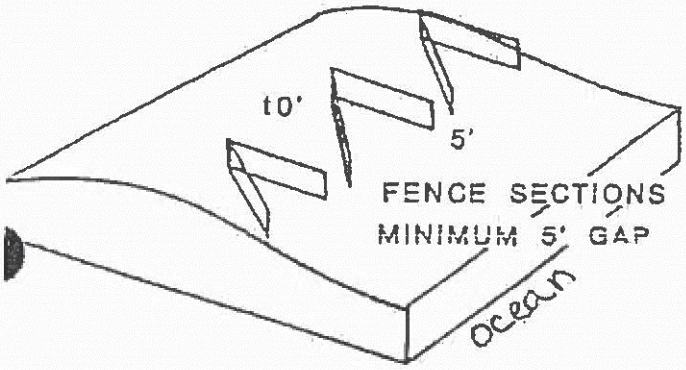
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Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter

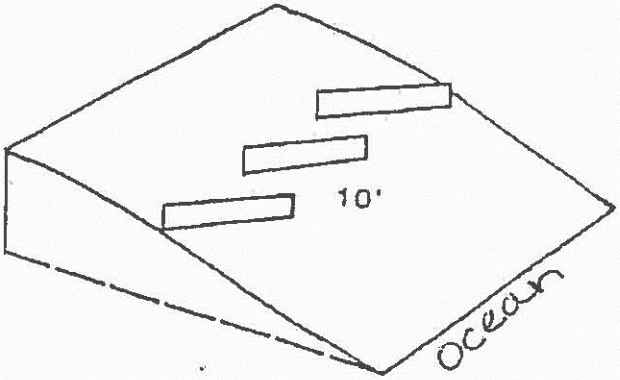


SAND FENCING

PERMITTED CONFIGURATIONS OF FENCE TO TRAP WIND-BLOWN SAND

NORMAL DUNE

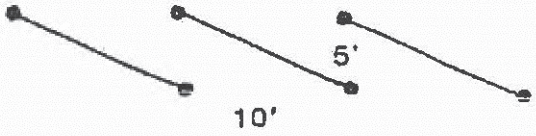




SECTION ANGLE MAY VARY
90 TO 140 DEGREES



PERMITTED VARIATION



Re: General Permit

Renee Reddy <reddyrenee@gmail.com>

Mon 9/18/2023 5:10 PM

To:Slagel, Matt <slagelmj@dhec.sc.gov>

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Great, thanks for the info and will share with the neighbors.

Renee

On Mon, Sep 18, 2023, 4:50 PM Slagel, Matt <slagelmj@dhec.sc.gov> wrote:

> Mrs. Reddy,
>
> Below is information I shared with Blu Tide following our site meeting last week. The City of IOP general permit and the recent emergency order for sand scraping did not include dune vegetation plantings. However, if you and other owners want to get together and request a separate emergency order for minor beach renourishment, that can include sand fencing and/or dune vegetation plantings as desired. The steps for submitting an emergency order request through our online ePermitting portal are below.
>
> Roddy,
>
> As discussed, you can submit an Emergency Order request for each property through our online ePermitting portal here: ePermitting | SCDHEC
>
> Once in ePermitting, you would click on "Start a New Form", then "I want to start a new application", and then "OCRM Emergency Order Application"
>
> The minor beach renourishment emergency order allows for the inclusion of sand fencing and dune vegetation plantings in the project. Sand fencing would need to be installed according to the attached diagram. Native salt tolerant grasses should be used for dune restoration projects: Sea Oats, American Beachgrass, and Bitter Panicum are examples. Additional plantings can be proposed as long as they are native salt tolerant, sand stabilizing perennial grasses.
>
> Soil stabilizing native grasses should be spaced throughout the project area in staggered rows a maximum distance of 18 inches on center for four-inch wide root balls or smaller plugs, or up to 36 inches on center for one-gallon size planting units. Grass planting units should be planted a minimum of six inches deep with slow-release pelletized fertilizer in the planting holes. All planting units should be fertilized and watered-in at the time of installation.
>
> Thanks,
> Matt
>
> --
> Matt Slagel
> Manager, Beachfront Management Section
> **Office of Ocean and Coastal Resource Management**
> **S.C. Dept. of Health & Environmental Control**
> Office: (843) 953-0250

Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter
DHEC Logo

From: Renee Reddy <reddyrenee@gmail.com>
Sent: Monday, September 18, 2023 10:47 AM
To: Slagel, Matt <slagelmj@dhec.sc.gov>
Subject: General Permit

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Matt,

Several neighbors are interested in planting the dunes with native vegetation species. Are we all still under the general permit issued to the city of IOP?

Best regards,

Renee

From:	Slagel, Matt
To:	Rom Reddy Renee Reddy
CC:	dkerr@iop.net "Desiree Fragoso" PateS@dnr.sc.gov
Date:	9/21/2023 3:56:15 PM
Subject:	DHEC OCRM Emergency Order: Minor Renourishment, Sand Fencing, Vegetation
Attachments:	23-EO-011 118 Ocean Blvd IOP Reddy Renourishment Plantings Sand Fencing.pdf How to Build A Dune.pdf

Mr. and Mrs. Reddy,

Please see the attached DHEC OCRM Emergency Order for minor beach renourishment, installing sand fencing, and/or planting native dune vegetation at 118 Ocean Blvd, Isle of Palms.

