

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
John D. McLeod, Administrative Law Judge

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Case No.: 08-ALC-07-0221-CC

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Deerfield Plantation Phase IIB Property Owners Association.....Appellant,

v.

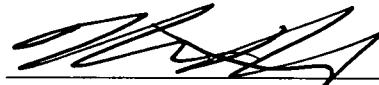
South Carolina Department of Health and Environmental Control,  
Deertrack Golf, Inc., and Bill Clark Homes of Myrtle Beach, LLC.....Respondents.

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**PETITION FOR REHEARING**

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The Respondent South Carolina Department of Health and Environmental Control respectfully requests this Court to reconsider its Order dated August 14, 2013, dismissing this appeal as moot, pursuant to SCAR Rule 221(a) and Rule 240. A memorandum in support of this petition is attached hereto. A Record on Appeal has not been filed in this case.



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**MEMORADUM IN SUPPORT OF  
PETITION FOR REHEARING**

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Pursuant to Rule 221(a) and Rule 240 of the South Carolina Appellate Court Rules, Respondent South Carolina Department of Health and Environmental Control (“DHEC”) respectfully requests this Court to reconsider its Order dated August 14, 2013.

In issuing its August 14, 2013 Order dismissing this action and clarifying its previous Order dated May 17, 2013<sup>1</sup> the Court of Appeals misapprehended the situation. In accordance with this Court’s instruction<sup>2</sup> in its August 14, 2013 DHEC submits this Petition for rehearing.

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<sup>1</sup> This Court’s May 17, 2013 Order provides, “[t]he explanations provided by the parties give us reason for concern that this appeal has become moot. For that reason *and because the parties have failed to follow this court’s directive to “proceed expeditiously on remand,”* this appeal is dismissed.” Order, May 17, 2013, *emphasis added*. DHEC reaffirms its Return to Petition for Rehearing received by this Court on June 13, 2013 that the Remand to DHEC issued by this Court was premised on the jurisdictional determination that was challenged by Deerfield Plantation Phase II B Property Owners Association in the District Court and later appealed by Deerfield Plantation Phase II B Property Owners Association to the United States Court of Appeals for the Fourth Circuit. DHEC was not a party to

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The August 14, 2013 Order provides “we failed to explain that the basis for the finding of mootness is that the May 18, 2012 and March 5, 2013 DHEC letters, and the fact that Respondent Deertrack Golf apparently did not reply to either letter, leave Respondent Deertrack Golf without a permit.”

DHEC’s Return to Appellant’s Petition for Rehearing, which was received by this Court on June 13, 2013, provides an ample history of this matter and in particular espouses DHEC’s lack of adequate knowledge regarding Deerfield Plantation Phase II B Property Owners Association’s appeal of the Final Order of the United States District Court.

As set forth in the June 13, 2013 Return to Appellant’s Petition for Rehearing, the premise of both the DHEC’s Motion to Remand as well as Appellant’s Motion to Remand was for consideration of the new jurisdictional determination made by the United States Army Corps of Engineers (“Corps”), which was challenged by Appellants in the United States District Court. The Appellants in this matter subsequently challenged the District Court Order in the United States Court of Appeals for the Fourth Circuit. Due to Appellant’s challenge of the District Court’s Order there was no judicial finality in regard to the Corps’ jurisdictional determination preventing DHEC from reviewing the new information as it pertains to the permit to determine if any action was needed and from taking any action. DHEC was not a party to the challenge of the jurisdictional determination and sat in limbo awaiting a ruling.

DHEC’s March 5, 2013 letter to Deertrack Golf’s attorney requesting to receive the requisite information was sent by DHEC believing there was finality in December 2012 of the

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this matter and was not provided updates regarding actions in this matter. DHEC was not able to act expeditiously on remand because there was no judicial finality in regard to the jurisdictional determination until March of this year.

<sup>2</sup> “If we have misinterpreted the record, or misapprehended the situation, any party believing so must file a petition for rehearing.” Court of Appeals Order, pp. 1-2, August 14, 2013.

action in the United States Court of Appeals for the Fourth Circuit.<sup>3</sup> DHEC did not learn about this Petition for Rehearing until after the issuance of the March 5, 2013 letter and only learned of this Petition from Deertrack Golf's attorney.

Regardless of DHEC's lack of knowledge regarding the Petition for Rehearing submitted by the Appellants to the United States Court of Appeals for the Fourth Circuit, Deertrack Golf submitted information via email regarding possibilities in moving forward and attempted to answer some of the questions raised by DHEC within ten (10) days of receiving this letter from DHEC. Deertrack Golf's attorney also explained Deerfield Plantation Phase II B Property Owners Association's filed a Petition for Rehearing of the Opinion issued by the United States Court of Appeals for the Fourth Circuit via telephone within ten (10) days of receiving DHEC's March 5, 2013 letter. DHEC never began the permit revocation procedure in regard to this permit because DHEC considered the request complied with. Accordingly, DHEC does not consider the application withdrawn.

WHEREFORE, the Respondent, South Carolina Department of Health and Environmental Control respectfully requests that the Court of Appeals reconsider its Order dated August 14, 2013 dismissing this matter as moot.

Respectfully submitted,



Nathan M. Haber (SC Bar No. 100480)  
Bradley D. Churdar (SC Bar No. 12829)  
Office of General Counsel

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<sup>3</sup> DHEC subsequently learned, through an update provided by Deertrack Golf's attorney, the Appeal was not final until a Mandate was issued by the Court on March 5, 2013 due to Appellant Deerfield Plantation Phase II B Property Owners Association's Petition for Rehearing of the December 2012 Opinion issued by the United States Court of Appeals for the Fourth Circuit.

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CERTIFICATE OF SERVICE

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I, Nathan M. Haber, Attorney for the South Carolina Department of Health and Environmental Control, hereby certify that I have on this **22nd day of June, 2013**, served a copy of *Respondent South Carolina Department of Health and Environmental Control's Petition for Rehearing* upon all parties and counsel of record in the above-captioned case, via United States Mail, First Class, postage prepaid, addressed as follows:

Mary D. Shahid, Esquire  
Nexsen Pruet  
P.O. Box 486  
Charleston, SC 29402

Amy E. Armstrong, Esquire  
South Carolina Environmental Law Project  
P.O. Box 1380  
Pawley's Island, SC 29585



Nathan M. Haber

August 22, 2013  
Columbia, South Carolina

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