

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

CHARLES SHEFFIELD and
PEDESTRIAN BEACH, LLC,

Plaintiffs,

v.

GEORGE P. BUSH, in his official capacity
as Commissioner of the Texas General Land
Office, and KEN PAXTON, in his official
capacity as Attorney General for the State of
Texas,

Defendants.

Civil Action No. 3:21-cv-00122

**FIRST AMENDED COMPLAINT FOR VIOLATION
OF FEDERAL CIVIL RIGHTS (42 U.S.C. § 1983)**

INTRODUCTION

1. Charles Sheffield, an individual citizen of Texas, and Pedestrian Beach, LLC, a private corporation organized under the laws of the state of Texas, own beachfront property in Surfside Beach, Texas. They bring this complaint against state officials who are unlawfully and unconstitutionally enforcing the Texas Open Beaches Act (Act or Open Beaches Act), Tex. Nat. Res. Code § 61.001, *et seq.*, through an Order that unconstitutionally and illegally takes, seizes, and deprives Plaintiffs of real property.

2. Plaintiffs own title, in fee simple, to four beachfront lots, each lawfully developed with a home. Under color of the Open Beaches Act, the Commissioner of the

Texas General Land Office (GLO) and other officials have issued an Order that imposes a public beach on Plaintiffs' property, authorizing public use and occupation of their land, and injuring the value, use, and marketability of the properties.

3. The Order, issued on March 29, 2021, redraws the landward boundary of public beaches at Surfside Beach at a line located 200 feet inland of the mean low tide line, creating a 200-foot-wide public beach area. *See* Exhibit A. This new "200 foot" public beach area encumbers privately owned dry sand beaches in Surfside Beach, and other private land, converting the subject areas into public property, without compensation, due process, reasonable predeprivation procedures, or hearings.

4. Indeed, the Order's establishment of a new 200-foot-wide public beach area instantly places many longstanding, lawfully built homes and other private structures, including those owned by Plaintiffs, "on the public beach." *See* Exhibit B (boundary line maps). In so doing, the Order subjects the previously unencumbered private residential lots to the property restrictions and public access rights applicable to public beaches under the Open Beaches Act, for the next two years.

5. The Order eviscerates Plaintiffs' right to exclude trespassers from the yards and areas immediately around and under their homes, creates liability issues and dangers for families who rent the homes, devalues the properties, harms their marketability, and inhibits Plaintiffs' ability to repair, build on, and use their properties.

6. While protecting legitimate public beach access rights, through legitimate means, may be a laudable state goal, Defendant officials may not turn private lots into a "public beach" open for unfettered public use, by the stroke of a pen, and thereby take

Plaintiffs' property rights without just compensation, due process, or reasonable predeprivation procedures, and in violation of the Act.

7. Plaintiffs ask the Court to declare the Order an ultra vires, unconstitutional act of state officials operating under color of state law, and enjoin it as such.

THE PARTIES

8. Plaintiff Charles Sheffield (Sheffield) is an individual citizen of the United States, who is domiciled in, resides in, and works in Texas. Sheffield has lived in Texas for decades. He owns beachfront properties in Surfside Beach, Texas, in fee simple, including those residentially developed properties located at 109, 111, and 814 Beach Drive, Surfside Beach.

9. Plaintiff Pedestrian Beach, LLC, is a private corporation organized under the laws of the state of Texas. Merry C. Porter, a native Texan and long-time resident of Surfside Beach, is the sole shareholder of Pedestrian Beach, LLC. Pedestrian Beach owns and operates rental properties, including the residentially developed property at 1206/1207 Sargrasso Circle, Surfside Beach, Texas (Sargrasso Property).

10. Defendants include George P. Bush, in his official capacity as Commissioner of the GLO (GLO Commissioner), and Ken Paxton, in his official capacity as Attorney General for the State of Texas (Attorney General).

11. As Commissioner of the GLO, George Bush construes and enforces the Open Beaches Act and the Order as it pertains to beachfront property. As a state official, Bush may not act under state law in a manner that violates the Takings Clause of the Fifth Amendment or the Fourth Amendment, as incorporated against the states through the

Fourteenth Amendment, the Due Process Clause, or the Act. In his official capacity as a state officer, Bush is subject to a suit seeking equitable, prospective relief from the enforcement of a law or policy, like the Order, that violates federal constitutional rights. *Ex parte Young*, 209 U.S. 123 (1908).

12. Ken Paxton is the Attorney General for the State of Texas. As such, Paxton has the power, at the request of the GLO Commissioner, to seek a court order enforcing the Open Beaches Act against property owners, Tex. Nat. Res. Code § 61.018(a), and to enforce state law in general. The Attorney General may not enforce a state law that violates the federal Constitution or the Act. In his official capacity as Attorney General, Paxton is subject to a suit seeking equitable, prospective relief from a law or policy that violates the federal Constitution.

JURISDICTION AND VENUE

13. The claims in this action arise under the Fifth and Fourth Amendments to the United States Constitution, as incorporated against the states by the Fourteenth Amendment, and the Due Process Clause of the Fourteenth Amendment, as well as under the Act. The Court has jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1331. A remedy is sought under the Declaratory Judgment Act, 28 U.S.C. § 2201.

14. A remedy and claim is also brought pursuant to Texas Natural Resources Code Section 61.019 (the Open Beaches Act), which states, in relevant part: “A littoral owner whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.” The Court has supplemental jurisdiction of this claim under 28 U.S.C. § 1367.

15. Venue is proper in this Court because this action concerns private properties located in Brazoria County, Texas, within the jurisdiction of the Galveston Division of the Southern District of Texas.

LEGAL BACKGROUND AND FACTS

TEXAS COASTAL PROPERTY LAW

16. In Texas, the state owns the beach area that extends from the mean low tide line to either (1) the mean high water mark, called mean high tide line, for grants of land tracing to English common law or (2) the mean higher high water mark, for grants of land tracing to Mexican/Spanish law. The mean low and high tide marks are generally calculated as an average of low and high tide marks over an approximately 19 year period. The mean higher high water mark is calculated as an average of the daily highest high tides over a 19 year period.¹

17. The state-owned lands located between the mean low tide line and mean high water mark or mean higher high water mark are sometimes known as the “wet beach.”

18. The state does *not* hold title to beach or coastal areas lying landward of the applicable mean high tide line, including those land between the applicable mean tide line and the vegetation or dune line. These areas, while occasionally wet during the highest tides or storms, are often called the “dry beach.” These areas of land are part of the private title held by people, like Plaintiffs, owning beach front land along the Texas Gulf coast.