Please sign and date the third page of the document and return to me. I have also attached the referenced "How to Build a Dune" guide.

Thanks,
Matt

--
Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter
DHEC Log

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

Rom Reddy
118 Ocean Blvd, Isle of Palms
Charleston County

EMERGENCY ORDER
MINOR RENOURISHMENT
23-EO-011

The South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (the Department), an agency of the State of South Carolina, organized and existing under the authority of the South Carolina Coastal Zone Management Act, S.C. Code Ann. §48-39-10 *et seq*., finds that emergency conditions have occurred associated with Tropical Storm Idalia beginning on August 30, 2023, on beaches facing the Atlantic Ocean at 118 Ocean Blvd (TMS#), Isle of Palms, Charleston County (Site) in the State of South Carolina and therefore located within the critical area jurisdiction of the Department. These conditions may expose and create an imminent threat to the existing habitable structures or critical infrastructure on front beach properties.

The Department finds that this imminent threat constitutes temporary emergency conditions that may endanger the health, safety, welfare, and resources of residents of the coastal zone as well as the general population of the State of South Carolina. Accordingly, the Department, pursuant to the authority of S.C. Code Ann. §48-39- 130(D)(1), hereby issues an Emergency Order to allow the owner of this property to conduct minor renourishment, install sand fencing, and/or plant native dune species in those areas of the beach threatened by erosion.

All activities must be coordinated with the Department prior to any work being performed. The local government with jurisdiction over the site must be notified of the activity.

This Emergency Order, 23-EO-011, will expire on October 21, 2023 (30 days from the date of this Order). Pursuant to S.C. Code Ann. §48-39-130(D)(1), property owners may request an individual emergency order from the Department if an emergency persists.

Specifically, all work must conform to the following requirements:

1. The amount of sand added to the beach under this Emergency Order must be documented and submitted to the Department in the form of number of truckloads of sand and/or sand volume. This information must be submitted in the form of an email to Matt Slagel, Manager of OCRM's Beachfront Management Section, slagelmj@dhec.sc.gov.

2. Renourishment sand must 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.

3. Sand placed on the beach must be located between the extended property lines of the property receiving the sand.

4. Sand placed on the beach cannot cover or bury any portion of an erosion control structure.

5. Constructed dunes shall not be located seaward of the normal spring high-tide line.

6. Any constructed dunes shall be aligned to the greatest extent possible with existing dune ridges and shall be of the same general configuration as adjacent dunes.

7. Sand may be stabilized with sand fencing and beach vegetation consistent with the requirements of GP-17-SMD (Sand Fences, Minor Beach Renourishment, Dune Construction & Dune Vegetation). See "Attachment A."

8. A copy of the issued Emergency Order shall be in possession of anyone performing minor renourishment on the beach.

9. The contractors performing work under this Emergency Order shall be in direct contact with the S.C. Department of Natural Resources (DNR) Marine Turtle Conservation Program (MTCP) representative. Daily, early surveys of the beach are performed to document turtle nesting activity, and the MTCP representative shall be consulted each morning prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or sea turtle adult is encountered, all work should cease and the DNR MTCP should be contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843-953-9052 (office) or PateS@dnr.sc.gov.

This Emergency Order shall not become effective until it is signed by the property owners, or their representatives, and it can be revoked by the Department at any time for non-compliance with the terms of the order.



9/21/2023

_____ _____

Matthew J. Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
SC Department of Health and Environmental Control

Date

In exchange for the relief authorized by this Emergency Order and as evidenced by my signature below, I agree and consent to be bound by the terms of this Emergency Order.

By: _____ _____

(Rom Reddy) 118 Ocean Blvd., Isle of Palms

Date

SCDHEC-OCRM GENERAL PERMIT
Attachment A - GP-17-SMD

WORK: Sand Fences, Minor Beach Renourishment, Dune Construction and Dune Vegetation

LOCATION: Seaward of the setback line and the baseline in the counties of Horry, Georgetown, Charleston, Colleton, Beaufort, and Jasper.

DESCRIPTION: In an effort to provide beachfront property owners with passive, low-cost dune stabilization methods, the placement, maintenance and repair, and replacement of sand fencing, minor renourishment, dune construction and dune vegetation may be allowed under this general permit under the following conditions. These steps may not be viewed as being undertaken for erosion control, but rather as dune enhancement and stabilization measures. Since a broad beach and a healthy dune provide a storm buffer, these methods should aid the natural processes affecting the beach/dune system.

1. Sand Fencing:

a. The fence material shall be biodegradable.

b. The fences shall be installed according to plans established by Department staff (see Attachment "B").

c. The fences shall be installed in a manner so as not to impede turtle nesting. The Department may require sand fences be moved or removed entirely if the fences are found to impact turtle nesting activities or, in the Department's opinion, have the potential to impact turtle nesting activities.

d. The fence shall be placed above the highest up rush of the waves as determined by Department staff.

e. The fencing shall not impede public access.

f. The fence shall be installed with the understanding that this is a temporary measure.

g. If fence material is damaged, debris shall be removed expeditiously from the beach area by the owner.

h. If the Department determines that the fence has a detrimental impact to the beach/dune system, it shall be removed by the owner as directed by the Department.

