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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Administrative Law Judge

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

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

v.

Rom Reddy, Appellant-Respondent.

**FINAL RESPONSE BRIEF OF APPELLANT-RESPONDENT ROM REDDY
TO THE INITIAL BRIEFS OF DES AND SCCCL**

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Introduction

Respondents-Appellants South Carolina Department of Environmental Services (“DES” or the “Department”) and South Carolina Coastal Conservation League (“SCCCL”) have filed cross-appeals asking this Court to do what the ALC declined to do: declare that DES has permitting jurisdiction over a floating, undefined “beaches critical area” that extends landward of the setback line—wherever the Department says the vegetation line happens to be on any given day. Both appellants also ask this Court to find that Reddy violated the Act as a matter of law, and SCCCL further seeks reinstatement of the \$289,000 civil penalty the ALC eliminated.

The irony of these appeals is that both DES and SCCCL rely heavily on the ALC’s own factual findings—findings that, when read as a whole, overwhelmingly support Reddy’s position. The ALC found that DES’s jurisdictional evidence was “subjective” and “dubious.” It found DES’s feature analysis had “de minimis” probative value. It found DES could not identify a single instance where it had previously enforced its now-claimed jurisdiction landward of the setback line. It found that DES’s own guidance, reports, and regulations implied the setback line was the jurisdictional boundary. And it found that interpreting the setback line as that boundary “would logically achieve” the legislative purpose of consistency. (R. pp. 135–138, 141–143, 150–152.)

What DES and SCCCL are really asking this Court to do is ignore all of that and instead adopt a statutory interpretation that the ALC itself recognized would leave “the Department’s permitting authority ever changing with no certainty to

either landowners’ or this Court as to whether a permit is required.” (R. p. 151.) This Court should decline that invitation.

Argument

I. The ALC Correctly Found That “Beaches” Is Not an Independent Jurisdictional Category Extending Landward of the Setback Line.

Both DES and SCCCL frame their central argument the same way: “beaches” is one of four critical areas listed in § 48-39-10(J), it has its own definition in § 48-39-10(H), and the permit requirement in § 48-39-130(C) applies to “any critical area.” From this, they reason that DES has permitting jurisdiction over any land meeting the physical description in § 48-39-10(H)—regardless of where the setback line falls. This reading is wrong for multiple reasons.

A. The BMA Incorporated “Beaches” into the “Beach/Dune System” and Established the Setback Line as the Jurisdictional Boundary.

Before 1988, the Act listed “primary oceanfront sand dunes” as one of the critical areas. The BMA replaced that category with “beach/dune system,” defined as “the area from the mean high-water mark to the setback line.” S.C. Code Ann. § 48-39-10(J)(4). The very name of this new category—“beach/dune system”—reflects that the Legislature intended the beach and the dune system to be managed as a single, geographically bounded critical area. Reading “beaches” as a separate, unbounded jurisdictional area would undo the BMA’s central accomplishment: replacing an amorphous jurisdictional concept with fixed, ascertainable lines.

Where one statute addresses an issue in general terms and another deals with the identical issue more specifically, the specific statute controls. *Denman v. City of*

Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010). The BMA’s detailed scheme for the beachfront—with its baselines, setback lines, construction restrictions, and disclosure requirements—is the specific statute. The pre-1988 “beaches” definition in § 48-39-10(H) is the general provision. The BMA controls.

Indeed, the Legislature enacted the BMA precisely because the pre-existing framework—including the general “beaches” definition—was inadequate. The Legislature found in 1988 that existing coastal regulations “do[] not provide adequate jurisdiction to the South Carolina Coastal Council to enable it to effectively protect the integrity of the beach/dune system.” *See Lucas v. S.C. Coastal Council*, 304 S.C. 376, 380, 404 S.E.2d 895, 897 (1991) (quoting S.C. Code Ann. § 48-39-250(4)). If the “beaches” definition already provided comprehensive regulatory authority over erosional areas, the BMA would have been unnecessary. DES’s current argument—that it possessed such authority all along—directly contradicts the Legislature’s 1988 finding.

B. DES’s Reading Creates the Very Problem the BMA Was Enacted to Solve.

The General Assembly enacted the BMA to provide a policy of “comprehensive, long-range beach management.” S.C. Code Ann. § 48-39-260(2). The baseline and setback lines are established through a detailed statutory process involving surveyed topographical data, public comment periods, public hearings, and periodic review every seven to ten years. S.C. Code Ann. § 48-39-280. The coordinates are published on DES’s website in a format that allows surveyors to import them into plats. The Act requires disclosure of these lines in property transfers. S.C. Code Ann. § 48-39-

330. This comprehensive statutory scheme would be meaningless if DES could assert jurisdiction landward of the setback line based on ad hoc, post-construction assessments of vegetation and periodic inundation.

The ALC recognized as much. It found that under DES's interpretation, "neither the Court nor a landowner could consistently determine, with a reasonable degree of certainty, whether a permit is required." (R. p. 138.) It found that "interpreting the BMA as establishing a limit to the Department's jurisdiction landward of the setback line would logically achieve" the legislative purpose of consistency. (R. p. 151.) And it found that the General Assembly's failure to require disclosure of "beaches critical area" in property transfers "could reflect that it did not intend for the Department's jurisdiction to extend landward of the setback line." (R. p. 152.)

