ALAN WILSON
ATTORNEY GENERAL

January 31, 2017

Thomas J. Keaveny, II, County Attorney
Beaufort County Government
Administrative Building
Post Office Drawer 1228
Beaufort SC 29901-1228

Dear Mr. Keaveny:

Attorney General Alan Wilson has referred your opinion request dated December 22, 2016 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Question** (as quoted from your letter):
*"On October 8, 2016, Hurricane Matthew's high winds, storm surge and riverline flooding led to large amounts of vegetative, construction and demolition debris, and marine debris in Beaufort County. In response to the widespread public health and safety threats that the debris posed, Beaufort County activated its Debris Management plan which calls for countywide land debris removal operations. The County is completing the land debris removal; however, marine debris still remains within the tidelands and pose significant threat to the navigability of the waterways, public health and safety of Beaufort County citizens.*

*As background, it is well established that the State owns the tidelands. For the purposes of this issue tidelands are defined in S.C. Code Ann. 48-39-10(G) as "all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine system involved." The State holds this property in trust for its citizens under the common law Public Trust Doctrine. The underlying premise of the Public Trust Doctrine is that some things are considered too important to society to be owned by one person."*[1] *Additionally, the State has taken significant steps to regulate the tidelands through the enactment of the Coastal Zone Management Act ("CZMA"), establishment of the Emergency Environmental Fund, and the designation of South Carolina Department of Natural Resources ("DNR") as the supporting enforcement mechanism. The State exercises exclusive control over the tidelands through its agencies. The County considers the tidelands to be outside its jurisdiction and authority as it has been pre-empted by the State. Therefore, the question is: does Beaufort County have the legal responsibility to clear marine debris from property located with the tidelands?*

*We greatly appreciate your time and consideration of this issue. As I noted earlier, time is of the essence on this matter as we are in the middle of the high traffic season and the marine debris poses a serious public safety threat. Further, if removal of marine debris is Beaufort County's legal responsibility, FEMA*

*regulations require us to remove all debris (including marine debris) by April 3, 2017 in order to qualify for reimbursement for expenses incurred in removing any debris (including land based debris on which the County has already expended several million dollars).*

*1 Finklea, Samuel L., et al.* Environmental Law in South Carolina, *4th Edition South Carolina Bar. South Carolina Bar CLE Division, 2016."*

**Law/Analysis:**

As you are aware, Beaufort County's boundaries are delineated in South Carolina Code § 4-3-70. Thus, we begin and end with the answer whether Beaufort County has the legal responsibility to clear debris depends on what the debris is, where it is located and pursuant to what authority it is being removed. Moreover, we distinguish the ability to maintain from the responsibility to remove debris and will answer your question accordingly. Furthermore, you ask whether Beaufort County has the "legal responsibility" as listed in 44 CFR § 206.223(a)(3). In answering your question this Office is not attempting to define or opine on the federal law in this opinion but merely assist you in determining where "legal responsibility" may apply to your County.[1] By way of background, the following summarizes the federal law in this area:

> [a]mong other things, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) provides authority to make PA disaster grants to a state or local government to meet immediate threats to life and property, to clear debris and wreckage when it is in the public interest, and to provide grants to state or local government for repair, reconstruction or replacement of public facilities on the basis of the design of the facility as it existed immediately before the major disaster. 42 U.S.C. §§ 5170b, 5172, 5173 (2006). . . . The rules by which FEMA administers public assistance grants through the Stafford Act are found at 44 C.F.R. subparts G and H (2004).
>
> To obtain a PA grant, an applicant must establish that it meets the eligibility requirements set forth in FEMA regulations. Those regulations require that the entity seeking PA be an eligible applicant. 44 C.F.R. 206.222. The work sought must be required as the result of the major disaster event, be located in the designated disaster area, and be the legal responsibility of the eligible applicant. 44 C.F.R. 206.223 a(1) – (3). Also, the type of work must be eligible. . . .

