



March 22, 2017

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

By electronic mail (IRS.Commissioner@IRS.gov) and First Class mail

Re: Complaint Against The Surfrider Foundation (EIN: 95-3941826)

Dear Commissioner Koskinen:

We respectfully request that the Internal Revenue Service (“IRS”) investigate whether The Surfrider Foundation (“Surfrider”), a non-profit organization which was granted an exemption from income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (“Code”), is in compliance with the Code and merits retention of its Section 501(c)(3) tax exemption. From the limited amount of information available to us it appears that Surfrider may be engaging in excessive lobbying activity and intentionally concealing that activity from the IRS through filing inaccurate tax returns. With the vast amount of resources and investigative powers of the IRS we believe that the IRS will reach definitive conclusions on these points when it conducts its investigation of Surfrider.

As an organization exempt from income tax pursuant to Code Section 501(c)(3), Surfrider may not, as a “substantial part” of its activities, attempt to influence legislation.¹ According to its Forms 990, Surfrider has made the election under Code Section 501(h) to apply the expenditure test for measuring its lobbying activities.² From the 2010 through 2014 tax years, Surfrider reported the following lobbying spending amounts and corresponding lobbying spending limits in its Forms 990:

¹ For the purposes of lobbying limitations applicable to tax-exempt organizations, the IRS defines legislation as including “action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by executive, judicial, or administrative bodies.” Moreover, “[a]n organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.” See <https://www.irs.gov/Charities-&-Non-Profits/Lobbying>.

² Whether an organization’s attempts to influence legislation, i.e., lobbying, constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. Organizations other than churches and private foundations may elect the expenditure test under Code Section 501(h) as an alternative method for measuring lobbying activity. If the expenditure limits are exceeded, a tax under Code Section 4911 will be imposed or, if the limits are exceeded by 150 percent over a four-year period, exempt status may be lost. See <https://www.irs.gov/Charities-&-Non-Profits/Measuring-Lobbying-Activity:-Expenditure-Test>.

Year	Grassroots Lobbying Spending	Grassroots Lobbying Limit	Total Lobbying Spending	Total Lobbying Limit
2010	\$0	\$119,925	\$12,600	\$479,000
2011	\$10,455	\$113,809	\$10,445	\$455,236
2012	\$13,865	\$112,682	\$13,865	\$450,727
2013	\$589	\$144,095	\$22,589	\$456,378
2014	\$0	\$108,460	\$10,125	\$433,841

According to its Forms 990, Surfrider has reportedly not exceeded its lobbying spending limits within the four-year testing periods of 2010-2013 or 2011-2014. Surfrider's reported spending on lobbying activities, however, does not appear to be consistent with Surfrider's press releases and newspaper articles, public contribution records representations to state agencies, and its own publications and policies and its website.

a. Surfrider's Press Releases and Newspaper Articles. Surfrider's press releases and other newspaper articles indicate a level of lobbying activities that appears to exceed considerably the amount of lobbying spending reported in Surfrider's Forms 990. On various occasions, Surfrider has sent advocates to Washington D.C. to meet with Members of Congress. Below are two of Surfrider's self-publicized examples of this; certainly there are many more and these efforts are indicative of probable expenditures well beyond what Surfrider reports in its Forms 990. In 2014 Surfrider sent at least six representatives to Washington, D.C. to lobby on funding for the BEACH ACT and other issues.³ As recently as this year, Surfrider again sent advocates to Washington, D.C. for Surfrider's Coastal Recreation Lobby Day. For this visit, dozens of Surfrider members and recreation industry leaders traveled to Washington D.C. to meet with congressional offices about ways to protect the ocean, waves, and beaches. Participants visited over 50 Senate and House offices to advocate for Surfrider's federal priorities.⁴ Pursuant to IRS rules, while volunteer time and unreimbursed expenses would not count against a 501(h) electing organization's annual lobbying expenditure cap, Section 501(c)(3) organizations must report allocable overhead and administrative costs, including staff salaries and benefits, attributable to lobbying activities.⁵ It is hard to imagine that lobby activities supported by staff and triggering reportable expenses were not a significant part of these trips, yet the amount reported is so small that it raises serious questions of Surfrider's

³ See Surfrider Visits Washington D.C. to Lobby for Federal Priorities, November 7, 2014 (<http://www.surfrider.org/coastal-blog/entry/surfrider-visits-washington-d.c.-to-lobby-for-federal-priorities>) Participants in the meetings with senate offices included: Mara Dias, Water Program Manager; Stefanie Sekich-Quinn, California Policy Manager; Maggie Coulter, Legal Fellow; Eleanor Hines, Chair of Washington's Northwest Straits Chapter; Paul Herzog, Ocean Friendly Gardens Program Coordinator; and Pete Stauffer, Ocean Program Manager.