The Department and SCCCL's reading violates the principle that statutory interpretation must account for manifest purpose, not isolated phrases. Statutes "shall not be construed by concentrating on an isolated phrase" but according to "the language of the statute as a whole considered in the light of its manifest purpose." *Laurens County Sch. Dists. 55 & 56 v. Cox*, 308 S.C. 171, 174, 417 S.E.2d 560, 561 (1992) (quoting *City of Columbia v. Niagara Fire Ins. Co.*, 249 S.C. 388, 391, 154 S.E.2d 674, 676 (1957)). Courts may "not give to particular words a significance clearly repugnant to the statute as a whole, or destructive of its obvious intent." *Id.* (quoting *Niagara Fire Ins.*, 249 S.C. at 391, 154 S.E.2d at 676). The Act's obvious intent includes providing property owners with notice of regulatory boundaries

through surveyed setback lines. DES's and SCCCL's narrow focus on the § 48-39-10(H) definition—while ignoring the broader statutory framework establishing the setback line—would destroy the predictability the BMA was designed to provide.

The setback line serves the same boundary function for beachfront jurisdiction that the mean high-water mark serves for tidelands jurisdiction—a fixed, surveyable line that provides notice and prevents arbitrary enforcement. DES's interpretation would eliminate that boundary and vest the agency with standardless discretion to expand jurisdiction based on episodic storm events.

C. The Anti-Surplusage Argument Cuts Against DES and SCCCL.

DES and SCCCL argue that treating “beaches” as subsumed within the “beach/dune system” renders “beaches” surplusage. But the surplusage argument cuts both ways. If “beaches” operates as an independent, unbounded jurisdictional category wherever the vegetation line happens to fall, then the setback line itself becomes surplusage as a jurisdictional boundary. The Legislature “is presumed to intend that its statutes accomplish something.” *State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010).

Reddy's reading preserves independent meaning for “beaches”: it applies in areas of the coastal zone where no baseline or setback line has been established. The Act expressly allows exemptions from survey requirements. S.C. Code Ann. § 48-39-280(E)(3). In those areas, “beaches” retains its function as a critical-area designation based on physical conditions. This avoids surplusage while preserving the setback line's jurisdictional function where it exists.

D. DES and SCCCL's Arguments for Beaches Jurisdiction Fail on the ALC's Own Findings.

Both DES and SCCCL contend the ALC's factual findings satisfy both elements of the statutory beaches definition and therefore establish jurisdiction as a matter of law. This argument fails for three independent reasons.

First, the ALC expressly found DES's jurisdictional evidence insufficient. The court found DES's vegetation line methodology "subjective" and "dubious," the feature analysis of "de minimis" probative value, and the expert testimony unable to establish boundaries "with a reasonable degree of certainty." (R. pp. 135–138.) These findings do not "satisfy" the statutory definition—they reject DES's proof as legally inadequate. DES and SCCCL ask this Court to disregard the ALC's credibility determinations and factual findings and instead adopt DES's jurisdictional theory as a matter of law. That request is inconsistent with settled standards of appellate review.

Second, even if the ALC had found periodic inundation and absence of vegetation, those factual findings would not compel a legal conclusion of beaches jurisdiction where the structure is located landward of the setback line. The beach/dune system definition controls the geographic scope of beachfront regulation. Reading "beaches" to extend landward of the setback line would render the setback line meaningless and violate the rule against surplusage. *Supra*, Part I.C.

Moreover, the ordinary meaning of "periodic inundation by tidal and wave action" does not support DES's jurisdictional claim. Undefined statutory terms must be construed with their "usual and customary meaning." *Murphy v. S.C. Dep't of*

Health & Env't Control, 396 S.C. 633, 640, 723 S.E.2d 191, 195 (2012); *see also Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 144, 750 S.E.2d 65, 71 (2013) (relying on *Black's Law Dictionary* and *Merriam-Webster's Collegiate Dictionary* to provide the meaning of a word not defined in the statute). “Periodic” ordinarily means occurring at *regular intervals*—not episodically or randomly. PERIODIC, *Black's Law Dictionary* (12th ed. 2024) (“Recurring at regular intervals.”). “Tidal” refers to astronomical tides, not storm surge. *Compare* 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.”); *with* S.C. Code Ann. § 48-39-10(Y) (“‘Storm surge’ means an abnormal rise of water generated by a storm *over and above the predicted astronomical tide.*” (emphasis added)); *see also Cape Romain Land & Improvement Co. v. Georgia-Carolina Canning Co.*, 148 S.C. 428, 146 S.E. 434, 437 (1928) (“‘[H]igh-water mark’ is meant ‘the line on the shore which is reached by the limit of the flux of the usual tide’; that is, the high mark made on the shore as ‘the tide ebbs and flows twice in each lunar day,’ and not the point reached at new or full moon nor when there is an intervening disturbance such as a storm or earthquake.”); *and State v. Murrell's Inlet Camp & Marina, Inc.*, 259 S.C. 404, 407, 192 S.E.2d 199, 201 (1972) (holding that the “critical issue” of state ownership over contested wetlands was “whether the area in dispute was covered twice daily by mean or average high tides” rather than “covered only by spring tides, occurring at the new moon and full moon of each synodic month, and by other unusually high tides of irregular occurrence”). Here, the ALC specifically found that much of the inundation

came from “episodic storm events and king tides” (R. p. 141 n.38), which is the opposite of regular, periodic tidal action. DES presented no evidence of regular tidal inundation at the relevant property elevation; all evidence showed episodic storm overwash. Under *Murphy*’s ordinary-meaning standard, this evidence does not satisfy the statutory definition.