[1] We note there are numerous federal statutes and case law not listed in this opinion that could apply to your question. For purposes of this opinion we are limiting our answer to the applicable law cited herein. However, if you have a follow-up question or need interpretation regarding the applicability of a specific statute, we are glad to address any such questions in a follow-up opinion. As we again note, the applicable Federal and State laws are too numerous to list in this opinion. We merely attempt to guide you in how we believe a court will make such a determination in answering your question. Moreover, we refer you to FEMA for any questions regarding its rules for reimbursement. See 44 CFR § 1.1 et seq. (Federal Emergency Management Act).

In The Matter of St. Tammany Parish, 10-1 BCAP 34457 (civilian B.C.A.), CBCA 1778-FEMA, 2010 WL 2975319 (May 12, 2010). The focus of your inquiry is whether "Beaufort County [has] . . . the legal responsibility to clear marine debris from property located within the tidelands?" You focus upon the fact that "[t]he State exercises exclusive control over the tidelands through its agencies."

We have also consulted with DHEC's General Counsel regarding your question. At our invitation to DHEC for its analysis of the law, that agency has submitted the following to us:

> [t]he Department points out that S.C. Code Ann. Regs. 30-11(E)(3) allows any party, which would include Beaufort County, to remove marine debris and abandoned vessels when ownership of such is unknown. Accordingly, Beaufort County is not pre-empted from undertaking such activity. (For your convenience, the Department is attaching a copy of S.C. Code Ann. Regs. 30-11(E) Abandoned Vessels and Structures.)
>
> The point that is important to the Department is that, while the agency does have broad regulatory authority (pursuant to the S.C. Coastal Tidelands and Wetlands Act) the agency is not tasked with the obligations beyond the intent of the statute or regulation. The Regulation does not contemplate that the Department is responsible for the removal of marine debris, but rather regulates such removal by third parties. Pursuant to S.C. Ann. Regs. 30-11(E)(5) if the removal process chooses "significant impact" so as to require a permit, the Department will work expeditiously to act upon such permit application.

Thus we interpret DHEC's response as claiming regulatory responsibility only for permitting the removal and cleanup of debris for the counties and municipalities boarding the State waters for cleanup of debris within the tidelands based on its claim to "regulate[] such removal by third parties" and its requirement of a permit to clean up the debris pursuant to Regulation 30-11(E)(3). We turn now to an analysis of the general law regarding the State's tidelands and navigable waters.

This Office has previously opined regarding DHEC that:

> DHEC also possesses broad regulatory authority pursuant to statutes other than the Coastal Zone Management Act, further buttressing this conclusion. Such regulatory authority extends far beyond the "critical areas" of the State, to include all lands of South Carolina. See e.g. § 48-1-10 *et seq.* (Pollution Control Act); § 48-14-10 *et seq.* (Stormwater Management and Sediment Reduction Act). Furthermore, as referenced above, and as recognized in *Brown v. S.C. DHEC, supra,* in compliance with the federal Coastal Zone Management Act (16 U.S.C.A. §§ 1451-1465), the General Assembly and Governor approved South Carolina's Coastal Management Program in order to define and manage activities which have a direct and significant impact on coastal waters. DHEC has defined such activities as follows:

> [a]n activity is considered to have direct and significant impact on coastal waters and is therefore subject to management in the coastal zone if it entails one or more of the following criteria:
> 1) located in a critical area;
> 2) *detrimental environmental impact upon a critical area* (for example, water pollution upstream from an inland source which would then reach and result in degradation of the estuarine system);
> 3) adverse effects on the quality of coastal resources - natural, economic, social or historical;
> 4) disruption of access to a public coastal resource.
>
> *S.C. Coastal Management Program*, p. III - 12. (emphasis added).

Op. S.C. Att'y Gen., 2006 WL 1207263 (S.C.A.G. Apr. 3, 2006). See also S.C. Code § 48-39-50 regarding Coastal Tidelands and Wetlands (DHEC shall have the powers and duties: ...(J) To manage estuarine and marine sanctuaries and regulate all activities therein, including the regulation of the use of the coastal waters located within the boundary of such sanctuary. ... (O) To exercise all incidental powers necessary to carry out the provisions of this chapter). As you mention in your letter, 48-39-10(G) defines tidelands as:

> (G) "Tidelands" means all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the department shall have the authority to designate its approximate geographic extent.

