

Martins Beach and unbecoming behavior by an over-reaching bureaucracy?
By Vinod Khosla

The press reports and lawsuits brought against Martins Beach portray a condition that hasn't existed there has never been open public access. Prior owners ran a commercial operation, providing paid access to the beach, leasing cabins, and opening and closing the gate at their convenience per their sworn testimony. The activists desiring unfettered access to Martin's Beach have misrepresented the issues and facts and have made reasonable solutions less likely. Legislators in framing the coastal act took great care to not let it be used to circumvent private property rights, eliminating and rewriting many phrases that would have allowed bureaucrats to do so.

Beyond our right to close the gate, which only the courts can provide definitive interpretation of the law on, we as the new owner of the property continued the practice of the prior owners to allow paid access. We intended to continue this practice for the foreseeable future but were forced to change when we received demands from San Mateo County that we allow beach access year-round and reduce the fees to those charged in 1973 —a level of access or fees not demanded everywhere along the coast.

Prior to the lawsuits, we reached out to the county and Coastal Commission and requested a due process hearing on closing the gate. Even the Surfriders were offered a chance at dialog if property rights were acknowledged but they declined. To add insult to injury Coastal Commission staff indicated "they will need a permit for something sometime, and then we will have them" and "we will tie you up in red tape". Is that conduct becoming of a public service? Why were the previous owners not asked to open year-round or charge 1973 rates, or required to get permits for closing the gates when inconvenient or uneconomic? They testified this sentiment in court routinely.

Should a government agency force property owners to run businesses at a loss? Records and testimony submitted in court demonstrate there were fewer than five cars on an average day visiting the beach and demand for access to the beach had been declining for over a decade. One of the reasons for selling the property was it did not generate enough revenue to cover the costs. The county, by their demands implicitly wanted the owners to increase their losses. It became imperative in the face of this bureaucratic overreach to clarify our rights under the law. For the days the gate was open, fees did not cover even a small fraction of the insurance costs, let alone the total operational costs of the business.

Was the Red White & Blue beach, just south of Martin's Beach, that permanently closed its gate after charging for decades forced to open? Why has the agency not sent violation notices to others that planted trees or moved dirt around as we have received? Is this a public service agency or an agenda? In 2013, the United Supreme Court, in the *Koontz* decision said that local government couldn't coerce private property owners into giving up constitutionally protected rights through the permitting process.

Should the State spend millions of dollars for a few cars per day to get access to property or get mired in years of expensive litigation when many other beaches with public access are locally available? The Superior Court has already ruled that there is “no right of public access or easement to use or access the property exists”. The Court found that Martins Beach includes the “off-shore submerged tidelands.” The beach that once existed has eroded away and the original property line is now submerged.

Should the state attempt to obtain rights through coercion when nobody was willing to pay for them? The Deeney family offered the property for sale to the state, the Public, the Peninsula Open Space Trust, the Mid-Peninsula Open Space District, and other public agencies. State Parks decided not to purchase the property based on the geology, high property value, dangerous conditions, and associated costs to acquire, improve, maintain and operate the beach. Should government be allowed to coerce the person willing to purchase the property into giving up what the government was unwilling to purchase?

We are a nation of laws and a Constitution that specifically protects private property rights. Private initiative made this country great, not big government and intrusive public agency overreach or coercion. Lets not make California an unfriendly state.