

CAUSE NO. _____

CARRIZO/COMECRUDO NATION OF TEXAS, INC.; SAVERGV; and SOUTH TEXAS ENVIRONMENTAL JUSTICE NETWORK	§	IN THE DISTRICT COURT OF
	§	
	§	
	§	
<i>Plaintiffs</i>	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS PARKS AND WILDLIFE DEPARTMENT; TEXAS PARKS AND WILDLIFE COMMISSION,	§	
	§	
<i>Defendants.</i>	§	_____ JUDICIAL DISTRICT

PLAINTIFFS’ ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Carrizo/Comecrudo Nation of Texas, Inc., SaveRGV, and the South Texas Environmental Justice Network (collectively “Plaintiffs”) and file this Original Petition seeking judicial review and declaratory relief regarding a decision by the Texas Parks and Wildlife Department and Texas Parks and Wildlife Commission (“TPWD,” “TPWC,” the “Commission,” or “Defendants”), which approved a taking of public land at Boca Chica State Park in Cameron County, Texas, to further the private development activities of Space Exploration Technologies Corporation (“SpaceX”). The Commission acted under the supposed authority of Chapter 26 of the Texas Parks and Wildlife Code—a provision intended by the Legislature to make the condemnation of park land a last resort for entities exercising eminent domain power. But the Commission unconstitutionally misused Chapter 26 here.

The Commission, in appearing to condemn its own land to convey it to a private corporation, has violated the plain language requirements of Chapter 26 and the constitutional prohibition on takings for private gain. The Commission did not meet its statutory obligation to consider alternatives to the taking of, and to minimize harm to, the 43 acres of the disposed-of parcels within Boca Chica State Park. And it failed to consider the best interests of the TPWD, as it was statutorily required to do.

Alternatively, the Commission's decision authorized a private corporation—namely, SpaceX—to step into the shoes of a “condemnor” of Boca Chica State Park. But the power of eminent domain has not been granted to SpaceX, so the Commission's apparent acceptance of a condemnation of public park land by an unauthorized private corporation violates both the Texas Constitution's separation of powers clause and its non-delegation doctrine. And it reflects that the Commission's decision was a willful and unreasoning action, made in bad faith.

Plaintiffs maintain that the Commission's decision to approve the disposition of Boca Chica State Park land to convey it to SpaceX is the product of numerous errors and must be reversed. For support, Plaintiffs respectfully offer the following:

I. DISCOVERY

1. This case is a challenge of a State agency’s final action. To the extent discovery is warranted in this matter, discovery should be conducted under Level 3, in accordance with Texas Rule of Civil Procedure 190.4.
2. Plaintiffs affirmatively plead that this action is not governed by the expedited actions process in Texas Rule of Civil Procedure 169, because Plaintiffs seek non-monetary relief. Tex. R. Civ. P. 47(c) & 169.

II. NATURE OF THE CASE

3. This is a statutory and constitutional challenge of a decision of the Texas Parks and Wildlife Commission, which approved at its March 4, 2024 meeting Commission Agenda Item No. 2, titled: “Action; Exchange of Land—Cameron County; Acquisition of Approximately 477 Acres in Exchange for Approximately 43 Acres of Boca Chica State Park.”
4. Plaintiffs are Carrizo/Comecrudo Nation of Texas, Inc., SaveRGV, and the South Texas Environmental Justice Network—all of which are impacted by the Commission’s decision.
5. On January 6, 2024, the Commission published notice of the proposed disposal of public parkland to be considered on January 25, 2024. The notice included no map or figure depicting where the parkland was located.
6. The notice referred to an online-only, English-only draft Commission resolution with no substantive back-up documentation detailing the proposal.

7. Community groups responded that the Commission had failed to meet its statutory obligation to provide 30-days notice of the hearing, as required by Chapter 26 of the Texas Parks and Wildlife Code.
8. The Commission then delayed the meeting and republished notice in advance of a special called meeting scheduled for March 4, 2024.
9. On March 4, 2024, the Commission held a hearing on the item, during which the Commission heard from almost 50 members of the community (including from Plaintiffs' representatives), over a two-and-a-half hour period, almost uniformly advocating against approval of the proposed disposal of Boca Chica State Park land. At the conclusion of the hearing, the Commission took final action approving the resolution, allowing Boca Chica State Park land to be condemned and conveyed to SpaceX. *See* Exhibit A.
10. This Original Petition for judicial review of the Commission's decision timely followed. *See* Tex. Parks & Wildlife Code § 26.003.
11. By this Original Petition, Plaintiffs seek an order reversing the Commission's March 4, 2024 action, which unlawfully approved disposal of Boca Chica State Park land, to be conveyed to SpaceX, and they seek judicial declarations, declaring the Commission's final decision unlawful and without authority.

III. PARTIES

12. **Plaintiff Carrizo/Comecrudo Nation of Texas, Inc. (the "Tribe").** The Tribe is a Texas non-profit membership organization, and the Tribe has standing to sue on behalf of its members, as well as organizational standing.

13. 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. The Tribe serves as a steward for plants and animals and their habitats.
14. Boca Chica Beach and the area surrounding the beach, including Boca Chica State Park, are vital and sacred to the Carrizo/Comecrudo People and their ancestral traditions. Boca Chica State Park is located within an area that has historically been accessible to the Tribe and its members, and that, together with Boca Chica Beach, is connected to the Tribe's identity.
15. Members of the Tribe, such as Chair Juan Mancias and member Robert Christopher Basaldú, Ph.D., descend from the original and first people to live on the lands that encompass Boca Chica State Park and the beach nearby. Their ancestors were born, lived, died, and were buried in this land for many thousands of years. The Tribe members' ancestors form the dust of the land that the Commission is disposing of and conveying to SpaceX, to allow SpaceX to destroy.
16. The destruction of the land, for the Tribe, includes the restriction of access to that land and to sacred sites, through privatization and conveyance of public park land

and subsequent enforcement of that refusal of access. The conveyance of public land to private entities and restriction of access to public land results in the Tribe's reduced access to sacred sites in the whole area of Boca Chica State Park and beach, which is the center of the original site of the Creation of the Tribe, according to the stories of their elders passed down during ceremonies, for thousands of years.

17. As the Commission disposes of and conveys parts of Boca Chica State Park to private, corporate entities for destructive uses, it also disposes of the sacred ancestral lands and remnants of the Tribe's ancestors and relatives—including those of Mr. Mancias and Dr. Basaldú. Limiting access to ancestral public lands—by conveying parts of them to SpaceX—restricts the Tribe's members' ability to perform their sacred duties and obligations with the land and from communing and praying with the land.
18. As the Commission abdicates its responsibility and conveys public park land to private corporations for destructive uses, the Tribe, as an organization, must expend additional resources to fulfill their obligations to protect and heal the public land that surrounds the developed land, and to ensure they can continue to access sacred sites without fear of law enforcement.
19. SpaceX's activities have already resulted in damage and destruction to land that the Tribe values and considers sacred. Ceding even more public park land to SpaceX—land that had, at the very least, provided some measure of buffer from space flight activities and the adverse impacts of those activities—will result in even more damage to the area, and the Tribe will have to expend its resources to attempt to

protect and maintain the sacred, spiritual, and historically significant public land that remains.

20. SpaceX's presence and its operations in the Boca Chica Beach area, including the State Park, have already hindered the Tribe's access to and use of culturally significant lands. Conveying public State parkland—which is valuable not only because of its recreational uses and wildlife refuge purposes, but also because of its historical and cultural significance, *see* Tex. Parks & Wildlife Code § 26.001(a)—to SpaceX further impedes the Tribe's ability to access its ancestral sites and protect the artifacts that were deposited in the area by the Tribe's ancestors.
21. Finally, the Tribe has been impacted and injured by the Commission's failure to fully comply with public notice and public hearing requirements. The Tribe, as an organization, and its members, were required to expend resources to travel to Austin to attend a public hearing for which little substantive information was provided, regarding the nature of the "project" that required the disposal of Boca Chica State Park land or the basis for the Commission's decision. The Commission's failure to timely respond to Public Information Act requests and its failure to provide the requisite information to the public via published notice has required the Tribe to expend additional resources to attempt to obtain the requisite public information and share it with its members. And because of the Commission's decision, the Tribe will be required to continue to expend resources to communicate with the U.S. Fish and Wildlife Service and advocate for their denial of authorization to dispose of Boca Chica State Park land.

22. **Plaintiff SaveRGV.** SaveRGV is a Texas non-profit corporation that advocates for environmental justice and sustainability and the health and well-being of the Rio Grande Valley community. SaveRGV also promotes the conservation and protection of wildlife habitat and the natural areas of the Rio Grande Valley, including by defending the public's right to access Boca Chica Beach and its environs. SaveRGV members regularly recreate at or immediately adjacent to Boca Chica State Park, the uses of which will be effectively destroyed through the land exchange and expansion of SpaceX activities. Representatives of SaveRGV submitted multiple timely comments on the proposed condemnation of Boca Chica State Park land and spoke at the March 4, 2024 hearing.
23. SaveRGV has standing to sue on behalf of its members, in addition to organizational standing.
24. Several of SaveRGV's members recreate, use, and otherwise regularly access Boca Chica Beach and its surrounding environs, including State Park land.
25. For instance, SaveRGV board member James Chapman is the former president of the Frontera Audubon Society, and he often accesses Boca Chica Beach and public park land to watch birds. Boca Chica is one of the best places to see a number of unique birds, including 3 species of plovers, and these birds depend on the availability of protected, public park land.
26. Patrick Anderson, another member of SaveRGV, has worked tirelessly on behalf of the organization to advocate, protect, preserve, and conserve native habitat and wildlife, accessibility to parks and native landscapes, including in the area of Boca

Chica Beach and its environs. His ability to continue to do this work depends on his access to public park lands, especially those closest to SpaceX facilities, which are among the most vulnerable to the damaging effects of SpaceX operations and activities.

27. Mr. Anderson has devoted his time and resources to SaveRGV, by conducting research, developing literature (*e.g.*, fact sheets, pamphlets), engaging in public education, and drafting comments and letters to elected officials and public agencies on behalf of SaveRGV.
28. Like the Tribe, SaveRGV members and SaveRGV as an organization have been impacted and injured by the Commission's failure to fully comply with public notice and public hearing requirements. SaveRGV members were required to expend resources to travel to Austin to attend a public hearing for which little substantive information was provided, regarding the nature of the "project" that required the disposal of Boca Chica State Park land or the basis for the Commission's decision. The Commission's failure to timely respond to Public Information Act requests and its failure to provide the requisite information to the public via published notice has required SaveRGV to expend additional resources to attempt to obtain the requisite public information and share it with its members. And because of the Commission's decision, SaveRGV will be required to continue to expend resources to communicate with the U.S. Fish and Wildlife Service and advocate for their denial of authorization to dispose of Boca Chica State Park land.

29. **Plaintiff South Texas Environmental Justice Network (“STEJN”).** STEJN is a network of directly impacted people of color working towards environmental justice in South Texas. Members of STEJN are organizations and individuals in Cameron County who reside, recreate, work, worship, or care for sacred lands in the areas around Boca Chica Beach and its environs, and they will be adversely impacted by the disposal of Boca Chica State Park land and the expansion of SpaceX activities.
30. Rebekah Hinojosa has been traveling to Boca Chica Beach and its environs since she was a child.
31. Ms. Hinojosa regularly takes guests (*e.g.*, community members, reporters, students, etc.) out to the area to experience wildlife and the pristine environment, and to document the area, and she has been doing so for years.
32. Ms. Hinojosa’s ability to access and enjoy the natural area will be adversely impacted by the State’s conveyance of public park land to SpaceX, without any meaningful and enforceable protections of the park land.
33. Ms. Hinojosa has witnessed SpaceX’s destruction of the land in the Boca Chica area and is concerned that SpaceX taking over more land will allow it to avoid responsibility for past harms.
34. Like the Tribe and SaveRGV, STEJN members and STEJN as an organization have been impacted and injured by the Commission’s failure to fully comply with public notice and public hearing requirements. STEJN members were required to expend significant resources to travel to Austin to attend a public hearing for which little substantive information was provided, regarding the nature of the “project” that

required the disposal of Boca Chica State Park land or the basis for the Commission's decision. The Commission's failure to timely respond to Public Information Act requests and its failure to provide the requisite information to the public via accessible published notice has required STEJN to expend additional resources to attempt to obtain the requisite public information and share it with its members. And because of the Commission's decision, STEJN will be required to continue to expend resources to communicate with the U.S. Fish and Wildlife Service and advocate for their denial of authorization to dispose of Boca Chica State Park land.

35. Neither the claims asserted nor the relief requested requires the participation of the individual members in the case.
36. **Defendant Texas Parks and Wildlife Department.** Defendant TPWD is the state agency with the responsibility for protecting the state's fish and wildlife resources and maintains custody over state parks. *See* Tex. Parks & Wildlife Code § 12.0011; § 13.001. Defendant TPWD can be served with citation by serving its Executive Director, David Yoskowitz, at 4200 Smith School Rd., Austin, Texas 78744.
37. **Defendant Texas Parks and Wildlife Commission.** Defendant TPWC is responsible for the policy direction of TPWD. Tex. Parks & Wild. Code § 11.011. Defendant TPWC can be served with citation by serving TPWD's Executive Director, David Yoskowitz, at 4200 Smith School Rd., Austin, Texas 78744.

IV. JURISDICTION AND VENUE

38. This Court has jurisdiction over Defendant TPWD as an agency of the government of the State of Texas, and over TPWC as the head of TPWD.
39. This Court has jurisdiction over the controversy because this action is brought under section 26.003 of the Parks and Wildlife Code.
40. This Original Petition is timely filed within 30 days after the date on which the Commission approved the disposal of Boca Chica State Park land to be conveyed to SpaceX.
41. Venue is proper in this Court under Texas Civil Practice and Remedies Code Section 15.002(a)(1), (3).

