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May 18 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

Willie D. Franks, Chairman

Appellate Case No. 2026-000914

Case No. 2025-5

In Re: Haren Construction, Co., Inc.

Project No. P24-6052-PG
Beaufort-Waddell Mariculture
Maturation Ponds Maintenance – Re-Bid

Paragon Inc. of South Carolina, LLC, Chief Procurement Officer, State Fiscal Accountability Authority, and South Carolina Department of Natural Resources,

of which Paragon Inc. of South Carolina, LLC and Chief Procurement Officer, State Fiscal Accountability Authority are the Appellants/Respondents, South Carolina Department of Natural Resources is the Respondent/Appellant, and Haren Construction Co., Inc. is the Respondent.

**PARAGON INC. OF SOUTH CAROLINA, LLC d/b/a PARAGON BUILDERS’
RESPONSE TO HAREN CONSTRUCTION CO., INC.’S AND THE SOUTH CAROLINA
DEPARTMENT OF NATURAL RESOURCES’ MOTION TO STRIKE**

I. INTRODUCTION

Respondents Haren Construction Co., Inc. (“Haren”) and South Carolina Department of Natural Resources (SCDNR) have moved to strike Exhibit 2 to Paragon’s Reply in Support of Motion to Stay and Request for Expedited Briefing Schedule (the “Reply”). Respondents’ Motion to Strike should be denied. Exhibit 2 is not newly created evidence introduced to supplement the administrative record—it is an annotated copy of a document already in the record, offered to assist

the Court in applying the governing statute to the line items the agency itself identified. It is argument, not evidence, and Rule 210(c) does not prohibit counsel from analyzing record documents in the course of making legal arguments on appeal.

II. ARGUMENT

A. Exhibit 2 Is an Annotation of a Document Already in the Administrative Record—It Is Not New Evidence.

The document underlying Exhibit 2—the Waddell Mariculture Center 100% Design Cost Estimate, Rev. 2 (the “Design Cost Estimate”)—is part of the administrative record. It appears in the record at PRP000074 and was specifically referenced by the Procurement Review Panel in its March 13, 2026, Order. Paragon did not obtain, create, or fabricate this document after the Panel’s decision. What Paragon did was annotate a copy of that same record document—adding handwritten labels identifying which cost categories correspond to WL subclassification work, and calculating the resulting percentages. The underlying data, the line items, the costs, and the category designations all come directly from DNR’s own cost estimate already in the record.

The annotations themselves are not “new material” within the meaning of Rule 210(c), SCACR. They are counsel’s visual aid for the legal argument that the administrative record, properly read and applied to the text of S.C. Code Section 40-11-410, does not support DNR’s license subclassification determination. Advocates regularly markup, highlight, chart, and annotate record documents in appellate briefs to illustrate their arguments. None of that constitutes introducing evidence outside the record.

B. Exhibit 2 Illustrates a Legal Argument, Not an Independent Engineering Opinion.

Haren and SCDNR characterizes Exhibit 2 as an independent “engineering analysis” and an after-the-fact “line-item cost analysis” of the kind the Panel found missing from the

administrative record. That characterization misstates both what Exhibit 2 is and what the Panel's finding means.

The Panel found that Paragon did not submit “independent engineering analysis contradicting the agency’s estimate” and that the record contained no “competing engineering estimate.” *In re: Haren Construction Co., Inc.*, Panel Case No. 2025-5, 2026 WL 1091940, at *2, *9 (S.C. Procure. Rev. Panel Mar. 13, 2026). Exhibit 2 does not contradict DNR’s cost estimate. Paragon does not dispute the dollar amounts in the Design Cost Estimate, the line items it identifies, or the quantities DNR’s engineer assigned to each category. Paragon’s argument is a legal one: that the items DNR designated as requiring a WL subclassification—pipes, valves, fittings, and connectors—are squarely within the plain language of the PB (Plumbing) subclassification under § 40-11-410(5)(f). That is a question of statutory construction, not a competing engineering opinion.

The annotation of Exhibit 2 illustrates this legal point by organizing the record data in a way that allows the Court to see the argument clearly. Specifically, the Design Cost Estimate shows that the line items DNR assigned to WL subclassification break down as follows:

The cost estimate is broken down by category and line item, showing that \$3,0871,009 of the work required some form of license. In three categories, DNR determined that a WL license subclassification is required: “Head Tower Rehab,” “Yard Piping” for the site, and “Piping and valves” for the four medium ponds. (PRP000074).

Admittedly, the “Head Tower Rehab” arguably has some line items falling outside the scope of a PB license, but this represented only \$405,000, or 13.1% of estimate. As to the project site’s “Yard Piping,” it contains the following line items, representing \$797,904 or 25.9% of the estimate:

Yard Piping					
10" DR17 HDPE	6,000	LF	\$	108	\$ 648,000
8" DR17 HDPE	258	LF	\$	90	\$ 23,040
6" DR17 HDPE	512	LF	\$	72	\$ 36,864
10" Butterfly Valve	12	EA	\$	7,500	\$ 90,000
					\$ 797,904 WL

The category "Piping and Valves" for the four medium ponds shows the following line items, representing \$1,260,260 or 40.9% of the work.

