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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden  
Administrative Law Judge

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Appellate Case No.: 2025-000379

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South Carolina Coastal Conservation League.....Appellant,

v.

South Carolina Department of Environmental Services and  
Pulte Homes, LLC.....Respondents.

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**RESPONDENT SCDES’S RETURN TO APPELLANT’S  
MOTION TO STRIKE EXTRA RECORD EVIDENCE AND  
MOTION TO TAKE JUDICIAL NOTICE OF CASE NO. 2022-CP-10-05192**

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The South Carolina Department of Environmental Services (“Department”) submits: (1) *Respondent SCDES’s Return to Appellant’s Motion to Strike Extra Record Evidence*; and (2) *Respondent SCDES’s Motion to Take Judicial Notice of Case No. 2022-CP-10-05192*.

In Appellant’s *Motion to Strike Extra Record Evidence* (“Motion to Strike”), Appellant states that the Court should strike any description of the online ePermitting procedures described by the Department relating to their processing of septic tank applications in the *Initial Brief of Respondent South Carolina Department of Environmental Services* (“SCDES’s Initial Brief”). Additionally, Appellant requests this Court to strike the Department’s argument relating to mootness in SCDES’s Initial Brief. For the reasons discussed below, the Department respectfully

submits that these materials were appropriate for inclusion in SCDES's Initial Brief, and Appellant's Motion to Strike should be denied.

**I. SCDES's Mootness Argument, Based on Intervening Events Occurring During the Appellate Stage of Proceedings, Is Properly Addressed in SCDES's Initial Brief.**

The Court of Appeals should not strike the mootness argument from SCDES's initial brief. In Appellant's Motion to Strike, Appellant requests this Court to strike from SCDES's Initial Brief the Department's entire argument relating to mootness of the public notice issue because it contains statements not based on the Record on Appeal. Such request is without merit. "The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing." Holden v. Cribb, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002). A justiciable controversy must be present for any action to be maintained. Byrd v. Irmo High School, 321 S.C. 426, 468 S.E.2d 861, 864 (1996). Accordingly, this Court has held that "cases or issues which have become moot or academic in nature are not a proper subject for review." Sloan v. Greenville Cty., 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003).

As determined by the South Carolina Supreme Court, "[a] moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). The South Carolina Supreme Court and Court of Appeals have routinely applied this principle by finding issues moot based on intervening events that occurred during the appellate stage of proceedings after judgment was entered by the initial court. See, e.g., S.C. Ret. Sys. Inv. Comm'n v. Loftis, 402 S.C. 382, 385, 741 S.E.2d 757, 759 (2013) (after the intervening event of Respondent performing

the precise act sought in Appellant’s petition for a writ of mandamus, it was impossible for the South Carolina Supreme Court to issue a writ of mandamus compelling Respondent to perform the act in question, rendering the issue moot); Seabrook v. Knox, 369 S.C. 191, 631 S.E.2d 907 (2006) (property owner’s procedural due process claim against city was rendered moot because property owner had already received the appropriate procedural relief when the property had been rezoned and the plat was subsequently approved); City of Charleston v. Masi, 362 S.C. 505, 609 S.E.2d 301 (2005) (town residents’ entitlement to vote in the district elections is moot given that the Town is a nullity); Mathis v. S.C. State Highway Dep’t, 260 S.C. 344, 195 S.E.2d 713 (1973) (issues on appeal were rendered moot by the intervening event of Respondent being returned his license); J & W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC, 441 S.C. 642, 896 S.E.2d 328 (Ct. App. 2023) (issue on appeal is moot because the action the court would have provided as relief was already taken); McDill v. Nationwide Mut. Ins. Co., 368 S.C. 29, 30, 627 S.E.2d 749, 749 (Ct. App. 2006) (the issue of whether policies should be reformed was mooted by the intervening event of an entry of judgment in separate tort action).

The above rulings confirm an issue may become moot at the appellate stage of proceedings based on intervening events not documented within the record on appeal because the events had not yet occurred. In this instance, it is argued by the Department that intervening events following the Administrative Law Court’s (“ALC”) December 18, 2024, issuance of its *Order Granting Respondents’ Motion for Summary Judgment*—namely, the circuit court’s July 14, 2025, decision in Case No. 2022-CP-10-05192 and subsequent development of the Department’s ePermitting features discussed in SCDES’s Initial Brief—have mooted this case, such that a decision by this Court would no longer carry any practical legal effect. This argument, which could not possibly have been raised below, plainly goes to the question of ongoing justiciability in this case and is

thus subject to consideration by this Court. Byrd, 321 S.C. at 426, 468 S.E.2d at 864. Any issue may become moot after the time that the issue on appeal has accrued. Sloan v. Friends of Hunley, Inc., 369 S.C. at 26, 630 S.E.2d at 477. It is not unforeseeable that an intervening event would be absent from the record on appeal but capable of confirmation.