V. TRANSMITTAL OF RECORD

42. Demand is hereby made that the Commission transmit a certified copy of the entire record of its proceedings to this Court within the time permitted by law for filing an answer in this case.

VI. FACTUAL AND PRODECURAL BACKGROUND

43. In 1994, TPWD acquired the land that is now Boca Chica State Park with federal assistance under the National Coastal Wetlands Grant Program.
44. In its 1992 application to the grant program, TPWD made clear its intent was to permanently preserve the land to protect it from imminent development threats that had been of concern to TPWD. *See* Exhibit B, attached and incorporated by reference.

45. For example, the “Project Narrative” section of the application highlighted the efforts of all agencies involved “to *permanently* protect and manage the area.” Exhibit B (emphasis added).
46. Additionally, in a letter to David Braun, State Director of the Nature Conservancy (the owner of the parcels at that time), included in the application, TPWD Director Andrew Sansom stated: “It is understood that said land when acquired by TPWD will be utilized as *Public Lands*.” Exhibit B (emphasis added).
47. Finally, the Evaluation Criteria used by the U.S. Fish and Wildlife Service to evaluate the application noted that “[t]he proposal strategy and design should provide wetlands benefits *in perpetuity*.” Exhibit B (emphasis added).
48. Therefore, the purpose of the land acquisition was to forever protect the property from development pressures and keep it in the public domain.
49. For many years, that protection has yielded conservation and recreation benefits for the people and wildlife of Texas, and it has provided the Tribe with access to vital ancestral lands.
50. The site is a unique ecological treasure, consisting largely of extremely rare wind tidal flats, coastal grasslands and lomas that provide critical habitat for numerous endangered species.
51. The site is also unique because of its significance to the Tribe and its ancestral sacred traditions.

52. However, development activities began to threaten the special ecosystem of Boca Chica when SpaceX started purchasing land there in 2012 to build a rocket manufacturing and test launch facility.
53. SpaceX's property is surrounded by not only TPWD property at Boca Chica State Park, but also two National Wildlife Refuges.
54. SpaceX operations over the years have caused damage to these public lands through the company's paving and polluting through a variety of activities, including: increased runoff of construction stormwater and discharges of industrial wastewater, air emissions, truck traffic, dust and noise impacts, fires and debris, and of course, severe explosions of rockets during test launches.
55. These impacts have been of great concern to TPWD in the past.
56. In 2021, for example, in comments to the FAA, TPWD explicitly laid out the current uses of Boca Chica State Park (and the dangers posed by SpaceX to those uses):

[E]ndangered species protection, migratory bird habitat, marine turtle nesting, and storm surge protection. The area also supports a wide variety of compatible public uses associated with the beach and South Bay, including fishing, kayaking, and bird watching. Aside from proposed future activities, the degree of impacts that current SpaceX activities have on these priority land uses has not been thoroughly evaluated. Impacts to the purposes of these adjacent [state-owned] properties would be expected to continue or increase with the proposed expansion of activities at the Boca Chica Launch Site.

“RE: Scoping Comments for Draft Environmental Assessment for Space Exploration Technologies’ Starship/SuperHeavy Launch Operations from the Boca Chica Launch Site in Cameron County, Texas,” Jan. 27, 2021, at 14-15.

57. In the same comments, TPWD warned the FAA of the many serious threats posed by SpaceX to public land:

As stated in previous environmental reviews of SpaceX activities at Boca Chica, TPWD continues to be concerned that the impacts of suborbital and orbital launches and continual testing will significantly reduce the natural resource conservation value of some or all of the state-owned property at Boca Chica. In addition to the direct loss of habitat resulting from the infrastructure expansion, new construction and experimental testing, TPWD is concerned that the quality and natural resource value of the surrounding property will also be diminished. Cumulatively, infrastructure expansion, new construction, and increased closure hours necessary to support the new project mission corresponds to an increase in potential direct and indirect impacts to and disturbance of wildlife and wildlife habitat on adjacent properties through the additional loss of habitat, increased traffic, noise, vibration, emissions, and night time lighting. TPWD has concerns regarding impacts associated with unexpected anomalies (e.g., explosions) including fires, scattered debris, and activities related to the response to these incidents (i.e., debris retrieval through sensitive habitats) on the integrity of TPWD property and the wildlife and plants TPWD is responsible for protecting and conserving.

Id.

58. These comments emphasize TPWD's recognition of its own statutorily imposed duty to protect park land and wildlife resources at Boca Chica, and the specific risks to state-owned property that harmful SpaceX activities were causing.
59. These comments do not portend a state agency abrogating its responsibility and preparing to give away public park land that was intended for permanent protection, to—of all people—the very same private actor causing harm to the agency's interests.

60. Nevertheless, in late 2023, SpaceX somehow convinced the Commission to give the company valuable land within Boca Chica State Park, so that SpaceX could continue its harmful activities and expand its operational footprint.
61. SpaceX proposed exchanging land that it did not currently own for 43 acres of Boca Chica State Park that it desired. These discussions occurred (and preliminary agreements were made) without public involvement, or even notice to the public.
62. The public first heard of the Commission's proposal to dispose of, and convey to SpaceX, Boca Chica State Park land on January 6, 2024, when the TPWD published its first notice in *The Brownsville Herald*.
63. The notice was published only in English in an English-language newspaper that is only published twice weekly.
64. The notice stated that a hearing on the proposed disposal and conveyance of State Park land was scheduled for January 25, 2024, just 19 days after the initial notice.
65. On January 24, one day before the scheduled meeting, TPWC apparently recognized that it had violated the 30-day notice and publication requirements in Chapter 26 of the Texas Parks and Wildlife Code, and so, it postponed the hearing on the item until its next regularly scheduled meeting, to be held in late March 2024.
66. TPWD then published a new notice in February 2024, in both *The Brownsville Herald* and the *Corpus Christi Caller-Times* (also an English-language newspaper). The notice included a sentence at the bottom in Spanish but not a full Spanish translation of the substance of the notice. The draft resolution itself, found only

online and briefly describing the Commission’s proposed action, was never published in Spanish.

67. The February notice announced a special-called meeting of the Commission for a public hearing solely on the proposal to dispose of, and convey to SpaceX, Boca Chica State Park land, set for March 4, 2024. Public comments would be due March 3, 2024 (a Sunday) at 5:00 p.m.
68. On March 4, 2024, at 10:00 a.m., the Commission held a hearing on the item. TPWD staff made a brief presentation (which was not shared with the public on TPWD’s website or made available for public review during the public hearing) about the proposal to dispose of, and convey to SpaceX, Boca Chica State Park land. One slide included language that was also present in the resolution under consideration, as follows: “Space Exploration Technologies Corp. (SpaceX) desires to expand its operational footprint around its existing facilities at Boca Chica.” Beyond this sentence, no explanation was given for how SpaceX, a private corporation with no condemnation authority, persuaded TWPC to dispose of park land, other than the company’s alleged “desire.”
69. During the presentation, staff stated that they had received 2,321 total public comments from the two comment periods—the majority of which expressed opposition to the proposed resolution.
70. Staff also presented a brief oral report about a February 2024 visit to both Boca Chica State Park and the land that SpaceX intends to offer in exchange. In the report, staff noted without any evidence and contrary to expert testimony, that the habitats

at the “Bahia Grande Acquisition” site are “expected to support similar plant and animal species as Boca Chica.”

71. After the staff presentation, the Commission held a public hearing. Nearly 50 individuals provided in-person testimony, with all but three people opposed to the proposal to dispose of, and convey to SpaceX, Boca Chica State Park land.
72. Those present at the hearing, including Plaintiffs, observed Chair Hildebrand disrespect many of the speakers. He repeatedly failed to correctly pronounce the names of speakers or make any obvious attempt to correct or apologize for his errors as he called them up to the podium—the vast majority of which were Spanish surnames common in Texas and particularly in Cameron County, where a public meeting should have been held, but never was. In fact, most of the speakers at the public hearing made substantial efforts to get to Austin for the meeting, in many cases, traveling 12 hours round trip from the Rio Grande Valley, to offer three minutes of public comment.
73. Additionally, Chair Hildebrand regularly interrupted members of the public when they were speaking, cutting into their allotted three minutes and preventing them from being heard. He interrupted speakers and admonished them, if they mentioned SpaceX, contending that comments regarding SpaceX were not “on topic” and could not be brought up. Nevertheless, he allowed a company representative from SpaceX to speak, without interruption, regarding topics unrelated to the proposed parkland disposition.

74. Finally, when several Spanish-speaking members of the public asked for interpretation services, they were accompanied to the podium by a TPWD staff member who was noticeably unable to interpret their comments. This abject failure of translation was verbally criticized by many in the audience as it was happening. The interpreter simply left out entire phrases or in some instances repeated words in Spanish because he did not know the translation.
75. After public testimony, the Commission went into executive session for approximately 45 minutes. They then came back into open session for 21 minutes. In open session, Commissioners asked questions of staff.
76. One question, from Vice-Chairman Oliver Bell, with a response from TPWD General Counsel James Murphy, was transcribed as follows:

VICE-CHAIRMAN BELL: And the other question, just because we're talking about land use in general, as far as SpaceX and their options, what about alternatives to this requested property? Have we looked into that at all for ...

MR. MURPHY: Commissioner-- for the record, James Murphy, General Counsel. I might just field that question, if I could. The short answer is, no, *SpaceX really doesn't have any options down there at Boca Chica*. As you saw from the map, they're surrounded by National Wildlife Refuge lands and TPWD property. There's very little private property remaining for them to grow. There's certainly no private property around some of their facilities that they could expand into. And so, you know, they have contracts with both NASA and the federal government for space exploration and national defense and they do have a growth need and so we do think that that finding has been made here.

(Emphasis added.)

77. Another question, posed by Commissioner Anna Galo, with a response from Mr. Murphy, was transcribed as follows:

COMMISSIONER GALO: James, I have a question. What reasonable measures can be taken to minimize the impacts to the remainder of Texas Parks and Wildlife Department lands at Boca Chica from this proposed exchange?

MR. MURPHY: Thank you, Commissioner. So there are a couple that I would have in mind here. The first is already in place. We have a memorandum of agreement with SpaceX related to debris removal, anomaly response, and restoration measures that come from those impacts. We negotiated this a number of years ago with SpaceX and so that provides some clear terms on how they enter the property to remove debris, the types of equipment that they can use to remove debris. Obviously, you don't want them dragging things along those mud flats. So we've looked at improved techniques to remove that material and as well as some restoration research that's underway right now to improve those mud flats from any disturbances. So I'd say that's the first one, and that's already in place. The second is a standard part of our process when we dispose of property or otherwise. You know, say have a pipeline easement, we typically have some terms that come along with that. For example, you know, we don't want you planting invasive vegetation there on the property that we convey out because we don't want that spreading within that very fragile ecosystem in terms of the vegetation there. Another example is no discharge of, say, water pollution through our property. You know, so those types of terms that we include in our contract with the entity that we're disposing of that property to. That's a pretty standard process. That contract has -- is another necessary step in this process and so that will be negotiated, appropriate terms on that document.

78. After the discussion among the Commissioners, they voted unanimously to approve Commission Agenda Item No. 2, titled: "Action; Exchange of Land—Cameron County; Acquisition of Approximately 477 Acres in Exchange for Approximately 43 Acres of Boca Chica State Park."

79. The approved and signed resolution is the only justification that has been provided in writing to the public regarding this Action.
80. The second and third sentences of the resolution explain how the Commission's Action was instigated and for what purpose: "Whereas, Space Exploration Technologies Corp. (SpaceX) desires to expand its operational footprint around its launch facilities at Boca Chica; and, Whereas, SpaceX has requested the transfer of 43 acres from Boca Chica SP (the Exchange Tracts) in exchange for 477 acres near the Laguna Atascosa National Wildlife Refuge (NWR) to TPWD."
81. In summary, SpaceX's desire and request for public land to expand its operational footprint were the primary bases for the Commission's Action.
82. Plaintiffs timely submitted comments opposing the Commission's Action before the March 3, 5:00 p.m. deadline.
83. By the timely filing of this Petition, Plaintiffs now seek judicial review of the Commission's Action.

**VII. CAUSE OF ACTION: JUDICIAL REVIEW OF AGENCY DECISION;
FAILURE TO COMPLY WITH STATUTORY REQUIREMENTS;
DECLARATORY JUDGMENT**

84. This is an action seeking judicial review of a final agency decision under Texas Parks and Wildlife Code, Section 26.003, of a program or project approved by TPWC under the same chapter.
85. Additionally, this is an action seeking to have a final agency decision declared void, unlawful, and unconstitutional, under the Uniform Declaratory Judgment Act ("UDJA"), Tex. Civ. Prac. & Rem. Code § 37.003.

