



Mary D. Shahid  
Shareholder  
Admitted in SC

March 5, 2024

RECEIVED

MAR 05 2024

Clerk, Board of Health  
and Environmental Control

24-RFR-47

VIA ELECTRONIC AND US MAIL

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

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

Dear Madam Clerk:

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

BACKGROUND

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

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Suite 400 (29401)  
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Attorneys and Counselors at Law

### RECENT EVENTS

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

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

### LEGAL ARGUMENT

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

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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 are considered by the Board before advancing to the S. C. Administrative Law Court.

Clerk, Board of Health and Environmental Control  
March 5, 2024  
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It is possible that OCRM may also be relying on the definition of “Active Beach” within its regulations: “[T]he area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean landward.” S. C. Reg. 30-(D)(2). If that is the case, the placement of the flags is well-landward of the existing escarpment. Under either definition, the Department’s actions were incorrect as the placement of the flags is not consistent with the regulatory definitions.

#### CONCLUSION

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

Very truly yours,

s/Mary D. Shahid

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



PK L 11726619

**FINAL PLAT**  
**CITY OF ISLE OF PALMS**  
**CHARLESTON COUNTY, S.C.**  
 PLAT OF LOTS 1-16 BLOCK 3A, LOTS 1-9 BLOCK 9A, LOTS 1-8 BLOCK 10A,  
 LOTS 1-8 BLOCK 12A, LOTS 1-13 BLOCK 18A, LOTS 1-12 BLOCK 19A,  
 LOTS 1-8 BLOCK 21A, LOTS 1-8 BLOCK 22A, AND LOTS 1-8 BLOCK 23A  
 SCALE: 1"=100' JANUARY 8, 1988

**LEGEND**

100' SETBACK LINE	SEE NOTE 1	200' SETBACK LINE	SEE NOTE 2
150' SETBACK LINE	SEE NOTE 3	250' SETBACK LINE	SEE NOTE 4
300' SETBACK LINE	SEE NOTE 5	350' SETBACK LINE	SEE NOTE 6
400' SETBACK LINE	SEE NOTE 7	450' SETBACK LINE	SEE NOTE 8
500' SETBACK LINE	SEE NOTE 9	550' SETBACK LINE	SEE NOTE 10
600' SETBACK LINE	SEE NOTE 11	650' SETBACK LINE	SEE NOTE 12
700' SETBACK LINE	SEE NOTE 13	750' SETBACK LINE	SEE NOTE 14
800' SETBACK LINE	SEE NOTE 15	850' SETBACK LINE	SEE NOTE 16
900' SETBACK LINE	SEE NOTE 17	950' SETBACK LINE	SEE NOTE 18
1000' SETBACK LINE	SEE NOTE 19	1050' SETBACK LINE	SEE NOTE 20
1100' SETBACK LINE	SEE NOTE 21	1150' SETBACK LINE	SEE NOTE 22
1200' SETBACK LINE	SEE NOTE 23	1250' SETBACK LINE	SEE NOTE 24
1300' SETBACK LINE	SEE NOTE 25	1350' SETBACK LINE	SEE NOTE 26
1400' SETBACK LINE	SEE NOTE 27	1450' SETBACK LINE	SEE NOTE 28
1500' SETBACK LINE	SEE NOTE 29	1550' SETBACK LINE	SEE NOTE 30
1600' SETBACK LINE	SEE NOTE 31	1650' SETBACK LINE	SEE NOTE 32
1700' SETBACK LINE	SEE NOTE 33	1750' SETBACK LINE	SEE NOTE 34
1800' SETBACK LINE	SEE NOTE 35	1850' SETBACK LINE	SEE NOTE 36
1900' SETBACK LINE	SEE NOTE 37	1950' SETBACK LINE	SEE NOTE 38
2000' SETBACK LINE	SEE NOTE 39	2050' SETBACK LINE	SEE NOTE 40
2100' SETBACK LINE	SEE NOTE 41	2150' SETBACK LINE	SEE NOTE 42
2200' SETBACK LINE	SEE NOTE 43	2250' SETBACK LINE	SEE NOTE 44
2300' SETBACK LINE	SEE NOTE 45	2350' SETBACK LINE	SEE NOTE 46
2400' SETBACK LINE	SEE NOTE 47	2450' SETBACK LINE	SEE NOTE 48
2500' SETBACK LINE	SEE NOTE 49	2550' SETBACK LINE	SEE NOTE 50
2600' SETBACK LINE	SEE NOTE 51	2650' SETBACK LINE	SEE NOTE 52
2700' SETBACK LINE	SEE NOTE 53	2750' SETBACK LINE	SEE NOTE 54
2800' SETBACK LINE	SEE NOTE 55	2850' SETBACK LINE	SEE NOTE 56
2900' SETBACK LINE	SEE NOTE 57	2950' SETBACK LINE	SEE NOTE 58
3000' SETBACK LINE	SEE NOTE 59	3050' SETBACK LINE	SEE NOTE 60
3100' SETBACK LINE	SEE NOTE 61	3150' SETBACK LINE	SEE NOTE 62
3200' SETBACK LINE	SEE NOTE 63	3250' SETBACK LINE	SEE NOTE 64
3300' SETBACK LINE	SEE NOTE 65	3350' SETBACK LINE	SEE NOTE 66
3400' SETBACK LINE	SEE NOTE 67	3450' SETBACK LINE	SEE NOTE 68
3500' SETBACK LINE	SEE NOTE 69	3550' SETBACK LINE	SEE NOTE 70
3600' SETBACK LINE	SEE NOTE 71	3650' SETBACK LINE	SEE NOTE 72
3700' SETBACK LINE	SEE NOTE 73	3750' SETBACK LINE	SEE NOTE 74
3800' SETBACK LINE	SEE NOTE 75	3850' SETBACK LINE	SEE NOTE 76
3900' SETBACK LINE	SEE NOTE 77	3950' SETBACK LINE	SEE NOTE 78
4000' SETBACK LINE	SEE NOTE 79	4050' SETBACK LINE	SEE NOTE 80
4100' SETBACK LINE	SEE NOTE 81	4150' SETBACK LINE	SEE NOTE 82
4200' SETBACK LINE	SEE NOTE 83	4250' SETBACK LINE	SEE NOTE 84
4300' SETBACK LINE	SEE NOTE 85	4350' SETBACK LINE	SEE NOTE 86
4400' SETBACK LINE	SEE NOTE 87	4450' SETBACK LINE	SEE NOTE 88
4500' SETBACK LINE	SEE NOTE 89	4550' SETBACK LINE	SEE NOTE 90
4600' SETBACK LINE	SEE NOTE 91	4650' SETBACK LINE	SEE NOTE 92
4700' SETBACK LINE	SEE NOTE 93	4750' SETBACK LINE	SEE NOTE 94
4800' SETBACK LINE	SEE NOTE 95	4850' SETBACK LINE	SEE NOTE 96
4900' SETBACK LINE	SEE NOTE 97	4950' SETBACK LINE	SEE NOTE 98
5000' SETBACK LINE	SEE NOTE 99	5050' SETBACK LINE	SEE NOTE 100

