



ALAN WILSON
ATTORNEY GENERAL

October 16, 2024

David A. Root, Esq.

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P.O. Box 565
Greenville, SC 29602-0565

Dear Mr. Root:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

As we discussed last week, I serve as the County Attorney for Oconee County, South Carolina. The Oconee County Council requested that I seek an Attorney General's opinion with respect to the potential use of public funds on private property in the context of FEMA's grant program for rehabilitating High Hazard Potential Dams (HHPD). I have attached a highlighted copy of the Notice

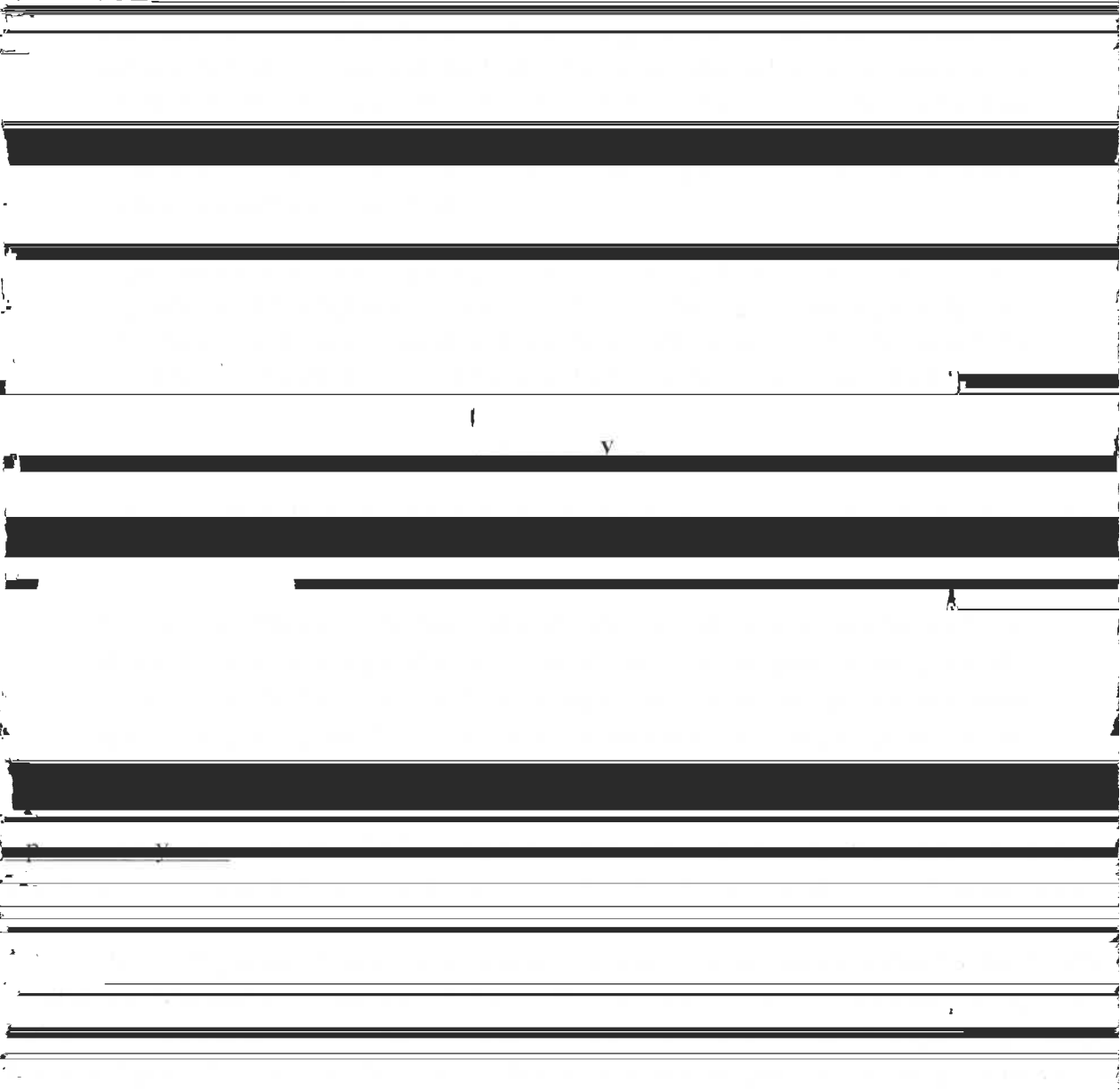
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Also, please note that the subject dam, the Chattooga Lake Dam, is owned by the Chattooga Lake Club, a gated, private (non-profit) community consisting of approximately eighty members, with the subject lake being approximately 45 acres. The area is surrounded by the Sumter National Forest. Based on information gleaned from the Emergency Action Plan for the Chattooga Lake Dam, SC ID: D1637, the dam is an earthen dam built in 1954, with the 44.9-acre lake fed from Taylor Creek and six mountain streams directly from Sumter National Forest. Surrounded by National Forest, Chattooga Lake feeds into the Chattooga River.