S.C. Code § 48-39-10(G).

As you are also likely aware, the South Carolina Constitution states that "the health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources are matters of public concern" and that "[t]he General Assembly shall provide appropriate agencies to function in these areas of public concern and determine the activities, powers, and duties of such agencies." S.C. Const. Art. XII § 1. South Carolina's sovereignty and jurisdiction includes all places within its boundaries, as delineated in South Carolina Code § 1-1-10. As you mention in your letter, this Office has consistently opined that lands below the high tide water mark (including marshlands) belong presumptively to the State of South Carolina in trust for the public and that the State has jurisdiction over "territorial waters" within three geographical miles distance from the low water mark of the coastline. See, e.g., Ops. S.C. Att'y Gen., 2012 WL 5376055 (S.C.A.G. Oct. 19, 2012); 2012 WL 3540453 (S.C.A.G. August 3, 2012) (citing Cunard S.C. Co. v. Mellon, 262 U.S. 100, 122 (1923), City of Charleston, S.C. v. A Fiserman's Best Inc., 310 F.3d 155, 160 (4th Cir. 2002), the U.S. Submerged Lands Act, S.C. Code 54-7-620(47), Geneva Convention, Art. 11, etc.); 2003 WL 21790888 (S.C.A.G. July 10,

2003) (citing the Submerged Lands Act); 1995 WL 805820 (S.C.A.G. October 20, 1995) (citing the Submerged Lands Act, S.C. Code § 54-7-620(47)); 1964 WL 11075 (S.C.A.G. February 4, 1964) (citing the U.S. Submerged Lands Act).[2] Specifically, this Office previously opined in a 2012 opinion regarding tidelands and boundary lines that:

> [H]istorically, the State holds presumptive title in land below the high water mark. In McQueen v. South Carolina Coastal Council, *et al.*, 354 S.C. 142, 580 S.E.2d 116 (2003), the South Carolina Supreme Court reaffirmed the State's ownership interest. The Court stated that:
>
> > [a]s a coastal state, South Carolina has a long line of cases regarding the public trust doctrine in the context of land bordering navigable waters. Historically, the State holds presumptive title to land below the high water mark. As stated by this Court in 1884, not only does the State hold title to this land in *jus privatum*, it holds it in *jus publicum*, in trust for the benefit of all the citizens of this State. State v. Pacific Guano Co., 22 S.C. 50, 84 (1884); see also State v. Hardee, 259 S.C. 535, 193 S.E.2d 497 (1972); Rice Hope Plantation v. South Carolina Public Serv. Auth., 216 S.C. 500, 59 S.E.2d 132 (1950), *overruled on other grounds*, McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985)....
> > The State has the exclusive right to control land below the high water mark for the public benefit, Port Royal Mining Co. v. Hagood, 30 S.C. 519, 9 S.E. 686 (1889), and cannot permit activity that substantially impairs the public interest in marine life, water quality or public access. Sierra Club v. Kiawah Resort Assocs., 318 S.C. 119, 456 S.E.2d 397 (1995); see also Heyward v. Farmers' Min. Co., 42 S.C. 138, 19 S.E.2d 963 (1884) public trust land cannot be placed entirely beyond direction and control of the State); Cape Romain Land and Improvement Co. v. Georgia - Carolina Canning Co., 148 S.E. 428, 146 S.E. 434 (1928) (protected public purposes of trust include navigation and fishery).
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> McQueen, 580 S.E.2d at 149-50; accord Hobonny Club. Inc. v. McEachern, 272 S.C. 392, 252 S.E.2d 133, 135 (1979) ("This Court has held that lands lying between the usual high water line and the usual low water line on tidal navigable watercourses enjoy a special or unique status, being held by the State in trust for public purposes"); Op. S.C. Atty. Gen., July 2, 1962 (1962 WL 8961) ["The strand area of a beach is state property and the other portion is private property"]; see also Borax Consolidated v. City of Los Angeles, 296 U.S. 10, 22 (1935) [when the sea, or a bay, is named as a boundary, line of ordinary high-water mark is always intended where common law prevails]; Sotomura v. County of Hawaii, 460 F. Supp. 473, 480 (D. Haw. 1978) [holding the "'mean high water mark' is the line of division between private and public property" along the beach]; Secure Heritage.