**E. M. DE BRUIN, INC.**  
 ENGINEERS AND ARCHITECTS  
 1000 W. PALM BLVD., SUITE 100  
 CHARLESTON, SOUTH CAROLINA 29401  
 PHONE: 732-2331

**City of Isle of Palms**  
 Planning Commission  
 1000 W. Palm Blvd., Suite 100  
 Charleston, South Carolina 29401  
 Phone: 732-2331

**City of Isle of Palms**  
 Planning Commission  
 1000 W. Palm Blvd., Suite 100  
 Charleston, South Carolina 29401  
 Phone: 732-2331



**PALM BLVD**  
**INLET LANE**

**BREACH INLET**

**SECOND AVE 40' R/W**

**THIRD AVE 80' R/W**

**BLOCK 8**

**BLOCK 10**

**BLOCK 3**

**BLOCK 9A**

**BLOCK 12A**

**BLOCK 18A**

**BLOCK 19A**

**BLOCK 21A**

**BLOCK 22A**

**BLOCK 23A**

**BLOCK 24A**

**BLOCK 25A**

**BLOCK 26A**

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**BLOCK 187A**

**BLOCK 188A**

**BLOCK 189A**



EXHIBIT  
B

3110 E

3105 B

3100 B

200 ft



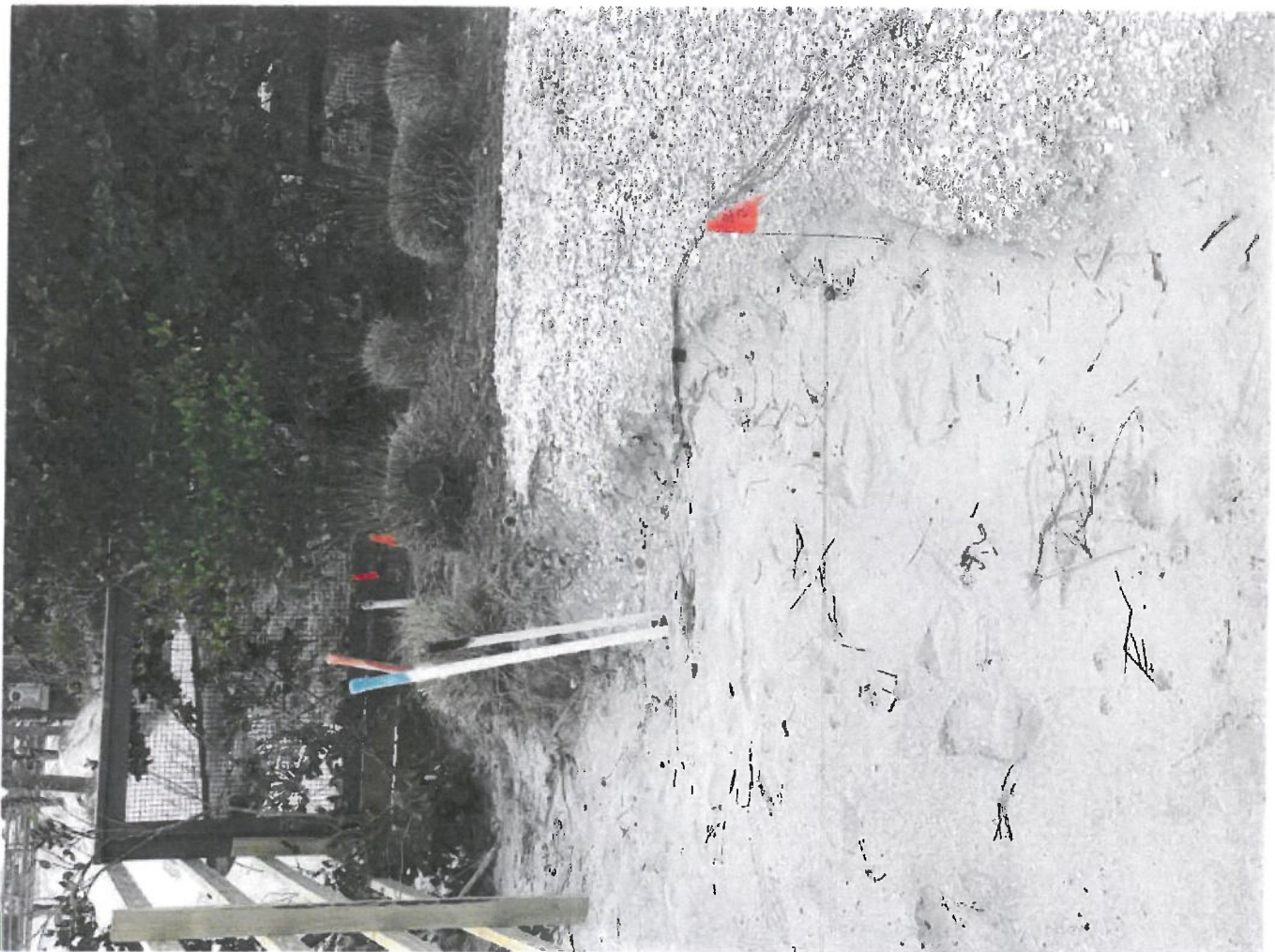
EXHIBIT

tabbies

C-1,2,3









**Mary D. Shahid**

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

{EXTERNAL EMAIL}

**Christopher W. Moore, PE**

Jon Guerry Taylor & Associates, Inc.  
PO Box 1082  
Mount Pleasant, South Carolina 29465 USA  
Office: 843.884.6415  
Direct: 843.628.5612  
Fax: 843.884.4026  
Cell: 843.367.7989  
[www.jgtinc.com](http://www.jgtinc.com)

