

March 20, 2001
OPINION NO. 01- 57

Jack C. Caldwell, Secretary
Department of Natural Resources
P.O. 94396
Baton Rouge, LA 70804-9396

Dear Secretary Caldwell:

You have requested an opinion from this office as to whether the Department of Natural Resources can proceed with the implementation of coastal restoration projects where less than 100% of the owners of an undivided tract have signed servitude agreements authorizing operation on or access to their property.

Louisiana Civil Code Article 800 provides that the concurrence of all the co-owners is not required if the other co-owners are undertaking necessary steps for the preservation of the property held in indivision. Conversely, any undertaking that affects the use and management of property held in indivision requires the agreement of all the co-owners pursuant to the provisions of Louisiana Civil Code Article 801.

Thus, the answer to your inquiry depends upon whether the nature and extent of the work of a particular coastal restoration project is considered to be an act of preservation or an act of management.

A determination as to how the work necessary for a particular coastal restoration project impacts the use of a particular piece of property is a question of fact. See: *Allain vs. Shell Western E & P, Inc.*, 762 So.2d 709 (La. App. 1st Cir. 2000).

While it may be assumed that all coastal restoration projects are by definition acts of preservation, we are of the opinion that each project must evaluate the effect such a project has on the use of a particular piece of property before it can be said to be an act of preservation not requiring the consent of all the co-owners.

If we can be of any further assistance to you in this matter, please do not hesitate to

OPINION NO. 01-57
Jack C. Caldwell, Secretary
Department of Natural Resources
Page No. 2

contact our office.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY:

ROBERT H. CARPENTER, JR.
Assistant Attorney General

RPI/RHC/tp

OPINION NO. 01-57

Louisiana Civil Code Article 800 & 801

11-A CONSERVATION OF NATURAL RESOURCES – Soil Erosion Prevention

How the work necessary for a coastal restoration project impacts the use of a particular piece of property is a question of fact. If the nature and extent of the work results in the preservation of property held in indivision, then the consent of all the co-owners is not required for an agreement authorizing operation on or access to the property. If the nature and extent of the work would affect the use and management of property held in indivision, then the agreement of all the co-owners would be required to authorize operation on or access to their property.

DATE REQUESTED: January 24, 2001

**REQUESTED BY: Jack C. Caldwell
Secretary, Department of Natural Resources**

DATE RELEASED:

**AUTHOR: ROBERT H. CARPENTER, JR.
Assistant Attorney General
Civil Division/Lands & Natural Resources Section**