[2] See also the U.S. Submerged Lands Act, 43 U.S.C. § 1301, et seq., as cited in the opinions. These cites are some of the ones mentioned. Please read the full opinions and cases for further information and sources.

> Inc. v. City of Cape May, 361 N.J. Super. 281, 825 A.2d 534, 547 (2003) ["The public trust doctrine, which is premised on the common rights of all citizens to use and enjoy tidal land seaward of the mean high water mark, dictates that the beach and the ocean must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible"]; City of New York v. Feltman, 230 A.D. 299, 243 N.Y.S. 625, 626 (1930) (holding "a grant of land lapped by the open sea carried title at common law to the high-water mark if the grant contained no reference to either the low or high water mark," and that "[t]his doctrine is too long recognized and is too thoroughly established as the law... be questioned or disturbed now"); Brower v. Wakeman, 88 Conn. 8, 89 A. 913, 914 (1914) [title to beach below high-water mark held to be in the state]; Johnson v. State, 114 Ga. 790, 40 S.E. 807, 807 (1902) (holding "the boundary of landowners abutting on the sea [or] where there was a regular rise and fall of the tide, extended only to high-water mark... This rule, so far as the boundary of the abutting landowner is concerned, has been almost universally followed in the United States"); cf. State v. Yelsen Land Company Inc., 265 S.C. 78, 216 S.E.2d 876, 878 (1975) [holding that the "State was presumptively the owner of tidelands"].

Op. S.C. Att'y Gen., 2012 WL 5376055, (S.C.A.G. Oct. 19, 2012). Moreover, regarding waters of this State, our Constitution states that:

> All navigable waters shall forever remain public highways free to the citizens of the State and the United States without tax, impost or toll imposed; and no tax, toll, impost or wharfage shall be imposed, demanded or received from the owners of any merchandise or commodity for the use of the shores or any wharf erected on the shores or in or over the waters of any navigable stream unless the same be authorized by the General Assembly.

SC Const. Art. XIV § 4. Furthermore, our General Assembly has prohibited the obstruction of navigable waters in stating that:

> All streams which have been rendered or can be rendered capable of being navigated by rafts of lumber or timber by the removal of accidental obstructions and all navigable watercourses and cuts are hereby declared navigable streams and such streams shall be common highways and forever free, as well to the inhabitants of this State as to citizens of the United States, without any tax or impost therefor, unless such tax or impost be expressly provided for by the General Assembly. If any person shall obstruct any such stream, otherwise than as in Chapters 1 to 9 of this Title provided, such person shall be guilty of a nuisance and such obstruction may be abated as other public nuisances are by law.

S.C. Code § 49-1-10. This Office has previously opined regarding navigable waters of this State that:

> 4. That the South Carolina constitutional, statutory, and common law give the South Carolina public the right of free and unobstructed navigation on the navigable waters of South Carolina. The South Carolina public is entitled to

> navigate all streams that are navigable in fact. A stream is navigable in fact if a person can float any vessel, of any size or construction, for any purpose whatsoever (pleasure or commerce), at any stage of tide (or water level), and for any length of stream, regardless of the ease or difficulty of propulsion.
> 5. That navigable waters of South Carolina are tidewater and fresh water streams, of any depth or width, with the capacity to float anything (logs, rafts, etc.), having a channel free either from obstruction or interrupted by obstructions, floatable at any time period of the normal high tide or normal water level and accessible at one public place (terminus).
> 6. That water is navigable when in its ordinary state it forms by itself or its connection with other waters a highway for vessels. Navigability does not depend on actual navigation but on capacity for use by pleasure boats or by boats of commerce. Navigable water is a public highway which the public is entitled to use. The State holds the property right of unobstructed navigation in trust for the public.
> 7. That no one has the authority to waive the right of free navigation on the navigable waters of the State. The State has the authority to enforce the trespass laws whether the trespassers approach by land or water. The trespass laws are enforced on fastlands adjacent to a deed-end land highway and are enforced on fastlands adjacent to a dead-end water highway (of navigable waters).