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

Chris,

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

- 112 Ocean Blvd
  - 116 Ocean Blvd
  - 122 Ocean Blvd
  - 126 Ocean Blvd
  - 130 Ocean Blvd
  - 204 Ocean Blvd
  - 206 Ocean Blvd
  - 208 Ocean Blvd
  - 210 Ocean Blvd
  - 310 Ocean Blvd
  - 314 Ocean Blvd
  - 410 Ocean Blvd
- Kristen Stein  
Mary & John Gondolfo  
Cindy Solomon*

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

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

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

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

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

Thanks,  
Matt

--

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

Office: (843) 953-0250

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

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

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

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

**OGC No.:** 2024-OCR-0005

**RECEIVED**

**MAR 22 2024**

Clerk, Board of Health  
and Environmental Control

**I. Summary**

**a. Type of Decision.**

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

**b. Location.**

130 Ocean Boulevard, Isle of Palms, SC

**c. Decision.**

On February 27, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department" or "DHEC OCRM") flagged the landward limit of Beaches Critical Area at the subject property. Orange flags marked "SC DHEC OCRM" were placed in the ground to adhere to the statutory definition of "Beaches" found in S.C. Code Ann. §48-39-10(H): " 'Beaches' means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." S.C. Code Ann. §48-39-10(J) further states that " 'Critical area' means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in §48-39-280." Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit. An Inspection Form was completed (See **Exhibit A**), and site photographs were taken (See **Exhibit B**). A figure was created to show the locations of

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

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

**d. Relevant Chronology.**

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

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

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

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

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

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

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

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

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

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

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

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

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

## II. Relevant Law

### a. Statutes.

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

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

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

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

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

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

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

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

(b) provides the basis for a tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a significant portion of the state's economy. The tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**b. Regulations.**

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

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

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

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

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

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

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

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



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

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

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

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

#### **IV. Requested Action**

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

[SIGNATURES ON FOLLOWING PAGE]

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

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

Respectfully Submitted,



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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: March 22, 2024

EXHIBIT A

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

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024



**Inspection Details**

1. Property Owner	Cynthia A. Solomon
2. Is this activity associated with a permit?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
3. Permit Number	N/A
4. Purpose of Inspection	Beaches CA Line
5. TMS/PIN	5680900160
6. Site Address	130 Ocean Boulevard, Isle of Palms, SC 29451
7. County	Charleston

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: 32.7757222222222  
GPS Longitude: -79.8065305555556  
GPS Altitude: 3.84626989514973 meters  
Photo Uploaded: 3/22/2024

### Inspection Details



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



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



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

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

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024



### Inspection Details



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



GPS Latitude: 32.7757138888889  
GPS Longitude: -79.8064444444444  
GPS Altitude: 2.91877099141684 meters  
Photo Uploaded: 3/22/2024



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

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



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

### Inspection Details



GPS Latitude: 32.7756277777778  
GPS Longitude: -79.8064333333333  
GPS Altitude: 2.64419096679238 meters  
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7755888888889  
GPS Longitude: -79.8065583333333  
GPS Altitude: 3.36642422926617 meters  
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7756222222222  
GPS Longitude: -79.8067527777778  
GPS Altitude: 4.5080883631936 meters  
Photo Uploaded: 3/22/2024

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

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024



### Inspection Details



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



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



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



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

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024



**Inspection Details**



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



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

9. What is the progress of the construction activity? N/A

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

11. Was the property owner present during this inspection?  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

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



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

**Inspection Details**

16. Inspector's Signature

*Matthew J. Slagel*



































**EXHIBIT C**



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

0 25 50 Feet

Location: 130 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 5, 2024

RECEIVED

MAR 05 2024

Clerk, Board of Health  
and Environmental Control

24-RFR-48

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

BACKGROUND

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

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

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

### RECENT EVENTS

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

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

### LEGAL ARGUMENT

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

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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 5, 2024  
Page 3

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

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

### **CONCLUSION**

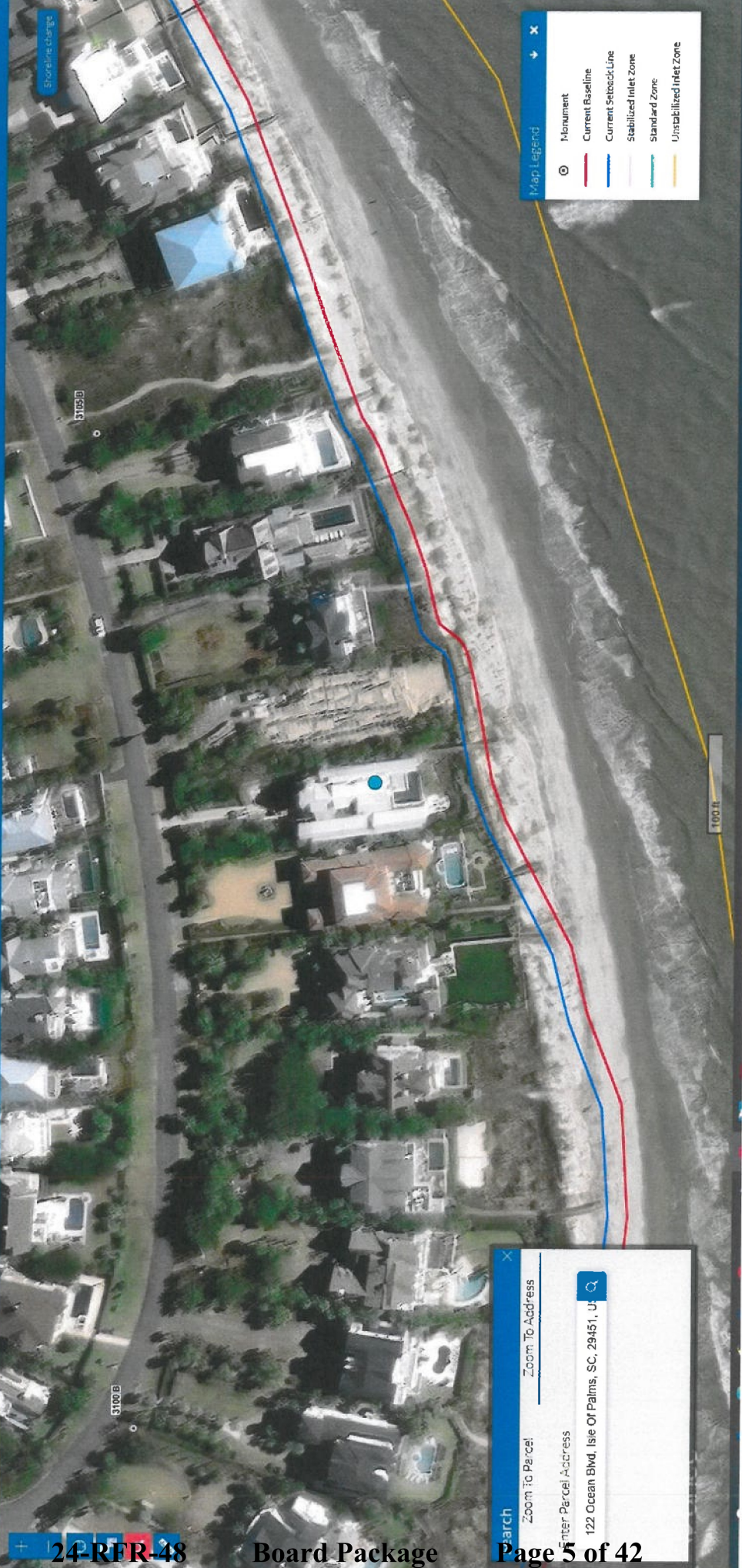
122 Ocean, through the Steins, seeks a determination by the Board of Health and Environmental Control that the Department’s actions must be reviewed and, upon review, these actions reversed as the Department staff disregarded the regulatory definitions in establishing the critical area boundaries and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

