ALAN WILSON
ATTORNEY GENERAL

March 5, 2026

The Honorable Steven Long, Member
South Carolina House of Representatives
1105 Pendleton Street
402-B Blatt Building
Columbia, SC 29201

Dear Representative Long:

You seek our opinion as to "whether two permit extension resolutions enacted in 2010 and 2013 apply to a contractual agreement between property owners and a municipal water and sewer entity." We conclude that a court would likely find that the answer to your question is "yes."

By way of background, you state the following:

> Due to the Great Recession, these joint resolutions suspended and tolled the duration of development approvals and associated vesting rights. See S.C. Act No. 297, 118th Sess. (2010) and S.C. Act No. 112, 120th Sess. 2013). Your office previously opined that these joint resolutions apply and toll the expiration of development agreements enacted pursuant to S.C. Code 6-31-10, et al. See 2014 WL 1398578 at *5 (S.C.A.G. Apr. 1, 2014) ("We believe this to be the case because both Resolutions specify that, in addition to development approvals, the Resolutions are intended to apply to vested rights "associated" with such approvals.").
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> This inquiry addresses a similar agreement in which property owners agreed to the annexation of their land into a municipality in consideration for the municipality's water and sewer entity paying for the water and wastewater infrastructure on the property. This water and wastewater infrastructure agreement was between two sophisticated parties who were represented by experienced counsel at large law firms. The agreement was executed in December 1995 and expires on December 29, 2025.
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> Some of the water and wastewater infrastructure has been installed on the property in question, and the municipal water and sewer entity has reimbursed the property owners for these expenses pursuant to the water and wastewater infrastructure agreement. However, the development was delayed due to the severe economic recession in 2008-2011, as well as the Covid-19 pandemic from

2020-2023. These delays, coupled with federal and state permitting delays, prevented all of the water and wastewater infrastructure from being installed before the expiration of the agreement.

This water and wastewater infrastructure agreement, and the rights vested therein, is similar to, but narrower than, a development agreement under S.C. Code § 6-31-10 as it addresses only water and wastewater infrastructure. However, development agreements that included water and wastewater infrastructure have been tolled pursuant to the 2010 and 2013 permit extension resolutions. And the 2010 and 2013 joint resolutions do not mention development agreements specifically and are not limited to development agreements under S.C. Code § 6-31-10. By contrast, these joint resolutions specifically mention water and wastewater services provided by a governmental entity as follows:

> ""Development approval" means an approval issued by the State, an agency or subdivision of the State, or a unit of local government, *regardless of the form of the approval,* that is for the development of land or *for the provision of water or wastewater services by a governmental entity* ..." S.C. Act No. 112, 120th Sess. 2013); § 2 at ¶ 3. (Emphasis added).

Law/Analysis

We note at the outset that this office may not determine or adjudicate facts in an opinion. Thus, we must rely upon the information which you have provided and the documents which you have submitted. That said, we will now discuss our 2014 Opinion and what we believe to be its applicability to the situation you present.

Our 2014 Opinion concluded that the Joint Resolutions adopted by the General Assembly in 2010 and 2013 had the effect of tolling the running period of a development agreement between Beaufort County and Del Webb Communities. There, we noted that the South Carolina Local Government Development Act (S.C Code Ann. § 6-31-10 et seq.) was enacted with the purpose of providing certainty to developers by allowing them to enter into agreements with local governments to the effect that, should the local government approve the development plan, the developer would be protected against changes in local laws that may impact the development process. 2014 Opinion, id. (citing Op. S.C. Atty. Gen., 2009 WL 276747 (January 8, 2009)).

In the 2014 Opinion, we also observed that Beaufort County had entered into a 20-year development agreement with Del Webb Communities, Inc. on December 16, 1993. As required by § 6-31-30, this development agreement was adopted by ordinance and properly recorded. Thus, we concluded that Del Webb "acquired a vested property right which would protect [it] from the effect of subsequently enacted local legislation or procedural changes in local government."

We then discussed the impact of the tolling resolutions of 2010 and 2013. In our view, the Resolutions retroactively and cumulatively suspended the running periods for development approvals, thereby protecting the developer's vested rights. Thus, we concluded that the 2010 and 2013 Resolutions were applicable to and controlling with respect to the Del Webb agreement with Beaufort County. Accordingly, we stated the following:

> [h]ere, because a properly approved and recorded development agreement entered into pursuant to the terms of the South Carolina Local Government Development Agreement Act clearly conveys a vested right to the developer in that it essentially "freezes" local development laws, it is evident that the Resolutions should apply to the agreement between the parties in this case. Indeed, a review of the legislative intent of the Act, as well as the concept of Local Development Agreements in general, clearly support this conclusion as it indicates a developer's rights vest as a result of the approval of such an agreement. See, e.g. S.C. Code Ann. § 6-31-10(B)(6) ("Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the development agreement or in any way hinder, restrict, or prevent the development of the project."); *See also* Hammes, 23 U. Balt. L. Rev. at 123 (explaining that a development agreement "vests or conveys a right to develop according to an initial plan" while "freezing the applicable land use scheme and conveying the right to develop."). Therefore, the Resolutions by explaining that they apply to vested rights associated with development approvals, would appear to reach development agreements entered into under the Act. Accordingly, we believe the Resolutions apply to the agreement between Del Webb and Beaufort County.