¹ The beaches generally experience two high tides per day. The mean high water mark or mean high tide line is calculated as an average of both these high tides over a 19 year period. The mean higher high water mark, on the other hand, is calculated based on an average of the highest daily high tide, not both high tides.

19. The Texas Open Beaches Act recognizes and codifies Texas common law rules holding that the public can acquire beach easements or rights in private coastal areas by judicially proving and establishing the existence and boundaries of a prescriptive or dedicated public easement over a particular area of private land. Tex. Nat. Res. Code § 61.001(8); *id.* § 61.011(a).

20. Nevertheless, for many years prior to 2012, state officials adhered to a policy and custom of automatically treating all private dry beach areas lying between the mean high water mark and the line of vegetation as a public beach area, without regard for the private ownership of such areas, and without due process or just compensation for the owners. Under this policy, state officials automatically treated, advertised, and regulated the vegetation line as the landward boundary of the public beach, authorizing and encouraging public use of private dry beaches lying seaward of that line under a false claim that those areas are automatically (presumed) a “public beach.”

21. However, in *Severance v. Patterson*, 370 S.W.3d 705 (Tex. 2012), the Texas Supreme Court rejected state officials’ policy of automatically treating the first line of vegetation as the landward boundary of the public beach. The court confirmed, upon certification of questions from the Fifth Circuit Court of Appeals, that state officials must judicially prove and establish the existence of a public easement on private coastlands, including dry beach areas seaward of the vegetation line, according to established common law doctrines, like prescription or dedication, before they may enforce public beaches on such lands.

22. *Severance* further held that, once state officials prove the existence and location of a common law public beach easement, avulsive events (like tropical storms) that push the vegetation line and dunes farther inland do not correspondingly move lawful public beach areas inland to new areas of private land.

23. In short, today, the line of vegetation is not an automatic boundary marker for public beaches or public beach access easements. Privately owned dry sand beach lands and other coastal shorelands cannot be presumed, declared, or treated as a “public beach” area simply because they are located seaward of the first vegetation line.

24. If and when public beaches or public beach access easements are judicially determined to exist on private coastlands lying landward of the mean high tide line, the area is subject to the Texas Open Beaches Act and related regulations.

25. That Act declares:

No person may display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or cause to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to the public beach as guaranteed by this subchapter.

Tex. Nat. Res. Code § 61.014(b).

26. The Act further declares:

It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively, lawfully and legally to enter or to leave any public beach or to use any public beach or any larger area abutting on or contiguous to a public beach if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

Id. § 61.013(a).

27. The Act authorizes substantial civil and administrative penalties against anyone who violates the Act and related regulations, including those enforcing “the free and unrestricted right of the public, individually and collectively, lawfully and legally to enter or to leave any public beach or to use any public beach,” *id.*, and rules prohibiting repairs and certain private uses of property within a designated public beach area. *Id.* § 61.018.

28. The Act and related regulations do not include any provision or means to compensate owners of private beachfront lands that are regulated, declared, or treated as a public beach area under color of the Act.

PLAINTIFFS’ PROPERTIES

29. The Gulf coast beaches in Surfside Beach are marked by the following features: (a) the mean low tide (MLT) line, also called the mean low water mark, calculated as the average of low tides over an approximately 19 year period. The MLT is typically located near open Gulf waters; (b) the mean higher high water mark, calculated as an average of higher high tides over an approximately 19 year period. The mean higher high

tide line is located landward of the MLT; and (c) the beginning of coastal vegetation or dunes. The line of vegetation or dunes is located landward of the mean higher high tide line.

30. Located between the mean higher high tide line and first sign of vegetation or dunes in Surfside Beach is a strip or ribbon of (mostly) dry sandy beach or other coastal land. This ribbon of land lying between the mean higher high tide line and dunes or vegetation has always been private property and is held in divided ownership as part of the title to private, beachfront parcels adjacent to the Surfside coastline.

31. The original grantor of the coastlands lying landward of mean higher high tide line in Surfside Beach did not reserve such lands for public beach use or access when first granting the lands to private parties.

32. State officials have never acquired a judicial determination that a prescriptive, dedicated, or other legitimate common law public easement exists on private land lying between the mean higher high water mark and vegetation on other private beachlands adjacent to the Gulf waters.

33. Plaintiff Sheffield owns three separate beachfront parcels of property in Surfside Beach, Texas, each developed with a single-family home.

34. Sheffield owns a small, single-family home and property at 109 Beach Drive, Surfside Beach, Texas, also known and recorded as Lot 5 Block 2, of the G.D. Shanks Addition to the Town of Surfside. He also owns an adjacent home and lot at 111 Beach Drive, Surfside Beach, Texas, also known and recorded as Lot 4 Block 2, of the G.D. Shanks Addition to the Town of Surfside.

35. Sheffield owns a third home at 814 Beach Drive, Surfside Beach, Texas, also known and recorded as Lot 21 Block 2, of the Surfside Townsite, Subdivision B, Section 2.

36. All are beachfront properties which Sheffield rents out to families and others for periodic visits, an endeavor which supplies Sheffield with regular, reliable income.

37. Sheffield purchased the homes at 109 and 111 Beach Drive together in 2019 for approximately \$600,000. The home at 111 Beach Drive was lawfully built on private land in the late 2000's. Title to these two lots extends seaward into the dry beach area lying between the mean higher high water mark and first sign of vegetation. Sheffield's properties at 109 and 111 Beach Drive thus include a portion of these (generally) dry beach lands.

38. To the south (seaward) of Sheffield's lot boundaries for 109 and 111, Beach Drive is an additional strip of dry beach owned by an unknown private party, and beyond that the mean higher high water line.

39. Sheffield acquired the home and property at 814 Beach Drive in 2015 for approximately \$250,000. This property was lawfully constructed in approximately 1984. A paved two-lane road—Beach Drive—separates 814 Beach Drive from the Gulf waters. This lot is on land that is landward of the mean higher high water mark, including the land under and immediately around the home.

40. Sheffield's homes and the land immediately around and under those homes are not on submerged lands. The homes, driveways, accessory structures, and curtilage

immediately around the homes is landward of the mean higher high water mark, and on private, dry land.

41. There are no recorded public beach access easements or rights-of-way on the title to the land under and immediately around the homes on Sheffield's properties. To Sheffield's knowledge, the properties have never been consistently utilized for recreational beach purposes by members of the public and no one has ever proven the existence of a common law public easement on the land under or immediately adjacent to the homes.

42. When Plaintiff purchased the properties at 109, 111, and 814 Beach Drive, they were not classified by state officials as "on the public beach." Neither Sheffield nor his predecessors has ever dedicated land at 109, 111, and 814 Beach Drive to public use.