Very truly yours,

**s/Mary D. Shahid**

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















**Mary D. Shahid**

---

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

{EXTERNAL EMAIL}

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

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

Chris,

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

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

*Kristen Stein  
Mary & John Gondolfo  
Cindy Solomon*

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

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

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

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

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

Thanks,  
Matt

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

Office: (843) 953-0250

Email: [slagelmj@dhec.sc.gov](mailto:slagelmj@dhec.sc.gov)  
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:** 122 Ocean Boulevard, LLC  
Mary D. Shahid, Maynard Nexsen, Attorney for Requestor

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

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

**OGC No.:** 2024-OCR-0004

**RECEIVED**

**MAR 22 2024**

Clerk, Board of Health  
and Environmental Control

**I. Summary**

**a. Type of Decision.**

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

**b. Location.**

122 Ocean Boulevard, Isle of Palms, SC

**c. Decision.**

On February 27, 2024, the South Carolina Department of Health and Environmental Control’s Office of Ocean and Coastal Resource Management (“Department” or “DHEC OCRM”) flagged the landward limit of Beaches Critical Area at the subject property. Orange flags marked “SC DHEC OCRM” were placed in the ground to adhere to the statutory definition of “Beaches” found in S.C. Code Ann. §48-39-10(H): “ ‘Beaches’ means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.” S.C. Code Ann. §48-39-10(J) further states that “ ‘Critical area’ means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in §48-39-280.” Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit. An Inspection Form was completed (See **Exhibit A**), and site photographs were taken (See **Exhibit B**). A figure was created to show the locations of

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

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

**d. Relevant Chronology.**

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

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

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

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

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

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

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

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

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

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

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

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

## II. Relevant Law

### a. Statutes.

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

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

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

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

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

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

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

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

(b) provides the basis for a tourism industry that generates approximately two-thirds of South Carolina's annual tourism industry revenue which constitutes a significant portion of the state's economy. The tourists who come to the South Carolina coast to enjoy the ocean and dry sand beach contribute significantly to state and local tax revenues;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

**b. Regulations.**

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

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

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

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

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

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

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

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

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

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

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

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

#### **IV. Requested Action**

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

[SIGNATURES ON FOLLOWING PAGE]

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

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

Respectfully Submitted,



---

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

*Sallie P. Phelan*

---

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

Date: March 22, 2024

EXHIBIT A

122 OCEAN BOULEVARD LLC : YQBH-8N9P-M37

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/18/2024



Inspection Details	
1. Property Owner	122 OCEAN BOULEVARD LLC
2. Is this activity associated with a permit?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
3. Permit Number	N/A
4. Purpose of Inspection	Beaches CA Line
5. TMS/PIN	5680900157
6. Site Address	122 OCEAN BLVD, ISLE OF PALMS, SC 29451
7. County	Charleston

8. Provide a description of your findings.

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



GPS Latitude: 32.7755111111111  
GPS Longitude: -79.8072611111111  
GPS Altitude: 4.00402636523606 meters  
Photo Uploaded: 3/18/2024

# 122 OCEAN BOULEVARD LLC : YQBH-8N9P-M37

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/18/2024



## Inspection Details



GPS Latitude: 32.775455555556  
GPS Longitude: -79.807619444444  
GPS Altitude: 3.46340238543628 meters  
Photo Uploaded: 3/18/2024



GPS Latitude: 32.775472222222  
GPS Longitude: -79.807611111111  
GPS Altitude: 3.42914593415582 meters  
Photo Uploaded: 3/18/2024



GPS Latitude: 32.775472222222  
GPS Longitude: -79.807611111111  
GPS Altitude: 3.42914593415582 meters  
Photo Uploaded: 3/18/2024

# 122 OCEAN BOULEVARD LLC : YQBH-8N9P-M37

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/18/2024



## Inspection Details



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



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



GPS Latitude: 32.7755027777778  
GPS Longitude: -79.8074861111111  
GPS Altitude: 4.02782496631715 meters  
Photo Uploaded: 3/18/2024

