

8156 Liberty



HENRY McMASTER  
ATTORNEY GENERAL

April 18, 2006

The Honorable Dwight A. Loftis  
Member, House of Representatives  
530A Blatt Bldg  
Columbia, South Carolina 29211

Dear Representative Loftis:

You have asked a number of questions regarding your disagreement with our April 3, 2006 Opinion to Representative Paul Agnew. That opinion concluded that DHEC possesses the requisite authority to promulgate regulations for Minimum Development Standards for Bridge Applications, even though such Regulations affect activities outside the "critical areas" of South Carolina. At your request, we have reviewed that Opinion thoroughly and conclude herein that the Opinion is correct. Thus, we reaffirm the April 3, 2006 Opinion.

We will address each of your questions in turn. First, you ask whether the April 3, 2003 Opinion considered "the fact that SC DHEC did not cite [these] relevant code sections [such as 48-14-10 *et seq.* (Stormwater Management and Sediment Reduction and § 48-1-10 *et seq.* (Pollution Control))] in its notice of drafting, nor in its proposed regulation." Your concern is that DHEC only cited only § 48-39-10 (Coastal Zone Management Section of the Coastal Zone Management Act).

Of course, the request leading to our April 3, 2006 opinion did not ask us to address the question of whether the proposed Regulations were in compliance with the Administrative Procedures Act. Rather, we were asked simply whether DHEC possessed the authority to promulgate such regulations. We concluded that DHEC did.

Nevertheless, we conclude herein that such reference by DHEC only to the Coastal Zone Management Act does *not* invalidate the Regulations in question. Our April 3, 2006 Opinion cited the Pollution Control Act and other statutes as additional authority for DHEC to promulgate the Regulations in question. However, we agree with DHEC that the Coastal Zone Management Act itself provides the requisite authority to promulgate the Regulations in question.

You next ask us to clarify our April 3, 2006, Opinion with respect to the scope of DHEC's authority to "issue permits that specifically determine the number of houses on an island, the design of lighting, and the types of vegetation to be planted in the yard." We believe our Opinion is clear on this point. The proposed Regulations provide, as part of the Minimum Development Standards

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for Bridge Applications, density limits and certain requirements for lighting and landscaping. Our opinion, without reservation, concluded that the General Assembly intended DHEC to possess the authority to promulgate the Regulations in question pursuant to the Coastal Management Act, as well as other Acts (such as the Pollution Control Act and Stormwater Management and Sediment Reduction Act). In our view, DHEC is empowered to regulate not only activities in the "critical areas," but also activities outside these critical areas when such activities adversely affect those critical areas.

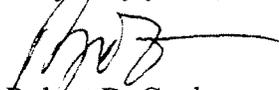
Next, you question our interpretation of the types of land which may be regulated given the General Assembly's definition of "critical areas." You argue that, pursuant to the principle of statutory interpretation, referred to as "*expressio est exclusio alterius*," the land which may be regulated must necessarily consist only of "critical areas." Of course, the statutory construction doctrine "*expressio est exclusio alterius*" or "to express one thing implies the exclusion of the other, or the alternative" is but only one rule of statutory interpretation and our Supreme Court has recently emphasized that such rule is not conclusive. *See, South Carolina State Ports Authority v. Jasper County*, 2005 WL 3941459 (April 3, 2006), n. 7. Moreover, the "*expressio*" rule of interpretation does not trump other principles of statutory construction. Indeed, our Opinion employed other rules of statutory interpretation, including the foremost rule, that of ascertaining and effectuating the intent of the General Assembly. *See, State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999) [all rules of statutory construction are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used, and such language must be construed in light of the statute's intended purpose]. In our view, as we stressed in the April 3, 2006 Opinion, the General Assembly intended that DHEC possess the authority "to regulate development in areas outside the 'critical area' which are deemed to adversely impact or affect the 'critical area.'"

Finally, you ask that we clarify the scope of DHEC's authority to regulate outside the "coastal zone." In essence, you argue that our conclusion is limitless and may be stretched beyond the coastal zone to the "far reaches of the State of South Carolina and potentially across state lines."

To the contrary, our conclusion is based upon DHEC's authority to promulgate the proposed regulations submitted. We do not comment beyond those Regulations. The Regulations in question relate to the permitting of bridges to coastal islands and come into play when a permit is sought. Thus, inasmuch as our Opinion relates only to DHEC's authority to promulgate the Regulations in question, your concerns regarding other DHEC authority does not come into play with respect to the Opinion.

Again, we reaffirm our April 3, 2006 Opinion.

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General