43. The properties at 109, 111, and 814 Beach Drive are not a nuisance or threat to public health, safety, or public beach access and are not under any such order or declaration issued by any authorized agency, official, or court.

44. Pedestrian Beach, LLC, owns a beachfront lot and a 2,400 square foot "duplex" home at 1206/1207 Sargrasso Circle, Surfside Beach, Texas. This property is also known and recorded as Lot 2, Block 2 of the Palm Beach Subdivision.

45. On belief and knowledge, the Sargrasso lot was acquired by Merry Porter's husband in 1981. The existing "duplex" home was lawfully built in 1986 at a cost of approximately \$80,000. Pedestrian Beach rents this property out for income.

46. The home at 1206/1207 Sargrasso Circle is located landward of the mean higher high water mark, and not on state-held submerged lands. When Pedestrian Beach,

LLC, acquired the Sargrasso property, it was not classified by state officials as “on the public beach.”

47. There is no recorded public beach easement on the title to the Sargrasso property. Neither Pedestrian Beach, LLC, nor their predecessors have ever dedicated the property to public use. To Merry Porter’s knowledge, no one has ever judicially proven the existence of a common law public easement on the land under or immediately adjacent to the Sargrasso duplex home

48. Plaintiffs purchased their residentially developed coastal property with the right and expectation of using that property for private, exclusive residential and rental purposes.

**THE 200-FOOT PUBLIC BEACH ORDER
AND IMPACT ON PLAINTIFFS’ PROPERTIES**

49. In late summer of 2020, two tropical storms—Hurricane Laura and Tropical Storm Beta—came ashore in Texas and suddenly altered the topography of beaches in the Galveston and Surfside Beach area.

50. General Land Office staff operating under authority of Defendant state officials surveyed the beaches in Surfside Beach between October 2020 and January 2021.

51. On March 29, 2021, General Land Office Commissioner George P. Bush issued an Order relating to coastal property in Surfside Beach. The Order, entitled, “Temporary Order Suspending Determination of the Line of Vegetation and Suspending Enforcement of Certain Encroachments on the Public Beach,” sets the boundary of the

public beach in Surfside Beach at a “line 200 feet inland from the line of mean low tide.” The Order is effective for a period of two years.

52. The Order specifically declares that: “For the duration of the Order, the landward boundary of the public beach extends from the line of mean low tide (MLT) to a line 200 feet inland from MLT.”

53. The 200-foot line is apparently a proxy for the first line of natural vegetation, which Defendant officials claim could not be identified in Surfside Beach after, and because of, Hurricane Laura and Tropical Storm Beta, and which state officials apparently still view as a public beach boundary, despite the *Severance* decision.

54. No notice of the Order and the public beach boundaries and area created by the Order was provided to property owners or the public prior to its issuance.

55. Concurrently with issuance of the Order, State officials publicly issued photographic maps showing the approximate location of the 200-foot public beach area in Surfside Beach. These maps show the location of the 200-foot boundary line relative to developed beachfront properties in Surfside, Exhibit B, including Plaintiffs’ properties. Exhibits D & E.

56. Aware that the establishment of the public beach boundary 200 feet inland of the MLT would cause some private homes to suddenly be on a “public beach,” Defendant officials included in the Order a suspension of state attempts to remove private homes that became “encroachments” on the “public beach” due to the Order. This home removal moratorium lasts for a period of three years.

57. The Order does *not* suspend enforcement of the public’s purported right, under the Act, to invade, use, occupy, and access private land within the new 200-foot “public beach” area.

58. Neither the Order nor any provision of the Act limits the time, duration, or nature of activities that the public can engage in on lands, like Plaintiffs’, that now fall within the “public beach” area due to the Order.

59. To enable and enforce public use of private land within the 200-foot public beach area, the Order declares that “[n]o construction of habitable structures is allowed on the public beach easement . . . from MLT to 200 feet landward[.]”

60. In a Frequently Asked Question sheet (FAQ) issued with the Order, state officials further declared that citizens who own property on the new 200-foot “public beach” cannot (a) “repair, replace, or construct a slab of concrete, fibercrete, or other impervious material” on their property, (b) add a room or any other additional square footage to their houses; and (c) cannot place any material other than sand on their lots. *See* Exhibit C.

61. These and other repair and construction limitations apply to a private home within the 200-foot public beach area, even if only a portion of the home falls within the 200-foot public beach area.

62. Defendant officials have, or will soon, file the Order in the “real property records of the county” to which the Order applies to ensure formal encumbrance of the property titles.

63. The Order does not offer just compensation to property owners whose land is deemed to now be a “public beach” area, and who suffer damage to the fair market value, profitability, use, and marketability of their beachfront property, due to the placement of a public area on their land.

64. Plaintiff Sheffield’s rights in the properties at 109 Beach Drive, 111 Beach Drive, and 814 Beach Drive are subject to, and injured by, the Order. Specifically, the 200-foot public beach area encroaches into the lots and intersects a private stairway accessory to both 109 and 111 Beach Drive (i.e., the boundary line goes through the stairway).

65. Indeed, the 200-foot line comes within a few feet of the homes at 109 and 111 Beach Drive, placing their entire front (seaward) yards and curtilage within the new, 200-foot (from MLT) “public beach” area. The creation of this area triggers public access rights under the Act and ultimately allows members of the public to station themselves for indefinite periods on Sheffield’s land, within feet of Sheffield’s homes. The Order authorizes a public invasion and occupation of this private area, and damages the use, privacy, enjoyment, and value of the properties. *See* Exhibit D (photo of location of homes relative to 200-foot boundary line).

66. The properties at 109 and 111 Beach Drive include accessory structures, such as private decks and stairways, that are now are or will likely soon be partially and wholly within the new 200-foot public beach area created by the Order. As a result, the Order subjects these properties to public invasion and use under the Act and prevents Sheffield from lawfully excluding members of the public from such private areas.

67. On belief and knowledge, Sheffield's home at 814 Beach Drive is partially or wholly landward of the 200-foot public beach boundary line, placing the home, land under the home, and curtilage immediately around the home, partially or wholly within the "public beach" area. This subjects the 814 Beach Drive property to public access, and allows members of the public to station themselves immediately around, and perhaps on the home, damaging its value, use, and enjoyment.

68. Plaintiff Pedestrian Beach's rights in the duplex lot at 1206/1207 Sargrasso Circle are also subject to, and injured by, the Order. Specifically, the new 200-foot public beach boundary is entirely landward of the duplex home, placing the home and curtilage immediately around it on a "public beach." The Order thus authorizes the public to station themselves on and around the Sargrasso home and restricts the privacy, value, use, and enjoyment of the property. *See* Exhibit E (photo of location of home relative to 200-foot boundary line).