and Lake J erav, in the headwaters of the Cheyee River. In addition to recreational

any other structural or nonstructural measures to rehabilitate an eligible [HHPD].” 33 U.S.C. § 467f-2(b). The South Carolina Department of Environmental Services (SCDES) published guidance documents that explain while privately-owned dams are eligible to receive grant funds,

private owners are not eligible to apply for such a grant themselves. See SCDES, Notice of Funding Opportunity- Federal Fiscal Year 2024 High Hazard Potential Dams Rehabilitation Grant Rev. 0 (October 2, 2024), “Non-federal governments (i.e., state, county, municipal) and 501(c)(3)

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501(c)(4) non-profit organizations are the only entities eligible to apply. An eligible applicant as defined above may choose to act as a Project Sponsor for a privately-owned dam solely at its own discretion and at its own risk.” *Id.* When an eligible entity acts as a project sponsor for a privately-owned dam, it is required to “provide[] an assurance, with respect to the dam to be rehabilitated by the eligible applicant, that the dam owner will consent to all circumstances of the dam

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of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution except as permitted by Section 3, Article XI of this Constitution.” S.C. Const, art. X, § 11. Our Supreme Court has construed this section to prohibit the expenditure of public funds or resources for the primary benefit of private parties. See State ex rel. McLeod v. Riley, 276 S.C. 323, 329, 278 S.E.2d 612, 615 (1981). *overruled on other grounds by* WDW Prop. v. City of

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Found., 421 S.C. at 115, 804 S.E.2d at 857. The Court held that these inspections violated Article X, section 5 of the South Carolina Constitution.

We find the inspection of the bridges did not serve a public purpose. We do not doubt that the inspection was conducted to assuage safety concerns. However, the owners of the bridges were the beneficiaries of the inspection, not the public at large, whose access to the bridges is limited to the extent of

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homeowners. In short, it is not the public's responsibility to bear the maintenance costs of bridges located within a gated community that seeks to exclude the public from enjoying the use of the bridges. Thus, because it did not serve a public purpose, we find the inspection was unconstitutional.

S.C. Ct. App. 14-1000, 421 S.C. 115, 804 S.E.2d 857 (2024).
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certification and inspection of certain dams in South Carolina in the interest of public health, safety, and welfare in order to reduce the risk of failure of the dams, prevent injuries to persons and damage to property, and confer upon the department the regulatory authority to accomplish the purposes.” S.C. Code § 49-11-130 (2008). The Act designates SCDES with the “South Carolina

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Foundation, 421 S.C. at 123, 804 S.E.2d at 861. As is discussed more fully above, it is this Office's opinion that if a political subdivision undertakes O&M responsibilities for a recreational dam within a private gated community without further justification for its public purpose, a court would likely hold those activities are unconstitutional.

Since the primary issue expressed in your letter concerns the potential O&M obligations under the program, dam removal may be a consideration as it is a listed use for funds awarded

under the HHDD grant program and would not entail the same O&M obligations for a

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Alternatively, a privately owned dam does not need to be sponsored by a political subdivision of

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REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General