

CAUSE NO. 2021-DCL-05887

SAVERGV,	§	IN THE DISTRICT COURT OF
<i>Plaintiff</i>	§	
	§	
v.	§	
	§	
TEXAS GENERAL LAND OFFICE;	§	CAMERON COUNTY, TEXAS
GEORGE P. BUSH, IN HIS OFFICIAL	§	
CAPACITY AS THE TEXAS LAND	§	
COMMISSIONER; and	§	
CAMERON COUNTY,	§	
<i>Defendants</i>	§	445th JUDICIAL DISTRICT

**SIERRA CLUB AND CARRIZO/COMECRUDO NATION OF TEXAS, INC.’S  
PETITION IN INTERVENTION**

TO THE HONORABLE JUDGE RINCONES:

COME NOW Sierra Club and Carrizo/Comecrudo Nation of Texas, Inc. (collectively, “Intervenors”) and file this petition in intervention, under Texas Rule of Civil Procedure 60 and Texas Civil Practice and Remedies Code Section 37.006. For support, Intervenors respectfully offer the following:

**I. PARTIES**

1. Intervenors will serve Defendant Texas General Land Office (“GLO”) a copy of this Petition in Intervention by serving it on the GLO’s attorney of record, in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure.
2. Intervenors will serve Defendant George P. Bush, in his official capacity as the Texas Land Commissioner (the “Commissioner”), a copy of this Petition in Intervention by serving it on the Commissioner’s attorney of record, in accordance with Rules 21 and

21a of the Texas Rules of Civil Procedure.

3. Intervenors will serve Defendant Cameron County (the “County”), a copy of this Petition in Intervention by serving it on the County’s attorney of record, in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure.
4. Intervenors will serve Intervenor-Defendant Texas Attorney General Ken Paxton a copy of this Petition in Intervention, in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure.

## **II. NATURE OF THE CASE**

5. This lawsuit seeks a declaration from this Court, declaring that certain sections of the Texas Open Beaches Act—particularly, those sections that allow for public beach closures for space flight activities—are unconstitutional. *Compare* 83<sup>rd</sup> Leg., R.S., ch. 152, 2013 Tex. Gen. Laws 589 (now, Tex. Nat. Res. Code §§ 61.001(4-a), 61.011(d)(11), and 61.132), *with* Tex. Const. art. I, § 33.
6. Relatedly, this lawsuit seeks a declaration that certain County actions are invalid and unconstitutional—namely, issuance of orders allowing the County Judge to order the closure of Boca Chica Beach and/or State Highway 4.
7. The lawsuit further requests a declaration from this Court that GLO’s amendment to its Rule 15.32, adopted pursuant to revisions to the Open Beaches Act and certifying the County’s dune protection and beach access plan, is invalid.
8. Similarly, the pending lawsuit requests a declaration from this Court that the Memorandum of Agreement between GLO and Cameron County, adopted pursuant to revisions to the Open Beaches Act and authorizing beach closures for purposes of

space flight activities, is also invalid.

### **III. INTERVENORS' INTERESTS**

9. Intervenor Sierra Club is a national nonprofit, membership environmental organization with its national headquarters located at 85 Second Street, 2nd Floor, San Francisco, CA 94105.
10. Among its corporate purposes are to explore, enjoy, and protect the wild places of the earth, to practice and promote the responsible use of the earth's ecosystems and resources, to educate and enlist humanity to protect and restore the quality of the natural and human environment, and to use all lawful means to carry out these objectives. The interests that Sierra Club seeks to protect, via its participation in this lawsuit, are consistent with the organization's purposes.
11. Sierra Club members include residents of Cameron County who regularly recreate and otherwise rely on Boca Chica Beach for a variety of activities.
12. More specifically, Mary Helen Flores, a Sierra Club member and lifelong resident of Cameron County has been visiting Boca Chica Beach regularly since she was a child. Family traditions often revolved around visits to the beach. Birthdays were regularly celebrated at Boca Chica Beach, and family get-togethers, with out-of-town relatives, were organized annually at the beach. Fishing, hiking, camping, and swimming are activities that Ms. Flores has enjoyed pursuing, regularly, at the beach throughout her life. She also enjoyed combing for sea shells, kite flying, playing football and frisbee, bonfires, and a bit of photography. As a self-described steward of the beach, Ms. Flores has enjoyed walking the shoreline to look for nesting turtles. She has observed,

on a few occasions, deceased wildlife and reported these incidents to the appropriate officials. She also regularly organized informal beach cleanups with her family, to ensure that the beach remained a pristine, tranquil, and healthy environment for others to enjoy.

13. Ms. Flores has been impacted by Cameron County's frequent public beach closures and the closure of the highway to accesses the beach.

14. Fishing, hiking, camping, and swimming at the beach—activities that have been an integral part of Ms. Flores' life for decades—are no longer regular activities that Ms. Flores enjoys, since the County began closing public access to the beach.

