

24-RFR-47

BOARD PACKAGE

Pages 1–10 RFR

Pages 11–48 Staff Response



Mary D. Shahid
Shareholder
Admitted in SC

March 5, 2024

RECEIVED

MAR 05 2024

Clerk, Board of Health
and Environmental Control

24-RFR-47

VIA ELECTRONIC AND US MAIL

S. C. Board of Health and Environmental Control
Attention: Clerk of Board
2600 Bull Street
Columbia, SC 29201
boardclerk@dhec.sc.gov

Re: Request for Final Review Conference - **CORRECTED**
OCRM Establishment of Beach Jurisdictional Line

Dear Madam Clerk:

This office represents Cindi Solomon in matters related to her home located at 130 Ocean Boulevard, Isle of Palms, Charleston County, South Carolina. 130 Ocean Blvd. is Ms. Solomon's and her spouse's full-time residence, not an investment property subject to rental.

BACKGROUND

130 Ocean Boulevard ("Property") is an oceanfront lot facing the Atlantic Ocean. Ms. Solomon purchased the Property on January 16, 2018, at a price of \$3,300,000. Ms. Solomon has paid property taxes to the Charleston County Tax Assessor's office for the Property of at least \$20,000 per year. The attached plat, Exhibit A to this RFR, indicates the location of the Baseline and Setback line relative to the Property. These lines are also reflected on the Department's website as shown on Exhibit B to this RFR. Ex. A reflects multiple lots, including the Property, extending from Ocean Boulevard to Mean High Water. Ex. A was prepared in 1988, but it appears that there is ample space to construct a residence on all of the Ocean Blvd. lots without impacting the Department's beach front jurisdiction. That remained the case with the publication in 2018 of the baseline and setback line positions, attached. As noted in Ex. B., all development is on the landward side of the jurisdictional lines. In fact, Ms. Solomon specifically avoided OCRM's jurisdiction in the construction of her home, desiring to locate her home as far landward as practicable.

205 King Street T (843) 720-1788
Suite 400 (29401) F 843.414.8242
PO Box 486 E MShahid@maynardnexsen.com
Charleston, SC 29402 Maynard Nexsen PC
www.maynardnexsen.com Attorneys and Counselors at Law

RECENT EVENTS

On December 17, 2023, the Charleston Harbor Tide Gage registered the fourth highest non-tropical high tide every recorded. The tide was the result of a Nor'easter storm and reached 9.86 feet (flood stage is 7 feet.) The tidal event caused significant erosion for all properties on Ocean Boulevard, Isle of Palms, and at the Property Ms. Solomon observed the tide approaching and undermining the foundation of her home.

The December 17, 2023 Nor'easter storm and resulting flooding was one-time event. Ms. Solomon has experienced predicted high tides and named storm events in her six years of ownership of the Property. At no time prior to December 17, 2023 did her property suffer from flood damage and tidal action. But, given the severity of the tidal conditions created by the December 17th Nor'easter, Ms. Solomon is considering installing some form of protection landward of the setback line as shown on Ex. B. Before she was able to perform that installation, a representative of the Department, Matt Slagel, placed flags on her property indicating what he believed to be the boundary of "beaches critical area" on the seaward side of the Property. Photographs of these flags are attached as Exhibit C to this RFR. The Department's determination of what it believes to be jurisdictional "critical area" is a "department decision... that may give rise to a contested case." Consequently, the review procedures set forth in S. C. Code Ann. Sec. 44-1-60 are applicable.¹ Moreover, it appears that the Department placed these flags between Thursday, February 22 and Monday, February 26. (Cindi Solomon was out of town during that period of time.) Based on these dates, the deadline for filing this RFR is March 7, 2024.

LEGAL ARGUMENT

The jurisdictional boundaries established by the Department through the placement of flags, and presumably locatable with GPS data, likely relate to the Department's jurisdiction over "beaches." "Beaches" are defined in S. C. Code Ann. Sec. 48-39-10(H) as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." "Beaches" are designated as critical area in S. C. Code Ann. 48-39-10(J)(3), the basis by which the Department asserts its jurisdiction. However, the Department disregarded this regulatory definition. As described above, the Property suffered erosion from a single, one-time event. Not a periodic event. High tides of the nature of the tidal activity on December 17, 2023 are not regular occurrences and certainly cannot be described as periodic.

¹ Moreover, the Administrative Law Court has jurisdiction over contested cases arising from a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard. S. C. Const. Article I Sec. 22. In accordance with the procedures of Sec. 44-1-60, these matters are considered by the Board before advancing to the S. C. Administrative Law Court.

Clerk, Board of Health and Environmental Control
March 5, 2024
Page 3

It is possible that OCRM may also be relying on the definition of "Active Beach" within its regulations: "[T]he area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean landward." S. C. Reg. 30-(D)(2). If that is the case, the placement of the flags is well-landward of the existing escarpment. Under either definition, the Department's actions were incorrect as the placement of the flags is not consistent with the regulatory definitions.

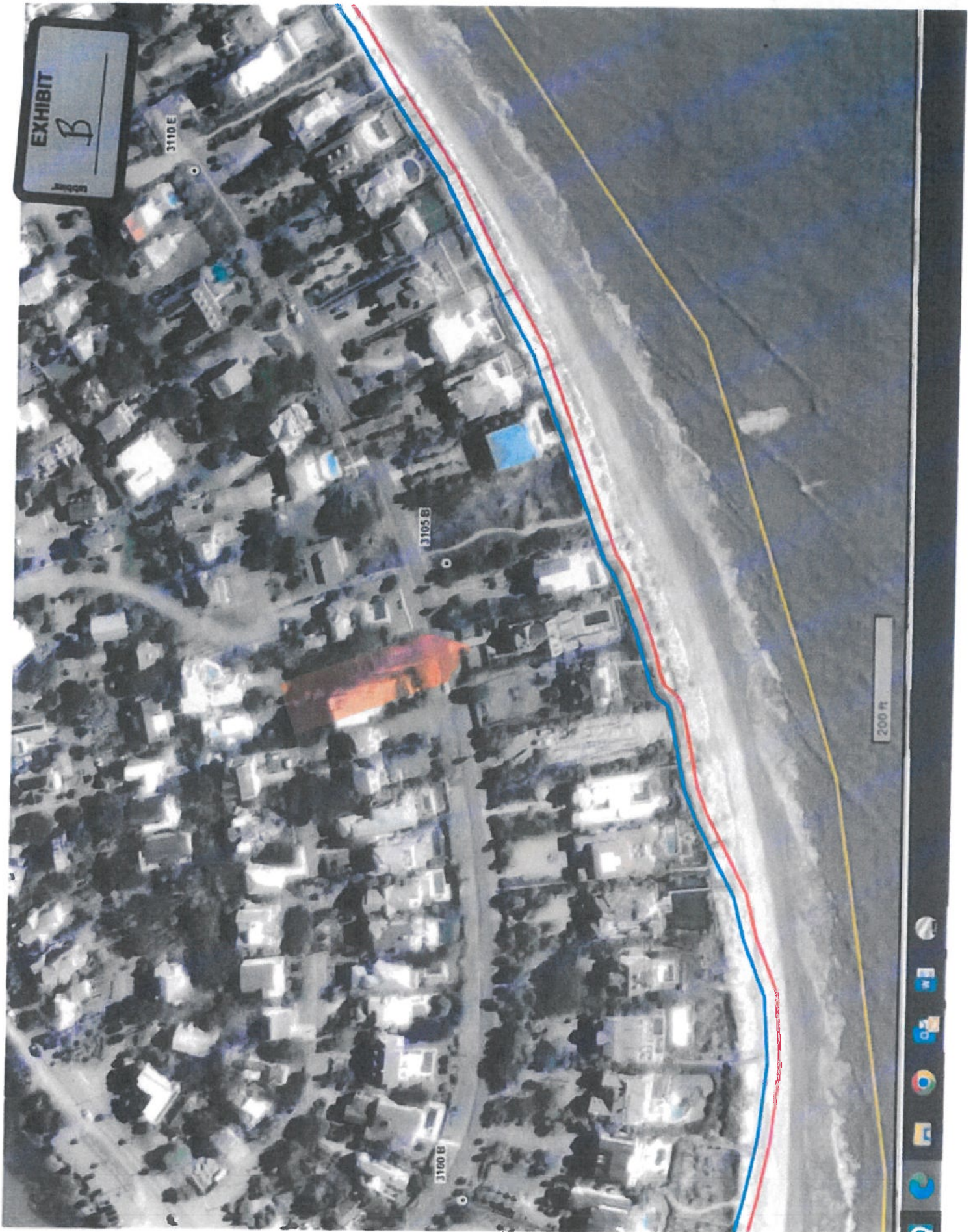
CONCLUSION

Ms. Solomon seeks a determination by the Board of Health and Environmental Control that the Department's actions must be reviewed and, upon review, these actions reversed as the Department staff disregarded the regulatory definitions in establishing the critical area boundaries and exercised unlawful discretion in establishing these boundaries.

Very truly yours,

s/Mary D. Shahid

cc: Cindi Solomon
Bradley D. Churdar, Associate General Counsel



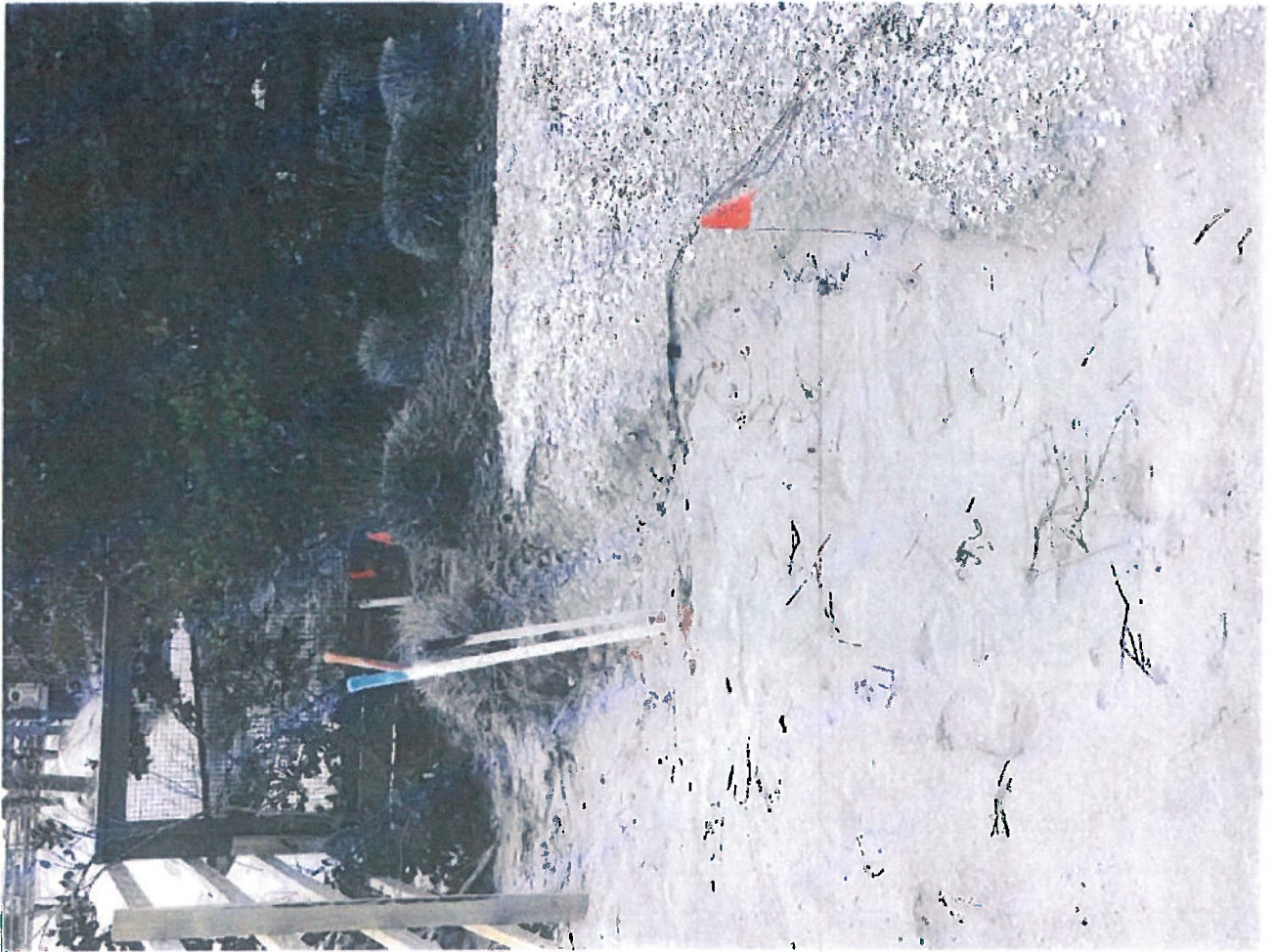
EXHIBIT

tabblier

C-1, 2, 3







Mary D. Shahid

From: Chris Moore <cmoore@jgtinc.com>
Sent: Wednesday, March 6, 2024 1:31 PM
To: Mary D. Shahid
Subject: FW: Isle of Palms beachfront critical lines / new City ordinance

{EXTERNAL EMAIL}

Christopher W. Moore, PE
Jon Guerry Taylor & Associates, Inc.
PO Box 1082
Mount Pleasant, South Carolina 29465 USA
Office: 843.884.6415
Direct: 843.628.5612
Fax: 843.884.4026
Cell: 843.367.7989
www.jgtinc.com

From: Slagel, Matt <slagelmj@dhec.sc.gov>
Sent: Wednesday, February 28, 2024 3:02 PM
To: Chris Moore <cmoore@jgtinc.com>; Craig Pawlyk <cpawlyk@jgtinc.com>
Cc: Boynton, Jessica <boyntojb@dhec.sc.gov>; Oswald, Matthew <OswaldM@dhec.sc.gov>
Subject: Re: Isle of Palms beachfront critical lines / new City ordinance

Chris,

Yesterday, 2/27/24, OCRM staff flagged the landward limit of beaches critical area at the following properties, many of which you have been working with and some may have contacted me directly:

112 Ocean Blvd
116 Ocean Blvd
122 Ocean Blvd
126 Ocean Blvd
130 Ocean Blvd
204 Ocean Blvd
206 Ocean Blvd
208 Ocean Blvd
210 Ocean Blvd
310 Ocean Blvd
314 Ocean Blvd
410 Ocean Blvd

*Kristen Stein
Mary & John Gondolito
Cindy Solomon*

Orange flags labeled "SC DHEC OCRM" were placed, and again, those represent the landward limit of beaches critical area at each property. This is not the same as the DHEC OCRM beachfront setback line, which a

surveyor will need to locate and flag using coordinates available on our website:
<https://gis.dhec.sc.gov/shoreline/>

From DHEC OCRM's perspective, any erosion control structure would need to be installed entirely landward of beaches critical area and entirely landward of the DHEC OCRM beachfront setback line.

We did not place flags at 900 Ocean Blvd because at that particular property, the beaches critical area is located seaward of the beach/dune system critical area (the landward limit of the beach/dune system critical area is the DHEC OCRM beachfront setback line). At that property, any erosion control structure would need to be installed entirely landward of the DHEC OCRM beachfront setback line.

The installation of an erosion control structure, including any equipment access or material storage, will need to occur from the landward side of the property. No impacts to the State's critical areas can occur to install a structure that is not otherwise permissible within the critical areas.

Thanks,
Matt

--

Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control

Office: (843) 953-0250

Email: slagelmj@dhec.sc.gov

Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Requestor: 130 Ocean Boulevard Living Trust
Mary D. Shahid, Maynard Nexsen, Attorney for Requestor

Applicant: 130 Ocean Boulevard Living Trust
Submission # HQ1-Y22Z-S0JCS
DHEC OCRM Request to Have a Critical Area Line Established
130 Ocean Boulevard, Isle of Palms, SC

Docket No.: 24-RFR-47, 130 Ocean Boulevard Living Trust

OGC No.: 2024-OCR-0005

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Clerk, Board of Health
and Environmental Control

I. Summary

a. Type of Decision.

Establishment of a DHEC OCRM Critical Area Line. In this case, DHEC OCRM flagged the landward limit of Beaches Critical Area at the subject property pursuant to the owner's request. This Staff Summary responds to the Request for Review submitted by 130 Ocean Boulevard Living Trust related to the location of Beaches Critical Area as flagged by DHEC OCRM at the property. Any future construction activities would need to comply with all applicable state and federal laws in procuring any additional permits required prior to construction, including a National Pollution Discharge Elimination System (NPDES) permit and a Coastal Zone Consistency review from the State if applicable.

b. Location.

130 Ocean Boulevard, Isle of Palms, SC

c. Decision.

On February 27, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department" or "DHEC OCRM") flagged the landward limit of Beaches Critical Area at the subject property. Orange flags marked "SC DHEC OCRM" were placed in the ground to adhere to the statutory definition of "Beaches" found in 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." S.C. Code Ann. §48-39-10(J) further states that " 'Critical area' means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in §48-39-280." Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit. An Inspection Form was completed (See **Exhibit A**), and site photographs were taken (See **Exhibit B**). A figure was created to show the locations of

the flags in reference to drone photography captured the day before, on February 26, 2024 (See **Exhibit C**).

Requestor is the property owner, 130 Ocean Boulevard Living Trust. Requestor disagrees with where DHEC OCRM flagged the landward limit of Beaches Critical Area at the subject property.

d. Relevant Chronology.

The chronology shows the Department has been actively working with the City of Isle of Palms to address erosion issues along Breach Inlet. The Department has also shifted workloads to flag the Beaches Critical Area in a timely manner, at the property owners' request.

June 30, 2023 – DHEC OCRM issued General Permit OCRM04706 to the City of Isle of Palms. The permit authorized minor beach renourishment (trucking in beach-compatible sand) from 100 Ocean Boulevard through 402 Ocean Boulevard.

July 26, 2023 – DHEC OCRM issued General Permit OCRM04742 to the City of Isle of Palms. The permit authorized minor beach renourishment (trucking in beach-compatible sand) from 404 Ocean Boulevard through 522 Ocean Boulevard.

August 31, 2023 – DHEC OCRM issued Emergency Order 23-EO-008 to the City of Isle of Palms for sand scraping from 100 to 314 Ocean Boulevard.

September 28, 2023 – DHEC OCRM issued Emergency Order 23-EO-014 to the owner of 130 Ocean Boulevard for sandbags, sand scraping, and minor beach renourishment.

September 29, 2023 – DHEC OCRM issued Emergency Order 23-EO-015 to the City of Isle of Palms for sand scraping from 100 to 314 Ocean Boulevard.

October 6, 2023 – DHEC OCRM issued Emergency Order 23-EO-016 to the City of Isle of Palms for the placement of sandbags from 120 to 206 Ocean Boulevard.

December 23, 2023 – DHEC OCRM issued Emergency Order 23-EO-021 to the City of Isle of Palms for sand scraping from 112 to 308 Ocean Boulevard.

January 2024 to Present – The City of Isle of Palms has issued local sand scraping Emergency Orders on an as-needed basis when erosion reaches to within 20 feet of habitable structures or swimming pools.

February 20, 2024 – The City of Isle of Palms approved Emergency Ordinance No. 2024-01, which allows for permits to be sought from the City for the construction of erosion control structures landward of the State's Critical Areas. Erosion control structures would need to meet other requirements specified in the Emergency Ordinance. (See **Exhibit D**).

February 26, 2024 – Chris Moore from Jon Guerry Taylor & Associates, Inc., on behalf of the property owner, requested DHEC OCRM staff to flag the Beaches Critical Area at 130 Ocean Boulevard.

February 27, 2024 – DHEC OCRM staff flagged the Beaches Critical Area at 130 Ocean Boulevard.

March 5, 2024 – 130 Ocean Boulevard Living Trust challenged the location of Beaches Critical Area as determined by DHEC OCRM and submitted a Request for Final Review (24-RFR-47) to the DHEC Board.

II. Relevant Law

a. Statutes.

S.C. Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10 et seq. (2008 & Supp. 2019) (CTWA)

§48-39-10: Definitions: (H) “Beaches” means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.

§48-39-10: Definitions: (J) “Critical area” means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.

§48-39-30: Legislative declaration of state policy: (D) Critical areas shall be used to provide the combination of uses which will insure the maximum benefit to the people, but not necessarily a combination of uses which will generate measurable maximum dollar benefits. As such, the use of a critical area for one or a combination of like uses to the exclusion of some or all other uses shall be consistent with the purposes of this chapter.

§48-39-210: Department only state agency authorized to permit or deny alterations or utilizations within critical areas: (A) The department is the only state agency with authority to permit or deny any alteration or utilization within the critical area except for the exemptions granted under Section 48-39-130(D) and the application for a permit must be acted upon within the time prescribed by this chapter. (B) ...Critical areas by their nature are dynamic and subject to change over time. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not.

§48-39-250: Legislative findings regarding the coastal beach/dune system: The General Assembly finds that:

(1) The beach/dune system along the coast of South Carolina is extremely important to the people of this State and serves the following functions:

- (a) protects life and property by serving as a storm barrier which dissipates wave energy and contributes to shoreline stability in an economical and effective manner;
- (b) provides the basis for a tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a significant portion of the state's economy. The tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues;
- (c) provides habitat for numerous species of plants and animals, several of which are threatened or endangered. Waters adjacent to the beach/dune system also provide habitat for many other marine species;
- (d) provides a natural healthy environment for the citizens of South Carolina to spend leisure time which serves their physical and mental well-being.
- (2) Beach/dune system vegetation is unique and extremely important to the vitality and preservation of the system.
- (3) Many miles of South Carolina's beaches have been identified as critically eroding.
- (4) Chapter 39 of Title 48, Coastal Tidelands and Wetlands, prior to 1988, did not provide adequate jurisdiction to the South Carolina Coastal Council to enable it to effectively protect the integrity of the beach/dune system. Consequently, without adequate controls, development unwisely has been sited too close to the system. This type of development has jeopardized the stability of the beach/dune system, accelerated erosion, and endangered adjacent property. It is in both the public and private interests to protect the system from this unwise development.
- (5) The use of armoring in the form of hard erosion control devices such as seawalls, bulkheads, and rip-rap to protect erosion-threatened structures adjacent to the beach has not proven effective. These armoring devices have given a false sense of security to beachfront property owners. In reality, these hard structures, in many instances, have increased the vulnerability of beachfront property to damage from wind and waves while contributing to the deterioration and loss of the dry sand beach which is so important to the tourism industry.
- (6) Erosion is a natural process which becomes a significant problem for man only when structures are erected in close proximity to the beach/dune system. It is in both the public and private interests to afford the beach/dune system space to accrete and erode in its natural cycle. This space can be provided only by discouraging new construction in close proximity to the beach/dune system.
- (7) Inlet and harbor management practices, including the construction of jetties which have not been designed to accommodate the longshore transport of sand, may deprive downdrift beach/dune systems of their natural sand supply. Dredging practices which include disposal of beach quality sand at sea also may deprive the beach/dune system of much-needed sand.

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

(9) Present funding for the protection, management, and enhancement of the beach/dune system is inadequate.

(10) There is no coordinated state policy for post-storm emergency management of the beach/dune system.

(11) A long-range comprehensive beach management plan is needed for the entire coast of South Carolina to protect and manage effectively the beach/dune system, thus preventing unwise development and minimizing man's adverse impact on the system.

§48-39-260: Policy Statement: In recognition of its stewardship responsibilities, the policy of South Carolina is to:

(1) protect, preserve, restore, and enhance the beach/dune system, the highest and best uses of which are declared to provide:

(a) protection of life and property by acting as a buffer from high tides, storm surge, hurricanes, and normal erosion;

(b) a source for the preservation of dry sand beaches which provide recreation and a major source of state and local business revenue;

(c) an environment which harbors natural beauty and enhances the well-being of the citizens of this State and its visitors;

(d) natural habitat for indigenous flora and fauna including endangered species;

(2) create a comprehensive, long-range beach management plan and require local comprehensive beach management plans for the protection, preservation, restoration, and enhancement of the beach/dune system. These plans must promote wise use of the state's beachfront;

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

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

(5) promote carefully planned nourishment as a means of beach preservation and restoration where economically feasible;

(6) preserve existing public access and promote the enhancement of public access to assure full enjoyment of the beach by all our citizens including the handicapped and encourage the purchase of lands adjacent to the Atlantic Ocean to enhance public access;

(7) involve local governments in long-range comprehensive planning and management of the beach/dune system in which they have a vested interest;

(8) establish procedures and guidelines for the emergency management of the beach/dune system following a significant storm event.

b. Regulations.

Critical Area Permitting Regulations, S.C. Code Ann. Regs. 30-1 et seq. (CAPR)

R.30-1.D: Definitions: (15) Critical Areas – any of the following: (1) coastal waters, (2) tidelands, (3) beach/dune systems and (4) beaches.

c. The South Carolina Coastal Zone Management Program Document. (CMP)

Part 2, Chapter IV – Erosion Control Program, Pages IV-51 to IV-60.

III. Staff Response to Grounds Stated in Request for Review.

- a. Requestor states: “The December 17, 2023 Nor’easter storm and resulting flooding was [a] one-time event. Ms. Solomon has experienced predicted high tides and named storm events in her six years of ownership of the Property. At no time prior to December 17, 2023 did her property suffer from flood damage and tidal action. But, given the severity of the tidal conditions created by the December 17th Nor’easter, Ms. Solomon is considering installing some form of protection landward of the setback line as shown on Ex. B [of RFR]. Before she was able to perform that installation, a representative of the Department, Matt Slagel, placed flags on the Property on February 27, 2024, indicating what he believed to be the boundary of ‘beaches critical area’ on the seaward side of the Property.”**

Staff response: As shown in the Relevant Chronology section above, the City of Isle of Palms has been working to address erosion issues along this stretch of shoreline since at least June 2023. The December 17, 2023 Nor’easter exacerbated the erosion issues that were already occurring. Since that storm, the City has been trucking-in beach-compatible sand and/or scraping sand from the beach when erosion reaches within 20 feet of habitable structures or swimming pools in attempt to “hold the line” until the U.S. Army Corps of Engineers’ planned beneficial use sand placement project in Spring/Summer 2024.

On February 20, 2024, the City of Isle of Palms approved Emergency Ordinance No. 2024-01, which allows for permits to be sought from the City for the construction of erosion control structures landward of the State’s Critical Areas. Erosion control structures would need to meet other requirements specified in the Emergency Ordinance. Pursuant to the Emergency Ordinance, prior to the issuance of a permit from the City, the property owner

must first coordinate with DHEC OCRM and have staff physically place markers on the property “to confirm the then existing location of the critical area, as defined in S.C. Code Ann. §48-39-10, and as solely determined by OCRM.” On February 26, 2024, the Requestor’s agent requested DHEC OCRM to flag the Beaches Critical Area at 130 Ocean Boulevard, and staff flagged the Beaches Critical Area the next day, on February 27, 2024.

- b. **Requestor states: “ ‘Beaches’ are defined in S.C. Code Ann. Sec. 48-39-10(H) as ‘those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.’ ‘Beaches’ are designated as critical area in S.C. Code Ann. 48-39-10(J)(3), the basis by which the Department asserts its jurisdiction. However, the Department disregarded this regulatory definition. As described above, the Property suffered erosion from a single, one-time event, not a periodic event. High tides of the nature of the tidal activity on December 17, 2023 are not regular occurrences and certainly cannot be described as periodic.”**

Staff response: DHEC OCRM disagrees that it disregarded the statutory definition of “beaches” found in S.C. Code Ann. §48-39-10(H). The statute does not exclude storms or other “one-time events” from consideration when delineating the State’s critical areas, whether coastal waters, tidelands, beaches, or the beach/dune system in unstabilized inlet zones. S.C. Code Ann. §48-39-210(B) states that “Critical areas by their nature are dynamic and subject to change over time. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not.” The second half of the “beaches” definition states: “so that no nonlittoral vegetation is established.” DHEC OCRM staff evaluated the presence or absence of nonlittoral vegetation at the property and the neighboring properties as an indicator for the landward limit of Beaches Critical Area, as directed by statute. The Department also considered the history of the site, personally observed the property and adjacent areas, and evaluated aerial photos to carefully verify the location of the critical area.

Although Requestor claims that the property suffered erosion from a single, one-time event, as the Relevant Chronology section above and the City of Isle of Palms Emergency Ordinance set forth, this stretch of shoreline remains dynamic and nonlittoral vegetation has not become re-established (See **Exhibit B**). The instability of this area is further evidenced by the multiple efforts the City has made since June 2023 to mitigate the erosion impacts it continues to experience. The Beaches Critical Area determination depicted in **Exhibit C** is consistent with the statutory definition of “beaches” and consistent with the legislative findings and policy statements in the S.C. Coastal Tidelands and Wetlands Act. The General Assembly has recognized the crucial importance and value of the beaches in providing storm protection, habitat for plants and animals, recreation to its citizens, and in attracting tourists to the South Carolina beaches which is important to South Carolina’s economy. It was the General Assembly’s intent to give the Department sufficient authority over the critical areas so that the beaches could be preserved and so that development would not continue to be sited too close to the beach dune system.

IV. Requested Action

Based on the foregoing, the Department requests that the Board decline to hold a final review conference in the above-referenced matter.

[SIGNATURES ON FOLLOWING PAGE]

**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Docket No.: 24-RFR-47, 130 Ocean Boulevard Living Trust

Respectfully Submitted,



Matthew J. Slagel
Manager, Beachfront Management Section
Office of Ocean & Coastal Resource Management

Sallie P. Phelan

Sallie P. Phelan
Assistant General Counsel
Office of Ocean & Coastal Resource Management

Date: March 22, 2024

EXHIBIT A


Cynthia A. Solomon : 4WZT-2C8Y-PHB

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024



Inspection Details	
1. Property Owner	Cynthia A. Solomon
2. Is this activity associated with a permit?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
3. Permit Number	N/A
4. Purpose of Inspection	Beaches CA Line
5. TMS/PIN	5680900160
6. Site Address	130 Ocean Boulevard, Isle of Palms, SC 29451
7. County	Charleston
<p>8. Provide a description of your findings.</p> <p>Orange flags marked "SC DHEC OCRM" were placed in the ground to adhere to the statutory definition of "Beaches" found in S.C. Code Ann. Section 48-39-10(H): " 'Beaches' means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit.</p>	
	<p>GPS Latitude: 32.7757222222222</p> <p>GPS Longitude: -79.8065305555556</p> <p>GPS Altitude: 3.84626989514973 meters</p> <p>Photo Uploaded: 3/22/2024</p>

3/22/2024 2:16 PM

1

Inspector: Matt Slagel
Start Date: 03/22/2024

Inspection Details



GPS Latitude: 32.7757194444444
GPS Longitude: -79.8065222222222
GPS Altitude: 3.86693000064754 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7757055555556
GPS Longitude: -79.80645
GPS Altitude: 3.80581110981717 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7757166666667
GPS Longitude: -79.8064472222222
GPS Altitude: 3.68151682260363 meters
Photo Uploaded: 3/22/2024

Inspector: Matt Slagel
Start Date: 03/22/2024

Inspection Details



GPS Latitude: 32.7757138888889
GPS Longitude: -79.8064444444444
GPS Altitude: 3.08627039891206 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7757138888889
GPS Longitude: -79.8064444444444
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Photo Uploaded: 3/22/2024



GPS Latitude: 32.7756194444444
GPS Longitude: -79.8064305555556
GPS Altitude: 2.95959079283887 meters
Photo Uploaded: 3/22/2024

Inspector: Matt Slagel
Start Date: 03/22/2024

Inspection Details



GPS Latitude: 32.775627777778
GPS Longitude: -79.806433333333
GPS Altitude: 2.64419096679238 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.775588888889
GPS Longitude: -79.806558333333
GPS Altitude: 3.36642422926617 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.775622222222
GPS Longitude: -79.806752777778
GPS Altitude: 4.5080883631936 meters
Photo Uploaded: 3/22/2024

Inspector: Matt Slagel
Start Date: 03/22/2024

Inspection Details



GPS Latitude: 32.7756194444444
GPS Longitude: -79.8067527777778
GPS Altitude: 4.35240484640803 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7756361111111
GPS Longitude: -79.8067444444444
GPS Altitude: 3.84299586578214 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7756777777778
GPS Longitude: -79.8067055555556
GPS Altitude: 3.89374799615261 meters
Photo Uploaded: 3/22/2024

Inspector: Matt Slagel
 Start Date: 03/22/2024

Inspection Details



GPS Latitude: 32.7756583333333
 GPS Longitude: -79.8067305555555
 GPS Altitude: 3.83383967071737 meters
 Photo Uploaded: 3/22/2024



GPS Latitude: 32.7757194444444
 GPS Longitude: -79.8064527777778
 GPS Altitude: 3.82667256550165 meters
 Photo Uploaded: 3/22/2024

9. What is the progress of the construction activity?	N/A
10. If activity, or any portion thereof, is not in compliance with the Act, Regulations, or specified conditions of the permit, describe the inconsistencies.	
11. Was the property owner present during this inspection?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12. If the property owner was notified, when?	
Date	Time
13. Is a construction placard posted?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
14. What is the result of the inspection?	N/A

Cynthia A. Solomon : 4WZT-2C8Y-PHB
OCRM Inspection Form



Inspector: Matt Slagel
Start Date: 03/22/2024

Inspection Details

16. Inspector's Signature

Matthew J. Slagel

SCDHEC - MJS

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Board Package

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02/27/24 11:14 AM

327757° N, 79.8068° W



SCD/HEC - MJS

02/27/24 11:14 AM

32° 77' 57\"/>

SCDHEC - MJS

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02/27/24-11:14 AM

32.7757° N, 79.8065° W



SCDHEC 11015

02/27/24 11:14 AM

32.7757° N, 79.8064° W

SCDHEC - MJS

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02/27/24 11:14 AM

32.7757° N, 79.8064° W





SCDHEC - MJS

02/27/24 11:14 AM

32 7757° N, 79 8064° W

SCDHEC - MJS

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02/27/24 11:15 AM

32.7756° N 79.8064° W





SCDHEC - MJS

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02/27/24 11:15 AM

32.7756° N, 79.8064° W

SCDHEC - MJS



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02/27/24 11:15 AM

32.756° N, 79.8066° W



SCDHEC - MJS

02/27/24 11:15 AM

32.7756° N, 79.8068° W

SCDHEC - MJS

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02/27/24 11:15 AM

32.7756° N, 79.8068° W





SCDHEC - MJS

09/22/24 4:41:13 AM

32.7756° N, 79.8067° W

SGDHEC - MUS

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02/27/24 11:18 AM

SP1011-N-79-8067-W





SCDHEC - M15

02/27/24 11:18 AM

32.7757° N 79.8067° W

SCDHEC - MJS

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03/08/24 01:43 PM

32.7757° N, 79.8065° W





EXHIBIT D

EMERGENCY ORDINANCE NO. 2024-01

AN ORDINANCE PERMITTING RESIDENTS NEAR BREACH INLET TO INSTALL A REVETMENT/SEAWALL FOR EMERGENCY EROSION CONTROL

WHEREAS, emergency erosion conditions have and continue to occur on beaches facing the Atlantic Ocean between Breach Inlet and 10th Avenue on Isle of Palms associated with Hurricane Idalia, coastal flooding, storm surge and subsequent king tides, wind and wave events;

WHEREAS, due to Hurricane Idalia, South Carolina received an emergency declaration on August 31, 2023, and the Mayor of the City of Isle of Palms (“City”) also declared a state of emergency due to Hurricane Idalia on the same day;

WHEREAS, these conditions have and will continue to expose and create an imminent threat to the existing structures and critical infrastructure on front beach properties located within the City;

WHEREAS, this continued imminent threat constitutes temporary emergency conditions that endanger the health, safety, welfare, resources, and property of residents of the coastal zone as well as the general population of the State of South Carolina;

WHEREAS, the City received an emergency order from the South Carolina Department of Health and Environmental Control’s Office of Ocean and Coastal Resource Management (“OCRM”) and approved an emergency contract to restore the dunes in the erosion area by scraping sand between 100 and 314 Ocean Blvd after Hurricane Idalia;

WHEREAS, continued king high tides, northeastern winds, and increased wave sizes have kept water levels high and completely eroded the newly restored dune installed by the contractor;

WHEREAS, the City received a new OCRM emergency order allowing another round of scraping in the affected area;

WHEREAS, on December 17, 2023, a weather event with strong northeastern winds and record high tides caused significant erosion due to high tides, wind and waves;

WHEREAS, these temporary emergency conditions are expected to be alleviated when the US Army Corps of Engineers initiates a project in 2024 that will result in approximately 550,000 cubic yards of sand being placed in this area and providing protection for public interests and the welfare and property of residents;

WHEREAS, City Ordinance, Section 5-4-15, entitled “Beach Regulations,” prohibits any seawalls, revetments, bulkheads, groins, rip-rap or any other hard erosion control structures to be situated in whole or in part landward of the critical area as defined in S.C. Code 1976, § 48-39-10,

as amended, within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet;

WHEREAS, the City Council of the City of Isle of Palms ("City Council") now desires to authorize and to establish a temporary emergency protocol for beach front property owners that own property in the erosion area between 100 Ocean Blvd. and 914 Ocean Blvd (hereinafter defined as "Residents") that desire to place a revetment or seawall on the Resident's property, entirely landward of the critical area as defined in S.C. Code Ann § 48-39-10, as more specifically set forth below;

WHEREAS, City Ordinance, Section 1-3-53(e) allows for the enactment of emergency ordinances pursuant to S.C. Code § 5-7-250(d), which provides "[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;"

WHEREAS, this Ordinance has been approved by at least two-thirds of the City Council members present at the meeting in which it was considered; and

NOW, THEREFORE, be it ordained by the City Council of the City of Isle of Palms as follows:

Section 1 – Revetment and Seawall Requirements and Installation. City Ordinance, Section 5-4-15, entitled "Beach Regulations," is hereby temporarily amended to permit Residents (defined above) to install a revetment or seawall entirely landward of the critical area, subject to the following specifications and restrictions:

- (a) This Emergency Ordinance only applies to owners of beach front properties located in the erosion area between 100 Ocean Blvd. and 914 Ocean Blvd, which are defined above as Residents;
- (b) For purposes of this Ordinance, the term "revetment" shall mean a sloping structure built entirely landward of the critical area as determined by OCRM, as defined in S.C. Code Ann § 48-39-10, to protect the Resident's home from erosion damage;
- (c) For purposes of this Ordinance, the term "seawall" shall mean a vertical structure built entirely landward of the critical area as determined by OCRM, as defined in S.C. Code Ann § 48-39-10, to protect the Resident's home from erosion damage;
- (d) For purposes of this Ordinance, the term "maximum building line" shall mean the setback created by Section 5-4-51(3)(a) of the City Code and labeled as such on that certain plat prepared by E.M. Seabrook, Jr., C.E. and L.S., dated January 8, 1988, and entitled "FINAL PLAT, CITY OF ISLE OF PALMS, CHARLESTON

COUNTY, S.C." and duly recorded at the County RMC Office on February 16, 1988, in Plat Book BQ, at Pages 111,112, and 113;

- (e) No revetment or seawall shall be constructed or altered without first obtaining approval of the City and the issuance of a valid permit pursuant to the conditions and limitations set forth in the Ordinance, and a copy of the issued permit shall be in possession of anyone performing work associated with the seawall or revetment;
- (f) Prior to obtaining a permit from the City, the Resident shall comply with all applicable state and federal laws in procuring any additional permits required prior to construction, including a National Pollution Discharge Elimination System (NPDES) permit and a Coastal Zone Consistency review from the State if applicable.
- (g) In the event of construction of any such seawall or revetment, it shall comply with the requirements in the Ordinance and shall be the sole responsibility of the property owner and contractor to use materials and construction techniques that will minimize the possibility of damage or danger to other properties, public or private, or to persons on the beach or adjacent properties. It shall be the responsibility of the property owner to maintain such structures in a manner so as to prevent their floating or washing away and endangering other persons or property;
- (h) Prior to the installation of any seawall or revetment, the Resident shall notify any adjacent property owners in writing and copy Douglas Kerr, Deputy City Administrator at dkerr@iop.net;
- (i) Prior to the issuance of a permit from the City, the Resident shall first coordinate with OCRM and have OCRM staff physically place markers on the Resident's Property to confirm the then existing location of the critical area, as defined in S.C. Code Ann § 48-39-10, and as solely determined by OCRM.