86. The standard of review for approvals of takings of public land is not explicitly provided by Chapter 26 of the Parks & Wildlife Code. Therefore, the Court should apply the default standard of review for decisions by administrative agencies, provided in the Texas Administrative Procedure Act (“APA”), Tex. Gov’t Code § 2001.174(2).
87. Under the APA, agency’s action is arbitrary and capricious if the agency “(1) failed to consider a factor the legislature directs it to consider; (2) considers an irrelevant factor; or (3) weighs only relevant factors that the legislature directs it to consider but still reaches a completely unreasonable result.” *Public Util. Comm’n of Tex. v. Texas Indus. Energy Consumers*, 620 S.W.3d 418, 427 (Tex. 2021) (quoting *City of El Paso v. Public Util. Comm’n of Tex.*, 883 S.W.2d 179, 184 (Tex. 1994)) (internal quotations omitted).
88. Alternatively, the Commission’s decision was made in bad faith and was arbitrary and capricious, as those terms are applied in the condemnation context. *Block House Mun. Util. Dist. v. City of Leander*, 291 S.W.3d 537, 546 (Tex. App.—Austin 2009, no pet.) (describing “arbitrary and capricious” as “willful and unreasoning action, action without consideration and in disregard of the facts and circumstances”) (citations and internal quotations omitted). That is, the Commission failed to take a hard look at all relevant factors and, using plain common sense, base its determination upon the evidence before it. *Id.* at 547.

89. Plaintiffs allege that the Commission committed several reversible errors in its March 4, 2024 Action to approve the proposal to dispose of, and convey to SpaceX, Boca Chica State Park land. Those errors are detailed below.
90. **Error No. 1.** The Commission violated Texas Parks and Wildlife Code Section 26.001(a)(1) in determining, without basis, that there is no feasible and prudent alternative to the use or taking of Boca Chica State Park land.
91. The Commission is the only party in this transaction with the authority to condemn parcels within Boca Chica State Park.
92. Yet, there was no “program or project” proposed by the Commission that requires the use or taking of Boca Chica State Park land. The taking and use of the State Park land was sought by SpaceX, not the Commission, and the only description of SpaceX’s intended use of the park land is that it “desires to expand its operational footprint around its launch facilities at Boca Chica.” Exhibit A. SpaceX did not seek approval of its program or project from the Commission. Based on the publicly available information and the discussion at the public hearing, SpaceX did not even describe its plans for expanding its operational footprint for the Commission’s consideration. In any event, SpaceX’s space flight activities do not require the taking of State Park land—*i.e.*, SpaceX’s activities need not be sited within or near State Park land (or public beaches, for that matter).
93. Nevertheless, the Commission’s decision to dispose of and convey to SpaceX State park land must comply with the standard laid out in Section 26.001(a)(1): that “there

is no feasible and prudent alternative to the use or taking” of park land—as the Commission and its legal counsel acknowledged during the March 4 public hearing.

94. This standard is in place to protect park land from condemnation and to only allow its use or taking as a last resort. Indeed, Chapter 26 of the Texas Parks and Wildlife Code is entitled: “Protection of Public Parks and Recreational Lands.”
95. All alternatives to taking the park land must be considered by the governing body. *See Block House Mun. Util. Dist. v. City of Leander*, 291 S.W.3d 537, 547 (Tex. App.—Austin 2009, no pet.). (“[T]he greater the impact a project has on the public land to be used or taken, the greater the level of scrutiny the governmental body must employ in weighing the feasibility and prudence of all alternative routes that do not impact the statutorily protected property.”).
96. The Commission failed entirely to consider alternatives to the use or taking of Boca Chica State Park land.
97. These alternatives, first and foremost, would include *not* voluntarily condemning its own park land to be taken and used by SpaceX.
98. Instead of opting for park land condemnation as a last resort among alternatives, the Commission deliberately considered only the singular alternative of an action that results in the full use and taking of 43 acres of public park land, to allow SpaceX to expand its operational footprint.
99. This failure is a violation of the plain language of Chapter 26’s requirement to determine that there is no feasible and prudent alternative to the use or taking of park land. Therefore, the Commission’s Action should be reversed, as it fails to

comply with the express requirements in Chapter 26 of the Texas Parks and Wildlife Code.

100. **Error 2.** The Commission acted arbitrarily and capriciously in making its determination that there was no feasible and prudent alternative to the taking of Boca Chica State Park.

101. The Legislature, via adoption of Chapter 26 of the Parks and Wildlife Code, instructed the Commission to consider its own alternatives before taking action to condemn park land, but the Commission failed to do so.

102. In fact, the Legislature made clear that the TPWD “*may not* approve any program or project that requires the use or taking of any public land designated and used prior to the arrangement of the program or project as a park recreation area, scientific area, wildlife refuge, or historic site,” unless it first determines that there is no feasible and prudent alternative to the taking. Tex. Parks & Wildlife Code § 26.001(a) (emphasis added). This reflects that the Legislature intended the TPWD’s mandatory default position to be that the use or taking of public park land is *not* permitted, unless specific, certain findings are made, following a public hearing.

103. Here, the Commission failed to make such a determination, and instead considered only the “desires” and benefits to SpaceX, focusing on the private company’s “growth need” and “desire to expand,” which are irrelevant to the Legislature’s directive to the Commission to consider its own alternatives.

104. Its purported “findings” only repeated the precise language included in Section 26.001(a)(1). There is no indication in the decision document that the Commission

fully considered the testimony offered during the public hearing, or how that information factored into its findings. In fact, the basis for the Commission’s statutorily-required findings remains unclear. *Cf. Texas Health Facilities Comm’n v. Charter Med.—Dallas, Inc.*, 665 S.W.2d 446, 451 (Tex. 1984) (holding that in APA cases, findings that embody statutory language must be accompanied and supported by underlying findings, and this requirement “extends to all statutory fact findings that represent the criteria that the legislature has directed the agency to consider in performing its function”).

105. The Commission’s Action failed to consider factors the Legislature intended the Commission to consider, and instead considered irrelevant factors.

106. Therefore, the Commission’s Action was arbitrary and capricious and should be reversed. *See* Tex. Gov’t Code § 2001.174(2)(A).

107. **Error 3.** The Commission violated the Texas Constitution by condemning parcels of Boca Chica State Park in order to appease SpaceX’s “desire to expand” its space flight activities.

108. No property shall be taken except for public use and cannot be taken as a “transfer to a private entity for the primary purpose of economic development.” TEX. CONST. art. I, § 17; *see also Miles v. Tex. Cent. R.R. & Infrastructure, Inc.*, 647 S.W.3d 613, 620 (Tex. 2022) (“[e]ven when so granted, the [eminent domain] authority remains subject to the constitutional prohibition against the taking of property for private use”).

109. The Commission approved a taking of Boca Chica State Park land to accommodate SpaceX’s “desire to expand its operational footprint” and “growth need.”
110. The condemned parcels will be transferred to SpaceX solely for SpaceX’s private use and benefit to further the company’s space exploration activities.
111. The Commission’s Action, therefore, was in violation of a constitutional provision and must be reversed.
112. **Error No. 4.** The Commission violated Texas Parks and Wildlife Code Section 26.001(a)(2) by failing to determine that all reasonable planning had been done to minimize harm to Boca Chica State Park land.
113. The Commission approved a complete taking of 43 acres of public park land within Boca Chica State Park.
114. As such, it must meet the explicit standard laid out in Section 26.001(a)(2) that “the program or project includes all reasonable planning to minimize harm to the land, as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from the use or taking”—as the Commission and its legal counsel acknowledged during the public hearing. In fact, the Legislature has instructed the Commission that it “may not” approve the use or taking of public park land, unless it makes this requisite finding after a public hearing.
115. Minimization of harm must be accomplished for the specific park land being used or taken. *See Persons v. City of Fort Worth*, 790 S.W.2d 865, 873-874 (Tex. App.—Fort Worth 1990, no writ) (“The statute [Section 26.001] seeks to protect a particular category or kind of use—here a ‘park’ use—from other use. This can be clearly seen

by the purpose expressed ‘to minimize harm to the land, as a park ...’ The desire is that, if at all feasible, the land be used after the project for the purpose it was used before the project was implemented.”).

116. For instance, had this park land been proposed to be transferred to a local governmental entity, instead of to SpaceX, according to TPWD’s policy, the local governmental entity would be required to permanently dedicate the property for public park and recreation purposes and to prepare a plan for future management and operation of the park. Further, the local governmental entity would be required to “prepare and submit to TPWD a Site Management Plan that addresses public use, cultural and natural resource protection at the site to include resource-based vegetation management, riparian and water quality protection, and wildlife management,” which TPWD would have to approve before the property could be transferred. *See Exhibit C.*

117. Here, however, the Boca Chica State Park land will be given by the Commission to SpaceX to accommodate the company’s “desire to expand its operational footprint” and “growth need.”

118. The property will no longer be used as a publicly accessible park but rather will be sacrificed for private space exploration activities.

119. No minimization of harm has been reasonably planned for by the Commission on these parcels, whose current use as a park will not be protected and instead will be destroyed by SpaceX.

120. Accordingly, harm to the 43 acres of Boca Chica State Park will be maximized, not minimized. The Commission has ensured this outcome rather than safeguarded against it as the Legislature mandated.
121. The Commission has failed to comply with its statutory obligation under Section 26.001(a)(2) of the Parks and Wildlife Code, and therefore its Action should be reversed.
122. **Error No. 5.** The Commission acted arbitrarily and capriciously in making its determination that all reasonable planning had been done to minimize harm to Boca Chica State Park land.
123. The Legislature, in adopting Chapter 26 of the Parks and Wildlife Code, directed the Commission to minimize harm to the parcels being used or taken, but the Commission failed to do so.
124. Instead, the Commission only discussed potential harm minimization with respect to *other* TPWD property nearby, which is not relevant to the Chapter 26 legal inquiry.
125. Measures to minimize harm to other TPWD property near the Boca Chica State Park parcels being taken are wholly irrelevant to the statutorily mandated protection of the disposed-of parcels themselves. *See, e.g.*, Exhibit C (TPWD's Policy Regarding Land Transactions).
126. The Commission did not do any planning whatsoever to maintain and protect the 43 acres' existing use as a publicly accessible park.

127. Its purported “findings” on this issue only repeated the precise language included in Section 26.001(a)(2). There is no indication in the decision document that the Commission fully considered the testimony offered during the public hearing, or how that information factored into its findings. The basis for the Commission’s statutorily-required findings remains unclear. *Cf. Charter Med.—Dallas*, 665 S.W.2d at 451.
128. The Commission’s Action failed to consider factors the Legislature intended the Commission to consider, and instead considered irrelevant factors.
129. Therefore, the Commission’s Action was arbitrary and capricious and should be reversed. *See* Tex. Gov’t Code § 2001.174(2)(A).
130. **Error No. 6.** The Commission violated the public notice and public hearing provisions of Chapter 26, and its decision should therefore be considered void.
131. Chapter 26 of the Texas Parks and Wildlife Code includes notice and public hearing requirements that are more robust than what is required by the Texas Open Meetings Act. Under Section 26.002(b), published notice of the hearing during which the Commission will consider disposal of public park land “must state clearly the proposed program or project and the date and place for the public hearing.” Tex. Parks & Wildlife Code § 26.002(b) & (c).
132. TPWD’s policies regarding disposition of public parkland emphasize the Commission’s purported commitment to transparency: “All real property transactions will be carried out in a manner that is easily understandable, fair, and consistent with the agency’s intent to conduct its affairs openly and with ample

opportunity for public comment by TPWD’s conservation partners and the general public.” Exhibit C. To that end, TPWD’s policy is to convene “at least two Commission meetings” when public park land disposition is being considered. Exhibit C. And TPWD is to publish notice in “the Texas Register and on the TPWD Internet web site at least 30 days or some other reasonable period prior to the Commission meeting at which any action on a proposed land transaction will be considered.” Exhibit C.

133. Further, TPWD’s policy is to ensure, consistent with the law, that the “30-day notice of the meeting at which action will be considered will contain enough detail for the public to easily identify the property in question, including . . . rationale for the disposition.” Exhibit C. And under TPWD’s policy, TPWD staff should “hold a public hearing in the area in which the land is located prior to the Commission meeting at which action is to be taken on a land disposition.” Exhibit C.

134. .When read in conjunction with the Legislature’s prohibition on disposal of public park land, absent required Commission findings following notice and a public hearing, it is apparent that the TPWD’s policies were intended to ensure that robust public input is provided, to inform the Commission’s statutorily-required findings.

135. Here, the process employed by staff and the Commission impeded public participation, instead of facilitating it. For instance, assuming for the sake of argument, that the Commission convened two public meetings, as its policy requires, neither public meeting was preceded by published notice in the Texas

Register at least 30 days before the public meeting. *See* 49 Tex.Reg. 914 (Feb. 16, 2024) (notice of Commission meeting to be held on March 4, 2024).

136. No public hearing was convened in Cameron County—the area where the Boca Chica Park land is located. And the published notice fails to clearly describe the proposed program or project that necessitates the disposition of Boca Chica State Park land. Instead, the only “project” described in the notice is the property proposed for acquisition by TPWD, in exchange for the disposal of the Boca Chica State Park land. The notice states that the property proposed for acquisition will enhance protection of natural resources and increase recreational opportunities, but it does not explain why Boca Chica State Park land must be disposed of or taken. Further, the notice fails to even mention SpaceX—which is the entity that professes to need the State Park land to accommodate its operational footprint expansion and growth needs. Nor does the notice provide sufficient detail for the public to easily identify the park land that is proposed for disposal and conveyance to SpaceX.
137. The Commission offered no explanation for its deviation from its policies, which were intended to ensure compliance with Chapter 26 of the Parks and Wildlife Code. *See Oncor Elec. Delivery Co. LLC v. Pub. Util. Comm’n of Tex.*, 406 S.W.3d 253, 267 (Tex. App.—Austin 2013, no pet.) (agency must explain its reasoning “when it appears to have departed from its earlier administrative policy or to be inconsistent in its determinations”).