Third, DES and SCCCL rely heavily on testimony that “active beach is a subset of the beaches critical area.” (R. p. 139.) But this is circular reasoning: it assumes what must be proved—that “beaches critical area” extends landward of the setback line. The fact that some portion of the active beach lies within beaches critical area does not establish that all allegedly inundated areas landward of the setback line fall within DES’s jurisdiction.

E. DES’s Own Conduct Confirms the Setback Line’s Jurisdictional Function.

The ALC’s findings on DES’s enforcement history are unrebutted. DES “did not produce any credible evidence that it has historically required a permit for the construction of an erosion control structure landward of the setback line nor could it confirm whether it has assessed a civil penalty for activity landward of the setback line.” (R. p. 143.) In the “Piping Plover” matter, DES staff acknowledged that “no Department approval was required for the construction of a seawall landward of the setback line.” (R. p. 143.) DES’s own reports to the Legislature “imply that the extent of the Department’s direct permitting authority over beachfront activity is established by the location of baseline and setback lines.” (R. p. 143.)

“[T]he failure of an administrative agency to exercise a power it claims to possess is a significant factor in determining whether the power was actually conferred.” *Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 214–15, 423 S.E.2d 101, 104 (1992). DES’s quarter-century of inaction, combined with its affirmative representations that its jurisdiction was bounded by the setback line, is powerful evidence that the General Assembly never intended the jurisdiction DES now claims.

DES’s assertion of “beaches” jurisdiction based on ad hoc, post-construction assessments of vegetation and inundation—without reference to surveyed boundaries or promulgated standards defining when “periodic inundation” converts private property into a critical area—also exceeds its statutory authority. A regulatory body “is possessed of only those powers expressly conferred or necessarily implied,” and may not apply unpromulgated standards to expand its jurisdiction. *Captain’s Quarters Motor Inn v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991). An agency “has only the powers conferred on it by law and must act within the authority created for that purpose.” *SGM-Moonglo, Inc. v. S.C. Dep’t of Revenue*, 378 S.C. 293, 295, 662 S.E.2d 487, 488 (Ct. App. 2008). DES’s application of “beaches” jurisdiction in a manner inconsistent with the Act’s promulgated setback and baseline system parallels the regulatory overreach these cases condemn.

DES attempts to neutralize its own regulation—S.C. Code Regs. § 30-21(H)(3), which states that DES’s “permitting jurisdiction on beaches is determined by the location of the setback line”—by arguing that, to the extent it conflicts with the Act, “the provision is void.” (DES Br. p. 42.) This is remarkable. DES asks this Court to

declare void, in the midst of an enforcement action, a regulation DES itself promulgated in 1993 and applied for over thirty years. An agency that seeks to penalize a property owner for conduct the agency’s own regulation authorized cannot simply disavow the regulation after the fact. Where a regulation purports to expand the operation of a statute, the statute controls. *Davis v. S.C. Dep’t of Corr.*, 444 S.C. 138, 160, 906 S.E.2d 569, 581 (2024). But the converse is equally true: where a regulation correctly interprets the statute, the agency cannot retroactively disavow it to ratify its own unlawful behavior. The 2024 amendment to S.C. Code Regs. § 30-13(N)(3)(a) confirms the point. If DES already had jurisdiction landward of the setback line, that amendment would have been unnecessary.

The CZMP itself further confirms DES’s previous understanding that its direct authority was limited to statutorily-defined critical areas. The CZMP states that the Council “has no direct regulatory authority outside the critical areas of the coastal zone (Section 20, S.C. Coastal Management Act)” and that management outside critical areas “is provided through the Council’s review and certification of permits of other State agencies.” (CZMP Document, Ch. III, p. III-12.) This is consistent with S.C. Code Regs. § 30-21(H)(3)’s statement that DES’s permitting jurisdiction on beaches is determined by the setback line—the boundary of the only beachfront critical area with defined geographic limits.

F. SCCCL’s Policy Arguments Do Not Override Statutory Text.

SCCCL argues the Department requires beaches jurisdiction landward of the setback line to protect the dry sand beach in highly erosional areas. This policy

argument cannot override statutory text. The Legislature balanced competing interests when it enacted the BMA. It chose to establish a fixed setback line rather than vest DES with roving jurisdiction over any area experiencing erosion. SCCCL's argument that DES needs more authority to manage erosion is an argument for legislative amendment, not judicial expansion of statutory jurisdiction.

SCCCL's policy argument that DES needs broader jurisdiction to manage erosion ignores the CZMP's own acknowledgment that "the Council has no direct regulatory authority outside the critical areas." (CZMP Document, Ch. III, p. III-12.) The CZMP addresses erosion control through its Resource Policies (Chapter III, Section X) and through a separate Erosion Control Program (Chapter IV(C)), not through an expansion of the "beaches" critical area definition. The Act's comprehensive management framework—with direct authority in critical areas and indirect authority elsewhere—was the Legislature's chosen balance. SCCCL's argument for broader direct jurisdiction is an argument for legislative amendment, not judicial expansion.