⁴ See Coastal Recreation Hill Day Rocks Washington D.C., February 17, 2016 (<https://www.surfrider.org/coastal-blog/entry/coastal-recreation-hill-day-rocks-washington-dc>).

⁵ See Instructions to Form 990, Schedule C and I.R.M. 7.25.3.17.2.

compliance with reporting requirements. For example, considering the small amount of total 2014 lobbying expenses (\$10,125) it reported in its 2014 Form 990, it is difficult to believe that Surfrider could have made a proper cost allocation with respect to that 2014 activity. The transportation, lodging and meal costs associated with such a trip would have been substantial. Any portion of those costs paid or otherwise borne by Surfrider was required to be reported in its applicable Form 990 to the extent connected with lobbying activities. Moreover, compensation (including benefits) of Surfrider staff and consultants participating would be reportable. In addition, the costs and expenses incurred (including compensation) for the front-end preparation, such as setting-up the meetings, handling travel details, preparing, producing and assembling materials, *etc.*, and any of the follow-up efforts concerning the meetings would be reportable. Surfrider should be required to provide specific details on them including a breakdown and allocation of the costs associated with all such trips.

A San Francisco Chronicle article published May 27, 2014 highlighted a “fight over beach access” and discussed how “lobbyists and activities were trying to sway state lawmakers ahead of a crucial vote . . .”⁶ The opponent had hired a top tier lobbyist to defeat the bill which “prompted proponents of [the] bill to head to Sacramento as well.” Surfrider’s former president was quoted as saying “When Khosla [the opponent] put all that money into lobbying, we thought, ‘Oh, we better get to Sacramento.’” In its own press release touting its successes in this matter, Surfrider references its team of activists, including a lobbying firm, that helped Surfrider successfully advocate for the new legislation.⁷

This focus on lobbying is consistent with Surfrider’s focus as described in d. below but Surfrider’s accounting for and reporting of its lobbying expenditures is inconsistent with the Code requirements as demonstrated by it reporting only \$22,589 and \$10,120 of total lobbying expenses in its 2013 and 2014, respectively, Forms 990. Surfrider should be required to produce detailed expenditure tracking (including direct costs and overhead allocations) connected with each such effort it has undertaken and demonstrate that the expenditures have been properly reported to the IRS.

b. 2014 California Contribution Records. In October 2014, Surfrider contributed \$49,500 to the California Conservation Campaign, a general purpose committee under the California Political Reform Act (Government Code Section 82075.5) in support of California’s 2014 Propositions 1 and 2, both of which passed.⁸ Proposition 1 authorized \$7.12 billion in general obligation bonds for public water system improvements and Proposition 2 mandated changes to how the state’s Budget Stabilization Account was funded. This \$49,500 expenditure clearly is in connection with lobbying activities but as noted above Surfrider reported only \$10,125 of lobbying expenditures in its 2014 Form 990. Surfrider’s failure to report this to the IRS in its 2014 Form 990 reflects an accounting system failure and may be indicative of a more

⁶ See attached copy of the article.

⁷ See <http://www.surfrider.org/press-center/entry/surfrider-foundation-honors-2014-wavemakers>.

⁸ See attached California Form 461.

serious problem. This was a significant expenditure and by itself is almost 500% of the amount Surfrider reported as total lobbying expenses for the year. Surfrider is active throughout the nation and this glaring omission merits scrutiny of its banking and accounting records to make sure all lobbying expenditures are being properly reported to the IRS as required by the Code.

c. Surfrider's Representations to State Agencies. As a non-profit charity, Surfrider is required to register with the appropriate state agency in many of the states in which it solicits donations from the general public. For example, Surfrider has registered with the New York Attorney General Charities Bureau and is required to file an annual Form Char500. As a part of this filing, Surfrider is required to provide financial statements. In its filing posted for 2013, Surfrider's financial statements indicate that Surfrider spent \$333,432 and \$423,900 on "lobbying and promotions" in 2013, and 2012 respectively.⁹ The amounts indicated in the financial statements are markedly more than the \$22,589 and \$13,865 lobbying amounts reported in the applicable Forms 990, which is indicative of potential underreporting of lobbying expenditures to the IRS. As a part of its charitable registration statement with New York, Surfrider indicates it has registered as a charitable fundraiser in all 50 states. We are certain that a review of Surfrider's filings in other states will raise more questions regarding potential underreporting to the IRS and we encourage the IRS to examine those filings. Surfrider should be required to reconcile its reporting to state agencies with its reporting to the IRS.

d. Surfrider's Publications and Policies and Website. Although Surfrider has reported to the IRS that between 2010 and 2014 it spent no more than \$22,589 on lobbying in a single year, its internal documents indicate that its lobbying activity is far more extensive.

