STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Environmental Services and South Carolina Coastal Conservation League, Petitioners, v. Rom Reddy and Renee Reddy, Respondents.	Docket No. 24-ALJ-07-0232-CC **ORDER DENYING MOTION FOR SUMMARY JUDGMENT**

STATEMENT OF THE CASE

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

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

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

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

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

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

UNDISPUTED FACTS

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

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

DISCUSSION

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

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

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

[5] Active beach is defined as "that area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean." S.C. Code § 48-39-270(13).

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

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

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

The South Carolina Coastal Tidelands and Wetlands Act

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

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

Pursuant to the Act, "critical areas" include "any of the following: coastal waters; tidelands; beaches; beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280."[6] S.C. Code Ann. § 48-39-10(J) (Supp. 2024) (originally enacted as Act No. 123, § 3 (1977) (defining critical area as: coastal waters, tidelands, beaches, and primary oceanfront sand dunes).[7] "Beaches" are defined as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." S.C. Code Ann. § 48-39-10(H) (Supp. 2024).

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

The Beach Management Act

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

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

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

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

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

South Carolina Coastal Zone Management Act

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

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

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

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

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

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

[10] The Department was formerly known as the Coastal Council.

Whether the Department has Permitting Jurisdiction over Beaches Critical Area?

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

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

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

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

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

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

The Department's Permitting Authority over Beaches Critical Areas

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

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

[12] The exemptions are inapplicable to the matter at hand.

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

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

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

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

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

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

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

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

[17] I acknowledge that at first glance section 48-39-290 of the South Carolina Code could be considered more specific and definite than subsection 48-39-130(A) of the South Carolina Code. *See also Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010) (citing *Spectre, LLC v. S.C. Dept. of Health and Envt. Control,* 386 S.C.

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

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

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

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

The Department's Permitting Authority under the Beachfront Management Plan

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

The Legislative Findings and Purpose of the Act

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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

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

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

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

Id.

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

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

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

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

not establish a "binding norm" as the Department's actions are consistent with the permitting authority condoned by the Legislature.

Whether the Definition of Beaches Critical Area Is Unconstitutionally Vague?

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

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

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

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

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

CONCLUSION

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

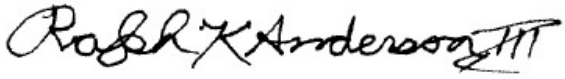
administrative order against Respondents. Moreover, I find that there are genuine issues of material facts and that further inquiry into the facts is necessary to clarify the application of the law to the issues presented to this Court. *Rothrock*, 305 S.C. at 405, 409 S.E.2d at 368.

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

ORDER

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

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

April 24, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

April 24, 2025
Columbia, South Carolina