69. The Order takes an approximately 100 foot x 60 foot section of Pedestrian's beachfront land, the majority of which supports the duplex home, and converts it into a public beach recreation area.

DECLARATORY RELIEF ALLEGATIONS

70. Under the Fifth and Fourteenth Amendments to the United States Constitution, Plaintiffs have a federal right to be free from an uncompensated taking of their right to exclusive possession and use of their property. Under the Fourth Amendment to the Constitution, Plaintiffs have a right to be free of unreasonable seizure of the land under and immediately around their homes. Under the Due Process Clause of the

Fourteenth Amendment, Plaintiffs have a federal right to notice and a hearing before they are deprived of their real property interests and to be free of arbitrary property deprivations.

71. Under the Open Beaches Act and Texas law, Plaintiffs have a right to hold and use every part of their property as private and exclusive property unless and until there is a final determination from a court that a public easement exists on their land.

72. The GLO Commissioner and other officials have enforced the Order and the Act to create and authorize a “public beach” on Plaintiffs’ properties, seizing and taking their property without just compensation, due process, or compliance with reasonable common law procedures.

73. There is a justiciable controversy as to whether state officials are enforcing the Order to unconstitutionally impose a “public beach” on Plaintiffs’ land without just compensation, due process, or compliance with the reasonable predeprivation procedures required by the Fourth Amendment.

74. There is a justiciable controversy as to whether the Order is facially unconstitutional because it takes and seizes private property for public use without concurrent provision of just compensation, due process, or compliance with the reasonable procedures required by the Fourth Amendment.

75. A declaratory judgment as to whether Defendant Officials may constitutionally and lawfully make Plaintiffs’ property into a “public beach” area, by the simple expedient of redrawing the public beach boundary, will serve a useful purpose in clarifying and settling the legal relations between the parties.

76. A declaratory judgment as to whether state officials are enforcing the Order and/or Act to unconstitutionally seize and take private property for public use without just compensation, due process, or compliance with reasonable predeprivation procedures will terminate and afford relief from the uncertainty and insecurity giving rise to this controversy.

77. A declaratory judgment as to whether the 200-foot public beach boundary is created by the Order is arbitrary and/or not rationally related to any legitimate public beach interest or method for establishing public beach areas will clarify legal relations between the parties and provide relief from the uncertainty giving rise to this controversy.

78. To the extent Defendant Officials rely on Natural Resources Code Section 61.020 to defend the Order, a declaratory judgment as to whether that provision unconstitutionally shifts the burden of proof to a property owner to prove that their private land is not subject to a public easement will clarify legal relations and afford relief from the uncertainty the provision causes to property titles and ownership.

79. A declaratory judgment as to whether the Order is facially unconstitutional because it converts all private land to which it applies into public property without concurrent provision of just compensation, due process, or compliance with reasonable predeprivation procedures will clarify unsettled legal relations and provide relief from uncertainties affecting title to coastal property in Surfside Beach.

INJUNCTIVE RELIEF ALLEGATIONS

80. Plaintiffs have no adequate remedy at law to address the arbitrary, unreasonable, uncompensated, and procedurally defective enforcement of the Order and/or Act against their properties.

81. There is a substantial likelihood that Plaintiffs will succeed on their claim that enforcement of the Order and/or Act to convert their properties into a “public beach” without just compensation, a predeprivation process, a rational connection to legitimate public beach interests, or compliance with reasonable procedures violates the Takings Clause, the Fourth Amendment, the Due Process Clause, and state law.

82. Plaintiffs will likely suffer irreparable injury absent a preliminary and permanent injunction restraining state officials from enforcing the Order and/or Act to convert their private residential property into a public beach area without compensation, due process, or compliance with reasonable predeprivation procedures.

83. The injury to Plaintiffs—the unconstitutional imposition of a public beach and public use of their property and resulting take and seizure of their property interests without due process, compensation, or compliance with reasonable predeprivation procedures—outweighs any harm the injunction might cause state officials.

84. An injunction restraining state officials from enforcing the Order and/or Act to unconstitutionally take and seize private property without just compensation, due process, or compliance with reasonable predeprivation procedures, will not impair, but rather enhance, the public interest.

LEGAL CLAIMS

COUNT I

Physical Taking of Private Property Without Just Compensation

85. All prior allegations are hereby included and incorporated in this claim.

86. The uncompensated creation of a “public beach” on private land is a per se physical taking that violates the Fifth Amendment.

87. The uncompensated authorization of public beach access and use rights on private land, sometimes conceptualized as the appropriation of a public easement, is a per se, physical taking that violates the Fifth Amendment.

88. The authorization of a continuous, ongoing, public invasion of real property for a temporary period is unconstitutional without just compensation.

89. The 200-foot (from MLT) “public beach” area created by the Order converts every area of private dry beach lands at Surfside Beach to which the Order applies into public property for at least two years, without providing or securing prompt just compensation for the period of public use.

90. In creating a 200-foot wide public beach area at Surfside Beach, the Order authorizes public access and use of every area of private dry beach land to which the Order applies, eviscerating the owners’ constitutionally protected right to exercise exclusive control and possession of the areas, without just compensation.

91. By placing a “public beach” or public access easement onto all private lands lying between the mean higher high water mark and 200 foot line, based on the effects of

Hurricane Laura or Tropical Storm Beta, the Order is ultra vires and amounts to a taking of property on its face.

92. The Order effects an unconstitutional taking of property on its face by authorizing ongoing public use and occupation of every area of private beach land to which it applies, for at least two years, without just compensation.

93. As applied to Plaintiffs, the Order physically and unconstitutionally takes portions of their real property.

94. The Order eviscerates Plaintiffs' right to exclude unwanted members of the general public from private land under and immediately around their homes.

95. The Order takes an expansive public easement on and from Plaintiffs' land, and burdens their titles, without just compensation.

96. The Order destroys and takes the "private" aspect of Plaintiffs' private property, making their property into a publicly controlled and occupied area of land, all without concurrent provision of just compensation.

97. As applied to Plaintiffs, the Order authorizes and effects a continuous, per se, unconstitutional physical invasion, occupation, and taking of Plaintiffs' real property, for at least two years.

98. The Order frustrates Plaintiffs' distinct investment-backed expectations related to their real property ownership and use, and harms the properties' value, without compensation.

COUNT II

Violation of Procedural Due Process Under the Fourteenth Amendment

99. All prior allegations are hereby included and incorporated in this claim.

100. Plaintiffs have a federal constitutional right to reasonable notice and an opportunity to be heard before being deprived of private property interests.

101. Real property, including Plaintiffs' residential coastal property, is a constitutionally protected property interest.