# 122 OCEAN BOULEVARD LLC : YQBH-8N9P-M37

OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/18/2024



## Inspection Details



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

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

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

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

12. If the property owner was notified, when?

Date	Time
------	------

13. Is a construction placard posted?  Yes  No  NA

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

16. Inspector's Signature

*Matthew J. Slagel*



SCDHEC - MJS

EXHIBIT B



SCDHEC - MJJS





SCDHEC - MJS

SCDHEC - MJS



SCDHEC - MJS





SCDHEC - MJS

SCDHEC - MJS



SCDHEC - MJJS





SCDHEC - MJS



SCDHEC - MJS



SCDHEC - MJS





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

0 25 50 Feet  
[Scale bar showing 0, 25, and 50 feet increments]

## 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 5, 2024

RECEIVED

MAR 05 2024

Clerk, Board of Health  
and Environmental Control

24-RFR-49

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

BACKGROUND

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

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

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

### RECENT EVENTS

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

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

### LEGAL ARGUMENT

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

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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 5, 2024  
Page 3

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

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

### CONCLUSION

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

Very truly yours,

s/Mary D. Shahid

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



# SC Beachfront Jurisdictional Lines

Select a Beach | Data Download | View Line Reports | Help



Map Legend

- Horizont
- Current Baseline
- Current Seaback Line
- Stabilized Inlet Zone
- Standard Zone
- Unstabilized Inlet Zone

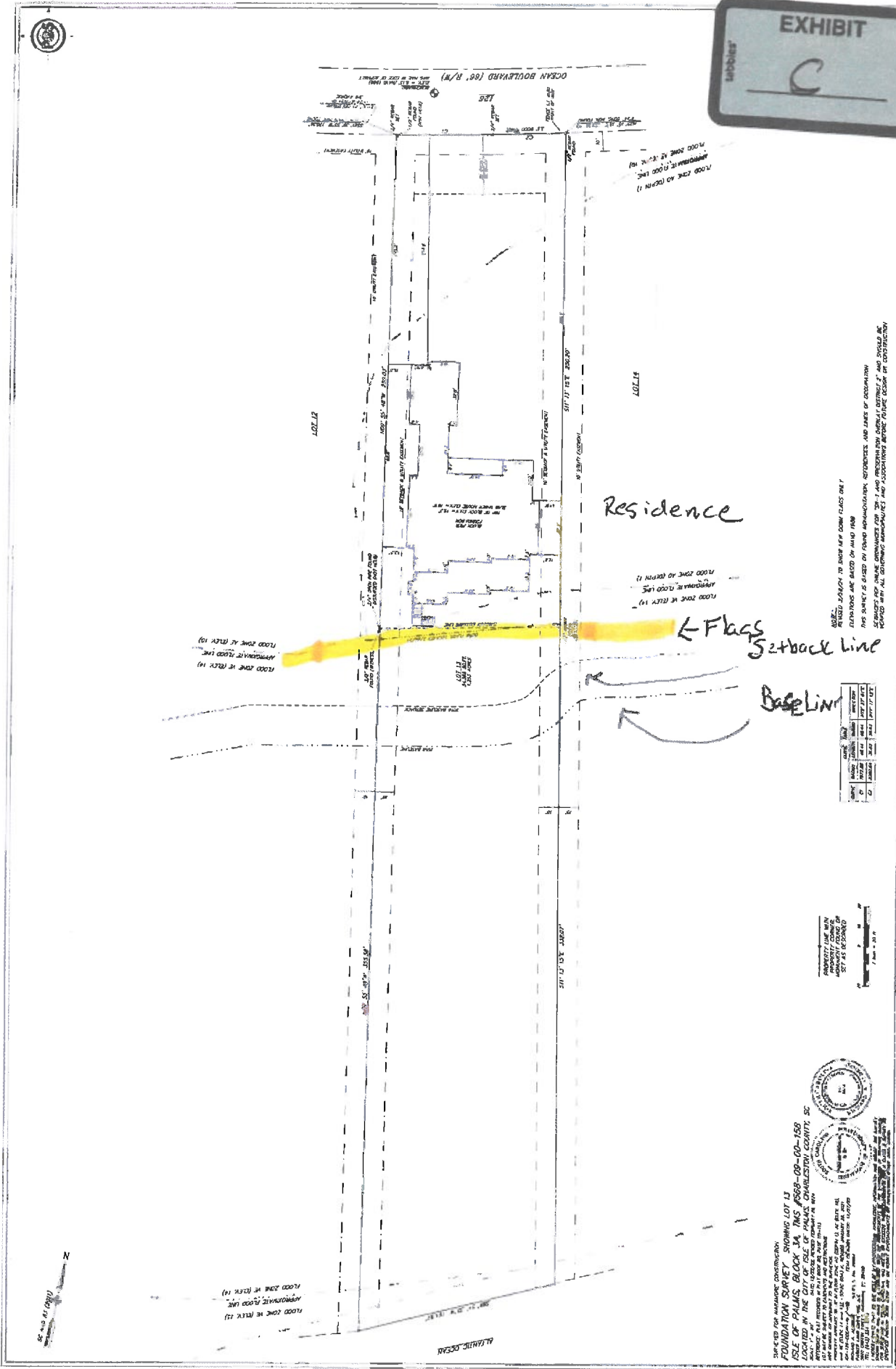
Search

Zoom To Parcel

Zoom To Address

Enter Parcel Address

126 Ocean Blvd, Isle Of Palms, SC, 29451, US





**Mary D. Shahid**

---

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

{EXTERNAL EMAIL}

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

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

Chris,

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

- 112 Ocean Blvd
  - 116 Ocean Blvd
  - 122 Ocean Blvd
  - 126 Ocean Blvd
  - 130 Ocean Blvd
  - 204 Ocean Blvd
  - 206 Ocean Blvd
  - 208 Ocean Blvd
  - 210 Ocean Blvd
  - 310 Ocean Blvd
  - 314 Ocean Blvd
  - 410 Ocean Blvd
- Kristen Stein  
Mary & John Gondolfo  
Cindy Solomon*

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

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

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

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

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

Thanks,  
Matt

--

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

Office: (843) 953-0250

Email: [slagelmj@dhec.sc.gov](mailto:slagelmj@dhec.sc.gov)  
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:** 126 Ocean Boulevard Living Trust  
Mary D. Shahid, Maynard Nexsen, Attorney for Requestor