15. Recently, in March 2022, Ms. Flores attempted to visit Boca Chica Beach to celebrate her birthday, as she has done throughout her life. As she approached the beach, however, she encountered a Sheriff's vehicle blocking the road to access the beach and turning visitors away.

16. In addition, annual family get-togethers with out-of-town relatives can no longer occur at the beach, because of the frequent beach closures. Oftentimes, little advance notice, if any, is provided before the beach is closed, and on occasion, the beach may remain closed for up to 2 or 3 days—sometimes more. Consequently, it is simply no longer possible to plan a family reunion at the beach with out-of-town relatives, because the beach may unexpectedly close to members of the public on any given day.

17. Ms. Flores has been impacted by the frequent closures of Boca Chica Beach in a manner that is different from members of the general public.

18. Sierra Club has an interest in participating in this lawsuit, under Texas Rule of Civil Procedure 60, in that Sierra Club's members would be impacted by and benefit from the relief requested by this lawsuit. Success in this lawsuit would redress Sierra Club's members' injuries, such as those described above, by recognizing its members' constitutional right to access Boca Chica Beach and by declaring unconstitutional the revisions to the Open Beaches Act, which authorize closure of the beach.
19. Neither the claim asserted nor the relief requested requires the participation of the individual members in the case.
20. The Carrizo/Comecrudo Nation of Texas (the "Tribe") is also a Texas non-profit membership organization, and the Tribe has standing to sue on behalf of its members.
21. Among the Tribe's purposes is to serve the cultural, social, educational, spiritual, linguistic, economic, health, and traditional needs of its members and descendants of the Carrizo/Comecrudo Nation of Texas and other indigenous or Native American groups. The Tribe members live by their mission of preserving, maintaining, protecting, and offering services that will better their tribal communities to overcome the erasure of the Original People of Texas. The Tribe promotes wellness and health by providing services in times of crisis. The Tribe seeks to protect ancestral lands and relatives and to honor their ancestors.
22. Boca Chica Beach and the area surrounding the beach are vital and sacred to the Carrizo/Comecrudo People and their ancestral traditions. The Tribe regularly holds ceremonial life ways at Boca Chica Beach, at least quarterly, during the equinox and solstice. These ceremonies typically involve between 20 and 30 of the Tribe's

members, during which the members leave offerings for ancestors at the beach.

23. The beach closures have impacted the Tribe's ability to hold their traditional ceremonial life ways and leave offerings for their ancestors.
24. Juan Mancias, a member of the Tribe, has been prevented from accessing the beach, a space sacred to him, to leave offerings to his ancestors, because of the frequent beach closures that have occurred for purposes of space flight activities. Participating in activities that are spiritually sacred to him depends upon his ability to access Boca Chica Beach—which had been guaranteed by the Texas Constitution and the Open Beaches Act, until the Act was revised to allow for beach closures to accommodate space flight activities.
25. The Carrizo/Comecrudo Nation of Texas has an interest in participating in this lawsuit, under Texas Rule of Civil Procedure 60, in that their members would be impacted by and benefit from the relief requested by this lawsuit. Success in this lawsuit would redress their members' injuries, such as those described above, by recognizing the Tribe's members' constitutional right to access Boca Chica Beach and by declaring unconstitutional the revisions to the Open Beaches Act, which authorize closure of the beach.
26. Neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

#### **IV. PRAYER**

27. Intervenors request this Court render judgment:
  - a. declaring Section 61.132 of the Texas Natural Resources Code unconstitutional

because it irreconcilably conflicts with Article I, Section 33 of the Texas Constitution, which guarantees the public an unrestricted right to use and access Texas public beaches;

- b. declaring Sections 61.132 and 61.011(d)(11) of the Texas Natural Resources Code, as applied to Boca Chica Beach, unconstitutional because they violate Article I, Section 33 of the Texas Constitution;
- c. declaring Section 61.011(d)(11) of the Texas Natural Resources Code, allowing for closure of public beaches via promulgation of state agency rules, is unconstitutional because it irreconcilably conflicts with Article I, Section 33 of the Texas Constitution, which guarantees the public an unrestricted right to use and access Texas public beaches;
- d. declaring the GLO's amendment to its Rule 15.32, certifying the County's dune protection and beach access plan, invalid because it violates the Texas Constitution;
- e. declaring the Memorandum of Agreement between GLO and Cameron County, adopted pursuant to House Bill 2623's revisions to the Open Beaches Act, invalid because it violates the Texas Constitution;
- f. declaring invalid the Cameron County commissioners court order, authorizing the Cameron County Judge to order the closure of Boca Chica Beach and/or State Highway 4, to allow for space flight activities, because it violates the Texas Constitution;
- g. awarding Intervenors and Plaintiff their costs and attorneys' fees; and

- h. granting such other relief, including supplemental and injunctive relief, to which Intervenor and Plaintiff may show themselves entitled.

Respectfully submitted,

/s/ Marisa Perales

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**CERTIFICATE OF SERVICE**

I certify that on May 5, 2022, a true and correct copy of the foregoing document was served on all attorneys of record by email to the addresses listed below.

/s/ Marisa Perales  
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