Respondents need not defer to Appellant's framing of the arguments and the issues before this Court. Rule 208(b)(2), SCACR. Rather, consistent with governing rules and mootness jurisprudence, the Department may raise the mootness issue. If this Court were to accept Appellant's position on mootness—that mootness arguments based on intervening events could not be raised on appeal after initial court proceedings because they contain information not appearing in the record—it would void the concept of mootness. The Department's argument for mootness need not be supported by the Record on Appeal. Therefore, the Department respectfully asks this court not to strike its mootness argument because intervening events, specifically the development of ePermitting's features to help the public obtain timely and accessible information relating to septic tank applications and permits, occurred after the ALC's judgment. The issue of mootness should be addressed in this appeal.

## **II. Statements in SCDES's Initial Brief Relating to ePermitting and Application and Permit Data Are Properly Included and Subject to Judicial Notice.**

The Court of Appeals Should Not Strike Any Statements Relating to ePermitting, as well as the Application and Permit Data, from SCDES's Initial Brief, and The Court Has the Authority to Take Such Statements/Information Under Judicial Notice. Appellant cites Rule 210(c), SCACR, and Rule 201, SCRE as the basis for excluding the statements relating to ePermitting and the argument for mootness in SCDES's Initial Brief. Appellant's application of these rules is too

narrow and excludes relevant matter of which the Court can take judicial notice without prejudice to Appellant. Rule 210(c), SCACR, as applied in cases cited by Appellant, merely states the general rule that the record on appeal is limited to materials that were presented to the lower tribunal. It does not affect this Court's ability to consider non-record facts when those facts meet judicial notice requirements and are argued to have mooted a case after the ALC's initial judgment.

In this case, the information contained within SCDES's mootness argument, which Appellant seeks to strike, was not available for inclusion in the Record on Appeal, as the intervening events mooting the case had not yet occurred at the time of the lower court's judgment. Nonetheless, Rule 201(f), SCRE, permits that "[j]udicial notice may be taken at any stage of the proceeding." (Emphasis added). Judicial notice is appropriate for facts whose "accuracy is capable of verification by reference to readily available sources of indisputable reliability." Rule 201(b)(2), SCRE. See State v. Squires, 311 S.C. 11, 426 S.E.2d 738 (1992) (judicial notice taken when infrared spectroscopy process had gained general acceptance in the scientific community); McCoy v. Town of York, 193 S.C. 390, 8 S.E.2d 905 (1940) (Supreme Court took judicial notice of dangerous qualities of gasoline and kerosene); Wise v. Wise, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (affirmed that "an appellate court can take judicial notice of something that was not before the trial court if it is indisputable").

The portions of the SCDES's Initial Brief that Appellant has challenged do nothing more than identify and summarize tools on the Department's public website and can be verified by any independent user using those publicly available features.<sup>1</sup> Though this information was not available for inclusion in the record on appeal, it is nonetheless appropriate for judicial notice by

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<sup>1</sup> See <https://des.sc.gov/permits-regulations/permit-central/epermitting> ; <https://epermitting.des.sc.gov/ext/ncore/external/subscriptions/signup> ; and <https://epermitting.des.sc.gov/ext/nsite/default/map/help>

this Court, given its bearing on Appellant's claim having become moot by the implementation of ePermitting's online features *after* the ALC's judgment. Furthermore, the summarized information is indisputably authentic and is a matter of public record. Rule 201(d), SCRE permits that "[a] court shall take judicial notice if requested by a party and supplied with the necessary information."

Appellant may vigorously disagree regarding the sufficiency of these publicly available website tools and whether they have mooted the case, but that does not alter this Court's authority to take judicial notice of the facts cited and to render its own determination as to whether those facts and circumstances have mooted the case. Therefore, the "extra record material" of statements relating to ePermitting and septic tank application and permit information within SCDES's Initial Brief should not be stricken. It is information of public record that arose and became available after the ALC's decision, and this Court has the authority to judicially notice the existence of these features.

**III. The Court of Appeals Should Take Judicial Notice of South Carolina Coastal Conservation League, et al. v. South Carolina Department of Health and Environmental Control, Case No. 2022-CP-10-05192**

In addition, the Department would also respectfully request this Court to take judicial notice of the documents and facts associated with South Carolina Coastal Conservation League, et al. v. South Carolina Department of Health and Environmental Control, Case No. 2022-CP-10-05192, which all three parties have cited in their briefs in the instant appeal. (Initial Brief of Appellant, p. 5, 24; Initial Brief of Respondent SCDES, p. 22; Initial Brief of Respondent Pulte Homes, LLC, p. 17 - 18). On July 14, 2025, a final order in the Charleston County Court of Common Pleas—concerning two identical issues between identical parties to this matter before this Court—required the Department to publicly notice applications for individual septic tank

systems less than 1,500 gallons per day (“gpd”). The circuit court found persuasive two sworn affidavits from the Department. The filed affidavits stated it was feasible for the Department to electronically post such septic application information. The affidavits provided the exact same data on septic tank applications and permits as is contained within SCDES’s Initial Brief. Appellant did not dispute the content of the filed affidavits and has not appealed that issue.