Op. S.C. Att'y Gen., 1964 WL 11075 (S.C.A.G. Feb. 4, 1964). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984).

Since we have documented our longstanding opinion that the State owns in trust for the public the tidelands (lands below the high tide line)[3] and has jurisdiction three geographical miles in "territorial waters" of this State, let us further review some sections of the South Carolina Constitution and the Code of Laws that we believe may be applicable in answering your question. Thus, there is no doubt that ownership of the State's tidelands and marshlands is in the State on behalf of the people of South Carolina. However, ownership of the property in question does not necessarily answer the question of "legal responsibility" for purposes of the foregoing FEMA regulations or for purposes of State law, for that matter. The State owns the tidelands as trustee for the public. However, the State, has the authority to delegate certain functions and responsibilities to its agencies and political subdivisions. See, e.g., S.C. Code §§ 48-39-70 ("All other state and local agencies and commissions shall cooperate with the department [DHEC] in the administration of enforcement [of the Coastal Tidelands and Wetlands chapter]"); 50-1-80 ("It shall be the positive duty of all sheriffs, deputy sheriffs, constables, rural policemen and special officers to actively cooperate with the department [DNR] in the enforcement of the game and fish laws of the State."); S.C. Code Regs 44-312 (regarding S.C. Emergency Management Division).[4] For example, in St. Tamanny's Parish, supra, the Federal Arbitration Panel noted that the Parish "has not represented that it owns the roads, drainage ditches, culverts, and canals in the CDL

[3] Except as where granted otherwise. As we note, the State's title to tidelands is presumptive.

[4] While there may be other relevant statutes and case law to this opinion, we are merely demonstrating here that there are statutory means for the handling of abandoned boats and motors. See also S.C. Code § 54-7-10 et seq. (requiring the local magistrate to turn over the salvageable goods from any unclaimed stranded ship, vessel, goods or effects to the county treasurer). Moreover, Regulation 30-11(E) covers more than just abandoned boats.

subdivision although it has legal responsibility for their maintenance." Moreover, In The Matter of Livingston Parish, 14-1 BCAP 35645 (civilian BCA), CBCA 3608-FEMA, 2014 WL 2993629 (June 30, 2014), the Panel made clear that the fact that the property in question may be "public property" does not preclude an agency or political subdivision from applying for FEMA relief. The Panel quoted from FEMA's Public Assistance Guide 322 as follows:

> [i]n general, debris on public property that must be removed to allow continued safe operation of governmental functions or to alleviate an immediate threat is eligible. Debris that is blocking streets and highways is a threat to public health and safety because it blocks passage of emergency vehicles or it blocks access to emergency facilities such as hospitals. Debris in a natural stream or flood channel may cause flooding from a future storm. If such flooding would cause an immediate threat of damage to improved property, removal of the disaster-related debris only to extent necessary to protect against an immediate threat would be eligible.

In Livingston Parish, the Panel went on to document that local parishes could receive financial assistance from FEMA for clearing debris from waterways:

> [m]uch of Louisiana is low-lying and contains many waterways, and hurricane Gustave was declared a disaster area for the entire State. Despite these facts, as a result of the hurricane, only three parishes in Louisiana requested public assistance grants for removing debris from waterways. The amounts sought and received were $300,000 for one parish, $5,000,000 for another and more than $44,000,000 for Livingston Parish. We also know that Gravity Drainage District 1, a taxing authority which maintains waterways within about 8% of Livingston Parish, sought and received $231,000 for removing Gustav-generated debris from its waterways. The relatively high figure claimed by Livingston Parish caused FEMA to carefully review this parish's request.