138. Compounding the deficiencies with the public notice is the fact that the substance of the notice was not provided in Spanish—even though Cameron County consists of a large population of monolingual Spanish-language community members.
139. Further, no supporting documents were made available to the public before the public hearing. The public was not provided with any information that might inform them of the basis for the Commission’s statutorily-required findings.
140. In fact, a representative acting on behalf of Plaintiffs submitted a Public Information Act (“PIA”) request to the TPWD well in advance of the March 4 public hearing date. By this PIA request, Plaintiffs sought to acquire substantive information that the Commission might consider before making its decision on March 4—information that would assist Plaintiffs in tailoring their testimony to the specific project proposed and the rationale offered for disposal of public park land.
141. But TPWD refused to provide the requested information, and instead sought an opinion from the Attorney General—but only after its deadline to submit such a request had passed. Ultimately, TPWD’s efforts to avoid providing useful, substantive back-up data in advance of the March 4 public hearing were successful, because Plaintiffs were not provided with the requested information before the public hearing.
142. Finally, the public hearing that was convened by the Commission was held in Austin, Texas—a 12-hour round-trip from Cameron County. Speakers who were able to make that round-trip, on a weekday, were provided only 3 minutes to offer public input regarding the proposed disposition of the park land. And language

interpretation was so deficient that Spanish-speaking members of the public were effectively denied the opportunity to offer meaningful public input.

143. These failures to provide proper notice and an opportunity for public testimony violate Texas Parks and Wildlife Code Chapter 26. Consequently, the public hearing envisioned by Chapter 26 was not conducted, and any “findings” made by the Commission in support of its decision were not based on testimony offered at the public hearing required by law. The Commission’s decision should therefore be declared void.

144. **Error No. 7.** The Commission’s “best interest” determination under Chapter 13 of the Parks and Wildlife Code was arbitrary and capricious.

145. The Commission may not approve any sale or exchange of TPWD property unless “ownership of the real property is no longer in the best interest of the department.” Tex. Parks & Wildlife Code § 13.009.

146. In its approved resolution, the Commission stated without basis that “the Commission finds, in accordance with Section 13.009 of the Texas Parks and Wildlife Code, that the proposed exchange of the tracts is in the best interest of TPWD.” Exhibit A.

147. Giving 43 acres of public land to the same company that has harmed that public land cannot be in the best interest of TPWD, and there is no support for the Commission’s finding.

148. Instead, maintaining ownership of Boca Chica State Park in its entirety is in the best interest of TPWD, as the property has served and continues to serve as an invaluable buffer against damaging and destructive SpaceX activities.
149. Removing that buffer will lead to further destruction of TPWD property and cannot be in TPWD's best interest.
150. TPWD has previously recognized and protected its best interest in relation to SpaceX, voicing in 2021 comments to the FAA strong concern for "the integrity of TPWD property and the wildlife and plants TPWD is responsible for protecting and conserving."
151. TPWD remains responsible for protecting and conserving wildlife, plants, and TPWD in the Boca Chica Area, in the face of acknowledged harmful activities by SpaceX.
152. The Commission shirked that responsibility in approving the taking of 43 acres of park land to give to SpaceX, rather than taking steps to safeguard the land.
153. It failed to consider factors the Legislature intended it to consider, namely its clear duty to protect the state's fish and wildlife resources and its custodial relationship to state parks. *See* Tex. Parks & Wildlife Code § 12.0011.
154. The Commission's Action, therefore, was arbitrary and capricious and should be reversed.
155. **Error No. 8.** The Commission abrogated its responsibility to protect the state's fish and wildlife resources, particularly state-listed threatened and endangered species.

156. TPWD is the only state agency with the responsibility for protecting the state's fish and wildlife resources. Tex. Parks & Wildlife Code § 12.0011.
157. The Legislature gave TPWD responsibility for "endangered species" in Texas: both those listed by the federal government and any additional species listed by TPWD's director. Tex. Parks & Wildlife Code § 68.002.
158. TPWD's director classifies listed species "as threatened with statewide extinction if the department finds that the continued existence of the fish or wildlife is endangered." Tex. Parks & Wildlife Code § 68.003.
159. The expansion of SpaceX operations into Boca Chica Beach and its environs threatens to destroy the habitat of federally listed threatened and endangered species, including, but not limited to: the northern aplomado falcon, the *rufa* red knot, and the piping plover.
160. The Commission did not consider potential impacts to these species, despite their inclusion on the TPWD's own list of threatened and endangered species.
161. If TPWD gives the State Park land to SpaceX, the result will be additional habitat destruction beyond what was contemplated by the U.S. Fish and Wildlife Service ("FWS") and Federal Aviation Administration in the Incidental Take Statement included in the Environmental Assessment for the Starship/SuperHeavy rocket launch authorization.
162. Such unpermitted habitat destruction can constitute an unlawful "take" of endangered species under federal law and may subject the responsible parties to civil and criminal liability. *See* Tex. Parks & Wildlife Code § 68.015 (no person

may take endangered wildlife); *see also* 16 U.S.C.A. § 1538 (a)(1)(B); *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 708 (1995) (regulations that defined “take” to include habitat modification were reasonable).

163. Critical habitat for the *rufa* red knot was proposed to be designated in 2023, with FWS specifically noting that a threat to the species identified within Unit TX-11 (South Bay-Boca Chica) includes “habitat modification resulting from space exploration development.” Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Rufa* Red Knot, 88 Fed. Reg. 22557 (proposed April 13, 2023).

164. Habitat modification resulting from space exploration development is a direct outcome of the Commission’s Action.

165. The Commission’s Action will harm endangered species present on and near the Boca Chica State Park land.

166. As such, the Commission failed to comply with its statutory obligation to protect the fish and wildlife resources of the state of Texas, and its decision should be reversed.

167. **Error No. 9.** The Commission acted arbitrarily and capriciously in failing to consider impacts to state-listed threatened and endangered species.

168. The Legislature intended TPWD to consider its “primary responsibility for protecting the state’s fish and wildlife resources.” Tex. Parks & Wildlife Code § 12.0011.

169. It also intended TPWD to prohibit activities that harm state-listed threatened and endangered species. Tex. Parks & Wildlife Code § 68.015.
170. The Commission ignored impacts on the fish and wildlife resources of Boca Chica State Park, including state-listed threatened and endangered species.
171. It made no mention of such species, nor critical habitats for such species present at Boca Chica State Park, in its final approved resolution.
172. Instead, the Commission considered SpaceX's "desire to expand its operational footprint" and "growth need"—factors the Legislature did not intend it to consider.
173. The Commission's Action, therefore, was arbitrary and capricious and should be reversed.
174. **Error No. 10.** Alternatively, the Commission violated the Texas Constitution and the non-delegation doctrine by allowing SpaceX to condemn park land without authorization from the Legislature.
175. The Commission is the only party in the exchange with explicit power to condemn park land.
176. However, under facts laid out above, the Commission's Action betrays that it considers SpaceX to have the authority to condemn the parcels within Boca Chica State Park, though this is not expressly stated in the resolution document or the public notice.
177. The Commission cited SpaceX's desire to take and use the parcels within Boca Chica State Park.
178. The Commission then looked at SpaceX's alternatives rather than its own.

179. The Commission convened a Chapter 26 proceeding and purportedly engaged in a Chapter 26 analysis, at SpaceX's behest.
180. This indicates that the Commission either believed SpaceX had authority to condemn park land, or it granted its own authority to SpaceX to condemn park land.
181. Both are unconstitutional outcomes.
182. No property shall be taken except by "an entity granted the power of eminent domain under law." TEX. CONST. art. I, § 17(a)(1). "[T]he power of eminent domain must be conferred by the Legislature, either expressly or by necessary implication, and will not be gathered from doubtful inferences." *Miles*, 647 S.W.3d 613 (citing *Coastal States Gas Producing Co. v. Pate*, 309 S.W.2d 828, 831 (Tex. 1958)).
183. The power of eminent domain was not granted to SpaceX by the legislature; therefore, the company's tacit condemnation of Boca Chica State Park would under all circumstances be unconstitutional.
184. TPWD's actions demonstrate an implicit attempt to grant its own power of eminent domain to SpaceX and allow public property to be taken for use by SpaceX.
185. Such a transfer of power from TPWD would still be an unconstitutional delegation of authority to a private entity. TEX. CONST. art. II, § 1 (emphasizing the separation of powers of government, which precludes the Executive branch from "exercising any power properly attached" to the Legislative branch).

186. Texas courts review such delegations of authority to private entities under the eight-factor test set out by the Texas Supreme Court in *Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen*, 952 S.W.2d 454 (Tex. 1997).

187. The test asks:

- (1) Are the private delegate's actions subject to meaningful review by a state agency or other branch of state government?
- (2) Are the persons affected by the private delegate's actions adequately represented in the decisionmaking process?
- (3) Is the private delegate's power limited to making rules, or does the delegate also apply the law to particular individuals?
- (4) Does the private delegate have a pecuniary or other personal interest that may conflict with his or her public function?
- (5) Is the private delegate empowered to define criminal acts or impose criminal sanctions?
- (6) Is the delegation narrow in duration, extent, and subject matter?
- (7) Does the private delegate possess special qualifications or training for the task delegated to it?
- (8) Has the Legislature provided sufficient standards to guide the private delegate in its work?

Id. at 472.

188. Here, such a delegation would fail all elements of the test.

189. Its failure is especially clear on prong number (4): SpaceX has a *substantial* pecuniary interest in the condemnation of Boca Chica State Park.

190. Accordingly, because the Commission's decision was unconstitutional, it must be reversed and declared void.

VIII. REQUEST FOR ATTORNEY'S FEES

191. Plaintiffs request recovery of attorney's fees and costs that they incur in pursuit of the declaratory relief they seek here, as authorized by Section 37.009 of the Civil Practice and Remedies Code.

IX. CONCLUSION & PRAYER

The errors described above render the Commission's decision to approve the disposal of, and conveyance to SpaceX, Boca Chica State Park land erroneous; the decision was in violation of the Texas Constitution; in excess of the agency's statutory authority; it was made through unlawful procedure; it was arbitrary and capricious; and it was made in bad faith.

Therefore, Plaintiffs pray that this Court reverse the Commission's March 4, 2024 decision approving a land exchange with SpaceX. Plaintiffs further pray that the Court render Judgment as follows:

- a. Declaring the Commission's March 4, 2024 decision unlawful and in violation of Texas Parks and Wildlife Code Section 26.001(a)(1);
- b. Declaring the Commission's March 4, 2024 decision unlawful and in violation of Texas Parks and Wildlife Code Section 26.001(a)(2);
- c. Declaring the Commission's March 4, 2004 decision unlawful and void because the Commission failed to comply with the notice and public hearing requirements under Texas Parks and Wildlife Code Section 26.002;
- d. Declaring the Commission's March 4, 2024 decision unlawful and in violation of Texas Parks and Wildlife Code Section 13.009;

- e. Declaring the Commission’s March 4, 2004 decision unlawful and arbitrary and capricious for failing to consider the impacts of its decision on endangered and threatened species;
- f. Declaring the Commission’s March 4, 2004 decision unconstitutional and void, because it violates art. I, § 17(a)(1) of the Texas Constitution;
- g. Declaring Commission’s March 4, 2004 decision unconstitutional and void, because it violates art. II, § 1 of the Texas Constitution;
- h. Awarding Plaintiffs their costs and attorney’s fees; and
- i. Granting such other relief, including supplemental and injunctive relief, to which Plaintiffs may show themselves entitled.

Respectfully submitted,

/s/ Marisa Perales
Marisa Perales
State Bar No. 24002750
marisa@txenvirolaw.com

PERALES, ALLMON & ICE, P.C.
1206 San Antonio St.
Austin, Texas 78701
(512) 469-6000 (t) | (512) 482-9346 (f)

COUNSEL FOR PLAINTIFFS

EXHIBIT A

Action
Exchange of Land – Cameron County
Acquisition of Approximately 477 Acres in Exchange for
Approximately 43 Acres at Boca Chica State Park
March 4, 2024

I. Executive Summary: Staff requests authorization to pursue acquisition of approximately 477 acres near the Laguna Atascosa National Wildlife Refuge (NWR) – Bahia Grande Unit, in exchange for approximately 43 acres from Boca Chica State Park. This acquisition would create opportunities to expand public access and recreation in the region and allow Texas Parks and Wildlife Department (TPWD) to protect and manage the property’s diverse habitats, which include lomas, coastal grasslands, and wetlands.

II. Discussion: Laguna Atascosa NWR was established in 1946 to protect habitat for wintering waterfowl and other migratory birds, with an emphasis on endangered species management. TPWD acquired Boca Chica State Park in 1994 and until recently, leased it to the United States Fish and Wildlife Service (USFWS), which managed it as a unit of the Lower Rio Grande Valley NWR.

Space Exploration Technologies Corp. (SpaceX) desires to expand its operational footprint around its launch facilities at Boca Chica and has requested the transfer of 43 acres from Boca Chica State Park in exchange for 477 acres near the Laguna Atascosa NWR to TPWD. This acquisition will provide increased public recreational opportunities including hiking, camping, water recreation, and wildlife viewing, and allow for greater conservation of sensitive habitats for wintering and migratory birds. Additionally, this land is within the broader conservation landscape of the Lower Rio Grande Valley of Texas.

III. Recommendation: Staff recommends that the Texas Parks and Wildlife Commission adopt the following motion:

“The Texas Parks and Wildlife Commission adopts the Resolution attached as Exhibit A.”