2. Minor Beach Renourishment / Dune Construction:

Minor renourishment is allowed in an attempt to build and maintain healthy dunes. Minor renourishment/Dune construction requirements are:

a. Sand shall be compatible in size and grain color, shall be from an upland source, shall be clean and free of any debris, and its use approved by Department staff.

b. Minor renourishment and dune construction shall be performed between November 1 and April 30. However, minor renourishment and dune construction proposed within 1 mile of an inlet must be performed between November 1 and March 15.

c. Department staff shall inspect the site and establish that there is a need for the project.

d. All projects shall be in compliance with applicable local ordinances.

e. The Department reserves the right to require an individual permit if, in its determination, conditions warrant.

f. The amount of sand added to the beach must be documented and submitted to the Department in the form of number of truckloads of sand and/or sand volume.

g. Sand placed on the beach must be located between the extended property lines of the property receiving the sand.

h. Constructed dunes shall not be located seaward of the normal spring high-tide line.

i. Any constructed dunes shall be aligned to the greatest extent possible with existing dune ridges and shall be of the same general configuration as adjacent dunes.

3. Dune Vegetation / Revegetation:

Property owners are encouraged to plant vegetation as a means of stabilizing oceanfront dunes. The roots of plant material tend to bind sand to dunes, while plant foliage serves to trap wind blown sand. Suggested plant varieties include, but are not limited to, American beach grass (Ammophila breviligulata), bitter panicum (Panicum amarum), and sea oats (Uniola paniculata).

Vegetation may be planted any time during the year and shall be planted, irrigated, and fertilized according to nursery instructions or the Department's "How to Build a Dune" booklet. Dune vegetation or revegetation requirements are:

a. Department staff shall inspect the site first and determine that there is a need for vegetative stabilization.

b. The applicant must submit a detailed plan outlining the desired plant species and provide the anticipated spacing for the plantings.

GENERAL CONDITIONS FOR GP-17-SMD

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save the South Carolina Coastal OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within **one year** of the date of issuance, this permit shall automatically expire. Individual authorizations under this general permit may not be extended
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit the OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by the OCRM.
8. That individual authorizations under this general permit may not be transferred.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the issued permit and shall be maintained in good condition. Failure to build in accordance with the issued permit or failure to maintain the structure in good condition shall result in the revocation of this permit.

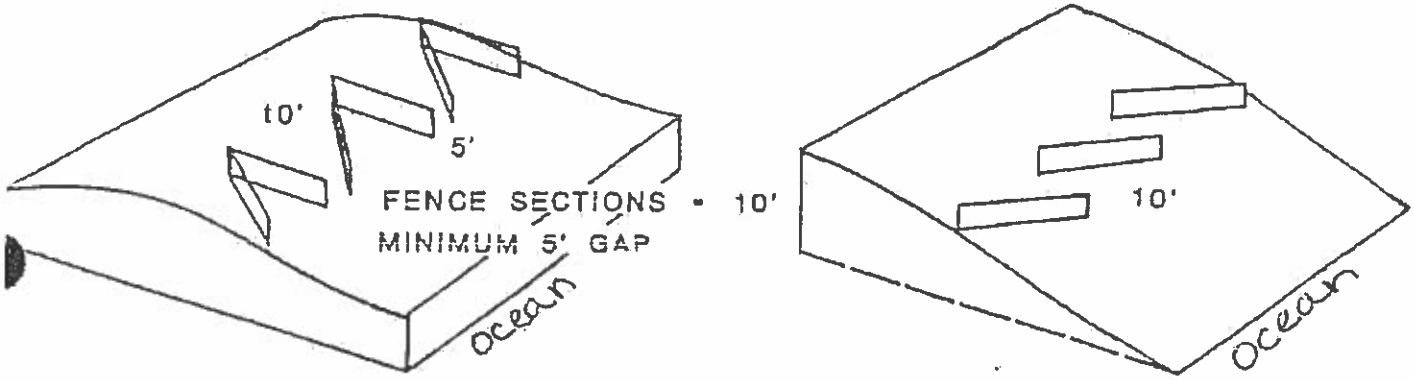
12. That the authorization for activities or structures herein constitutes a revocable license. The OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by the OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That the OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the special conditions and/or the drawings submitted by the applicant. That the permittee, upon receipt of the Coastal OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, the OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to the OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against the OCRM or the State of South Carolina or any employee, agent, or representative of the Coastal OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of other. This permit authorizes no invasion of adjacent of private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

ATTACHMENT B

SAND FENCING

PERMITTED CONFIGURATIONS OF FENCE TO TRAP WIND-BLOWN SAND

NORMAL DUNE



SECTION ANGLE MAY VARY
90 TO 140 DEGREES



PERMITTED VARIATION