Surfrider indicated in its "Campaigns 101" document directed to its chapters and members that "campaigns" are its primary means of advancing its mission and defines a campaign as being an effort to secure a yes vote on a decision. On its website Surfrider states that it has 349 victorious campaigns since 2006. Reference should also be made to Surfrider's Coastal Blog on which there are numerous examples within the last year of lobbying activities. It is clear that lobbying activities are a very substantial part of Surfrider but yet the reported costs of such activities are nominal when compared to Surfrider's reported total expenditures.

In a sample campaign budget included in its "Chapter Resource Book," posted online in 2010, Surfrider valued the "in-kind cash value of chapter time" at \$10 an hour. This value applied equally to all staff members, from interns to chair persons. We are unaware of the existence of any IRS authority providing for a blended, hourly rate. IRS rules appear to require an apportionment of actual expenses attributable to lobbying activities. In any event, a blended hourly rate is inappropriate for valuing all time contributions to Surfrider because segregation of Surfrider's activities and expenditures into various categories is mandated by the Code (*e.g.*,

⁹ Posted online by the New York Attorney General Charities Bureau at http://www.charitiesnys.com/RegistrySearch/show_details.jsp?id={CEB4BFA5-FDB9-4856-841B-B80038815198}.

lobbying activities and expenditures). Also, the activity being conducted and the experience, knowledge and skills of the individuals participating will dictate the appropriate value of the services and time. For example, the value of time contributed for a beach clean-up activity would not be an appropriate proxy for valuing time contributed for meeting with federal or state governmental officials. Moreover, even if some type of overall blended hourly rate were permissible, it is inconceivable that the average rate would be \$10 per hour. Beyond that, considering Surfrider's publicized events discussed in a. above, (e.g., having dozens of its staff and members visit U.S. senators and representatives on behalf of Surfrider), even applying a \$10 per hour rate for the time expended plus reasonable travel costs and pre-travel training and preparation would result in lobbying expenditure amounts that are inconsistent with the nominal overall lobbying expenditure amounts reported to the IRS by Surfrider. This can hardly be a unique occurrence and is indicative of underreporting by Surfrider to the IRS.

For its 2014 Florida Chapter Conference, Surfrider prepared a presentation entitled "Lobbying 101."¹⁰ The presentation included a slide entitled "The Laws of the Land," which explained to members that "[a]pproximately 20% of Surfrider's total budget is allowed for all lobbying and a quarter of that (5%) is allowed for grassroots lobbying." For the 2013 tax year, Surfrider's total expenses as reported in its Form 990 were \$6,415,268, and 20% of this figure would be \$1,283,053. For the 2013 tax year Surfrider's total lobbying expenditure limit as reported in its Form 990 was \$456,378. Therefore as applied to 2013, if Surfrider had actually spent 20% of its budget on lobbying, its lobbying expenditures would have been approximately 281% of the expenditure limit. For 2014, Surfrider reported \$6,141,980 in total expenses, and 20% of this figure would equal \$1,228,396. For 2014 Surfrider reported a total lobbying expenditure limit of \$433,841, and thus if Surfrider actually expended 20% of its budget on lobbying, its lobbying expenditures would have been approximately 283% of the expenditure limit. It is unclear whether Surfrider is misleading its members and donors by creating the expectations that a very large portion of its budget will be used to fund lobbying activities or if instead it is misreporting to the IRS. Again, Surfrider should be required to reconcile these points.

Conclusion

Based on Surfrider's press releases, representations to state agencies, and its own publications and policies and website, there is strong support to justify an investigation into whether Surfrider has underreported its lobbying expenditures in its Forms 990 and has incurred expenses beyond the limit allowed for a Section 501(c)(3) organization. Moreover, Surfrider has acknowledged to the IRS that its "lobbying is done to encourage legislators to vote on legislation that impacts the oceans, waves and beaches . . ."¹¹ Also, for 2014 Surfrider reported to the IRS that it incurred \$370,596 in expenditures for "Mid Atlantic Regional Support" to develop

¹⁰ Surfrider Website, Accessed at https://chaptersurfrider.org/wp-content/uploads/gravity_forms/26-101473f12851654d80693ff81b155354/2014/11/Lobbying101-Florida.pdf, slide 18, Aug. 3, 2015.