Attachments – 6

1. Exhibit A – Resolution
2. Exhibit B – Location Map
3. Exhibit C – Vicinity Map
4. Exhibit D – Site Map of Proposed Acquisition
5. Exhibit E – Site Map of Proposed Exchange
6. Exhibit F – Site Map of Proposed Exchange

**A Resolution by the Texas Parks and Wildlife Commission
Regarding the Acquisition of Approximately 477 Acres in Cameron County in
Exchange for Approximately 43 Acres at Boca Chica State Park**

RESOLUTION

Whereas, Texas Parks and Wildlife Department (TPWD) owns and operates Boca Chica State Park (SP) for a variety of recreation and conservation values, including the protection of coastal habitat; and,

Whereas, Space Exploration Technologies Corp. (SpaceX) desires to expand its operational footprint around its launch facilities at Boca Chica; and,

Whereas, SpaceX has requested the transfer of 43 acres from Boca Chica SP (the Exchange Tracts) in exchange for 477 acres near the Laguna Atascosa National Wildlife Refuge (NWR) to TPWD; and,

Whereas, Laguna Atascosa NWR was established in 1946 to protect habitat for wintering waterfowl and other migratory birds, with an emphasis on endangered species management; and,

Whereas, Boca Chica SP was acquired in 1994 and until recently, was leased to the United States Fish and Wildlife Service (USFWS) and managed as a unit of the Lower Rio Grande Valley NWR; and,

Whereas, the Exchange Tracts no longer serve the conservation and recreational purposes for which they were acquired; and,

Whereas, this exchange will provide increased public recreational opportunities including hiking, camping, water recreation, and wildlife viewing, and allow for greater conservation of sensitive habitats for wintering and migratory birds; and,

Whereas, the Texas Parks and Wildlife Commission (Commission) finds that as required by Texas Parks and Wildlife Code, Chapter 26, notices of today's hearing of this matter were published at least once a week for three consecutive weeks in newspapers of general circulation

that are published at least six days a week in the communities nearest to the state park in which such newspapers are published (the *Brownsville Herald and Valley Morning Star* in Cameron County, and the *Corpus Christi Caller-Times* in Nueces County), with the last day of publication being not less than one week or more than two weeks before the date of today's hearing; and,

Whereas, the Commission finds, in accordance with Parks and Wildlife Code, Chapter 26, that (1) there is no feasible and prudent alternative to the use or taking of the Exchange Tracts, which will be exchanged for a greater area of land of greater conservation and recreation value; and (2) the program or project that requires the use or taking of land includes all reasonable planning to minimize harm to TPWD property; and,

Whereas, the Commission finds, in accordance with Section 13.009 of the Texas Parks and Wildlife Code, that the proposed exchange of the tracts is in the best interest of TPWD; and,

Now, therefore, the Texas Parks and Wildlife Commission authorizes the Executive Director to take all necessary steps to exchange the subject tracts for the purposes and subject to the conditions described herein and in the motion approving this Resolution.

Adopted and approved this 4th day of March, 2024.



Jeffery D. Hildebrand, Chairman



Anna B. Galo, Member



Oliver J. Bell, Vice-Chairman

Robert L. "Bobby" Patton, Jr., Member



James E. Abell, Member



Travis B. "Blake" Rowling, Member



Wm. Leslie Doggett, Member



Dick Scott, Member



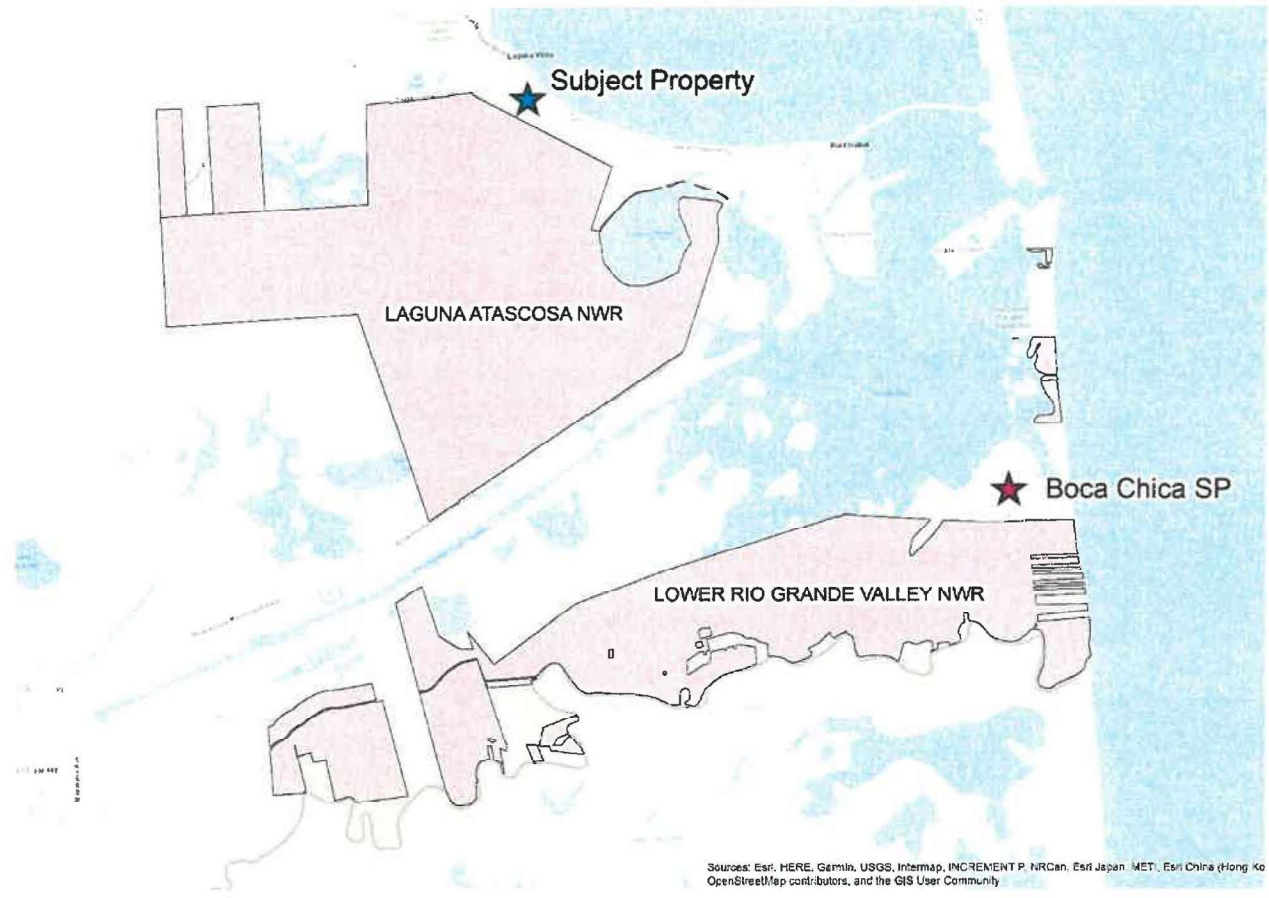
Paul L. Foster, Member

**Location Map for the Proposed Exchange
Cameron County**



**Commission Agenda Item No. 2
Exhibit C**

**Vicinity Map for the Proposed Exchange
Cameron County**



**Commission Agenda Item No. 2
Exhibit D**

**Site Map of the Proposed Acquisition
Subject Tract in Yellow**



Site Map of the Proposed Exchange
Exchange Tracts in Green
State Park in Red



Site Map of the Proposed Exchange
Exchange Tracts in Green



EXHIBIT B



U.S. FISH AND WILDLIFE SERVICE
Division of Federal Aid

ASSURANCES

Note: Certain of these assurances may not apply to your project or program. If you have questions, please contact the Regional Director of the U.S. Fish and Wildlife Service. Further, if you are required to certify to additional assurances, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

FWS-REG. 2
 DIVISION OF FEDERAL AID


10-01-92

RECEIVED

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following; (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738, (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historical Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

**ADDITIONAL ASSURANCES GENERALLY APPLICABLE TO CONSTRUCTION,
LAND ACQUISITION, OR LAND DEVELOPMENT**

1. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
2. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
3. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE Federal Aid Coordinator
APPLICANT ORGANIZATION Texas Parks & Wildlife Dept. 4200 Smith School Road Austin, TX 78744	DATE SUBMITTED 10/1/92

OCT 01 1992

NATIONAL COASTAL WETLAND GRANT PROPOSAL

**Boca Chica State Park and Wildlife Management Area
Cameron County, Texas**

A Wetland Habitat Acquisition and Management Project

Submitted By

**Texas Parks and Wildlife Department
Austin, Texas**



CONTENTS

PROJECT NARRATIVE

- A. NEED
- B. OBJECTIVE
- C. EXPECTED RESULTS AND BENEFITS
- D. APPROACH
- E. LOCATION
- F. ESTIMATED COST
- G. RELATED ACTIONS
- H. PUBLIC INVOLVEMENT
- I. REFERENCES

APPENDIX A - Maps

APPENDIX B - Cooperator Letters

APPENDIX C - Evaluation Criteria

PROJECT NARRATIVE

State: Texas Agency: Texas Parks and Wildlife Department
Project Title: Boca Chica State Park and Wildlife Management Area
Period Covered: April 1, 1993 to March 31, 1994
Prepared By: Daniel W. Moulton, Ph.D.

A. NEED

The project area is the lower elevation area from the north bank of the Rio Grande River where it enters the Gulf of Mexico extending about 1,220 m back (west) from Boca Chica and Del Mar beaches and running some 12 km north to the south jetty at the Brownsville Ship Channel. West of the beach is a line of primary sand dunes (the highest on the Texas coast) vegetated with Sea Oats, Beach Morning Glory, Bitter Panicum, and Beach Evening Primrose. The lower secondary dunes are more stable and support more dense stands of Panicum, Beach Tea, Camphor Daisy, and Partridge Pea. Behind the dunes are a series of sandy swales and low ridges called gavilans or corrugated mesas supporting dominants like Pennywort, Beach Carpet, Common Frogfruit, and Star Rush. The gavilan level into wind-tidal flats which cover most of the area with a mixture of semi-vegetated areas among barren algal-covered areas. Vegetation includes Glassworts, Seablite, Saltwort, Leafless Cressa, Shoregrass, and shrubby Black Mangrove along the Rio Grande and along the margins of South Bay. Smooth Cordgrass is found in the tidal marshes. Marshhay Cordgrass and Seacoast Goldenrod forms transitional zones between the lowest and highest elevations of gavilan ridges and swales. South Bay is a 3,400-acre secondary bay (southernmost bay in Texas) of the Lower Laguna Madre and is located inland to the gavilan on Brazos Island and north of extensive tidal flats leading to the Rio Grande. At its northern end South Bay opens into the Brownsville Ship Channel 4 km from the channel mouth. South Bay supports seagrasses (Shoal Grass, Clover Grass, Manatee Grass, and Turtle Grass) and is an important spawning and nursery area for marine resources. Shoal Grass is a prime food for Redheads, Pintails, and other waterfowl.

South Bay and the Rio Grande are primary components of this complex and productive wetland ecosystem.

There have been many attempts over the years to develop this area. The only development to succeed is a Polish-American retirement village begun in the 1960's. Today approximately 35 houses dot the landscape. There is no school, store, water, sewer or other services associated with modern-day conveniences. The largest of all of Boca Chica's failed developments was Playa del Rio, an attempt in the 1980's to ignore the harshness of the region, environmental concerns and economics to build a resort on 12,300 acres of dunes, marsh, and mudflats. As word of the plans for the development became public in the 1980's, every Texas and Federal natural resource agency opposed the project. The proposed development stalled but has not died. The original developers are still pursuing the acquisition of about 12,500 acres of dunes, marshes, and tidal flats for the creation of a "world class resort". Although the land is currently held by FDIC, litigation initiated by the original developers is pending. The threat of development will persist as long as the area is unprotected. The area also suffers from a lack of regulation of human activity, e.g. ATV's on dunes and wetlands. These fragile ecosystems are damaged by many human actions that could be regulated through education and enforcement if the area was in the public domain.

B. OBJECTIVE

The objective of the principal partners; the U.S. Fish and Wildlife Service (FWS), Texas Parks and Wildlife Department (TPWD), Texas Nature Conservancy (TNC), and the Texas General Land Office (GLO) is to preserve and manage the entire 12,500-acre Playa del Rio area.

C. EXPECTED RESULTS AND BENEFITS

This area encompasses miles of undeveloped, but sometimes heavily used, beach backed by vegetated dunes, salt marsh, coastal prairie, wind-tidal flats, and unique lomas. Lomas are small elevated islands of native Tamaulipan brushlands formed by wind and water erosion. They provide habitat for Ocelots and other endangered cats that inhabit and move through the area. The native shrubs and trees provide nesting, roosting, and foraging habitat for a large number of neotropical migrants and subtropical birds including plain chachalacas, green jays, and olive sparrows, on the northern periphery of their ranges. Piping Plovers, Least Terns, Black Skimmers, Oyster Catchers, Brown Pelicans, Arctic Peregrine Falcons, Northern Aplomado Falcons, Roseate Spoonbills, Bald Eagles, Reddish Egrets, White-faced Ibis and many other species utilize the area. Kemp's Ridley and other sea turtles have been observed on area beaches. Chaney and Pons (1988) identified 523 species (179 plants and 344 animals) from study transects on the area. Animals included 14 mollusks, 23 crabs and shrimp, 61 fish, 9 amphibians, 31 reptiles, 184 birds, and 22 mammals. Of the 523 species identified, about 62 are actively managed in some way by TPWD. At least 18 species of ducks and geese are common on area wetlands which are included in the Laguna Madre Initiative of the Gulf Coast Joint Venture of the North American Waterfowl Management Plan. Area wetlands are particularly important to Redheads and Pintails.