If OCRM staff determines that the critical area should be established using the coordinates under the Data Download tab of OCRM's SC Beachfront Jurisdictional Lines viewer: <https://gis.dhec.sc.gov/shoreline/>, the Resident shall hire a surveyor to physically place markers on OCRM's Setback Line.

- (j) The following are requirements for seawalls and revetments:
 - (1) seawalls and revetments shall be designed by a registered, qualified engineer and include a certification from the engineer that the seawall or revetment will not accelerate erosion or negatively impact adjacent or down-drift lots and be designed/built to withstand a storm event;
 - (2) seawalls and revetments shall be installed entirely landward of the critical area markers placed by OCRM or the setback line marked by a surveyor, whichever is farther landward, on the Resident's property and shall not be installed more than twenty feet (20') seaward of the maximum building line;
 - (3) revetments shall be designed and installed with no greater than a 1:2 slope to reduce scour from adjacent properties;

- (4) seawalls and revetments shall have a maximum height of no more than ten (10) feet above mean sea level using NAVD88 datum;
 - (5) seawalls and revetments shall not be made of recycled concrete/materials, unless specifically designed for the purpose of marine construction;
 - (6) revetments and seawalls shall be covered by beach compatible sand when not directly exposed to water during an erosion event;
 - (7) seawalls shall be installed so as to not be visible;
 - (8) All excavations shall occur entirely landward of the critical area as marked by OCRM on the Resident's Property; and
 - (9) seawalls and revetments shall be designed so as to be continuous with any existing or planned revetments installed on adjacent properties, to the extent possible;
- (k) The Resident's contractor shall access the Resident's property through the Resident's property as OCRM prohibits heavy machinery, equipment, or materials within the critical area for the purpose of installing a seawall or revetment;
 - (l) The sand covering the revetment or wall must be from an upland source (i.e. not originating from the beach) and compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material. Only clean sand from an approved OCRM source may be placed on the seawall or revetment; and
 - (m) The Resident shall be responsible for the day-to-day maintenance of the revetment or wall to ensure it is covered with beach compatible sand, remains in good repair, and is serving its intended purpose. If the revetment is not properly installed, maintained, or becomes compromised, as determined by the City and the City's coastal engineer, the revetment shall be removed at the direction of the City and at the Resident's sole expense. The City shall have the authority to remove revetments that are not installed or maintained in accordance with this Ordinance. Residents that elect to install a seawall or revetment shall assume all responsibility over impacts to adjacent property owners.

Section 2 – OCRM Guidance. OCRM has informed the City that if a seawall or revetment is built entirely landward of the critical area, as marked by OCRM, but then later enters into the critical area due to erosion, it would be subject to OCRM's usual structural inventory and damage assessment activities. If the structure becomes "destroyed beyond repair" (as that term is used in OCRM regulations), OCRM will require the seawall or revetment to be removed at the expense of the property owner. The shoreline in the erosion area can drastically change in a matter of hours or days. As such, OCRM suggests that an erosion control structure should be installed within 7 days of OCRM flagging the critical area. If at any time prior to completion of the seawall or revetment, the partially completed seawall or revetment becomes located in whole or in part in the critical area, as marked by OCRM, OCRM will issue a Cease and Desist Directive and require the seawall or revetment to be removed from the critical area at the sole expense of the Resident.

OCRM has indicated that no emergency scraping will be allowed in front of areas where seawalls or revetments are located pursuant to state law. OCRM has indicated that all work must occur on the Resident's upland property and landward of the critical area as marked by OCRM. OCRM prohibits heavy machinery, equipment, and materials within the critical area for the purpose of installing a seawall or revetment. Also, per S.C. Code Ann. § 48-39-120(C): "The department shall have the authority to remove all erosion control structures which have an adverse effect on the public interest." The City encourages Residents to contact OCRM with any questions.

Section 3 - Removal of Seawalls and Revetments. If a Resident fails to comply with City Ordinance, Section 5-4-15, as amended herein, or any of the specifications or requirements of this Emergency Ordinance, including building a seawall or revetment without first obtaining a City issued permit, the City is entitled to require the Resident to remove the seawall or revetment, at the Resident's sole expense. Any seawalls or revetments installed in violation of Section 5-4-15, as amended herein, or this Emergency Ordinance shall be removed within forty-five (45) days after the Resident receives notice from the City to remove the seawall or revetment. In the event the City is required to enforce compliance with Section 5-4-15, as amended herein, or this Emergency Ordinance, the Resident shall pay the City any additional costs, expenses, or legal fees incurred by the City to ensure compliance with Section 5-4-15, as amended herein, and this Emergency Ordinance.

Additionally, pursuant to S.C. Code Ann. §§ 48-39-20(C) and 48-39-160, the City is authorized to file an action in Charleston County Circuit Court to prevent or eliminate a violation the Coastal Zone Management Act (S.C. Code Ann. §§ 48-39-10 to -360), including the non-permitted installation of hard erosion control devices, such as seawalls and revetments in the critical area as defined in S.C. Code Ann. § 48-39-10.

Section 4. Suspension of Contrary Local Provisions. During the emergency term, any ordinance (including City Ordinance Sections 5-4-15 and 5-4-51), resolution, policy, or bylaw of the City that conflicts with the provisions hereof shall be and is hereby temporarily suspended and superseded to allow for the Resident's installation of a seawall or revetment in strict accordance with all of the requirements and specifications as set forth in this Emergency Ordinance. However, except as expressly provided herein concerning installation of seawalls and revetments, nothing contained in this Emergency Ordinance suspends or supersedes the City's prohibition of (1) erosion control structures situated in whole or on part in the critical area; and (2) bulkheads, groins, rip-rap, concrete, clay, gravel or any other prohibited erosion control structures situated in whole or in part landward of the critical area within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet.

Section 5. Immediate Application Due to Emergency. Given the immediate threat to the welfare, safety, and property of the City's affected Residents near Breach Inlet caused by severe erosion and storm damage, this Ordinance has been enacted and shall be effective immediately.

Section 6. Expiration of Ordinance; Extension of Emergency Term. As provided by S.C. Code § 5-7-250(d), this Emergency Ordinance shall expire automatically as of the sixty-first day following the date of enactment. Notwithstanding the foregoing, however, Council may extend the emergency term by ordinance enacted in accordance with S.C. Code § 5-7-250(d) for one or more

additional terms, each of no more than sixty days, provided that the aggregate duration of the emergency term, including all such extensions, does not exceed six months.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE 20th DAY OF FEBRUARY, 2024.



Phillip Pounds, Mayor

(Seal)

Attest:



Nicole DeNeane, City Clerk



First Reading and Ratification of Emergency Ordinance: February 20, 2024
(Date)

24-RFR-48

BOARD PACKAGE

Pages 1–12 RFR

Pages 13–42 Staff Response



Mary D. Shahid
Shareholder
Admitted in SC

March 5, 2024

RECEIVED

MAR 05 2024

VIA ELECTRONIC AND US MAIL

Clerk, Board of Health
and Environmental Control

S. C. Board of Health and Environmental Control
Attention: Clerk of Board
2600 Bull Street
Columbia, SC 29201
boardclerk@dhec.sc.gov

24-RFR-48

Re: Request for Final Review Conference
OCRM Establishment of Beach Jurisdictional Line

Dear Madam Clerk:

This office represents 122 Ocean Boulevard LLC, an Ohio Limited Liability Company ("122 Ocean"), in matters related to a residential structure located at 122 Ocean Boulevard, Isle of Palms, Charleston County, South Carolina. This home is a private residence for Kristen Stein and her husband ("the Steins"), member(s) of 122 Ocean. 122 Ocean Boulevard is not an investment property subject to rental.

BACKGROUND

122 Ocean Boulevard ("Property") is an oceanfront lot facing the Atlantic Ocean. The Property was purchased by 122 Ocean on December 20, 2019 at a price of \$6,400,000. 122 Ocean has paid property taxes to the Charleston County Tax Assessor's office for the Property of at least \$80,000 per year. The attached plat, Exhibit A to this RFR, indicates the location of the Baseline and Setback line relative to the Property. These lines are also reflected on the Department's website as shown on Exhibit B to this RFR. Ex. A reflects multiple lots, including the Property, extending from Ocean Boulevard to Mean High Water. Ex. A was prepared in 1988, but it appears that there is ample space to construct a residence on all of the Ocean Blvd. lots without impacting the Department's beach front jurisdiction. This remained the case with the publication in 2018 of the baseline and setback line positions, attached. As noted in

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.maynardnexsen.com
T (843) 720-1788
F 843.414.8242
E MShahid@maynardnexsen.com
Maynard Nexsen PC
Attorneys and Counselors at Law

Ex. B, all development is on the landward side of the jurisdictional lines. In fact, OCRM's jurisdiction was specifically avoided during construction to locate the home as far landward as practicable.

RECENT EVENTS

On December 17, 2023, the Charleston Harbor Tide Gage registered the fourth highest non-tropical high tide every recorded. The tide was the result of a Nor'easter storm and reached 9.86 feet (flood stage is 7 feet.) The tidal event caused significant erosion for all properties on Ocean Boulevard, Isle of Palms, and at the Property the tide undermined the backyard area and approached the foundation of the Steins' home.

The December 17, 2023, Nor'easter storm and resulting flooding was one-time event. The Steins have experienced predicted high tides and named storm events in their four years of residence on the Property. At no time prior to December 17, 2023 did the Property suffer from flood damage and tidal action. But, given the severity of the tidal conditions created by the December 17th Nor'easter, the Steins are considering installing some form of protection landward of the setback line as shown on Ex. B. Before they were able to perform that installation, a representative of the Department, Matt Slagel, placed flags on the Property on February 27, 2024, indicating what he believed to be the boundary of "beaches critical area" on the seaward side of the Property. Photographs of these flags are attached as Exhibits C1-4 to this RFR. The Department's determination of what it believes to be jurisdictional "critical area" is a "department decision... that may give rise to a contested case." Consequently, the review procedures set forth in S. C. Code Ann. Sec. 44-1-60 are applicable.¹ This Request is timely, as the 15-day time period to challenge the staff decision does not expire until March 12, 2024.

LEGAL ARGUMENT

The jurisdictional boundaries established by the Department through the placement of flags, and presumably locatable with GPS data, likely relate to the Department's jurisdiction over "beaches." "Beaches" are defined in S. C. Code Ann. Sec. 48-39-10(H) as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." "Beaches" are designated as critical area in S. C. Code Ann. 48-39-10(J)(3), the basis by which the Department asserts its jurisdiction. However, the Department disregarded this regulatory definition. As described above, the Property suffered erosion from a single, one-time

¹ Moreover, the Administrative Law Court has jurisdiction over contested cases arising from a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard. S. C. Const. Article I Sec. 22. In accordance with the procedures of Sec. 44-1-60, these matters must be considered by the Board before advancing to the S. C. Administrative Law Court.

Clerk, Board of Health and Environmental Control
March 5, 2024
Page 3

event, not a periodic event. High tides of the nature of the tidal activity on December 17, 2023 are not regular occurrences and certainly cannot be described as periodic.

It is possible that OCRM may also be relying on the definition of "Active Beach" within its regulations: "[T]he area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean landward." S. C. Reg. 30-(D)(2). If that is the case, the placement of the flags is well-landward of the existing escarpment. Under either definition, the Department's actions were incorrect as the placement of the flags is not consistent with the regulatory definitions.

CONCLUSION

122 Ocean, through the Steins, seeks a determination by the Board of Health and Environmental Control that the Department's actions must be reviewed and, upon review, these actions reversed as the Department staff disregarded the regulatory definitions in establishing the critical area boundaries and exercised unlawful discretion in establishing these boundaries.

Very truly yours,

s/Mary D. Shahid

cc: 122 Ocean Boulevard, LLC c/o Kristen Stein
Bradley D. Churdar, Associate General Counsel

W. L. 9720618

FINAL PLAT CITY OF ISLE OF PALMS CHARLESTON COUNTY, S.C.

PLAT OF LOTS 1-18 BLOCK 3A, LOTS 1-9 BLOCK 6A, LOTS 1-8 BLOCK 10A,
LOTS 1-8 BLOCK 12A, LOTS 1-12 BLOCK 18A, LOTS 1-2 BLOCK 18A,
LOTS 1-8 BLOCK 22A, LOTS 1-9 BLOCK 22A, AND LOTS 1-8 BLOCK 22A

SCALE: 1"=100' JANUARY 6, 1988

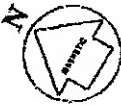
E. M. REARBOCK, JR., L.S.J.
LANDSCAPE ARCHITECT



LEGEND

SYMBOL	DESCRIPTION
(Symbol)	LOT BOUNDARIES
(Symbol)	STREET CENTER LINES
(Symbol)	STREET RIGHT-OF-WAY LINES
(Symbol)	UNIMPROVED LOTS
(Symbol)	IMPROVED LOTS
(Symbol)	EXISTING BUILDINGS
(Symbol)	PROPOSED BUILDINGS
(Symbol)	EXISTING UTILITIES
(Symbol)	PROPOSED UTILITIES

UNIMPROVED LOTS
IMPROVED LOTS
EXISTING BUILDINGS
PROPOSED BUILDINGS
EXISTING UTILITIES
PROPOSED UTILITIES



PALM BLVD
INLET LANE

BREACH INLET

Block 3

SECOND AVE 40' R/W

THIRD AVE 40' R/W

BLOCK 9

BLOCK 10

OCEAN BOULEVARD

BLOCK 6A

BLOCK 10A

BLOCK 12A

BLOCK 22A

BLOCK 22A

BLOCK 22A

BLOCK 22A

LOT	AREA	DATE
1	1.2 AC	1/1/88
2	1.5 AC	1/1/88
3	1.8 AC	1/1/88
4	2.1 AC	1/1/88
5	2.4 AC	1/1/88
6	2.7 AC	1/1/88
7	3.0 AC	1/1/88
8	3.3 AC	1/1/88
9	3.6 AC	1/1/88
10	3.9 AC	1/1/88
11	4.2 AC	1/1/88
12	4.5 AC	1/1/88
13	4.8 AC	1/1/88
14	5.1 AC	1/1/88
15	5.4 AC	1/1/88
16	5.7 AC	1/1/88
17	6.0 AC	1/1/88
18	6.3 AC	1/1/88

Approved by the Council
of the City of Isle of Palms
on this 15th day of January 1988
[Signature]

SEE SHEET 2 OF THIS PLAT FOR NOTES AND
RESTRICTIONS PERTAINING TO THESE LOTS

ATLANTIC OCEAN

SHEET 1 OF 3



Legend

- Monument
- Current Baseline
- Current Setback Line
- Stabilized Inlet Zone
- Standard Zone
- Unstabilized Inlet Zone

Search

Zoom To Parcel: Zoom To Address:

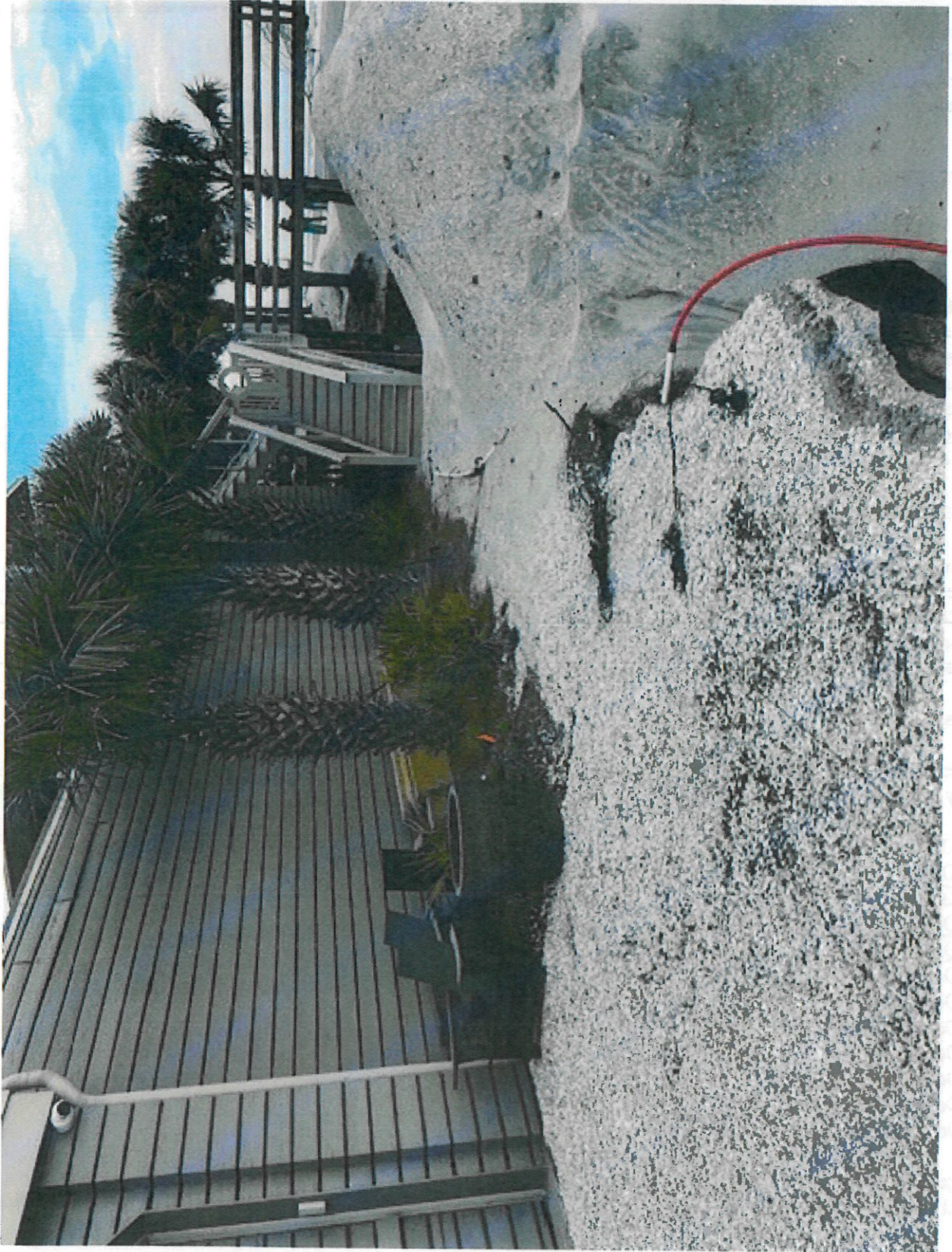
Center Parcel Address

122 Ocean Blvd, Isle Of Palms, SC, 29451, U.S.A.









Mary D. Shahid

From: Chris Moore <cmoore@jgtinc.com>
Sent: Wednesday, March 6, 2024 1:31 PM
To: Mary D. Shahid
Subject: FW: Isle of Palms beachfront critical lines / new City ordinance

{EXTERNAL EMAIL}

Christopher W. Moore, PE
Jon Guerry Taylor & Associates, Inc.
PO Box 1082
Mount Pleasant, South Carolina 29465 USA
Office: 843.884.6415
Direct: 843.628.5612
Fax: 843.884.4026
Cell: 843.367.7989
www.jgtinc.com

From: Slagel, Matt <slagelmj@dhec.sc.gov>
Sent: Wednesday, February 28, 2024 3:02 PM
To: Chris Moore <cmoore@jgtinc.com>; Craig Pawlyk <cpawlyk@jgtinc.com>
Cc: Boynton, Jessica <boyntojb@dhec.sc.gov>; Oswald, Matthew <OswaldM@dhec.sc.gov>
Subject: Re: Isle of Palms beachfront critical lines / new City ordinance

Chris,

Yesterday, 2/27/24, OCRM staff flagged the landward limit of beaches critical area at the following properties, many of which you have been working with and some may have contacted me directly:

112 Ocean Blvd
116 Ocean Blvd
122 Ocean Blvd
126 Ocean Blvd
130 Ocean Blvd
204 Ocean Blvd
206 Ocean Blvd
208 Ocean Blvd
210 Ocean Blvd
310 Ocean Blvd
314 Ocean Blvd
410 Ocean Blvd

*Kristen Stein
Mary? John Gondolfo
Cindy Solomon*

Orange flags labeled "SC DHEC OCRM" were placed, and again, those represent the landward limit of beaches critical area at each property. This is not the same as the DHEC OCRM beachfront setback line, which a

surveyor will need to locate and flag using coordinates available on our website:
<https://gis.dhec.sc.gov/shoreline/>

From DHEC OCRM's perspective, any erosion control structure would need to be installed entirely landward of beaches critical area and entirely landward of the DHEC OCRM beachfront setback line.

We did not place flags at 900 Ocean Blvd because at that particular property, the beaches critical area is located seaward of the beach/dune system critical area (the landward limit of the beach/dune system critical area is the DHEC OCRM beachfront setback line). At that property, any erosion control structure would need to be installed entirely landward of the DHEC OCRM beachfront setback line.

The installation of an erosion control structure, including any equipment access or material storage, will need to occur from the landward side of the property. No impacts to the State's critical areas can occur to install a structure that is not otherwise permissible within the critical areas.

Thanks,
Matt

Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control

Office: (843) 953-0250

Email: slagelmi@dhec.sc.gov

Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Requestor: 122 Ocean Boulevard, LLC
Mary D. Shahid, Maynard Nexsen, Attorney for Requestor

Applicant: 122 Ocean Boulevard, LLC
Submission # HQ1-XY30-2G78Z
DHEC OCRM Request to Have a Critical Area Line Established
122 Ocean Boulevard, Isle of Palms, SC

Docket No.: 24-RFR-48, 122 Ocean Boulevard, LLC

OGC No.: 2024-OCR-0004

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Clerk, Board of Health
and Environmental Control

I. Summary

a. Type of Decision.

Establishment of a DHEC OCRM Critical Area Line. In this case, DHEC OCRM flagged the landward limit of Beaches Critical Area at the subject property pursuant to the owner's request. This Staff Summary responds to the Request for Review submitted by 122 Ocean Boulevard, LLC related to the location of Beaches Critical Area as flagged by DHEC OCRM at the property. Any future construction activities would need to comply with all applicable state and federal laws in procuring any additional permits required prior to construction, including a National Pollution Discharge Elimination System (NPDES) permit and a Coastal Zone Consistency review from the State if applicable.

b. Location.

122 Ocean Boulevard, Isle of Palms, SC

c. Decision.

On February 27, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department" or "DHEC OCRM") flagged the landward limit of Beaches Critical Area at the subject property. Orange flags marked "SC DHEC OCRM" were placed in the ground to adhere to the statutory definition of "Beaches" found in 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." S.C. Code Ann. §48-39-10(J) further states that " 'Critical area' means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in §48-39-280." Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit. An Inspection Form was completed (See **Exhibit A**), and site photographs were taken (See **Exhibit B**). A figure was created to show the locations of

the flags in reference to drone photography captured the day before, on February 26, 2024 (See **Exhibit C**).

Requestor is the property owner, 122 Ocean Boulevard, LLC. Requestor disagrees with where DHEC OCRM flagged the landward limit of Beaches Critical Area at the subject property.

d. Relevant Chronology.

The chronology shows the Department has been actively working with the City of Isle of Palms to address erosion issues along Breach Inlet. The Department has also shifted workloads to flag the Beaches Critical Area in a timely manner, at the property owners' request.

June 30, 2023 – DHEC OCRM issued General Permit OCRM04706 to the City of Isle of Palms. The permit authorized minor beach renourishment (trucking in beach-compatible sand) from 100 Ocean Boulevard through 402 Ocean Boulevard.

July 26, 2023 – DHEC OCRM issued General Permit OCRM04742 to the City of Isle of Palms. The permit authorized minor beach renourishment (trucking in beach-compatible sand) from 404 Ocean Boulevard through 522 Ocean Boulevard.

August 31, 2023 – DHEC OCRM issued Emergency Order 23-EO-008 to the City of Isle of Palms for sand scraping from 100 to 314 Ocean Boulevard.

September 29, 2023 – DHEC OCRM issued Emergency Order 23-EO-015 to the City of Isle of Palms for sand scraping from 100 to 314 Ocean Boulevard.

October 6, 2023 – DHEC OCRM issued Emergency Order 23-EO-016 to the City of Isle of Palms for the placement of sandbags from 120 to 206 Ocean Boulevard.

December 23, 2023 – DHEC OCRM issued Emergency Order 23-EO-021 to the City of Isle of Palms for sand scraping from 112 to 308 Ocean Boulevard. 122 Ocean Boulevard was excluded from the sand scraping effort due to unauthorized sand containment structures at the subject property.

January 2024 to Present – The City of Isle of Palms has issued local sand scraping Emergency Orders on an as-needed basis when erosion reaches to within 20 feet of habitable structures or swimming pools.

February 20, 2024 – The City of Isle of Palms approved Emergency Ordinance No. 2024-01, which allows for permits to be sought from the City for the construction of erosion control structures landward of the State's Critical Areas. Erosion control structures would need to meet other requirements specified in the Emergency Ordinance. (See **Exhibit D**).

February 26, 2024 – Chris Moore from Jon Guerry Taylor & Associates, Inc., on behalf of the property owner, requested DHEC OCRM staff to flag the Beaches Critical Area at 122 Ocean Boulevard.

February 27, 2024 – DHEC OCRM staff flagged the Beaches Critical Area at 122 Ocean Boulevard.

March 5, 2024 – 122 Ocean Boulevard, LLC challenged the location of Beaches Critical Area as determined by DHEC OCRM and submitted a Request for Final Review (24-RFR-48) to the DHEC Board.

II. Relevant Law

a. Statutes.

S.C. Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10 et seq. (2008 & Supp. 2019) (CTWA)

§48-39-10: Definitions: (H) “Beaches” means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.

§48-39-10: Definitions: (J) “Critical area” means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.

§48-39-30: Legislative declaration of state policy: (D) Critical areas shall be used to provide the combination of uses which will insure the maximum benefit to the people, but not necessarily a combination of uses which will generate measurable maximum dollar benefits. As such, the use of a critical area for one or a combination of like uses to the exclusion of some or all other uses shall be consistent with the purposes of this chapter.

§48-39-210: Department only state agency authorized to permit or deny alterations or utilizations within critical areas: (A) The department is the only state agency with authority to permit or deny any alteration or utilization within the critical area except for the exemptions granted under Section 48-39-130(D) and the application for a permit must be acted upon within the time prescribed by this chapter. (B) ...Critical areas by their nature are dynamic and subject to change over time. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not.

§48-39-250: Legislative findings regarding the coastal beach/dune system: The General Assembly finds that:

(1) The beach/dune system along the coast of South Carolina is extremely important to the people of this State and serves the following functions:

- (a) protects life and property by serving as a storm barrier which dissipates wave energy and contributes to shoreline stability in an economical and effective manner;
- (b) provides the basis for a tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a significant portion of the state's economy. The tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues;
- (c) provides habitat for numerous species of plants and animals, several of which are threatened or endangered. Waters adjacent to the beach/dune system also provide habitat for many other marine species;
- (d) provides a natural healthy environment for the citizens of South Carolina to spend leisure time which serves their physical and mental well-being.
- (2) Beach/dune system vegetation is unique and extremely important to the vitality and preservation of the system.
- (3) Many miles of South Carolina's beaches have been identified as critically eroding.
- (4) Chapter 39 of Title 48, Coastal Tidelands and Wetlands, prior to 1988, did not provide adequate jurisdiction to the South Carolina Coastal Council to enable it to effectively protect the integrity of the beach/dune system. Consequently, without adequate controls, development unwisely has been sited too close to the system. This type of development has jeopardized the stability of the beach/dune system, accelerated erosion, and endangered adjacent property. It is in both the public and private interests to protect the system from this unwise development.
- (5) The use of armoring in the form of hard erosion control devices such as seawalls, bulkheads, and rip-rap to protect erosion-threatened structures adjacent to the beach has not proven effective. These armoring devices have given a false sense of security to beachfront property owners. In reality, these hard structures, in many instances, have increased the vulnerability of beachfront property to damage from wind and waves while contributing to the deterioration and loss of the dry sand beach which is so important to the tourism industry.
- (6) Erosion is a natural process which becomes a significant problem for man only when structures are erected in close proximity to the beach/dune system. It is in both the public and private interests to afford the beach/dune system space to accrete and erode in its natural cycle. This space can be provided only by discouraging new construction in close proximity to the beach/dune system.
- (7) Inlet and harbor management practices, including the construction of jetties which have not been designed to accommodate the longshore transport of sand, may deprive downdrift beach/dune systems of their natural sand supply. Dredging practices which include disposal of beach quality sand at sea also may deprive the beach/dune system of much-needed sand.

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

(9) Present funding for the protection, management, and enhancement of the beach/dune system is inadequate.

(10) There is no coordinated state policy for post-storm emergency management of the beach/dune system.

(11) A long-range comprehensive beach management plan is needed for the entire coast of South Carolina to protect and manage effectively the beach/dune system, thus preventing unwise development and minimizing man's adverse impact on the system.

§48-39-260: Policy Statement: In recognition of its stewardship responsibilities, the policy of South Carolina is to:

(1) protect, preserve, restore, and enhance the beach/dune system, the highest and best uses of which are declared to provide:

(a) protection of life and property by acting as a buffer from high tides, storm surge, hurricanes, and normal erosion;

(b) a source for the preservation of dry sand beaches which provide recreation and a major source of state and local business revenue;

(c) an environment which harbors natural beauty and enhances the well-being of the citizens of this State and its visitors;

(d) natural habitat for indigenous flora and fauna including endangered species;

(2) create a comprehensive, long-range beach management plan and require local comprehensive beach management plans for the protection, preservation, restoration, and enhancement of the beach/dune system. These plans must promote wise use of the state's beachfront;

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

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

(5) promote carefully planned nourishment as a means of beach preservation and restoration where economically feasible;

(6) preserve existing public access and promote the enhancement of public access to assure full enjoyment of the beach by all our citizens including the handicapped and encourage the purchase of lands adjacent to the Atlantic Ocean to enhance public access;

(7) involve local governments in long-range comprehensive planning and management of the beach/dune system in which they have a vested interest;

(8) establish procedures and guidelines for the emergency management of the beach/dune system following a significant storm event.

b. Regulations.

Critical Area Permitting Regulations, S.C. Code Ann. Regs. 30-1 et seq. (CAPR)

R.30-1.D: Definitions: (15) Critical Areas – any of the following: (1) coastal waters, (2) tidelands, (3) beach/dune systems and (4) beaches.

c. The South Carolina Coastal Zone Management Program Document. (CMP)

Part 2, Chapter IV – Erosion Control Program, Pages IV-51 to IV-60.

III. Staff Response to Grounds Stated in Request for Review.

- a. Requestor states: “The December 17, 2023 Nor’easter storm and resulting flooding was [a] one-time event. The Steins have experienced predicted high tides and named storm events in their four years of residence on the Property. At no time prior to December 17, 2023 did the Property suffer from flood damage and tidal action. But, given the severity of the tidal conditions created by the December 17th Nor’easter, the Steins are considering installing some form of protection landward of the setback line as shown on Ex. B [of RFR]. Before they were able to perform that installation, a representative of the Department, Matt Slagel, placed flags on the Property on February 27, 2024, indicating what he believed to be the boundary of ‘beaches critical area’ on the seaward side of the Property.”

Staff response: As shown in the Relevant Chronology section above, the City of Isle of Palms has been working to address erosion issues along this stretch of shoreline since at least June 2023. The December 17, 2023 Nor’easter exacerbated the erosion issues that were already occurring. Since that storm, the City has been trucking-in beach-compatible sand and/or scraping sand from the beach when erosion reaches within 20 feet of habitable structures or swimming pools in attempt to “hold the line” until the U.S. Army Corps of Engineers’ planned beneficial use sand placement project in Spring/Summer 2024.

On February 20, 2024, the City of Isle of Palms approved Emergency Ordinance No. 2024-01, which allows for permits to be sought from the City for the construction of erosion control structures landward of the State’s Critical Areas. Erosion control structures would need to meet other requirements specified in the Emergency Ordinance. Pursuant to the Emergency Ordinance, prior to the issuance of a permit from the City, the property owner

must first coordinate with DHEC OCRM and have staff physically place markers on the property “to confirm the then existing location of the critical area, as defined in S.C. Code Ann. §48-39-10, and as solely determined by OCRM.” On February 26, 2024, the Requestor’s agent requested DHEC OCRM to flag the Beaches Critical Area at 122 Ocean Boulevard, and staff flagged the Beaches Critical Area the next day, on February 27, 2024.

- b. **Requestor states: “ ‘Beaches’ are defined in S.C. Code Ann. Sec. 48-39-10(H) as ‘those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.’ ‘Beaches’ are designated as critical area in S.C. Code Ann. 48-39-10(J)(3), the basis by which the Department asserts its jurisdiction. However, the Department disregarded this regulatory definition. As described above, the Property suffered erosion from a single, one-time event, not a periodic event. High tides of the nature of the tidal activity on December 17, 2023 are not regular occurrences and certainly cannot be described as periodic.”**

Staff response: DHEC OCRM disagrees that it disregarded the statutory definition of “beaches” found in S.C. Code Ann. §48-39-10(H). The statute does not exclude storms or other “one-time events” from consideration when delineating the State’s critical areas, whether coastal waters, tidelands, beaches, or the beach/dune system in unstabilized inlet zones. S.C. Code Ann. §48-39-210(B) states that “Critical areas by their nature are dynamic and subject to change over time. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not.” The second half of the “beaches” definition states: “so that no nonlittoral vegetation is established.” DHEC OCRM staff evaluated the presence or absence of nonlittoral vegetation at the property and the neighboring properties as an indicator for the landward limit of Beaches Critical Area, as directed by statute. The Department also considered the history of the site, personally observed the property and adjacent areas, and evaluated aerial photos to carefully verify the location of the critical area.

Although Requestor claims that the property suffered erosion from a single, one-time event, as the Relevant Chronology section above and the City of Isle of Palms Emergency Ordinance set forth, this stretch of shoreline remains dynamic and nonlittoral vegetation has not become re-established (See **Exhibit B**). The instability of this area is further evidenced by the multiple efforts the City has made since June 2023 to mitigate the erosion impacts it continues to experience. The Beaches Critical Area determination depicted in **Exhibit C** is consistent with the statutory definition of “beaches” and consistent with the legislative findings and policy statements in the S.C. Coastal Tidelands and Wetlands Act. The General Assembly has recognized the crucial importance and value of the beaches in providing storm protection, habitat for plants and animals, recreation to its citizens, and in attracting tourists to the South Carolina beaches which is important to South Carolina’s economy. It was the General Assembly’s intent to give the Department sufficient authority over the critical areas so that the beaches could be preserved and so that development would not continue to be sited too close to the beach dune system.

IV. Requested Action

Based on the foregoing, the Department requests that the Board decline to hold a final review conference in the above-referenced matter.

[SIGNATURES ON FOLLOWING PAGE]

**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Docket No.: 24-RFR-48, 122 Ocean Boulevard, LLC

Respectfully Submitted,



Matthew J. Slagel
Manager, Beachfront Management Section
Office of Ocean & Coastal Resource Management

Sallie P. Phelan

Sallie P. Phelan
Assistant General Counsel
Office of Ocean & Coastal Resource Management


Date: March 22, 2024

EXHIBIT A

122 OCEAN BOULEVARD LLC : YQBH-8N9P-M37
OCRM Inspection Form



Inspector: Matt Slagel
Start Date: 03/18/2024

Inspection Details	
1. Property Owner	122 OCEAN BOULEVARD LLC
2. Is this activity associated with a permit?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
3. Permit Number	N/A
4. Purpose of Inspection	Beaches CA Line
5. TMS/PIN	5680900157
6. Site Address	122 OCEAN BLVD, ISLE OF PALMS, SC 29451
7. County	Charleston
8. Provide a description of your findings. Orange flags marked "SC DHEC OCRM" were placed in the ground to adhere to the statutory definition of "Beaches" found in S.C. Code Ann. Section 48-39-10(H): " 'Beaches' means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit.	
<div style="display: flex; align-items: flex-start;"><div style="margin-left: 20px;"><p>GPS Latitude: 32.77551111111111 GPS Longitude: -79.80726111111111 GPS Altitude: 4.00402636523606 meters Photo Uploaded: 3/18/2024</p></div></div>	

122 OCEAN BOULEVARD LLC : YQBH-8N9P-M37

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/18/2024



Inspection Details



GPS Latitude: 32.7754555555556
GPS Longitude: -79.8076194444444
GPS Altitude: 3.46340238543628 meters
Photo Uploaded: 3/18/2024



GPS Latitude: 32.7754722222222
GPS Longitude: -79.8076111111111
GPS Altitude: 3.42914593415582 meters
Photo Uploaded: 3/18/2024



GPS Latitude: 32.7754722222222
GPS Longitude: -79.8076111111111
GPS Altitude: 3.42914593415582 meters
Photo Uploaded: 3/18/2024

122 OCEAN BOULEVARD LLC : YQBH-8N9P-M37
OCRM Inspection Form



Inspector: Matt Slagel
Start Date: 03/18/2024

Inspection Details



GPS Latitude: 32.7754805555556
GPS Longitude: -79.8075805555555
GPS Altitude: 3.23145380434783 meters
Photo Uploaded: 3/18/2024



GPS Latitude: 32.7754916666667
GPS Longitude: -79.8075694444444
GPS Altitude: 3.6493447905478 meters
Photo Uploaded: 3/18/2024



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GPS Altitude: 4.02782496631715 meters
Photo Uploaded: 3/18/2024

122 OCEAN BOULEVARD LLC : YQBH-8N9P-M37
 OCRM Inspection Form



Inspector: Matt Slagel
 Start Date: 03/18/2024

Inspection Details



GPS Latitude: 32.7754888888889
 GPS Longitude: -79.8074861111111
 GPS Altitude: 3.80394528002419 meters
 Photo Uploaded: 3/18/2024

9. What is the progress of the construction activity? Not Started

10. If activity, or any portion thereof, is not in compliance with the Act, Regulations, or specified conditions of the permit, describe the inconsistencies.