102. Defendant state officials issued the Order and imposed the 200-foot public beach on private beachfront land, including Plaintiffs' properties, without constitutionally sufficient notice to Plaintiffs or other affected property owners or opportunity to object.

103. The state officials issued the Order and imposed a "public beach" on private beachfront lands, including Plaintiffs' properties, without providing Plaintiffs and other affected property owners with adequate notice and a predeprivation opportunity to be heard.

104. If state officials had provided Plaintiffs and other affected coastal property owners with adequate notice and an opportunity to be heard prior to issuance of the Order, there is a substantial likelihood that state officials would have understood that the Order is inconsistent with federal and state legal principles, and Plaintiffs' property interests, and would have delayed, changed, or withdrawn the Order.

COUNT III

Violation of Due Process Under the Fourteenth Amendment

105. The Order and the 200-foot “public beach” area it establishes is irrational and arbitrary on its face, in that the 200-foot public beach boundary and area lack any rational or lawful connection to legitimate public beach interests or to a legitimate method of establishing public beach areas and/or public beach easement boundaries.

106. The Order and the 200-foot “public beach” area it establishes is irrational and arbitrary as-applied to Plaintiffs’ properties, as the 200-foot public beach boundary and area it creates lack any rational or lawful connection to Plaintiffs’ rights or interests, to state law methods of establishing public beach access, or legitimate public beach interests or boundaries.

107. To the extent Defendant officials rely on Natural Resources Code Section 61.020 to defend the Order, that provision violates Plaintiffs’ due process rights by shifting the burden of proof to Plaintiffs to prove that their private land is *not* subject to a public easement, in contravention of established law placing the burden on an easement claimant to prove that private land is encumbered by public rights.

COUNT IV

Unreasonable Seizure of Private Property in Violation of the Fourth Amendment

108. All prior allegations are hereby included and incorporated in this claim.

109. Plaintiffs’ homes, and the land immediately under and around the homes, are protected from unreasonable seizures by the Fourth Amendment.

110. A government-sponsored public invasion of Plaintiffs' residential private property interests interferes with Plaintiffs' possessory interests and is a "seizure" for purposes of the Fourth Amendment.

111. Plaintiffs have a legitimate expectation of privacy in the land under and immediately around their residential properties, and a legitimate expectation of the right to exclude others from those private areas.

112. In issuing the Order, state officials have failed to incorporate or follow reasonable local procedural safeguards, such as the requirement that public beaches and public easements be proven and established in a court of law prior to enforcement.

113. The Order effects an unreasonable seizure of protected interests on its face in authorizing a public beach on every area of private land between the mean higher high water mark and 200 foot line in Surfside Beach, without compliance with reasonable predeprivation procedures, including the requirement that easements be judicially established under common law, prior to enforcement.

114. As applied to Plaintiffs, the Order effects an unreasonable seizure of Plaintiffs' protected real property interests by authorizing a public beach on private land under and around their homes without prior compliance with reasonable predeprivation procedures.

COUNT V

Declaratory Judgment Under Tex. Nat. Res. Code § 61.019

115. All prior allegations are hereby included and incorporated in this claim.

116. Texas Natural Resources Code Section 61.019 (the Open Beaches Act) states, in relevant part: “A littoral owner whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.”

117. The Order, issued under color of the Open Beaches Act, frustrates Plaintiffs’ property rights in their littoral properties, and is therefore subject to challenge under Natural Resources Code Section 61.019.

118. The Order and its establishment of a 200-foot public beach area and/or a public beach easement boundary at a line 200 feet inland of the MLT is arbitrary, unlawful, and unconstitutional.

119. State officials may not establish, declare, and regulate private coastal land as a public beach under color and authority of the Act based on the location of the vegetation or a purported proxy for that line—like the 200-foot line.

120. State officials may not place or move a public beach or public beach easement onto private land like Plaintiffs’ based on the effects of a tropical storm or hurricane. Before enforcing or declaring a public beach or public easement on private coastlands, state officials must establish in court that a common law public easement exists and burdens the areas of land which they seek to open to public use.

121. The Order violates the Act, the *Severance* decision, and Texas constitutional and common law principles, including the “Due Course of Law” provision in Article I, Section 19, of the Texas Constitution.

RELIEF SOUGHT

Wherefore, Plaintiffs respectfully request that the Court:

1. Declare that the Order effects an unconstitutional taking of private property on its face;
2. Declare that the Order effects an unconstitutional physical taking of Plaintiffs’ particular properties;
3. Declare that the Order effects an unreasonable seizure on its face and as applied to of Plaintiffs’ land by imposing a public beach on the subject private land without prior compliance with reasonable state law safeguards, such as a judicial determination of an easement on all subject areas;
4. Declare that the Order deprives Plaintiffs of real property interests without notice or a hearing and, thus, without due process of law;
5. Declare that the Order’s placement of the public beach at a 200-foot line is arbitrary and irrational and violative of due process;
6. Declare, pursuant to Tex. Nat. Res. Code § 61.019, that the Order violates the Fifth Amendment of the U.S. Constitution without provision of just compensation, violates Texas law, including *Severance*, and violates the Due Course of Law provision of the Texas Constitution, and is therefore invalid;

7. Preliminarily and permanently enjoin Defendant State officials from enforcing the Order on its face and as-applied to Plaintiffs;

8. Any other available relief that is appropriate and which becomes apparent during the course of litigation; and

9. Attorneys' fees under 42 U.S.C. § 1988.

Dated: June 18, 2021.

Respectfully submitted,

s/ J. David Breemer
J. DAVID BREEMER
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the day of June 18, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. Counsel for Defendants are registered with the Court's CM/ECF system and will receive a notification of such filing via the Court's electronic filing system.

s/ J. David Breemer
J. DAVID BREEMER

Exhibit A

TEXAS GENERAL LAND OFFICE

In Re: Hurricane Laura and § Before the Commissioner of the
Tropical Storm Beta § Texas General Land Office
§ State of Texas

TEMPORARY ORDER SUSPENDING DETERMINATION OF THE LINE OF VEGETATION AND SUSPENDING ENFORCEMENT ON CERTAIN ENCROACHMENTS ON THE PUBLIC BEACH

The Commissioner of the Texas General Land Office (Commissioner) makes the following Findings of Fact and Conclusions of Law in support of this Temporary Order to suspend determination of the line of vegetation (LOV) for two years and to suspend enforcement of the prohibition against certain encroachments on the public beach easement for three years pursuant to Texas Natural Resources Code (TNRC) §§ 61.0171 and 61.0185.