D. APPROACH

TPWD intends to acquire and manage about 2,400 acres of the Playa del Rio area in a phased process. Boca Chica and Del Mar Beaches would be managed as Boca Chica State Park. The remaining acreage encompassing dunes, prairie, wetlands, and lomas will be managed as Boca Chica Wildlife Management Area with public access and use carefully controlled to protect these fragile ecosystems and their fish and wildlife habitat values. FWS proposes to acquire and manage the remaining 10,000 acres as the Playa del Rio addition to the Lower Rio Grande Valley National Wildlife Refuge (LRGVNWR). The

initial acquisition for TPWD will be the 1,161 acre Barnes tract. TPWD and FWS hope to acquire their respective parts of the Playa del Rio acreage when it becomes available.

E. LOCATION

The area is in Cameron County, Texas about 32 km east of Brownsville (see maps).

F. COSTS AND SCHEDULE

<u>Tract</u>	<u>Owner</u>	<u>Acres</u>	<u>Cost</u>	<u>Per Acre</u>	<u>Projected Closing Date</u>
Barnes	TNC	<u>1,161</u>	<u>\$430,000*</u>	<u>\$370</u>	April 1993

* The appraised fair market value of the tract is \$550,000 (\$474/acre). Transfer will be a bargain sale from TNC to TPWD.

A total of \$ 215,000 is requested to match \$ 335,000 of non-federal funds from TNC (\$ 120,000) and TPWD (\$ 215,000) (Texas Waterfowl Stamp Fund and Local Park Fund); a federal to non-federal match of 39% : 61%.

G. RELATED ACTIONS

In 1990, Congress added the greater Boca Chica area to the Coastal Barriers System making federal flood insurance unavailable. The area has been identified for protection (acquisition) in recently established legislation (Coastal Barriers Improvement Act of 1990) which contains authorization for appropriation of \$15,000,000 for land acquisition. The area has been assigned a Priority 2 rating by Region II consistent with the National Wetlands Priority Conservation Plan.

The Playa del Rio tracts constitute the downstream termination of the Rio Grande biological corridor. TPWD has had a long-term interest in this area and at one time leased 216 acres, Brazos Island State Park, from the GLO. TPWD has indicated willingness (see attached letter) to join with FWS (Region 2) and the TNC to preserve the

area. TPWD has agreed to manage approximately 2,400 acres of beach, dunes, and wetlands. TPWD currently has management authority for South Bay as a unit of the Coastal Preserve System which is a joint Coastal Conservation program of TPWD and the GLO. FWS (Region 2) is pursuing acquisition of the remaining Playa del Rio acreage (~10,000 acres) as the final linkage between the LRGVNWR and the coastal environment. The GLO has expressed willingness to work with TPWD in transferring management, and perhaps title, of the Brazos Island tract. TNC has acquired, on behalf of TPWD, 1,161 acres called the Barnes tract (see map) which was not a Playa del Rio tract. The Barnes tract is a key tract for access to the entire 2,400 acres since the only road into the area, State Highway 4, passes through the middle of the tract. The 216-acre GLO tract is presently leased to the Cameron County Park System and the beach is maintained by that entity. Cameron County is highly supportive of the efforts of FWS, TPWD, TNC, and GLO to permanently protect and manage the area.

H. PUBLIC INVOLVEMENT

This area has been identified for protection in the Coastal Barriers Improvement Act of 1990 which contains authorization for appropriation of \$15,000,000 for land acquisition. Congress has not appropriated funds for acquisition by FWS and has only through 1992 to do so. The area is recognized for its wildlife and fisheries habitat values in numerous FWS publications relating to the LRGVNWR and Gulf Coast Joint Venture of the North American Waterfowl Management Plan and has a Priority 2 rating for acquisition. The Texas Wetlands Plan (1988) identifies coastal wetlands as the second priority, after hardwood bottomlands, for wetland acquisition and management in Texas.

In 1986, when the Playa del Rio developers applied for a section 404 permit, every Texas and Federal natural resource agency and 23 environmental groups opposed the project and the Corps denied the permit in 1990. One of the most important benefits for natural resources that would result from acquisition by TPWD would be the education and regulation of people and their activities. TPWD, in addition to providing beach access, would protect the fragile dune-prairie-wetland ecosystems that constitute most of the

area. Educational efforts would include self-guided nature trails and regularly scheduled guided nature tours led by natural resource professionals. Regular maintenance and patrol by enforcement officers would benefit the area greatly and prevent degradation of the fragile and unique ecosystems involved.

I. REFERENCES

Chapman, J. 1992. Where the road ends. Texas Parks and Wildlife, 50(2):6-13.

USFWS. 1992. Fiscal year 1992; briefing book: land acquisition: State of Texas. Reg. 2, Albuquerque, NM.

Sullivan, D. 1991. Occurrences of special species or natural communities in the general vicinity of the Playa del Rio tract. Texas Natural Heritage Program Information System, TPWD, Austin.

Cheney, A.H. and M. B. Pons, Jr. 1988. Faunal and floral characteristics of the Playa del Rio project site, Cameron County, Texas. Coop. Agreement No. 14-16-0002-86-926 with USFWS Ecol. Serv. Branch, Corpus Christi, TX.

Espey, Huston & Assocs., Inc. 1988. Playa del Rio biological assessment. Austin, TX.

Prothero, B.C. 1991 (Dec.). An appraisal and analysis of value of an open land tract. Professional Appraisal Services, McAllen, TX. 133 pp + addenda.

USFWS. n.d. The wildlife corridor: information brochure for the Lower Rio Grande Valley National Wildlife Refuge land acquisition program. Div. of Realty, Field Off., McAllen, TX. 6pp.

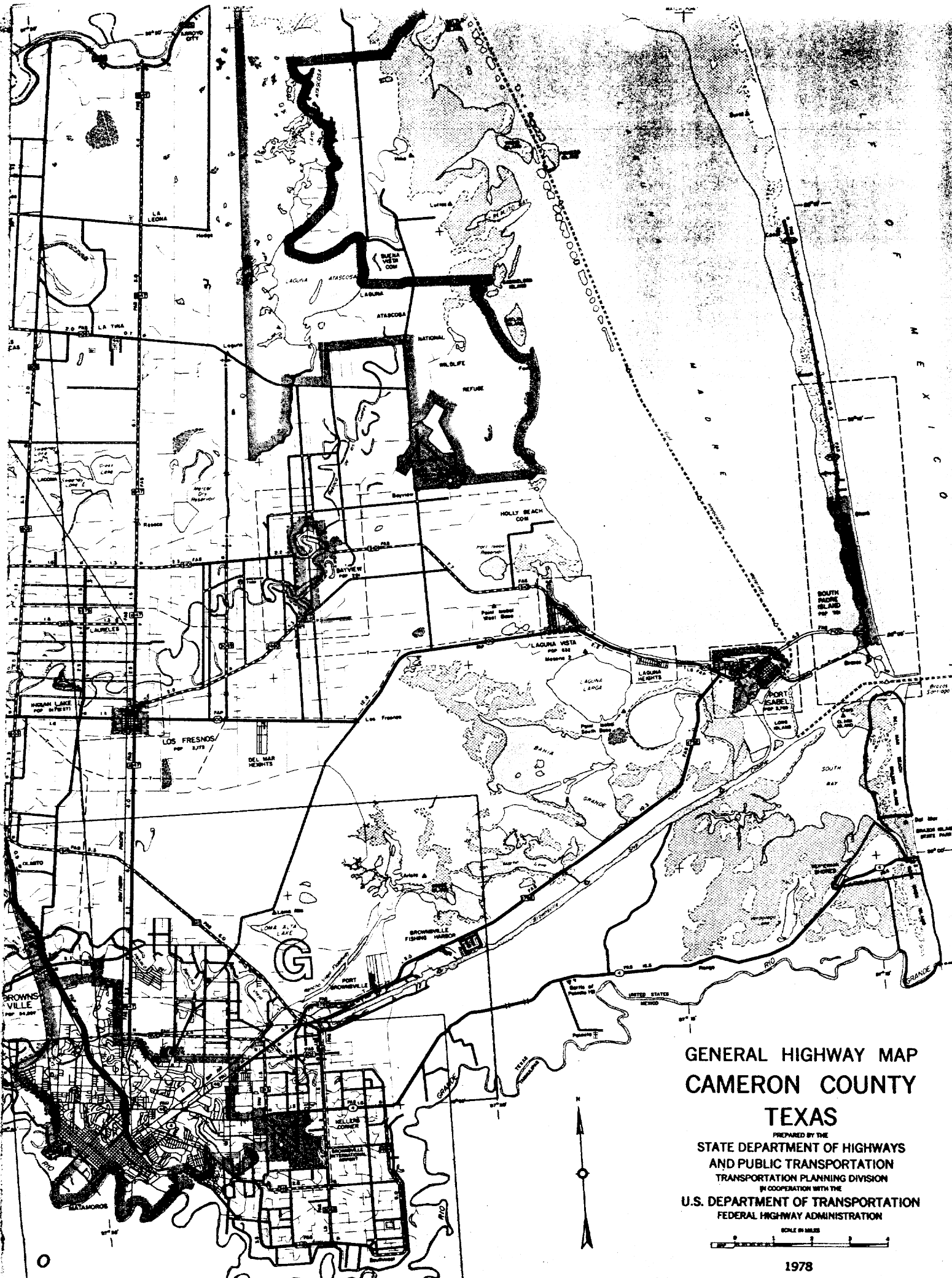
USFWS. 1990. Laguna Madre initiative plan: Gulf Coast joint venture: North American waterfowl management plan. Arlington, TX. 34 pp + appendixes.

USFWS. 1991. Emergency wetlands resources act: Region II wetlands regional concept plan. Albuquerque, NM. 186 pp.

USFWS. 1989. National wetlands priority conservation plan. Wash., D.C. 58 pp. + appendixes.

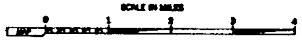
TPWD. 1988. The Texas wetlands plan: Addendum to the 1985 Texas outdoor recreation plan. Austin, TX. 35 pp.

APPENDIX A - Maps

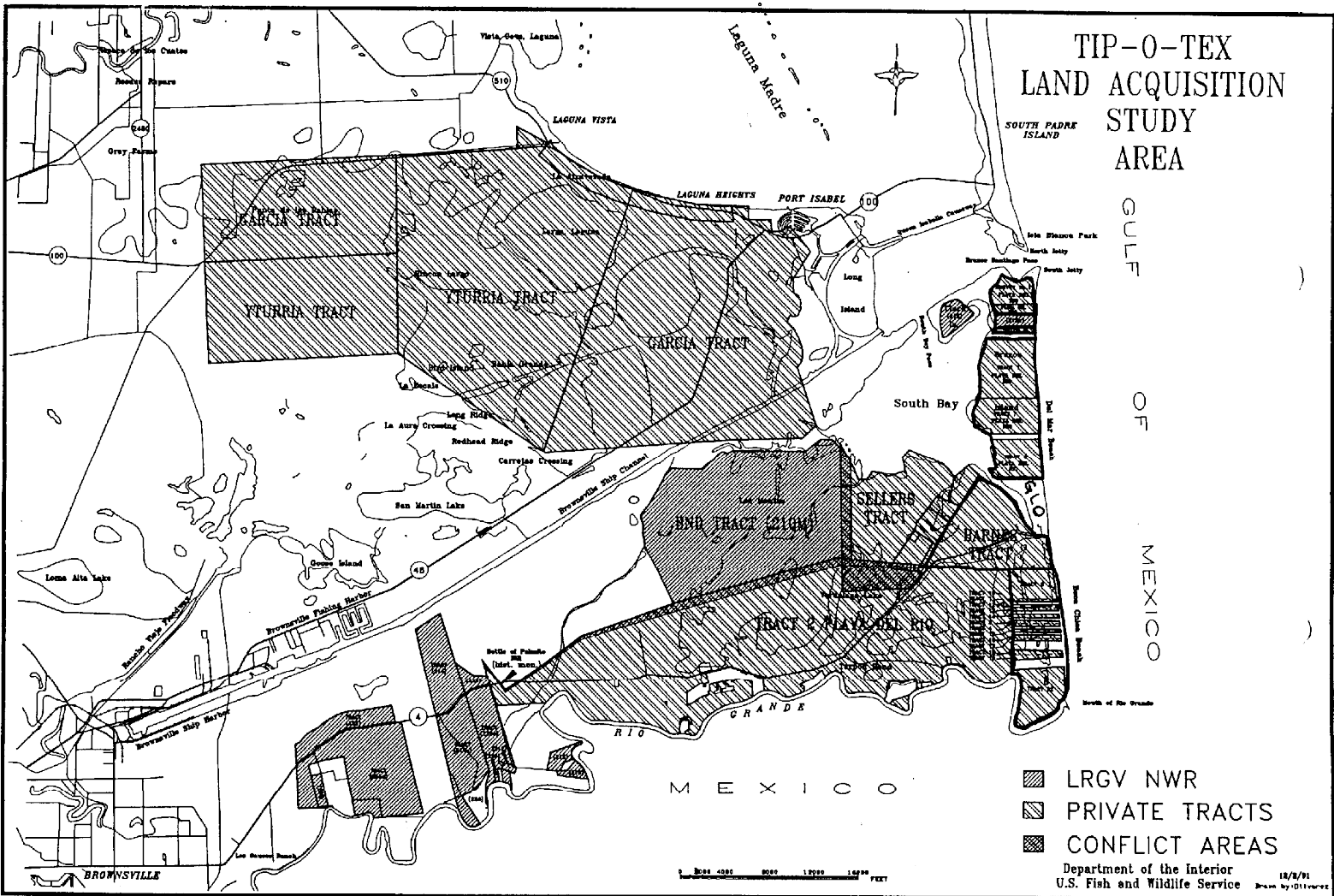


**GENERAL HIGHWAY MAP
CAMERON COUNTY
TEXAS**

PREPARED BY THE
STATE DEPARTMENT OF HIGHWAYS
AND PUBLIC TRANSPORTATION
TRANSPORTATION PLANNING DIVISION
IN COOPERATION WITH THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION



TIP-O-TEX LAND ACQUISITION STUDY AREA



APPENDIX B - Cooperator Letters



B

TEXAS
PARKS AND WILDLIFE DEPARTMENT
4200 Smith School Road • Austin, Texas 78744 • 512-389-4800

ANDREW SANSON
Executive Director

COMMISSIONERS

CHUCK NASH
Chairman, San Marcos

JOHN WILSON KELSEY
Vice-Chairman
Houston

LEE M. BASS
Ft. Worth

HENRY C. BECK, III
Dallas

YGNACIO D. GARZA
Brownsville

TERESE TARLTON HERSHEY
Houston

GEORGE C. "TIM" HIXON
San Antonio

BEATRICE CARR PICKENS
Dallas

WALTER UMPHREY
Beaumont

April 19, 1991

Mr. Michael J. Spear
Regional Director
U.S. Fish & Wildlife Service
P.O. Box 1306
Albuquerque, NM 87103

Dear Mr. *Mike* Spear:

News that the Cameron County property known as Playa del Rio may soon become available was exciting to get from you and I was pleased with our discussions on the matter.