¹¹ See Surfrider's 2014 Form 990, Schedule C, Part IV.

John A. Koskinen, Commissioner
Tax Exempt and Government Entities Division
Internal Revenue Service
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training materials, train and assist with campaign planning, and facilitate its chapters in their grass roots activist works in the region.¹² Surfrider should be required to demonstrate that no portion of the \$370,596 to facilitate the works of the “grass roots activists” was allocable to grass roots lobbying.

It is implausible for Surfrider to contend that the amounts it reported to the IRS in its Forms 990 represent what it has spent on lobbying each year. Therefore, it is respectfully requested that the IRS investigate Surfrider and, should it find that Surfrider has violated its tax-exempt status, take appropriate action, which may include revoking its Section 501(c)(3) status, imposing any applicable excise taxes, and treating Surfrider as a taxable corporation.

Thank you for your prompt attention to this matter.

Very truly yours,



Scott Walter
President

Attachments

cc: David Horton, Deputy Commissioner, Tax Exempt & Government Entities Division
Margaret A. Von Lienen, Acting Director, Exempt Organizations

¹² See Surfrider’s 2014 Form 990, Schedule O.

Martins Beach fight heads to state Capitol

By Melody Gutierrez Updated 8:34 am, Wednesday, May 28, 2014



IMAGE 1 OF 10

Buy Photo

Silicon Valley billionaire Vinod Khosla arrives at the San Mateo County Superior Court building in Redwood City, Calif., on Monday, May 12, 2014, on his way to testify in the Martin's Beach lawsuit.

Sacramento --

The fight over access to the picturesque Martins Beach near Half Moon Bay moved to the state Capitol, as lobbyists and activists attempted to sway state lawmakers ahead of a crucial vote Wednesday on a bill to reopen the sandy haven to the public.

The bill by Sen. Jerry Hill, D-San Mateo, would require the State Lands Commission to buy a road or obtain access rights so that the public can use Martins Beach. A Senate vote on the bill is scheduled for Wednesday. If it passes, it would move on to the state Assembly for consideration.

Billionaire property owner Vinod Khosla, who purchased the land containing the only public access road to the beach - and then closed the road - has been locked in a court case with the Surfrider Foundation over access.

Khosla hired top-tier lobbyists from California Strategies to defeat Hill's bill. That prompted proponents of Hill's bill to head to Sacramento as well.

"We aren't taking any chances," said Rob Caughlan, former president of the Surfrider Foundation. "When Khosla put all that money into lobbying, we thought, 'Oh, *we* better get to Sacramento.' "

The Surfrider Foundation accused Khosla in a March 2013 lawsuit of flouting the California Coastal Act by blocking public access to the beach, located about 6 miles south of Half Moon Bay.

Steven Baugher of Martins Beach LLC, the company Khosla established to purchase the beachfront land in 2008 for \$37.5 million, is listed as hiring California Strategies on May 20. The lobbying firm includes former Assemblyman Rusty Areias, who was a California Coastal commissioner, and former Environmental Protection Agency Secretary Winston Hickox.

An opposition letter Areias gave Hill's office says California was asked multiple times if it wanted to buy private property for public access to the beach, but passed. The letter says Martins Beach is private, from the sandy beach to submerged tidelands seaward of the mean high tide and therefore the state's coastal public access policies don't apply. Caughlan called that claim "bogus."

The opposition letter, which The Chronicle obtained, also says Hill's bill would be more costly than current legislative estimates show. Policy analysts estimated California would have to pay "hundreds of thousands of dollars to low millions of dollars." Opponents peg the cost at tens of millions of dollars.

"For this guy to buy Martins Beach and deny the public access is an outrage," said former Peninsula Rep. Pete McCloskey, who enjoyed the beach growing up and is part of the Surfrider legal team. "The coastal plan calls for this to be public."

The lawsuit filed by the Surfrider Foundation against Khosla, who is the co-founder of Sun Microsystems, is pending in San Mateo County Superior Court.

To see the lobbyist letters, go to:

<http://www.sfgate.com/file/814/814-968.pdf>

<http://www.sfgate.com/ffle/813/813-D-oc.pdf>

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**Major Donor and
Independent Expenditure Committee
Campaign Statement**
(Government Code Sections 84200-84216.5)

Type or print in ink.