The Agreement in question here, consummated in 1995, was between representatives of a trust, created by Harry F. Guggenheim and the Commissioners of Public Works of the City of Charleston ("CPW"). In that Agreement, 3433 acres in Berkeley County, near Cainhoy, would be used "for the future development" of such property. The owner "was desirous of obtaining water and wastewater services for said property...." as necessary to achieve such development. Pursuant to the Agreement, CPW thus would "provide water service and wastewater service for all residential, commercial, industrial and other development on the property...." The Agreement further specified the terms of such provision of water and wastewater services.

Our Supreme Court has recognized that an adequate infrastructure goes hand-in-hand with, and is the centerpiece of development. For example, in Repko v. County of Georgetown, 424 S.C. 494, 497-98, 818 S.E. 2d 743, 745 (2018), the Court noted:

> [i]n South Carolina, most localities will not allow a developer to sell lots in a residential development without the required infrastructure— roads, water, drainage, and sewer— being completed.

Without adequate water and wastewater services, in other words, the development of properties for residential or commercial use may not proceed nor be successful.

Thus, as you indicate, the provision of "water or wastewater services" is included within the term "Development approval," as that term is used in the Joint Resolutions of 2010 and 2013. "Development approval" is defined therein to mean "an approval issued by the state, an agency or subdivision of the state, or a unit of local government, regardless of the form of the approval that is for the development of land, or for the provision of water or wastewater services by the government entity…" Joint Resolutions, *supra.* (Emphasis added). Accordingly, based upon this language, the Agreement between CPW and the trust owners for the provision of water and wastewater services in order to support the "development" would fall within the terms of the Joint Resolutions. In short, the General Assembly deemed the supplying of water and wastewater services to be a "development approval" for purposes of the Joint Resolutions.

Further, as you argue in your letter,

> [s]ome of the water and wastewater infrastructure has been installed on the property in question, and the municipal water and sewer entity has reimbursed the property owners for those expenses pursuant to the water and wastewater infrastructure agreement….
>
> This water and wastewater infrastructure agreement, and the rights vested therein, is similar to, but narrower than a development agreement under S.C Code § 6-31-10 as it addresses only water and wastewater infrastructure. However, development agreements that included water and wastewater infrastructure have been tolled pursuant to the 2010 and 2013 permit extension resolutions. And the 2010 and 2013 joint resolutions do not mention development agreements specifically and are not limited to development agreements under S.C Code § 6-31-10.

It is well recognized that with any legislative enactment, the intent of the General Assembly is paramount. City of Spartanburg v. Leonard, 180 S.C. 491, 186 S.E. 395, 396 (1936). Here, it is clear that the General Assembly, in adopting the Joint Resolutions, sought to remedy the economic crisis caused by the Great Recession, so as to ensure that development proceeded apace.

Given this legislative intent, the tolling Resolutions should be read and applied broadly even outside the parameters of § 6-31-10 et seq. As the eminent jurist, Judge Cardoza, wrote in Gaines v. City of New York, 215 N.Y. 533, 539-40, 109 N.E. 594, 596 (1915), "[The tolling statute's] broad liberal purpose is not to be frittered away by any narrow construction." Indeed,

the Resolutions themselves require a liberal construction "to effectuate the purposes of this Joint Resolution."

While the Agreement in question differs somewhat from the Development Agreement analyzed in our 2014 Opinion, the purpose of the Joint Resolutions of 2010 and 2013 remains the same- to promote development for residential and commercial use. It is evident that the Agreement we consider here is for the purpose of such development. The Agreement seeks water and wastewater services "for all residential, commercial, industrial and other development of the property.

As our Supreme Court noted in Repko, without adequate infrastructure, particularly water and wastewater services, development typically may not proceed and cannot achieve such growth. Again, the Joint Resolutions were intended to apply to the "provision of water and wastewater services, by a government entity…." This is precisely the case here. Read broadly, as they must be, the Joint Resolutions are applicable to the Agreement here.

Conclusion

Based upon the foregoing, we are of the opinion that a court would likely conclude that the 2010 and 2013 Joint Resolutions are applicable to the Agreement for the provision of water and wastewater treatment between the trust owners and CPW. Providing adequate water and wastewater services is part and parcel of sound residential and commercial development. Thus, in our opinion, the tolling provisions contained in the Joint Resolutions would likely be deemed applicable to this Agreement.

Sincerely,

Robert D. Cook
Solicitor General Emeritus