Id.[5]

Recently, our Supreme court concluded in Estate of Tenney v. S.C. DHEC, 393 S.C. 100, 712 S.E.2d 395 (2011), that the State does not have presumptive ownership in marsh islands based upon the prior rule that "[t]itle to islands situate in the marshland follows title to marshland." 393 S.C. at 111, 712 S.E.2d at 401 (overruling Coburg Dairy, Inc. v. Lesser, 318 S.C. 510, 458 S.E.2d 547 (1995) ("Coburg II"). Thus, the current status of the "public trust" doctrine is as follows:

> [i]n sum, the jurisprudence of this State is consistent that "presumption of title to marshland rests in the State of South Carolina to be held in trust for the benefit of the public." Coburg I, 309 S.C. at 253, 422 S.E.2d at 97. However, the proposition that the State is the presumed owner of last that remains above the high watermark is at odds with coastal property jurisprudence that predated Coburg, and expands the public trust doctrine beyond its historic bounds. Of the 3,467 coastal islands in South Carolina, the DNR estimates that 72% of these are privately

[5] Louisiana, like South Carolina, recognizes the "public trust" doctrine. Louisiana Seafood Mgmt. Council v. Louisiana Wildlife and Fisheries Comm., 719 So.2d 119 (La. Ct. App. 1999).

> owned. We do not see a practical and uniform way to narrow the scope of Coburg without clouding the title of potentially thousands of marsh islands. . . . We do not underestimate the importance of these islands as the vestiges of our State's most fragile ecosystem, and we recognize the State's interest in protecting and preserving these lands for the enjoyment of all citizens. DHEC and other agencies of this State have the regulatory authority to prevent or limit the development of our State's pristine coastal areas, and our opinion today leaves them at liberty of continue those efforts. Current and potential marsh island owners should be keenly aware of this regulatory risk. However, we do not believe the protection and preservation of these islands should be effected through the unprecedented expansion of the public trust doctrine. Therefore, we overrule the specific principle in the Coburg cases that "ownership of islands situate within marshland follows ownership of the marshland." Coburg I, 309 S.C. at 253, 422 S.E.2d at 97.

Estate of Tenney, 393 S.C. at 110-111, 712 S.E.2d at 400 (emphasis added). Thus, the Tenney Court distinguished between the State's ownership of lands below mean high water, which the Court reaffirmed that such ownership is in the State (as the State) in trust for its citizens, and the regulation of tidal areas, for the protection and preservation of such areas, which the State has delegated to its agencies, such as DHEC and the Department of Natural Resources.

The General Assembly has also delegated certain authority regarding tidal areas to counties and municipalities. In Op. S.C. Att'y Gen., 1985 WL 259150 (March 27, 1985), for example, we addressed "whether a municipality and a county bordering on the Atlantic Ocean may close the beach or regulate the period during the year when traffic may be allowed in the public beach between high and low tide." We concluded:

> Section 5-7-140 and 4-9-45, 1976 Code of Laws, as amended, pertaining to cities and counties respectively, provides that those entities do have the authority to exercise their police jurisdiction between the high tide line and low tide line within their borders.

Moreover, even prior to the enactment of § 4-9-45, we addressed the question concerning "[t]he power of a county council to regulate uses of the foreshore (the area between mean high and low water mark on tidal beaches) as well as the water below mean low water." In Op. S.C. Att'y Gen., 1978 WL 35270 (December 18, 1978), we reasoned:

> [t]he South Carolina Code does not expressly grant policy power over these areas (which are State-owned lands) to counties. It does, however, in § 4-9-30 make a general grant of police power to counties. The question is whether this general grant carries with it, in the case of coastal counties, any authority over the foreshore and areas oceanward. There are relatively few cases on this subject. Perhaps the leading case is Ross v. Edgewater, 115 N.J.L. 477, 180A 866 (1935). That case, in holding that a city's police power extended to the low water mark, states:
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> > [i]t is not to be presumed that the Legislature intended to withhold from this municipal corporation, designed to serve the needs, convenience, and

> comforts of its residents, powers necessary to attain those ends. Such a construction is an entire harmony with our scheme of government which employs the municipal corporation to supply the local needs of tis residents. 180 A. at 871.
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> It is the opinion of this Office that this is the soundest view to take. This exercise of the police power would not operate to "zone out" the State from any proposed activity, as had always been prohibited prior to recent statutory change. Instead, it would merely provide [ ] regulation over those areas abutting the county which are vacant lands of the State and which the State itself had not sought to regulate. The opinion of this Office, therefore, is that as a general rule counties may regulate conduct at least down to the low water mark as a necessary adjunct to the general grant to them of police power.