Findings of Fact

1. Hurricane Laura made landfall at 1:00 a.m. on August 27, 2020 near Cameron, Louisiana, impacting the upper Texas coast. Tropical Storm Beta made landfall at 10:00 p.m. on September 21, 2020 near Matagorda Peninsula. These two meteorological events resulted in a loss in elevation and a loss of vegetation and dunes in both Galveston and Brazoria Counties.
2. The line of vegetation (LOV) has been obliterated within the city limits of the Village of Surfside Beach and on Galveston Island from the western terminus of the seawall to Thirteen Mile Road by storm tidal surges and overwash from Hurricane Laura and Tropical Storm Beta.
3. A temporary suspension of determination of the line of vegetation and a determination of the boundary of the public beach, setting a line at 200 feet inland from mean low tide, is necessary so local governments can issue permits for beachfront construction in accordance with the local Beach Access and Dune Protection Plans, while preventing construction on the public beach easement.
4. A primary purpose of the temporary suspension of enforcement is to allow natural recovery and stabilization of the beach system prior to enforcing against encroachments on the public beach.
5. GLO staff reviewed the LOV in Brazoria and Galveston Counties multiple times between October 2020 and January 2021 and determined that the LOV had been obliterated as a result of meteorological events.
6. In some areas, a common law public beach easement or other easement exists that extends landward of the area that is 200 feet landward of mean low tide.

Conclusions of Law

1. The General Land Office has jurisdiction over this matter pursuant to the Open Beaches Act, TNRC Chapter 61, and the Dune Protection Act, TNRC Chapter 63.
2. Pursuant to TNRC § 61.0171, the Commissioner is authorized to issue a temporary order suspending action on conducting a line of vegetation determination for a period of up to three years from the date

the Order is issued since the Commissioner has determined that the line of vegetation was obliterated as a result of Hurricane Laura and Tropical Storm Beta. For the duration of the Order, the landward boundary of the public beach extends from the line of mean low tide (MLT) to a line 200 feet inland from MLT as established by a licensed state land surveyor.

3. Pursuant to TNRC § 61.0185, the Commissioner is authorized to issue a temporary order suspending, for a period of three years from the date the order is issued, the submission of a request that the attorney general file a suit under TNRC § 61.018(a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach if the Commissioner determines that the line of vegetation establishing the boundary of the public beach has moved as a result of a meteorological event, the house was located landward of the natural line of vegetation before the meteorological event, and the house does not present an imminent threat to public health and safety.
4. The boundary of the public beach easement established by this Order establishes a minimum landward boundary of the public beach and does not supersede all or any portions of an easement existing prior to the issuance of this Order to the extent such right of the public that has been established by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom. A public beach easement or other easement that extends beyond 200 feet landward of MLT cannot be ceded under common law.
5. No construction of habitable structures is allowed on the public beach easement, whether the portion from MLT to 200 feet landward or farther landward in places with a public beach easement or other easement that extends beyond the 200-foot line. Construction may be allowed as specified in 31 TAC §§ 15.7(e) and 15.11.

It is accordingly **ORDERED** that:

1. Action on conducting a line of vegetation determination is suspended for a period of two years from the date of this Order within the Village of Surfside Beach city limits and from the western terminus of the Seawall west to Thirteen Mile Road on Galveston Island. For the duration of the order, the public beach shall extend to a line 200 feet inland from the line of mean low tide (MLT) as established by a licensed state land surveyor.
2. The area from MLT to 200 feet landward shall be the minimum public beach easement. The public beach easement or another easement may extend further landward than the line established at 200 feet from MLT in some areas if a public beach easement as set forth in TNRC § 61.011 existed in those areas prior to the issuance of this Order.
3. For permitting purposes, local governments shall use 200 feet landward of mean low tide as the LOV, as applicable depending on the local government's plan, for two years.
4. Action on the submission of a request that the attorney general file a suit to obtain a court order to remove a house from a public beach is suspended for a period of three years from the date of this Order. For the duration of the Order, the authority of the GLO or other local government to submit a request that the attorney general file a suit under TNRC § 61.018(a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach is suspended unless the Commissioner determines that the house presents an imminent threat to public health and safety or that the house was not located landward of the natural line of vegetation before Hurricane Laura or Tropical Storm Beta.

5. Notice of this Temporary Order shall be:
 - a. posted on the Internet website of the GLO;
 - b. published by the GLO as a miscellaneous document in the *Texas Register*;
 - c. filed for record by the land office in the real property records of the county in which the areas of beach subject to the order are located; and
 - d. sent to the governing body of each local government to which this order applies.
9. The Temporary Order suspending determination of the LOV will expire two years from the date the Order is issued. The Temporary Order suspending enforcement of the prohibition against certain encroachments on the public beach easement will expire three years from the date it is issued.
10. Should any part of this Temporary Order be determined by a court of competent jurisdiction to be invalid, the validity of the remaining parts of this Order shall remain unaffected.

SIGNED this 29th day of March, 2021, in Austin, Texas.

DocuSigned by:

840877346994453...

GEORGE P. BUSH
Commissioner, General Land Office

Exhibit B

Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



This map is intended for general informational purposes only to depict the location of the line of vegetation (LOV) at 200 feet landward from Mean Low Tide in areas where it was obliterated by meteorological events in 2020. The depicted LOV represents conditions observed on 1/11/21. This line does not purport to depict the boundaries of private and public land. The GLO makes no representations or warranties concerning the rights of property owners on or adjacent to the public beach based on this line and makes no representations or warranties of merchantability and fitness for a particular purpose, express or implied, of the information presented here, and is not responsible or liable for any derivative or misuses of this map.

Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



— 200 Feet from Mean Low Tide
 — Mean Low Tide

Bermuda Beach Dr



This map is intended for general informational purposes only to depict the location of the line of vegetation (LOV) at 200 feet landward from Mean Low Tide in areas where it was obliterated by meteorological events in 2020. The depicted LOV represents conditions observed on 1/11/21. This line does not purport to depict the boundaries of private and public land. The GLO makes no representations or warranties concerning the rights of property owners on or adjacent to the public beach based on this line and makes no representations or warranties of merchantability and fitness for a particular purpose, express or implied, of the information presented here, and is not responsible or liable for any derivative or misuses of this map.



Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



Temporary Post-Storm Line of Vegetation 1-11-2021

City of Galveston



Exhibit C

Texas General Land Office Issues Temporary Suspension on the Line of Vegetation (LOV)

The 2020 hurricane season brought an onslaught of particularly damaging effects, especially from Hurricane Laura and Tropical Storm Beta. The Galveston and Surfside areas experienced a loss of beach elevation and a significant loss of dunes and dune vegetation.