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

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

**RECEIVED**

**OGC No.:** 2024-OCR-0003

**MAR 22 2024**

Clerk, Board of Health  
and Environmental Control

**I. Summary**

**a. Type of Decision.**

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

**b. Location.**

126 Ocean Boulevard, Isle of Palms, SC

**c. Decision.**

On February 27, 2024, the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management ("Department" or "DHEC OCRM") flagged the landward limit of Beaches Critical Area at the subject property. Orange flags marked "SC DHEC OCRM" were placed in the ground to adhere to the statutory definition of "Beaches" found in S.C. Code Ann. §48-39-10(H): " 'Beaches' means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." S.C. Code Ann. §48-39-10(J) further states that " 'Critical area' means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in §48-39-280." Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit. An Inspection Form was completed (See **Exhibit A**), and site photographs were taken (See **Exhibit B**). A figure was created to show the locations of

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

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

**d. Relevant Chronology.**

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

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

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

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

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

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

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

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

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

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

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

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

## II. Relevant Law

### a. Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

system is inadequate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**b. Regulations.**

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

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

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

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

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

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

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

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



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

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

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

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

#### **IV. Requested Action**

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

[SIGNATURES ON FOLLOWING PAGE]

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

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

Respectfully Submitted,



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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: March 22, 2024

EXHIBIT A

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



OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024

**Inspection Details**

1. Property Owner	126 Ocean Boulevard Living Trust
2. Is this activity associated with a permit?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
3. Permit Number	N/A
4. Purpose of Inspection	Beaches CA Line
5. TMS/PIN	5680900158
6. Site Address	126 OCEAN BLVD, ISLE OF PALMS, SC 29451
7. County	Charleston

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: 32.7754083333333  
GPS Longitude: -79.8073388888889  
GPS Altitude: 3.6393934050432 meters  
Photo Uploaded: 3/22/2024

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



OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024

**Inspection Details**



GPS Latitude: 32.7755666666667  
GPS Longitude: -79.8071  
GPS Altitude: 4.02663429978118 meters  
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7755777777778  
GPS Longitude: -79.8071111111111  
GPS Altitude: 4.35321036656549 meters  
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7755027777778  
GPS Longitude: -79.8073138888889  
GPS Altitude: 4.20450066455841 meters  
Photo Uploaded: 3/22/2024

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



OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024

**Inspection Details**



GPS Latitude: 32.7755138888889  
GPS Longitude: -79.8072833333333  
GPS Altitude: 4.0376007497657 meters  
Photo Uploaded: 3/22/2024



GPS Latitude: 32.7755111111111  
GPS Longitude: -79.8072611111111  
GPS Altitude: 4.00402636523606 meters  
Photo Uploaded: 3/22/2024



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

9. What is the progress of the construction activity?

N/A

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



OCRM Inspection Form

Inspector: Matt Slagel

Start Date: 03/22/2024

**Inspection Details**

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

11. Was the property owner present during this inspection?  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 C**

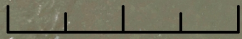


**Beaches Critical Area Survey Points: 02/27/2024**



**Beaches Critical Area Line**

0 25 50 Feet



24-RFR-49

Board Package

Basemap: Ortho Imagery 02/26/2024

Location: 126 Ocean Blvd

## 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 13, 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 13 2024**

Clerk, Board of Health  
and Environmental Control

24-RFR-50

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

Dear Madam Clerk:

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

**BACKGROUND**

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

**RECENT EVENTS**

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

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**

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

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

### LEGAL ARGUMENT

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

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

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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 13, 2024  
Page 3

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

### CONCLUSION

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

Very truly yours,

s/Mary D. Shahid

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



REPORT SHALL BE TO THE BEST OF THE SURVEYOR'S KNOWLEDGE AND BELIEF, THE SURVEY SHALL BE MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE BOARD OF PROFESSIONAL ENGINEERS AND SURVEYORS, AND SHALL BE MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE BOARD OF PROFESSIONAL ENGINEERS AND SURVEYORS, AND SHALL BE MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE BOARD OF PROFESSIONAL ENGINEERS AND SURVEYORS.

1. PROPERTY FROM THE PROPERTY SHOWN HEREON IS A SPECIAL PLANNED AREA AND SHALL BE SUBJECT TO THE CITY AND COUNTY ZONING ORDINANCES.

Station	PC	PVI	PT	Length	Curve Data
1+00	1+00.00	1+00.00	1+00.00	0.00	
1+05	1+05.00	1+05.00	1+05.00	0.00	
1+10	1+10.00	1+10.00	1+10.00	0.00	
1+15	1+15.00	1+15.00	1+15.00	0.00	
1+20	1+20.00	1+20.00	1+20.00	0.00	
1+25	1+25.00	1+25.00	1+25.00	0.00	
1+30	1+30.00	1+30.00	1+30.00	0.00	
1+35	1+35.00	1+35.00	1+35.00	0.00	
1+40	1+40.00	1+40.00	1+40.00	0.00	
1+45	1+45.00	1+45.00	1+45.00	0.00	
1+50	1+50.00	1+50.00	1+50.00	0.00	

2. THE BEACHES SHOWN ARE SHOWN NORTH MAGNETIC.

3. ANYTHING SHOWN OUTSIDE OF THE BOUNDARY IS FOR DESCRIPTIVE PURPOSES ONLY.

4. THIS SURVEY IS BASED ON THE REFERENCES SHOWN AND DOES NOT CONSTITUTE A TITLE SEARCH.

5. THE SURVEY IS BASED ON THE REFERENCES SHOWN AND DOES NOT CONSTITUTE A TITLE SEARCH.

Station	PC	PVI	PT	Length	Curve Data
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1+10	1+10.00	1+10.00	1+10.00	0.00	
1+15	1+15.00	1+15.00	1+15.00	0.00	
1+20	1+20.00	1+20.00	1+20.00	0.00	
1+25	1+25.00	1+25.00	1+25.00	0.00	
1+30	1+30.00	1+30.00	1+30.00	0.00	
1+35	1+35.00	1+35.00	1+35.00	0.00	
1+40	1+40.00	1+40.00	1+40.00	0.00	
1+45	1+45.00	1+45.00	1+45.00	0.00	
1+50	1+50.00	1+50.00	1+50.00	0.00	

1. THE PROPERTY APPEARS IN PLANNED ZONING DISTRICT OF ISLE PALMS AND IS SUBJECT TO THE CITY AND COUNTY ZONING ORDINANCES.
2. THE BEACHES SHOWN ARE SHOWN NORTH MAGNETIC.
3. ANYTHING SHOWN OUTSIDE OF THE BOUNDARY IS FOR DESCRIPTIVE PURPOSES ONLY.
4. THIS SURVEY IS BASED ON THE REFERENCES SHOWN AND DOES NOT CONSTITUTE A TITLE SEARCH.