Piping and Valves					
8" PVC Pipe	125	LF	\$	80	\$ 10,000
4" PVC Pipe	50	LF	\$	40	\$ 2,000
6" HDPE 45 Elbow	2	EA	\$	200	\$ 400
6" Tee	2	EA	\$	800	\$ 1,600
8" 90 elbow	2	EA	\$	550	\$ 1,100
6" 45 elbow	2	EA	\$	550	\$ 1,100
8" butterfly valve	3	EA	\$	5,000	\$ 15,000
8" Pinch Valve	1	EA	\$	5,000	\$ 5,000
8" to 4" reducer	1	EA	\$	500	\$ 500
4" 90 elbow	6	EA	\$	100	\$ 600
4" Tee	1	EA	\$	140	\$ 140
4" Pinch Valve	2	EA	\$	1,500	\$ 3,000
10" Dia Knife Gate	2	EA	\$	15,000	\$ 30,000
Subtotal					\$ 1,260,260 WL

Together, the site's "Yard Piping" and the four ponds' "Piping and Values" represents 66.8% of the work. Each line item consists of pipes (HDPE or PVC) or pipe connectors and attachments (butterfly valves, toes, elbows, reducers, tees, pinch values, and knife gates). The pipes and attachments are all "piping, fixtures, and appliances related to water supply," and fit squarely within the scope of § 40-11-410(5)(f)'s second category, as shown above.

DNR already determined that 17% of the work required an "Electrical" (EL) subclassification, which Paragon possesses. When you combine this with the 66.8% of the estimate suitable for a PB subclassification, Paragon's license classifications and subclassifications cover 83.3% of the work. Given that a contractor holding a Mechanical Contractor's license can act as a sole prime contractor if at least 51% of the project falls within its license subclassifications, S.C. Code Ann. § 40-11-340, Paragon was always qualified to act as sole prime contractor on the project.

The argument is not new. Paragon has maintained throughout these proceedings that the Yard Piping and Piping and Valves work falls within the scope of its PB license. What Exhibit 2 adds is a visual presentation of that argument drawn directly from the record document DNR and the Panel relied upon. Applying a statute to record facts is the core function of appellate argument, and illustrating that application through annotated record documents is entirely proper.

C. Rule 210(c), SCACR Does Not Prohibit Counsel From Analyzing Record Documents in Appellate Submissions.

Rule 210(c), SCACR, provides that matter not presented to the lower tribunal must not be included in the Record on Appeal. By its terms, the rule governs the content of the Record on Appeal—not the content of briefs, motions, or argument papers filed by counsel. Haren does not contend that the Design Cost Estimate itself is outside the record. It is in the record. The Rule 210(c) concern would arise if Paragon attempted to add a new document to the record designation, not when it uses an annotated copy of a record document to illustrate an argument in an appellate motion.

Respondents' cited authority confirms this distinction. S.C. Code Ann. § 1-23-380(4) states that appellate review “must be confined to the record.” Paragon’s argument is confined to the record—the Design Cost Estimate that DNR produced, that the Panel relied upon, and that is formally part of the administrative record. Paragon does not ask this Court to consider any document outside the record; it asks the Court to apply Section 40-11-410 to the line items that appear in the record document.

D. If the Court Has Any Concern About Exhibit 2, the Appropriate Remedy Is Disregard, Not Striking the Reply.

Even if this Court were to agree with Respondents that the handwritten annotations go beyond the proper scope of argument, the appropriate remedy is to disregard those annotations, not to strike Paragon's Reply in its entirety. The Reply's substantive arguments regarding the stay factors, irreparable harm, likelihood of success, and the circumstances of contract execution stand independently of the footnote and Exhibit 2. Striking the Reply would be a disproportionate remedy for what Haren frames as a problem confined to a single footnote and its supporting exhibit.

III. CONCLUSION

For the foregoing reasons, Paragon respectfully requests that this Court deny Haren and SCDNR's Motion to Strike. Exhibit 2 is an annotated copy of a document already in the administrative record, offered to illustrate the legal argument that the line items DNR assigned to the WL subclassification fall within the plain language of Paragon's PB license under § 40-11-410(5)(f). It is not new evidence, not a competing engineering analysis, and not a supplement to the administrative record. Rule 210(c), SCACR does not prohibit this form of appellate argument, and Haren's motion should be denied.

Respectfully submitted,

s/ James M. Griffin
James M. Griffin (State Bar ID No. 9995)
GRIFFIN HUMPHRIES LLC
Post Office Box 999
Columbia, South Carolina 29202
(803) 744-0800
jgriffin@griffinhumphries.com

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PROOF OF SERVICE

I, Jaime Harmon, legal assistant at Griffin Humphries LLC, attorneys for the Appellant, located at 8906 Two Notch Road, Suite 200, Columbia, South Carolina 29223, hereby certify that on May 15, 2026, I have served all counsel in this action a copy of the **Paragon Inc. of South Carolina, LLC d/b/a Paragon Builders' Response to Haren Construction Co., Inc.'s and The South Carolina Department of Natural Resources' Motion to Strike** by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

Served:


Stephen O'Keefe
Edgar Brown Building
1205 Pendleton Street, Suite 366
Columbia, SC 29201
Stephen.Keefe@prp.sc.gov

General Counsel, South Carolina Procurement Review Panel

Greg Placone
Nick Nybo
Hudson Lambert Parrott, LLC
176 Croghan Spur
Charleston, SC 29407
gplacone@hlpwlaw.com
nicknybo@hlpwlaw.com
Attorneys for Haren Construction Co., Inc.

Manton M. Grier, Jr.
Office of General Counsel
State Fiscal Accountability Authority
1333 Main Street, Suite 600
Columbia, SC 29201
mgrier@ogc.sc.gov
Attorney for the Chief Procurement Officer

Van Whitehead
Susan O. Porter
S.C. Department of Natural Resources
260 D. Epting Lane
West Columbia, SC 29172
whiteheadv@dnr.sc.gov
porters@dnr.sc.gov
Attorneys for S.C. Department of Natural Resources


Jaime Harmon

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