11. Was the property owner present during this inspection? Yes No

12. If the property owner was notified, when?

Date	Time

13. Is a construction placard posted? Yes No NA

14. What is the result of the inspection? N/A

16. Inspector's Signature

Matthew J. Slagel



SCOPEC-MJS

EXHIBIT B

04-REF-48 Board Package 25 of 42

32.7755° N 79.8073° W

02/27/24 11:28-AM



SCDHEC - MJS

24-RFR-48 Board Package 26 of 42

02/27/24 11:34 AM

32.7755° N 79.8076° W



SCDFEC - MJS

7/11/24 8:46 Bourdeaux

32.7755° N, 79.8076° W

02/21/24 11:54 AM



SCDHEC - MUS

32.7755° N, 79.8076° W

24-SEP-18 Boardwalk Edge 28 of 42

09/27/2018 11:33 AM



SGDHEC - MUS

32.7755° N, 79.8076° W

10/10/2024 11:34 AM

10/10/2024 11:34 AM



SCDHCC - MUS

02/27/24 11:34 AM

Board Package 30 of 42

32.7755° N, 79.8076° W



SCDHEC - MJS

02/27/24 11:35 AM

24-RFR-48 Board Package 1 of 4

32.7755° N, 79.8075° W

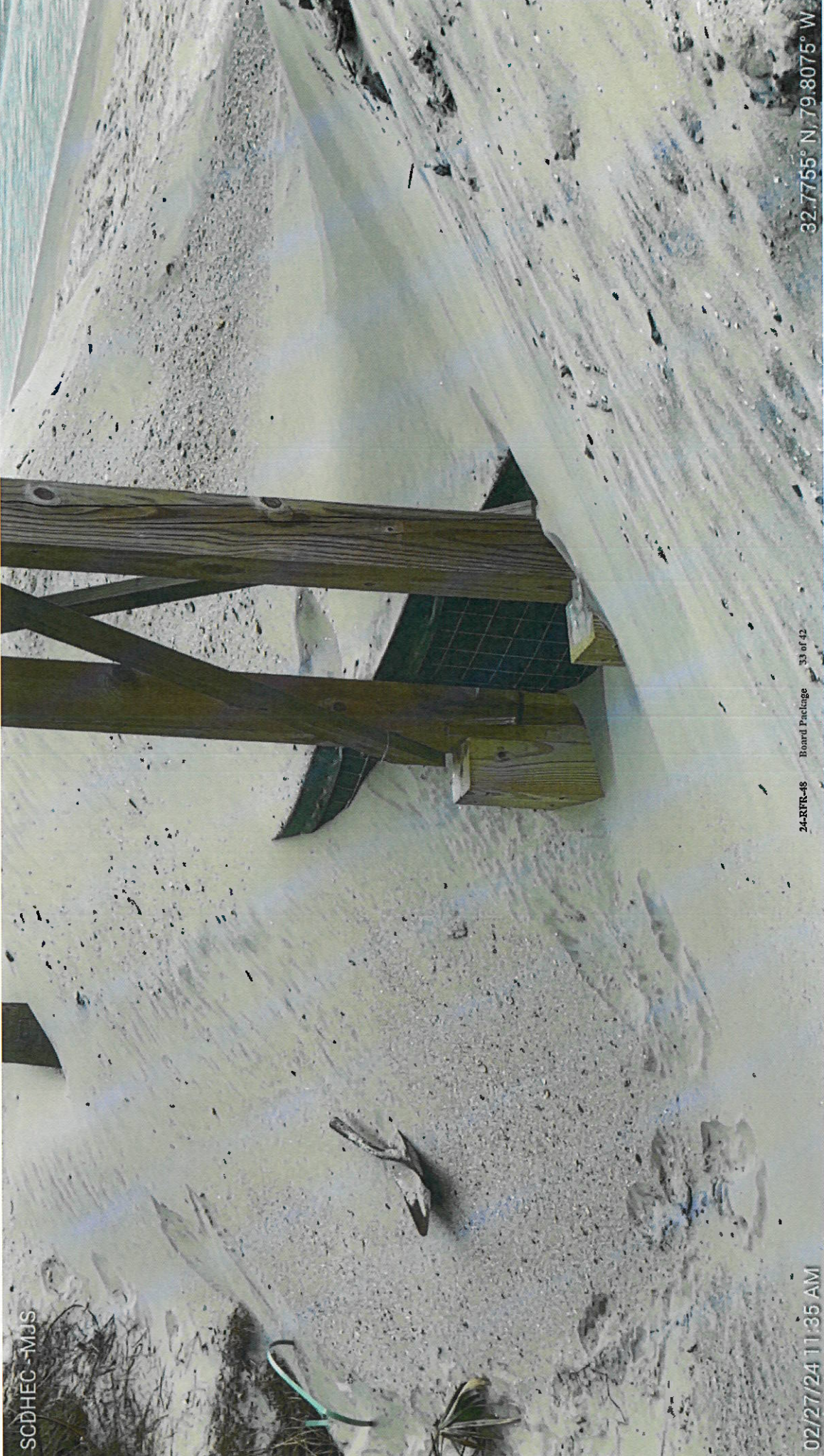


SCDHEC - MJS

02/27/24 11:35 AM

24-RRR-48 Board Package 02-20-24

32.7755° N, 79.8075° W



SCDHEC -MJS

02/27/24 11:35 AM

24-RFR-48 Board Package 33 of 42

32.7755° N, 79.8075° W

SCDHEC - MJS

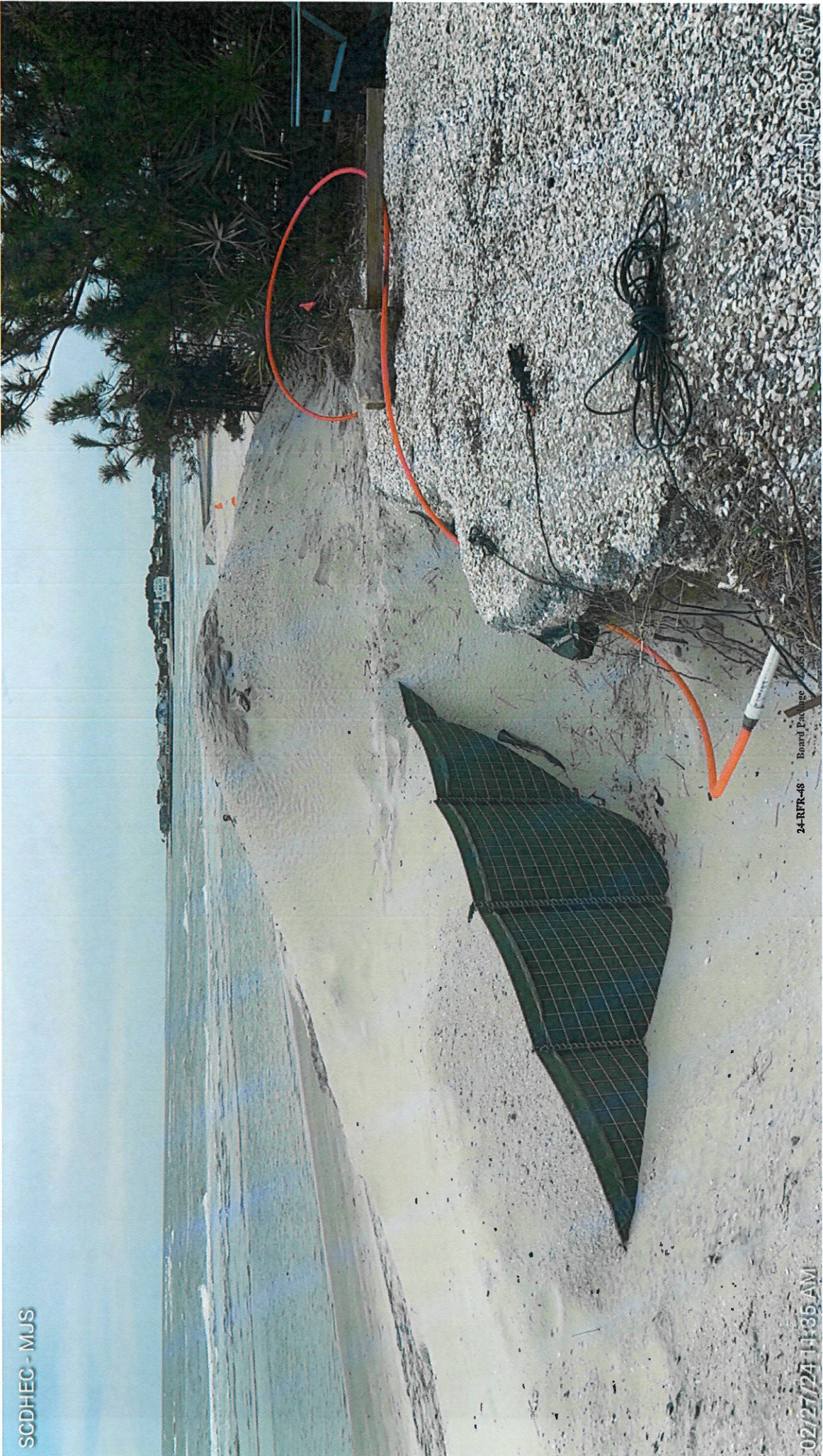


24-FER-48 Board Package 34 of 42

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02/27/24 11:35 AM

SCDHEC - MJS



24-RFR-48 Board Package 25 of 30

02/27/24 11:35 AM

EXHIBIT C



● Beaches Critical Area Survey Points: 02/27/2024
— Beaches Critical Area Line

0 25 50 Feet

24-RFR-48

Board Image

Basemap: Ortho

Location: 122 Ocean Blvd

Imagery 02/26/2024

EXHIBIT D

EMERGENCY ORDINANCE NO. 2024-01

AN ORDINANCE PERMITTING RESIDENTS NEAR BREACH INLET TO INSTALL A REVETMENT/SEAWALL FOR EMERGENCY EROSION CONTROL

WHEREAS, emergency erosion conditions have and continue to occur on beaches facing the Atlantic Ocean between Breach Inlet and 10th Avenue on Isle of Palms associated with Hurricane Idalia, coastal flooding, storm surge and subsequent king tides, wind and wave events;

WHEREAS, due to Hurricane Idalia, South Carolina received an emergency declaration on August 31, 2023, and the Mayor of the City of Isle of Palms (“City”) also declared a state of emergency due to Hurricane Idalia on the same day;

WHEREAS, these conditions have and will continue to expose and create an imminent threat to the existing structures and critical infrastructure on front beach properties located within the City;

WHEREAS, this continued imminent threat constitutes temporary emergency conditions that endanger the health, safety, welfare, resources, and property of residents of the coastal zone as well as the general population of the State of South Carolina;

WHEREAS, the City received an emergency order from the South Carolina Department of Health and Environmental Control’s Office of Ocean and Coastal Resource Management (“OCRM”) and approved an emergency contract to restore the dunes in the erosion area by scraping sand between 100 and 314 Ocean Blvd after Hurricane Idalia;

WHEREAS, continued king high tides, northeastern winds, and increased wave sizes have kept water levels high and completely eroded the newly restored dune installed by the contractor;

WHEREAS, the City received a new OCRM emergency order allowing another round of scraping in the affected area;

WHEREAS, on December 17, 2023, a weather event with strong northeastern winds and record high tides caused significant erosion due to high tides, wind and waves;

WHEREAS, these temporary emergency conditions are expected to be alleviated when the US Army Corps of Engineers initiates a project in 2024 that will result in approximately 550,000 cubic yards of sand being placed in this area and providing protection for public interests and the welfare and property of residents;

WHEREAS, City Ordinance, Section 5-4-15, entitled “Beach Regulations,” prohibits any seawalls, revetments, bulkheads, groins, rip-rap or any other hard erosion control structures to be situated in whole or in part landward of the critical area as defined in S.C. Code 1976, § 48-39-10,

as amended, within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet;

WHEREAS, the City Council of the City of Isle of Palms ("City Council") now desires to authorize and to establish a temporary emergency protocol for beach front property owners that own property in the erosion area between 100 Ocean Blvd. and 914 Ocean Blvd (hereinafter defined as "Residents") that desire to place a revetment or seawall on the Resident's property, entirely landward of the critical area as defined in S.C. Code Ann § 48-39-10, as more specifically set forth below;

WHEREAS, City Ordinance, Section 1-3-53(e) allows for the enactment of emergency ordinances pursuant to S.C. Code § 5-7-250(d), which provides "[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;"

WHEREAS, this Ordinance has been approved by at least two-thirds of the City Council members present at the meeting in which it was considered; and

NOW, THEREFORE, be it ordained by the City Council of the City of Isle of Palms as follows:

Section 1 –Revetment and Seawall Requirements and Installation. City Ordinance, Section 5-4-15, entitled "Beach Regulations," is hereby temporarily amended to permit Residents (defined above) to install a revetment or seawall entirely landward of the critical area, subject to the following specifications and restrictions:

- (a) This Emergency Ordinance only applies to owners of beach front properties located in the erosion area between 100 Ocean Blvd. and 914 Ocean Blvd, which are defined above as Residents;
- (b) For purposes of this Ordinance, the term "revetment" shall mean a sloping structure built entirely landward of the critical area as determined by OCRM, as defined in S.C. Code Ann § 48-39-10, to protect the Resident's home from erosion damage;
- (c) For purposes of this Ordinance, the term "seawall" shall mean a vertical structure built entirely landward of the critical area as determined by OCRM, as defined in S.C. Code Ann § 48-39-10, to protect the Resident's home from erosion damage;
- (d) For purposes of this Ordinance, the term "maximum building line" shall mean the setback created by Section 5-4-51(3)(a) of the City Code and labeled as such on that certain plat prepared by E.M. Seabrook, Jr., C.E. and L.S., dated January 8, 1988, and entitled "FINAL PLAT, CITY OF ISLE OF PALMS, CHARLESTON

COUNTY, S.C." and duly recorded at the County RMC Office on February 16, 1988, in Plat Book BQ, at Pages 111,112, and 113;

- (e) No revetment or seawall shall be constructed or altered without first obtaining approval of the City and the issuance of a valid permit pursuant to the conditions and limitations set forth in the Ordinance, and a copy of the issued permit shall be in possession of anyone performing work associated with the seawall or revetment;
- (f) Prior to obtaining a permit from the City, the Resident shall comply with all applicable state and federal laws in procuring any additional permits required prior to construction, including a National Pollution Discharge Elimination System (NPDES) permit and a Coastal Zone Consistency review from the State if applicable.
- (g) In the event of construction of any such seawall or revetment, it shall comply with the requirements in the Ordinance and shall be the sole responsibility of the property owner and contractor to use materials and construction techniques that will minimize the possibility of damage or danger to other properties, public or private, or to persons on the beach or adjacent properties. It shall be the responsibility of the property owner to maintain such structures in a manner so as to prevent their floating or washing away and endangering other persons or property;
- (h) Prior to the installation of any seawall or revetment, the Resident shall notify any adjacent property owners in writing and copy Douglas Kerr, Deputy City Administrator at dkerr@iop.net;
- (i) Prior to the issuance of a permit from the City, the Resident shall first coordinate with OCRM and have OCRM staff physically place markers on the Resident's Property to confirm the then existing location of the critical area, as defined in S.C. Code Ann § 48-39-10, and as solely determined by OCRM.

If OCRM staff determines that the critical area should be established using the coordinates under the Data Download tab of OCRM's SC Beachfront Jurisdictional Lines viewer: <https://gis.dhec.sc.gov/shoreline/>, the Resident shall hire a surveyor to physically place markers on OCRM's Setback Line.

- (j) The following are requirements for seawalls and revetments:
 - (1) seawalls and revetments shall be designed by a registered, qualified engineer and include a certification from the engineer that the seawall or revetment will not accelerate erosion or negatively impact adjacent or down-drift lots and be designed/built to withstand a storm event;
 - (2) seawalls and revetments shall be installed entirely landward of the critical area markers placed by OCRM or the setback line marked by a surveyor, whichever is farther landward, on the Resident's property and shall not be installed more than twenty feet (20') seaward of the maximum building line;
 - (3) revetments shall be designed and installed with no greater than a 1:2 slope to reduce scour from adjacent properties;

- (4) seawalls and revetments shall have a maximum height of no more than ten (10) feet above mean sea level using NAVD88 datum;
 - (5) seawalls and revetments shall not be made of recycled concrete/materials, unless specifically designed for the purpose of marine construction;
 - (6) revetments and seawalls shall be covered by beach compatible sand when not directly exposed to water during an erosion event;
 - (7) seawalls shall be installed so as to not be visible;
 - (8) All excavations shall occur entirely landward of the critical area as marked by OCRM on the Resident's Property; and
 - (9) seawalls and revetments shall be designed so as to be continuous with any existing or planned revetments installed on adjacent properties, to the extent possible;
- (k) The Resident's contractor shall access the Resident's property through the Resident's property as OCRM prohibits heavy machinery, equipment, or materials within the critical area for the purpose of installing a seawall or revetment;
 - (l) The sand covering the revetment or wall must be from an upland source (i.e. not originating from the beach) and compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material. Only clean sand from an approved OCRM source may be placed on the seawall or revetment; and
 - (m) The Resident shall be responsible for the day-to-day maintenance of the revetment or wall to ensure it is covered with beach compatible sand, remains in good repair, and is serving its intended purpose. If the revetment is not properly installed, maintained, or becomes compromised, as determined by the City and the City's coastal engineer, the revetment shall be removed at the direction of the City and at the Resident's sole expense. The City shall have the authority to remove revetments that are not installed or maintained in accordance with this Ordinance. Residents that elect to install a seawall or revetment shall assume all responsibility over impacts to adjacent property owners.

Section 2 – OCRM Guidance. OCRM has informed the City that if a seawall or revetment is built entirely landward of the critical area, as marked by OCRM, but then later enters into the critical area due to erosion, it would be subject to OCRM's usual structural inventory and damage assessment activities. If the structure becomes "destroyed beyond repair" (as that term is used in OCRM regulations), OCRM will require the seawall or revetment to be removed at the expense of the property owner. The shoreline in the erosion area can drastically change in a matter of hours or days. As such, OCRM suggests that an erosion control structure should be installed within 7 days of OCRM flagging the critical area. If at any time prior to completion of the seawall or revetment, the partially completed seawall or revetment becomes located in whole or in part in the critical area, as marked by OCRM, OCRM will issue a Cease and Desist Directive and require the seawall or revetment to be removed from the critical area at the sole expense of the Resident.

OCRM has indicated that no emergency scraping will be allowed in front of areas where seawalls or revetments are located pursuant to state law. OCRM has indicated that all work must occur on the Resident's upland property and landward of the critical area as marked by OCRM. OCRM prohibits heavy machinery, equipment, and materials within the critical area for the purpose of installing a seawall or revetment. Also, per S.C. Code Ann. § 48-39-120(C): "The department shall have the authority to remove all erosion control structures which have an adverse effect on the public interest." The City encourages Residents to contact OCRM with any questions.

Section 3 - Removal of Seawalls and Revetments. If a Resident fails to comply with City Ordinance, Section 5-4-15, as amended herein, or any of the specifications or requirements of this Emergency Ordinance, including building a seawall or revetment without first obtaining a City issued permit, the City is entitled to require the Resident to remove the seawall or revetment, at the Resident's sole expense. Any seawalls or revetments installed in violation of Section 5-4-15, as amended herein, or this Emergency Ordinance shall be removed within forty-five (45) days after the Resident receives notice from the City to remove the seawall or revetment. In the event the City is required to enforce compliance with Section 5-4-15, as amended herein, or this Emergency Ordinance, the Resident shall pay the City any additional costs, expenses, or legal fees incurred by the City to ensure compliance with Section 5-4-15, as amended herein, and this Emergency Ordinance.

Additionally, pursuant to S.C. Code Ann. §§ 48-39-20(C) and 48-39-160, the City is authorized to file an action in Charleston County Circuit Court to prevent or eliminate a violation the Coastal Zone Management Act (S.C. Code Ann. §§ 48-39-10 to -360), including the non-permitted installation of hard erosion control devices, such as seawalls and revetments in the critical area as defined in S.C. Code Ann. § 48-39-10.


Section 4. Suspension of Contrary Local Provisions. During the emergency term, any ordinance (including City Ordinance Sections 5-4-15 and 5-4-51), resolution, policy, or bylaw of the City that conflicts with the provisions hereof shall be and is hereby temporarily suspended and superseded to allow for the Resident's installation of a seawall or revetment in strict accordance with all of the requirements and specifications as set forth in this Emergency Ordinance. However, except as expressly provided herein concerning installation of seawalls and revetments, nothing contained in this Emergency Ordinance suspends or supersedes the City's prohibition of (1) erosion control structures situated in whole or on part in the critical area; and (2) bulkheads, groins, rip-rap, concrete, clay, gravel or any other prohibited erosion control structures situated in whole or in part landward of the critical area within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet.

Section 5. Immediate Application Due to Emergency. Given the immediate threat to the welfare, safety, and property of the City's affected Residents near Breach Inlet caused by severe erosion and storm damage, this Ordinance has been enacted and shall be effective immediately.

Section 6. Expiration of Ordinance; Extension of Emergency Term. As provided by S.C. Code § 5-7-250(d), this Emergency Ordinance shall expire automatically as of the sixty-first day following the date of enactment. Notwithstanding the foregoing, however, Council may extend the emergency term by ordinance enacted in accordance with S.C. Code § 5-7-250(d) for one or more

additional terms, each of no more than sixty days, provided that the aggregate duration of the emergency term, including all such extensions, does not exceed six months.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE 20th DAY OF FEBRUARY, 2024.



Phillip Pounds, Mayor

(Seal)
Attest:





Nicole DeNeane, City Clerk

First Reading and Ratification of Emergency Ordinance: February 20, 2024
(Date)

24-RFR-49

BOARD PACKAGE

Pages 1–8 RFR

Pages 9–35 Staff Response



Mary D. Shahid
Shareholder
Admitted in SC

March 5, 2024

RECEIVED

MAR 05 2024

VIA ELECTRONIC AND US MAIL

Clerk, Board of Health
and Environmental Control

24-RFR-49

S. C. Board of Health and Environmental Control
Attention: Clerk of Board
2600 Bull Street
Columbia, SC 29201
boardclerk@dhec.sc.gov

Re: Request for Final Review Conference
OCRM Establishment of Beach Jurisdictional Line

Dear Madam Clerk:

This office represents 126 Ocean Boulevard Living Trust in matters related to a residential structure located at 126 Ocean Boulevard, Isle of Palms, Charleston County, South Carolina. This home is a full-time residence occupied John and Mary Gondolfo ("Gondolfos"), who are beneficiaries of 126 Ocean Boulevard Living Trust. 126 Ocean Boulevard is not an investment property subject to rental.

BACKGROUND

126 Ocean Boulevard ("Property") is an oceanfront lot facing the Atlantic Ocean. The Property was purchased on November 30, 2021 at a price of \$5,200,000 by 126 Ocean Boulevard Living Trust ("the Trust"). The Trust has paid property taxes to the Charleston County Tax Assessor's office for the Property of at least \$67,000 per year. The attached plat, Exhibit A to this RFR, indicates the location of the Baseline and Setback line relative to the Property. These lines are also reflected on the Department's website as shown on Exhibit B to this RFR. Ex. A, prepared in 1988, reflects multiple lots, including the Property, extending from Ocean Boulevard to Mean High Water. Based on Exhibit A, there was ample space to construct a residence on all of the Ocean Blvd. lots without impacting the Department's beach front jurisdiction.

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.maynardnexsen.com

T (843) 720-1788
F 843.414.8242
E MShahid@maynardnexsen.com
Maynard Nexsen PC
Attorneys and Counselors at Law

That remained the case with the publication in 2018 of the baseline and setback line positions, attached. As noted in Ex. B, all development is on the landward side of the jurisdictional lines.

RECENT EVENTS

On December 17, 2023, the Charleston Harbor Tide Gage registered the fourth highest non-tropical high tide every recorded. The tide was the result of a Nor'easter storm and reached 9.86 feet (flood stage is 7 feet.) The tidal event caused significant erosion for all properties on Ocean Boulevard, Isle of Palms, and at the Property the Gondolfos observed the tide approaching and undermining the foundation of their home.

The December 17, 2023 Nor'easter storm and resulting flooding was one-time event. The Gondolfos have experienced predicted high tides and named storm events in their two years of residence on the Property. At no time prior to December 17, 2023 did the Property suffer from flood damage and tidal action. But, given the severity of the tidal conditions created by the December 17th Nor'easter, the Gondolfos are considering installing some form of protection landward of the setback line as shown on Ex. B. Before they were able to perform that installation, a representative of the Department, Matt Slagel, placed flags on the Property indicating what he believed to be the boundary of "beaches critical area" on the seaward side of the Property. A plat depicting the location of these flags is attached as Exhibit C to this RFR. The Department's determination of what it believes to be jurisdictional "critical area" is a "department decision... that may give rise to a contested case." Consequently, the review procedures set forth in S. C. Code Ann. Sec. 44-1-60 are applicable.¹ It appears that the Department placed these flags on February 27, 2024. Consequently, the deadline for filing this RFR is March 12, 2024.

LEGAL ARGUMENT

The jurisdictional boundaries established by the Department through the placement of flags, and locatable with GPS data, likely relate to the Department's jurisdiction over "beaches." "Beaches" are defined in S. C. Code Ann. Sec. 48-39-10(H) as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." "Beaches" are designated as critical area in S. C. Code Ann. 48-39-10(J)(3), the basis by which the Department asserts its jurisdiction. However, the Department disregarded this regulatory definition. As

¹ Moreover, the Administrative Law Court has jurisdiction over contested cases arising from a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard. S. C. Const. Article I Sec. 22. In accordance with the procedures of Sec. 44-1-60, these matters must be considered by the Board before advancing to the S. C. Administrative Law Court.

Clerk, Board of Health and Environmental Control
March 5, 2024
Page 3

described above, the Property suffered erosion from a single, one-time event, not a periodic event. High tides of the nature of the tidal activity on December 17, 2023 are not regular occurrences and certainly cannot be described as periodic.

It is possible that OCRM may also be relying on the definition of "Active Beach" within its regulations: "[T]he area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean landward." S. C. Reg. 30-(D)(2). If that is the case, the placement of the flags is well-landward of the existing escarpment. Under either definition, the Department's actions were incorrect as the placement of the flags is not consistent with the regulatory definitions.

CONCLUSION

The Trust, through the Gondolfos, seeks a determination by the Board of Health and Environmental Control that the Department's actions must be reviewed and, upon review, these actions reversed as the Department staff disregarded the regulatory definitions in establishing the critical area boundaries and exercised unlawful discretion in establishing these boundaries.

Very truly yours,

s/Mary D. Shahid

cc: 126 Ocean Boulevard Living Trust c/o John and Mary Gondolfo
Bradley D. Churdar, Associate General Counsel

BL 11726618

FINAL PLAN CITY OF ISLE OF PALMS CHARLESTON COUNTY, S.C.

PLAN OF LOTS 1-18 BLOCK 9A, LOTS 1-8 BLOCK 9A, LOTS 1-8 BLOCK 10A,
LOTS 1-8 BLOCK 10A, LOTS 1-18 BLOCK 10A, LOTS 1-8 BLOCK 10A,
LOTS 1-8 BLOCK 10A, LOTS 1-8 BLOCK 10A, AND LOTS 1-8 BLOCK 10A
JANUARY 8, 1988

SCALE: 1" = 100'

E. N. SEABROOK, JR., 1982
CONSULTING ENGINEER

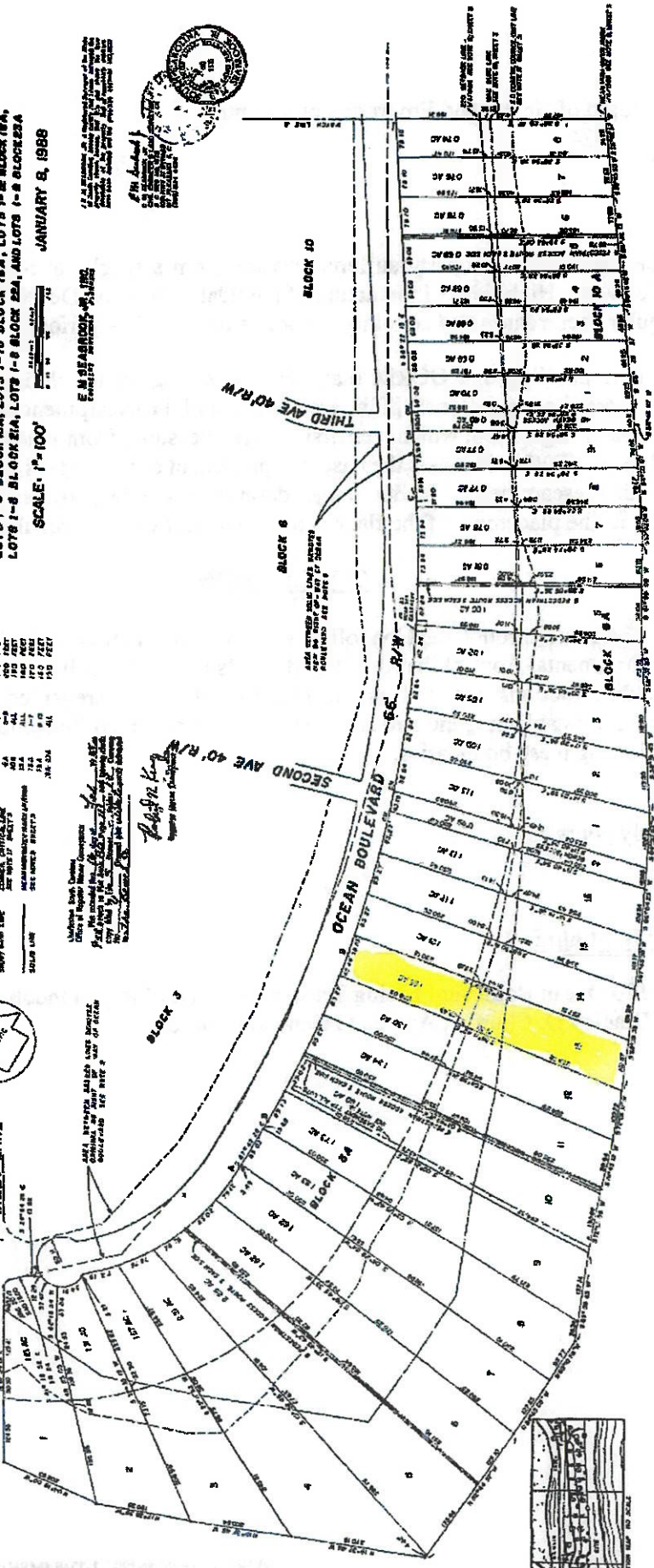


LEGEND

LAND FROM STATE	SECTION 16	SECTION 17	SECTION 18	SECTION 19	SECTION 20
SECTION 16	SECTION 17	SECTION 18	SECTION 19	SECTION 20	SECTION 21
SECTION 22	SECTION 23	SECTION 24	SECTION 25	SECTION 26	SECTION 27
SECTION 28	SECTION 29	SECTION 30	SECTION 31	SECTION 32	SECTION 33
SECTION 34	SECTION 35	SECTION 36	SECTION 37	SECTION 38	SECTION 39
SECTION 40	SECTION 41	SECTION 42	SECTION 43	SECTION 44	SECTION 45
SECTION 46	SECTION 47	SECTION 48	SECTION 49	SECTION 50	SECTION 51
SECTION 52	SECTION 53	SECTION 54	SECTION 55	SECTION 56	SECTION 57
SECTION 58	SECTION 59	SECTION 60	SECTION 61	SECTION 62	SECTION 63
SECTION 64	SECTION 65	SECTION 66	SECTION 67	SECTION 68	SECTION 69
SECTION 70	SECTION 71	SECTION 72	SECTION 73	SECTION 74	SECTION 75
SECTION 76	SECTION 77	SECTION 78	SECTION 79	SECTION 80	SECTION 81
SECTION 82	SECTION 83	SECTION 84	SECTION 85	SECTION 86	SECTION 87
SECTION 88	SECTION 89	SECTION 90	SECTION 91	SECTION 92	SECTION 93
SECTION 94	SECTION 95	SECTION 96	SECTION 97	SECTION 98	SECTION 99
SECTION 100	SECTION 101	SECTION 102	SECTION 103	SECTION 104	SECTION 105



PALM BLVD
INLET LANE



DATE	BY	REVISION
1/8/88	E. N. SEABROOK, JR.	FINAL PLAN
1/15/88	E. N. SEABROOK, JR.	REVISION
1/22/88	E. N. SEABROOK, JR.	REVISION
1/29/88	E. N. SEABROOK, JR.	REVISION
2/5/88	E. N. SEABROOK, JR.	REVISION
2/12/88	E. N. SEABROOK, JR.	REVISION
2/19/88	E. N. SEABROOK, JR.	REVISION
2/26/88	E. N. SEABROOK, JR.	REVISION
3/5/88	E. N. SEABROOK, JR.	REVISION
3/12/88	E. N. SEABROOK, JR.	REVISION
3/19/88	E. N. SEABROOK, JR.	REVISION
3/26/88	E. N. SEABROOK, JR.	REVISION
4/2/88	E. N. SEABROOK, JR.	REVISION
4/9/88	E. N. SEABROOK, JR.	REVISION
4/16/88	E. N. SEABROOK, JR.	REVISION
4/23/88	E. N. SEABROOK, JR.	REVISION
4/30/88	E. N. SEABROOK, JR.	REVISION
5/7/88	E. N. SEABROOK, JR.	REVISION
5/14/88	E. N. SEABROOK, JR.	REVISION
5/21/88	E. N. SEABROOK, JR.	REVISION
5/28/88	E. N. SEABROOK, JR.	REVISION
6/4/88	E. N. SEABROOK, JR.	REVISION
6/11/88	E. N. SEABROOK, JR.	REVISION
6/18/88	E. N. SEABROOK, JR.	REVISION
6/25/88	E. N. SEABROOK, JR.	REVISION
7/2/88	E. N. SEABROOK, JR.	REVISION
7/9/88	E. N. SEABROOK, JR.	REVISION
7/16/88	E. N. SEABROOK, JR.	REVISION
7/23/88	E. N. SEABROOK, JR.	REVISION
7/30/88	E. N. SEABROOK, JR.	REVISION
8/6/88	E. N. SEABROOK, JR.	REVISION
8/13/88	E. N. SEABROOK, JR.	REVISION
8/20/88	E. N. SEABROOK, JR.	REVISION
8/27/88	E. N. SEABROOK, JR.	REVISION
9/3/88	E. N. SEABROOK, JR.	REVISION
9/10/88	E. N. SEABROOK, JR.	REVISION
9/17/88	E. N. SEABROOK, JR.	REVISION
9/24/88	E. N. SEABROOK, JR.	REVISION
10/1/88	E. N. SEABROOK, JR.	REVISION
10/8/88	E. N. SEABROOK, JR.	REVISION
10/15/88	E. N. SEABROOK, JR.	REVISION
10/22/88	E. N. SEABROOK, JR.	REVISION
10/29/88	E. N. SEABROOK, JR.	REVISION
11/5/88	E. N. SEABROOK, JR.	REVISION
11/12/88	E. N. SEABROOK, JR.	REVISION
11/19/88	E. N. SEABROOK, JR.	REVISION
11/26/88	E. N. SEABROOK, JR.	REVISION
12/3/88	E. N. SEABROOK, JR.	REVISION
12/10/88	E. N. SEABROOK, JR.	REVISION
12/17/88	E. N. SEABROOK, JR.	REVISION
12/24/88	E. N. SEABROOK, JR.	REVISION
12/31/88	E. N. SEABROOK, JR.	REVISION

Approved by City Council
of the City of Isle of Palms
on 1/15/88
[Signature]

ATLANTIC OCEAN

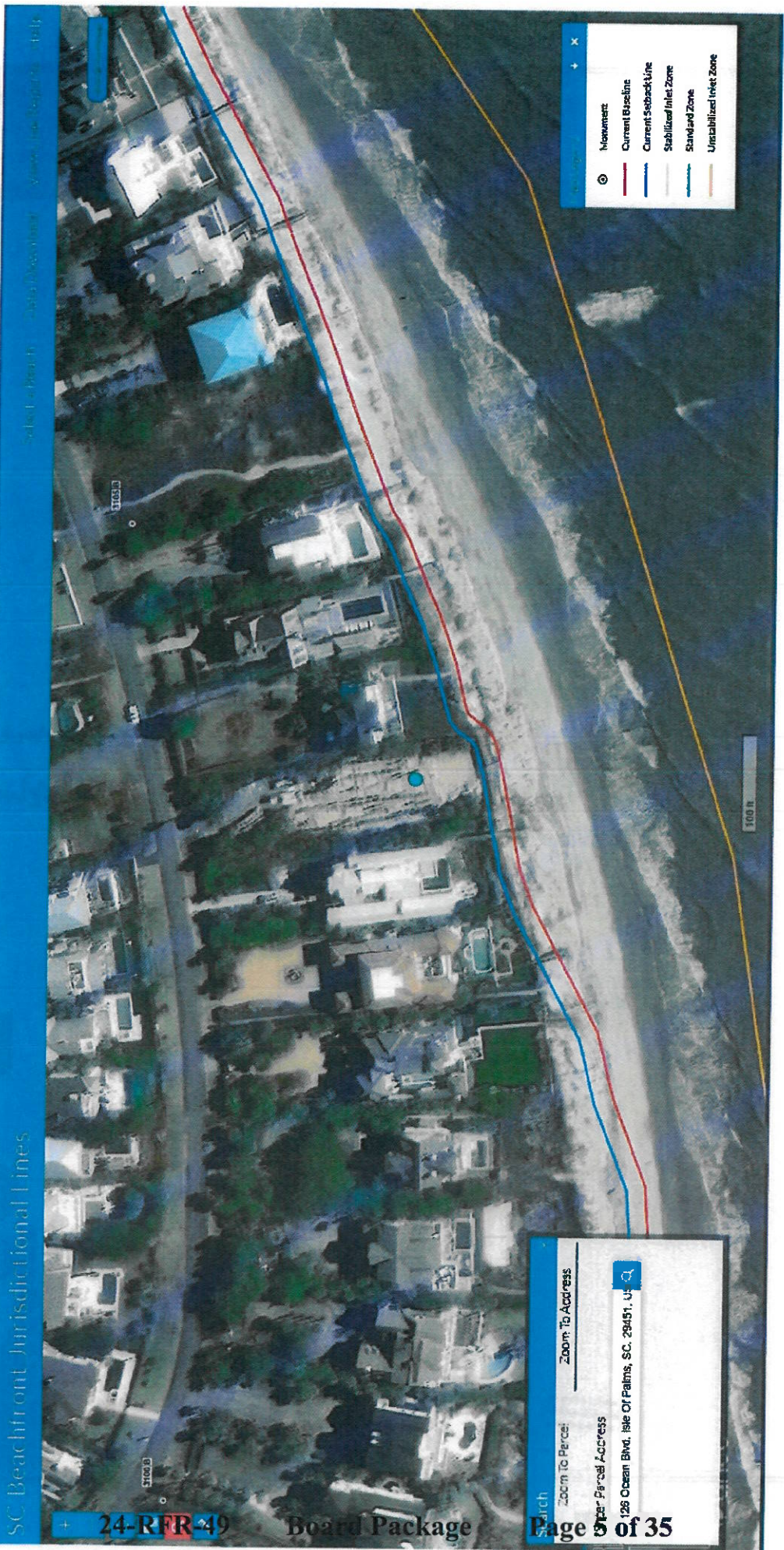
SHEET 1 OF 3

SC Beachfront Jurisdictional Lines

24-RFR-49

Board Package

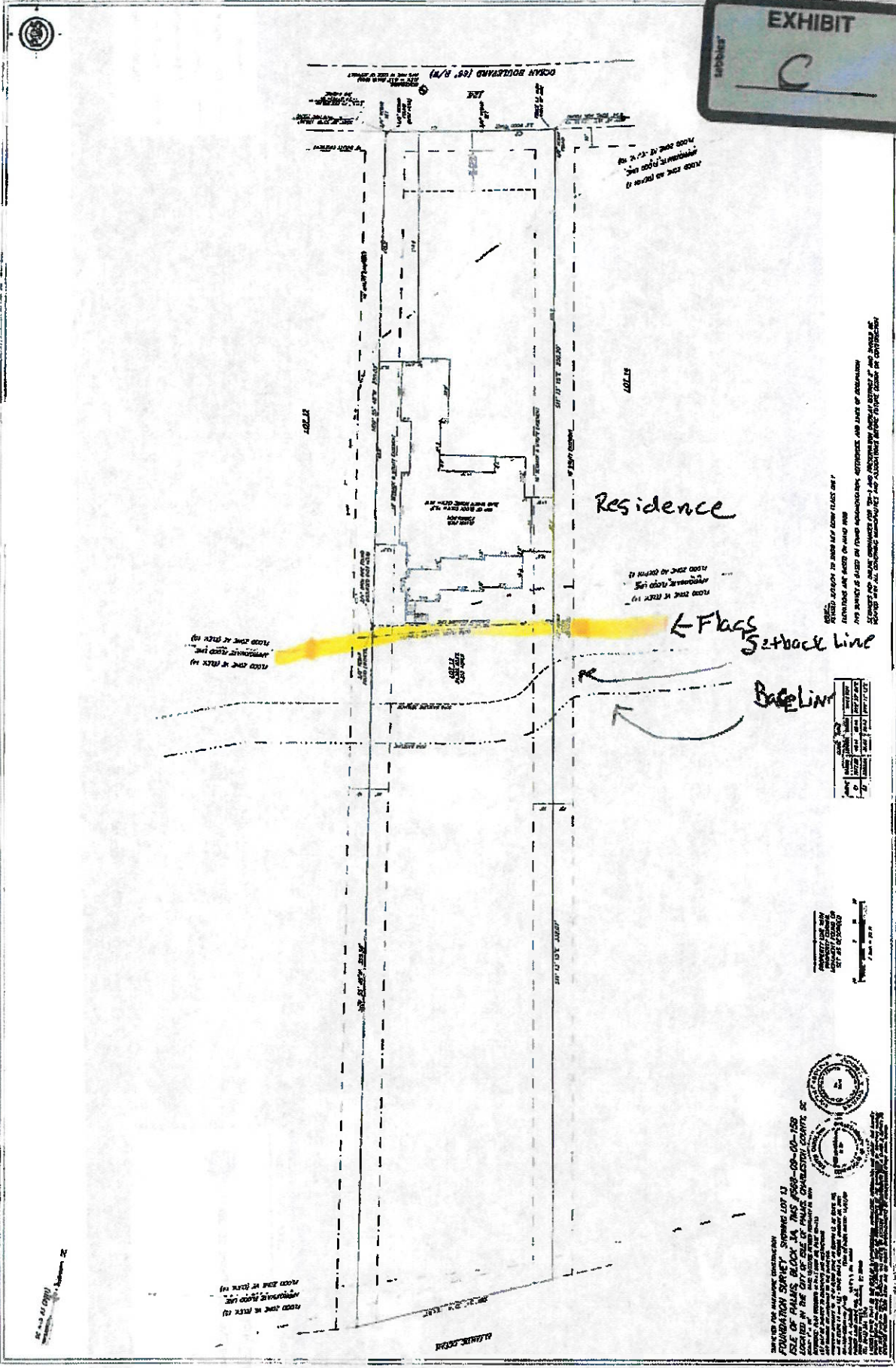
Page 9 of 35



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Map data © OpenStreetMap contributors, Imagery © Mapbox

EXHIBIT
C



Mary D. Shahid

From: Chris Moore <cmoore@jgtinc.com>
Sent: Wednesday, March 6, 2024 1:31 PM
To: Mary D. Shahid
Subject: FW: Isle of Palms beachfront critical lines / new City ordinance

{EXTERNAL EMAIL}

Christopher W. Moore, PE
Jon Guerry Taylor & Associates, Inc.
PO Box 1082
Mount Pleasant, South Carolina 29465 USA
Office: 843.884.6415
Direct: 843.628.5612
Fax: 843.884.4026
Cell: 843.367.7989
www.jgtinc.com

From: Slagel, Matt <slagelmj@dhec.sc.gov>
Sent: Wednesday, February 28, 2024 3:02 PM
To: Chris Moore <cmoore@jgtinc.com>; Craig Pawlyk <cpawlyk@jgtinc.com>
Cc: Boynton, Jessica <boyntojb@dhec.sc.gov>; Oswald, Matthew <OswaldM@dhec.sc.gov>
Subject: Re: Isle of Palms beachfront critical lines / new City ordinance

Chris,

Yesterday, 2/27/24, OCRM staff flagged the landward limit of beaches critical area at the following properties, many of which you have been working with and some may have contacted me directly:

- 112 Ocean Blvd
- 116 Ocean Blvd
- 122 Ocean Blvd
- 126 Ocean Blvd
- 130 Ocean Blvd
- 204 Ocean Blvd
- 206 Ocean Blvd
- 208 Ocean Blvd
- 210 Ocean Blvd
- 310 Ocean Blvd
- 314 Ocean Blvd
- 410 Ocean Blvd

*Kristen Stein
Mary? John Gondolfo
Cindy Solomon*

Orange flags labeled "SC DHEC OCRM" were placed, and again, those represent the landward limit of beaches critical area at each property. This is not the same as the DHEC OCRM beachfront setback line, which a

surveyor will need to locate and flag using coordinates available on our website:
<https://gis.dhec.sc.gov/shoreline/>

From DHEC OCRM's perspective, any erosion control structure would need to be installed entirely landward of beaches critical area and entirely landward of the DHEC OCRM beachfront setback line.

