



November 18, 2019

Cami Heirs
120 Palmetto Boulevard
Edisto Beach, South Carolina

Joyce Gray
204 Palmetto Boulevard
Edisto Beach, South Carolina

Richard and Mary Howse
402 Palmetto Boulevard
Edisto Beach, South Carolina

Marie Bost and Jerome Kizer
512 Palmetto Boulevard
Edisto Beach, South Carolina

Robert W. Ringer and Josephine Tindall Ringer
610 Palmetto Boulevard
Edisto Beach, South Carolina

David and Krystal Bottom
612 Palmetto Boulevard
Edisto Beach, South Carolina

**RE: *Cami Hiers, et al. v. SCDHEC*
Docket No. 18-ALJ-07-0023-CC**

Dear Petitioners:

The above-referenced case has been remanded to the S.C. Department of Health & Environmental Control (the Department) for a determination of new beachfront jurisdictional lines under S.C. Code Ann. § 48-39-280. The determination takes into consideration information provided by the Petitioners during the public comment period and with their Request for Final Review and any supplemental information provided during this remand process. The information provided and reviewed, and the Department's response is summarized below.

The six properties listed above are located within the standard beach zone and within the same general geographical area on Edisto Beach (Figure 1). On November 17, 2017, these Petitioners submitted materials with their Requests for Final Review which included a letter from R. Cody Lenhardt, Jr. of Lenhardt Law Firm, LLC, a copy of DHEC OCRM's public notice, and a letter from Bill Eiser of Eiser

Coastal Consulting LLC.¹ These materials were identical for all six properties. Two of these properties (402 and 610 Palmetto Boulevard) also submitted site photographs. Pursuant to the Order of Stay and Remand, the Petitioners were given the opportunity to submit any additional information to support their contentions to the Department. On August 1, 2019, the Petitioners who own 402 Palmetto Boulevard supplemented the materials for the Department to consider on remand with additional site photographs.

Since the Petitioners' assertions and supplement materials are nearly identical, and the properties are located within the same beach zone and geographical area, the Department is providing a single response.



Figure 1: Location and distribution of properties.

Petitioners' Assertions: Petitioners allege that the baseline should be moved seaward of its current location, which was last set in 2009. The letter from R. Cody Lenhardt Jr. alleges that the current baseline and the proposed landward movement of the baseline and setback line do not accurately reflect beach formation and beach stability. The letter from Bill Eiser alleges that the Department utilized field data collected in November of 2016, which was subsequent to Hurricane Matthew, and it

¹ Petitioners for properties located at 204, 402, 512, and 610 also submitted information during the public comment period for the jurisdictional lines in the fall of 2017. This information also was taken into consideration by the Department.

was inappropriate to locate the primary dune following Hurricane Matthew. The letter additionally asserts that the Department should not have proposed a new baseline along the seaward edge of Palmetto Boulevard, because there is no provision in the law for doing so; the statute mandates that the baseline must be established “using the best scientific and historical data, as where the crest of the primary oceanfront sand dunes for that zone would be located if the shoreline had not been altered.” Finally, the letter asserts that the Department ignored historical sand dunes and vegetation, and the Town’s commitment to protecting the beach through renourishment efforts.

Department's Response: On May 3, 2018, Act 173, the Beachfront Management Reform Act, was signed by Governor Henry McMaster. The Act established the position of the jurisdictional baselines and setback lines for the 2018 establishment cycle. As a result, the 2018 jurisdictional baselines and setback lines established by the Act do not move landward from their positions set during the 2008-2012 establishment cycle. Act 173 established the baseline location as the most seaward location of either the baseline established during the 2008-2012 establishment cycle, or the baseline proposed by DHEC on October 6, 2017. Similarly, Act 173 established the setback line as the most seaward location of either the setback line established during the 2008-2012 establishment cycle, or the setback line proposed by DHEC on October 6, 2017.

At these six properties, Act 173 established, for the 2018 cycle, the baseline and setback line as the ones that were set during the 2008-2012 cycle. These lines are seaward of those proposed by the Department in the 2018 cycle as shown in Figures 2 and 3.



Figure 2: 120, 204, and 402 Palmetto Boulevard properties, overlaid with 2008-2012 and 2016-2018 baseline and setback lines. At these properties, the 2008-2012 baseline and setback line are in effect.



Figure 3: 512, 610, and 612 Palmetto Boulevard properties, overlaid with 2008-2012 and 2016-2018 baseline and setback lines. At these properties, the 2008-2012 baseline and setback line are in effect.

The original Request for Final Review focused on the location of the baseline proposed by DHEC on October 6, 2017, which is not in effect. However, for clarification purposes, the Department is providing a response to those materials.

These six properties are located in a standard zone. S.C. Code Ann. § 48-39-280(A)(1) requires the Department to establish the baseline at the location of the crest of the primary oceanfront sand dune in standard erosion zones. Petitioners, through the Eiser letters dated November 17, 2017, state that the use of the November 2016 data, one month after Hurricane Matthew, was "not appropriate." However, the Department did not use the November 2016 vegetation line data in establishing the proposed jurisdictional lines at these properties. The Department collected dune measurements on Edisto Beach in September 2016, *prior* to Hurricane Matthew. Dune measurements were also collected in July 2019, after a beach renourishment project. Neither prior to Hurricane Matthew, nor after the renourishment was there a primary dune seaward of the currently established baseline. These measurements did not meet the regulatory definition of a Primary Oceanfront Sand Dune found in S.C. Code Ann. Regs. 30-1(D)(43):

"Those dunes which constitute the front row of dunes adjacent to the Atlantic Ocean, are partially or wholly seaward of the setback line, are not landward of an existing functional erosion control device and have a minimum height of thirty-six (36) inches, as measured vertically from the crest to the toe of the dune. For purposes of

establishing the baseline, this dune must also form a continuous line for 500 shore parallel feet."

Specifically, the measured dune was not at least thirty-six inches tall from toe to crest.

Mr. Eiser indicated that in areas where no primary dune is located, the baseline should have been established "using the best scientific and historical data, as where the crest of the primary oceanfront sand dunes for that zone would be located if the shoreline had not been altered." This process is typically called the 'ideal dune analysis'. Department staff did a preliminary ideal dune analyses; however, the results indicated that the baseline would have been established landward of what was proposed in October 2017. The Department is confident that if the Department were to complete an ideal dune analysis for this area, the baseline and setback line would be landward of where they are set now. The Department offered to perform a full ideal dune analysis for the Petitioners but was not advised that the Petitioners desired to have that analysis completed.

Regardless of the source and location of the baseline proposed on October 6, 2017, it is not in effect. The baseline established in 2008-2012 is currently in effect, which is seaward of the 2017 line. After a review of the materials submitted by Petitioners, the Department is not certain where the Petitioners are proposing that the Department should establish the lines. However, since the Department did not locate a primary dune seaward of the current baseline (either prior to Hurricane Matthew or after the renourishment), the Department does not support a seaward movement of the baseline from its currently established location. This is the Department's final decision on remand.

Sincerely,



Elizabeth B. von Kolnitz
Chief
Office of Ocean and Coastal Resource Management

cc: Matthew J. Slagel, Beachfront Permitting Project Manager, DHEC-OCRM
Jessica B. Boynton, Shoreline Specialist, DHEC-OCRM
Sallie P. Phelan, Attorney, DHEC

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cami Hiers, et al.,) Docket No. 18-ALJ-07-0023-CC
Petitioners,)
vs.)
South Carolina Department of)
Health and Environmental Control,)
Respondent.)

)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has this day served a copy of the Final Decision on Remand for the properties located at 120, 204, 402, 512, 610 and 612 Palmetto Boulevard, Edisto Beach in the above-referenced matter via electronic and U.S. mail on the following parties through counsel of record listed below:

R. Cody Lenhardt, Jr.
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Attorney for Petitioners



Sallie P. Phelan

November 18, 2019
Charleston, South Carolina