

Date of Hearing: August 6, 2016

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Mike Gatto, Chair

SB 968 (Hill) – As Amended: June 30, 2014

Policy Committee: Natural Resources  
Judiciary

Vote: 6-3  
7-1

Urgency: No State Mandated Local Program: No

Reimbursable:

SUMMARY

This bill requires the State Lands Commission (SLC) to enter into negotiations to acquire a public access right-of-way to the beach, located at the Martins Beach property south of Half Moon Bay. If SLC is unable to reach an agreement or the owners do not voluntarily provide access by January 1, 2016, SLC may require a right of way or easement by condemnation. Additionally, this bill:

- 1) Clarifies that nothing in this bill prohibits the owner of the property from voluntarily providing public access to and along the shoreline at Martins Beach upon terms acceptable to SLC.
- 2) Requires SLC to consult and enter into negotiations with local stakeholders to address the ongoing operation and management issues of any property acquired pursuant to this bill.
- 3) Makes various legislative findings and declarations.

FISCAL EFFECT

- 1) Potential one-time GF costs, in the several millions to tens of millions of dollars range if the SLC purchases a right-of-way or easement.
- 2) Potential ongoing GF costs for the operations and maintenance if SLC purchases a right-of-way or easement.

COMMENTS

- 1) Purpose. According to the author, Martins Beach, located in San Mateo County, is a significant local coastal resource that had been accessible to local residents and visitors for more than 100 years. However, after the sale of the property adjacent to the beach in 2008, Californians are now unable to access Martins Beach by land because the only road leading to the beach has been closed by the new land owner who controls the road and adjacent property. To address the current lack of access to Martins Beach caused by this closure, this bill seeks to reinforce the public's right to access California beaches and coastal resources by taking steps to reestablish an access route to Martins Beach.

- 2) Background. The Martins Beach property consists of two parcels, totaling approximately 89 acres of beachfront property in San Mateo County, located about 10 miles south of Half Moon Bay along the Cabrillo Highway. The property traces its origins to a rancho granted by the governor of Spanish Mexico in 1838. From the early 1900s until 2008, the property was owned by the Deeney family who allowed public access via Martins Beach Road for a fee.

In 2008, the property was sold to two limited liability companies owned by Vinod Khosla (referred to here as Martins Beach LLC). Following a warning issued by San Mateo County in 2009 that the new owner must preserve the coastal access previously provided by the Deeney family, Martins Beach LLC sued the county to clarify and settle its legal obligation to provide public access. San Mateo County Superior Court Judge John Grandsaert ruled in the County's favor. After two years of complying with San Mateo County's request to maintain access to the beach, Martins Beach LLC locked the gates and posted no trespassing signs.

In response, a group called Friends of Martins Beach sued Martins Beach LLC on various grounds, including the claim that prohibiting access to the beach violated Article 10, Section 4 of the California Constitution regarding public access to navigable water. In April 2014, Judge Gerald Buchwald ruled in favor of Martins Beach LLC finding the property's federal land patent, which served as a quitclaim deed of all US interests in the property and predates any sovereign claim in the property by the state of California, prevents the state from asserting a new interest in public access at Martins Beach ( Comment 4 below). This ruling is being appealed.

In 2013, the Surfrider Foundation sued Martins Beach LLC, claiming that blocking access to the beach required a coastal development permit which was never sought nor obtained. Final arguments concluded in July 2014, and a ruling is expected within 90 days.

- 3) Public Trust Lands and Coastal Access.

The California Constitution prohibits an individual from claiming or possessing the frontage of tidal lands of navigable waters for excluding the right of way for any public purpose. The common law doctrine of the public trust protects the public's right to use California waterways for water dependent commerce, navigation, fishing, boating, natural habitat and water-oriented activities. Filled and unfilled tide and submerged lands and the bed of lakes, streams, and other navigable waterways are to be held in trust by the state for the benefit of the people of California.

SLC is the steward and manager of the state's public trust lands. Existing law authorizes SCL to acquire public access to public trust lands by purchase, lease, gift, exchange, or if all negotiations fail, by condemnation. This bill restates this existing authority.