We did not place flags at 900 Ocean Blvd because at that particular property, the beaches critical area is located seaward of the beach/dune system critical area (the landward limit of the beach/dune system critical area is the DHEC OCRM beachfront setback line). At that property, any erosion control structure would need to be installed entirely landward of the DHEC OCRM beachfront setback line.

The installation of an erosion control structure, including any equipment access or material storage, will need to occur from the landward side of the property. No impacts to the State's critical areas can occur to install a structure that is not otherwise permissible within the critical areas.

Thanks,
Matt

--

Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control

Office: (843) 953-0250

Email: slagelmi@dhec.sc.gov
Connect: www.scdhec.gov Facebook Twitter



**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Requestor: 126 Ocean Boulevard Living Trust
Mary D. Shahid, Maynard Nexsen, Attorney for Requestor

Applicant: 126 Ocean Boulevard Living Trust
Submission # HQ1-XYJ2-3PAGX
DHEC OCRM Request to Have a Critical Area Line Established
126 Ocean Boulevard, Isle of Palms, SC

Docket No.: 24-RFR-49, 126 Ocean Boulevard Living Trust

OGC No.: 2024-OCR-0003

RECEIVED

MAR 22 2024

Clerk, Board of Health
and Environmental Control

I. Summary

a. Type of Decision.

Establishment of a DHEC OCRM Critical Area Line. In this case, DHEC OCRM flagged the landward limit of Beaches Critical Area at the subject property pursuant to the owner's request. This Staff Summary responds to the Request for Review submitted by 126 Ocean Boulevard Living Trust related to the location of Beaches Critical Area as flagged by DHEC OCRM at the property. Any future construction activities would need to comply with all applicable state and federal laws in procuring any additional permits required prior to construction, including a National Pollution Discharge Elimination System (NPDES) permit and a Coastal Zone Consistency review from the State if applicable.

b. Location.

126 Ocean Boulevard, Isle of Palms, SC

c. Decision.

On February 27, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department" or "DHEC OCRM") flagged the landward limit of Beaches Critical Area at the subject property. Orange flags marked "SC DHEC OCRM" were placed in the ground to adhere to the statutory definition of "Beaches" found in 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." S.C. Code Ann. §48-39-10(J) further states that " 'Critical area' means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in §48-39-280." Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit. An Inspection Form was completed (See **Exhibit A**), and site photographs were taken (See **Exhibit B**). A figure was created to show the locations of

the flags in reference to drone photography captured the day before, on February 26, 2024 (See **Exhibit C**).

Requestor is the property owner, 126 Ocean Boulevard Living Trust. Requestor disagrees with where DHEC OCRM flagged the landward limit of Beaches Critical Area at the subject property.

d. Relevant Chronology.

The chronology shows the Department has been actively working with the City of Isle of Palms to address erosion issues along Breach Inlet. The Department has also shifted workloads to flag the Beaches Critical Area in a timely manner, at the property owners' request.

June 30, 2023 – DHEC OCRM issued General Permit OCRM04706 to the City of Isle of Palms. The permit authorized minor beach renourishment (trucking in beach-compatible sand) from 100 Ocean Boulevard through 402 Ocean Boulevard.

July 26, 2023 – DHEC OCRM issued General Permit OCRM04742 to the City of Isle of Palms. The permit authorized minor beach renourishment (trucking in beach-compatible sand) from 404 Ocean Boulevard through 522 Ocean Boulevard.

August 31, 2023 – DHEC OCRM issued Emergency Order 23-EO-008 to the City of Isle of Palms for sand scraping from 100 to 314 Ocean Boulevard.

September 29, 2023 – DHEC OCRM issued Emergency Order 23-EO-015 to the City of Isle of Palms for sand scraping from 100 to 314 Ocean Boulevard.

October 6, 2023 – DHEC OCRM issued Emergency Order 23-EO-016 to the City of Isle of Palms for the placement of sandbags from 120 to 206 Ocean Boulevard.

December 23, 2023 – DHEC OCRM issued Emergency Order 23-EO-021 to the City of Isle of Palms for sand scraping from 112 to 308 Ocean Boulevard.

January 2024 to Present – The City of Isle of Palms has issued local sand scraping Emergency Orders on an as-needed basis when erosion reaches to within 20 feet of habitable structures or swimming pools.

February 20, 2024 – The City of Isle of Palms approved Emergency Ordinance No. 2024-01, which allows for permits to be sought from the City for the construction of erosion control structures landward of the State's Critical Areas. Erosion control structures would need to meet other requirements specified in the Emergency Ordinance. (See **Exhibit D**).

February 26, 2024 – Chris Moore from Jon Guerry Taylor & Associates, Inc., on behalf of the property owner, requested DHEC OCRM staff to flag the Beaches Critical Area at 126 Ocean Boulevard.

February 27, 2024 – DHEC OCRM staff flagged the Beaches Critical Area at 126 Ocean Boulevard.

March 5, 2024 – 126 Ocean Boulevard Living Trust challenged the location of Beaches Critical Area as determined by DHEC OCRM and submitted a Request for Final Review (24-RFR-49) to the DHEC Board.

II. Relevant Law

a. Statutes.

S.C. Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10 et seq. (2008 & Supp. 2019) (CTWA)

§48-39-10: Definitions: (H) “Beaches” means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.

§48-39-10: Definitions: (J) “Critical area” means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.

§48-39-30: Legislative declaration of state policy: (D) Critical areas shall be used to provide the combination of uses which will insure the maximum benefit to the people, but not necessarily a combination of uses which will generate measurable maximum dollar benefits. As such, the use of a critical area for one or a combination of like uses to the exclusion of some or all other uses shall be consistent with the purposes of this chapter.

§48-39-210: Department only state agency authorized to permit or deny alterations or utilizations within critical areas: (A) The department is the only state agency with authority to permit or deny any alteration or utilization within the critical area except for the exemptions granted under Section 48-39-130(D) and the application for a permit must be acted upon within the time prescribed by this chapter. (B) ...Critical areas by their nature are dynamic and subject to change over time. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not.

§48-39-250: Legislative findings regarding the coastal beach/dune system: The General Assembly finds that:

(1) The beach/dune system along the coast of South Carolina is extremely important to the people of this State and serves the following functions:

(a) protects life and property by serving as a storm barrier which dissipates wave energy and contributes to shoreline stability in an economical and effective manner;

(b) provides the basis for a tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a significant portion

of the state's economy. The tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues;

(c) provides habitat for numerous species of plants and animals, several of which are threatened or endangered. Waters adjacent to the beach/dune system also provide habitat for many other marine species;

(d) provides a natural healthy environment for the citizens of South Carolina to spend leisure time which serves their physical and mental well-being.

(2) Beach/dune system vegetation is unique and extremely important to the vitality and preservation of the system.

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

(4) Chapter 39 of Title 48, Coastal Tidelands and Wetlands, prior to 1988, did not provide adequate jurisdiction to the South Carolina Coastal Council to enable it to effectively protect the integrity of the beach/dune system. Consequently, without adequate controls, development unwisely has been sited too close to the system. This type of development has jeopardized the stability of the beach/dune system, accelerated erosion, and endangered adjacent property. It is in both the public and private interests to protect the system from this unwise development.

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

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

(7) Inlet and harbor management practices, including the construction of jetties which have not been designed to accommodate the longshore transport of sand, may deprive downdrift beach/dune systems of their natural sand supply. Dredging practices which include disposal of beach quality sand at sea also may deprive the beach/dune system of much-needed sand.

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

(9) Present funding for the protection, management, and enhancement of the beach/dune

system is inadequate.

(10) There is no coordinated state policy for post-storm emergency management of the beach/dune system.

(11) A long-range comprehensive beach management plan is needed for the entire coast of South Carolina to protect and manage effectively the beach/dune system, thus preventing unwise development and minimizing man's adverse impact on the system.

§48-39-260: Policy Statement: In recognition of its stewardship responsibilities, the policy of South Carolina is to:

(1) protect, preserve, restore, and enhance the beach/dune system, the highest and best uses of which are declared to provide:

(a) protection of life and property by acting as a buffer from high tides, storm surge, hurricanes, and normal erosion;

(b) a source for the preservation of dry sand beaches which provide recreation and a major source of state and local business revenue;

(c) an environment which harbors natural beauty and enhances the well-being of the citizens of this State and its visitors;

(d) natural habitat for indigenous flora and fauna including endangered species;

(2) create a comprehensive, long-range beach management plan and require local comprehensive beach management plans for the protection, preservation, restoration, and enhancement of the beach/dune system. These plans must promote wise use of the state's beachfront;

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

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

(5) promote carefully planned nourishment as a means of beach preservation and restoration where economically feasible;

(6) preserve existing public access and promote the enhancement of public access to assure full enjoyment of the beach by all our citizens including the handicapped and encourage the purchase of lands adjacent to the Atlantic Ocean to enhance public access;

(7) involve local governments in long-range comprehensive planning and management

of the beach/dune system in which they have a vested interest;

(8) establish procedures and guidelines for the emergency management of the beach/dune system following a significant storm event.

b. Regulations.

Critical Area Permitting Regulations, S.C. Code Ann. Regs. 30-1 et seq. (CAPR)

R.30-1.D: Definitions: (15) Critical Areas – any of the following: (1) coastal waters, (2) tidelands, (3) beach/dune systems and (4) beaches.

c. The South Carolina Coastal Zone Management Program Document. (CMP)

Part 2, Chapter IV – Erosion Control Program, Pages IV-51 to IV-60.

III. Staff Response to Grounds Stated in Request for Review.

- a. **Requestor states: “The December 17, 2023 Nor’easter storm and resulting flooding was [a] one-time event. The Gondolfos have experienced predicted high tides and named storm events in their two years of residence on the Property. At no time prior to December 17, 2023 did the Property suffer from flood damage and tidal action. But, given the severity of the tidal conditions created by the December 17th Nor’easter, the Gondolfos are considering installing some form of protection landward of the setback line as shown on Ex. B [of RFR]. Before they were able to perform that installation, a representative of the Department, Matt Slagel, placed flags on the Property on February 27, 2024, indicating what he believed to be the boundary of ‘beaches critical area’ on the seaward side of the Property.”**

Staff response: As shown in the Relevant Chronology section above, the City of Isle of Palms has been working to address erosion issues along this stretch of shoreline since at least June 2023. The December 17, 2023 Nor’easter exacerbated the erosion issues that were already occurring. Since that storm, the City has been trucking-in beach-compatible sand and/or scraping sand from the beach when erosion reaches within 20 feet of habitable structures or swimming pools in attempt to “hold the line” until the U.S. Army Corps of Engineers’ planned beneficial use sand placement project in Spring/Summer 2024.

On February 20, 2024, the City of Isle of Palms approved Emergency Ordinance No. 2024-01, which allows for permits to be sought from the City for the construction of erosion control structures landward of the State’s Critical Areas. Erosion control structures would need to meet other requirements specified in the Emergency Ordinance. Pursuant to the Emergency Ordinance, prior to the issuance of a permit from the City, the property owner must first coordinate with DHEC OCRM and have staff physically place markers on the property “to confirm the then existing location of the critical area, as defined in S.C. Code Ann. §48-39-10, and as solely determined by OCRM.” On February 26, 2024, the

Requestor's agent requested DHEC OCRM to flag the Beaches Critical Area at 122 Ocean Boulevard, and staff flagged the Beaches Critical Area the next day, on February 27, 2024.

- b. **Requestor states: “ ‘Beaches’ are defined in S.C. Code Ann. Sec. 48-39-10(H) as ‘those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.’ ‘Beaches’ are designated as critical area in S.C. Code Ann. 48-39-10(J)(3), the basis by which the Department asserts its jurisdiction. However, the Department disregarded this regulatory definition. As described above, the Property suffered erosion from a single, one-time event, not a periodic event. High tides of the nature of the tidal activity on December 17, 2023 are not regular occurrences and certainly cannot be described as periodic.”**

Staff response: DHEC OCRM disagrees that it disregarded the statutory definition of “beaches” found in S.C. Code Ann. §48-39-10(H). The statute does not exclude storms or other “one-time events” from consideration when delineating the State’s critical areas, whether coastal waters, tidelands, beaches, or the beach/dune system in unstabilized inlet zones. S.C. Code Ann. §48-39-210(B) states that “Critical areas by their nature are dynamic and subject to change over time. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not.” The second half of the “beaches” definition states: “so that no nonlittoral vegetation is established.” DHEC OCRM staff evaluated the presence or absence of nonlittoral vegetation at the property and the neighboring properties as an indicator for the landward limit of Beaches Critical Area, as directed by statute. The Department also considered the history of the site, personally observed the property and adjacent areas, and evaluated aerial photos to carefully verify the location of the critical area.

Although Requestor claims that the property suffered erosion from a single, one-time event, as the Relevant Chronology section above and the City of Isle of Palms Emergency Ordinance set forth, this stretch of shoreline remains dynamic and nonlittoral vegetation has not become re-established (See **Exhibit B**). The instability of this area is further evidenced by the multiple efforts the City has made since June 2023 to mitigate the erosion impacts it continues to experience. The Beaches Critical Area determination depicted in **Exhibit C** is consistent with the statutory definition of “beaches” and consistent with the legislative findings and policy statements in the S.C. Coastal Tidelands and Wetlands Act. The General Assembly has recognized the crucial importance and value of the beaches in providing storm protection, habitat for plants and animals, recreation to its citizens, and in attracting tourists to the South Carolina beaches which is important to South Carolina’s economy. It was the General Assembly’s intent to give the Department sufficient authority over the critical areas so that the beaches could be preserved and so that development would not continue to be sited too close to the beach dune system.

IV. Requested Action

Based on the foregoing, the Department requests that the Board decline to hold a final review conference in the above-referenced matter.

[SIGNATURES ON FOLLOWING PAGE]

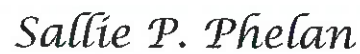
**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Docket No.: 24-RFR-49, 126 Ocean Boulevard Living Trust

Respectfully Submitted,



Matthew J. Slagel
Manager, Beachfront Management Section
Office of Ocean & Coastal Resource Management



Sallie P. Phelan
Assistant General Counsel
Office of Ocean & Coastal Resource Management

Date: March 22, 2024

EXHIBIT A


126 Ocean Boulevard Living Trust : 5VH4-9M6D-
HD1



OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024

Inspection Details	
1. Property Owner	126 Ocean Boulevard Living Trust
2. Is this activity associated with a permit?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
3. Permit Number	N/A
4. Purpose of Inspection	Beaches CA Line
5. TMS/PIN	5680900158
6. Site Address	126 OCEAN BLVD, ISLE OF PALMS, SC 29451
7. County	Charleston
<p>8. Provide a description of your findings.</p> <p>Orange flags marked "SC DHEC OCRM" were placed in the ground to adhere to the statutory definition of "Beaches" found in S.C. Code Ann. Section 48-39-10(H): " 'Beaches' means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit.</p>	
<div style="display: flex; align-items: flex-start;"> <div style="flex: 1;">  </div> <div style="flex: 1; padding-left: 10px;"> <p>GPS Latitude: 32.7754083333333</p> <p>GPS Longitude: -79.8073388888889</p> <p>GPS Altitude: 3.6393934050432 meters</p> <p>Photo Uploaded: 3/22/2024</p> </div> </div>	

126 Ocean Boulevard Living Trust : 5VH4-9M6D-HD1

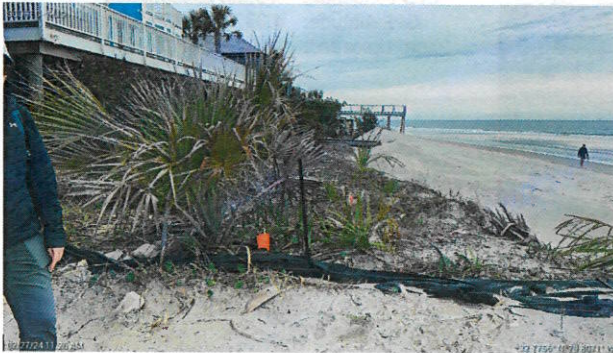


OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024

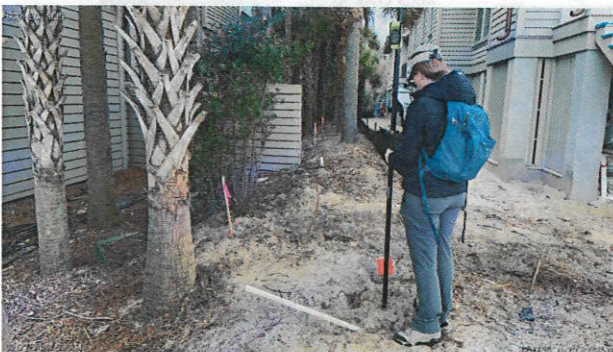
Inspection Details



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Photo Uploaded: 3/22/2024



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126 Ocean Boulevard Living Trust : 5VH4-9M6D-
HD1



OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024

Inspection Details



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GPS Altitude: 4.0376007497657 meters
Photo Uploaded: 3/22/2024



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GPS Longitude: -79.8072611111111
GPS Altitude: 4.00402636523606 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7756472222222
GPS Longitude: -79.8068138888889
GPS Altitude: 3.56155913473285 meters
Photo Uploaded: 3/22/2024

9. What is the progress of the construction activity?

N/A

126 Ocean Boulevard Living Trust : 5VH4-9M6D-
HD1



OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024

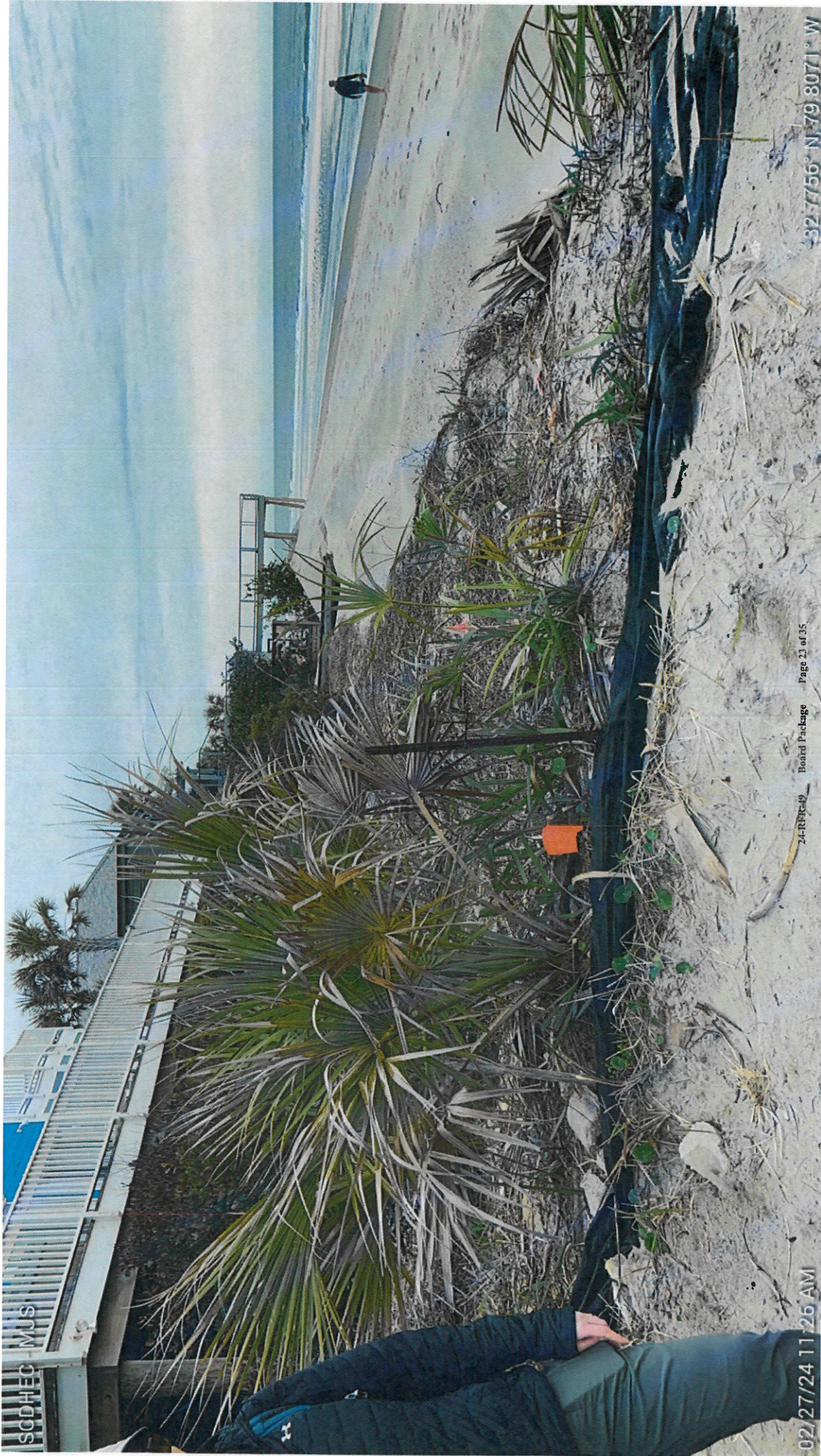
Inspection Details

10. If activity, or any portion thereof, is not in compliance with the Act, Regulations, or specified conditions of the permit, describe the inconsistencies.	
11. Was the property owner present during this inspection?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12. If the property owner was notified, when?	
Date	Time
13. Is a construction placard posted?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
14. What is the result of the inspection?	N/A
16. Inspector's Signature	

SCDHEG - MJS

EXHIBIT B





SCDHEC - MUS

02/27/24 11:26 AM

24-RFR-49 Board Package Page 23 of 35

32.7756° N 79.8071° W



SGD-REC - MUS

24-FR-49 Board Package Page 24 of 35

32° 7' 56" N, 79° 8' 07" W

02/27/24 11:26 AM



SCDHEC - MJS

24 RFR-49 Board Package Page 25 of 35

02/27/24 11:28 AM

77755 N 798073 W



SCDHFC - MJS

02 FEBRUARY 28 AM

2014 (FR-09) Board Package Page 36 of 35

32° 17' 55" N, 79° 8' 07.3" W

SCD/REC - MJS



02/27/24 11:28 AM

24-RTR-19 Board Package Page 27 of 35

32.7755° N 79.8073° W

SCDHEC - MJS

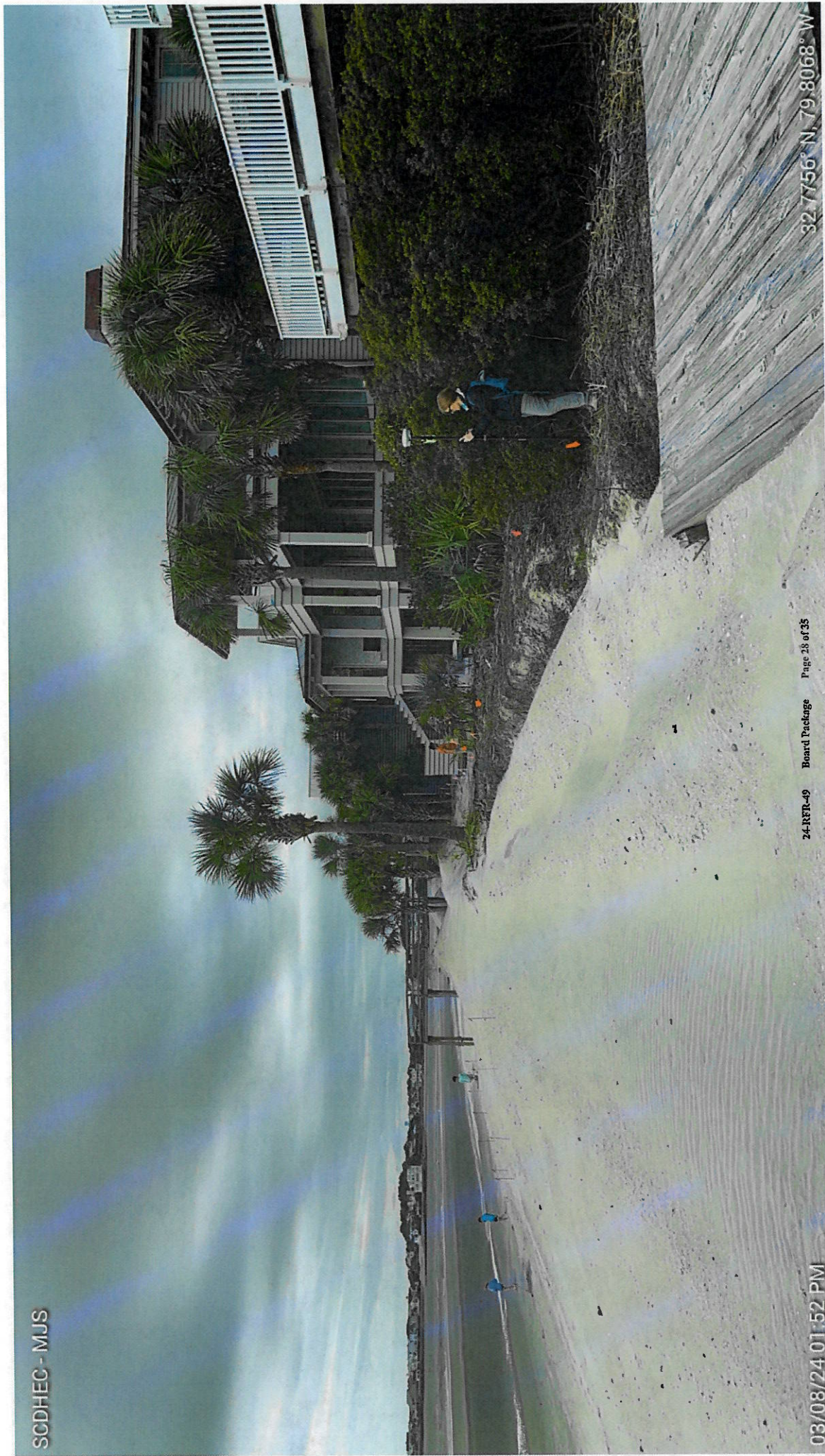


EXHIBIT C

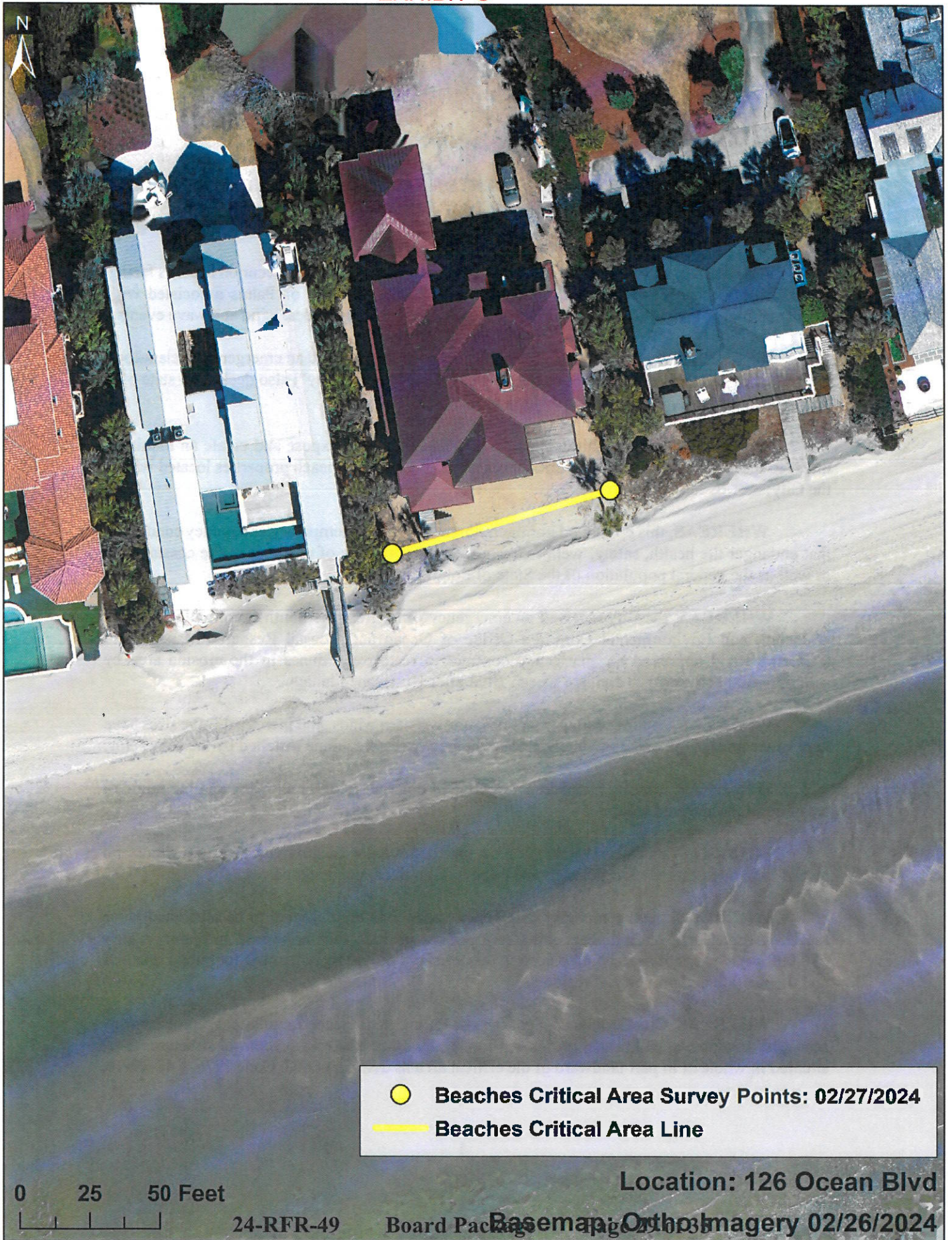


EXHIBIT D

EMERGENCY ORDINANCE NO. 2024-01

AN ORDINANCE PERMITTING RESIDENTS NEAR BREACH INLET TO INSTALL A REVETMENT/SEAWALL FOR EMERGENCY EROSION CONTROL

WHEREAS, emergency erosion conditions have and continue to occur on beaches facing the Atlantic Ocean between Breach Inlet and 10th Avenue on Isle of Palms associated with Hurricane Idalia, coastal flooding, storm surge and subsequent king tides, wind and wave events;

WHEREAS, due to Hurricane Idalia, South Carolina received an emergency declaration on August 31, 2023, and the Mayor of the City of Isle of Palms (“City”) also declared a state of emergency due to Hurricane Idalia on the same day;

WHEREAS, these conditions have and will continue to expose and create an imminent threat to the existing structures and critical infrastructure on front beach properties located within the City;

WHEREAS, this continued imminent threat constitutes temporary emergency conditions that endanger the health, safety, welfare, resources, and property of residents of the coastal zone as well as the general population of the State of South Carolina;

WHEREAS, the City received an emergency order from the South Carolina Department of Health and Environmental Control’s Office of Ocean and Coastal Resource Management (“OCRM”) and approved an emergency contract to restore the dunes in the erosion area by scraping sand between 100 and 314 Ocean Blvd after Hurricane Idalia;

WHEREAS, continued king high tides, northeastern winds, and increased wave sizes have kept water levels high and completely eroded the newly restored dune installed by the contractor;

WHEREAS, the City received a new OCRM emergency order allowing another round of scraping in the affected area;

WHEREAS, on December 17, 2023, a weather event with strong northeastern winds and record high tides caused significant erosion due to high tides, wind and waves;

WHEREAS, these temporary emergency conditions are expected to be alleviated when the US Army Corps of Engineers initiates a project in 2024 that will result in approximately 550,000 cubic yards of sand being placed in this area and providing protection for public interests and the welfare and property of residents;

WHEREAS, City Ordinance, Section 5-4-15, entitled “Beach Regulations,” prohibits any seawalls, revetments, bulkheads, groins, rip-rap or any other hard erosion control structures to be situated in whole or in part landward of the critical area as defined in S.C. Code 1976, § 48-39-10,

as amended, within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet;

WHEREAS, the City Council of the City of Isle of Palms ("City Council") now desires to authorize and to establish a temporary emergency protocol for beach front property owners that own property in the erosion area between 100 Ocean Blvd. and 914 Ocean Blvd (hereinafter defined as "Residents") that desire to place a revetment or seawall on the Resident's property, entirely landward of the critical area as defined in S.C. Code Ann § 48-39-10, as more specifically set forth below;

WHEREAS, City Ordinance, Section 1-3-53(e) allows for the enactment of emergency ordinances pursuant to S.C. Code § 5-7-250(d), which provides "[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;"

WHEREAS, this Ordinance has been approved by at least two-thirds of the City Council members present at the meeting in which it was considered; and

NOW, THEREFORE, be it ordained by the City Council of the City of Isle of Palms as follows:

Section 1 –Revetment and Seawall Requirements and Installation. City Ordinance, Section 5-4-15, entitled "Beach Regulations," is hereby temporarily amended to permit Residents (defined above) to install a revetment or seawall entirely landward of the critical area, subject to the following specifications and restrictions:

- (a) This Emergency Ordinance only applies to owners of beach front properties located in the erosion area between 100 Ocean Blvd. and 914 Ocean Blvd, which are defined above as Residents;
- (b) For purposes of this Ordinance, the term "revetment" shall mean a sloping structure built entirely landward of the critical area as determined by OCRM, as defined in S.C. Code Ann § 48-39-10, to protect the Resident's home from erosion damage;
- (c) For purposes of this Ordinance, the term "seawall" shall mean a vertical structure built entirely landward of the critical area as determined by OCRM, as defined in S.C. Code Ann § 48-39-10, to protect the Resident's home from erosion damage;
- (d) For purposes of this Ordinance, the term "maximum building line" shall mean the setback created by Section 5-4-51(3)(a) of the City Code and labeled as such on that certain plat prepared by E.M. Seabrook, Jr., C.E. and L.S., dated January 8, 1988, and entitled "FINAL PLAT, CITY OF ISLE OF PALMS, CHARLESTON

COUNTY, S.C." and duly recorded at the County RMC Office on February 16, 1988, in Plat Book BQ, at Pages 111,112, and 113;

- (e) No revetment or seawall shall be constructed or altered without first obtaining approval of the City and the issuance of a valid permit pursuant to the conditions and limitations set forth in the Ordinance, and a copy of the issued permit shall be in possession of anyone performing work associated with the seawall or revetment;
- (f) Prior to obtaining a permit from the City, the Resident shall comply with all applicable state and federal laws in procuring any additional permits required prior to construction, including a National Pollution Discharge Elimination System (NPDES) permit and a Coastal Zone Consistency review from the State if applicable.
- (g) In the event of construction of any such seawall or revetment, it shall comply with the requirements in the Ordinance and shall be the sole responsibility of the property owner and contractor to use materials and construction techniques that will minimize the possibility of damage or danger to other properties, public or private, or to persons on the beach or adjacent properties. It shall be the responsibility of the property owner to maintain such structures in a manner so as to prevent their floating or washing away and endangering other persons or property;
- (h) Prior to the installation of any seawall or revetment, the Resident shall notify any adjacent property owners in writing and copy Douglas Kerr, Deputy City Administrator at dkerr@iop.net;
- (i) Prior to the issuance of a permit from the City, the Resident shall first coordinate with OCRM and have OCRM staff physically place markers on the Resident's Property to confirm the then existing location of the critical area, as defined in S.C. Code Ann § 48-39-10, and as solely determined by OCRM.