Moreover, SCCCL's concern is overstated. DES retains full authority to regulate within the beach/dune system critical area, to deny permits for construction that would impact critical areas, and to require property owners to comply with disclosure requirements. What DES lacks is authority to prohibit erosion control structures on private property *landward of the setback line*. That is precisely the limitation the Legislature imposed in 1988. DES's reliance on the statement in *SCCCL v. SCDHEC (KDP II)*, 434 S.C. 1, 10, 862 S.E.2d 72, 77 (2021), that "the

public's interest must be the lodestar" of coastal zone analysis conflates policy objectives with core jurisdictional authority. While *KDP II* emphasized public interest in coastal protection, it did not authorize agencies to expand jurisdiction beyond statutory grants. Indeed, the land at issue in *KDP II* became developable precisely because DHEC relocated the baseline, "making KDP's property *landward of the setback line* that paralleled the ocean side *available for development*." *KDP II*, 434 S.C. at 6, 862 S.E.2d at 74 (emphasis added).

Even agencies serving important public functions must operate within legislative jurisdictional limits. *Trident Med. Ctr., LLC v. S.C. Dep't of Health & Env't Control*, 438 S.C. 391, 397, 882 S.E.2d 878, 882 (Ct. App. 2022) (citing *SGM-Moonglo, Inc.*, 378 S.C. at 295, 662 S.E.2d at 488 ("An administrative agency has only the powers conferred on it by law and must act within the authority created for that purpose.")). The BMA's setback line provisions represent the Legislature's chosen balance between public beach protection and private property rights. The Department cannot override that balance by invoking public policy.

G. The CZMP Document and *KDP II* Do Not Support DES's Jurisdictional Claim.

DES cites the CZMP Document for the proposition that "beaches" extends to "the line of vegetation" and that this document has "the full force of the law" under *Spectre, LLC v. S.C. Dep't of Health & Env't Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010). (DES Br. at 45.) This argument fails on multiple grounds.

First, the CZMP Document does not say what DES claims it says. In its section on the Coastal Zone Boundary, the CZMP states that "[f]or beaches and sand dune

critical areas, the Council employs the definition found in the Act in making a case-by-case determination of the critical area boundary.” (CZMP Document, Ch. III, p. III-3.) The CZMP does not independently define “beaches” as extending to the vegetation line. It expressly defers to the statutory definition in the Act—the same definition in § 48-39-10(H) that all parties agree applies. DES’s suggestion that the CZMP independently expands the statutory definition of “beaches” to create a separate jurisdictional category is unsupported by the document’s own text.

Second, the CZMP was drafted before the BMA. The CZMP lists the critical areas as “coastal waters, tidelands, beaches and primary oceanfront sand dunes.” (CZMP Document, Ch. III, p. III-3.) This is the pre-1988 list of critical areas. The BMA replaced “primary oceanfront sand dunes” with “beach/dune system” and established the setback line as the jurisdictional boundary. The CZMP has never been updated to reflect this change. To the extent any CZMP language describing “beaches” is inconsistent with the BMA’s establishment of the setback line as the beachfront jurisdictional boundary, the later-enacted statutory scheme controls. Again, where a regulatory document purports to expand the operation of a statute, the terms of the statute prevail. *Davis*, 444 S.C. at 160, 906 S.E.2d at 581.

Third, the CZMP’s own text distinguishes between the Department’s direct permitting authority in critical areas and its indirect management authority (review and certification) in the broader coastal zone. The CZMP states that the Coastal Council “employs a two-tier approach”: “[t]he ‘critical areas’ will receive more intensive attention through a direct permitting system while the remainder of the

coastal zone will be managed through cooperation with other State and local agencies.” (CZMP Document, Ch. III, p. III-3.) The *Spectre* Court acknowledged this approach in holding that the CZMP authorized consistency review of permits throughout the eight coastal counties. *Spectre*, 386 S.C. at 372, 688 S.E.2d at 852. But *Spectre* addressed the CZMP’s *indirect* management authority—whether the CZMP authorized consistency review of a stormwater permit for isolated freshwater wetlands in Horry County. *Spectre*, 386 S.C. at 365, 688 S.E.2d at 848 (“Because the Spectre site is located in the coastal zone but outside of a critical area, Section 1 applies.”). It did not hold that the CZMP could expand the geographic boundaries of DES’s *direct* permitting authority over critical areas beyond what the statute defines. DES’s reliance on *Spectre* for the proposition that the CZMP can independently establish beaches jurisdiction landward of the setback line extends the holding far beyond its context.