As we discussed, both the Department and Fish and Wildlife Service have been involved with the Playa del Rio project for many years. Our interest has not only been in the preservation of this coastal ecosystem, but also in the continued provision of public access and recreational opportunities.

The Department has already established a presence in the area through management of 3,420 acres of South Bay as a coastal preserve. The Department continues to have an interest in the protection of the valuable resources represented in the Playa del Rio property, and legislation now pending in Austin would allow us to financially participate in its acquisition. We would like to join the Fish and Wildlife Service in any effort to acquire all or a portion of the Playa del Rio tract.

I would like to express the Department's formal interest in working with the Fish and Wildlife Service in acquisition and management of this area.

Thanks for your continued support and cooperation.

Sincerely,

Andy
Andrew Sansom
Executive Director

AS:MWH:mh

cc: Honorable Ygnacio D. Garza

Mike - Joe Mazoni's cooperation in this matter has been outstanding and is deeply appreciated.
A.



TEXAS
PARKS AND WILDLIFE DEPARTMENT
4200 Smith School Road • Austin, Texas 78744 • 512-389-4800

ANDREW SANSOM
Executive Director

COMMISSIONERS

YGNACIO D. GARZA
Chairman, Brownsville

JOHN WILSON KELSEY
Vice-Chairman
Houston

LEE M. BASS
Ft. Worth

HENRY C. BECK, III
Dallas

TERESE TARLTON HERSHEY
Houston

GEORGE C. "TIM" HIXON
San Antonio

CHUCK NASH
San Marcos

BEATRICE CARR PICKENS
Dallas

WALTER UMPHREY
Beaumont

PERRY R. BASS
Chairman-Emeritus
Ft. Worth

July 2, 1992

Mr. David Braun, State Director
The Nature Conservancy
Texas Field Office
711 Navarro, Suite 410
San Antonio, TX 78205-1721

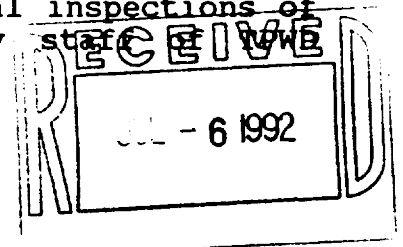
RE: Barnes Tract Project

Dear Mr. Braun:

Texas Parks and Wildlife Department, hereinafter "TPWD" hereby requests The Nature Conservancy, hereinafter "Conservancy" to acquire either title to the surface with appropriate mineral development limitations or an assignable signed option agreement for TPWD over approximately 1,161 acres known as the Barnes Tract, (hereinafter the "Property"), in Cameron County, State of Texas. It is understood that said land when acquired by TPWD will be utilized as Public Lands.

In return, in the event that Conservancy has taken title, TPWD will make every effort to repurchase the said Property from Conservancy. In the event that Conservancy has secured an option, TPWD agrees to accept an assignment of that option.

It is further understood that our purchase price shall include all direct costs incurred by Conservancy in the acquisition of the property including, in addition to the land cost, the costs of appraisals, survey, title insurance, recording fees, attorney's fees and other related expenses of Conservancy that result from the financing and handling of the purchase, together with the interest on the land cost for the Conservancy's holding period computed at the annual rate of prime plus 1%. Environmental inspections of the Property will be conducted by state Resource Protection Division.



Mr. David Braun, State Director
Page Two
July 2, 1992

In addition, we understand that we will also partially reimburse the Conservancy for the time and expenses of its employees (real estate specialists, regional attorney, paralegals, biologists and botanists, and others) and other indirect costs in this transaction through the payment of an overhead charge.

In the event that TPWD is unable to purchase the Property from Conservancy, then it is mutually understood that Conservancy may take such further action as necessary to recover its investment. This may include placing the property for sale on the open market if no conservation purchasers can be found.

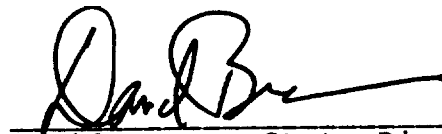
TPWD understands that Conservancy will require, by deed restriction or otherwise, that we erect and maintain a permanent plaque or other appropriate marker, at a prominent location on the Property, that bears the statement: "This Area Was Acquired With The Assistance Of The Nature Conservancy".

Sincerely,


Andrew Sansom
Executive Director

AS:MWH:mh

Acknowledged:



David Braun, State Director
The Nature Conservancy

Date:

7/7/91

APPENDIX C - Evaluation Criteria

Evaluation Criteria

1. The project does not involve maritime forest on a coastal barrier.
2. The project addresses the No-Net-Loss concept by benefitting several decreasing wetlands types, viz. estuarine intertidal emergent, estuarine intertidal forested (black mangrove), and marine intertidal.
3. The project will enhance and protect essential habitat for a number of Federally listed endangered or threatened species. Refer to proposal sections: A. Need, and C. Expected Results and Benefits.
4. The project will provide benefits to a large variety of native plants and animals. Refer to proposal sections: A. Need, and C. Expected Results and Benefits.
5. The project will provide significant benefits to spawning and nursery areas for marine resources. Refer to proposal section: C. Expected Results and Benefits.
6. The project will prevent further contaminant input into South Bay and the lower reach of the Rio Grande. If the entire 12,500 acre project could be completed, significant reduction in contaminant input would be possible.
7. The proposal includes State, Federal, and private interests.
8. The proposal strategy and design should provide wetlands benefits in perpetuity.
9. Considering the number of winter Texans that visit this coastal area, the educational aspect of this project could reach a very large number of people.
10. The project may be critical in promoting and stimulating the larger Playa del Rio project. Refer to Section: G. Related Actions.
11. The State does have financial support from outside sources in excess of the 50 percent requirement. Refer to Section: F. Costs and Schedule.

NATIONAL COASTAL WETLANDS CONSERVATION PROGRAM

A. Purpose. The purpose of this document is to provide guidance on the selection and administration of grants under the National Coastal Wetlands Conservation Grant Program. It does not apply to other wetland programs.

B. Background. The National Coastal Wetlands Grant Program is authorized by section 305 of the Coastal Wetlands Planning, Protection and Restoration Act of 1991 (16 U.S.C 3954), herein referred to as "the Act."

C. Eligible Applicants. Eligible applicants are State agencies of coastal States designated by the Governor. Coastal States are those States bordering the Great Lakes (Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin); States bordering the Atlantic Coast, Gulf of Mexico (except Louisiana), and Pacific coast (Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington); American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, Trust Territories of the Pacific Islands, and the Virgin Islands.

Applications from more than one State agency may be submitted to the Service if the Governor determines that more than one agency has responsibility for coastal wetlands.

D. Eligible Purposes. The following purposes are eligible for grants.

1. Obtaining a real property interest in coastal lands and/or waters, if the acquisition of such interests is subject to terms and conditions that will ensure the real property will be administered for the long-term conservation of such lands and waters and the hydrology, water quality and fish and wildlife dependent thereon.
2. The restoration, enhancement, or management of coastal wetlands ecosystems, if such restoration, enhancement or management is conducted on coastal lands and waters that are administered pursuant to terms and conditions providing for the long-term conservation of such lands and waters and the hydrology, water quality and fish and wildlife dependent thereon.

E. Ineligible Activities.

1. Projects which primarily provide benefits for navigation, irrigation, flood control or mariculture.
2. Acquiring or managing lands to mitigate recent or pending habitat losses resulting from the actions of other agencies.
3. Creation of artificial wetlands.

4. Enforcement of fish and wildlife laws and regulations, except when necessary for the accomplishment of approved project purposes.

F. Application Procedures. Proposals for grants should be sent to the appropriate Regional Director of the U.S. Fish and Wildlife Service. A list of U.S. Fish and Wildlife Service Regional Offices is attached. Proposals for FY 1993 grant funding must be received by the Regional Director by October 1, 1992. Each proposal must include:

1. An Application for Federal Assistance (Standard Form 424), a Certificate of Assurances and a project Statement. Copies of the forms are available from the Regional Director.
2. The project Statement should include the following information.
 - a. Need. State the purpose of the project in terms of carrying out the Act.
 - b. Objective. State what is to be accomplished during the period of the project pursuant to the need. The objective must specify a recognizable end point and be quantifiable or verifiable.
 - c. Expected results or benefits. Describe the anticipated results or benefits of the project in terms of coastal wetlands and the hydrology, water quality, and fish and wildlife dependent on the wetlands.
 - d. Approach. Describe how the objective will be attained. Include specific procedures, schedules and cooperators.
 - e. Location. Identify where the work will be carried out.
 - f. Estimated cost. Provide the estimated cost, by year, to attain the objective.
 - g. Relationship to other projects. Describe the relationship of the proposed project to other current coastal acquisition, restoration, enhancement and management actions. Identify other agencies involved and any relationship with the proposed project. Describe how the project fits into comprehensive natural resource plans for the area, if any.
 - h. Public involvement. Describe public involvement, interagency cooperation or coordination on the proposed coastal wetlands conservation project that have occurred or are planned. Identify parties, types, and dates of involvement.

G. Project selection criteria.

1. To be considered for selection, the proposed project must be substantial in character and design. A substantial project is one which:

- a. Identifies and describes a need within the purposes of the Act;
- b. Identifies the objective to be accomplished based on the Stated need;
- c. Utilizes accepted principles, sound design and appropriate procedures; and
- d. Will yield benefits which are pertinent to the identified need at a level commensurate with the costs.

2. The Director will give priority to projects that meet the following criteria contained in the Act.

- a. Projects that are consistent with the criteria and considerations outlined in the National Wetlands Priority Conservation Plan.
- b. Projects in maritime forests on coastal barrier islands.
- c. Projects in States that have established dedicated funding for programs to acquire coastal wetlands, natural areas, and open spaces.

3. Other criteria will be used by the Director in selecting projects. Therefore, proposals should address each of the items, as applicable, either as a part of the project Statement or as supplemental material.

CRITERIA FOR EVALUATING NATIONAL COASTAL WETLANDS CONSERVATION PROJECTS

The following criteria will assist in ranking qualified proposals when funding requests exceed funds available. The point system has been developed to assure maximum weight for proposals that meet the purposes of the Act.

	<u>Points</u>
1. Proposal is for acquisition of maritime forest on a coastal barrier, as defined in the Act.	20
2. The proposal addresses the No-Net-Loss concept by reversing wetland loss or habitat degradation.	
a. Project will benefit decreasing wetlands types (estuarine intertidal emergent, estuarine intertidal forested, estuarine scrub-shrub, marine intertidal).	10
b. Project will benefit stable wetlands types (estuarine intertidal non-vegetated, estuarine subtidal).	5
c. Project will benefit increasing wetlands types.	3
3. Will any Federally listed endangered or threatened species be affected by the project?	
a. Proposal will provide or enhance essential habitat for two or more species.	10
b. Proposal will provide or enhance essential habitat for one species.	5
c. Proposal will not provide essential habitat to any species.	0
4. Will the proposal provide benefits to a diversity of fish and wildlife?	
a. Proposed project has been documented to exhibit high biological diversity for individual native species compared to similar wetlands types in the region.	7
b. Proposed project has been documented to exhibit low to moderate biological diversity compared to similar wetlands types in the region.	3
c. Biological diversity of the site has not been determined.	0
5. Will the project provide spawning and nursery benefits to anadromous and other coastal interjurisdictional fish species and their habitat?	
a. Project will provide significant benefits.	7
b. Project will provide minor benefits.	3
c. Project will not provide any documented benefits.	0

6. Will the proposal provide protection from contaminant input or restore wetlands already contaminated?
 - a. Project will provide significant values in contaminant protection, including nutrients assimilation, sediment trapping and toxic substance uptake, or project is designed to restore contaminated wetlands. 5
 - b. Project will provide limited contaminant protection or restoration will be of minor value to contaminant reduction. 2
 - c. Project will not provide any documented benefits. 0

7. Will the proposal receive financial support from partnerships with private, local or Federal interests?
 - a. Proposal includes the State plus 2 or more partners. 10
 - b. Proposal includes the State plus 1 other partner. 5
 - c. Proposal includes only the State. 0

8. Is the combination of protection strategy and project design sufficient to ensure long-term conservation of wetlands values?
 - a. Strategy and design will provide wetlands benefits for 25 or more years. 5
 - b. Strategy and design will provide wetlands benefits for 10 to 25 years. 2
 - c. Strategy and design will provide wetlands benefits for less than 10 years. 0

9. Is the proposal designed to increase environmental awareness and develop an outreach program to foster, promote and develop a more informed and involved citizenry to support coastal wetlands conservation?
 - a. Proposal includes an innovative outreach program designed to reach a significant and varied segment of the population. 5
 - b. Proposal designed for a limited outreach program. 2
 - c. Proposal does not include a meaningful outreach program. 0

10. Is the proposal designed to leverage other ongoing wetlands protection projects in the area, such as acquisition of areas to add to already acquired lands, or provide impetus for additional restoration?
 - a. Project will be essential to further enhance other projects underway. 5
 - b. Project will have limited impact on other projects. 2
 - c. Project will have no discernible impact on other projects. 0

11. Does the State have financial support or assistance from outside private or business sources in excess of the 50 percent requirement?