If OCRM staff determines that the critical area should be established using the coordinates under the Data Download tab of OCRM's SC Beachfront Jurisdictional Lines viewer: <https://gis.dhec.sc.gov/shoreline/>, the Resident shall hire a surveyor to physically place markers on OCRM's Setback Line.

- (j) The following are requirements for seawalls and revetments:
 - (1) seawalls and revetments shall be designed by a registered, qualified engineer and include a certification from the engineer that the seawall or revetment will not accelerate erosion or negatively impact adjacent or down-drift lots and be designed/built to withstand a storm event;
 - (2) seawalls and revetments shall be installed entirely landward of the critical area markers placed by OCRM or the setback line marked by a surveyor, whichever is farther landward, on the Resident's property and shall not be installed more than twenty feet (20') seaward of the maximum building line;
 - (3) revetments shall be designed and installed with no greater than a 1:2 slope to reduce scour from adjacent properties;

- (4) seawalls and revetments shall have a maximum height of no more than ten (10) feet above mean sea level using NAVD88 datum;
 - (5) seawalls and revetments shall not be made of recycled concrete/materials, unless specifically designed for the purpose of marine construction;
 - (6) revetments and seawalls shall be covered by beach compatible sand when not directly exposed to water during an erosion event;
 - (7) seawalls shall be installed so as to not be visible;
 - (8) All excavations shall occur entirely landward of the critical area as marked by OCRM on the Resident's Property; and
 - (9) seawalls and revetments shall be designed so as to be continuous with any existing or planned revetments installed on adjacent properties, to the extent possible;
- (k) The Resident's contractor shall access the Resident's property through the Resident's property as OCRM prohibits heavy machinery, equipment, or materials within the critical area for the purpose of installing a seawall or revetment;
 - (l) The sand covering the revetment or wall must be from an upland source (i.e. not originating from the beach) and compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material. Only clean sand from an approved OCRM source may be placed on the seawall or revetment; and
 - (m) The Resident shall be responsible for the day-to-day maintenance of the revetment or wall to ensure it is covered with beach compatible sand, remains in good repair, and is serving its intended purpose. If the revetment is not properly installed, maintained, or becomes compromised, as determined by the City and the City's coastal engineer, the revetment shall be removed at the direction of the City and at the Resident's sole expense. The City shall have the authority to remove revetments that are not installed or maintained in accordance with this Ordinance. Residents that elect to install a seawall or revetment shall assume all responsibility over impacts to adjacent property owners.

Section 2 – OCRM Guidance. OCRM has informed the City that if a seawall or revetment is built entirely landward of the critical area, as marked by OCRM, but then later enters into the critical area due to erosion, it would be subject to OCRM's usual structural inventory and damage assessment activities. If the structure becomes "destroyed beyond repair" (as that term is used in OCRM regulations), OCRM will require the seawall or revetment to be removed at the expense of the property owner. The shoreline in the erosion area can drastically change in a matter of hours or days. As such, OCRM suggests that an erosion control structure should be installed within 7 days of OCRM flagging the critical area. If at any time prior to completion of the seawall or revetment, the partially completed seawall or revetment becomes located in whole or in part in the critical area, as marked by OCRM, OCRM will issue a Cease and Desist Directive and require the seawall or revetment to be removed from the critical area at the sole expense of the Resident.

OCRM has indicated that no emergency scraping will be allowed in front of areas where seawalls or revetments are located pursuant to state law. OCRM has indicated that all work must occur on the Resident's upland property and landward of the critical area as marked by OCRM. OCRM prohibits heavy machinery, equipment, and materials within the critical area for the purpose of installing a seawall or revetment. Also, per S.C. Code Ann. § 48-39-120(C): "The department shall have the authority to remove all erosion control structures which have an adverse effect on the public interest." The City encourages Residents to contact OCRM with any questions.

Section 3 - Removal of Seawalls and Revetments. If a Resident fails to comply with City Ordinance, Section 5-4-15, as amended herein, or any of the specifications or requirements of this Emergency Ordinance, including building a seawall or revetment without first obtaining a City issued permit, the City is entitled to require the Resident to remove the seawall or revetment, at the Resident's sole expense. Any seawalls or revetments installed in violation of Section 5-4-15, as amended herein, or this Emergency Ordinance shall be removed within forty-five (45) days after the Resident receives notice from the City to remove the seawall or revetment. In the event the City is required to enforce compliance with Section 5-4-15, as amended herein, or this Emergency Ordinance, the Resident shall pay the City any additional costs, expenses, or legal fees incurred by the City to ensure compliance with Section 5-4-15, as amended herein, and this Emergency Ordinance.

Additionally, pursuant to S.C. Code Ann. §§ 48-39-20(C) and 48-39-160, the City is authorized to file an action in Charleston County Circuit Court to prevent or eliminate a violation the Coastal Zone Management Act (S.C. Code Ann. §§ 48-39-10 to -360), including the non-permitted installation of hard erosion control devices, such as seawalls and revetments in the critical area as defined in S.C. Code Ann. § 48-39-10.

Section 4. Suspension of Contrary Local Provisions. During the emergency term, any ordinance (including City Ordinance Sections 5-4-15 and 5-4-51), resolution, policy, or bylaw of the City that conflicts with the provisions hereof shall be and is hereby temporarily suspended and superseded to allow for the Resident's installation of a seawall or revetment in strict accordance with all of the requirements and specifications as set forth in this Emergency Ordinance. However, except as expressly provided herein concerning installation of seawalls and revetments, nothing contained in this Emergency Ordinance suspends or supersedes the City's prohibition of (1) erosion control structures situated in whole or on part in the critical area; and (2) bulkheads, groins, rip-rap, concrete, clay, gravel or any other prohibited erosion control structures situated in whole or in part landward of the critical area within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet.

Section 5. Immediate Application Due to Emergency. Given the immediate threat to the welfare, safety, and property of the City's affected Residents near Breach Inlet caused by severe erosion and storm damage, this Ordinance has been enacted and shall be effective immediately.

Section 6. Expiration of Ordinance; Extension of Emergency Term. As provided by S.C. Code § 5-7-250(d), this Emergency Ordinance shall expire automatically as of the sixty-first day following the date of enactment. Notwithstanding the foregoing, however, Council may extend the emergency term by ordinance enacted in accordance with S.C. Code § 5-7-250(d) for one or more

additional terms, each of no more than sixty days, provided that the aggregate duration of the emergency term, including all such extensions, does not exceed six months.


PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE 20th DAY OF FEBRUARY, 2024.



Phillip Pounds, Mayor

(Seal)

Attest:


Nicole DeNeane, City Clerk



First Reading and Ratification of Emergency Ordinance: February 20, 2024
(Date)

24-RFR-50

BOARD PACKAGE

Pages 1–13 RFR

Pages 14–47 Staff Response

Mary D. Shahid
Shareholder
Admitted in SC

March 13, 2024

VIA ELECTRONIC AND US MAIL

RECEIVED

MAR 13 2024

Clerk, Board of Health
and Environmental Control

24-RFR-50

S. C. Board of Health and Environmental Control
Attention: Clerk of Board
2600 Bull Street
Columbia, SC 29201
boardclerk@dhec.sc.gov

Re: Request for Final Review Conference
OCRM Establishment of Beach Jurisdictional Line

Dear Madam Clerk:

This office represents 204 Ocean Holdings LLC, a South Carolina Limited Liability Company ("204 Ocean"), in matters related to a residential structure located at 204 Ocean Boulevard, Isle of Palms, Charleston County, South Carolina. This home is the residence of Curtis Kay and his wife Karla Kay, members of 204 Ocean. Mr. and Mrs. Kay have resided at 204 Ocean Boulevard since 2006.

BACKGROUND

204 Ocean Boulevard ("Property") is an oceanfront lot facing the Atlantic Ocean. The Property was initially purchased by a Trust of which the current owner was a Trustee for \$2,050,000.00. 204 Ocean has paid property taxes to the Charleston County Tax Assessor's office for the Property of at least \$52,000.00 per year (\$54,961.08 for 2024.) The attached plat, Exhibit A to this RFR, indicates the location of the Baseline and Setback line relative to the Property. Ex. A further indicates an area entitled "Beaches Critical Line." The Beaches Critical Line as established by the Department on February 27, 2024 is located at least 25 feet landward of the Department's setback line and at least 60+ feet from the Department's baseline.

RECENT EVENTS

On December 17, 2024, the Charleston Harbor Tide Gauge registered the fourth

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PO Box 486
Charleston, SC 29402
www.maynardnexsen.com

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Maynard Nexsen PC
Attorneys and Counselors at Law

highest non-tropical high tide every recorded. The tide was the result of a Nor'easter storm and reached 9.86 feet (flood stage is 7 feet.) The tidal event caused significant erosion for all properties on Ocean Boulevard, Isle of Palms, including 204 Ocean.

The December 17, 2024 Nor'easter storm and resulting flooding was one-time event. The owner of 204 Ocean has experienced predicted high tides and named storm events in their four years of residence on the Property. At no time prior to December 17, 2024 did the Property suffer from flood damage and tidal action. But, given the severity of the tidal conditions created by the December 17th Nor'easter, the owner is considering installing some form of protection landward of the setback line as shown on Ex. B. Before they were able to perform that installation, a representative of the Department, Matt Slagel, placed flags on the Property indicating what he believed to be the boundary of "beaches critical area" on the seaward side of the Property. Photographs of these flags are attached as Exhibit B to this RFR. The Department's determination of what it believes to be jurisdictional "critical area" is a "department decision... that may give rise to a contested case." Consequently, the review procedures set forth in S. C. Code Ann. Sec. 44-1-60 are applicable.¹ Moreover, it appears that the Department placed these flags between February 27th and February 27th, 2024, and Mr. Kay's consultant, Christopher W. Moore, PE received written notification on February 28th, a copy of which is attached as Exhibit B. The deadline for filing this RFR is March 13, 2024.

LEGAL ARGUMENT

The jurisdictional boundaries established by the Department through the placement of flags, and presumably locatable with GPS data, likely relate to the Department's jurisdiction over "beaches." "Beaches" are defined in S. C. Code Ann. Sec. 48-39-10(H) as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." "Beaches" are designated as critical area in S. C. Code Ann. 48-39-10(J)(3), the basis by which the Department asserts its jurisdiction. However, the Department disregarded this regulatory definition. As described above, the Property suffered erosion from a single, one-time event, not a periodic event. High tides of the nature of the tidal activity on December 17, 2024 are not regular occurrences and certainly cannot be described as periodic.

It is possible that OCRM may also be relying on the definition of "Active Beach" within its regulations: "[T]he area seaward of the escarpment or the first line of

¹ Moreover, the Administrative Law Court has jurisdiction over contested cases arising from a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard. S. C. Const. Article I Sec. 22. In accordance with the procedures of Sec. 44-1-60, these matters must be considered by the Board before advancing to the S. C. Administrative Law Court.

Clerk, Board of Health and Environmental Control
March 13, 2024
Page 3

stable natural vegetation, whichever first occurs, measured from the ocean landward.” S. C. Reg. 30-(D)(2). If that is the case, the placement of the flags is well-landward of the existing escarpment. Under either definition, the Department’s actions were incorrect as the placement of the flags is not consistent with the regulatory definitions.

CONCLUSION

204 Ocean seeks a determination by the Board of Health and Environmental Control that the Department’s actions must be reviewed and, upon review, these actions reversed as the Department staff disregarded the regulatory definitions in establishing the critical area boundaries and exercised unlawful discretion in establishing these boundaries.

Very truly yours,

s/Mary D. Shahid

cc: 204 Ocean Boulevard, LLC c/o Curtis and Karla Kay
Bradley D. Churdar, Associate General Counsel

Mary D. Shahid

From: Chris Moore <cmoore@jgtinc.com>
Sent: Wednesday, March 6, 2024 1:31 PM
To: Mary D. Shahid
Subject: FW: Isle of Palms beachfront critical lines / new City ordinance

{EXTERNAL EMAIL}



Christopher W. Moore, PE
Jon Guerry Taylor & Associates, Inc.
PO Box 1082
Mount Pleasant, South Carolina 29465 USA
Office: 843.884.6415
Direct: 843.628.5612
Fax: 843.884.4026
Cell: 843.367.7989
www.jgtinc.com

From: Slagel, Matt <slagelmj@dhec.sc.gov>
Sent: Wednesday, February 28, 2024 3:02 PM
To: Chris Moore <cmoore@jgtinc.com>; Craig Pawlyk <cpawlyk@jgtinc.com>
Cc: Boynton, Jessica <boyntojb@dhec.sc.gov>; Oswald, Matthew <OswaldM@dhec.sc.gov>
Subject: Re: Isle of Palms beachfront critical lines / new City ordinance

Chris,

Yesterday, 2/27/24, OCRM staff flagged the landward limit of beaches critical area at the following properties, many of which you have been working with and some may have contacted me directly:

- 112 Ocean Blvd
- 116 Ocean Blvd
- 122 Ocean Blvd
- 126 Ocean Blvd
- 130 Ocean Blvd
- 204 Ocean Blvd
- 206 Ocean Blvd
- 208 Ocean Blvd
- 210 Ocean Blvd
- 310 Ocean Blvd
- 314 Ocean Blvd
- 410 Ocean Blvd

Orange flags labeled "SC DHEC OCRM" were placed, and again, those represent the landward limit of beaches critical area at each property. This is not the same as the DHEC OCRM beachfront setback line, which a

surveyor will need to locate and flag using coordinates available on our website:

<https://gis.dhec.sc.gov/shoreline/>

From DHEC OCRM's perspective, any erosion control structure would need to be installed entirely landward of beaches critical area and entirely landward of the DHEC OCRM beachfront setback line.

We did not place flags at 900 Ocean Blvd because at that particular property, the beaches critical area is located seaward of the beach/dune system critical area (the landward limit of the beach/dune system critical area is the DHEC OCRM beachfront setback line). At that property, any erosion control structure would need to be installed entirely landward of the DHEC OCRM beachfront setback line.

The installation of an erosion control structure, including any equipment access or material storage, will need to occur from the landward side of the property. No impacts to the State's critical areas can occur to install a structure that is not otherwise permissible within the critical areas.

Thanks,
Matt

--

Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control

Office: (843) 953-0250

Email: slagelmi@dhec.sc.gov

Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



From: Chris Moore <cmoore@igtinc.com>

Sent: Tuesday, February 27, 2024 1:12 PM

To: Slagel, Matt <slagelmi@dhec.sc.gov>; Craig Pawlyk <cpawlyk@igtinc.com>

Subject: RE: Isle of Palms beachfront critical lines / new City ordinance

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Thanks Matt!

Here are a few additional lots/homes to go with the list I sent last night:

112 Ocean Blvd
314 ocean Blvd
310 ocean Blvd

Another question, As you know many of these properties have very limited or no access to the rear of the house through the front of the house/Ocean Blvd, particularly for sheet pile driving equipment. Will there be any provision or permitting allowed for the contactors to access the rear of the properties from the beach?

Sorry for all the questions, we are trying to wrap our heads around how all of this is going to work and all the boxes that need checked.

Chris

Christopher W. Moore, PE
Jon Guerry Taylor & Associates, Inc.
PO Box 1082
Mount Pleasant, South Carolina 29465 USA
Office: 843.884.6415
Direct: 843.628.5612
Fax: 843.884.4026
Cell: 843.367.7989
www.jgtinc.com

From: Slagel, Matt <slagelmj@dhec.sc.gov>
Sent: Tuesday, February 27, 2024 8:00 AM
To: Chris Moore <cmoore@jgtinc.com>; Craig Pawlyk <cpawlyk@jgtinc.com>
Subject: Re: Isle of Palms beachfront critical lines / new City ordinance

Chris,

DHEC OCRM will mark the landward limit of the beaches critical area at these properties as soon as possible in conjunction with other site visits in the area. We will likely use an ePermitting form to document and track these requests, but I will get back to you on that aspect. In the meantime, please just continue to email me with new addresses as they are confirmed.

Additionally, they will need to hire a surveyor to locate and identify the City's "Maximum Building Line", the 20-foot seaward offset from the Maximum Building Line, and the DHEC OCRM beachfront setback line at their property. The DHEC OCRM beachfront setback line coordinates can be downloaded from our SC Beachfront Jurisdictional Lines viewer using the Data Download tab at the top right of the page:
<https://gis.dhec.sc.gov/shoreline/>

The end result should be four features or lines marked at the property and shown on a survey: 1) the landward limit of beaches critical area marked by DHEC OCRM; 2) the City's Maximum Building Line marked by a surveyor; 3) the 20-foot seaward offset from the Maximum Building Line marked by a surveyor; and 4) the DHEC OCRM beachfront setback line marked by a surveyor.

Thanks,
Matt

--

Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control

Office: (843) 953-0250

Email: slagelmi@dhec.sc.gov

Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



From: Chris Moore <cmoore@igtinc.com>
Sent: Monday, February 26, 2024 10:30 PM
To: Slagel, Matt <slagelmi@dhec.sc.gov>; Craig Pawlyk <cpawlyk@igtinc.com>
Subject: RE: Isle of Palms beachfront critical lines / new City ordinance

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Matt,
Right now, I have the following properties:

116 Ocean Blvd.
122 Ocean Blvd.
126 Ocean Blvd.
130 Ocean Blvd.
410 Ocean Blvd.
900 Ocean Blvd.

I'm waiting on one or two additional addresses the above is what I have right now.

Do you have any guidance on what will be required from OCRM's standpoint? I assume the line will need to be surveyed and the Baseline and offset will need to be shown. Will the survey need to be submitted to OCRM for approval similar to other critical lines? Any guidance or info would be greatly appreciated since we are talking with surveyors and trying to finalize scopes.

Thanks,
Chris

Christopher W. Moore, PE
Jon Guerry Taylor & Associates, Inc.
PO Box 1082
Mount Pleasant, South Carolina 29465 USA
Office: 843.884.6415
Direct: 843.628.5612
Fax: 843.884.4026
Cell: 843.367.7989
www.igtinc.com

From: Slagel, Matt <slagelmi@dhec.sc.gov>
Sent: Monday, February 26, 2024 4:08 PM

To: Craig Pawlyk <cpawlyk@igtinc.com>
Cc: Chris Moore <cmoore@igtinc.com>
Subject: Re: Isle of Palms beachfront critical lines / new City ordinance

Thanks Craig. Chris- please let me know which addresses you have been working with, as OCRM staff might try to fit some of this work into already scheduled field work as soon as possible.

Thanks,
Matt

Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control

Office: (843) 953-0250

Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



From: Craig Pawlyk <cpawlyk@igtinc.com>
Sent: Friday, February 23, 2024 4:25 PM
To: Slagel, Matt <slagelmj@dhec.sc.gov>
Cc: Chris Moore <cmoore@igtinc.com>
Subject: RE: Isle of Palms beachfront critical lines / new City ordinance

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Thanks Matt. I've copied my business partner Chris Moore, who has been working directly with the homeowners. He can give you the addresses.

Have a good weekend.

Craig

Craig A. Pawlyk, RLA, ASLA, AICP
Vice President / Director of Regulatory Permitting
Jon Guerry Taylor & Associates, Inc.
PO Box 1082
Mount Pleasant, SC 29465
843-884-6415 ph. 843-884-4026 fax
www.igtinc.com

From: Slagel, Matt <slagelmi@dhec.sc.gov>
Sent: Friday, February 23, 2024 4:18 PM
To: Craig Pawlyk <cpawlyk@jgtinc.com>
Subject: Re: Isle of Palms beachfront critical lines / new City ordinance

Craig,

We just received the final ordinance language yesterday and are working through what our process will be. I will try to follow up with you early next week. In the meantime, please send me the list of addresses that you are working with.

Thanks,
Matt

--

Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control

Office: (843) 953-0250

Email: slagelmi@dhec.sc.gov
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



From: Craig Pawlyk <cpawlyk@jgtinc.com>
Sent: Thursday, February 22, 2024 10:50 AM
To: Slagel, Matt <slagelmi@dhec.sc.gov>
Subject: Isle of Palms beachfront critical lines / new City ordinance

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Good morning, Matt,

We are working with several homeowners on the front beach of Isle of Palms that are impacted by the new City ordinance. What is the procedure for having OCRM flag the critical lines in these areas? Do we submit a request through the portal?

Thanks,
Craig

Craig A. Pawlyk, RLA, ASLA, AICP
Vice President / Director of Regulatory Permitting

From: [Curtis Kay](#)
To: [Mary D. Shahid](#)
Subject: Fw: 204 Ocean Blvd, IOP
Date: Tuesday, March 12, 2024 9:09:38 PM
Attachments: [EMERGENCY_ord_2024-01Final.pdf](#)

Mary,

This letter gives the date that Matt Slagel came out to our property and marked the flags. 2/27. I'll call tomorrow. Thanks, Curtis Kay

----- Forwarded Message -----

From: Slagel, Matt <slagelmj@dhec.sc.gov>
To: kayrentals@aol.com <kayrentals@aol.com>
Sent: Tuesday, March 5, 2024 at 12:08:34 PM EST
Subject: 204 Ocean Blvd, IOP

Ms. Kay,

The email below contains the information that I have shared with other property owners in the area as they inquire about the City of Isle of Palms' ordinance.

The orange flags placed at your property on 2/27/24 and labeled "SC DHEC OCRM" represent the landward limit of beaches critical area. Beaches critical area is one of four critical areas, defined in statute, where DHEC OCRM has direct permitting authority. S.C. Code Ann. Section 48-39-10(H) defines "Beaches" as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established."

<https://www.scstatehouse.gov/code/t48c039.php> Therefore, the flags were placed at the boundary between the sandy beach and the presence of vegetation at your property. From DHEC OCRM's perspective, any erosion control structure (seawall) would need to be installed entirely landward of beaches critical area and entirely landward of the DHEC OCRM beachfront setback line (as flagged by a surveyor and as indicated below).

You will need to hire a surveyor to locate and identify the City's "Maximum Building Line", the 20-foot seaward offset from the Maximum Building Line, and the DHEC OCRM beachfront setback line at your property. The DHEC OCRM beachfront setback line coordinates can be downloaded from our SC Beachfront Jurisdictional Lines viewer using the Data Download tab at the top right of the page: <https://gis.dhec.sc.gov/shoreline/>

The end result should be four features or lines marked at the property and shown on a survey: 1) the landward limit of beaches critical area marked by DHEC OCRM; 2) the City's Maximum Building Line marked by a surveyor; 3) the 20-foot seaward offset from the Maximum Building Line marked by a surveyor; and 4) the DHEC OCRM beachfront setback line marked by a surveyor.

I'm sure you have also seen the City's ordinance, but I am attaching it for your reference.

Thanks,
Matt

--
Matt Slagel
Manager, Beachfront Management Section
Office of Ocean and Coastal Resource Management
S.C. Dept. of Health & Environmental Control
Office: (843) 953-0250
Email: slagelmj@dhec.sc.gov
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Requestor: 204 Ocean Holdings LLC
Mary D. Shahid, Maynard Nexsen, Attorney for Requestor

Applicant: 204 Ocean Holdings LLC
Submission # HQ1-Y2NK-32QMP
DHEC OCRM Request to Have a Critical Area Line Established
204 Ocean Boulevard, Isle of Palms, SC

Docket No.: 24-RFR-50, 204 Ocean Holdings LLC

RECEIVED

OGC No.: 2024-OCR-0006

MAR 22 2024

Clerk, Board of Health
and Environmental Control

I. Summary

a. Type of Decision.

Establishment of a DHEC OCRM Critical Area Line. In this case, DHEC OCRM flagged the landward limit of Beaches Critical Area at the subject property pursuant to the owner's request. This Staff Summary responds to the Request for Review submitted by 204 Ocean Holdings LLC related to the location of Beaches Critical Area as flagged by DHEC OCRM at the property. Any future construction activities would need to comply with all applicable state and federal laws in procuring any additional permits required prior to construction, including a National Pollution Discharge Elimination System (NPDES) permit and a Coastal Zone Consistency review from the State if applicable.

b. Location.

204 Ocean Boulevard, Isle of Palms, SC

c. Decision.

On February 27, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department" or "DHEC OCRM") flagged the landward limit of Beaches Critical Area at the subject property. Orange flags marked "SC DHEC OCRM" were placed in the ground to adhere to the statutory definition of "Beaches" found in 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." S.C. Code Ann. §48-39-10(J) further states that " 'Critical area' means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in §48-39-280." Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit. An Inspection Form was completed (See **Exhibit A**), and site photographs were taken (See **Exhibit B**). A figure was created to show the locations of

the flags in reference to drone photography captured the day before, on February 26, 2024 (See **Exhibit C**).

Requestor is the property owner, 204 Ocean Holdings LLC. Requestor disagrees with where DHEC OCRM flagged the landward limit of Beaches Critical Area at the subject property.

d. Relevant Chronology.

The chronology shows the Department has been actively working with the City of Isle of Palms to address erosion issues along Breach Inlet. The Department has also shifted workloads to flag the Beaches Critical Area in a timely manner, at the property owners' request.

June 30, 2023 – DHEC OCRM issued General Permit OCRM04706 to the City of Isle of Palms. The permit authorized minor beach renourishment (trucking in beach-compatible sand) from 100 Ocean Boulevard through 402 Ocean Boulevard.

July 26, 2023 – DHEC OCRM issued General Permit OCRM04742 to the City of Isle of Palms. The permit authorized minor beach renourishment (trucking in beach-compatible sand) from 404 Ocean Boulevard through 522 Ocean Boulevard.

August 31, 2023 – DHEC OCRM issued Emergency Order 23-EO-008 to the City of Isle of Palms for sand scraping from 100 to 314 Ocean Boulevard.

September 29, 2023 – DHEC OCRM issued Emergency Order 23-EO-015 to the City of Isle of Palms for sand scraping from 100 to 314 Ocean Boulevard.

October 6, 2023 – DHEC OCRM issued Emergency Order 23-EO-016 to the City of Isle of Palms for the placement of sandbags from 120 to 206 Ocean Boulevard.

December 23, 2023 – DHEC OCRM issued Emergency Order 23-EO-021 to the City of Isle of Palms for sand scraping from 112 to 308 Ocean Boulevard.

January 2024 to Present – The City of Isle of Palms has issued local sand scraping Emergency Orders on an as-needed basis when erosion reaches to within 20 feet of habitable structures or swimming pools.

February 20, 2024 – The City of Isle of Palms approved Emergency Ordinance No. 2024-01, which allows for permits to be sought from the City for the construction of erosion control structures landward of the State's Critical Areas. Erosion control structures would need to meet other requirements specified in the Emergency Ordinance. (See **Exhibit D**).

Late February 2024 – The property owner, via a phone call, requested DHEC OCRM staff to flag the Beaches Critical Area at 204 Ocean Boulevard.

February 27, 2024 – DHEC OCRM staff flagged the Beaches Critical Area at 204 Ocean Boulevard.

March 13, 2024 – 204 Ocean Holdings LLC challenged the location of Beaches Critical Area as determined by DHEC OCRM and submitted a Request for Final Review (24-RFR-50) to the DHEC Board.

II. Relevant Law

a. Statutes.

S.C. Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10 et seq. (2008 & Supp. 2019) (CTWA)

§48-39-10: Definitions: (H) “Beaches” means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.

§48-39-10: Definitions: (J) “Critical area” means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280.

§48-39-30: Legislative declaration of state policy: (D) Critical areas shall be used to provide the combination of uses which will insure the maximum benefit to the people, but not necessarily a combination of uses which will generate measurable maximum dollar benefits. As such, the use of a critical area for one or a combination of like uses to the exclusion of some or all other uses shall be consistent with the purposes of this chapter.

§48-39-210: Department only state agency authorized to permit or deny alterations or utilizations within critical areas: (A) The department is the only state agency with authority to permit or deny any alteration or utilization within the critical area except for the exemptions granted under Section 48-39-130(D) and the application for a permit must be acted upon within the time prescribed by this chapter. (B) ...Critical areas by their nature are dynamic and subject to change over time. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not.

§48-39-250: Legislative findings regarding the coastal beach/dune system: The General Assembly finds that:

(1) The beach/dune system along the coast of South Carolina is extremely important to the people of this State and serves the following functions:

(a) protects life and property by serving as a storm barrier which dissipates wave energy and contributes to shoreline stability in an economical and effective manner;

(b) provides the basis for a tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a significant portion

of the state's economy. The tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues;

(c) provides habitat for numerous species of plants and animals, several of which are threatened or endangered. Waters adjacent to the beach/dune system also provide habitat for many other marine species;

(d) provides a natural healthy environment for the citizens of South Carolina to spend leisure time which serves their physical and mental well-being.

(2) Beach/dune system vegetation is unique and extremely important to the vitality and preservation of the system.

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

(4) Chapter 39 of Title 48, Coastal Tidelands and Wetlands, prior to 1988, did not provide adequate jurisdiction to the South Carolina Coastal Council to enable it to effectively protect the integrity of the beach/dune system. Consequently, without adequate controls, development unwisely has been sited too close to the system. This type of development has jeopardized the stability of the beach/dune system, accelerated erosion, and endangered adjacent property. It is in both the public and private interests to protect the system from this unwise development.

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

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

(7) Inlet and harbor management practices, including the construction of jetties which have not been designed to accommodate the longshore transport of sand, may deprive downdrift beach/dune systems of their natural sand supply. Dredging practices which include disposal of beach quality sand at sea also may deprive the beach/dune system of much-needed sand.

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

(9) Present funding for the protection, management, and enhancement of the beach/dune

system is inadequate.

(10) There is no coordinated state policy for post-storm emergency management of the beach/dune system.

(11) A long-range comprehensive beach management plan is needed for the entire coast of South Carolina to protect and manage effectively the beach/dune system, thus preventing unwise development and minimizing man's adverse impact on the system.

§48-39-260: Policy Statement: In recognition of its stewardship responsibilities, the policy of South Carolina is to:

(1) protect, preserve, restore, and enhance the beach/dune system, the highest and best uses of which are declared to provide:

(a) protection of life and property by acting as a buffer from high tides, storm surge, hurricanes, and normal erosion;

(b) a source for the preservation of dry sand beaches which provide recreation and a major source of state and local business revenue;

(c) an environment which harbors natural beauty and enhances the well-being of the citizens of this State and its visitors;

(d) natural habitat for indigenous flora and fauna including endangered species;

(2) create a comprehensive, long-range beach management plan and require local comprehensive beach management plans for the protection, preservation, restoration, and enhancement of the beach/dune system. These plans must promote wise use of the state's beachfront;

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

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

(5) promote carefully planned nourishment as a means of beach preservation and restoration where economically feasible;

(6) preserve existing public access and promote the enhancement of public access to assure full enjoyment of the beach by all our citizens including the handicapped and encourage the purchase of lands adjacent to the Atlantic Ocean to enhance public access;

(7) involve local governments in long-range comprehensive planning and management

of the beach/dune system in which they have a vested interest;

(8) establish procedures and guidelines for the emergency management of the beach/dune system following a significant storm event.

b. Regulations.

Critical Area Permitting Regulations, S.C. Code Ann. Regs. 30-1 et seq. (CAPR)

R.30-1.D: Definitions: (15) Critical Areas – any of the following: (1) coastal waters, (2) tidelands, (3) beach/dune systems and (4) beaches.

c. The South Carolina Coastal Zone Management Program Document. (CMP)

Part 2, Chapter IV – Erosion Control Program, Pages IV-51 to IV-60.

III. Staff Response to Grounds Stated in Request for Review.

- a. **Requestor states: “The December 17, 2023 Nor’easter storm and resulting flooding was [a] one-time event. The owner of 204 Ocean has experienced predicted high tides and named storm events in their four years of residence on the Property. At no time prior to December 17, 2023 did the Property suffer from flood damage and tidal action. But, given the severity of the tidal conditions created by the December 17th Nor’easter, the owner is considering installing some form of protection landward of the setback line as shown on Ex. B [of RFR]. Before they were able to perform that installation, a representative of the Department, Matt Slagel, placed flags on the Property on February 27, 2024, indicating what he believed to be the boundary of ‘beaches critical area’ on the seaward side of the Property.”**

Staff response: As shown in the Relevant Chronology section above, the City of Isle of Palms has been working to address erosion issues along this stretch of shoreline since at least June 2023. The December 17, 2023 Nor’easter exacerbated the erosion issues that were already occurring. Since that storm, the City has been trucking-in beach-compatible sand and/or scraping sand from the beach when erosion reaches within 20 feet of habitable structures or swimming pools in attempt to “hold the line” until the U.S. Army Corps of Engineers’ planned beneficial use sand placement project in Spring/Summer 2024.

On February 20, 2024, the City of Isle of Palms approved Emergency Ordinance No. 2024-01, which allows for permits to be sought from the City for the construction of erosion control structures landward of the State’s Critical Areas. Erosion control structures would need to meet other requirements specified in the Emergency Ordinance. Pursuant to the Emergency Ordinance, prior to the issuance of a permit from the City, the property owner must first coordinate with DHEC OCRM and have staff physically place markers on the property “to confirm the then existing location of the critical area, as defined in S.C. Code Ann. §48-39-10, and as solely determined by OCRM.” In late February 2024, the property

owner, via a phone call, requested DHEC OCRM to flag the Beaches Critical Area at 204 Ocean Boulevard. Staff flagged the Beaches Critical Area on February 27, 2024.

- b. **Requestor states: “ ‘Beaches’ are defined in S.C. Code Ann. Sec. 48-39-10(H) as ‘those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.’ ‘Beaches’ are designated as critical area in S.C. Code Ann. 48-39-10(J)(3), the basis by which the Department asserts its jurisdiction. However, the Department disregarded this regulatory definition. As described above, the Property suffered erosion from a single, one-time event, not a periodic event. High tides of the nature of the tidal activity on December 17, 2023 are not regular occurrences and certainly cannot be described as periodic.”**

Staff response: DHEC OCRM disagrees that it disregarded the statutory definition of “beaches” found in S.C. Code Ann. §48-39-10(H). The statute does not exclude storms or other “one-time events” from consideration when delineating the State’s critical areas, whether coastal waters, tidelands, beaches, or the beach/dune system in unstabilized inlet zones. S.C. Code Ann. §48-39-210(B) states that “Critical areas by their nature are dynamic and subject to change over time. By delineating the permit authority of the department, the department in no way waives its right to assert permit jurisdiction at any time in any critical area on the subject property, whether shown hereon or not.” The second half of the “beaches” definition states: “so that no nonlittoral vegetation is established.” DHEC OCRM staff evaluated the presence or absence of nonlittoral vegetation at the property and the neighboring properties as an indicator for the landward limit of Beaches Critical Area, as directed by statute. The Department also considered the history of the site, personally observed the property and adjacent areas, and evaluated aerial photos to carefully verify the location of the critical area.

Although Requestor claims that the property suffered erosion from a single, one-time event, as the Relevant Chronology section above and the City of Isle of Palms Emergency Ordinance set forth, this stretch of shoreline remains dynamic and nonlittoral vegetation has not become re-established (See **Exhibit B**). The instability of this area is further evidenced by the multiple efforts the City has made since June 2023 to mitigate the erosion impacts it continues to experience. The Beaches Critical Area determination depicted in **Exhibit C** is consistent with the statutory definition of “beaches” and consistent with the legislative findings and policy statements in the S.C. Coastal Tidelands and Wetlands Act. The General Assembly has recognized the crucial importance and value of the beaches in providing storm protection, habitat for plants and animals, recreation to its citizens, and in attracting tourists to the South Carolina beaches which is important to South Carolina’s economy. It was the General Assembly’s intent to give the Department sufficient authority over the critical areas so that the beaches could be preserved and so that development would not continue to be sited too close to the beach dune system.

IV. Requested Action

Based on the foregoing, the Department requests that the Board decline to hold a final review conference in the above-referenced matter.

[SIGNATURES ON FOLLOWING PAGE]

**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Docket No.: 24-RFR-50, 204 Ocean Holdings LLC

Respectfully Submitted,



Matthew J. Slagel
Manager, Beachfront Management Section
Office of Ocean & Coastal Resource Management

Sallie P. Phelan

Sallie P. Phelan
Assistant General Counsel
Office of Ocean & Coastal Resource Management

Date: March 22, 2024

EXHIBIT A

204 Ocean Holdings LLC : C5J5-S0KD-W9W
OCRM Inspection Form



Inspector: Matt Slagel
Start Date: 03/22/2024

Inspection Details

1. Property Owner	204 Ocean Holdings LLC
2. Is this activity associated with a permit?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
3. Permit Number	N/A
4. Purpose of Inspection	Beaches CA Line
5. TMS/PIN	5680900163
6. Site Address	204 OCEAN BLVD, ISLE OF PALMS, SC 29451
7. County	Charleston

8. Provide a description of your findings.

Orange flags marked "SC DHEC OCRM" were placed in the ground to adhere to the statutory definition of "Beaches" found in S.C. Code Ann. Section 48-39-10(H): " 'Beaches' means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit.