**SC DUNE-COAST PLAT REQUIREMENTS:**

1. DUNE-COAST CONTROL SURVEY CONDUCTED UNDER:

2. THE BEACHES SHOWN ARE SHOWN NORTH MAGNETIC.

3. ANYTHING SHOWN OUTSIDE OF THE BOUNDARY IS FOR DESCRIPTIVE PURPOSES ONLY.

4. THIS SURVEY IS BASED ON THE REFERENCES SHOWN AND DOES NOT CONSTITUTE A TITLE SEARCH.

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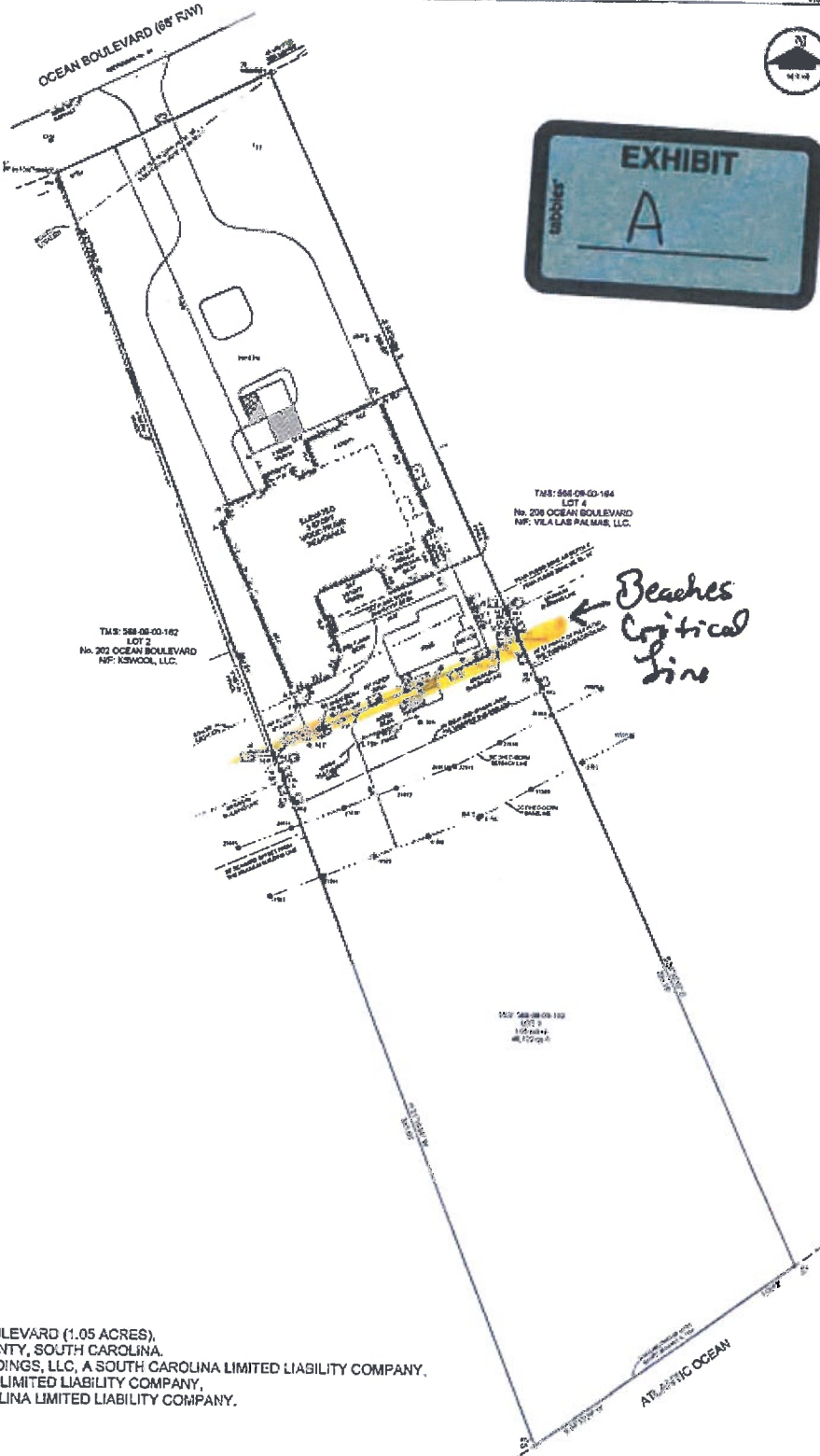
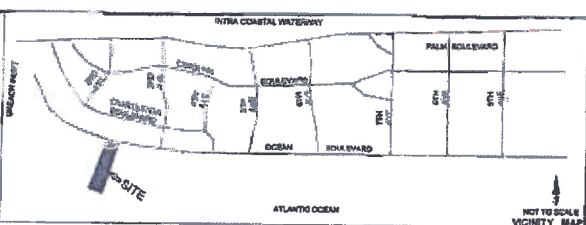
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**PLAT**

OF LOT 3, BLOCK 6A, No. 204 OCEAN BOULEVARD (1.05 ACRES), CITY OF ISLE PALMS, CHARLESTON COUNTY, SOUTH CAROLINA. PRESENTLY OWNED BY 204 OCEAN HOLDINGS, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, 204 OCEAN SK, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, AND 204 OCEAN KK, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY.

SCALE: 1" = 20'

DATE: FEBRUARY 22, 2024  
REV: FEBRUARY 23, 2024 (SC DUNE-COAST BEACHES CRITICAL LINE)

REP: PLAT BK "B", PG. 111  
RPT: SC DUNE-COAST BEACHFRONT LINE REPORT  
DATE: FEBRUARY 22, 2024

TNS: 168-66-642



**Mary D. Shahid**

---

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

{EXTERNAL EMAIL}



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

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

Chris,

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

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

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

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

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

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

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

Thanks,  
Matt

--

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

Office: (843) 953-0250

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



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**From:** Chris Moore <[cmoore@igtinc.com](mailto:cmoore@igtinc.com)>  
**Sent:** Tuesday, February 27, 2024 1:12 PM  
**To:** Slagel, Matt <[slagelmj@dhec.sc.gov](mailto:slagelmj@dhec.sc.gov)>; Craig Pawlyk <[cpawlyk@igtinc.com](mailto:cpawlyk@igtinc.com)>  
**Subject:** RE: Isle of Palms beachfront critical lines / new City ordinance

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Thanks Matt!