The information contained in the Department’s affidavits was foundational to the circuit court’s decision on July 14, 2025, and has become the law of the case. See generally *Judy v. Martin*, 381 S.C. 455, 674 S.E.2d 151 (2009). In this Court, Appellant is seeking to strike the very same information from this appeal, effectively denying its existence. Particularly and curiously, Appellant states in their Initial Brief for the appeal of Case No. 2022-CP-10-05192 (Appellate Case No. 2025-001315) that they intend to consolidate that case with the case sub judice, despite Case No. 2022-CP-10-05192 containing the very same facts Appellant argues in their Motion to Strike are not part of the record and should be stricken from SCDES’s Initial Brief.<sup>2</sup> Initial Brief of Appellant of Appellate Case No. 2025-001315, p. 3 - 4.

Appellant requested this Court to not take judicial notice of facts spawning from the substantively similar Case No. 2022-CP-10-05192. The denial of such judicial notice would essentially ignore a crucial and foundational context that is missing from this matter involving the development of the Department’s ePermitting features to help the public receive timely and accessible information of septic applications and permits. To remedy this missing context, the Department has submitted to this Court the Department’s concurrent *Motion to Consolidate* on January 16, 2026, to consolidate this appeal and Appellate Case No. 2025-001315. A consolidation

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<sup>2</sup> The issue appealed to this Court in Appellate Case No. 2025-001315 concerns the Department declining to apply a coastal consistency review of applications for individual septic tank systems less than 1,500 gpd in the coastal zone of South Carolina. Initial Brief of Appellant of Appellate Case No. 2025-001315, p. 1.

of two matters involving similar questions of law and facts “will promote judicial economy and reduce the risk of inconsistent rulings.” Fulmer v. Cain, 380 S.C. 466, 471, 670 S.E.2d 652, 655 (2008). In addition to the reasons cited by the Department for consolidation of this matter with Appellate Case No. 2025-001315 in its *Motion to Consolidate*, the record for Appellate Case No. 2025-001315, which contains the Department’s filed sworn affidavits with the circuit court, would render Appellant’s argument for striking such information from SCDES’s Initial Brief moot.

### **Conclusion**

For the foregoing reasons, the Department asks the Court to deny Appellant’s Motion to Strike, take judicial notice of the ePermitting statements, and direct the Court’s attention to the Department’s *Motion to Consolidate* filed concurrently on January 16, 2026. The Department further moves that the Court take judicial notice of the documents and facts associated with Case No. 2022-CP-10-05192.

[Signature Page to Follow]

Respectfully submitted,

s/ Joseph A. Giordano

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January 16, 2026

Columbia, South Carolina

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STATE OF SOUTH CAROLINA  
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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Deborah Brooks Durden, Administrative Law Judge

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Appellate Case No. 2025-000379

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South Carolina Coastal Conservation League,

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vs.

South Carolina Department of Environmental  
Services and Pulte Homes, LLC,

Respondents.

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**PROOF OF SERVICE**

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I hereby certify that on this date, January 16, 2026, I have served the Respondent South Carolina Department of Environmental Services' *Return to Appellant's Motion to Strike Extra Record Evidence and Motion to Take Judicial Notice of Case No. 2022-CP-10-05192* by emailing a copy of same to the email addresses designated in the Court's Attorney Information System for counsel of record as designated below:

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January 16, 2026  
Columbia, South Carolina



SC DEPARTMENT of  
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January 16, 2026

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Bo 11629  
Columbia, South Carolina 29211

**RECEIVED**  
**Jan 16 2026**  
**SC Court of Appeals**

Re: Coastal Conservation League vs. South Carolina Department of Environmental Services & Pulte Homes, LLC  
Appellate Case No. 2025-000379

Dear Ms. Kitchings:

Please find enclosed the South Carolina Department of Environmental Services' *Return to Appellant's Motion to Strike Extra Record Evidence and Motion to Take Judicial Notice of Case No. 2022-CP-10-05192* for filing in connection with the above referenced matter.

Thank you for your assistance with this matter. Please contact our office should you have questions or need additional information.

Sincerely,

s/ Joseph A. Giordano  
Joseph A. Giordano  
Assistant General Counsel

Enclosures

cc: Leslie S. Lenhardt, Esquire  
Ellis R. Lesemann, Esquire  
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