GPS Latitude: 32.7761888888889
GPS Longitude: -79.8052527777778
GPS Altitude: 3.93547156096675 meters
Photo Uploaded: 3/22/2024

204 Ocean Holdings LLC : C5J5-S0KD-W9W
OCRM Inspection Form

Inspector: Matt Slagel
Start Date: 03/22/2024



Inspection Details



GPS Latitude: 32.7761861111111
GPS Longitude: -79.8052611111111
GPS Altitude: 4.16596170114589 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7761388888889
GPS Longitude: -79.8052361111111
GPS Altitude: 3.95900093125433 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7761388888889
GPS Longitude: -79.8052361111111
GPS Altitude: 3.95900093125433 meters
Photo Uploaded: 3/22/2024

204 Ocean Holdings LLC : C5J5-S0KD-W9W
OCRM Inspection Form



Inspector: Matt Slagel
Start Date: 03/22/2024

Inspection Details



GPS Latitude: 32.7762027777778
GPS Longitude: -79.8052805555556
GPS Altitude: 4.05640417457306 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7761722222222
GPS Longitude: -79.8052805555556
GPS Altitude: 4.12769083359949 meters
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7761694444444
GPS Longitude: -79.8052472222222
GPS Altitude: 4.12266545784225 meters
Photo Uploaded: 3/22/2024

204 Ocean Holdings LLC : C5J5-S0KD-W9W
OCRM Inspection Form

Inspector: Matt Slagel
Start Date: 03/22/2024



Inspection Details



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Photo Uploaded: 3/22/2024



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GPS Longitude: -79.8055222222222
GPS Altitude: 4.14396138313983 meters
Photo Uploaded: 3/22/2024

204 Ocean Holdings LLC : C5J5-S0KD-W9W
 OCRM Inspection Form

Inspector: Matt Slagel
 Start Date: 03/22/2024



Inspection Details



GPS Latitude: 32.7760694444444
 GPS Longitude: -79.8055416666667
 GPS Altitude: 4.0997238915056 meters
 Photo Uploaded: 3/22/2024



GPS Latitude: 32.7760638888889
 GPS Longitude: -79.8055472222222
 GPS Altitude: 4.13750244666275 meters
 Photo Uploaded: 3/22/2024

9. What is the progress of the construction activity?	N/A				
10. If activity, or any portion thereof, is not in compliance with the Act, Regulations, or specified conditions of the permit, describe the inconsistencies.					
11. Was the property owner present during this inspection?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
12. If the property owner was notified, when?					
	<table border="1"> <tr> <td>Date</td> <td>Time</td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	Date	Time		
Date	Time				
13. Is a construction placard posted?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA				
14. What is the result of the inspection?	N/A				

204 Ocean Holdings LLC : C5J5-S0KD-W9W
OCRM Inspection Form

Inspector: Matt Slagel
Start Date: 03/22/2024



Inspection Details

16. Inspector's Signature

Matthew J. Slagel

SCDHEC - MJS

EXHIBIT B



24-RFR-50

Grant Knowledge

Page 29 of 47

02/27/24 10:56 AM

32.7762° N, 79.8053° W

SCDHEC - MJS



24-RFR-50 Board Package Page 30 of 47

02/27/24 10:57 AM

32.7762° N, 79.8053° W

SCDHEC - MUS



SCDHEC - MJS



24-RFR-50 Board Package Page 32 of 47

32.7761° N, 79.8052° W

02/27/24 10:57 AM



SCDHEC-MJS

02/27/24 11:00 AM

32° 7' 62" N - 79° 8' 053" W

Ward Packard - Pages of 11



SCDA/EG-MJS

24-RRR-50 Board Package - Page 34 of 47

32-7762° N-79 8058° W

02/27/24 11:00 AM

SCDHEC - MJS



24-RFR-50 Board Package Page 35 of 41

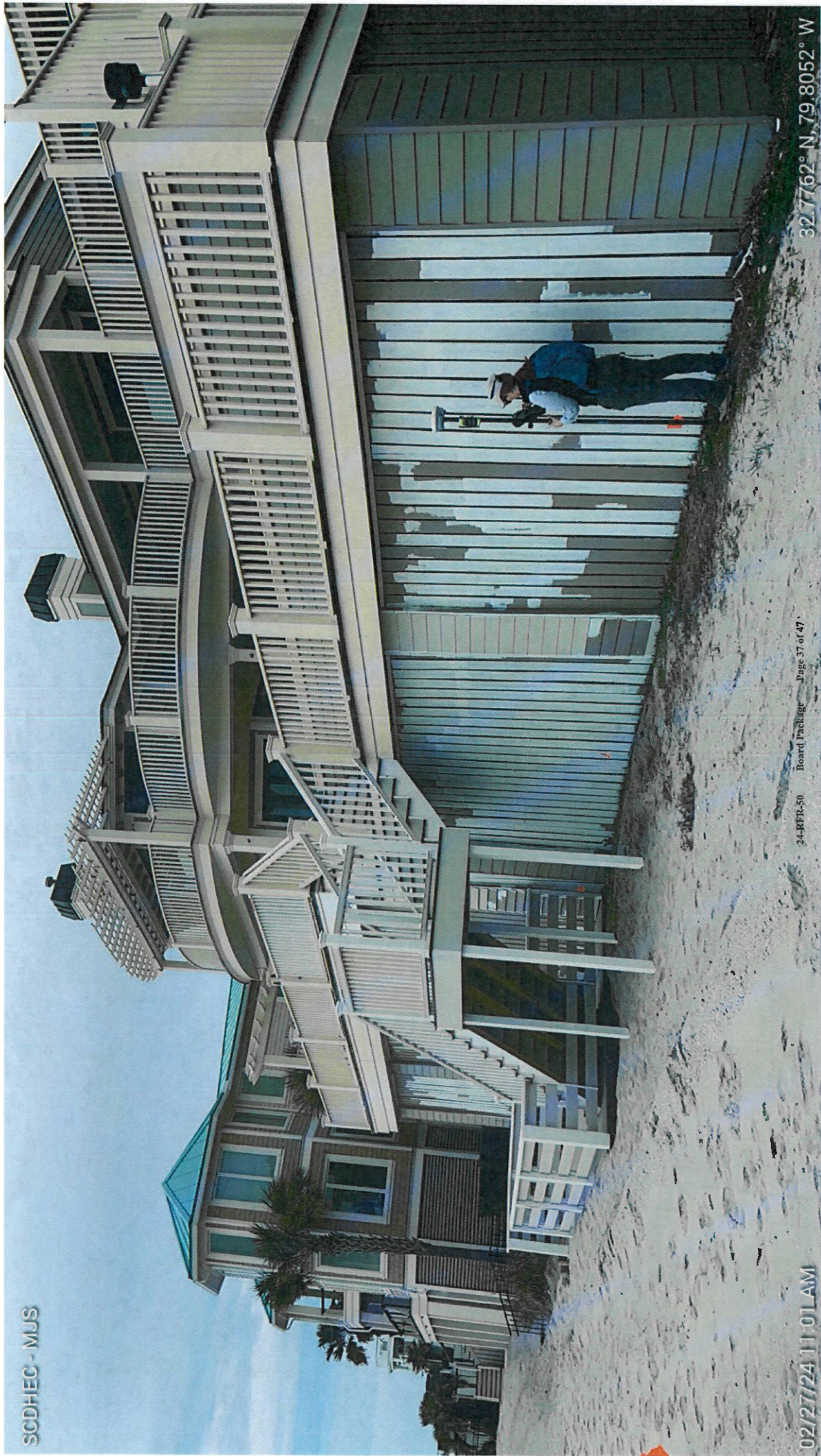
32.7762° N, 79.8052° W

02/27/24 11:00 AM

SCDHEC - MJS



SCDHEC - MUS



24-RTR-50 Board Package Page 37 of 47

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02/27/24 11:01 AM

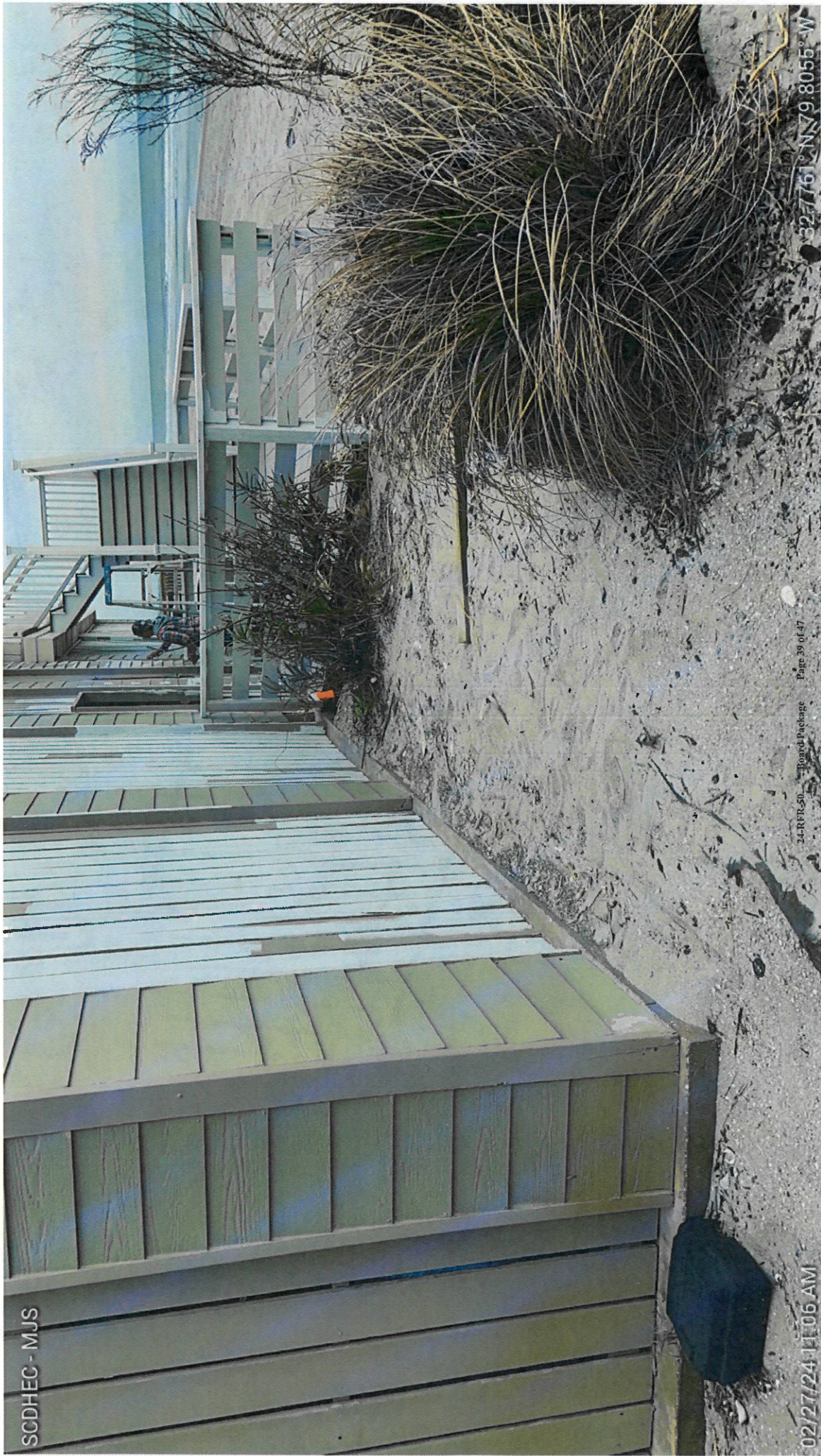
SCDHEC - MJS



2024-04-20 11:02 AM Board Release Page 38 of 77

32.7761° N, 79.8055° W

02/27/24 11:02 AM



SCDHEC - MJS

34-RPR-50 - Board Package Page 39 of 47

32.761° N 79.8055° W

02/27/24 11:06 AM

SCDHEC - MJS

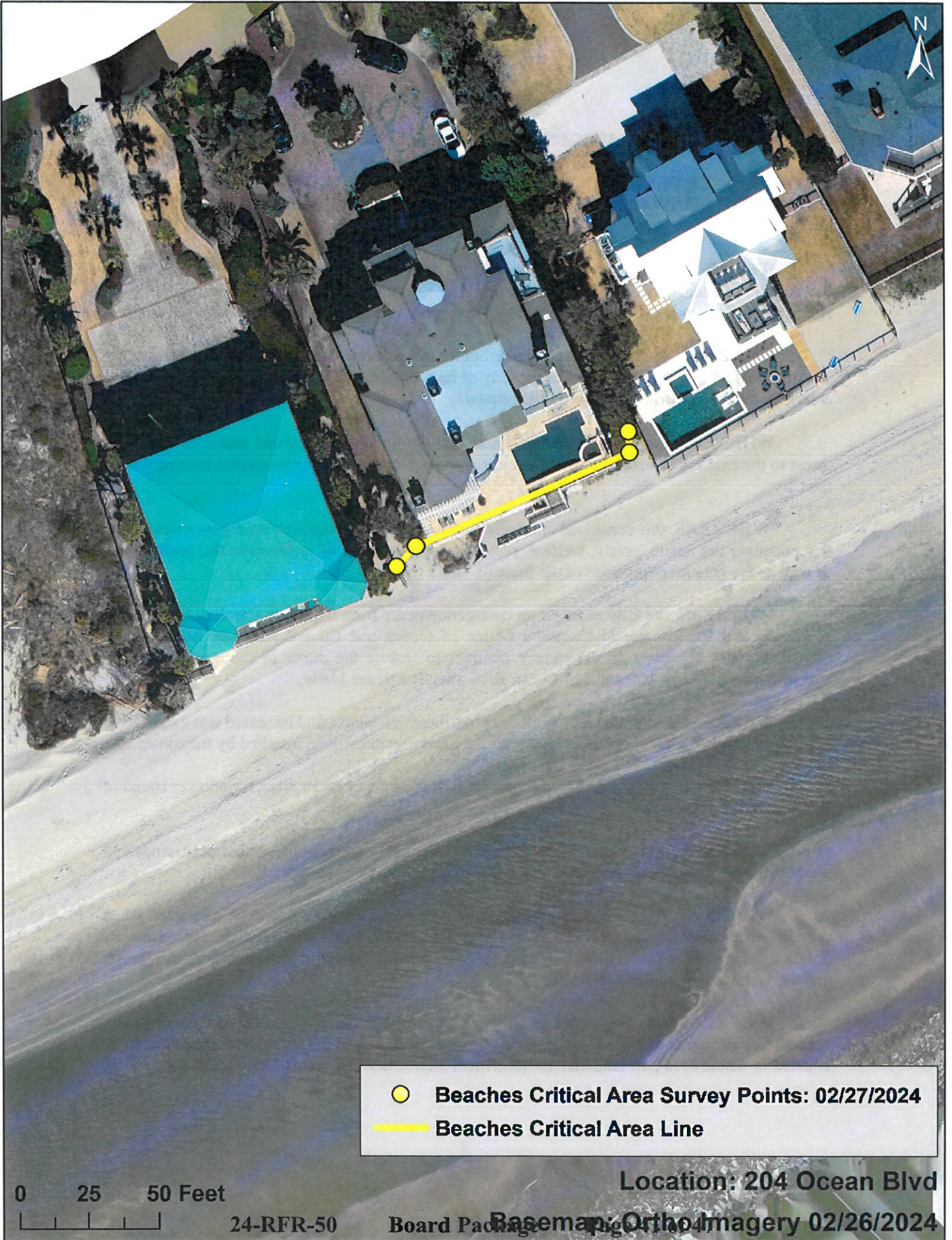


24, Kaniyasho Hirahira Pauleque, Phone: 40 81 47

82° 7' 61" N 79° 8' 055" W

02/27/24 11:06 AM

EXHIBIT C



● Beaches Critical Area Survey Points: 02/27/2024

— Beaches Critical Area Line

0 25 50 Feet



24-RFR-50

Board Package

Location: 204 Ocean Blvd

Basemap: Ortho Imagery 02/26/2024

EXHIBIT D

EMERGENCY ORDINANCE NO. 2024-01

AN ORDINANCE PERMITTING RESIDENTS NEAR BREACH INLET TO INSTALL A REVETMENT/SEAWALL FOR EMERGENCY EROSION CONTROL

WHEREAS, emergency erosion conditions have and continue to occur on beaches facing the Atlantic Ocean between Breach Inlet and 10th Avenue on Isle of Palms associated with Hurricane Idalia, coastal flooding, storm surge and subsequent king tides, wind and wave events;

WHEREAS, due to Hurricane Idalia, South Carolina received an emergency declaration on August 31, 2023, and the Mayor of the City of Isle of Palms (“City”) also declared a state of emergency due to Hurricane Idalia on the same day;

WHEREAS, these conditions have and will continue to expose and create an imminent threat to the existing structures and critical infrastructure on front beach properties located within the City;

WHEREAS, this continued imminent threat constitutes temporary emergency conditions that endanger the health, safety, welfare, resources, and property of residents of the coastal zone as well as the general population of the State of South Carolina;

WHEREAS, the City received an emergency order from the South Carolina Department of Health and Environmental Control’s Office of Ocean and Coastal Resource Management (“OCRM”) and approved an emergency contract to restore the dunes in the erosion area by scraping sand between 100 and 314 Ocean Blvd after Hurricane Idalia;

WHEREAS, continued king high tides, northeastern winds, and increased wave sizes have kept water levels high and completely eroded the newly restored dune installed by the contractor;

WHEREAS, the City received a new OCRM emergency order allowing another round of scraping in the affected area;

WHEREAS, on December 17, 2023, a weather event with strong northeastern winds and record high tides caused significant erosion due to high tides, wind and waves;

WHEREAS, these temporary emergency conditions are expected to be alleviated when the US Army Corps of Engineers initiates a project in 2024 that will result in approximately 550,000 cubic yards of sand being placed in this area and providing protection for public interests and the welfare and property of residents;

WHEREAS, City Ordinance, Section 5-4-15, entitled “Beach Regulations,” prohibits any seawalls, revetments, bulkheads, groins, rip-rap or any other hard erosion control structures to be situated in whole or in part landward of the critical area as defined in S.C. Code 1976, § 48-39-10,

as amended, within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet;

WHEREAS, the City Council of the City of Isle of Palms ("City Council") now desires to authorize and to establish a temporary emergency protocol for beach front property owners that own property in the erosion area between 100 Ocean Blvd. and 914 Ocean Blvd (hereinafter defined as "Residents") that desire to place a revetment or seawall on the Resident's property, entirely landward of the critical area as defined in S.C. Code Ann § 48-39-10, as more specifically set forth below;

WHEREAS, City Ordinance, Section 1-3-53(e) allows for the enactment of emergency ordinances pursuant to S.C. Code § 5-7-250(d), which provides "[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;"

WHEREAS, this Ordinance has been approved by at least two-thirds of the City Council members present at the meeting in which it was considered; and

NOW, THEREFORE, be it ordained by the City Council of the City of Isle of Palms as follows:

Section 1 – Revetment and Seawall Requirements and Installation. City Ordinance, Section 5-4-15, entitled "Beach Regulations," is hereby temporarily amended to permit Residents (defined above) to install a revetment or seawall entirely landward of the critical area, subject to the following specifications and restrictions:

- (a) This Emergency Ordinance only applies to owners of beach front properties located in the erosion area between 100 Ocean Blvd. and 914 Ocean Blvd, which are defined above as Residents;
- (b) For purposes of this Ordinance, the term "revetment" shall mean a sloping structure built entirely landward of the critical area as determined by OCRM, as defined in S.C. Code Ann § 48-39-10, to protect the Resident's home from erosion damage;
- (c) For purposes of this Ordinance, the term "seawall" shall mean a vertical structure built entirely landward of the critical area as determined by OCRM, as defined in S.C. Code Ann § 48-39-10, to protect the Resident's home from erosion damage;
- (d) For purposes of this Ordinance, the term "maximum building line" shall mean the setback created by Section 5-4-51(3)(a) of the City Code and labeled as such on that certain plat prepared by E.M. Seabrook, Jr., C.E. and L.S., dated January 8, 1988, and entitled "FINAL PLAT, CITY OF ISLE OF PALMS, CHARLESTON

COUNTY, S.C." and duly recorded at the County RMC Office on February 16, 1988, in Plat Book BQ, at Pages 111,112, and 113;

- (e) No revetment or seawall shall be constructed or altered without first obtaining approval of the City and the issuance of a valid permit pursuant to the conditions and limitations set forth in the Ordinance, and a copy of the issued permit shall be in possession of anyone performing work associated with the seawall or revetment;
- (f) Prior to obtaining a permit from the City, the Resident shall comply with all applicable state and federal laws in procuring any additional permits required prior to construction, including a National Pollution Discharge Elimination System (NPDES) permit and a Coastal Zone Consistency review from the State if applicable.
- (g) In the event of construction of any such seawall or revetment, it shall comply with the requirements in the Ordinance and shall be the sole responsibility of the property owner and contractor to use materials and construction techniques that will minimize the possibility of damage or danger to other properties, public or private, or to persons on the beach or adjacent properties. It shall be the responsibility of the property owner to maintain such structures in a manner so as to prevent their floating or washing away and endangering other persons or property;
- (h) Prior to the installation of any seawall or revetment, the Resident shall notify any adjacent property owners in writing and copy Douglas Kerr, Deputy City Administrator at dkerr@iop.net;
- (i) Prior to the issuance of a permit from the City, the Resident shall first coordinate with OCRM and have OCRM staff physically place markers on the Resident's Property to confirm the then existing location of the critical area, as defined in S.C. Code Ann § 48-39-10, and as solely determined by OCRM.

If OCRM staff determines that the critical area should be established using the coordinates under the Data Download tab of OCRM's SC Beachfront Jurisdictional Lines viewer: <https://gis.dhec.sc.gov/shoreline/>, the Resident shall hire a surveyor to physically place markers on OCRM's Setback Line.

- (j) The following are requirements for seawalls and revetments:
 - (1) seawalls and revetments shall be designed by a registered, qualified engineer and include a certification from the engineer that the seawall or revetment will not accelerate erosion or negatively impact adjacent or down-drift lots and be designed/built to withstand a storm event;
 - (2) seawalls and revetments shall be installed entirely landward of the critical area markers placed by OCRM or the setback line marked by a surveyor, whichever is farther landward, on the Resident's property and shall not be installed more than twenty feet (20') seaward of the maximum building line;
 - (3) revetments shall be designed and installed with no greater than a 1:2 slope to reduce scour from adjacent properties;

- (4) seawalls and revetments shall have a maximum height of no more than ten (10) feet above mean sea level using NAVD88 datum;
- (5) seawalls and revetments shall not be made of recycled concrete/materials, unless specifically designed for the purpose of marine construction;
- (6) revetments and seawalls shall be covered by beach compatible sand when not directly exposed to water during an erosion event;
- (7) seawalls shall be installed so as to not be visible;
- (8) All excavations shall occur entirely landward of the critical area as marked by OCRM on the Resident's Property; and
 - (9) seawalls and revetments shall be designed so as to be continuous with any existing or planned revetments installed on adjacent properties, to the extent possible;
- (k) The Resident's contractor shall access the Resident's property through the Resident's property as OCRM prohibits heavy machinery, equipment, or materials within the critical area for the purpose of installing a seawall or revetment;
- (l) The sand covering the revetment or wall must be from an upland source (i.e. not originating from the beach) and compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material. Only clean sand from an approved OCRM source may be placed on the seawall or revetment; and
- (m) The Resident shall be responsible for the day-to-day maintenance of the revetment or wall to ensure it is covered with beach compatible sand, remains in good repair, and is serving its intended purpose. If the revetment is not properly installed, maintained, or becomes compromised, as determined by the City and the City's coastal engineer, the revetment shall be removed at the direction of the City and at the Resident's sole expense. The City shall have the authority to remove revetments that are not installed or maintained in accordance with this Ordinance. Residents that elect to install a seawall or revetment shall assume all responsibility over impacts to adjacent property owners.

Section 2 – OCRM Guidance. OCRM has informed the City that if a seawall or revetment is built entirely landward of the critical area, as marked by OCRM, but then later enters into the critical area due to erosion, it would be subject to OCRM's usual structural inventory and damage assessment activities. If the structure becomes "destroyed beyond repair" (as that term is used in OCRM regulations), OCRM will require the seawall or revetment to be removed at the expense of the property owner. The shoreline in the erosion area can drastically change in a matter of hours or days. As such, OCRM suggests that an erosion control structure should be installed within 7 days of OCRM flagging the critical area. If at any time prior to completion of the seawall or revetment, the partially completed seawall or revetment becomes located in whole or in part in the critical area, as marked by OCRM, OCRM will issue a Cease and Desist Directive and require the seawall or revetment to be removed from the critical area at the sole expense of the Resident.

OCRM has indicated that no emergency scraping will be allowed in front of areas where seawalls or revetments are located pursuant to state law. OCRM has indicated that all work must occur on the Resident's upland property and landward of the critical area as marked by OCRM. OCRM prohibits heavy machinery, equipment, and materials within the critical area for the purpose of installing a seawall or revetment. Also, per S.C. Code Ann. § 48-39-120(C): "The department shall have the authority to remove all erosion control structures which have an adverse effect on the public interest." The City encourages Residents to contact OCRM with any questions.

Section 3 - Removal of Seawalls and Revetments. If a Resident fails to comply with City Ordinance, Section 5-4-15, as amended herein, or any of the specifications or requirements of this Emergency Ordinance, including building a seawall or revetment without first obtaining a City issued permit, the City is entitled to require the Resident to remove the seawall or revetment, at the Resident's sole expense. Any seawalls or revetments installed in violation of Section 5-4-15, as amended herein, or this Emergency Ordinance shall be removed within forty-five (45) days after the Resident receives notice from the City to remove the seawall or revetment. In the event the City is required to enforce compliance with Section 5-4-15, as amended herein, or this Emergency Ordinance, the Resident shall pay the City any additional costs, expenses, or legal fees incurred by the City to ensure compliance with Section 5-4-15, as amended herein, and this Emergency Ordinance.

Additionally, pursuant to S.C. Code Ann. §§ 48-39-20(C) and 48-39-160, the City is authorized to file an action in Charleston County Circuit Court to prevent or eliminate a violation the Coastal Zone Management Act (S.C. Code Ann. §§ 48-39-10 to -360), including the non-permitted installation of hard erosion control devices, such as seawalls and revetments in the critical area as defined in S.C. Code Ann. § 48-39-10.

Section 4. Suspension of Contrary Local Provisions. During the emergency term, any ordinance (including City Ordinance Sections 5-4-15 and 5-4-51), resolution, policy, or bylaw of the City that conflicts with the provisions hereof shall be and is hereby temporarily suspended and superseded to allow for the Resident's installation of a seawall or revetment in strict accordance with all of the requirements and specifications as set forth in this Emergency Ordinance. However, except as expressly provided herein concerning installation of seawalls and revetments, nothing contained in this Emergency Ordinance suspends or supersedes the City's prohibition of (1) erosion control structures situated in whole or on part in the critical area; and (2) bulkheads, groins, rip-rap, concrete, clay, gravel or any other prohibited erosion control structures situated in whole or in part landward of the critical area within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet.

Section 5. Immediate Application Due to Emergency. Given the immediate threat to the welfare, safety, and property of the City's affected Residents near Breach Inlet caused by severe erosion and storm damage, this Ordinance has been enacted and shall be effective immediately.

Section 6. Expiration of Ordinance; Extension of Emergency Term. As provided by S.C. Code § 5-7-250(d), this Emergency Ordinance shall expire automatically as of the sixty-first day following the date of enactment. Notwithstanding the foregoing, however, Council may extend the emergency term by ordinance enacted in accordance with S.C. Code § 5-7-250(d) for one or more

additional terms, each of no more than sixty days, provided that the aggregate duration of the emergency term, including all such extensions, does not exceed six months.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE 20th DAY OF FEBRUARY, 2024.



Phillip Pounds, Mayor

(Seal)
Attest:





Nicole DeNeane, City Clerk

First Reading and Ratification of Emergency Ordinance: February 20, 2024
(Date)

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

April 11, 2024

- () ACTION/DECISION
(X) INFORMATION

- I. TITLE:** Healthcare Quality Administrative and Consent Orders.
- II. SUBJECT:** Healthcare Quality Administrative Orders and Consent Orders for the period of February 1, 2024, through February 29, 2024.
- III. FACTS:** For the period of February 1, 2024, through February 29, 2024, Healthcare Quality reports two Consent Orders totaling \$9,150 in assessed monetary penalties.

Bureau	Facility, Service, Provider, or Equipment Type	Administrative Orders	Consent Orders	Assessed Penalties	Required Payment
Community Care	Community Residential Care Facilities	0	1	\$9,000	\$9,000
Healthcare Systems and Services	EMT Paramedic	0	1	\$150	\$150
TOTAL			2	\$9,150	\$9,150

Submitted By:

Gwendolyn C. Thompson

Gwen C. Thompson
Deputy Director
Healthcare Quality

HEALTHCARE QUALITY ENFORCEMENT REPORT
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

April 11, 2024

Bureau of Community Care

Facility Type	Total Number of Licensed Facilities	Total Number of Licensed Beds
Community Residential Care Facilities (CRCFs)	461	22,248

1. Brighter Senior Care LLC d/b/a Seneca Residential Care – Seneca County – 33 licensed beds

Investigation and Violations: From December 7, 2022, to August 14, 2023, the Department visited Seneca Residential Care (the Facility) multiple times to conduct various types of inspections and investigations that it does of all licensed CRCFs. As a result of those visits, Department staff observed and cited the following violations of Regulation 61-84:

- The Facility failed to employ a licensed CRCF administrator.
- The Facility admitted a resident that needed treatment for a stage two decubitus ulcer.
- The Facility retained residents needing nursing services for more than 14 days.
- The Facility failed to render care and services in accordance with physicians' orders.
- The Facility failed to initial medication administration records as medications were administered.
- The Facility failed to ensure discontinued medications were stored separately from current medications.

Enforcement: The Department notified the Facility that an enforcement action was being considered. The Department and the Facility met and agreed to resolve this matter through a Consent Order, which was executed on February 13, 2024. The Facility agreed to the assessment of a \$9,000 monetary penalty through three monthly payments of \$3,000.

Remedial Action: The Facility further agreed to a suspension of admission of new residents and to correct the violations that initiated the enforcement action. The Facility also agreed to schedule and attend a compliance assistance meeting.

Prior Orders: None in the past 5 years.

Bureau of Healthcare Systems and Services

Provider Type	Total Number of Certified Paramedics
Paramedic	4,473

1. Eric D. Harold

Investigation and Violations: Department staff investigated a self-reported incident involving Mr. Harold. Department staff determined Mr. Harold committed misconduct, as defined by statute and regulation, in that: he disregarded an appropriate order concerning emergency treatment; he discontinued care of a patient without providing for the further administration of care by an equal or higher medical authority; and he falsified documentation required by the Department.

Enforcement: On November 28, 2023, the Department notified Mr. Harold that it was considering enforcement action. The Parties met on December 13, 2023, for an enforcement conference. Mr. Harold and Department staff agreed to resolve this via a Consent Order, which was executed on February 12, 2024. Mr. Harold agreed to the assessment of a \$150 monetary penalty and to completion of certain training (see below).

Remedial Action: Mr. Harold paid the monetary penalty and completed a National Association of Counties Professional Development Leadership Class.

Prior Orders: None in the past 5 years.

SUMMARY SHEET
 BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
 April 11, 2024

_____ ACTION/DECISION

 X INFORMATION

1. **TITLE:** Administrative and Consent Orders issued by the Office of Environmental Affairs.
2. **SUBJECT:** Administrative and Consent Orders issued by the Office of Environmental Affairs during the period February 1, 2024, through February 29, 2024.
3. **FACTS:** For the reporting period of February 1, 2024, through February 29, 2024, the Office of Environmental Affairs issued twenty-nine (29) Consent Orders with total assessed civil penalties in the amount of one hundred sixteen thousand, six hundred forty dollars (\$116,640.00). Also, six (6) Administrative Orders with total assessed civil penalties in the amount of thirty-three thousand, nine hundred dollars (\$33,900.00) were reported during this period.

Bureau and Program Area	Administrative Orders	Assessed Penalties	Consent Orders	Assessed Penalties
Land and Waste Management				
UST Program	1	\$33,400.00	2	\$10,800.00
Solid Waste	0	0	0	0
Hazardous Waste	0	0	2	\$23,750.00
Mining	0	0	0	0
Radiological Health	0	0	0	0
Infectious Waste	0	0	1	\$5,000.00
SUBTOTAL	1	\$33,400.00	5	\$39,550.00
Water				
Recreational Water	0	0	10	\$9,900.00
Drinking Water	0	0	6	0
Water Pollution	0	0	4	\$35,150.00
SUBTOTAL	0	0	20	\$45,050.00
Air Quality				
SUBTOTAL	0	0	3	\$30,040.00
Environmental Health Services				
Onsite Wastewater	5	\$500.00	1	\$2,000.00
SUBTOTAL	5	\$500.00	1	\$2,000.00
OCRM				
SUBTOTAL	0	0	0	0
TOTAL	6	\$33,900.00	29	\$116,640.00

Submitted by:

Myra C. Reece
 Myra C. Reece
 Director of Environmental Affairs

**ENVIRONMENTAL AFFAIRS ENFORCEMENT REPORT
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
April 11, 2024**

BUREAU OF LAND AND WASTE MANAGEMENT

Underground Storage Tank Enforcement

- 1) Order Type and Number: Administrative Order 23-0213-UST
 Order Date: December 20, 2023
 Individual/Entity: **Krishiv Property Management, LLC**
 Facility: First Pantry
 Location: 550 Ascauga Lake Road
 Graniteville, SC 29829
 Mailing Address: 812 Willow Lake Road
 Evans, GA 30809

 County: Aiken
 Previous Orders: None
 Permit/ID Number: 15339
 Violations Cited: The State Underground Petroleum
 Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-
 2-10 et seq. (2018); and South Carolina Underground Storage Tank Control
 Regulation, 7 S.C. Code Ann., Regs. 61-92, 280.20(c)(1)(ii) (2012 & Supp.
 2023).

Summary: Krishiv Property Management, LLC (Individual/Entity) owns underground storage tanks (USTs) in Lexington County, South Carolina. Based on a routine file review conducted on June 5, 2023, and a routine inspection conducted on July 24, 2023, the Department issued Notices of Alleged Violation. The Individual/Entity violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to maintain overfill prevention equipment of an underground storage tank system; and failed to demonstrate financial responsibility for the UST system.

Action: The Individual/Entity corrected the violation pertaining to overfill prevention equipment prior to the issuance of the Order. The Individual/Entity is required to submit a completed Certificate of Financial Responsibility. The Department has assessed a total civil penalty in the amount of thirty-three thousand, four hundred dollars (\$33,400.00). The Individual/Entity shall pay a civil penalty in the amount of thirty-three thousand, four hundred dollars (**\$33,400.00**) by February 19, 2024.

Update: None.

- 2) Order Type and Number: Consent Order 23-0298-UST
 Order Date: February 12, 2024
 Individual/Entity: **RelaDyne**
 Facility: GasPro-Trenton

Location: 1 Pinehouse Road
Trenton, SC 29847
Mailing Address: 6625 5th Street
Augusta, SC 30901
County: Edgefield
Previous Orders: None
Permit/ID Number: 10804
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 et seq. (2018); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.10(d) (2012 & Supp 2020).

Summary: RelaDyne (Individual/Entity) is a fuel supply company located in Augusta, Georgia. Based on a Notice of Alleged Violation dated October 11, 2023, product was introduced into an UST that didn't hold a valid permit. The Individual/Entity violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: introduced product into an unregistered or unpermitted UST.

Action: The Individual/Entity corrected all violations prior to issuance of the Order. The Department has assessed a total penalty in the amount of seven thousand, two hundred dollars (\$7,200.00). The Individual/Entity shall pay a civil penalty in the amount of seven thousand, two hundred dollars (**\$7,200.00**) by March 28, 2024.

Update: None.

3) Order Type and Number: Consent Order 23-0318-UST
Order Date: February 12, 2024
Individual/Entity: **Deepkala, LLC**
Facility: Quick Pantry 37
Location: 1093 Five Chop Road
Orangeburg, SC 29115
Mailing Address: 307 North Harry C. Raysor
St. Matthews, SC 29135
County: Orangeburg
Previous Orders: None
Permit/ID Number: 10516
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-10 et seq. (2018); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.41(b)(1)(i)(A) (2012 & Supp 2022).

Summary: Deepkala, LLC (Individual/Entity) owns underground storage tanks (USTs) in Orangeburg County, South Carolina. The Department conducted a routine compliance inspection on November 13, 2023, and issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to equip a pressurized line with an automatic line leak detector.

Action: The Individual/Entity corrected all violations prior to issuance of the Order. The Department has assessed a total civil penalty in the amount of three thousand,

six hundred dollars (\$3,600.00). The Individual/Entity shall pay a civil penalty in the amount of three thousand, six hundred dollars (**\$3,600.00**) by March 28, 2024.

Update: None.

Hazardous Waste Enforcement

- 4) Order Type and Number: Consent Order 24-02-HW
Order Date: February 8, 2024
Individual/Entity: **PLASMAN SC, INC.**
Facility: PLASMAN SC, INC.
Location: 1000 Robinson Road
Greer, SC 293651
Mailing Address: Same
County: Spartanburg
Previous Orders: None
Permit/ID Number: SCD 000 784 462
Violations Cited: The South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10 et seq. (2018), and the South Carolina Hazardous Waste Management Regulation, 6 and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2021).

Summary: Plasman SC, Inc. (Individual/Entity) is an automotive supplier which manufactures plastic automotive body parts via injection molding and painting operations at their facility located Spartanburg County, South Carolina. The Department conducted an inspection at the facility on June 22, 2023. The Individual/Entity has violated the South Carolina Hazardous Waste Management Act and the Hazardous Waste Management Regulations, as follows: failed to ensure satellite accumulation area (SAA) containers were at or near the point of generation or under the control of the operator of the process generating the waste; failed to ensure the container remained closed at all times during accumulation except when: adding, removing, or consolidating waste or when temporary venting of a container is necessary; failed to mark or label SAA containers with: the words “Hazardous Waste” and an indication of the hazards of the contents; failed to mark or label central accumulation area (CAA) containers with: the words “Hazardous Waste,” an indication of the hazards of the contents, and the date upon which each period of accumulation begins clearly visible for inspection on each container; failed to clearly label or mark universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, with any of the following phrases: “Universal Waste—Aerosol Can(s),” “Waste Aerosol Can(s),” or “Used Aerosol Can(s)”; failed to demonstrate the length of time that the universal waste had been accumulated from the date it becomes a waste or is received; failed to make an accurate determination if that waste was a hazardous waste; failed to maintain records supporting its hazardous waste determinations, as well as records that identify whether a solid waste is a hazardous waste; failed to ensure facility personnel successfully complete a program of classroom instruction, online training, or on-the-job training that teaches them to perform their duties in a way that ensures compliance; failed to ensure that facility personnel successfully complete the program required training within six (6) months after the date of their employment or assignment to the facility, and facility personnel take part in an annual review of the initial training; failed to maintain a written description of the type and amount of both introductory and continuing training that would be given to each

person filling a position; failed to maintain training records on current personnel until closure of the facility or on former employees for at least three (3) years from the date the employee last worked at the facility; failed to record inspections in an inspection log or summary; failed to at least weekly, inspect the central accumulation areas and look for leaking containers and for deterioration of containers caused by corrosion or other factors; failed to describe in the Contingency Plan, the arrangements agreed to with the local police departments, fire departments, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals; and failed to have a complete quick reference guide of the contingency plan.

Action: The Individual/Entity is required to submit analytical results on several waste streams at the facility by April 8, 2024, and submit a Waste Management Plan for the hazardous waste generated at the facility by March 9, 2024. The Department has assessed a total civil penalty in the amount of twenty-one thousand dollars (\$21,000.00). The Individual/Entity shall pay a civil penalty in the amount of twenty-one thousand dollars (**\$21,000.00**) by March 9, 2023.

Update: The Individual/Entity has paid the civil penalty.

5) Order Type and Number: Consent Order 24-04-HW
Order Date: February 9, 2024
Individual/Entity: **Miwon Specialty Chemical USA, Inc.**
Facility: Miwon Specialty Chemical USA, Inc.
Location: 1700 Longwood Road
Columbia, SC 29209
Mailing Address: Same
County: Richland
Previous Orders: None
Permit/ID Number: SCR 000 790 063 491
Violations Cited: The South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10 et seq. (2018) and the South Carolina Hazardous Waste Management Regulation, 6 and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2021).

Summary: Miwon Specialty Chemical USA, Inc. (Individual/Entity) is a manufacturer of UV cured resins for the utility industry and is located in Richland County, South Carolina. The Department conducted an inspection at the facility on November 7, 2023. The Individual/Entity has violated the South Carolina Hazardous Waste Management Act and the Hazardous Waste Management Regulations, as follows: failed to inspect, at least weekly, central accumulation areas; failed to have a quick reference guide of the contingency plan; failed to maintain records with the local fire department and any other organization necessary to respond to an emergency.

Action: The Individual/Entity corrected the violations prior to the issuance of the Order. The Department has assessed a total civil penalty in the amount of two thousand, seven hundred fifty dollars (\$2,750.00). The Individual/Entity is required to pay a civil penalty in the amount of two thousand, seven hundred fifty dollars (**\$2,750.00**) by March 11, 2024.

Update: The Individual/Entity has paid the civil penalty. This Order is closed.

Infectious Waste Enforcement

- 6) Order Type and Number: Consent Order 24-01-IW
 Order Date: February 20, 2024
 Individual/Entity: **Henryhand Funeral Home**
 Facility: Henryhand Funeral Home
 Location: 1951 Thurgood Marshall Highway
 Kingstree, SC 29556

 Mailing Address: Same
 County: Williamsburg
 Previous Orders: None
 Permit/ID Number: IWG003194
 Violations Cited: The South Carolina Infectious Waste
 Management Act, S.C. Code ann. §§ 44-93-10 *et seq.* (2002); and the South
 Carolina Infectious Waste Management Regulation, 8. S.C. Code Ann. Regs. 61-
 105 (2010).

Summary: Henryhand Funeral Home (Individual/Entity) operates a funeral home located in Williamsburg County, South Carolina. The Department conducted an open investigation on June 19, 2023, and a site visit on July 31, 2023. The Individual/Entity has violated the South Carolina Infectious Waste Management Act and the South Carolina Infectious Waste Management Regulation, as follows: failed to manage infectious waste in a manner which prevents exposure to the public or releases to the environment; failed to treat infectious waste onsite or transport offsite for treatment at a permitted facility; failed to prepare a manifest using DHEC Form 2116 or another Department-approved form for any infectious waste transported, or offered for transport, for offsite treatment; failed to treat infectious waste prior to disposal; failed to prevent the discharge of infectious waste or treatment residue into the environment of this State and failed to report to the Department within twenty-four (24) hours of release; and failed to maintain all records and manifest copies required by the Regulation for a minimum of two (2) years.