Yes	5
No	0

EXHIBIT C

Land Transaction, Conservation and Facility Closure and Transfer Policy

Policy Number: LF-03-01

Type of Policy: Lands and Facilities

Date: July 2003 (Revised: July 2008)

PURPOSE

This document establishes policies that ensure Texas Parks and Wildlife Department's (TPWD or Department) land conservation decisions are based on Department priorities and conducted in a fair and open manner with ample opportunity for public comment. It also creates procedures to coordinate all TPWD resources efficiently when conducting land transactions.

BACKGROUND

The Department must carefully consider and coordinate capital improvements to facilities because of the long-term implications of these sizeable investments. Decisions relating to the divestiture and acquisition of land will have especially long lasting impact on the Department. The need exists to prioritize potential land acquisitions and the reinvestment of proceeds from strategic land sales so that limited land acquisition funds are invested wisely for the state and the Department.

TPWD's legal authority for various land transactions is found in the Parks and Wildlife Code. Some examples include:

- §§11.037 (c), 13.002-003 – Purchase of Land for use as a State Park, Natural Area

- §§11.043 (c), 81.401 – Purchase of land for use as a Wildlife Management Area
- §13.005 – Purchase of land for use as a Historic Site
- §13.008 – Solicitation, Receipt, and Transfer of Land
- §13.009 – Sale or Exchange of Land
- §26.001-26.004 – Protection of Public Parks and Recreational Lands
- §§81.102-103 – Purchase of Land for Use as a Fish Hatchery

DEFINITIONS

For the purpose of this policy the following applies:

Land Acquisition:

Transfer and transfer of jurisdiction, purchase, donation, or land exchange resulting in additions to TPWD's real property inventory.

Land Disposition:

Sale, exchange, transfer and transfer of jurisdiction resulting in a loss to TPWD's real property inventory.

Land Trade:

An exchange of real property per §13.009 Sale or Exchange of Land, Parks and Wildlife Code.

Land Transactions:

Transactions involving land disposition, land acquisition, land trade, granting surface use privileges, easements and/or recommending mineral leases on TPWD lands. A land transaction under this policy does not include the acquisition of non-possessory property rights, such as a third party right to enforce conservation easements or other restrictive covenants.

Land Conservation:

- Coordinating and executing land transactions on behalf of TPWD;
- Evaluating, planning, and implementing statewide land conservation needs for TPWD consistent with TPWD's Land and Water Resources Conservation and Recreation Plan;
- Coordinating the development of mitigation banks in accordance with the TPWD Mitigation Banking Policy.

Right of First Offer to Adjacent Landowners:

A procedure in which TPWD establishes a sales price for TPWD property and offers the property to an adjacent landowner at that price. If the adjacent landowner declines the offer or if terms cannot be reached with the adjacent landowner, TPWD may offer the property to all proposed buyers at the highest price.

Facility Closure

The complete or partial closure of a state park, state historic site or wildlife management area by TPWD, including significant reduction in programs, services or hours of operation.

Planned Facility Closure

A permanent, semi-permanent or indefinite closure or substantial reduction in public services at a facility that is reasonably foreseeable by TPWD. A planned facility closure does not include a facility closure due to a weather or other type of emergency, including, but not limited to utility or infrastructure failure, destruction of a facility by an act of nature or otherwise, the closure of a facility for construction, repair or maintenance, or the normal seasonal closure of a facility.

POLICY

- All Department land transactions will be executed in compliance with:
 - TPWD's Land and Water Resources Conservation and Recreation Plan
 - Existing department plans and directives
 - Texas Parks and Wildlife Department Commission policy and directives
 - Texas law and appropriation authority
- All land negotiations will be carried out with sensitivity to the privacy of the landowners the department is dealing with. "Terms and Conditions" of in-process negotiations will be handled in such a way as to protect the confidentiality for both the buyer and the seller, while recognizing that disclosure of this information is governed by the Texas Public Information Act. Before signing or otherwise entering a non-disclosure agreement, employees should consult with a Legal Division lawyer to ensure compliance with the Texas Public Information Act.
- All real property transactions will be carried out in a manner that is easily understandable, fair, and consistent with the

agency's intent to conduct its affairs openly and with ample opportunity for public comment by TPWD's conservation partners and the general public.

- TPWD will not employ the power of eminent domain in land transactions.
- The Land Conservation Program (LCP) will be the primary Department contact for TPWD statewide land conservation efforts that result in changes to Department property inventory.
- All Department land conservation strategic planning activities (e.g., TPWD Land and Water Resources Conservation and Recreation Plan, Texas Outdoor Recreation Plan) will be coordinated with the Land Conservation Program.
- All TPWD land transactions will be coordinated through the Land Conservation Program. The Land Conservation Program will implement and maintain a procedure for the prioritization, coordination and funding of proposed and required land transactions relating to TPWD programs and facility operations. (see, Procedure A, "Land Acquisition Procedures"). The LCP will implement and maintain a procedure for the coordination and review of easement and surface use requests on TPWD facilities (see, Procedure B, "TPWD Easement Review Process").
- The Land Acquisition Coordination Committee is comprised of the following staff positions (or appointed delegate):
 - Director, Land Conservation Program
 - Director, State Parks Division
 - Director, Wildlife Division
 - Director, Infrastructure Division
 - Director, Inland Fisheries Division
 - Director, Coastal Fisheries Division
 - General Counsel
 - Chief Financial Officer
 - Deputive Executive Director for Operations
- The Land Acquisition Coordination Committee will meet on an as needed basis to:

- Prioritize potential land acquisitions and land dispositions
 - Formulate funding strategies for the highest priority land projects
 - Make land transaction recommendations to the Deputy Executive Director for Operations for consideration and action
- When a property is proposed for acquisition as a result of settlement negotiations related to a claim that is in litigation or that could be litigated, the proposed acquisition shall be submitted to the LCP for consideration at the earliest practicable time in the process. The Land Acquisition Coordination Committee shall respond to the proposal within deadlines applicable to the specific negotiation process. The Land Acquisition Coordination Committee shall recommend to the Deputy Executive Director for Operations that the proposal be recommended to the Commission, eliminated from consideration, or recommended to the Commission subject to the satisfaction of identified conditions.

PUBLIC NOTICE AND INPUT TO TPWD LAND TRANSACTIONS

Requirements Applicable to both Land Acquisitions, Dispositions and Planned Facility Closures, and Facility Transfers

- Two meeting process. Land acquisitions, dispositions and planned Facility closures will normally be presented in at least two Commission meetings.
- Public notification. A notice will be published in the Texas Register and on the TPWD Internet web site at least 30 days or some other reasonable period prior to the Commission meeting at which any action on a proposed land transaction will be considered. Notice of the proposed transaction will also be published in a local newspaper prior to the Commission meeting at which action will be considered.
- Open Meetings Act Compliance.

- Notice of both meetings at which the transaction will be discussed will be posted with the Secretary of State in accordance with the Open Meetings Act.
 - Proposed land transactions may be discussed in Executive Session if such a discussion is consistent with the requirements of the Open Meetings Act.
- Public input. After a briefing in Executive Session and/or Public Session at the first meeting, the Commission may direct staff to proceed with gathering public input and official comment, including comment from appropriate local and state officials. Public input may be by written comments, at a public hearing and/or through another method likely to obtain public input. This public input will then be presented to the Commission at the next or later scheduled meeting for open discussion and public testimony. The Commission may then take action or not, at its discretion.
- Special Meeting. If necessary, the Commission may schedule a special meeting to consider land transactions, consistent with state law.
- Process exceptions. Exceptions for this process may be approved by the Executive Director for easements, for the acquisition and disposition of small parcels that are clearly housekeeping in nature, and for recommendations to the Board for Lease regarding oil and gas operations. In such cases, the Commission could be briefed in committee meeting with action scheduled the next day during open Commission meeting (or later the same day, in the case of a single-day Commission meeting). In such situations, staff will endeavor to publish notice in the Texas Register and/or on the TPWD web site at least 30 days or some other reasonable period prior to the Commission meeting at which the proposed transaction will be considered.
- Board for Lease scheduling exceptions. In certain cases the Board for Lease for Texas Parks and Wildlife lands (administered by the General Land Office) will consider the nomination of TPWD minerals for lease or pooling prior to the next scheduled Commission meeting. In such cases, the Executive Director is authorized to communicate to the Board for Lease the terms and conditions under which

TPWD desires the nomination be considered. In such cases the Commission may be briefed during the next regularly scheduled meeting.

Additional Requirements for Land Disposition and Planned Facility Closures

- The 30-day notice of the meeting at which action will be considered will contain enough detail for the public to easily identify the property in question, including sales price, restrictions, conditions and rationale for the disposition.
- TPWD staff will hold a public hearing in the area in which the land is located prior to the Commission meeting at which action is to be taken on a land disposition or planned facility closure.
- TPWD staff will notify the Director of the Legislative Budget Board and the Director of the Governor's Division of Budget, Planning and Policy in advance of a planned facility closure.
- When selling land, TPWD may give a right of first offer to adjacent landowners.

Additional Requirements and Exceptions for Land Acquisition

- The 30-day notice of the meeting at which action will be considered will not include sales price or information that would identify the private sector seller or the specific tract of land and will normally be posted only after a contract is in place.
- As an exception to the two meeting and public notice provisions set out above, if the Executive Director determines that compliance with the two meeting and public notice provisions for an acquisition may result in additional costs to TPWD, the loss of a transaction that would be beneficial to TPWD or is otherwise not in the best interest of TPWD, the Executive Director may waive the two meeting and public notice requirements for acquisitions. Provided, however, staff will endeavor to provide as much public notice as is reasonably possible under the

circumstances and in compliance with the Open Meetings Act.

Legislatively Mandated Acquisitions and Dispositions

These transactions will take place in accordance with the legislation mandating the transaction. Unless the legislation requires action by the Commission, such transactions may occur without Commission action. If the legislation requires Commission action, an effort will be made to conduct the transaction in accordance with the normal policy for land acquisitions and dispositions, set out above.

Transfer of Property to the Texas Public Finance Authority

This policy shall not apply to a transfer of property to the Texas Public Finance Authority for the purpose of issuing revenue bonds or other debt for the benefit of TPWD pursuant to Chapter 1232 of the Texas Government Code, so long as the Commission has entered an appropriate resolution authorizing the issuance of the revenue bonds.

Transfer of Property to Local Governmental Entities

Proposals submitted by local governmental entity seeking transfer of a state park to the governmental entity should contain a plan for future management and operation of the park. Any state park land transferred to a local governmental entity must be permanently dedicated for public park and recreation purposes and shall revert to TPWD if the governmental entity fails to use the property for these purposes. TPWD shall furnish the receiving governmental entity with any biological survey, site assessment, natural and cultural resource data and management planning documents in TPWD's possession. Based on this information, the local governmental entity must prepare and submit to TPWD a Site Management Plan that addresses public use, cultural and natural resource protection at the site to include resource-based vegetation management, riparian and

water quality protection, and wildlife management. TPWD must approve the Site Management Plan before the site can be transferred.

ROLES AND RESPONSIBILITIES

Land Conservation Program (LCP)

The Land Conservation Program will:

- Coordinate with the land-holding divisions to develop acquisition priorities;
- Coordinate within the conservation community (non-governmental organizations or governmental organizations that provide public access to land) to facilitate TPWD statewide land conservation strategies;
- When directed by executive management, and in cooperation with the appropriate Division Director or designee, negotiate the “terms and conditions” under which the Department might acquire, dispose, or accept real property obligations to include operations and maintenance responsibility, except when the proposed transaction is the result of settlement negotiations related to a claim that is in litigation or that could be litigated, in which case negotiations will be conducted by representatives from the affected division and the department’s legal counsel;
- Coordinate department land issues with the Texas General Land Office to include actions concerning “unused and underutilized land”.

Wildlife, Inland Fisheries, Coastal Fisheries and State Parks Division Directors

As the Department’s major land-holding divisions, the directors will coordinate within their divisions to identify land acquisition/disposition needs and function within the Land Acquisition Coordination Committee to prioritize specific transactions and recommend funding strategies based on overall department needs and limitations.

Chief Financial Officer and Infrastructure Division Director

These positions will function within the Land Acquisition Coordination Committee to prioritize land transaction recommendations that are in the long-term strategic interest of the department and are in compliance with applicable laws, directives, and legislative appropriation.

General Counsel or Designated Department Lawyer

This position will function within the Land Acquisition Coordination Committee to ensure that all transactions comply with applicable law and receive appropriate legal review.

Amendments

LF-03-01 and LF-03-01A Land Transaction and Conservation Policy Policy Amendments

(/admin/guidelines/policies/tpwd_policies/lands_facilities/media/Administrative-Bulletin-LF-03-01-LF-03-01A-Land-Transaction-and-Conservation-Policy.pdf) | PDF

[Back To Top](#)

Last modified: September 30, 2019, 10:12 am