

**Mary D. Shahid**  
Shareholder  
Admitted in SC

March 20, 2024

**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

**RECEIVED**

**MAR 20 2024**

Clerk, Board of Health  
and Environmental Control

**24-RFR-53**

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

Dear Madam Clerk:

This office represents Tideview Properties, LLC, (“Tideview”) a South Carolina Limited Liability Company, in matters related to a residential structure located at 132 Ocean Boulevard, Isle of Palms, Charleston County, South Carolina. This home is occupied by Walter Brashier, a member of Tideview, who purchased the property in 2006 for \$3,900,000.00.

**BACKGROUND**

132 Ocean Boulevard (“Property”) is an oceanfront lot facing the Atlantic Ocean. Tideview has paid property taxes to the Charleston County Tax Assessor’s office for the Property in amounts ranging from \$45,670.85 in 2021 to \$48, 704.98 for 2024. The attached aerial image, Exhibit A to this RFR, indicates significant vegetation on the ocean side of the lot, in front of an existing fence or landscaping wall.

**RECENT EVENTS**

On December 17, 2024, the Charleston Harbor Tide Gauge 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, including 204 Ocean.

The December 17, 2024 Nor’easter storm and resulting flooding was one-time

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Suite 400 (29401)  
PO Box 486  
Charleston, SC 29402  
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**E** MShahid@maynardnexsen.com  
Maynard Nexsen PC  
**Attorneys and Counselors at Law**

event. The owner of 132 Ocean has experienced predicted high tides and named storm events over the past 4 years. 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 17<sup>th</sup> Nor'easter, the owner is considering installing some form of protection. Before being able to perform that installation, a representative of the Department, presumably Matt Slagel, placed flags on the Property indicating what was determined 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.<sup>1</sup> Moreover, it appears that the Department placed these flags on or around March 6, 2024 based on the information provided in Ex. B. The deadline for filing this RFR is March 21, 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 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 and appears to overlook existing vegetation. Under either definition, the Department's actions were incorrect as the placement of the flags is not consistent with the regulatory definitions.

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<sup>1</sup> 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 20, 2024  
Page 3

**CONCLUSION**

Tideview 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**

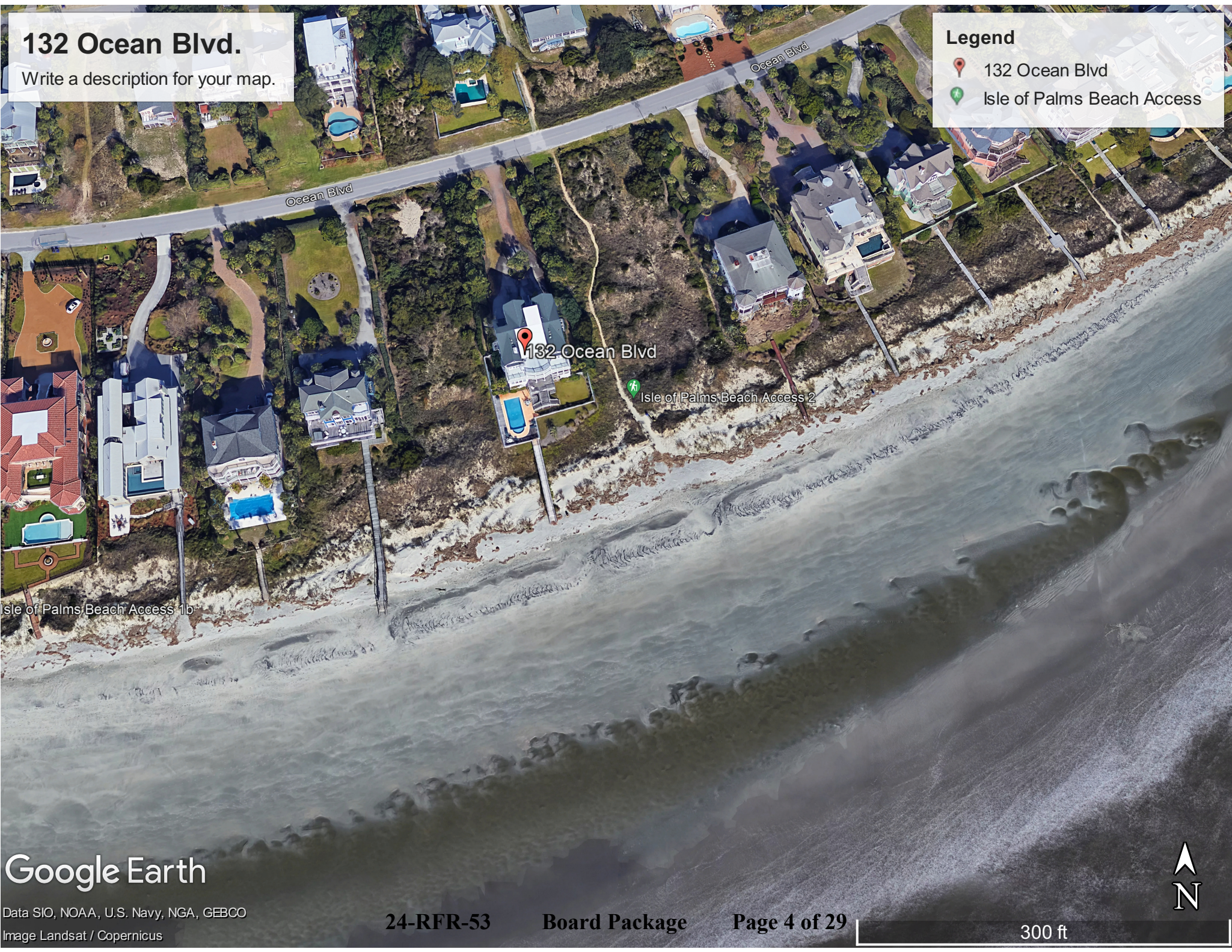
cc: Ted Brashier  
Bradley D. Churdar, Associate General Counsel  
Sallie Phelan, Assistant General Counsel

# 132 Ocean Blvd.

Write a description for your map.