Action: The Individual/Entity is required to: submit weight and treatment records for shipment of infectious waste beginning November 28, 2023, and submit a written protocol for the management of infectious waste by March 21, 2024. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a civil penalty in the amount of five thousand dollars (**\$5,000.00**) by March 21, 2024.

Update: The Individual/Entity has paid the civil penalty.

BUREAU OF WATER

Recreational Waters Enforcement

- 7) Order Type and Number: Consent Order 24-034-RW

Order Date: February 5, 2024
Individual/Entity: **412WLR, LLC**
Facility: The Preserve at Wood Lake
Location: 412 Woods Lake Road
Greenville, SC 29607
Mailing Address: 130 Dutchman Boulevard
Irmo, SC 29063
County: Greenville
Previous Orders: None
Permit/ID Number: 23-468-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: 412WLR, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Greenville County, South Carolina. The Department conducted inspections on July 6, 2023, and September 26, 2023, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: there was no foot rinse shower; a gate did not self-close and latch; the pool rules sign was not completely filled out; only one “Shallow Water – No Diving Allowed” sign was posted on the first inspection; there were no “Shallow Water – No Diving Allowed” signs posted on the second inspection; the current pool operator of record information was not posted to the public; and the bound and numbered log book was not available for review.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**).

Update: The civil penalty has been paid and the Consent Order is closed.

8) Order Type and Number: Consent Order 23-122A-RW
Order Date: February 7, 2024
Individual/Entity: **Bluffton Investment, LLC**
Facility: Comfort Suites
Location: 23 Towne Drive
Bluffton, SC 29910
Mailing Address: Same
County: Beaufort
Previous Orders: 21-217-RW (\$680.00)
Permit/ID Number: 07-1064B
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Bluffton Investment, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Beaufort County, South Carolina. The Department conducted inspections on June 5, 2023, and July 20, 2023, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: a ladder was missing bumpers and was not tight and secure; the waterline tiles were dirty; the pool furniture was not at least four feet from the edge of the pool; the deck was uneven with sharp edges; the foot rinse shower was not operating properly; a drinking water fountain was not within fifty feet of the pool; there were non-pool related items stored in the

equipment room; the pool equipment room was not locked; a gate did not self-close and latch; the chlorine level was not within the acceptable range of water quality standards; the shepherd's crook was attached to a telescoping pole and was not clear of obstructions; the "No Lifeguard On Duty-Swim At Your Own Risk" signs were obstructed; and the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of one thousand six hundred dollars (\$1,600.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand six hundred dollars **(\$1,600.00)**.

Update: The civil penalty has been paid and the Consent Order is closed.

9) Order Type and Number: Consent Order 24-035-RW
Order Date: February 7, 2024
Individual/Entity: **Mallard Cove Horizontal Property Regime**
Facility: Mallard Cove
Location: 104 Barnacle Circle
Lexington, SC 29072
Mailing Address: 186 Barnacle Circle
Lexington, SC 29072
County: Lexington
Previous Orders: None
Permit/ID Number: 32-117-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Mallard Cove Horizontal Property Regime (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Lexington County, South Carolina. The Department conducted inspections on June 19, 2023, and August 18, 2023, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the lifeline floats were not properly spaced; the pool furniture was not at least four feet from the edge of the pool; the pool equipment room was not locked; a gate did not self-close and latch; the chlorine level was not within the acceptable range of water quality standards; the cyanuric acid level was above the water quality standards acceptable limit; the pool was not approved for night swimming; the pool rules sign was not legible; and the pool operator of record information was not posted to the public.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars **(\$680.00)**.

Update: The civil penalty has been paid and the Consent Order is closed.

10) Order Type and Number: Consent Order 24-036-RW
Order Date: February 7, 2024
Individual/Entity: **The Lutheran Homes of South Carolina, Inc.**

<u>Facility:</u>	The Heritage at Lowman
<u>Location:</u>	2101 Dutch Fork Road White Rock, SC 29177
<u>Mailing Address:</u>	PO Box 444 White Rock, SC 29177
<u>County:</u>	Richland
<u>Previous Orders:</u>	22-204-RW (\$680.00)
<u>Permit/ID Number:</u>	40-1110D
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-51(J)

Summary: The Lutheran Homes of South Carolina, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a spa located in Richland County, South Carolina. The Department conducted inspections on July 20, 2023, and September 18, 2023, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the walls were dirty; the plaster on the floor was deteriorated; the water level was too low; the return was missing a cover; there was no flow meter; the chlorine level was not within the acceptable range of water quality standards; the main drain grate was missing screws; the spa temperature was too high; the bound and numbered log book was not maintained on a daily basis and was not maintained a minimum of three times per week by the pool operator of record; the recirculation and filtration system was not operating properly; and the automatic controller was not operating properly.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of one thousand six hundred dollars (\$1,600.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand six hundred dollars **(\$1,600.00)**.

Update: The civil penalty has been paid and the Consent Order is closed.

11) <u>Order Type and Number:</u>	Consent Order 24-037-RW
<u>Order Date:</u>	February 7, 2024
<u>Individual/Entity:</u>	Carolinas Holding Company, LLC
<u>Facility:</u>	Sea Mist Oceanfront Resort
<u>Location:</u>	1200 S Ocean Boulevard Myrtle Beach, SC 29577
<u>Mailing Address:</u>	Same
<u>County:</u>	Horry
<u>Previous Orders:</u>	None
<u>Permit/ID Number:</u>	26-300-1
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-51(J) & 61-51(K)(1)(c)

Summary: Carolinas Holding Company, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Horry County, South Carolina. On August 14, 2023, the pool was inspected, and a violation was issued for failure to properly operate and maintain; and, on August 23, 2023, the pool was inspected and violations were issued for failure to properly operate and maintain and for re-opening prior to receiving Department approval. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the lifeline floats were damaged and were not properly spaced; a ladder was missing bumpers during the first inspection and did not

have non-slip tread inserts during the second inspection; the waterline tiles were dirty and some of them were broken or missing; a skimmer was missing a weir; there was no drinking water fountain during the first inspection and the drinking water fountain was not operating properly during the second inspection; there was no foot rinse shower; a gate did not self-close and latch; the chlorine and pH levels were not within the acceptable range of water quality standards; the main drain grate was not in place; the shepherd's crook handle was attached to a telescoping pole; the emergency notification device was not operational; depth marker tiles were broken; the pool furniture was not at least four feet from the edge of the pool; there was debris in the skimmer baskets; the pool rules sign was not completely filled out; the current pool operator of record information was not posted to the public; the bound and numbered log book was not maintained on a daily basis; there were chlorine sticks in the skimmer baskets; and the pool was operating prior to receiving Department approval.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of one thousand twenty dollars (\$1,020.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand twenty dollars (**\$1,020.00**).

Update: The civil penalty has been paid and the Consent Order is closed.

12) <u>Order Type and Number:</u>	Consent Order 24-038-RW
<u>Order Date:</u>	February 7, 2024
<u>Individual/Entity:</u>	M and M Corporation of South Carolina
<u>Facility:</u>	Baymont Inn
<u>Location:</u>	240 E Exchange Boulevard Columbia, SC 29209
<u>Mailing Address:</u>	Same
<u>County:</u>	Richland
<u>Previous Orders:</u>	21-222-RW (\$1,000.00)
<u>Permit/ID Number:</u>	40-428-1
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-51(J)

Summary: M and M Corporation of South Carolina (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Richland County, South Carolina. The Department conducted inspections on July 12, 2023, and August 10, 2023, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: there was only one bathroom and it did not have paper towels or a hand dryer during the first inspection, and was not accessible during the second inspection; a gate did not self-close and latch; the chlorine level was not within the acceptable range of water quality standards; the cyanuric acid level was not checked weekly; the bound and numbered log book was not maintained on a daily basis; the plaster on the pool floor was deteriorated; an equalizer cover was missing; the pool equipment room was not locked; the flow meter was not operational; and the main drain grate was not in place.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of one thousand six hundred dollars (\$1,600.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand six hundred dollars (**\$1,600.00**).

Update: The civil penalty has been paid and the Consent Order is closed.

- 13) Order Type and Number: Consent Order 24-039-RW
Order Date: February 13, 2024
Individual/Entity: **37 East 12TH ST DRM Meredith Square, LLC**
Facility: Endora East Apartments
Location: 300 Meredith Square
Columbia, SC 29223
Mailing Address: Same
County: Richland
Previous Orders: None
Permit/ID Number: 40-306-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: 37 East 12TH ST DRM Meredith Square, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Richland County, South Carolina. The Department conducted inspections on June 16, 2023, and July 26, 2023, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the bathrooms were dirty; the backwash pit did not have a six inch air gap; the pool rules sign was not completely filled out; the letters on the “Shallow Water – No Diving Allowed” signs posted and the “No Lifeguard On Duty – Swim At Your Own Risk” signs posted were not the correct size on the first inspection; only one “Shallow Water – No Diving Allowed” sign was posted and only one “No Lifeguard On Duty - Swim At Your Own Risk” sign was posted on the second inspection; the current pool operator of record information was not posted to the public; chemical readings were entered in advance in the bound and numbered log book on the first inspection; and the bound and numbered log book was not available for review on the second inspection; the bathrooms did not have toilet paper; the pool equipment room was not accessible; and the pH level was not within the acceptable range of water quality standards.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**).

Update: The civil penalty has been paid and the Consent Order is closed.

- 14) Order Type and Number: Consent Order 24-040-RW
Order Date: February 13, 2024
Individual/Entity: **37 East 12TH ST DRM Parklane, LLC**
Facility: Samara East Apartments
Location: 8100 Bayfield Road
Columbia, SC 29223
Mailing Address: Same
County: Richland
Previous Orders: None
Permit/ID Number: 40-133-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: 37 East 12TH ST DRM Parklane, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Richland County, South Carolina. The Department conducted inspections on June 1, 2023, and July 17, 2023, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: skimmers were missing weirs; there was no six inch air gap above the backwash pit; the chlorine and pH levels were not within the acceptable range of water quality standards; the pool rules sign did not have all of the required rules; the letters on the “Shallow Water – No Diving Allowed” signs posted were not the correct size; the letters on the “No Lifeguard On Duty – Swim At Your Own Risk” signs posted were not the correct size on the first inspection; only one “No Lifeguard On Duty - Swim At Your Own Risk” sign was posted on the second inspection; the current pool operator of record information was not posted to the public; there was algae on the pool walls; the bathrooms were dirty; the pool equipment room was not locked; the bound and numbered log book was not maintained on a daily basis and was not maintained a minimum of three times per week by the pool operator of record; and the cyanuric acid level was not recorded on a weekly basis in the bound and numbered log book.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**).

Update: The civil penalty has been paid and the Consent Order is closed

15) <u>Order Type and Number:</u>	Consent Order 24-041-RW
<u>Order Date:</u>	February 13, 2024
<u>Individual/Entity:</u>	Randal Columbia, LLC
<u>Facility:</u>	Baymont Inn and Suites
<u>Location:</u>	347 Zimalcrest Drive Columbia, SC 29210
<u>Mailing Address:</u>	Same
<u>County:</u>	Lexington
<u>Previous Orders:</u>	None
<u>Permit/ID Number:</u>	40-276-1
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-51(J)

Summary: Randal Columbia, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Lexington County, South Carolina. The Department conducted inspections on June 29, 2023, and August 9, 2023, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: depth marker tiles were cracked; some of the tiles on the pool wall were missing; a ladder was not tight and secure; the pool wall plaster was deteriorated; the pool floor was dirty; skimmers were missing weirs; the bathrooms did not have soap on the first inspection; the bathrooms did not have paper towels or soap on the second inspection; the drinking water fountain was not operating properly; the pool equipment room was not locked; the flow meter was not operating; a gate did not self-close and latch; the chlorine level was not within the acceptable range of water quality standards; the main drain grate was not in place; the life ring was deteriorated; the shepherd’s crook was not properly mounted in

its designated location; the shepherd's crook was not clear of obstructions; the pool rules sign was not completely filled out; both of the "No Lifeguard On Duty - Swim At Your Own Risk" signs posted were not visible; and the disinfection equipment was leaking.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**).

Update: The civil penalty has been paid and the Consent Order is closed.

16) Order Type and Number: Consent Order 24-042-RW
Order Date: February 13, 2024
Individual/Entity: **Hospitality Priority, LLC**
Facility: Union Inn
Location: 101 Toshes Creek Circle
Union, SC 29379
Mailing Address: Same
County: Union
Previous Orders: None
Permit/ID Number: 44-012-1
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Hospitality Priority, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Union County, South Carolina. The Department conducted inspections on July 3, 2023, and July 26, 2023, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: ladders were missing steps; the pool walls and floor were dirty; skimmer lids were cracked; the water level was too low; the drinking water fountain was not operating properly; there were non-pool related items in the equipment room; the gate did not self-close and latch; the pH level was not within the acceptable range of water quality standards; the shepherd's crook was not permanently attached to the handle; the emergency notification device was not accessible; the pool rules sign was not completely filled out; the current pool operator of record information was not posted to the public; the bound and numbered log book was not available for review on the first inspection; and the cyanuric acid level was not recorded on a weekly basis in the bound and numbered log book on the second inspection.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**).

Update: The civil penalty has been paid and the Consent Order is closed.

Drinking Water Enforcement

17) Order Type and Number: Consent Order 24-008-DW
Order Date: February 5, 2024

<u>Individual/Entity:</u>	Bucksport Water System, Inc.
<u>Facility:</u>	Bucksport Water System
<u>Location:</u>	2809 Fourth Avenue Conway, SC 29527
<u>Mailing Address:</u>	Same
<u>County:</u>	Horry
<u>Previous Orders:</u>	CO 21-016-DW (\$4,000.00)
<u>Permit/ID Number:</u>	2620003
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-58.5.P(2)(b)

Summary: Bucksport Water System, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS) located in Horry County, South Carolina. On November 19, 2023, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the PWS exceeded the maximum contaminant level (MCL) for total trihalomethanes.

Action: The Individual/Entity is required to: submit a corrective action plan to the Department with a schedule to address the MCL violation by May 5, 2024. The Department has assessed a total civil penalty in the amount of eight thousand dollars (\$8,000.00). The Individual/Entity shall pay a **stipulated penalty** in the amount of eight thousand dollars (**\$8,000.00**) should any requirement of the Order not be met.

Update: None.

18) <u>Order Type and Number:</u>	Consent Order 24-009-DW
<u>Order Date:</u>	February 12, 2024
<u>Individual/Entity:</u>	Beaufort-Jasper Water and Sewer Authority
<u>Facility:</u>	Beaufort-Jasper Water and Sewer Authority
<u>Location:</u>	6 Snake Road Okatie, SC 29909
<u>Mailing Address:</u>	Same
<u>County:</u>	Beaufort
<u>Previous Orders:</u>	None
<u>Permit/ID Number:</u>	0720003
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-58.5.P(2)(b)

Summary: Beaufort-Jasper Water and Sewer Authority (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS) located in Beaufort County, South Carolina. On December 1, 2023, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the PWS exceeded the maximum contaminant level (MCL) for haloacetic acids (five) (HAA5).

Action: The Individual/Entity is required to: submit a corrective action plan to the Department with a schedule to address the MCL violation by May 12, 2024. The Department has assessed a total civil penalty in the amount of four thousand dollars (\$4,000.00). The Individual/Entity shall pay a **stipulated penalty** in the amount of four thousand dollars (**\$4,000.00**) should any requirement of the Order not be met.

Update: None.

- 19) Order Type and Number: Consent Order 24-010-DW
Order Date: February 21, 2024
Individual/Entity: **Snipes Brothers Land Holding, LLC**
Facility: Snipes Property
Location: 114 Grayson Road
Rock Hill, SC 29732
Mailing Address: P.O. Box 37056
Rock Hill, SC 29732
County: York
Previous Orders: None
Permit/ID Number: 4674008
Violations Cited: S.C. Code Ann. Regs. 61-58.7 and 61-58.17K(1)(a)

Summary: Snipes Brothers Land Holding, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS) located in York County, South Carolina. The Department conducted an inspection on January 10, 2024, and the PWS was rated unsatisfactory for failure to properly operate and maintain; and on January 11, 2024, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: there was no approvable backflow prevention device; the pressure gauge was broken; the cartridge filter located at the bladder tank was full of debris and dirt; a complete procedures manual with programs and logs was not provided for Department review; and the PWS tested present for total coliform and E. coli, which resulted in a violation of the maximum contaminant level for E. coli.

Action: The Individual/Entity is required to: submit an investigative report and a corrective action plan with a schedule to address the causes of the total coliform and E. coli present results at the PWS by March 22, 2024; and submit to the Department for review and approval a complete procedures manual within thirty days of completion of the Department-approved corrective action plan. The Department has assessed a total civil penalty in the amount of eight thousand dollars (\$8,000.00). The Individual/Entity shall pay a **stipulated penalty** in the amount of eight thousand dollars (**\$8,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has corrected the deficiencies documented during the January 10, 2024, Department inspection.

- 20) Order Type and Number: Consent Order 24-011-DW
Order Date: February 21, 2024
Individual/Entity: **Williamsburg County Water & Sewer Authority**
Facility: Williamsburg County Water & Sewer Authority
Location: 130 West Main Street
Kingstree, SC 29556
Mailing Address: P.O. Box 1124
Kingstree, SC 29556

County: Williamsburg
Previous Orders: None
Permit/ID Number: 4510007
Violations Cited: S.C. Code Ann. Regs. 61-58.5.P(2)(b)

Summary: Williamsburg County Water & Sewer Authority (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS) located in Williamsburg County, South Carolina. On January 11, 2024, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the PWS exceeded the maximum contaminant level (MCL) for total trihalomethanes.

Action: The Individual/Entity is required to: submit a corrective action plan to the Department with a schedule to address the MCL violation by May 21, 2024. The Department has assessed a total civil penalty in the amount of four thousand dollars (\$4,000.00). The Individual/Entity shall pay a **stipulated penalty** in the amount of four thousand dollars (**\$4,000.00**) should any requirement of the Order not be met.

Update: None.

21) Order Type and Number: Consent Order 24-012-DW
Order Date: February 21, 2024
Individual/Entity: **Y & S Hospitality, LLC**
Facility: Guest Inn
Location: 110 Frontage Road
Aiken, SC 29801
Mailing Address: Same
County: Aiken
Previous Orders: None
Permit/ID Number: 0270401
Violations Cited: S.C. Code Ann. Regs. 61-58.7

Summary: Y & S Hospitality, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS) located in Aiken County, South Carolina. The Department conducted an inspection on November 17, 2023, and the PWS was rated unsatisfactory for failure to properly operate and maintain. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the wells did not have a blow-off valve, proper vent, or a sample tap; the chemicals used for treatment did not meet the specifications required for drinking water; the chemical injection points were not housed in an accessible vault; the chemical injection lines were not color-coded or labeled; there was a hose that bypassed the chemical injection points that was being used to fill the storage tank; a boil water advisory was not issued and the operator was not available when the wells were taken off-line for repairs and a water line leak was repaired; and flushing logs and a current system map were not provided for Department review.

Action: The Individual/Entity is required to: correct all the deficiencies; submit flushing logs; submit a current system map; and submit a standard operating procedure for issuing and lifting boil water advisories by June 1, 2024. The Department has assessed a total civil penalty in the amount of four thousand dollars (\$4,000.00). The

Individual/Entity shall pay a **stipulated penalty** in the amount of four thousand dollars (**\$4,000.00**) should any requirement of the Order not be met.

Update: None.

22) Order Type and Number: Consent Order 24-013-DW
Order Date: February 21, 2024
Individual/Entity: **Rocky Creek Water Co., Inc.**
Facility: Rocky Creek Water Co., Inc.
Location: 209 Pacolet Street
Jonesville, SC 29353
Mailing Address: P.O. Box 806
Jonesville, SC 29353
County: Union
Previous Orders: None
Permit/ID Number: 4420003
Violations Cited: S.C. Code Ann. Regs. 61-58.5.P(2)(b)

Summary: Rocky Creek Water Co., Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS) located in Union County, South Carolina. On November 8, 2023, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the PWS exceeded the maximum contaminant level (MCL) for total trihalomethanes.

Action: The Individual/Entity is required to: submit a corrective action plan to the Department with a schedule to address the MCL violation by September 1, 2024. The Department has assessed a total civil penalty in the amount of four thousand dollars (\$4,000.00). The Individual/Entity is required to pay a **stipulated penalty** in the amount of four thousand dollars (**\$4,000.00**) should any requirement of the Order not be met.

Update: None.

Water Pollution Enforcement

23) Order Type and Number: Consent Order 24-011-W
Order Date: February 12, 2024
Individual/Entity: **Town of Harleyville**
Facility: Town of Harleyville Wastewater Treatment Facility
Location: Western end of Range Road off Highway 89, Harleyville, S.C.
Mailing Address: P.O. Box 35
Harleyville, SC 29448
County: Dorchester
Previous Orders: 23-002-W (\$13,000.00)
Permit/ID Number: NPDES Permit SC0038504

Violations Cited: Pollution Control Act, S.C Code Ann § 48-1-110 (d) and the Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (a).

Summary: The Town of Harleyville (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Dorchester County, South Carolina. On August 16, 2023, a Notice of Violation was issued as a result of violations of the permitted discharge limits for dissolved oxygen (DO) as reported on discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act, and the Water Pollution Control Permits Regulation as follows: failed to comply with the permitted effluent discharge limits for DO.

Action: The Individual/Entity is required to: submit a written notification of the planned completion date for all corrective actions necessary to resolve the violations by March 13, 2024; conduct a six (6) event compliance confirmation period upon completion of corrective actions; and implement engineered upgrades to the WWTF should additional violations be observed during the compliance confirmation period. The Department has assessed a total civil penalty in the amount of seven thousand two hundred dollars (\$7,200.00). The Individual/Entity shall pay a civil penalty in the amount of seven thousand two hundred dollars (**\$7,200.00**) by March 13, 2024.

Update: The Individual/Entity has submitted the corrective action letter and paid the civil penalty.

24) Order Type and Number: Consent Order 24-013-W
Order Date: February 21, 2024
Individual/Entity: **Commander Operator, LLC**
Facility: The Palms at Florence Nursing and Rehab
Location: 4438 Pamplico Hwy
Florence, SC 29505
Mailing Address: Same
County: Florence
Previous Orders: 18-015-W (\$6,800.00)
Permit/ID Number: SC0034703
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110(d) and the Water Pollution Control Permits Regulation S.C. Code Ann Regs. 61-9.122.41(a)

Summary: Commander Operator, LLC (Individual/Entity) owns and is responsible for a wastewater treatment facility (WWTF) located in Florence County, South Carolina. On September 21, 2022, a Notice of Violation was issued as a result of violations of the permitted discharge limits for biochemical oxygen demand (BOD), dissolved oxygen (DO) and ammonia-nitrogen (ammonia) as reported on discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and the Water Pollution Control Permits Regulation, as follows: failed to comply with permitted effluent limitations for BOD, DO and ammonia.

Action: The Individual/Entity is required to: either comply with the Site-Specific Water Effect Ratio Study (WER) if approved, or submit an administratively and technically complete treatment plan, or submit a preliminary engineering report

concurrently with a no discharge permit application the address the permitted effluent total copper limitations; submit written notification of the planned completion date for all corrective actions necessary to resolve the effluent violations by March 22, 2024; conduct a six (6) monitoring event compliance confirmation period upon completion of corrective actions; and implement engineered upgrades to the WWTF should additional violations be observed during the compliance confirmation period. The Department has assessed a total civil penalty in the amount of seventeen thousand dollars (\$17,000.00). The Individual/Entity shall pay a civil penalty in the amount of seventeen thousand dollars (**\$17,000.00**) by July 1, 2024.

Update: The Individual/Entity paid the civil penalty.

25) Order Type and Number: Consent Order 24-012-W
Order Date: February 22, 2024
Individual/Entity: **Swamp Fox Utilities LLC**
Facility: Bonneau Mine
Location: 234 Dennisridge Road
Bonneau, SC 29431
Mailing Address: 2080 Mendel Rivers Road
Saint Stephen, SC 29479
County: Berkeley
Previous Orders: None
Permit/ID Number: SCG731110
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110(d), the Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.505.41(1)(4), and Part II.L.

Summary: Swamp Fox Utilities LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a Nonmetal Mineral Mining Facility in Berkeley County, South Carolina. On March 6, 2023, a Notice of Violation (NOV) was issued for failing to submit discharge monitoring reports (DMRs) as required by the NPDES Permit for October 2020 to March 2023 monitoring periods. The Individual/Entity has violated the Pollution Control Act, and the Water Pollution Control Permits Regulation as follows: failed to submit DMRs at the intervals specified in the Permit.

Action: The Individual/Entity is required to: submit DMRs for the monthly monitoring periods of October 2020 to March 2022 and May 2022 to present by March 23, 2024. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a civil penalty in the amount of five thousand dollars (**\$5,000.00**) by March 23, 2024.

Update: None

26) Order Type and Number: Consent Order 24-014-W
Order Date: February 29, 2024
Individual/Entity: **Wellford Glen LLC**
Facility: Wellford Estates Trailer Park
Location: 2081 Fort Prince Boulevard
Wellford, SC 29385

Mailing Address: P.O. Box 1362
Greer, SC 29652
County: Spartanburg
Previous Orders: None
Permit/ID Number: SC0030571
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110(d) and the Water Pollution Control Permits Regulation S.C. Code Ann. Regs. 61-9.122.41(a)

Summary: Wellford Glen LLC (Individual/Entity) owns and is responsible for a wastewater treatment facility (WWTF) located in Spartanburg County, South Carolina. On September 20, 2023, a Notice of Alleged Violation was issued as a result of violations of the permitted discharge limits for total residual chlorine (TRC) reported on discharge monitoring reports (DMRs) submitted to the Department. The Individual/Entity has violated the Pollution Control Act and the Water Pollution Control Permits Regulation, as follows: failed to comply with the permitted effluent limitations for TRC.

Action: The Individual/Entity is required to: submit written notification of the planned completion date for all corrective actions necessary to resolve the effluent violations by March 30, 2024; conduct a six (6) monitoring event compliance confirmation period upon completion of corrective actions; and implement engineered upgrades to the WWTF should additional violations be observed during the compliance confirmation period. The Department has assessed a total civil penalty in the amount of five thousand, nine hundred and fifty dollars (\$5,950.00). The Individual/Entity shall pay a civil penalty in the amount of five thousand, nine hundred and fifty dollars (**\$5,950.00**) by March 30, 2024.

Update: The Individual/Entity submitted the written notification of completion date for corrective actions.

BUREAU OF AIR QUALITY

27) Order Type and Number: Consent Order 24-005-A
Order Date: February 5, 2024
Individual/Entity: Ronald Dodson
Facility: N/A
Location: 334 Old Seneca Road
Westminster, SC 29693
Mailing Address: 210 D Street
Westminster, SC 29693
County: Oconee
Previous Orders: None
Permit/ID Number: N/A
Violations Cited: S.C. Code Ann. Regs. 61-62.2 (Supp. 2022)
Prohibition of Open Burning

Summary: Ronald Dodson (Individual/Entity) owns property located on Old Seneca Road in Oconee County, South Carolina. On April 14, 2022, a Department inspector conducted an investigation in response to a complaint of open burning. The Individual/Entity has violated South Carolina Air Pollution Control Regulations, as

follows: burned or allowed to be burned materials other than those allowed by Section I of the Open Burning Regulations, specifically household garbage.

Action: The Individual/Entity is required to: cease all open burning except as permitted by the regulation. The Department has assessed a total civil penalty in the amount of four hundred fifty dollars (\$450.00). The Individual/Entity shall pay a civil penalty in the amount of four hundred fifty dollars (**\$450.00**) by April 1, 2024.

Update: The Individual/Entity has paid the civil penalty.

28) Order Type and Number: Consent Order 24-006-A
Order Date: February 9, 2024
Individual/Entity: **Dominion Energy South Carolina, Inc.
D.B.A. A.M. Williams Station**
Facility: **Dominion Energy A.M. Williams Station**
Location: 2242 Bushy Park Road in
Goose Creek, SC 29445
Mailing Address: 220 Operations Way
Cayce, SC 29033
County: Berkeley
Previous Orders: None
Permit/ID Number: 0420-0006
Violations Cited: U.S. EPA 40 CFR Subpart UUUUU, S.C.
Code Ann. Regs. 61-62.63 Subpart UUUUU, and S.C. Code Ann. Regs 61-62.1,
Section II, *Permit Requirements*.

Summary: Dominion Energy A.M. Williams Station (Individual/Entity) operates an electric utility steam generating plant located in Berkeley County, South Carolina. On January 30, 2023, the Department received a semiannual compliance report for the reporting period of July 1, 2022, through December 31, 2022. The Individual/Entity has violated US EPA and South Carolina Air Pollution Control Regulations, as follows: failed to limit SO₂ emissions to 0.20 lb/MMBtu on a 30-day rolling average basis for a total of six (6) days.

Action: The Individual/Entity is required to: comply with applicable SO₂ emissions limits specified the regulation and the TV Permit. The Department has assessed a total civil penalty in the amount of thirteen thousand five hundred ninety dollars (\$13,590.00). The Individual/Entity shall pay a civil penalty in the amount of thirteen thousand five hundred ninety dollars (**\$13,590.00**), by March 10, 2024.

Update: The Individual/Entity has paid the civil penalty.

29) Order Type and Number: Consent Order 24-007-A
Order Date: February 20, 2024
Individual/Entity: Sylvamo North America, LLC
Facility: Sylvamo North America, LLC
Location: 4001 McCords Ferry Road
Eastover, SC 29044
Mailing Address: Same
County: Richland

Previous Orders: 05-039-A; 93-054-A
Permit/ID Number: TV-1900-0046
Violations Cited: S.C. Code Ann. Regs. 61-62.1, Section II,
Permit Requirements

Summary: Sylvamo North America, LLC (Individual/Entity) operates a kraft pulp and paper mill in Richland County, South Carolina. On March 23, 2022, a source test on the power boiler ("502A") for carbon monoxide ("CO") emissions was conducted and on September 26, 2023, a source test on the recovery furnace ("381A") for CO emissions was conducted. The Individual/Entity has violated the South Carolina Air Pollution Control Regulations, as follows: failed to limit CO emissions from 502A to 1.0 lb/MMBtu during the March 23, 2022 source test; and, failed to limit CO emissions from 381A to 2.0 lb/ADTP during the September 26, 2023 source test.

Action: The Individual/Entity is required to: limit CO emissions from: 502A to 1.0 lb/MMBtu and 381A to 2.0 lb/ADTP. The Department has assessed a total civil penalty in the amount of sixteen thousand dollars (\$16,000.00). The Individual/Entity shall pay a civil penalty in the amount of sixteen thousand dollars (**\$16,000.00**) by March 21, 2024.

Update: The Individual/Entity has paid the civil penalty.

BUREAU OF ENVIRONMENTAL HEALTH SERVICES

On-Site Wastewater Enforcement

30) Order Type and Number: Administrative Order 23-086-OSWW
Order Date: January 19, 2024
Individual/Entity: **Andrew Moore, D.B.A. Keowee Plumbing, LLC**
Facility: Andrew Moore, D.B.A. Keowee Plumbing, LLC
Location: 586 Pruitt Road
Seneca, SC 29678
Mailing Address: 110 Miller Farm Road
Westminster, SC 29693
County: Oconee
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Andrew Moore, D.B.A. Keowee Plumbing, LLC, (Individual/Entity) repaired an OSWW system on property located in Oconee County, South Carolina. The Department conducted an investigation on July 10, 2023, and determined the Individual/Entity is not a Department licensed OSWW contractor. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to apply for, receive, and maintain a Department issued license to construct and repair onsite wastewater treatment and disposal systems.

Action: The Individual/Entity is required to cease and desist installing and/or repairing OSWW systems until the Individual/Entity has obtained a Department license to conduct such activities. The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (**\$500.00**) by March 10, 2024.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

31) Order Type and Number: Administrative Order 23-110-OSWW
Order Date: January 19, 2024
Individual/Entity: **Channon Lee, D.B.A. LDW, LLC**
Facility: Channon Lee, D.B.A. LDW, LLC
Location: 2415 Hewitt Road
Lynchburg, SC 29080
Mailing Address: 1531 Johnsonville Highway
Lake City, SC 29560
County: Lee
Previous Orders: 23-067-OSWW (\$500.00)
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Channon Lee, D.B.A. LDW, LLC, (Individual/Entity) installed an OSWW system on property located in Lee County, South Carolina. The Department reviewed documents submitted to the Department on September 28, 2023, and determined that no Final Inspection was scheduled for the site, and the fill cap was not sufficient enough. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to install the OSWW system as specified on the Permit to Construct and failed to maintain insurance and bonding as required by the regulation.

Action: The Individual/Entity is required to cease and desist installing OSWW systems that do not conform to the specifications of the Permit to Construct and retain insurance and bonding as required by the regulation. The Department has suspended the Individual/Entity's Tier 3 license for sixty (60) days, ending on April 2, 2024.

Update: None.

32) Order Type and Number: Administrative Order 24-001-OSWW
Order Date: January 26, 2024
Individual/Entity: **Jermaine Johnson**
Facility: Jermaine Johnson
Location: 213 Willie Johnson Lane
Pageland, SC 29728
Mailing Address: 1473 Oro Church Road
Pageland, SC 29728
County: Chesterfield
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Jermaine Johnson (Individual/Entity) owns property located in Chesterfield County, South Carolina. The Department conducted an investigation on October 31, 2023, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

33) <u>Order Type and Number:</u>	Administrative Order 24-002-OSWW
<u>Order Date:</u>	January 26, 2024
<u>Individual/Entity:</u>	Mari Figuero-Salgado and Andres Figuero-Salgado
<u>Facility:</u>	Mari Figuero-Salgado and Andres Figuero-Salgado
<u>Location:</u>	704 Hamlet Highway Bennettsville, SC 29512
<u>Mailing Address:</u>	214 Plum Thicket Road Cheraw, SC 29520
<u>County:</u>	Marlboro
<u>Previous Orders:</u>	None
<u>Permit Number:</u>	None
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-56

Summary: Mari Figuero-Salgado and Andres Figuero-Salgado (Individual/Entity) owns property located in Marlboro County, South Carolina. The Department conducted an investigation on November 9, 2023, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

34) Order Type and Number: Administrative Order 24-003-OSWW
Order Date: January 26, 2024
Individual/Entity: **Erica Poston**
Facility: Erica Poston
Location: 2986 Old Creek Road
Scranton, SC 29591
Mailing Address: Same as Location
County: Florence
Previous Orders: None
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Erica Poston (Individual/Entity) owns property located in Florence County, South Carolina. The Department conducted an investigation on November 17, 2023, and observed a camper occupied for more than two (2) hours per day without being connected to an approved means of domestic wastewater treatment and disposal. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that any building, dwelling, or unit occupied for more than two (2) hours per day is connected to an approved means of domestic wastewater treatment and disposal.

Action: The Individual/Entity is required to apply for a permit to construct an OSWW system within five (5) days and install any permitted OSWW system within ten (10) days of issuance of a permit to construct; or immediately vacate or relocate the camper. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

35) Order Type and Number: Consent Order 24-007-OSWW
Order Date: February 21, 2024
Individual/Entity: **Kevin Coffey, D.B.A. Lowcountry Land Development Consulting**
Facility: Kevin Coffey, D.B.A. Lowcountry Land Development Consulting
Location: 3030 Ashley Town Center Drive,
Suite 101-A
Charleston, SC 29414
Mailing Address: Same as location
County: Dorchester
Previous Orders: 23-033-OSWW
Permit Number: None
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Kevin Coffey, D.B.A. Lowcountry Land Development Consulting, (Individual/Entity) was the professional engineer for two (2) OSWW systems installed on properties located in Dorchester County, South Carolina. The Department conducted an investigation on September 12, 2023, and determined that the as-built documents were not submitted to the Department for the two (2) sites. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: they did not submit as-built documents within two (2) business days as the registered professional engineer responsible for the OSWW systems.

Action: The Individual/Entity is required to cease and desist submitting as-built documentation later than the timeframe required by the regulation. The Department has assessed a total civil penalty in the amount of two thousand dollars (\$2,000.00). The Individual/Entity shall pay a civil penalty in the amount of two thousand dollars **(\$2,000.00)**.

Update: The Individual/Entity has met all requirements of the Order. This Order has been closed.

* Unless otherwise specified, "Previous Orders" as listed in this report include orders issued by Environmental Affairs Programs within the last five (5) years.

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

April 4, 2024

() ACTION/DECISION
(X) INFORMATION

- I. TITLE:** Health Promotion and Services Administrative and Consent Orders.
- II. SUBJECT:** Health Promotion and Services Administrative Orders and Consent Orders for the period of February 1, 2024, through February 29, 2024.
- III. FACTS:** For the period of February 1, 2024, through February 29, 2024, Health Promotion and Services reports 0 Administrative Orders and 37 Consent Orders totaling \$51,750 in assessed civil penalties.

Permit Type	Administrative Orders	Consent Orders	Assessed Civil Penalties
Retail Food Establishments	0	43	\$51,750.00

Submitted By:



Susan Best
Program Manager
Division of Food

Individual/Entity: Louis Nicholas Skodras
Facility: Eggs Up Grill- Garden City
Location: 2520 Highway 17 South, Unit 1
Murrells Inlet, SC 29576
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-12244

Summary: The Department conducted inspections on December 8, 2022, April 4, 2023, October 18, 2023, and October 27, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that physical facilities were maintained in good repair.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of four hundred dollars (\$400.00). The Individual/Entity shall pay a civil penalty in the amount of four hundred dollars (\$400.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

3) Order Type and Number: Consent Order 23-454-FOOD
Order Date: February 1, 2024
Individual/Entity: Surfside Beach Pizza
Facility: Surfside Beach Pizza
Location: 821 Surfside Drive
Surfside Beach, SC 29575
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-11841

Summary: The Department conducted inspections on January 24, 2023, June 15, 2023, and November 14, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for

Facility: Gino's Real NY Pizza
Location: 2520 Highway 17 South Business, Unit 6
Garden City, SC 29576
Mailing Address: Same
County: Horry
Previous Orders: 23-148-FOOD (\$800.00)
Permit Number: 26-206-12607

Summary: The Department conducted an inspection on October 18, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00). No update at this time.

Previous Orders: The previous consent order (23-148-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling (P).

6) Order Type and Number: Consent Order 23-397-FOOD
Order Date: February 1, 2024
Individual/Entity: Fork 'N Links
Facility: Fork 'N Links
Location: 9408 Highway 707
Myrtle Beach, SC 29588
Mailing Address: Same
County: Horry
Previous Orders: 23-151-FOOD (\$800.00)
Permit Number: 26-206-13846

Summary: The Department conducted an inspection on October 17, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

Previous Orders: The previous consent order (23-151-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling (P); and by failing to ensure that the plumbing system was installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the retail food establishment (P).

7) <u>Order Type and Number:</u>	Consent Order 23-374-FOOD
<u>Order Date:</u>	February 1, 2024
<u>Individual/Entity:</u>	Las Americas Market
<u>Facility:</u>	Las Americas Market
<u>Location:</u>	1906 Cherry Road Rock Hill, SC 29732
<u>Mailing Address:</u>	125 Roberts Avenue York, SC 29745
<u>County:</u>	York
<u>Previous Orders:</u>	None
<u>Permit Number:</u>	46-206-03242

Summary: The Department conducted inspections on June 14, 2023, August 14, 2023, and October 12, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; and failed to provide individual disposable towels at each hand washing sink or group of adjacent handwashing sinks.