We noted also in the 1978 Opinion that "the best way to handle this problem would be by the enactment of State legislation which expressly grants to the counties some specific quantum of police power over the above areas."

That is precisely what the General Assembly did, shortly after our 1978 Opinion (by 1980 Act No. 300), with the enactment of § 4-9-45. Section 4-9-45 provides as follows:

> [f]or the purpose of maintaining proper policing, to provide proper sanitation and to abate nuisances, the police jurisdiction and authority of any county bordering on the high tide line of the Atlantic Ocean is extended to include all that area lying between the high tide line and the low tide line not within the corporate limits of any municipality. Such area shall be subject to all ordinances and regulations that may be applicable to the area lying within the boundary limits of the county, and the magistrates' courts shall have jurisdiction to punish individuals violating the provisions of county ordinances where such misdemeanor occurred in the area defined in this section.

(emphasis added). Thus, the General Assembly confirmed by express legislation, as we had suggested, our earlier opinion that the Home Rule Act (specifically, § 4-9-30) delegated police powers to the county over the property lying between high and low tide. As noted above, we construed § 4-9-45 to authorize a county to "close the beach or regulate the period during the year when traffic may be allowed in the beach between high and low tide." Op. S.C. Att'y Gen., March 27, 1985, supra. Further, § 4-9-45 authorizes the county to "abate nuisances in the area between mean high and mean low water." See 23 S.C. Jurisprudence § 30 (Public Nuisance) ["In coastal counties, the police jurisdiction for abating nuisances extends to the high tide line of the Atlantic Ocean."][6] Thus, there can be no doubt that the State has delegated police powers to counties over tidelands areas. [7]

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[6] Moreover, the County would have responsibility to maintain its easements, including those in tidelands. See S.C. Code § 1-11-80.

[7] However, we would be remiss not to mention the South Carolina Department of Natural Resources ("DNR"). Regarding the South Carolina Department of Natural Resources ("DNR"), State law grants DNR jurisdiction over "all saltwater fish, fishing, fisheries, and marine resources within the salt waters of this State, including the territorial sea." S.C. Code § 50-5-20. Additionally, DNR officers have statewide authority for the enforcement of all laws "relating to wildlife, marine, and natural resources." S.C. Code § 50-3-340. Moreover, State law requires that it is

**Conclusion:**

At the end of the day, it is the unambiguous Constitutional duty of the South Carolina General Assembly to "provide appropriate agencies to function in" the areas of the "health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources" and to "determine the activities, powers, and duties of such agencies." S.C. Const. Art. XII § 1. The answer to your specific question is that a coastal county, such as Beaufort County, possesses "legal responsibility" with respect to debris cleanup in the tidelands areas between mean high and low water.[8] This responsibility has been delegated to the county, first pursuant to the general police powers of the Home Rule Act (§ 4-9-30), then, more expressly, pursuant to § 4-9-45, and thirdly implicitly by DHEC pursuant to its interpretation of Regulation 30-11. The fact that the State is the presumptive titleholder of such areas is not controlling because the State may still delegate regulatory power over these areas to state agencies and to its political subdivisions. This it has done, particularly by delegating the power to abate nuisances in tidelands areas to the counties and to provide that the county's ordinances and regulations apply to tidelands properties as they do other parts of the county. We do not address herein the specific powers of state agencies, such as DHEC.[9] However, as DHEC argues, these appear to be particularly in a regulatory capacity. Clearly, however, a county possesses general police powers over these lands, as delegated to it by the General Assembly.

