

1968

Draft of Explanatory Comparison of First Two Beach Initiatives

Beaches Forever, Inc.

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Recommended Citation

Beaches Forever, Inc., "Draft of Explanatory Comparison of First Two Beach Initiatives" (1968). *Documents*. 2.
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Beaches ForeverCSEB

Sec.1	Policy statement: declares that the ocean beaches shall be kept for public use and enjoyment forever.	Nothing comparable
Sec.2	Definitions:	
	(1) "Ocean beach lands"	(6) "ocean shore" comparable
	(2) "Line of natural vegetation"	Not defined
	(3) "Appropriate administrative agency"	"State agency charged with administering parks and recreational and scenic places"
Sec.3	Title to ocean beach lands vested in State Includes less than fee interests	(1) Comparable Makes no provision
Sec. 4	Directs proceedings to quiet title in State	Makes no provision
Sec.5	(1) Provides for acquisition of privately owned ocean beach lands Allows condemnation Includes acquisition of accesses	(2) Comparable but includes lands owned by cities, port districts, etc. Makes no provision Makes no provision
	(2) Permits joinder in one court proceeding of suit to quiet title and condemnation	Makes no provision
Sec.6	Prohibits sale or other disposition of lands but permits easements, leases, etc.	(1) Comparable
Sec.7	Prohibits construction of highways on beaches and publicly owned sand spits except for access and service roads	Makes no provision
Sec.8	Provides for enforcement of regulations restricting cars and littering	Makes no provision
Sec.9	Savings clause for zoning and other governmental regulation	Makes no provision
Sec.10	Provides for \$50 million bonds to acquire beaches and accesses	(2) Provides for bonds for acquisition of beaches. Limits to 1 percent of true cash value of state (\$106 million at April 1, 1968, after deducting highway bonds outstanding)
Sec.11	Provides for terms and conditions of bonds and for refunding bonds	Makes no provision
Sec.12	Imposes 1¢ per gallon tax on fuel used in private passenger vehicles for four years to retire bonds	Does not provide for payment of bonds
Sec.13	Allows use of gas tax revenues to retire bonds.	Gas tax revenues cannot be used for payment of bonds

Commentary ComparingBEACHES FOREVER and CSOB Initiatives

The Beaches Forever, Inc. measure and that of the Citizens to Save the Oregon Beaches, Inc. (CSOB) are similar in that both have the basic goal of conserving the beaches for use and enjoyment by the public. Although there are some differences in refinement of definition, both measures deal with the land between extreme low tide and the line of natural vegetation. The Beaches Forever measure is considerably broader however, in that it provides for public access to the beaches, prohibits the building of through highways on the beaches and directs the enforcement of regulations restricting the use of motor vehicles and littering. The CSOB measure does not deal with any of these problems.

Both measures contemplate that before it pays for any beach land the State will assert claims of ownership. Beaches Forever directs the State to first bring suits to quiet title to all of its claims to the beach including the rights of the public acquired by prescription. CSOB ignores the prescriptive rights but provides a scheme designed to acquire fee title to beach lands by the device of adverse possession. It creates a "conclusive presumption" that the State of Oregon is in "actual, hostile, visible, notorious, exclusive and physical possession of the ocean shore." These are the elements required for adverse possession. It speeds the process by shortening the statute of limitations from 10 years to one year. Any property owner who fails to bring a law suit ejecting the State from his land at least once each year, loses it to the State by adverse possession.

The inner workings of this section are curious and complex. The presumption of adverse possession by the State does not apply to persons who are in "actual physical possession of some portion of the ocean shore." Actual possession rules out constructive possession. Thus, even a person who lives year round in a beach house may not be in "actual" possession of the outer reaches of his lot. To be sure,

he must fence it and deny its use to others. Passage of this measure could well trigger the blossoming of fences and barricades on the beaches on a scale never before imagined.

Paragraph 4(b) recites that it is a "statute of prescription" as well as a statute of limitations. This eliminates a doctrine which allows one to defend title to land in his possession even though the time for him to bring a law suit has expired.

The shortened one year statute of limitations does not start to run until notice is mailed. This is a bow to due process of law. However, the notice is not required to be mailed to mortgage holders and a multitude of other persons owning interests in beach lands whose names do not appear in the deed records. Deed records contain no addresses.

In summary, the scheme does not apply to persons who deny others access to their lands. In all other cases, it is a bald attempt to take property without just compensation and is clearly unconstitutional.

To the extent that the State does not already own the beaches, both measures provide that it may acquire them. Beaches Forever limits this to privately owned lands. CSOB directs the acquisition of lands owned by cities, port districts and other public bodies as well. (It more or less appropriates county lands by classifying them as parks, etc., regulated by the state and prohibits them from being sold.) In the event that public lands are sold to private interests they could of course be acquired immediately under the Beaches Forever proposal.

The Beaches Forever measure allows for saving money by acquisition of easements and other less than fee ownerships. The CSOB measure directs the acquisition of absolute ownership.

Savings are also inherent in the Beaches Forever measure which specifically provides for condemnation and permits the joinder in one court proceeding of a suit to quiet title and an action for condemnation.

Both measures contemplate the issuance of bonds to provide funds for acquisition of the beach. Beaches Forever limits the bond issue to \$50 million. By tacking theirs to the existing bonding authority for highways CSOB bonding is limited to one percent of the true cash value of all of the property in the state. As of April 1, 1968, one percent amounts to \$ 106 million, after deducting highway bonds outstanding. The Beaches Forever limitation is qualified by "at any one time" so as to allow for the savings that might be effected by refunding the bonds before their maturing in accordance with the refunding authority which is specifically granted.

The Beaches Forever proposal imposes a one cent per gallon tax on fuel for private passenger motor vehicles for a period of four years to be used to retire the bonds. In order to insure the marketability of the bonds, it directs payment of any deficiency from the State general fund although it does not appear that this will ever be required.

The CSOB does not provide any method for payment of the bonds authorized to be issued under its proposal. Gas tax revenues cannot be used.