Both DES and SCCCL also rely on *KDP II*. That case is inapposite. *KDP II* involved a permitted steel wall along the Kiawah River shoreline on Kiawah Island. *KDP II*, 434 S.C. at 7, 862 S.E.2d at 75. Unlike here where the Department’s enforcement jurisdiction is contested, *KDP II* involved the Department’s review of permit applications through its Coastal Zone Consistency Certification process. The Supreme Court held that DES should have applied critical-area permitting standards as part of its consistency review because the tidelands critical area would inevitably encompass at least some portions of the wall. *KDP II*, 434 S.C. at 12–13, 862 S.E.2d at 78. In other words, all experts in *KDP II* agreed that the critical area line was

moving rapidly towards the setback line, such that the wall itself would “become a part of the Kiawah River shoreline.” *KDP II*, 434 S.C. at 12, 862 S.E.2d at 78. This progression would have placed the wall itself into the tidelands/coastal waters along the Kiawah River. The *KDP II* Court noted that development in the tidelands critical area is the “exception,” and reviewed the case “through [that] lens.” *KDP II*, 434 S.C. at 10–11, 862 S.E.2d at 77. The court further declined to adopt a “bright line rule as to when [the Department] must analyze section 48-39-30(D) for a non-critical area permit.” *Id.* at 13, 862 S.E.2d at 78 n.7.

Contrary to the suggestion of DES and SCCCL, *KDP II* is not a blank check that grants DES unlimited enforcement jurisdiction beyond the statutorily defined critical areas. *KDP II* is limited on its face to coastal zone consistency reviews under the CMP, which this case does not involve. Also, *KDP II* involved the undisputed eventuality of the non-critical area in that case becoming tidelands critical area in the future. The purported “beaches” critical area, by contrast, is defined by physical conditions that DES’s own expert admitted “could change day-by-day.” (R. pp. 137–138.) The jurisdictional certainty the *KDP II* Court assumed is precisely what is lacking here.

To the extent DES invokes the public trust doctrine as an independent basis for jurisdiction, *McQueen v. S.C. Coastal Council*, 354 S.C. 142, 580 S.E.2d 116 (2003), forecloses that argument. *McQueen* limits the public trust doctrine to lands “below the high water mark” that the State owns and holds in trust. *Id.* at 149, 580 S.E.2d at 119–20. The doctrine operates as a background principle of property law defining

ownership boundaries, not as a roving grant of regulatory authority over upland property. Reddy's property is upland, above mean high water. Episodic storm overwash does not convert upland property into public trust tidelands subject to unlimited Department jurisdiction.

II. The ALC Correctly Eliminated the \$289,000 Civil Penalty.

SCCCL argues the ALC erred in vacating the \$289,000 civil penalty and that this Court should reinstate it without remand. (SCCCL Br. pp. 28–44.) DES does not appeal the penalty vacatur. The ALC's decision to eliminate the penalty was a sound exercise of discretion grounded in the specific facts of this case.

A. The ALC's Penalty Decision Was Based on the Totality of the Circumstances.

SCCCL characterizes the ALC's penalty vacatur as resting entirely on the absence of a liability finding. (SCCCL Br. pp. 29–30.) That is an incomplete reading. The ALC identified multiple, independent grounds for finding the penalty inappropriate: DES's own guidance stated that hard structures were prohibited "seaward of the" setback line (R. p. 130); DES could not produce any evidence that it has ever previously imposed a civil penalty for activity landward of the setback line (R. p. 143); DES's own staff told other homeowners no Department approval was required for construction landward of the setback line (R. p. 143); and DES's own reports and regulations implied the setback line was the jurisdictional boundary. (R. p. 143.) Against this backdrop, the ALC concluded that assessing a \$289,000 penalty for conduct that DES's own guidance and regulations implied was lawful was "not appropriate under the facts of this case." (R. p. 160.) That is exactly the kind of

individualized analysis SCCCL’s own authority requires. *See Midlands Util., Inc. v. S.C. Dep’t of Health & Env’t Control*, 313 S.C. 210, 212, 437 S.E.2d 120, 121 (Ct. App. 1993) (“each fine must be analyzed individually to determine if it is appropriate under the circumstances”).

B. Notice of DES’s “Position” Is Not Fair Notice of the Law.

SCCCL argues that Reddy had “repeated, direct, and specific notice of the Department’s position.” (SCCCL Br. pp. 32–33.) But notice of an agency’s litigation position is not the same as fair notice of what the law requires. Reddy was notified that DES *claimed* jurisdiction—but he was also notified, by the same agency, that hard structures were prohibited “seaward of the . . . setback line” (R. p. 130); that DES’s “permitting jurisdiction on beaches is determined by the location of the setback line,” S.C. Code Regs. § 30-21(H)(3); and that “no Department approval was required for the construction of a seawall landward of the setback line” (R. p. 143). A property owner confronted with contradictory signals—the agency claiming jurisdiction on one hand while its regulations, guidance, and enforcement practice disclaim it on the other—cannot fairly be penalized \$289,000 for believing the agency’s own published rules. The ALC was right to find this penalty inappropriate.

C. SCCCL’s Characterization of the Penalty Evidence Misrepresents the Record.

SCCCL contends DES supported its assessment with a structured worksheet, gravity analysis, and testimony. (SCCCL Br. pp. 9–41.) But the worksheet and testimony assumed beaches jurisdiction—the very issue the ALC declined to decide. Each “violated requirement” identified in the worksheet depends on the premise that

the site was beaches critical area and that Reddy was required to obtain a permit. The worksheet lists “unpermitted alteration of Beaches Critical Area” and “use of non-beach-compatible materials” as violations. If the site was not beaches critical area because it was landward of the setback line, then these are not violations at all. The worksheet’s classifications of “major” extent of deviation and “major” adverse impact likewise assume facts the ALC never found. Structure is not substance. A methodologically sound worksheet applying an erroneous legal premise produces an erroneous result. The ALC properly declined to rubber-stamp DES’s assessment where the foundational jurisdictional premise was never established.

