

SUPREME COURT OF SOUTH CAROLINA

South Carolina Coastal Conservation League v. South Carolina
Department of Health and Environmental Control

SC Coastal Conservation League · No. 2019-000074 · Decided June 2, 2021

SUMMARY

The South Carolina Supreme Court reversed the Administrative Law Court's approval of permits for a 2,380-foot steel sheet pile wall on Captain Sam's Spit on Kiawah Island. The Court held that the ALC erred by declining to apply the more rigorous critical-area analysis, relying on protection of Beachwalker Park to justify the entire structure, and treating projected tax revenues and employment as sufficient public benefits. The Court emphasized the public trust doctrine and the protection of coastal resources under South Carolina's Coastal Zone Management Act.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Hearn; Chief Justice Beatty; Justice Few; Justice James; Justice Kittredge
JURISDICTION	South Carolina
DECIDED	June 2, 2021
DOCKET	2019-000074
DISPOSITION	reversed
PROCEDURAL POSTURE	The Coastal Conservation League appealed the Administrative Law Court's decision upholding DHEC's issuance of four permits and a Coastal Zone Consistency Certification for construction of a 2,380-foot steel sheet pile wall. The Supreme Court of South Carolina certified the appeal pursuant to Rule 204(b), SCACR.

STANDARD OF REVIEW	Under S.C. Code Ann. section 1-23-610(B), the Supreme Court reviews the ALC's decision for constitutional or statutory violations, excess of agency authority, unlawful procedure, error of law, clear error in view of reliable, probative, and substantial evidence, or arbitrariness, capriciousness, abuse of discretion, or clearly unwarranted exercise of discretion. The ALC is the finder of fact in contested DHEC certification and permitting proceedings, and substantial evidence exists when the entire record contains evidence from which reasonable minds could reach the ALJ's conclusion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control, KDP, II, LLC, KRA Development, LP

TOPICS

environmental law

judicial review of agency action

administrative law

statutory interpretation

standard of review

PRACTICE AREAS

environmental law

administrative law

coastal permitting

appellate procedure

QUESTIONS PRESENTED

1. Whether the more rigorous review required by S.C. Code Ann. section 48-39-30(D) applied to a structure designed to be built outside the critical area but certain to affect the critical area as erosion continued.
2. Whether the ALC erred by relying on protection of Beachwalker Park to justify the entire 2,380-foot wall.
3. Whether projected tax revenue and employment constituted a sufficient public benefit to justify permanent alteration and elimination of protected coastal resources.

HOLDINGS

1. The ALC erred by declining to apply the more stringent critical-area analysis under S.C. Code Ann. section 48-39-30(D). A structure initially located upland of the critical area requires that analysis when the record establishes that it will ultimately impact the critical area.
2. The ALC erred as a matter of law by relying on protection of Beachwalker Park to justify the entire 2,380-foot wall.
3. Projected tax revenue, job creation, and related economic benefits are insufficient as a matter of law to establish an overriding public interest justifying permanent alteration and elimination of protected

coastal resources.

KEY QUOTATIONS

“the public's interest must be the lodestar”

“We hold evidence of purely economic benefit is insufficient as a matter of law to establish an overriding public interest.”

“the basic premise undergirding our analysis must be the public trust doctrine which provides that those lands below the high water line are owned by the State and held in trust for the benefit of the public.”

FACTUAL BACKGROUND

Captain Sam's Spit is a largely undeveloped coastal area on Kiawah Island bordered by water on three sides. KDP sought permits to construct a 2,380-foot steel sheet pile wall along the Kiawah River shoreline to prevent erosion, stabilize a narrow neck of land, and facilitate construction of a road serving a proposed development of up to fifty homes. Although the wall was designed to be constructed upland of the critical area, the expert testimony uniformly established that continued erosion would eventually expose and subsume the wall into the shoreline, eliminating part of the sandy critical area. DHEC issued the permits and certification, and the ALC upheld them while relying in part on protection of Beachwalker Park and anticipated tax revenue and employment.

PROCEDURAL HISTORY

DHEC issued permits and a certification authorizing construction of the steel wall and related infrastructure. After the DHEC Board declined the League's request for final review, the League sought a contested case hearing before the Administrative Law Court. Following a seven-day hearing, the ALC upheld DHEC's approvals. The Supreme Court reversed, concluding that the ALC erred in its treatment of critical-area review and public benefit.

DISPOSITION

reversed

CASES CITED

- Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 766 S.E.2d 707 (2014)
- Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 422 S.C. 632, 813 S.E.2d 691 (2018)
- Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 698 S.E.2d 612 (2010)
- S.C. Wildlife Fed'n v. S.C. Coastal Council, 296 S.C. 187, 371 S.E.2d 521 (1988)
- Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999)