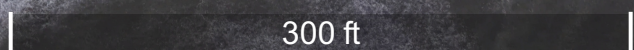
## Legend

-  132 Ocean Blvd
-  Isle of Palms Beach Access



Google Earth

Data SIO, NOAA, U.S. Navy, NGA, GEBCO  
Image Landsat / Copernicus



300 ft



Fwd: DHEC Online Services - Submission Status Change Notification - HQ1-Y1YV-4TKNP, TIDEVIEW PROPERTIES LLC

---

From: Ted Brashier (tedbrashier87@yahoo.com)

To: twbrashier@yahoo.com

Date: Monday, March 18, 2024 at 12:45 PM EDT

---

Ted Brashier

JTB Development, LLC

KIDCO, LLC

101 Warehousing, LLC

## 25 Brendan Way

Greenville, SC 29615

Office (864) 271-7485

Cell (864) 901-0606

Begin forwarded message:

**From:** noreply@dhec.sc.gov

**Date:** March 6, 2024 at 4:13:55 PM EST

**To:** tedbrashier87@yahoo.com

**Subject:** DHEC Online Services - Submission Status Change Notification - HQ1-Y1YV-4TKNP, TIDEVIEW PROPERTIES LLC

SCDHEC ePermitting User,

This notification is to inform you of a status change on your submission of "OCRM Request to Have a Critical Area Line Established" (submission **HQ1-Y1YV-4TKNP**) for TIDEVIEW PROPERTIES LLC. The status has been updated to status "In Process" on 3/6/2024 4:10 PM.

The processor assigned to your submission is Bradley J. Jaynes.

This is an automated notification generated by ePermitting.

## Fwd: DHEC Online Services - Submission Receipt Acknowledgement - HQ1-Y1YV-4TKNP, TIDEVIEW PROPERTIES LLC

---

From: Ted Brashier (tedbrashier87@yahoo.com)

To: twbrashier@yahoo.com

Date: Monday, March 18, 2024 at 12:44 PM EDT

---

Ted Brashier

JTB Development, LLC

KIDCO, LLC

101 Warehousing, LLC

## 25 Brendan Way

Greenville, SC 29615

Office (864) 271-7485

Cell (864) 901-0606

Begin forwarded message:

**From:** noreply@dhec.sc.gov

**Date:** March 6, 2024 at 2:14:53 PM EST

**To:** tedbrashier87@yahoo.com

**Subject:** DHEC Online Services - Submission Receipt Acknowledgement - HQ1-Y1YV-4TKNP, TIDEVIEW PROPERTIES LLC

This notification is to inform you that DHEC has received your submission with the following details:

Form Name: **OCRM Request to Have a Critical Area Line Established**

Submission Reference Number: **HQ1-Y1YV-4TKNP**

Submission Version Number: **1**

System Receipt Date: **3/6/2024 2:12 PM**

Site Name: **TIDEVIEW PROPERTIES LLC**

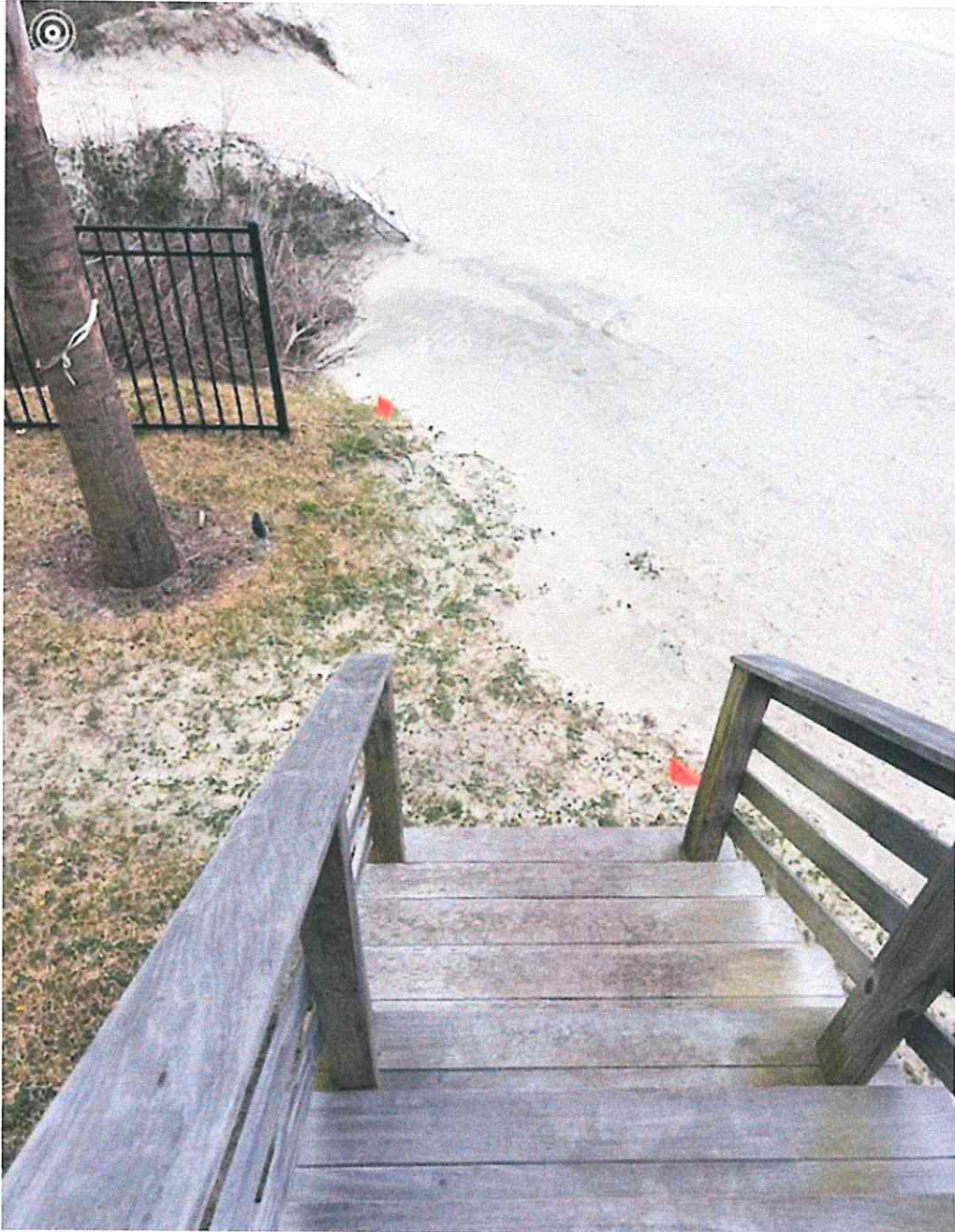
Additional notifications will be sent as your submission is processed by DHEC staff. If your submission is incomplete, you will receive a notification along with instructions about how to review corrections requests, revise and resubmit your submission.

You can check the status of your submission at any time by logging into your ePermitting account.

This is an automated notification generated and sent by ePermitting.



**S.C. Dept. of Health & Environmental Control**  
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Connect: [www.scdhec.gov](http://www.scdhec.gov) [Facebook](#) [Twitter](#)







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

**Requestor:** Tideview Properties, LLC  
Mary D. Shahid, Maynard Nexsen, Attorney for Requestor

**Applicant:** Tideview Properties, LLC  
Submission # HQ1-Y1YV-4TKNP  
DHEC OCRM Request to Have a Critical Area Line Established  
132 Ocean Boulevard, Isle of Palms, SC

**Docket No.:** 24-RFR-53, Tideview Properties, LLC

**RECEIVED**

**OGC No.:** 2024-OCR-0008

**APR 05 2024**

**I. Summary**

Clerk, Board of Health  
and Environmental Control

**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 Tideview Properties, 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.**

132 Ocean Boulevard, Isle of Palms, SC

**c. Decision.**

On March 8, 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 on February 26, 2024 (See **Exhibit C**).

Requestor is the property owner, Tideview Properties, 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**).

March 6, 2024 – Ted Brashier, on behalf of Tideview Properties, LLC, requested DHEC OCRM staff to flag the Beaches Critical Area at 132 Ocean Boulevard.

March 8, 2024 – DHEC OCRM staff flagged the Beaches Critical Area at 132 Ocean Boulevard.

March 20, 2024 – Tideview Properties, LLC challenged the location of Beaches Critical Area as determined by DHEC OCRM and submitted a Request for Final Review (24-RFR-53) 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 132 Ocean Blvd has experienced predicted high tides and named storm events over the past 4 years. 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 17<sup>th</sup> Nor’easter, the owner is considering installing some form of protection. Before being able to perform that installation, a representative of the Department, presumably Matt Slagel, placed flags on the Property indicating what was determined 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 March 6, 2024, Ted Brashier on behalf of Tideview Properties, LLC requested DHEC OCRM to flag the Beaches Critical Area at 132 Ocean Boulevard, and staff flagged the Beaches Critical Area two days later, on March 8, 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-53, Tideview Properties, LLC**

Respectfully Submitted,



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

*Sallie P. Phelan*

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

Date: April 5, 2024

# EXHIBIT A

TIDEVIEW PROPERTIES LLC : R7B3-FG3K-6QY

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 04/04/2024



## Inspection Details

1. Property Owner	TIDEVIEW PROPERTIES 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	5680900161
6. Site Address	132 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: 32.7758527777778  
GPS Longitude: -79.8061722222222  
GPS Altitude: 4.28678734146041 meters  
Photo Uploaded: 4/4/2024

# TIDEVIEW PROPERTIES LLC : R7B3-FG3K-6QY

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 04/04/2024



## Inspection Details



GPS Latitude: 32.7758388888889  
GPS Longitude: -79.8061444444444  
GPS Altitude: 4.58826399052199 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.7757111111111  
GPS Longitude: -79.8064694444444  
GPS Altitude: 3.81060991752367 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.7757  
GPS Longitude: -79.8064888888889  
GPS Altitude: 3.8422578351474 meters  
Photo Uploaded: 4/4/2024

9. What is the progress of the construction activity?

Not Started

TIDEVIEW PROPERTIES LLC : R7B3-FG3K-6QY

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 04/04/2024



**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?  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*

EXHIBIT B







● Beaches Critical Area Survey Points: 03/08/2024  
— Beaches Critical Area Line

0 25 50 Feet  
|-----|-----|

24-RFR-53

Board Package

Location: 132 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 10<sup>th</sup> 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](mailto: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 20<sup>th</sup> DAY OF FEBRUARY, 2024.

  
\_\_\_\_\_  
Phillip Pounds, Mayor

(Seal)  
Attest:  
\_\_\_\_\_



  
\_\_\_\_\_  
Nicole DeNeane, City Clerk

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

**Mary D. Shahid**  
Shareholder  
Admitted in SC

March 22, 2024

**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

**RECEIVED**

**MAR 22 2024**

Clerk, Board of Health  
and Environmental Control

**24-RFR-54**

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

Dear Madam Clerk:

This office represents Claire M. Richardson Trust (“Trust”), in matters related to a residential structure located at 128 Ocean Boulevard, Isle of Palms, Charleston County, South Carolina. This home has been owned by members of the Richardson family who acquired it in 1993. Presently it is occupied by Claire Richardson and other beneficiaries of the Trust.

**BACKGROUND**

128 Ocean Boulevard (“Property”) is an oceanfront lot facing the Atlantic Ocean. The Trust has paid property taxes to the Charleston County Tax Assessor’s office for the Property of approximately \$10,000.00 per year. The home located on the property was constructed in 1997. The market value of the property as calculated by the Charleston Count Tax Assessor is \$3,456,000.00. Recent aerial imagery, attached as Ex. A to this RFR, indicates a relatively small structure with no accessory structures or swimming pool and significant vegetation on the seaward side of the structure.

**RECENT EVENTS**

On December 17, 2024, the Charleston Harbor Tide Gauge 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

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**

erosion for all properties on Ocean Boulevard, Isle of Palms, including 128 Ocean Boulevard.

The December 17, 2024 Nor'easter storm and resulting flooding was one-time event. The owner of 128 Ocean Blvd. has experienced predicted high tides and named storm events over the past several years. 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 17<sup>th</sup> Nor'easter, the owner is considering installing some form of protection. Before being able to perform that installation, a representative of the Department, presumably Matt Slagel, placed flags on the Property indicating what was determined to be the boundary of "beaches critical area" on the seaward side of the Property. Confirmation of the establishment of the Department's jurisdiction boundary is confirmed in the attached email, Ex. 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.<sup>1</sup> Moreover the Department placed these flags on March 8, 2024. The deadline for filing this RFR is March 23, 2024. This request is timely.

### **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 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 and appears to overlook existing vegetation. Under either

---

<sup>1</sup> 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 22, 2024  
Page 3

definition, the Department's actions were incorrect as the placement of the flags is not consistent with the regulatory definitions.

### **CONCLUSION**

The Trust 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: Claire, Wayne, and Katie Richardson  
Bradley D. Churdar, Associate General Counsel  
Sallie Phelan, Assistant General Counsel

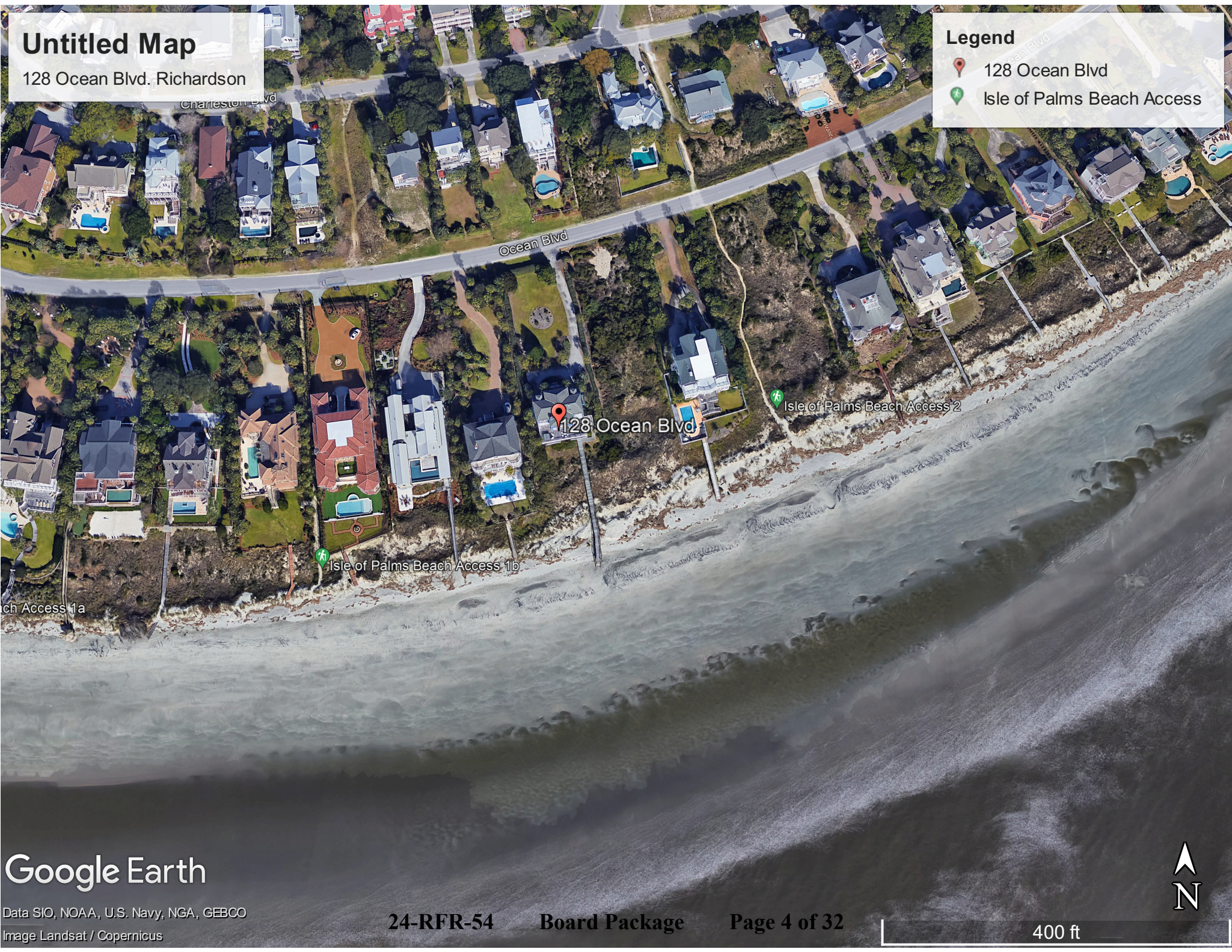


# Untitled Map

128 Ocean Blvd. Richardson

## Legend

-  128 Ocean Blvd
-  Isle of Palms Beach Access



Google Earth

Data SIO, NOAA, U.S. Navy, NGA, GEBCO  
Image Landsat / Copernicus



**From:** [Chris Moore](#)  
**To:** [Mary D. Shahid](#)  
**Subject:** FW: Seawall flagging at 128 Ocean Blvd., Isle of Palms, SC  
**Date:** Friday, March 22, 2024 12:53:35 PM

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**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](http://www.jgtinc.com)

---

**From:** Slagel, Matt <slagelmj@dhec.sc.gov>  
**Sent:** Wednesday, March 13, 2024 3:48 PM  
**To:** Katie Richardson <wprkt@aol.com>; Wayne Richardson <waynerichardson128@gmail.com>  
**Cc:** Chris Moore <cmoore@jgtinc.com>; GORDON RICHARDSON <AMSGORDON@aol.com>  
**Subject:** Re: Seawall flagging at 128 Ocean Blvd., Isle of Palms, SC

The landward limit of Beaches Critical Area at 128 Ocean Blvd on Isle of Palms was flagged with small orange flags by OCRM on Friday, March 8th.

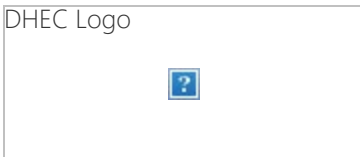
Thanks,  
Matt

--

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



**From:** Katie Richardson <[wprkt@aol.com](mailto:wprkt@aol.com)>  
**Sent:** Monday, March 11, 2024 9:15 PM  
**To:** Wayne Richardson <[waynerichardson128@gmail.com](mailto:waynerichardson128@gmail.com)>; Slagel, Matt <[slagelmj@dhec.sc.gov](mailto:slagelmj@dhec.sc.gov)>; katie richardson <[wprkt@aol.com](mailto:wprkt@aol.com)>  
**Cc:** [cmoore@jgtinc.com](mailto:cmoore@jgtinc.com) <[cmoore@jgtinc.com](mailto:cmoore@jgtinc.com)>; GORDON RICHARDSON <[AMSGORDON@aol.com](mailto:AMSGORDON@aol.com)>  
**Subject:** Re: Seawall flagging at 128 Ocean Blvd., Isle of Palms, SC

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

Hi there:

Just checking in. Were you able to flag the lot at 128 Ocean Blvd, Isle of Palms, SC. I know you were going to go out there on March 8th. We did not see the orange flags? We are trying to schedule the surveyor.

Thank you so much for your help. We know you're overwhelmed I am sure. Much appreciated.

Katie, Wayne and Claire Richardson  
714-222-7303

[Sent from the all new AOL app for iOS](#)

On Thursday, March 7, 2024, 10:54 AM, Wayne Richardson <[waynerichardson128@gmail.com](mailto:waynerichardson128@gmail.com)> wrote:

Matt,

Thank you for your quick response. We are engaging a surveyor.

On Thu, Mar 7, 2024 at 10:10 AM Slagel, Matt <[slagelmj@dhec.sc.gov](mailto:slagelmj@dhec.sc.gov)> wrote:

Mr. and Mrs. Richardson,

DHEC OCRM will mark the landward limit of the Beaches Critical Area at this property as soon as possible in conjunction with other site visits in the area. We intend to do this tomorrow, 3/8/24.

Additionally, 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 the 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've seen the City of Isle of Palms ordinance related to this, but I'm attaching it here.

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](mailto:slagelmj@dhec.sc.gov)

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

DHEC Logo



---

**From:** Katie Richardson <[wprkt@aol.com](mailto:wprkt@aol.com)>  
**Sent:** Wednesday, March 6, 2024 3:45 PM  
**To:** Slagel, Matt <[slagelmj@dhec.sc.gov](mailto:slagelmj@dhec.sc.gov)>; katie richardson <[wprkt@aol.com](mailto:wprkt@aol.com)>; Wayne Richardson <[waynerichardson128@gmail.com](mailto:waynerichardson128@gmail.com)>  
**Subject:** Seawall flagging at 128 Ocean Blvd., Isle of Palms, SC

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

unknown senders or unexpected email. \*\*\*

Hello:

We are requesting you to please come out and flag our property at 128 Ocean Blvd, Isle of Palms, SC. We want to apply to build a Seawall ASAP. Please call me to schedule and let us know what else you need from us. Time as you know is of the essence.

Thank you,

Wayne and Katie Richardson  
714-227-8028 and 714-222-7303  
PST

[Sent from the all new AOL app for iOS](#)

--

Wayne Richardson  
714-227-8028

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

**Requestor:** Claire M. Richardson Trust  
Mary D. Shahid, Maynard Nexsen, Attorney for Requestor

**Applicant:** Claire M. Richardson Trust  
Submission # HQ2-KGDW-GHHWT  
DHEC OCRM Request to Have a Critical Area Line Established  
128 Ocean Boulevard, Isle of Palms, SC

**Docket No.:** 24-RFR-54, Claire M. Richardson Trust

**RECEIVED**

**OGC No.:** 2024-OCR-0009

**APR 05 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 Claire M. Richardson 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.**

128 Ocean Boulevard, Isle of Palms, SC

**c. Decision.**

On March 8, 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 on February 26, 2024 (See **Exhibit C**).

Requestor is the property owner, Claire M. Richardson 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**).

March 6, 2024 – Katie Richardson, on behalf of Claire M. Richardson Trust, requested DHEC OCRM staff to flag the Beaches Critical Area at 128 Ocean Boulevard.

March 8, 2024 – DHEC OCRM staff flagged the Beaches Critical Area at 128 Ocean Boulevard.

March 13, 2024 – DHEC OCRM staff notified Requestor that the Beaches Critical Area was flagged at 128 Ocean Boulevard on March 8, 2024. This notification was sent via email.

March 22, 2024 – Claire M. Richardson Trust challenged the location of Beaches Critical Area as determined by DHEC OCRM and submitted a Request for Final Review (24-RFR-54) 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 128 Ocean Blvd has experienced predicted high tides and named storm events over the past several years. 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 17<sup>th</sup> Nor’easter, the owner is considering installing some form of protection. Before being able to perform that installation, a representative of the Department, presumably Matt Slagel, placed flags on the Property indicating what was determined 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 March 6, 2024, Katie Richardson on behalf of Claire M. Richardson Trust requested DHEC OCRM to flag the Beaches Critical Area at 128 Ocean Boulevard, and staff flagged the Beaches Critical Area two days later, on March 8, 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-54, Claire M. Richardson Trust**

Respectfully Submitted,



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

*Sallie P. Phelan*

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

Date: April 5, 2024

# EXHIBIT A


Claire M. Richardson Trust : 1535-GKMZ-HPY

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 04/04/2024



Inspection Details	
1. Property Owner	Claire M. Richardson 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	5680900159
6. Site Address	128 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: 32.7755027777778 GPS Longitude: -79.8067611111111 GPS Altitude: 3.88960994131861 meters Photo Uploaded: 4/4/2024</p></div></div>	

Inspector: Matt Slagel  
Start Date: 04/04/2024

### Inspection Details



GPS Latitude: 32.7756527777778  
GPS Longitude: -79.8068833333333  
GPS Altitude: 4.22989033409844 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.7756305555556  
GPS Longitude: -79.8068805555556  
GPS Altitude: 4.28452481076535 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.775625  
GPS Longitude: -79.8068638888889  
GPS Altitude: 4.42444691804647 meters  
Photo Uploaded: 4/4/2024



Inspector: Matt Slagel  
Start Date: 04/04/2024

**Inspection Details**



GPS Latitude: 32.77561111111111  
GPS Longitude: -79.80686111111111  
GPS Altitude: 4.33558716591185 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.77561944444444  
GPS Longitude: -79.80685555555556  
GPS Altitude: 4.11918627842042 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.77564722222222  
GPS Longitude: -79.80681388888889  
GPS Altitude: 3.56155913473285 meters  
Photo Uploaded: 4/4/2024

9. What is the progress of the construction activity?

Not Started

Claire M. Richardson Trust : 1535-GKMZ-HPY

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 04/04/2024



**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?  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*

EXHIBIT B





SCDHEC - MJS



03/08/24 01:52 PM

32.7756° N, 79.8069° W

SCDHEC - MJS



03/08/24 01:52 PM

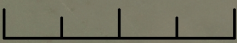
32.7756° N, 79.8069° W

SCDHEC - MJS





0 25 50 Feet



## 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 10<sup>th</sup> 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](mailto: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 20<sup>th</sup> DAY OF FEBRUARY, 2024.

  
\_\_\_\_\_  
Phillip Pounds, Mayor

(Seal)  
Attest:

\_\_\_\_\_  
  
Nicole DeNeane, City Clerk



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



**Mary D. Shahid**  
Shareholder  
Admitted in SC

**RECEIVED**

**MAR 20 2024**

Board, Clerk of Board  
and Environmental Control

**24-RFR-55**

March 20, 2024

**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  
OCRM Establishment of Beach Jurisdictional Line

Dear Madam Clerk:

This office represents Paul and Meredith Jorgensen, owners of 116 Ocean Boulevard (“Property”), in matters related to SCDHEC-OCRM’s assertion of jurisdiction on the Property. 116 Ocean Boulevard is occupied by Mr. and Mrs. Jorgensen for at least six months every year since their acquisition of the Property in 2022 and is not utilized for rental income.

**BACKGROUND**

The Property is an oceanfront lot facing the Atlantic Ocean. The Jorgensens paid \$6,800,000.00 for the Property in 2022. In 2024, the Jorgensens’ tax liability for the property as assessed by Charleston County, is \$90,131.60. The attached plat, prepared in 1992, Exhibit A to this RFR, indicates the significant length of the Property and the distance to MHW. More recent aerial imagery from 2022, Ex. B, indicates extensive vegetation on the seaward side of the house located on the Property.

At some point in time unknown to the Jorgensens, SCDHEC-OCRM staff flagged what the staff claims is the “Beaches Critical Line” on the Property. The attached photographs, Ex. C, indicate that the beaches critical line was established inside a fence on the seaward side of the Jorgensens’ property. This conclusion as to

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**

the location of the beaches critical line is unsupportable by the statutory definition.

### **RECENT EVENTS**

On December 17, 2024, the Charleston Harbor Tide Gauge 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.

The December 17, 2024, Nor'easter storm and resulting flooding was one-time event. The owners of the Property are aware of high tides and named storm events during their ownership and prior to their ownership but at no time prior to December 17, 2024, did the Property suffer from flood damage and tidal action. Given the severity of the tidal conditions created by the December 17<sup>th</sup> Nor'easter, the owner is considering installing some form of protection but is not willing to sacrifice an extensive portion of the Property based on the boundary established by the flag placement. 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.<sup>1</sup> The Property owners were out of the Country when the flags were placed and were not contacted by the Department staff regarding the flag placement. At this time no written notice of placement of the flags has been provided to the Property owners. Regardless, the owners are entitled to review of this action. A review of these photographs, Ex. C, indicates the Department asserting jurisdiction within a vegetated area.

### **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

---

<sup>1</sup> 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.

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 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 Jorgensens seek 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: Paul and Meredith Jorgensen  
Sallie Phelan, Assistant General Counsel  
Bradley D. Churdar, Associate General Counsel

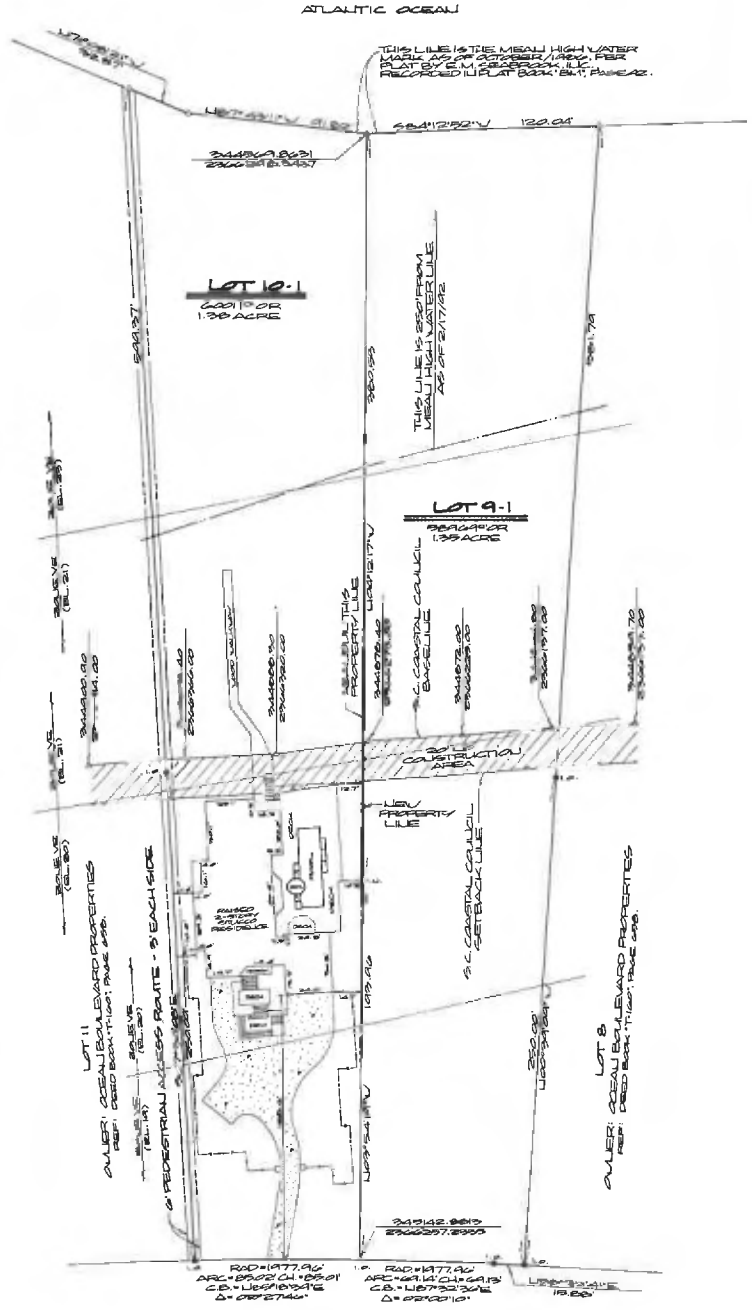


EX L 294PG841

97  
16 EC 309  
47 2  
Dennis O'Neill



NOTE: A PEDESTRIAN ACCESS ROUTE IS SHOWN FROM REMAINING SUBDIVISIONS TO THE EAST.



- NOTES:
- 1) THIS PROPERTY IS ZONED 'SR-1'
  - 2) THIS PROPERTY IS ZONED 'SR-1' (1) LOCAL WATER TREATMENT PLANT THIS PLAT IS SUBJECT TO THE CITY OF ISLE OF PALMS WATER TREATMENT PLANT REGULATIONS AS APPLICABLE ACCORDING TO S.C. GOVT. CANAL REGULATIONS.
  - 3) THE CITY OF ISLE OF PALMS AT THIS TIME OF THIS PLAT IS ZONED 'SR-1' (1) LOCAL WATER TREATMENT PLANT THIS PLAT IS SUBJECT TO THE CITY OF ISLE OF PALMS WATER TREATMENT PLANT REGULATIONS AS APPLICABLE ACCORDING TO S.C. GOVT. CANAL REGULATIONS.

- LEGEND:
- 1/4" IRON PIPE OLD (ISLAND)
  - 1/4" IRON PIPE NEW (ISLAND)
  - PEDESTRIAN ACCESS ROUTE TO BE ABANDONED
- REFERENCE:
- 1) THIS SUBDIVISION IS SHOWN ON MAP 1987-10-1
  - 2) PLAT BOOK 'B' 11, PAGE 201.

APPROVED BY PLANNING COMMISSION OF THE CITY OF ISLE OF PALMS this 21<sup>st</sup> day of March, 1992  
Janet A. Mandolin  
Clerk

OCEAN BOULEVARD 66' RW



**SURVEYOR'S CERTIFICATION**  
I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS 'A' SURVEY AS SPECIFIED THEREIN.  
Charles F. Dawley, Jr. 15354  
CIVIL ENGR. & SURVEYOR, P.E., S.C.

**PLAT**  
SHOWING A RE-SURVEY AND RE-SUBDIVISION OF LOTS 8-10, INTO LOTS 8-1 & 10-1, BLOCK 3A, SITUATE AS SHOWN IN THE CITY OF ISLE OF PALMS, IN CHARLESTON COUNTY, SOUTH CAROLINA.  
THIS PROPERTY IS PRESENTLY OWNED BY RUSSELL R. VORPHEES & PATRICIA L. VORPHEES  
SCALE: 1" = 40'  
FEBRUARY 17, 1992



*Charles F. Dawley, Jr.*  
CHARLES F. DAWLEY, JR., P.L.S.  
S.C. REGISTRATION NO. 9314  
P.O. BOX 231  
MT. PLEASANT, S.C. 29568  
(803) 684-4431

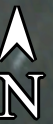
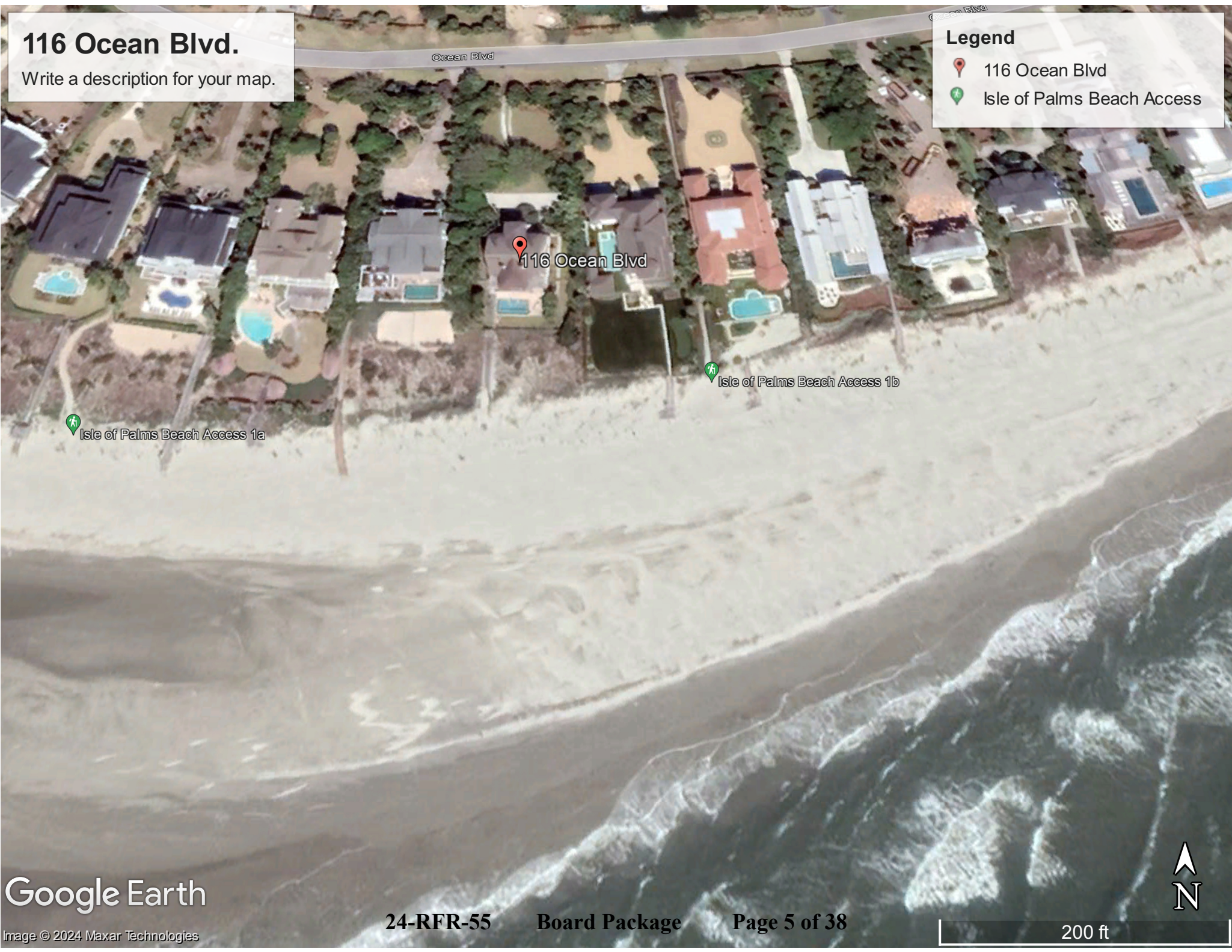
NOTE: THESE LOTS RESTAKED ON NOVEMBER 25, 1997.

# 116 Ocean Blvd.

Write a description for your map.

## Legend

-  116 Ocean Blvd
-  Isle of Palms Beach Access









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

**Requestor:** Paul and Meredith Jorgensen  
Mary D. Shahid, Maynard Nexsen, Attorney for Requestor

**Applicant:** Paul and Meredith Jorgensen  
Submission # HQ1-XXEH-94E0V  
DHEC OCRM Request to Have a Critical Area Line Established  
116 Ocean Boulevard, Isle of Palms, SC

**Docket No.:** 24-RFR-55, Paul and Meredith Jorgensen

**RECEIVED**

**OGC No.:** 2024-OCR-0010

**APR 05 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 Paul and Meredith Jorgensen 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.**

116 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, Paul and Meredith Jorgensen. 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.

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 116 Ocean Boulevard.

February 27, 2024 – DHEC OCRM staff flagged the Beaches Critical Area at 116 Ocean Boulevard.

February 28, 2024 – DHEC OCRM staff notified Chris Moore from Jon Guerry Taylor & Associates, Inc. that the Beaches Critical Area was flagged at 116 Ocean Boulevard on February 27, 2024. This notification was sent via email.

March 11, 2024 – The City of Isle of Palms issued a local sand scraping Emergency Order and performed sand scraping at 112, 116, and 120 Ocean Boulevard.

March 20, 2024 – Paul and Meredith Jorgensen challenged the location of Beaches Critical Area as determined by DHEC OCRM and submitted a Request for Final Review (24-RFR-55) 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 owners of the Property are aware of high tides and named storm events during their ownership and prior to their ownership but at no time prior to December 17, [2023] did the Property suffer from flood damage and tidal action. Given the severity of the tidal conditions created by the December 17<sup>th</sup> Nor’easter, the owner is considering installing some form of protection but is not willing to sacrifice an extensive portion of the Property based on the boundary established by the flag placement.**

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. At 116 Ocean Blvd, the beach was most recently scraped by the City on March 11, 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 116 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. DHEC OCRM flagged the landward limit of Beaches Critical Area on February 27, 2024. Days later, on March 11, 2024, the City of Isle of Palms issued a local emergency order and performed sand scraping at 116 Ocean Boulevard. Note in the photos below that, prior to sand scraping, vegetation had not grown seaward of the flags placed by DHEC OCRM and the erosion escarpment was located in close proximity to the flags.