The ALC properly exercised informed discretion in declining to rubber-stamp a penalty predicated on an unestablished jurisdictional premise. Assessment of civil penalties is “committed to the informed discretion” of the reviewing court, and “each fine must be analyzed individually to determine if it is appropriate under the circumstances.” *Midlands*, 313 S.C. at 212, 437 S.E.2d at 121. An administrative body may not approve relief by simply reciting conflicting testimony and issuing a general conclusion without detailed findings backed by substantial evidence. *Hamm v. S. Bell Tel. & Tel. Co.*, 302 S.C. 132, 134–35, 394 S.E.2d 311, 312 (1990). The ALC’s detailed findings—including the absence of a liability determination, the disputed jurisdiction, and DES’s own contradictory guidance—satisfy this standard and support the penalty vacatur.

D. The ALC's Finding That Reddy's Conduct Was Not "Egregious" Is Supported by the Record.

SCCCL relies on testimony that DES's enforcement manager described Reddy's conduct as "the most egregious" she had observed "throughout her tenure." (SCCCL Br. at 41.) But the ALC's recitation of DES's characterization does not constitute an independent finding of egregiousness. More fundamentally, even conduct the agency finds objectionable cannot be penalized absent statutory authority. The question is not whether DES's staff found the conduct offensive, but whether the conduct violated a legal requirement Reddy was bound to follow. DES presented no credible evidence it had ever required a permit for construction landward of the setback line. (R. p. 143.) DES's staff had previously told property owners no permit was required for an erosion control structure landward of the setback line. (R. pp. 1844–1845.) And DES informed Reddy himself that the prohibition on hard structures applied "seaward of the setback line." (R. pp. 2862–2863; R. pp. 5728–5734.) Under these circumstances, characterizing Reddy's conduct as "egregious" for failing to obtain a permit DES never required before elevates agency preference over statutory authority.

E. Reinstatement Without Remand Is Inappropriate.

SCCCL requests this Court "reinstate the Department's \$289,000 civil penalty without remand." (SCCCL Br. p. 44.) Even if this Court were to find that a violation occurred, reinstatement of the maximum statutory penalty without remand would be procedurally improper. Penalty assessment requires a weighing of case-specific circumstances that the appellate court cannot perform in the first instance. This

Court’s scope of review under § 1-23-610(B) does not authorize it to substitute its own judgment for the ALC’s on questions of fact or exercises of discretion. Rather, it is limited to affirming the decision, remanding for further proceedings, or reversing or modifying the decision only if “*the substantive rights of the petitioner*” have been prejudiced. *Id.* (emphasis added). Accordingly, the proper remedy, if any violation were found, would be remand to the ALC to determine the appropriate penalty—if any—in light of Reddy’s reliance on DES’s own guidance and the absence of enforcement precedent. *See Frame v. Resort Servs., Inc.*, 357 S.C. 520, 531, 593 S.E.2d 491, 497 (Ct. App. 2004) (where administrative findings are conclusory or insufficient, the proper remedy is remand for definite and detailed findings, not appellate fact-finding). Direct reinstatement of the maximum statutory penalty would constitute an improper exercise of appellate authority.

F. The Statute Permits the ALC to Decline to Impose a Penalty.

Section 48-39-170(C) provides that a violator “shall be liable for, and *may* be assessed by the department for, a civil penalty.” S.C. Code Ann. § 48-39-170(C) (emphasis added). The word “may” is permissive. Even assuming a violation occurred, the statute does not mandate a penalty in every case. SCCCL argues that removal does not “displace” civil penalties, and that penalties serve distinct deterrence functions. (SCCCL Br. pp. 37–38.) This argument proves too much. If penalties were warranted simply to “deter future unpermitted hardening” regardless of the circumstances, then the statutory discretion signaled by “may” would be meaningless. Deterrence is a permissible consideration in setting the amount of a penalty, but it

cannot justify imposing penalties where the agency's own guidance implied the conduct was lawful.

III. The ALC's Limited Removal Order Was a Reasonable Exercise of Remedial Discretion.

DES argues the ALC erred in limiting its removal order to the walls and associated construction materials. (DES Br. pp. 27–39.) This argument fails for several reasons.

A. The ALC's Finding on "Continued Existence" Is Entitled to Deference.

The ALC found that "the continued existence of non-compatible materials unassociated with those used in the construction of the hard erosion [control] structure was not established by the evidence." (R. p. 168.) This is a factual finding. The ALC reviewed the photographs, heard the testimony, and assessed the evidence. Its determination is entitled to deference under the clearly erroneous standard. *See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014) ("[T]he Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion as the ALC."). "In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof." *Sierra Club v. S.C. Dep't of Health & Env't Control*, 426 S.C. 236, 257, 826 S.E.2d 595, 607 (Ct. App. 2019) (quoting *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017)). DES bore the burden of establishing that non-beach-compatible materials persisted, and it failed to carry that burden through reliable, probative, and substantial evidence. In rejecting the Department's motion for

reconsideration, the ALC specifically found that photographic evidence from November 2023 and June 2024 did not show non-compatible materials near Reddy's property. (R. p. 168.) DES presented no physical samples, no excavation evidence, and no expert testimony confirming the presence of buried materials at the time of trial. DES cannot now shift its evidentiary burden to Reddy by requiring him to prove a negative.