The Texas General Land Office conducted extensive beach surveys following the storms and determined that the line of vegetation (LOV) had been completely obliterated in certain areas.

Due to the damaging effects of the storms and the obliteration of the LOV in some areas, the Texas General Land Office has issued an Order under the authority of Texas Natural Resource Code Sections [61.0171](#) and [61.0185](#) that temporarily suspends the determination of the LOV for two years and suspends certain enforcement actions for removal of houses on the public beach for three years in Surfside and in parts of Galveston. This Temporary Order is necessary to give the beach and dune system time to recover naturally from the meteorological events and establish a new line of vegetation. This temporary Order also maintains the status quo for the duration of the order protecting the private property rights of littoral landowners.

Under the Order, for a period of two years, the public beach will extend to a line 200 feet inland from the line of mean low tide as established by a licensed state land surveyor. For permitting purposes, local governments will be required to use 200 feet landward of MLT as the LOV, as applicable depending on the local government's Beach Access & Dune Protection Plan. This Order applies to homeowners, businesses, and local governments during the permitting process.

The establishment of the LOV at 200 feet from mean low tide line will mean that a limited number of homes are now partially or wholly located on the public beach. One of the primary purposes of the Order is to give the beach and natural line of vegetation time to recover rather than seeking immediate enforcement regarding structures located on the public beach. The Order includes a three-year suspension of the ability for the Commissioner to request that the Texas Attorney General's Office file a suit to remove any home from the public beach. The only two exemptions to this rule are that:

1. The house must have been located landward of the natural LOV prior to the meteorological events that are the subject of this Order; and
2. The house must not present an imminent threat to public health and safety.

During the duration of this Order, property owners may make limited repairs to their homes that are seaward of the LOV in accordance with [31 TAC § 15.11](#).

The temporary suspension of the LOV and enforcement Order applies within the Village of Surfside Beach city limits and in the City of Galveston from the western terminus of the Seawall west to 13 Mile Road.

FAQ (FREQUENTLY ASKED QUESTIONS)

- **Why is this action necessary?**

This action is necessary because the LOV was destroyed by Hurricane Laura and Tropical Storm Beta. The Open Beaches Act allows the Texas General Land Office to suspend usual LOV determinations and set the boundary of the public beach at 200 feet from Mean Low Tide for a

period of up to three years to allow for natural recovery of the vegetation line. Simultaneously, the Open Beaches Act also allows the Land Office to suspend requests to the Attorney General's office to remove homes that may now be located seaward of the boundary of the public beach for a period of three years. This is being done in order to maintain the status quo and protect private property rights while giving the beach and dune system time to recover naturally from the meteorological events.

- **How was the line decided upon?**

The temporary line was determined by a licensed state land surveyor through on-the-ground surveys that were conducted by the GLO in January 2021. The survey line located 200 feet from mean low tide marks the minimum extent of the public beach easement where the natural line of vegetation has been obliterated.

- **Where would the LOV be measured if the Commissioner had not issued this Order?**

By statute, the LOV is at 200 feet from mean low tide when it has been obliterated by a storm, even without the order. The purpose of the order is to make it easier for local governments and landowners to determine the location of the LOV, and to provide temporary relief from enforcement against homes determined to be located on the public beach.

- **What areas of the coast are affected?**

The portions of the Village of Surfside Beach city limits and the City of Galveston from the western terminus of the Seawall west to 13 Mile Road (See maps below for a more detailed outline).

- **Is the GLO going to remove houses that are seaward of 200 feet from mean low water?**

No. Not at this time. The Order issued by the Land Office suspends the ability to request that the Texas Attorney General's Office file a suit remove a home from the public beach for three years.

- **Will the GLO condemn my house when the three-year period is over?**

The GLO does not have condemnation authority. However, construction is not allowed on the public beach and the GLO is charged with ensuring that existing and new construction does not impact the public's ability to use or access the beach. Typically under the Open Beaches Act, if any portion of a structure is located within the public beach easement, it is considered an encroachment on the easement and may be subject to removal through an enforcement action if the structure is or becomes a health and safety risk or significantly impedes the public's ability to traverse the beach.

- **Does this Order suspend all enforcement action by the GLO for 3 years?**

No, the GLO can still pursue enforcement if you perform construction without a permit or in a manner not compliant with an existing permit. This Order only suspends enforcement for removal of homes or structures that are located on the public beach.

- **May a property owner repair a home that is encroaching on the public beach?**

Yes, in certain cases. However, under the Order and state rules for beachfront construction, there are limitations on what activities may be performed. A homeowner may be eligible to obtain a permit under [31 TAC § 15.11](#) which lays out the following conditions:

1. The line of vegetation establishing the boundary of the public beach has moved as a result of erosion or a meteorological event.
 2. The house was located landward of the line of vegetation before the erosion or meteorological event occurred.
 3. No portion of the house is located seaward of mean high tide.
 4. The house was not damaged more than 50 percent as the result of a meteorological event.
 5. The house does not present an imminent threat to public health and safety.
- **My house is located partially or entirely seaward of the 200 feet from mean low water line, what construction activities can I do?**

A local government may issue a certificate or permit authorizing repair of an eligible house if the local government determines that the repair:

1. is solely to make the house habitable including reconnecting the house to utilities;
2. does not increase the footprint of the house;
3. does not include the use of impervious material, including but not limited to concrete or fibercrete, seaward of the boundary of the public beach;
4. does not include the construction of an enclosed space below the base flood elevation and seaward of the boundary of the public beach;
5. does not include the repair, construction, or maintenance of an erosion response structure seaward of the boundary of the public beach;
6. does not occur seaward of mean high water; and
7. does not include construction underneath, outside or around the house other than for reasonable access to or structural integrity of the house, provided that such repair does not create an additional obstruction to public use of and access to the beach.

In addition, only beach-quality sand may be placed beneath the footprint of an eligible house and in an area up to five feet seaward of the house. The beach-quality sand must remain loose and cannot be placed in bags or other formed containment. The sand must also be an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system. The use of clay or clayey material is not allowed.

You may repair your septic system if the Texas Commission on Environmental Quality, Texas Department of Health, or a local official has determined that your septic system does not pose a public health and safety risk. Reconnection to water, sewer, electricity, and gas should be coordinated through the local government and must be made in accordance with other applicable laws and local ordinances.

- **What's not allowed in areas seaward of 200 ft from MLT?**
 1. You can't repair, replace, or construct a slab of concrete, fibercrete, or other impervious material.

2. You can't construct a room addition or increase the size of the structure's footprint or construct a new structure.
3. You can't place materials other than beach quality sand on the public beach.