Order Date: February 5, 2024
Individual/Entity: Michael Orcutt
Facility: Domino's Pizza #5665
Location: 1121 North Fraser Street
Georgetown, SC 29440
Mailing Address: 3585 Trotter Drive
Alpharetta, GA 30003
County: Georgetown
Previous Orders: None
Permit Number: 22-206-06057

Summary: The Department conducted inspections on March 14, 2023, August 7, 2023, August 16, 2023, and October 12, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that drainboards, utensil racks, or tables were large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation, and provided for necessary utensil holding before cleaning and after sanitizing.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of four hundred dollars (\$400.00). The Individual/Entity shall pay a civil penalty in the amount of four hundred dollars (\$400.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

10) Order Type and Number: Consent Order 24-22-FOOD
Order Date: February 5, 2024
Individual/Entity: NY Deli
Facility: NY Deli
Location: 3901 B Dick Pond Road
Myrtle Beach, SC 29588
Mailing Address: 229 Lapatos Drive
Myrtle Beach, SC 29588
County: Horry
Previous Orders: None
Permit Number: 26-206-11927

Summary: The Department conducted inspections on November 21, 2022, June 5, 2023, and January 4, 2024. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity shall pay a civil penalty in the amount of eight hundred dollars (\$800.00). The Department has entered into a payment plan with the Individual/Entity for the civil penalty.

11)	<u>Order Type and Number:</u>	Consent Order 23-441-FOOD
	<u>Order Date:</u>	February 5, 2024
	<u>Individual/Entity:</u>	Spinx #189
	<u>Facility:</u>	Spinx #189
	<u>Location:</u>	3135 Brushy Creek Road Greer, SC 29650
	<u>Mailing Address:</u>	P. O. Box 8624 Greenville, SC 29604
	<u>County:</u>	Greenville
	<u>Previous Orders:</u>	None
	<u>Permit Number:</u>	23-206-07776

Summary: The Department conducted inspections on April 14, 2022, February 8, 2023, and November 7, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity shall pay a civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

Summary: The Department conducted inspections on November 3, 2023, and November 13, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: providing food to the public without a valid permit issued by the Department.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of two thousand dollars (\$2,000.00). The Individual/Entity shall pay a civil penalty in the amount of two thousand dollars (\$2,000.00). The Department has entered into a payment plan with the Individual/Entity for the civil penalty.

14)	<u>Order Type and Number:</u>	Consent Order 23-400-FOOD
	<u>Order Date:</u>	February 6, 2024
	<u>Individual/Entity:</u>	Kristina Ciminillo
	<u>Facility:</u>	Daniello's Pizzeria & Pub
	<u>Location:</u>	755 Main Street North Myrtle Beach, SC 29582
	<u>Mailing Address:</u>	2906 Wiley Drive North Myrtle Beach, SC 29582
	<u>County:</u>	Horry
	<u>Previous Orders:</u>	23-174-FOOD (\$400.00)
	<u>Permit Number:</u>	26-206-13799

Summary: The Department conducted inspections on April 5, 2023, October 20, 2023, October 26, 2023, and November 6, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that at least one employee that has supervisory and management responsibility, the authority to direct and control food preparation and service, the ability to enforce employee health policies, and a frequent presence at the facility shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity is in compliance with Regulation 61-25; however, the civil penalty has not been paid.

County: Greenwood
Previous Orders: 22-169-FOOD (\$400.00)
Permit Number: 24-206-03117

Summary: The Department conducted an inspection on December 14, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: obscured, covered, defaced, relocated, or removed the grade decal that was posted by the Department.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

Previous Orders: The previous Consent Order (22-169-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to maintain the premises free of insects, rodents, and other pests (PF).

17) Order Type and Number: Consent Order 24-07-FOOD
Order Date: February 8, 2024
Individual/Entity: Thee Dollhouse
Facility: Thee Dollhouse
Location: 3001 Highway 17
North Myrtle Beach, SC 29582
Mailing Address: Same
County: Horry
Previous Orders: None
Permit Number: 26-206-08333

Summary: The Department conducted inspections on December 1, 2022, May 17, 2023, and November 15, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to maintain the proper sanitization concentration in a chemical sanitizer used in a manual or mechanical operation during contact times.

Individual/Entity: Creekside Bar-Be-Que
Facility: Creekside Bar-Be-Que
Location: 1115 Salem Church Road
Anderson, SC 29625
Mailing Address: Same
County: Anderson
Previous Orders: 23-320-FOOD (\$800.00)
Permit Number: 04-206-02830

Summary: The Department conducted inspections on March 23, 2023, August 3, 2023, November 30, 2023, and December 8, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; and failed to maintain the premises free of insects, rodents, and other pests.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of one thousand five hundred dollars (\$1,500.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

Previous Orders: The previous Consent Order (23-320-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to maintain the premises free of insects, rodents, and other pests (PF); and by failing to keep equipment food contact surfaces and utensils clean to sight and touch (PF).

20) Order Type and Number: Consent Order 24-01-FOOD
Order Date: February 12, 2024
Individual/Entity: Tienda Latina Pasabien
Facility: Tienda Latina Pasabien
Location: 3254 Augusta Road
West Columbia, SC 29170
Mailing Address: 237 Robin Road
Lexington, SC 29073
County: Lexington
Previous Orders: None
Permit Number: 32-206-07231

Summary: The Department conducted an inspection on December 28, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: obscured, covered, defaced, relocated, or removed the grade decal that was posted by the Department.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

21)	<u>Order Type and Number:</u>	Consent Order 23-445-FOOD
	<u>Order Date:</u>	February 12, 2024
	<u>Individual/Entity:</u>	Applebee's Restaurants, LLC
	<u>Facility:</u>	Applebee's #1129
	<u>Location:</u>	2497 Broad Street Sumter, SC 29150
	<u>Mailing Address:</u>	1877 North Rock Road Wichita, KS 67206
	<u>County:</u>	Sumter
	<u>Previous Orders:</u>	None
	<u>Permit Number:</u>	43-206-01445

Summary: The Department conducted inspections on March 24, 2023, October 10, 2023, October 19, 2023, October 26, 2023, and November 3, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to meet the lighting intensity as measured by foot candles throughout specific areas of the facility; failed to maintain the proper sanitization concentration in a chemical sanitizer used in a manual or mechanical operation during contact times; and failed to ensure that a warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of six hundred dollars (\$600.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred dollars (\$600.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

Summary: The Department conducted inspections on November 29, 2023, December 7, 2023, and December 11, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00). No update at this time.

Previous Orders: The previous Consent Order (22-32-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to properly cool cooked time/temperature control for safety foods (P); and failed to ensure that refrigerated, ready-to-eat, time/temperature control for safety foods were discarded if the temperature and time combination exceeded seven (7) days or if the package was not properly date marked (P).

24)	<u>Order Type and Number:</u>	Consent Order 24-37-FOOD
	<u>Order Date:</u>	February 20, 2024
	<u>Individual/Entity:</u>	Prestwick Club HSE Snack Bar
	<u>Facility:</u>	Prestwick Club HSE Snack Bar
	<u>Location:</u>	1001 Links Road Myrtle Beach, SC 29575
	<u>Mailing Address:</u>	Same
	<u>County:</u>	Horry
	<u>Previous Orders:</u>	23-219-FOOD (\$800.00)
	<u>Permit Number:</u>	26-206-01595

Summary: The Department conducted inspections on November 22, 2022, June 13, 2023, and January 17, 2024. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that the plumbing system was installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the retail food establishment.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of one thousand dollars

	Georgetown, SC 29440
<u>Mailing Address:</u>	Same
<u>County:</u>	Georgetown
<u>Previous Orders:</u>	22-124-FOOD (\$1,600.00); 23-25-FOOD (\$1,000.00); and 23-244-FOOD (\$2,250.00)
<u>Permit Number:</u>	22-206-06544

Summary: The Department conducted inspections on December 28, 2022, May 24, 2023, December 1, 2023, December 7, 2023, and December 11, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that when time without temperature control is used as a public health control, foods with expired time labels, unmarked containers or packages, shall be discarded; and failed to ensure that refrigerated, ready-to-eat, time/temperature control for safety foods were discarded if the temperature and time combination exceeded seven (7) days or if the package was not properly date marked.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of three thousand dollars (\$3,000.00). The Individual/Entity shall pay a civil penalty in the amount of three thousand dollars (\$3,000.00). The Department has entered into a payment plan with the Individual/Entity for the civil penalty.

Previous Orders: The previous Consent Order (22-124-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling. (P). The previous Consent Order (23-25-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure there was no bare hand contact with ready-to-eat foods (P). The previous Consent Order (23-244-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that when time without temperature control is used as a public health control, foods with expired time labels, unmarked containers or packages, shall be discarded (P); and by failing to ensure that at all times during operation, the person in charge shall be a certified food handler or a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program (C).

27) Order Type and Number: Consent Order 23-463-FOOD

Order Date: February 20, 2024
Individual/Entity: Zaxby's #61
Facility: Zaxby's #61
Location: 1635 Bypass 72 NE
Greenwood, SC 29646
Mailing Address: 1040 Founders Boulevard, Building 500
Athens, GA 30646
County: Greenwood
Previous Orders: None
Permit Number: 24-206-01382

Summary: The Department conducted inspections on July 3, 2023, July 10, 2023, October 19, 2023, October 24, 2023, November 2, 2023, and November 9, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; and failed to keep equipment food contact surfaces and utensils clean to sight and touch.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of three thousand two hundred dollars (\$3,200.00). The Individual/Entity shall pay a civil penalty in the amount of three thousand two hundred dollars (\$3,200.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

28) Order Type and Number: Consent Order 23-423-FOOD
Order Date: February 21, 2024
Individual/Entity: Georgia Lindley
Facility: McCormick Drive Inn
Location: 117 Virginia Street
McCormick, SC 29835
Mailing Address: P. O. Box 1027
McCormick, SC 29835
County: McCormick
Previous Orders: 23-195-FOOD (\$2,000.00)
Permit Number: 35-206-00766

Summary: The Department conducted inspections on February 16, 2023, June 1, 2023, June 9, 2023, June 11, 2023, September 28, 2023, October 5, 2023, October 11, 2023, October 19, 2023, and October 25, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; failed to ensure that at least one employee that has supervisory and management responsibility, the authority to direct and control food preparation and service, the ability to enforce employee health policies, and a frequent presence at the facility shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; failed to ensure that at all times during operation, the person in charge shall be a certified food handler or a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; failed to ensure employees wash hands after engaging in activities that contaminate their hands; failed to convey sewage to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law; and failed to maintain the premises free of insects, rodents, and other pests.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of six thousand dollars (\$6,000.00). The Individual/Entity shall pay a civil penalty in the amount of six thousand dollars (\$6,000.00). No update at this time.

Previous Orders: The previous consent order (23-195-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that at least one employee that has supervisory and management responsibility, the authority to direct and control food preparation and service, the ability to enforce employee health policies, and a frequent presence at the facility shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program (C); by failing to ensure that at all times during operation, the person in charge shall be a certified food handler or a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program (C); by failing to sanitize utensils and food contact surfaces of equipment before using, after cleaning (P); and by failing to ensure that refrigerated, ready-to-eat, time/temperature control for safety foods were discarded if the temperature and time combination exceeded seven (7) days or if the package was not properly date marked (P).

Mailing Address: Same
County: Greenville
Previous Orders: None
Permit Number: 23-206-13396

Summary: The Department conducted an inspection on December 21, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: obscured, covered, defaced, relocated, or removed the grade decal that was posted by the Department.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (\$500.00). No update at this time.

31) Order Type and Number: Consent Order 24-25-FOOD
Order Date: February 23, 2024
Individual/Entity: Wexford Plantation Clubhouse
Facility: Wexford Plantation Clubhouse
Location: 111 Wexford Club Drive
Hilton Head Island, SC 29928
Mailing Address: P. O. Box 4100
Hilton Head, SC 29938
County: Beaufort
Previous Orders: None
Permit Number: 07-206-00876

Summary: The Department conducted inspections on February 15, 2022, February 8, 2023, and January 11, 2024. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to comply with the Hazard Analysis and Critical Control Point (HACCP) plan and procedures that are submitted and approved as a basis for the modification or waiver; and maintain and provide to the Department, upon request, records that demonstrate the HACCP plan is being employed.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The

County: Horry
Previous Orders: 23-07-FOOD (\$2,400.00);
23-52-FOOD (\$1,000.00); and
23-273-FOOD (\$2,250.00)
Permit Number: 26-206-14317

Summary: The Department conducted an inspection on December 14, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00). No update at this time.

Previous Orders: The previous Consent Order (23-07-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling (P). The previous Consent Order (23-52-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to properly cool cooked time/temperature control for safety foods (P); and by failing to use effective methods to cool cooked time/temperature control for safety foods (PF). The previous Consent Order (23-273-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to properly cool cooked time/temperature control for safety foods (P); by failing to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling (P); and by failing to use effective methods to cool cooked time/temperature control for safety foods (PF).

34) Order Type and Number: Consent Order 23-461-FOOD
Order Date: February 23, 2024
Individual/Entity: Blue Fin
Facility: Blue Fin
Location: 461-4 Town Center Place
Columbia, SC 29229

Mailing Address: Same
County: Richland
Previous Orders: 23-371-FOOD (\$800.00)
Permit Number: 40-206-06208

Summary: The Department conducted an inspection on December 7, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

Previous Orders: The previous Consent Order (23-371-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling (P).

35) Order Type and Number: Consent Order 23-443-FOOD
Order Date: February 26, 2024
Individual/Entity: Floco Foods, LLC
Facility: Holly Hill IGA #82 Deli
Location: 621 Gardner Boulevard
Holly Hill, SC 29059
Mailing Address: P. O. Box 1629
Lake City, SC 29560
County: Orangeburg
Previous Orders: None
Permit Number: 38-206-02655

Summary: The Department conducted inspections on February 6, 2023, October 13, 2023, October 19, 2023, October 26, 2023, October 31, 2023, November 8, 2023, November 15, 2023, and November 21, 2023. The Individual/Entity has violated the South Carolina Retail

Food Establishment Regulation as follows: failed to ensure that at all times during operation, the person in charge shall be a certified food handler or a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; and failed to ensure that physical facilities were maintained in good repair.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of two thousand dollars (\$2,000.00). The Individual/Entity shall pay a civil penalty in the amount of two thousand dollars (\$2,000.00). The Individual/Entity has paid the civil penalty; however, correction of the violation has not been verified.

36)	<u>Order Type and Number:</u>	Consent Order 23-444-FOOD
	<u>Order Date:</u>	February 26, 2024
	<u>Individual/Entity:</u>	Floco Foods, LLC
	<u>Facility:</u>	Holly Hill IGA #82
	<u>Location:</u>	621 Gardner Boulevard Holly Hill, SC 29059
	<u>Mailing Address:</u>	P. O. Box 1629 Lake City, SC 29560
	<u>County:</u>	Orangeburg
	<u>Previous Orders:</u>	None
	<u>Permit Number:</u>	38-211-02654

Summary: The Department conducted inspections on February 6, 2023, October 13, 2023, October 19, 2023, October 26, 2023, October 31, 2023, November 8, 2023, and November 15, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that at all times during operation, the person in charge shall be a certified food handler or a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; failed to ensure that at least one employee that has supervisory and management responsibility, the authority to direct and control food preparation and service, the ability to enforce employee health policies, and a frequent presence at the facility shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; and failed to ensure that physical facilities were maintained in good repair.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The

Department has assessed a total civil penalty in the amount of two thousand two hundred dollars (\$2,200.00). The Individual/Entity shall pay a civil penalty in the amount of two thousand two hundred dollars (\$2,200.00). The Individual/Entity has paid the civil penalty; however, correction of the violation has not been verified.

37) Order Type and Number: Consent Order 23-459-FOOD
 Order Date: February 27, 2024
 Individual/Entity: Karen Hemingway
 Facility: Super Chic
 Location: 15 West Main Street
 Andrews, SC 29510

 Mailing Address: 1200 Church Street
 Georgetown, SC 29440

 County: Georgetown
 Previous Orders: None
 Permit Number: 22-206-00574

Summary: The Department conducted inspections on April 19, 2023, October 25, 2023, November 1, 2023, and November 9, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to clean the physical facilities as often as necessary to keep them clean.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of four hundred dollars (\$400.00). The Individual/Entity shall pay a civil penalty in the amount of four hundred dollars (\$400.00). The Individual/Entity is in compliance with Regulation 61-25; however, the civil penalty has not been paid.

38) Order Type and Number: Consent Order 24-40-FOOD
 Order Date: February 27, 2024
 Individual/Entity: Joey Doggs
 Facility: Joey Doggs
 Location: 1818 Highway 17 North
 Surfside Beach, SC 29575

 Mailing Address: Same
 County: Horry

Previous Orders: 22-328-FOOD (\$400.00)
Permit Number: 26-206-14201

Summary: The Department conducted inspections on November 30, 2022, June 22, 2023, and January 17, 2024. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to keep equipment food contact surfaces and utensils clean to sight and touch.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

Previous Orders: The previous Consent Order (22-328-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to clearly mark the date by which food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F or less for a maximum of seven (7) days. This applies only to refrigerated, ready-to-eat, time/temperature control for safety foods prepared and held in a food establishment for more than twenty-four (24) hours (PF).

39) Order Type and Number: Consent Order 24-12-FOOD
Order Date: February 27, 2024
Individual/Entity: Ron Jon's Sports Bar
Facility: Ron Jon's Sports Bar
Location: 3218 Waccamaw Boulevard
Myrtle Beach, SC 29575
Mailing Address: 1720 Culbertson Avenue, Unit B
Myrtle Beach, SC 29577
County: Horry
Previous Orders: None
Permit Number: 26-206-14833

Summary: The Department conducted inspections on July 5, 2023, September 26, 2023, and November 29, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of eight hundred dollars (\$800.00). The Individual/Entity shall pay a civil penalty in the amount of eight hundred dollars (\$800.00). No update at this time.

40) Order Type and Number: Consent Order 24-23-FOOD
 Order Date: February 27, 2024
 Individual/Entity: Pee Dee Grocery
 Facility: Pee Dee Grocery
 Location: 9150 Highway 701 South
 Conway, SC 29527

 Mailing Address: Same
 County: Horry
 Previous Orders: 22-50-FOOD (\$600.00)
 Permit Number: 26-206-10614

Summary: The Department conducted inspections on March 10, 2023, August 3, 2023, and January 5, 2024. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that refrigerated, ready-to-eat, time/temperature control for safety foods were discarded if the temperature and time combination exceeded seven (7) days or if the package was not properly date marked.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity has met all requirements of the Order. This Order has been closed.

Previous Orders: The previous Consent Order (22-50-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure that at least one employee that has supervisory and management responsibility, the authority to direct and control food preparation and service, the ability to enforce employee health policies, and a frequent presence at the facility shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program (C).

insects, rodents, and other pests (PF). The previous Consent Order (22-88-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to ensure there was no bare hand contact with ready-to-eat foods (P); by failing to ensure that refrigerated, ready-to-eat, time/temperature control for safety foods were discarded if the temperature and time combination exceeded seven (7) days or if the package was not properly date marked (P); and by failing to maintain the premises free of insects, rodents, and other pests (PF). The previous Consent Order (23-193-FOOD) was issued when the Individual/Entity violated the South Carolina Retail Food Establishment Regulation by failing to maintain the premises free of insects, rodents, and other pests (PF); by failing to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling (P); and by failing to ensure that refrigerated, ready-to-eat, time/temperature control for safety foods were discarded if the temperature and time combination exceeded seven (7) days or if the package was not properly date marked (P).

42)	<u>Order Type and Number:</u>	Consent Order 24-11-FOOD
	<u>Order Date:</u>	February 27, 2024
	<u>Individual/Entity:</u>	Cheesesteak Factory
	<u>Facility:</u>	Cheesesteak Factory
	<u>Location:</u>	310 Highway 17 North Surfside Beach, SC 29575
	<u>Mailing Address:</u>	Same
	<u>County:</u>	Horry
	<u>Previous Orders:</u>	22-326-FOOD (\$800.00)
	<u>Permit Number:</u>	26-206-12733

Summary: The Department conducted inspections on June 22, 2023, December 7, 2023, and December 15, 2023. The Individual/Entity has violated the South Carolina Retail Food Establishment Regulation as follows: failed to ensure that time/temperature control for safety foods was maintained at a temperature of 41 degrees F and below or 135 degrees F and above, except during preparation, cooking, or cooling; and by failing to maintain the premises free of insects, rodents, and other pests.

Action: The Individual/Entity is required to operate and maintain the facility in accordance with the requirements of all applicable regulations, including S.C. Regs. 61-25. The Department has assessed a total civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). The Individual/Entity shall pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). No update at this time.

SUMMARY SHEET
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

April 11, 2024

(X) ACTION/DECISION
() INFORMATION

I. **TITLE:** Request for Placement of 2-Methyl AP-237 in Schedule I for Controlled Substances in South Carolina

II. **SUBJECT:** Placement of 2-Methyl AP-237 in Schedule I for Controlled Substances

III. **FACTS:**

Controlled substances are governed by the South Carolina Controlled Substances Act (“CSA”), Title 44, Chapter 53 of the South Carolina Code of Laws. Schedule I substances are listed in Section 44-53-190 of the South Carolina Code of Laws. Pursuant to Section 44-53-160, titled “Manner in which changes in schedule of controlled substances shall be made,” controlled substances are generally designated by the General Assembly upon recommendation by the Department. Section 44-53-160(C) provides a process for the Department to expeditiously designate a substance if the federal government has so designated.

South Carolina Section 44-53-160(C) states:

If a substance is added, deleted, or rescheduled as a controlled substance pursuant to federal law or regulation, the department shall, at the first regular or special meeting of the South Carolina Board of Health and Environmental Control within thirty days after publication in the federal register of the final order designating the substance as a controlled substance or rescheduling or deleting the substance, add, delete, or reschedule the substance in the appropriate schedule. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection has the full force of law unless overturned by the General Assembly. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection must be in substance identical with the order published in the federal register effecting the change in federal status of the substance. Upon the addition, deletion, or rescheduling of a substance, the department shall forward copies of the change to the Chairmen of the Medical Affairs Committee and the Judiciary Committee of the Senate, the Chairman of the Medical, Military, Public and Municipal Affairs Committee, the Chairman of the Judiciary Committee of the House of Representatives, the Clerks of the Senate and House, and the Code Commissioner, and shall post the schedules on the department's website indicating the change and specifying the effective date of the change.

On March 15, 2024, the Administrator of the federal Drug Enforcement Administration (“DEA”) issued a final order in the Federal Register to place 1-(2-methyl-4-(3- phenylprop-2-en-1-yl)piperazin-1- yl)butan-1-one (commonly known as 2- methyl AP-237), including its optical and geometric isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, in schedule I of the federal Controlled Substances Act (“federal CSA”). As a result of this order, the federal regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional

activities or chemical analysis with, or possess) or propose to handle 2-methyl AP-237. The final rule has an effective date of April 15, 2024. *Federal Register*, Volume 89, Number 52, pages 18793-18796; <https://www.govinfo.gov/content/pkg/FR-2024-03-15/pdf/2024-05543.pdf>.

IV. ANALYSIS:

The United States is a party to the 1961 United Nations Single Convention on Narcotic Drugs, March 30, 1961, 18 U.S.T. 1407, 570 U.N.T.S. 151 (Single Convention), as amended by the 1972 Protocol. Article 3, paragraph 7 of the Single Convention requires that if the Commission on Narcotic Drugs (“Commission”) adds a substance to one of the schedules of such Convention, and the United States receives notification of such scheduling decision from the Secretary-General of the United Nations (“Secretary-General”), the United States, as a signatory Member State, is obligated to control the substance under its national drug control legislation.

2-Methyl AP-237 has a pharmacological profile similar to other classical opioids such as fentanyl (schedule II), morphine (schedule II) and heroin (schedule I), which act as mu-opioid receptor agonists. Because of the pharmacological similarities of 2-methyl AP-237 to the aforementioned opioids, 2-methyl AP-237 presents a high risk of abuse and has negatively affected users and communities. According to the DEA Toxicology Testing Program and a recent publication, the abuse of 2-methyl AP-237 has been associated with at least seven fatalities in the United States between February 2020 and July 2023. The identification of this substance in post-mortem cases is a serious concern to public safety. In June 2019, 2-methyl AP-237 emerged on the United States illicit drug market as evidenced by its identification in drug seizures. Law enforcement reports demonstrate that 2-methyl AP-237 is being illicitly distributed and abused. The illicit use and distribution of this substance is similar to that of heroin (schedule I) and prescription opioid analgesics.

DEA is not aware of any claims or any medical or scientific literature suggesting that 2-methyl AP-237 has a currently accepted medical use in treatment in the United States. In addition, the Assistant Secretary for Health of the U.S. Department of Health and Human Services, by a letter to DEA dated December 22, 2022, stated that there are no investigational new drug applications or approved new drug applications for 2-methyl AP-237 in the United States; hence, there are no legitimate channels for this substance as a marketed drug product in the United States. Because 2-methyl AP-237 is not formulated or available for clinical use as an approved medicinal product, all current use of this substance by individuals is based on their own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer such a drug. Therefore, consistent with 21 U.S.C. 811(d)(1), DEA concludes that 2-methyl AP-237 has no currently accepted medical use in treatment in the United States and is most appropriately placed in schedule I of the federal CSA. Because control is required under the Single Convention, DEA will not be initiating regular rulemaking proceedings to permanently schedule 2-methyl AP-237 pursuant to 21 U.S.C. 811(a).

In order to meet the United States’ obligations under the Single Convention and because 2-methyl AP-237 has no currently accepted medical use in treatment in the United States, the Administrator has determined that 2-methyl AP-237, including its optical and geometric isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, should be placed in schedule I of the federal CSA.

V. RECOMMENDATION:

Pursuant to S.C. Code Section 44-53-160(C), the Department recommends placing 2-Methyl AP-237 in Schedule I in the same manner as the federal Drug Enforcement Administration. The listing includes its

optical and geometric isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, in schedule I for controlled substances in South Carolina and the amendment of Section 44-53-190 of the South Carolina Controlled Substances Act to include:

() 2-Methyl AP-237 (1-(2-methyl-4-(3-phenylprop-2-en-1-yl)piperazin-1-yl)butan-1-one)

Submitted by:



Lisa Thomson
Director, Bureau of Drug Control



Gwen Thompson
Director for Healthcare Quality

Attachment:

Federal Register 89, Number 52, March 15, 2024

section 513(f)(2) of the act, is pending before the Food and Drug Administration, or

(ii) There is a predetermined change control plan (PCCP) cleared under section 515C of the act, provided that the change is consistent with the PCCP.

* * * * *

§ 807.87 [Amended]

■ 3. Amend § 807.87 by removing the phrase “(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910–0281)” that appears after paragraph (m).

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 4. The authority citation for part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 360bbb–8b, 371, 372, 373, 374, 375, 379, 379e, 379k–1, 381.

■ 5. In § 814.39, revise paragraph (b) to read as follows:

§ 814.39 PMA supplements.

* * * * *

(b) An applicant may make a change in a device after FDA’s approval of a PMA for the device without submitting a PMA supplement if the change does not affect the device’s safety or effectiveness and the change is reported to FDA in post approval periodic reports required as a condition to approval of the device, *e.g.*, an editorial change in labeling which does not affect the safety or effectiveness of the device, or if the change is consistent with a predetermined change control plan (PCCP) approved under section 515C of the act.

* * * * *

Dated: March 11, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–05473 Filed 3–14–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1245]

Schedules of Controlled Substances: Placement of 2-Methyl AP–237 in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final amendment; final order.

SUMMARY: With the issuance of this final order, the Administrator of the Drug Enforcement Administration is permanently placing 1-(2-methyl-4-(3-phenylprop-2-en-1-yl)piperazin-1-yl)butan-1-one (commonly known as 2-methyl AP–237), including its optical and geometric isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, in schedule I of the Controlled Substances Act. This scheduling action discharges the United States’ obligations under the Single Convention on Narcotic Drugs (1961). This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research or conduct instructional activities with, or possess), or propose to handle 2-methyl AP–237.

DATES: Effective April 15, 2024.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Legal Authority

The United States is a party to the 1961 United Nations Single Convention on Narcotic Drugs, March 30, 1961, 18 U.S.T. 1407, 570 U.N.T.S. 151 (Single Convention), as amended by the 1972 Protocol. Article 3, paragraph 7 of the Single Convention requires that if the Commission on Narcotic Drugs (Commission) adds a substance to one of the schedules of such Convention, and the United States receives notification of such scheduling decision from the Secretary-General of the United Nations (Secretary-General), the United States, as a signatory Member State, is obligated to control the substance under its national drug control legislation. Under 21 U.S.C. 811(d)(1) of the Controlled Substances Act (CSA), if control of a substance is required “by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970,” the Attorney General must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by 21 U.S.C. 811(a) or 812(b), and without regard to the procedures prescribed by 21 U.S.C.

811(a) and (b). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (Administrator of DEA or Administrator). 28 CFR 0.100.

Background

In a letter dated November 24, 2022, the Director-General of the World Health Organization recommended to the Secretary-General of the United Nations that 2-methyl AP–237 be placed in Schedule I of the Single Convention, as this substance has an opioid mechanism of action and similarity to drugs that are controlled in Schedule I of the Single Convention (*i.e.*, 2-methyl AP–237 is similar to drugs such as isotonitazene) and has dependence and abuse potential. On May 17, 2023, the United States Government was informed by the Secretariat of the United Nations, by letter, that during its 66th session in March 2023, the Commission voted to place 2-methyl AP–237 in Schedule I of the Single Convention (CND Mar/66/1).

2-Methyl AP–237

2-Methyl AP–237 has a pharmacological profile similar to other classical opioids such as fentanyl (schedule II), morphine (schedule II) and heroin (schedule I), which act as mu-opioid receptor agonists. Because of the pharmacological similarities of 2-methyl AP–237 to the aforementioned opioids, 2-methyl AP–237 presents a high risk of abuse and has negatively affected users and communities. According to the DEA Toxicology Testing Program (DEA TOX)¹ and a recent publication,² the abuse of 2-methyl AP–237 has been associated with at least seven fatalities in the United States between February 2020 and July 2023. The identification of this substance in post-mortem cases is a serious concern to public safety.

In June 2019, 2-methyl AP–237 emerged on the United States illicit drug market as evidenced by its identification in drug seizures.³ Law enforcement

¹ The DEA Toxicology Testing Program (DEA TOX) was initiated in response to the ongoing novel synthetic drug abuse epidemic. This program provides toxicology data on synthetic drugs from biological samples that may not be routinely identified, which are generated from drug overdose victims. Data queried on 8/7/2023.

² Fogarty, MF, Vandeputte, MM, Krotulski, AJ, Walton, SE, Stove, CP, and Logan, BK (2022). Toxicological and pharmacological characterization of novel cinnamylpiperazine synthetic opioids in humans and in vitro including 2-methyl AP–237 and AP–238. Archives of Toxicology 96:1701–1710.

³ NFLIS represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive

Continued

reports demonstrate that 2-methyl AP-237 is being illicitly distributed and abused. The illicit use and distribution of this substance is similar to that of heroin (schedule I) and prescription opioid analgesics. According to the National Forensic Laboratory Information System (NFLIS-Drug) database, which collects drug identification results from drug cases submitted to and analyzed by Federal, State, and local forensic laboratories, there have been 92 reports of 2-methyl AP-237 in the United States since 2019 (data queried July 17, 2023).

DEA is not aware of any claims or any medical or scientific literature suggesting that 2-methyl AP-237 has a currently accepted medical use in treatment in the United States. In addition, the Assistant Secretary for Health of the U.S. Department of Health and Human Services, by a letter to DEA dated December 22, 2022, stated that there are no investigational new drug applications or approved new drug applications for 2-methyl AP-237 in the United States; hence, there are no legitimate channels for this substance as a marketed drug product in the United States. Because 2-methyl AP-237 is not formulated or available for clinical use as an approved medicinal product, all current use of this substance by individuals is based on their own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer such a drug.

Therefore, consistent with 21 U.S.C. 811(d)(1), DEA concludes that 2-methyl AP-237 has no currently accepted medical use in treatment in the United States⁴ and is most appropriately

information system that includes data from forensic laboratories that handle the nation's drug analysis cases. NFLIS-Drug participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is currently 98.5 percent. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. See Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV; 76 FR 77330, 77332, December 12, 2011. NFLIS data was queried on July 17, 2023. Reports to NFLIS-Drug are still pending for 2023.

⁴ Although, as discussed above, there is no evidence suggesting that 2-methyl AP-237 has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by the Food and Drug Administration, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. the drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies

placed in schedule I of the CSA. Because control is required under the Single Convention, DEA will not be initiating regular rulemaking proceedings to permanently schedule 2-methyl AP-237 pursuant to 21 U.S.C. 811(a).

Conclusion

In order to meet the United States' obligations under the Single Convention and because 2-methyl AP-237 has no currently accepted medical use in treatment in the United States, the Administrator has determined that 2-methyl AP-237, including its optical and geometric isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, should be placed in schedule I of the CSA.

Requirements for Handling

Upon the effective date of the final order contained in this document, 2-methyl AP-237 will be permanently subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture of, distribution of, importation of, exportation of, engagement in research or conduct of instructional activities with, and possession of, schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, imports, exports, engages in research or conducts instructional activities with, or possesses), or who desires to handle, 2-methyl AP-237 must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of this substance in a manner not authorized by the CSA is unlawful and those in possession of any quantity of this substance may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* 2-Methyl AP-237 must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, state, local, and tribal laws.

3. *Security.* 2-Methyl AP-237 is subject to schedule I security

proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (Mar 26, 1992), *pet. for rev. denied, Alliance for Cannabis Therapeutics v. Drug Enforcement Admin.*, 15 F.3d 1131, 1135 (D.C. Cir. 1994).

requirements and must be handled and stored pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling 2-methyl AP-237 must comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and packaging.* All labels, labeling, and packaging for commercial containers of 2-methyl AP-237 must comply with 21 U.S.C. 825, and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture 2-methyl AP-237 in accordance with a quota assigned pursuant to 21 U.S.C. 826, and in accordance with 21 CFR part 1303.

6. *Inventory.* Any person registered with DEA to handle 2-methyl AP-237 must have an initial inventory of all stocks of controlled substances (including this substance) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including 2-methyl AP-237) on hand every two years pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* DEA registrants must maintain records and submit reports with respect to 2-methyl AP-237 pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1301.74(b) and (c), 1301.76(b), and 1307.11 and parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding 2-methyl AP-237 to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* All DEA registrants who distribute 2-methyl AP-237 must comply with the order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of 2-methyl AP-237 must comply with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving 2-methyl AP-237 not authorized by, or in violation of the CSA, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) and 14094 (Modernizing Regulatory Review)

This action is not a significant regulatory action as defined by Executive Order (E.O.) 12866 (Regulatory Planning and Review), section 3(f), as amended by E.O. 14094, section 1(b), and the principles reaffirmed in E.O. 13563 (Improving Regulation and Regulatory Review); and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This action does not have federalism implications warranting the application of E.O. 13132. This action does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications warranting the application of E.O. 13175. The action does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Administrative Procedure Act

The CSA provides for an expedited scheduling action where control is required by the United States'

obligations under international treaties, conventions, or protocols. 21 U.S.C. 811(d)(1). If control is required pursuant to such international treaty, convention, or protocol, the Attorney General, as delegated to the Administrator, must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, and "without regard to" the findings and rulemaking procedures otherwise required for scheduling actions in 21 U.S.C. 811(a) and (b). *Id.*

In accordance with 21 U.S.C. 811(d)(1), scheduling actions for drugs that are required to be controlled by the United States' obligations under international treaties, conventions, or protocols in effect on October 27, 1970, shall be issued by order (as opposed to scheduling by rule pursuant to 21 U.S.C. 811(a)). Therefore, DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this scheduling action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA or any other law. As explained above, the CSA exempts this final order from notice and comment. Consequently, the RFA does not apply to this action.

Paperwork Reduction Act of 1995

This order would modify an existing collection of information requirement under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521. Pursuant to section 3507(d) of the PRA of 1995 (44 U.S.C. 3507(d)), DEA is adding new reporting and recordkeeping requirements for 1117–0003. This order also involves existing collection 1117–0004, but would not modify the existing collection of information requirement under the PRA. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Copies of existing information collections approved by

OMB may be obtained at <http://www.reginfo.gov/public/do/PRAMain>.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, DEA has determined and certifies that this action would not result in any Federal mandate that may result "in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year * * *." Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This order is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, DEA is submitting reports under the CRA to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:

■ a. Redesignate paragraphs (b)(59) through (b)(103) as follows:

Old paragraph	New paragraph
(b)(59) through (103)	(b)(60) through (104).

■ b. Add new paragraph (b)(59). The addition reads as follows:

§ 1308.11 Schedule I.

* * * * *
(b) * * *

*	*	*	*	*	*	*	*
(59) 2-Methyl AP–237 (1-(2-methyl-4-(3-phenylprop-2-en-1-yl)piperazin-1-yl)butan-1-one)							9664
*	*	*	*	*	*	*	*

Signing Authority

This document of the Drug Enforcement Administration was signed

on March 8, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with

requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for

publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024-05543 Filed 3-14-24; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 12306]

RIN 1400-AF80

International Traffic in Arms Regulations: Addition to List of Proscribed Countries

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to add Nicaragua in the list of countries for which it is the policy of the United States to deny licenses or other approvals for exports and imports of defense services and defense articles, except as otherwise provided.

DATES: The rule is effective on March 15, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Tatarska, Foreign Affairs Officer, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (771) 205-7671; email DDTCCustomerService@state.gov ATTN: Regulatory Change, ITAR Section 126.1: Nicaragua.

SUPPLEMENTARY INFORMATION: Due to growing concerns regarding Nicaragua's continuing dismantling of democratic institutions, attacks on civil society, and increased security cooperation with Russia, to include support of Russia's full-scale invasion of Ukraine, the Under Secretary of State for Arms Control and International Security has determined that it is in the best interests of U.S. national security and foreign policy to restrict, with certain exceptions, the export and import of defense articles and defense services destined for or originating in Nicaragua. This policy reflects the U.S. government's opposition to the trade of arms with Nicaragua and its authoritarian government dominated by President Daniel Ortega Saavedra and his wife, Vice President Rosario Murillo Zambrana. Pursuant to this determination, the Department is adding

Nicaragua to ITAR § 126.1 in paragraph (p). The policy of denial toward Nicaragua applies to licenses or other approvals for exports and imports of defense articles or defense services, except that a license or other approval may be issued on a case-by-case basis for non-lethal military equipment intended solely for humanitarian assistance, to include natural disaster relief. Further, in accordance with ITAR § 129.7, no broker, as described in ITAR § 129.2, may engage in or make a proposal to engage in brokering activities subject to the ITAR that involve Nicaragua without obtaining the approval of the Directorate of Defense Trade Controls. Consistent with ITAR § 129.7(d), the Department of State will apply the same policy of denial to such requests.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from the rulemaking requirements of section 553 of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as a military or foreign affairs function of the United States.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment provisions of 5 U.S.C. 553, the rule does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Department does not believe this rulemaking is a major rule within the definition of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866, 13563, and 14094

Executive Order 12866, as amended by Executive Orders 13563 and 14094, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). As a result of this change, certain exemptions to licensing requirements will not be available for exports, reexports, retransfers, and temporary imports destined for or originating in Nicaragua. However, a license or other approval may be issued on a case-by-case basis for non-lethal military equipment intended solely for humanitarian assistance, to include natural disaster relief. Because the scope of this rule does not impose significant additional regulatory requirements or obligations, the Department believes costs associated with this rule will be minimal. This rule has been designated a "significant regulatory action" by the Office and Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

For the reasons set forth above, title 22, chapter I, subchapter M, part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

Authority: 22 U.S.C. 287c, 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2780, 2791, 2797; Sec. 1225, Pub. L. 108-375, 118 Stat. 2091; Sec. 7045, Pub. L. 112-74, 125 Stat.