B. A Removal Order Requires Something to Remove.

DES argues that it should not bear the burden of proving the materials “remain” at the time of hearing. (DES Br. pp. 32–38.) But the ALC did not impose an improper burden; it exercised remedial discretion. A removal order is a prospective remedy—it requires someone to take future action. If the materials may no longer be present, a removal order serves no purpose. The ALC's decision to limit the order to materials whose continued presence was established was a rational exercise of the court's equitable authority. DES's claim that materials “must” remain because they were installed months earlier is speculative and conjectural. Justiciability requires concrete injury that is “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018) (citation omitted). Without proof of continuing presence, there is no justiciable controversy requiring additional removal relief.

C. The Broader Removal Order DES Seeks Requires the Jurisdictional Finding DES Failed to Obtain.

DES concedes that ordering removal of the non-wall materials “necessarily requires the Court to hold that the Department has jurisdiction in the Beaches

Critical Area.” (DES Br. p. 27.) Because DES lacks jurisdiction landward of the setback line, as argued above and in Reddy’s Initial Brief, there is no basis for the broader removal order DES seeks.

IV. The ALC’s Findings Do Not Establish a Violation of § 48-39-130(C) as a Matter of Law.

SCCCL argues that the ALC’s factual findings compel the conclusion that the site was statutory “beaches” and that Reddy violated § 48-39-130(C) as a matter of law. (SCCCL Br. pp. 14–28.) This argument conflates the ALC’s factual findings with the legal conclusions those findings support, and it ignores the findings that are most damaging to SCCCL’s position.

A. The ALC’s Findings Actually Reject DES’s Jurisdictional Proof.

SCCCL selectively cites findings about water reaching the property and the absence of vegetation seaward of the structures. But the ALC also made findings about the *quality* and *reliability* of DES’s evidence that SCCCL ignores. The ALC found DES’s vegetation line assessment—the centerpiece of its “beaches critical area” claim—was “subjective” and “dubious.” (R. p. 135.) DES’s feature analysis had “de minimis” probative value. (R. p. 137.) DES’s expert “was unable to state with a reasonable degree of certainty the extent to which [Reddy]’s hard structure encroaches into the beaches critical area” and acknowledged that the jurisdiction “could change day-by-day.” (R. pp. 137–138.) And the ALC found that under DES’s interpretation, “neither the Court nor a landowner could consistently determine, with a reasonable degree of certainty, whether a permit is required.” (R. p. 138.)

These are not findings that “satisfy” the statutory definition of beaches. They are findings that DES failed to carry its burden of proof on the jurisdictional question. SCCCL asks this Court to disregard the ALC’s credibility determinations and factual assessments and instead treat selected findings as compelling a legal conclusion the ALC itself declined to draw. That request is inconsistent with settled standards of appellate review. The ALC’s factual findings are reviewed for clear error, and DES and SCCCL have not demonstrated that the ALC’s assessment of DES’s evidence was clearly erroneous.

B. The ALC’s Inundation Findings Are More Nuanced Than SCCCL Acknowledges.

SCCCL argues the ALC found “periodic inundation” satisfying § 48-39-10(H). (SCCCL Br. p. 5.) But the ALC’s actual findings are more guarded. The ALC found water reached the property “at varying times throughout the Department’s investigation” (R. p. 141), and acknowledged that much of this inundation came from “*episodic* storm events and king tides” (R. p. 141 n.38 (emphasis added)). The ALC also found that the beaches adjacent to Reddy’s property “have recently started to accrete.” (R. p. 129.)

The statute requires “*periodic* inundation by tidal and wave action so that no nonlittoral vegetation is established.” S.C. Code Ann. § 48-39-10(H) (emphasis added). Whether storm surge, king tides, and episodic weather events constitute “periodic” tidal and wave action within the meaning of the statute—or instead represent extraordinary “episodic” events that temporarily alter conditions without establishing a permanent jurisdictional status—is a question the ALC was well

positioned to resolve. The ALC's decision not to resolve it in DES's favor is itself significant.

C. Removal Authority Under § 48-39-120(C) Does Not Make the § 48-39-130(C) Analysis “Required.”

SCCCL argues the ALC was “required” to decide the beaches question and could not use § 48-39-120(C) removal authority to bypass the classification-and-liability analysis. (SCCCL Br. pp. 22–25.) But the ALC did not “bypass” an analysis—it resolved the case on an alternative legal ground. Remand is appropriate only when an agency's erroneous legal finding prevents it from reaching substantive issues necessary for disposition. *Cf. Reese v. CCI Constr. Co.*, 334 S.C. 600, 514 S.E.2d 144 (Ct. App. 1999). The controlling question is whether the ALC committed legal error that precluded determination of necessary issues, not whether the ALC simply chose not to address additional issues after resolving the case. Here, the ALC affirmatively determined that ordering wall removal under § 48-39-120(C) resolved the enforcement action, rendering further jurisdictional findings unnecessary. This is permissible judicial economy, not reversible error. The ALC's order contains explicit findings regarding inundation, vegetation, and the structure's impact; “no particular format” is mandated for administrative findings. *Seabrook Island Prop. Owners Ass'n v. S.C. Pub. Serv. Comm'n*, 303 S.C. 493, 497, 401 S.E.2d 672, 674 (1991). These findings permit meaningful review even if not organized exactly as SCCCL prefers.