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

112 Ocean Blvd  
314 ocean Blvd  
310 ocean Blvd

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

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

Chris

**Christopher W. Moore, PE**

Jon Guerry Taylor & Associates, Inc.  
PO Box 1082  
Mount Pleasant, South Carolina 29465 USA  
Office: 843.884.6415  
Direct: 843.628.5612  
Fax: 843.884.4026  
Cell: 843.367.7989  
[www.jgtinc.com](http://www.jgtinc.com)

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

Chris,

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

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

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

Thanks,  
Matt

--

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

Office: (843) 953-0250

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

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



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

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

Matt,  
Right now, I have the following properties:

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

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

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

Thanks,  
Chris

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

**From:** Slagel, Matt <[slagelmj@dhec.sc.gov](mailto:slagelmj@dhec.sc.gov)>  
**Sent:** Monday, February 26, 2024 4:08 PM

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

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

Thanks,  
Matt

--

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

Office: (843) 953-0250

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



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

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

Have a good weekend.

Craig

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

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

Craig,

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

Thanks,  
Matt

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

Office: (843) 953-0250

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



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

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

Good morning, Matt,

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

Thanks,  
Craig

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

Jon Guerry Taylor & Associates, Inc.  
PO Box 1082  
Mount Pleasant, SC 29465  
843-884-6415 ph. 843-884-4026 fax  
[www.igtinc.com](http://www.igtinc.com)



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

---

Mary,

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

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

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

Ms. Kay,

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

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

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

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

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

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

Thanks,  
Matt

--

Matt Slagel  
Manager, Beachfront Management Section  
**Office of Ocean and Coastal Resource Management**  
**S.C. Dept. of Health & Environmental Control**  
Office: (843) 953-0250  
Email: [slagelmj@dhec.sc.gov](mailto:slagelmj@dhec.sc.gov)  
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:** 204 Ocean Holdings LLC  
Mary D. Shahid, Maynard Nexsen, Attorney for Requestor

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

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

**RECEIVED**

**OGC No.:** 2024-OCR-0006

**MAR 22 2024**

Clerk, Board of Health  
and Environmental Control

**I. Summary**

**a. Type of Decision.**

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

**b. Location.**

204 Ocean Boulevard, Isle of Palms, SC

**c. Decision.**

On February 27, 2024, the South Carolina Department of Health and Environmental Control’s Office of Ocean and Coastal Resource Management (“Department” or “DHEC OCRM”) flagged the landward limit of Beaches Critical Area at the subject property. Orange flags marked “SC DHEC OCRM” were placed in the ground to adhere to the statutory definition of “Beaches” found in S.C. Code Ann. §48-39-10(H): “ ‘Beaches’ means those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established.” S.C. Code Ann. §48-39-10(J) further states that “ ‘Critical area’ means any of the following: (1) coastal waters; (2) tidelands; (3) beaches; (4) beach/dune system which is the area from the mean high-water mark to the setback line as determined in §48-39-280.” Flags were placed along the boundary between beach sand and upland vegetation. The locations of flags were also captured using a survey-grade RTK-GPS unit. An Inspection Form was completed (See **Exhibit A**), and site photographs were taken (See **Exhibit B**). A figure was created to show the locations of

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

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

**d. Relevant Chronology.**

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

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

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

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

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

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

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

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

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

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

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

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

## II. Relevant Law

### a. Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

system is inadequate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**b. Regulations.**

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

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

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

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

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

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

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

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



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

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

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

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

#### **IV. Requested Action**

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

[SIGNATURES ON FOLLOWING PAGE]

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

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

Respectfully Submitted,



---

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

*Sallie P. Phelan*

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

Date: March 22, 2024

# EXHIBIT A

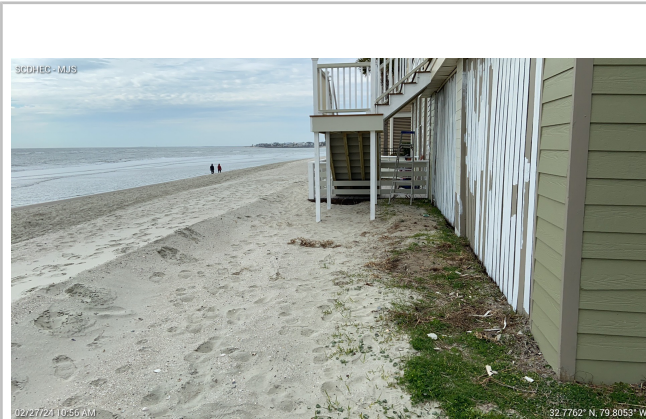
204 Ocean Holdings LLC : C5J5-S0KD-W9W  
OCRM Inspection Form



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

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

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



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

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



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

**Inspection Details**



GPS Latitude: 32.7761861111111  
GPS Longitude: -79.8052611111111  
GPS Altitude: 4.16596170114589 meters  
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GPS Latitude: 32.7761388888889  
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GPS Altitude: 3.95900093125433 meters  
Photo Uploaded: 3/22/2024



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

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



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

**Inspection Details**



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



GPS Latitude: 32.7761694444444  
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Photo Uploaded: 3/22/2024

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



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

**Inspection Details**



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GPS Altitude: 4.14396138313983 meters  
Photo Uploaded: 3/22/2024

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



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

**Inspection Details**



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



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

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



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

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



**Inspection Details**

16. Inspector's Signature

*Matthew J. Slagel*





























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

0 25 50 Feet

24-RFR-50

Board Package

Location: 204 Ocean Blvd

Basemap: Ortho Imagery 02/26/2024

## EXHIBIT D

### EMERGENCY ORDINANCE NO. 2024-01

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

**WHEREAS**, emergency erosion conditions have and continue to occur on beaches facing the Atlantic Ocean between Breach Inlet and 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)