Therefore, in summary, while FEMA will have to apply federal law in this area to determine whether or not the county meets eligibility criteria under the Stafford Act and regulations promulgated pursuant thereto, we conclude that as a matter of State law, Beaufort County possess the "legal responsibility" for maintenance of the tidelands areas that it has police power over[10], including debris cleanup

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"the positive duty of all sheriffs, deputy sheriffs, constables, rural policemen and special officers to actively cooperate with the department [DNR] in the enforcement of the game and fish laws of the State." S.C. Code § 50-1-80. Furthermore, State law authorizes but does not require county and municipal law enforcement officers to enforce all laws relating to boating.[7] S.C. Code § 50-21-80. Nevertheless, when the General Assembly requires use of county personnel, facilities or equipment, the county must be reimbursed by the department implementing the use. S.C. Code § 4-9-50. South Carolina Code § 4-9-55 further outlines the limitations regarding laws requiring a county's expenditures. The statutory procedure for removal of abandoned boats and motors includes the Department of Natural Resources attempting to notify the owner(s). S.C. Code §§ 50-21-190, 50-21-10(9), 50-23-205. However, the statute requires that the Department "must conduct investigations... to determine the status of watercraft as abandoned... must send written notice... must post a notice." S.C. Code § 50-21-190(D). Moreover, any person may claim the abandoned watercraft after ninety days, or the Department of Natural Resources or "any governmental agency that has jurisdiction over the area where the abandoned watercraft is located" may remove and dispose of abandoned watercraft. S.C. Code § 50-21-190 (emphasis added). Clearly, even if the County has jurisdiction over the area where watercraft has been abandoned, the statute's use of the word "may" allows for but does not require the watercraft's removal. Id.; Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) ("Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement."); State v. Hill, 314 S.C. 330, 332, 444 S.E.2d 255, 256 (1994) ("The word 'may' ordinarily signifies permission and generally means the action spoken of is optional or discretionary.") (quoting Robertson v. State, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981)); Joseph v. S.C. Dep't of Labor, Licensing & Regulation, 417 S.C. 436, 463, 790 S.E.2d 763, 777 (2016), reh'g denied (Dec. 7, 2016). Thus, the County is not required to act when "may" is used in the statute.

[8] Other than those duties delegated otherwise. (e.g. S.C. Code § 50-21-190(D)).

[9] See, e.g., S.C. Code Regs. 61-68(E)(5)(b).

[10] Please note South Carolina law authorizes a municipality bordering the Atlantic Ocean to have jurisdiction beyond the high-tide line one mile seaward and any municipality bordering any other navigable water to have jurisdiction between the high and low-water marks. S.C. Code §§ 5-7-140; 5-7-150; see also Barnhill v. City of

notwithstanding that the State is the presumptive owner of such lands. The State has both expressly and implicitly delegated the police power to Beaufort County in these areas. Nevertheless, please do not interpret this opinion to preclude legal responsibility of other agencies and the Federal government (and cooperation therewith). Moreover, this opinion is not intended to deter any agency or political subdivision from assisting in debris removal in an attempt to help the citizens of this State, as we are only addressing legal duty. We encourage all agencies and political subdivisions within this State to work together for the good of the State and to help when able. Nonetheless, this Office is issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

We emphasize again that this opinion is based upon our interpretation of state law. Of course, FEMA authorities will need to apply federal statutes and regulations. We would hope that state and local authorities are fully reimbursed for the costs imposed in responding to this disaster.

Sincerely,

Anita S. Fair

Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

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North Myrtle Beach, 333 S.C. 482, 511 S.E.2d 361 (1999). Such jurisdiction includes policing power and the ability to enforce all municipal ordinances. Id. While Beaufort County is a county and not a municipality, South Carolina authorizes the joint administration of powers and government and would include an agreement between municipality and a county. S.C. Const. Art. VIII, § 13; see also S.C. Code §§ 4-9-41; 4-9-40. Counties are authorized by statute to work with other political subdivisions for the "joint administration of any function and exercise of powers as authorized by Section 13 of Article VIII of the South Carolina Constitution." S.C. Code § 4-9-41. Thus, if the debris violates a municipal ordinance of a municipality with jurisdiction where the debris is located and if the municipality contracts with the county to enforce the applicable ordinances, the County could be required by contract to remove debris within the municipality's jurisdiction by its contractual relationship with the municipality.