

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the South Carolina Administrative Law Court
Honorable John D. McLeod, Administrative Law Judge
Docket No. 2008-ALJ-07-00221

Deerfield Plantation Phase II B
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.

**RESPONDENT DEERTRACK GOLF, INC.'S
REPLY TO APPELLANT'S RETURN
TO PETITION FOR REHEARING**

This Court's Order of August 14, 2013, is based on the Court's erroneous conclusion that "DHEC has effectively revoked [Deertrack's] permit." DHEC has confirmed in its Petition for Rehearing that the permit has not been revoked. Regardless of Appellant's disagreement with DHEC's conclusions, as expressed in Appellant's Return, Deertrack Golf, Inc., ("Deertrack") is in possession of an NPDES authorization to discharge

storm water from construction activities arising from proposed redevelopment of the Old South Golf Course. This permit was affirmed by the S. C. Administrative Law Court ("ALC"). This permit underlies this appeal and this appeal has not been mooted by any action taken by DHEC.

DHEC's authority to regulate storm water discharges and issue this storm water permit derives from the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et. seq. Federal regulations have been adopted governing revocation and DHEC has adopted and promulgated the federal regulatory program. 40 CFR Sec. 122 and 40 CFR Sec. 124 are identical to S. C. Code Reg. 61-9.122 and R. 61-9.124, setting forth the grounds and procedures relative to revocation of NPDES permits. These procedures have not been invoked by DHEC.

Respondent Deertrack would remind this Court that the only thing that has changed, since the ALC affirmed the issuance of this storm water permit giving rise to this appeal, is that 1/3rd of an acre, located in the lower reaches of a drainage ditch, has been designated as a water of the United States. This is 1/3rd of an acre on a \pm 90 acre construction site and represents significantly less than 1% of the construction site. Deertrack's plans showed construction impacts in this section of the drainage ditch and, under the storm water authorization provided by DHEC, Deertrack must now obtain a permit from the Army Corps of Engineers authorizing these impacts or, alternatively, just eliminate any construction in these areas. Deertrack is prepared to do one or the other of these options.

But this has little to do with the real issues that were litigated before the ALC and that need to be finally resolved by this Court. This is simply a side-show, created by

Appellant¹ who sought to have the Corps of Engineers assert jurisdiction over every water feature on the construction site and who was greatly disappointed by the Corps' limited assertion of jurisdiction. While Appellant was successful in using this side show to further delay resolution of the matters raised in this appeal, such delay has been resolved with the favorable opinion of the Fourth Circuit Court of Appeals which was final in March of 2013.

Deertrack requests that the Court of Appeals grant its Petition for Rehearing as it is undisputed that DHEC has taken no action to revoke or terminate NPDES permit coverage and this appeal is ripe for briefing, argument, review, and resolution by this Court.

Respectfully submitted:

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Charleston, South Carolina

16 September 2013

¹ Appellant sent a notification letter to the Corps of Engineers threatening legal action against the Corps based on the Corps' initial findings that there were no waters of the United States on the golf course. This caused the Corps to revoke its initial determination and perform another jurisdictional determination, resulting in the conclusion that the site included 1/3rd of an acre of area subject to the jurisdiction of the Clean Water Act.

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**PROOF OF SERVICE
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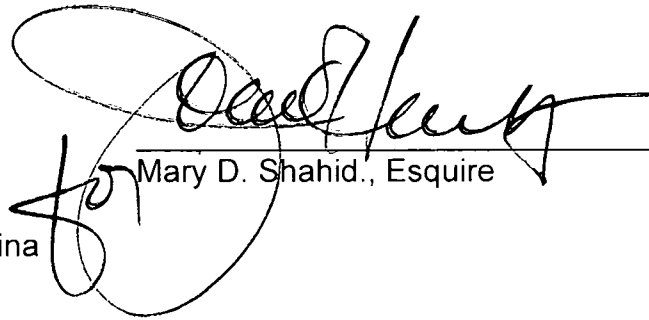
I, Mary D. Shahid., Esquire, hereby certify that on 16 September 2013, I served a copy of the **Reply to Appellant's Return to Petition for Rehearing** submitted by the Respondent, Deertrack Golf, Inc., on all counsel of record, via the United States Postal Service, postage pre-paid, and addressed as follows:

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