- **What if the 200-foot line goes through my house?**

If the 200-foot line goes through any portion of your house, then your entire house will be limited to only the activities allowed under [31 TAC § 15.11](#). Some construction in areas landward of the public beach is allowed but must comply with the local government's Beach Access & Dune Protection Plan and state rules (see list of allowable construction activities above).

- **May a property owner obtain a permit to build a new habitable structure, if a portion of the footprint is located seaward of the 200-foot line?**

No, new construction of a habitable structure may only be permitted completely landward of the public beach easement, or 200 feet from mean low tide, whichever is farther landward.

- **May I use my own survey to determine the location of 200 feet from mean low tide?**

Yes, you may have an independent survey performed by a licensed state land surveyor. The local government and GLO will consider such surveys on a case by case basis. All surveys must be submitted to the local government and reviewed by the General Land Office.

- **My bulkhead, retaining wall or geotube is exposed and damaged. Can I repair it?**

No. Constructing, repairing, or maintaining a bulkhead, retaining wall erosion response structure or shore protection project on the public beach is prohibited.

- **May dunes be restored seaward of the 200-foot line?**

Only in select areas. Dune restoration projects may be constructed no farther seaward than 20 feet from the post-storm landward boundary of the public beach (which is 180 feet from mean low tide) as long as public beach access is not impacted. Other rules relating to dune restoration in [31 TAC § 15.7\(e\)](#) also apply.

- **I previously received an emergency authorization to restore dunes seaward of the 200-foot line; will the GLO require me to move that restored dune?**

No, the GLO will not require you to move a restored dune as long as the dune restoration work was completed in accordance with the emergency rules and the authorization from the local government and does not interfere with the public's use of the beach.

- **If I restored dunes on the public beach previously or want to restore them in the future, will this change the location of the line of vegetation?**

No, the line of vegetation will be set at 200 feet from Mean Low Tide until the Order expires.

- **Where is the line of vegetation in areas where this Order does not apply?**

The GLO will determine the location of the line of vegetation using its normal criteria under the Open Beaches Act in areas where this Order does not apply. The location of the natural line of

vegetation will be used to determine the landward boundary of the public beach easement, as determined by the GLO.

- **I don't agree with the 200-foot line, what is my recourse?**

The GLO has the authority to set the "line of vegetation," which is the statutory landward boundary of the public beach. The Order is a temporary measure designed to set the landward extent of the public beach following the impacts of a meteorological event. The line is based on the best information and technology available to the GLO. However, you may hire your own licensed state land surveyor to determine the location of the 200-foot line and submit their survey with the construction application to the local government.

- **How do I get a permit to perform construction or dune restoration?**

Apply to your local government for a regular Beachfront Construction Certificate & Dune Protection Permit for all construction projects. The normal permitting process includes a local review of the application and a ten-day review period for the GLO to comment on the proposed small-scale permit application. The local government that issues Beachfront Construction Certificates and Dune Protection Permits in the affected areas are:

City of Galveston: 409-797-3660

Village of Surfside Beach: 979-233-1531

Exhibit D

Temporary Post-Storm Line of Vegetation 1-11-2021

Village of Surfside Beach



Exhibit E

Temporary Post-Storm Line of Vegetation 1-11-2021

Village of Surfside Beach



Kiren Mathews

From: DCECF_LiveDB@txs.uscourts.gov
Sent: Friday, June 18, 2021 3:39 PM
To: DC_Notices@txsd.uscourts.gov
Subject: Activity in Case 3:21-cv-00122 Sheffield et al v. Bush et al Amended Complaint/Counterclaim/Crossclaim etc.

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

SOUTHERN DISTRICT OF TEXAS

Notice of Electronic Filing

The following transaction was entered by Breemer, Jan on 6/18/2021 at 5:38 PM CDT and filed on 6/18/2021

Case Name: Sheffield et al v. Bush et al

Case Number: [3:21-cv-00122](#)

Filer: Charles Sheffield
Pedestrian Beach, LLC

Document Number: [12](#)

Docket Text:

First AMENDED COMPLAINT against George P. Bush, Ken Paxton filed by Charles Sheffield, Pedestrian Beach, LLC. (Attachments: # (1) Exhibit A - March 2021 Temporary Order, # (2) Exhibit B - Photos of Shoreline, # (3) Exhibit C - FAQ Sheet, # (4) Exhibit D - 109/111 Beach Dr., # (5) Exhibit E - 1206/1207 Sargrasso)(Breemer, Jan)

3:21-cv-00122 Notice has been electronically mailed to:

Jan David Breemer jdb@pacificlegal.org, incominglit@pacificlegal.org, tdyer@pacificlegal.org

Jeffrey Wilson McCoy jmccoy@pacificlegal.org, incominglit@pacificlegal.org, tdyer@pacificlegal.org

Shelly Magan Doggett shelly.doggett@oag.texas.gov, janet.mcnutt@oag.texas.gov,
laura.courtney@oag.texas.gov

3:21-cv-00122 Notice has not been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1045387613 [Date=6/18/2021] [FileNumber=35773858-0] [324eb221f36df10e86257e581cb01fa5396a4cbadc3053251e4bbd99dda8c44fe309db42f2018f6773ec8c989edf53e5d74b098963e094c5c7d46979cd31db98]]

Document description:Exhibit A - March 2021 Temporary Order

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1045387613 [Date=6/18/2021] [FileNumber=35773858-1] [0241f3a203c3c25831d0d9a0e78bd76f1f0a0b38e8ecfc1abdae4a123dea40e357e0e81e3a2d76856e8351150551dc5bd00ec1ffde19196a25f0eb31a64a0d95]]

Document description:Exhibit B - Photos of Shoreline

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1045387613 [Date=6/18/2021] [FileNumber=35773858-2] [28192e1033a483a66b9f79c196a34d881e28aa6741b82d3482a3e26017698356212f2e07b75a6110d471dd4e1945fe6247b5a92e41369026f8ce1c571d0ed2ca]]

Document description:Exhibit C - FAQ Sheet

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1045387613 [Date=6/18/2021] [FileNumber=35773858-3] [4717d3897b1e9faaa0b3800275634fc96be5001a93c669d9f7337a8b7c93ef5bba4b2d232f2b22873f37182fb257345d5eff9885dc4cc9c2d763e63d73e24f7f]]

Document description:Exhibit D - 109/111 Beach Dr.

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1045387613 [Date=6/18/2021] [FileNumber=35773858-4] [105946fbcdf1b737286b7967f0ea94778706b726da376e3a685586d612d6421d952c6b34621a546bffd1d5b8e8e176b070eff870fb55e095acd0e0a1dc5e5f]]

Document description:Exhibit E - 1206/1207 Sargrasso

Original filename:n/a

Electronic document Stamp:

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