MAJOR DONOR AND INDEPENDENT EXPENDITURE
COMMITTEE STATEMENT

Amendment

SEE INSTRUCTIONS ON REVERSE

1. Name and Address Of Filer

NAME OF FILER
(Include name(s) of all affiliated entities whose contributions are included in this statement.)
SURFRIDER FOUNDATION

MAILING ADDRESS

(NO. AND STREET)

CITY

STATE

ZIP CODE

SAN CLEMENTE
RESPONSIBLE OFFICER
(If filer is other than an individual)
Michelle Kremer

CA 92974
AREA CODE/DAYTIME PHONE

2. Nature and Interests of Filer (Complete each applicable section.)

A FILER THAT IS AN INDIVIDUAL MUST LIST THE NAME, ADDRESS, AND BUSINESS INTERESTS OF EMPLOYER OR, IF SELF-EMPLOYED, THE NAME, ADDRESS, AND NATURE OF THE BUSINESS

NAME OF EMPLOYER/BUSINESS

BUSINESS INTERESTS

ADDRESS OF EMPLOYER/BUSINESS

A FILER THAT IS A BUSINESS ENTITY MUST DESCRIBE THE BUSINESS ACTIVITY IN WHICH IT IS ENGAGED

A FILER THAT IS AN ASSOCIATION MUST PROVIDE A SPECIFIC DESCRIPTION OF ITS INTERESTS

A FILER THAT IS NOT AN INDIVIDUAL, BUSINESS ENTITY, OR ASSOCIATION MUST DESCRIBE THE COMMON ECONOMIC INTEREST OF THE GROUP OR ENTITY

Nonprofit environmental organization

Date of election if applicable:
(Month, Day, Year)

11/04/2014

Date Stamp

1/2

For Official Use Only

3. Summary

(Amounts may be rounded to whole dollars.)

1. Expenditures and contributions (including loans) of \$100 or more made this period. (Part 5.) \$ 49500.00
2. Unitemized expenditures and contributions (including loans) under \$100 made this period..... \$ 0.00
3. Total expenditures and contributions made this period. (Add Lines 1 + 2.) **SUBTOTAL \$ 49500.00**
4. Total expenditures and contributions made from prior statement. (Enter amount from Line 5 of last statement filed. If this is the first statement for the calendar year, enter zero.) \$ 0.00
5. Total expenditures and contributions (including loans) made since January 1 of the current calendar year. (Add Lines 3 + 4.) **TOTAL \$ 49500.00**

4. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed the statement and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 10/27/2014

DATE

By Michelle Kremer

SIGNATURE OF INDIVIDUAL DONOR OR RESPONSIBLE OFFICER IF OTHER THAN AN INDIVIDUAL

FPPC Form 481 (8/99)
For Technical Assistance: 916/322-5560
State of California

Major Donor and Independent Expenditure Committee Campaign Statement

Type or print in ink. Amounts may be rounded to whole dollars.

INDEPENDENT EXPENDITURE COMMITTEE AND MAJOR DONOR COMMITTEE STATEMENT

Statement covers period from 01/01/2014 through 12/31/2014

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SEE INSTRUCTIONS ON REVERSE
NAME OF FILER
SURFRIDER FOUNDATION

5. Contributions (Including Loans, Forgiveness of Loans, and Loan Guarantees) and Expenditures Made

(If more space is needed, use additional copies of this page for continuation sheets.)

DATE	NAME AND ADDRESS OF PAYEE (IF COMMITTEE ALSO ENTER I.D. NUMBER)	TYPE OF PAYMENT	DESCRIPTION OF PAYMENT (IF OTHER THAN MONETARY CONTRIBUTION OR LOAN)	CANDIDATE AND OFFICE, MEASURE AND JURISDICTION, OR COMMITTEE	AMOUNT THIS PERIOD	CUMULATIVE AMOUNT RELATIVE TO THIS CANDIDATE, MEASURE OR COMMITTEE
10/22/2014	California Conservation Campaign San Francisco CA 941104 ID: 1238760 Reference No: P	<input checked="" type="checkbox"/> Monetary Contribution <input type="checkbox"/> Loan <input type="checkbox"/> Non-Monetary Contribution <input type="checkbox"/> Independent Expenditure	Monetary contrib - lition	Water bond LA parks NO. rainy day <input type="checkbox"/> Support <input type="checkbox"/> Oppose	(49500.00)	Calendar Year \$ (49500.00) Other \$ (0.00)

SUBTOTAL \$ 0.00

FPPC Form 481 (8/99)
For Technical Assistance: 916/822-5660