Existing law requires the state to maximize public access to and along the coast and to maximize recreational opportunities in the coastal zone. The California Coastal Commission (CCC) is charged with protecting public access to and along the coast.

- 4) Martins Beach Pre-1900. In 1838, the governor of Spanish Mexico granted an 8,905 acre of property to Jose Maria Alviso, who subsequently conveyed the property to his brother Jose Antonio Alviso. The present Martins Beach was part of the larger land grant.

In 1848, the Treaty of Guadalupe Hidalgo formerly ended the Mexican-American War and resulted in Mexico ceding a region, including California, to the United States. The Treaty required the United States to honor pre-existing Mexican land grants. Congress passed the California Land Act in 1851 to settle Mexican land claims, following which the federal government issued federal land patents for properties recognized by the Treaty. Jose Antonio Alviso filed a claim for the property that was ultimately upheld by the United States Supreme Court, and a patent was issued for the rancho. The patent established fixed boundaries for the property, including a fixed boundary for the seaward edge of the property that, as a result of over 150 years of coastal erosion, resides well offshore of the current intertidal zone.

In a 1984 Supreme Court decision, the court held that the public trust doctrine to determine the applicability of the constitutional provision on public access does not apply to an area of tide and submerged lands if all the following apply:

- a) The tide and submerged lands were part of a Mexican land grant (i.e., grants issued to individuals by the Mexican Governor of California prior to the Treaty of Guadalupe Hidalgo in 1848);
- b) Those lands were patented by the federal government through a process established to protect the property rights of Mexican landowners, which was an obligation the U.S. committed to under the Treaty of Guadalupe Hidalgo; and
- c) The federal patent was confirmed without any mention of a public trust easement.

It is this Supreme Court ruling upon which the trial court relied in finding that the federal land patent prevents the state of California from asserting a new interest in public access in the Friends of Martins Beach case.

Supporters of this bill assert the trial court based one of its findings on an unprecedented and questionable holding that the California Constitution's provision prohibiting an individual from excluding the public's right of way to navigable waters codifies the common law public trust doctrine. Supporters argue the Supreme Court decision was mistakenly applied because the common law public trust doctrine—which protects the public's right to use tide and submerged lands for commerce, navigation, fishing, boating, natural habitat protection, and other water oriented activities—does not confer any right on the public to use non-trust lands to access the water.

- 5) The California Coastal Commission (CCC). The CCC, who is not a party to either suit, sent a Notice of Violation to the property owner in 2011 for closing the gate and denying public access. According to CCC staff, they have been in conversation with the owner and his representatives about how to resolve the violation (closed gate), but no agreement has been reached and progress has been slow.

In light of the lack of progress, the CCC initiated a Prescriptive Rights documentation process in July, and posted a "Prescriptive Rights Survey" on its website asking anyone who

has accessed and used the beach in the past to submit the questionnaire to help the CCC document historic public use of the beach or prescriptive use.

The concept of prescriptive rights has its roots in British Common Law, and is codified in the California Code of Civil Procedures, and supported by existing case law. If it can be shown that the public has been utilizing private property as if it were public land for a period of at least five years, a right to continued public access may be established.

- 6) Opposition. According to representatives for the property owners, this legislation is premature for this unique property currently in active litigation. Martins Beach has complex, site-specific property rights, unique to it and better addressed by the current legal process and good faith negotiations.

The opposition further asserts, in May 2014, the court issued a written Opinion and Judgment in the *Friends of Martins Beach* case finding that Martins Beach 1, LLC and Martins Beach 2, LLC are the fee owners of the property including the off-shore submerged tidelands, and there is no right of public access or easement for the public to use or access the property for any purpose whatsoever.

According to the opponents, because there are no existing public lands to which access is needed, there is no authority to acquire a right-of-way or easement across this private property. Furthermore, any acquisition of easement or access by way of condemnation may require the state to compensate the property owner for use of the beach and submerged tidelands in addition to the access road. There is no precedent for state acquisition of such a property interest, the cost of which is unknown but could be very substantial.

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