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-55, Paul and Meredith Jorgensen**

Respectfully Submitted,



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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: April 5, 2024

# EXHIBIT A


Paul Jorgensen : 3CPC-BBTX-WHD

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 04/04/2024



Inspection Details	
1. Property Owner	Paul and Meredith Jorgensen
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	5680900154
6. Site Address	116 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="margin-left: 20px;"> <p>GPS Latitude: 32.7753666666667                      GPS Longitude: -79.8085888888889                      GPS Altitude: 3.37387362485488 meters                      Photo Uploaded: 4/4/2024</p> </div> </div>	

Paul Jorgensen : 3CPC-BBTX-WHD

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 04/04/2024



### Inspection Details



GPS Latitude: 32.7753611111111  
GPS Longitude: -79.8086027777778  
GPS Altitude: 3.31815776001944 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.7753611111111  
GPS Longitude: -79.8085805555556  
GPS Altitude: 3.34214213653178 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.7753666666667  
GPS Longitude: -79.8085222222222  
GPS Altitude: 3.36041732532406 meters  
Photo Uploaded: 4/4/2024



Paul Jorgensen : 3CPC-BBTX-WHD

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 04/04/2024



### Inspection Details



GPS Latitude: 32.775375  
GPS Longitude: -79.8085277777778  
GPS Altitude: 3.02005732809076 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.7753777777778  
GPS Longitude: -79.808525  
GPS Altitude: 3.37898769153479 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.7754  
GPS Longitude: -79.8084111111111  
GPS Altitude: 3.76703005480937 meters  
Photo Uploaded: 4/4/2024

Paul Jorgensen : 3CPC-BBTX-WHD

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 04/04/2024



### Inspection Details



GPS Latitude: 32.7753527777778  
GPS Longitude: -79.8083277777778  
GPS Altitude: 3.29390463474338 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.7753666666667  
GPS Longitude: -79.8083444444444  
GPS Altitude: 3.32076744360339 meters  
Photo Uploaded: 4/4/2024



GPS Latitude: 32.7753666666667  
GPS Longitude: -79.8083472222222  
GPS Altitude: 3.26546570898981 meters  
Photo Uploaded: 4/4/2024

Paul Jorgensen : 3CPC-BBTX-WHD

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 04/04/2024



### Inspection Details



GPS Latitude: 32.7753638888889  
GPS Longitude: -79.8083555555556  
GPS Altitude: 3.29655183583564 meters  
Photo Uploaded: 4/4/2024

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*

EXHIBIT B







SCDHEC - MJS



SCDHEC - MJS



SCDHEC - MJS



02/27/24 11:53 AM

32.7754° N, 79.8083° W

SCDHEC - MJS



02/27/24 11:53 AM

32.7754° N, 79.8083° W



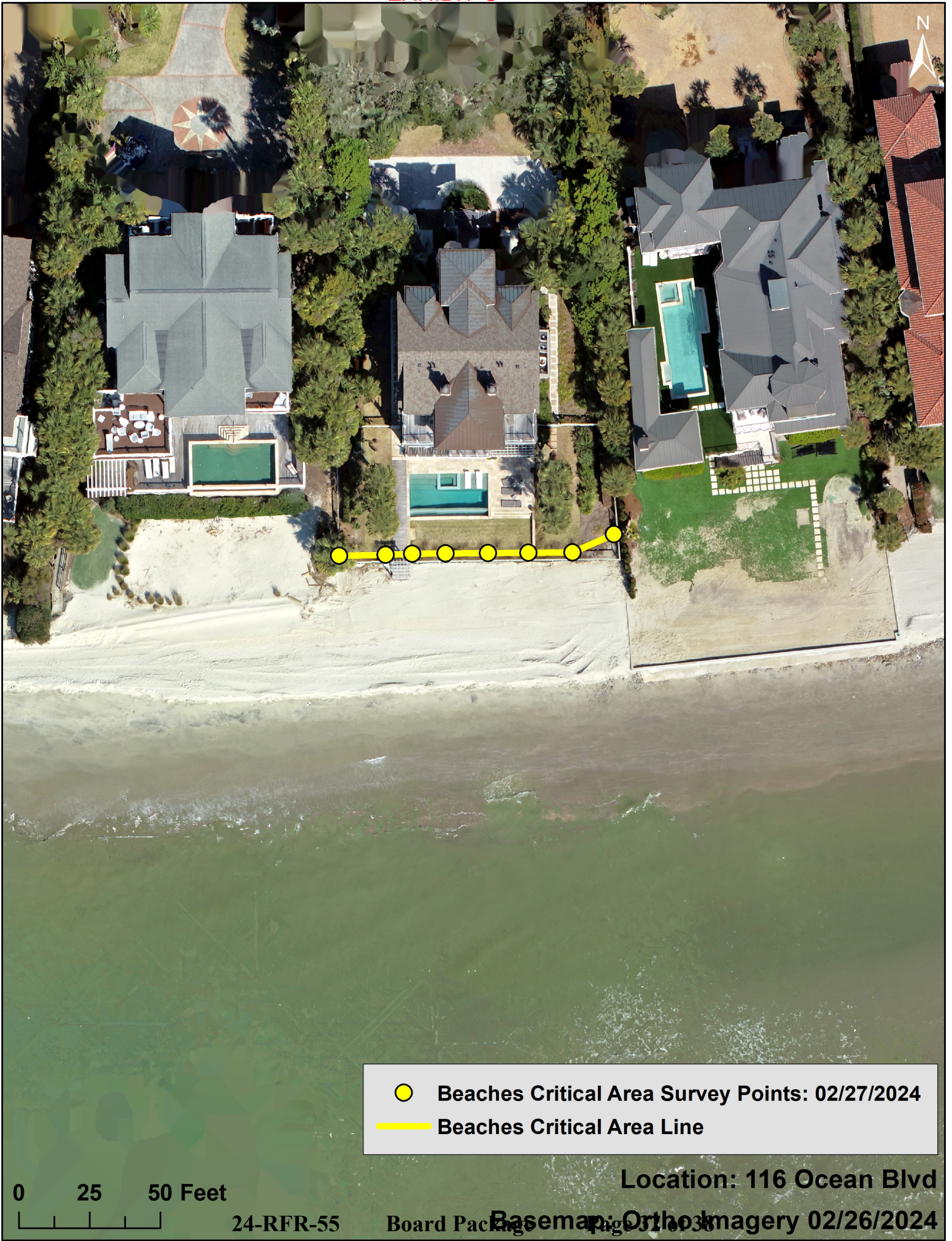
SCDHEC - MJS











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

0 25 50 Feet  
|-----|-----|

## 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 10<sup>th</sup> 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](mailto: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 20<sup>th</sup> DAY OF FEBRUARY, 2024.

  
\_\_\_\_\_  
Phillip Pounds, Mayor

(Seal)  
Attest:

\_\_\_\_\_  
  
Nicole DeNeane, City Clerk



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