Furthermore, even if this Court concludes that additional findings are necessary, “the proper procedure is to remand the case and allow the agency the opportunity to make those findings” because the appellate court is not a factfinder.

Frame, 357 S.C. at 531, 593 S.E.2d at 497. SCCCL’s request for reversal and penalty reinstatement without remand inverts the proper relationship between the appellate court and the factfinder.

To be clear, Reddy’s position is that the ALC erred in applying § 48-39-120(C) to this case, for the reasons set forth in Reddy’s Initial Brief. But the ALC’s decision to resolve the case on that ground—rather than on the beaches jurisdictional theory—was a permissible exercise of judicial discretion, not a legal error.

V. Reddy’s Cross-Appeal Arguments Are Independently Dispositive.

Even if this Court were to agree with DES and SCCCL on the “beaches” jurisdictional question, Reddy’s cross-appeal arguments provide independent grounds for reversal of the removal order. As set forth in Reddy’s Initial Brief:

Section 48-39-120(C) does not authorize removal of erosion control structures on private property landward of the setback line, because that provision by its terms governs permits for structures “on or upon the tidelands and coastal waters.” S.C. Code Ann. § 48-39-120(B). (Reddy Initial Br. pp. 7–12.)

The ALC’s “adverse effect on the public interest” finding is not supported by substantial evidence, because the ALC relied on general legislative policy declarations rather than case-specific evidence. (*Id.* at 14–15.)

The ALC’s sua sponte reliance on § 48-39-120(C) as the dispositive legal basis denied Reddy due process. (*Id.* at 15–17.)

These arguments are fully briefed in Reddy’s Initial Brief and need not be repeated here. They are, however, responsive to SCCCL’s contention that the § 48-39-120(C) removal order should be affirmed regardless of the “beaches” question.

VI. DES and SCCCL Have Not Established Reversible Error.

DES and SCCCL are the appellants challenging the ALC’s refusal to find beaches jurisdiction and its vacatur of the penalty. They bear the burden of demonstrating the ALC committed reversible error. For the reasons stated above, they have not met that burden.

The ALC made extensive factual findings regarding the quality and persuasiveness of DES’s jurisdictional evidence. These are factual findings reviewed under the substantial evidence standard. DES and SCCCL have not demonstrated these findings are clearly erroneous. To the contrary, the findings are supported by the DES expert’s own testimony that he could not identify the beaches boundary with certainty and that the boundary “could change day-by-day.” (R. pp. 2579–2580; R. p. 138.) Reviewing courts may not make independent factual findings but must review the record under the appropriate standard. *Stubbs v. S.C. Dep’t of Emp’t & Workforce*, 407 S.C. 288, 293, 755 S.E.2d 114, 116–17 (Ct. App. 2014). Agency deference does not extend to interpretations that expand statutory jurisdiction beyond the plain meaning of undefined terms. *See Jack’s Custom Cycles, Inc. v. S.C. Dep’t of Revenue*, 439 S.C. 35, 48, 885 S.E.2d 433, 440 (Ct. App. 2023). Deference to these factual findings compels affirmance of the ALC’s refusal to find beaches jurisdiction.

The ALC's refusal to extend DES's jurisdiction beyond the statutory setback line reflects a proper application of statutory text, legislative history, and established principles of administrative law. The ALC's vacatur of the penalty was a sound exercise of discretion given the absence of a violation finding and the multiple equitable considerations supporting that conclusion. This Court should affirm both rulings.

Conclusion

For the foregoing reasons, and the reasons set forth in Reddy's Initial Brief, Appellant-Respondent respectfully requests that this Court:

1. Reverse the ALC's order requiring removal of the erosion control structure;
2. Hold that S.C. Code Ann. § 48-39-120(C) does not authorize removal of erosion control structures on private property landward of the statutory setback line;
3. Hold that the setback line established under § 48-39-280 marks the landward limit of DES's beachfront permitting jurisdiction;
4. Affirm the ALC's vacatur of the \$289,000 civil penalty;
5. Affirm the ALC's limitation of the removal order to the walls and associated construction materials;
6. Hold that DES lacked jurisdiction to issue Administrative Order AF-0000960 for construction occurring entirely landward of the setback line; and

7. Vacate the Administrative Order in its entirety.

In the alternative, this Court should remand for proceedings under the correct statutory framework, with a determination of whether DES has jurisdiction landward of the setback line.

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Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Administrative Law Judge

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

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

Rom Reddy, Appellant-Respondent.

**CERTIFICATE OF
APPELLANT-RESPONDENT'S COUNSEL**

The undersigned certifies that this Final Response Brief complies with Rule
211(b), SCACR.

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