



The Attorney General of Texas

December 13, 1984

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Honorable Jim Mapel
Criminal District Attorney
Brazoria County Courthouse
Angleton, Texas 77515

Opinion No. JM-246

Re: Whether Brazoria County may establish a dune protection line along its coast pursuant to section 63.011 of the Natural Resources Code

Dear Mr. Mapel:

You have requested our opinion as to whether Brazoria County is authorized to establish a dune protection line along its entire coast.

Section 63.011 of the Natural Resources Code provides:

After notice and hearing, the commissioners court of any county bordering on the Gulf of Mexico that has within its boundaries a barrier island or peninsula located north of the Mansfield Ship Channel may establish a dune protection line on the island or peninsula for the purpose of preserving sand dunes that offer a defense against storm water and erosion of the shoreline.

"Barrier island" is defined as "an island bordering on the Gulf of Mexico and entirely surrounded by water." Section 63.002(2). Brazoria County borders on the Gulf of Mexico and is located north of the Mansfield Ship Channel. The intercoastal canal runs the length of Brazoria County, several miles inland from the Gulf. You suggest that "the intercoastal canal in a sense makes a barrier island of the entire county coastline." In order to accept this argument as valid, we would have to construe "water" in section 63.002(2) to include a man-made body of water such as the canal.

Dr. Robert Morton, associate director of the University of Texas Bureau of Economic Geology, and an internationally known expert on coastal geology who has frequently testified as an expert witness for this office, has furnished information to us which indicates that a "barrier island," in geological terms, is a land form which fronts on an open ocean, and which is normally bounded landward by a lagoon or estuary. Dr. Morton emphasizes that a barrier island is a naturally occurring geological form created by erosion over a period of time.

Furthermore, in Padre Island National Seashore: A Guide to the Geology, Natural Environment, and History of a Texas Barrier Island (1980) by Weise, B.R. and White, W.A. the authors define a "barrier island" as

a long, low, narrow island separated from the mainland by a lagoon and commonly having dunes, vegetated zones and marshy environments extending lagoonward from the beach.

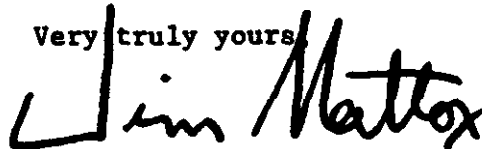
It is clear from this information that a barrier island, in geological terms, was not created by the construction of this artificial canal. See also, definitions of "barrier island" and "barrier beach" in American Geological Institute, Glossary of Geology & Related Sciences, a Cooperative Project (1957). The legislature was presumably aware, when it enacted the predecessor statute of section 63.002, et seq., in 1973, that a "barrier island" has specific geological significance, i.e., that it is separated from the mainland by a lagoon or estuary rather than by a man-made canal. For this reason, we believe that the legislature, in defining "barrier island" in section 63.002(2), must have intended "water" to refer only to water naturally surrounding such island.

We conclude therefore that, since no "barrier island" lies within the boundaries of Brazoria County, that county is not authorized by section 63.011 of the Natural Resources Code to establish a dune protection line along its entire coast.

S U M M A R Y

Brazoria County is not authorized under section 63.011 of the Natural Resources Code to establish a dune protection line along its entire coast.

Very truly yours,



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