



January 2, 2002

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative (File No. SA2001RF0040, Amendment No. 1-S), the Heritage Tree Preservation Act.

The Proposal

Background. Currently, the state regulates the harvesting of timber on nonfederal lands in California under the Forest Practice Act. Specifically, timber harvesting is prohibited unless harvest operations comply with a timber harvest plan (THP) prepared by a registered professional forester and approved by the Director of the California Department of Forestry and Fire Protection (CDFFP). The THP covers such matters as harvest volume, cutting method, erosion control measures to protect water quality, and special provisions for a unique area or wildlife that would be affected by harvesting operations. Under current law, with a minor exception, there are no prohibitions specifically against harvesting “heritage” trees that are of a particular *old* age.

Prohibition on Harvesting Heritage Trees. Except for a few specified limited circumstances, the measure prohibits cutting or harming any heritage tree on private and state lands. The measure defines an individual heritage tree as a tree that has been in existence since 1850 and also meets specific diameter requirements set forth in the measure. The measure does not specify what activities constitute “harm” of heritage trees.

The measure also establishes an area of protection called a “buffer zone” around individual heritage trees. Within the buffer zone, the measure restricts the amount of harvesting of *other* trees that can occur, the method of harvesting that can occur, and prohibits the use of any heavy equipment except upon existing permanent roadways.

Identifying Heritage Trees. In addition, the measure requires that boundaries of heritage tree buffer zones be flagged prior to harvesting and all trees to be harvested shall be visibly marked. In addition, the measure requires that all THPs, and other environmental documents associated with timber harvest submitted to a state or local agency, identify and inventory all heritage trees within the area covered by the THP or other environmental document.

Fund Establishment. The measure establishes the Heritage Tree Preservation Fund to be administered by the Wildlife Conservation Board. The fund may be used for purposes of carrying out the measure.

Violations and Penalties. Persons who violate the measure's provisions would be subject to civil penalties. Revenues from civil penalties would be deposited in the Heritage Tree Preservation Fund. In the event trees are cut and removed from the forest in violation of the measure, the proceeds from the sales of such illegally cut trees would be deposited in the Heritage Tree Preservation Fund.

Fiscal Effect

Likely Loss of State and Local Revenues. Because the measure places restrictions on timber harvesting, it would likely reduce timber harvest yields. To the extent that timber harvesting is reduced, there would be state and local revenue losses due to reduced revenue from (1) taxes imposed on timber harvest yields and (2) sales of timber on state-owned forests. While the magnitude of these losses is unknown, they are potentially a few million to over \$10 million annually.

State Administrative Costs to Implement Measure. The CDFFP reviews all THPs. As a result of this measure, the CDFFP would have additional costs related to ensuring compliance with the restrictions proposed in the measure. The CDFFP estimates its additional costs to be approximately \$500,000 annually.

Potential Compensation Claims Against State. Currently, civil courts determine whether a property owner deserves compensation for a loss in property value due to a government action. This determination is based on standards established through case law. These standards evaluate the government action and subsequent decline in property value based on factors such as the purpose of the action, the reasonable expectations of the owner for the use of the land, and the extent to which the owner is deprived of an economic use of the land.

To the extent that the prohibitions in the measure against cutting or harming a heritage tree reduces or eliminates the economic value of the land, the state could be exposed to compensation claims from property owners for a loss in property value. The magnitude of this exposure is unknown as it would depend largely on subsequent court

interpretations of the measure. However, based on the number of trees and acres that could be affected by the initiative, the magnitude of the state's exposure to compensation claims—if these were to be successful—could be major.

Summary

In summary, the initiative would have the following fiscal effects:

- Unknown reduction in state and local revenues, potentially a few million to over \$10 million annually, to the extent that timber harvesting is reduced.
- State administrative costs of about \$500,000 to ensure compliance with the timber harvesting restrictions proposed by the measure.
- Unknown, but potentially major, state costs to pay for any successful compensation claims against the state by property owners for a loss in property value due to the measure's restrictions.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance