

BETTY OLDS

Berkeley City Council

CONSENT CALENDAR:

December 9, 2003

TO: Honorable Mayor and Members of the City Council

FROM: Council member Betty Olds

RE: **Support of SB 754/ Heritage Tree Preservation Act**

RECOMMENDATION:

That the City Council support SB 754- (Perata) to protect California's

Old-Growth Trees.

BACKGROUND AND NEED FOR COUNCIL ACTION :

SB 754 is legislation proposed by Senator Don Perata that would save trees one hundred years or older from commercial cutting. Timber interests are aggressively lobbying to defeat the bill. With Governor Schwarzenegger claiming to have credentials as an environmentalist, pressure on the assembly could have a positive result.

The Assembly Committee on Natural Resources will re-open debate and vote on SB 754 again in January. Please see attached for the complete text of SB 754.

FINANCIAL IMPLICATIONS : None

CONTACT : Betty Olds, City Council – 981-7160

BILL NUMBER: SB 754 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JUNE 19, 2003
AMENDED IN SENATE JUNE 3, 2003
AMENDED IN SENATE MAY 7, 2003

INTRODUCED BY Senator Perata

FEBRUARY 21, 2003

An act to add Article 7.6 (commencing with Section 4595) to Chapter 8 of Part 2 of Division 4 of the Public Resources Code, relating to forest resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 754, as amended, Perata. Heritage trees.

Existing law contains various provisions designed to encourage responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, and recreational opportunities.

This bill would enact the Heritage Tree Preservation Act to prohibit (1) cutting or causing a substantial probability of significant harm to any heritage tree, as defined, in this state, (2) using a heritage tree or heritage tree buffer zone, as defined, in a manner that significantly harms a heritage tree, and (3) cutting a heritage tree pursuant to certain statutory and regulatory exemptions.

This bill would establish the Heritage Tree Preservation Fund in the State Treasury. The bill would authorize the Wildlife Conservation Board to expend the moneys in the fund, upon appropriation by the Legislature, for purposes of the act.

This bill would require all timber operations to comply with the act, except as specified.

This bill would prescribe the criminal and civil penalties for action taken in violation of any provision of the act. By making a violation of these provisions a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 7.6 (commencing with Section 4595) is added to Chapter 8 of Part 2 of Division 4 of the Public Resources Code, to read:

Article 7.6. Heritage Tree Preservation Act

4595. This article shall be known, and may be cited as, the Heritage Tree Preservation Act.

4595.1. The Legislature finds and declares all of the following:

(a) Most of California's original old-growth forests have been cut down.

(b) Currently, no state or federal statute bans the cutting of most old-growth trees in the State of California.

(c) California's remaining old-growth trees are a unique natural treasure. California tree species include the tallest, largest, and some of the oldest living things on Earth. Some California tree species live to be thousands of years old.

(d) Numerous threatened and endangered species depend upon ancient and old-growth trees for their survival.

(e) Old-growth trees and mature forests store more carbon, a component of the greenhouse gas, carbon dioxide, than young trees and tree plantations do. Some California old-growth forests sequester more carbon than any other forest type on Earth, reducing global warming from industrial and other emissions.

(f) Most of California's surface water originates in forested areas.

(g) Old-growth forests are a rare and threatened forest type. Individual old-growth trees are building blocks for restoring natural forest structure and maintaining ecological diversity.

(h) People from all over the world come to California to see our heritage of ancient trees, which benefits the economy of California.

(i) The loss of each old-growth tree has a significant effect on the environment within the meaning of the California Environmental Quality Act. Each old-growth tree, living since before statehood, has aesthetic and historic significance, often providing significant benefits to land, air, water, flora, fauna, and noise reduction.

(j) The preservation and maintenance of old-growth trees, native vegetation, and wildlife on forestland provide a biologic reserve, and provide benefits to the biological diversity, resilience, and productivity of forestland.

(k) The risk of severe fires is increased by removing large, fire-resistant, old-growth trees from the forest, because those trees shade out flammable undergrowth and preserve moisture in the forest.

(l) The preservation of heritage trees, heritage tree buffer zones, and biologic reserves is a compatible use in timberland production zones within the meaning of subdivision (h) of Section 51104 of the Government Code.

(m) The people of the State of California encourage counties and cities across the state to preserve old growth trees within their jurisdictions.

(n) The people of the State of California request that Congress, all federal agencies, and federal land managers extend at least the same protections to old-growth trees on federal lands in California that this measure extends to old-growth trees on nonfederal land.

4595.2. (a) It is the intent of the Legislature that this article be construed in accordance with the following primary objectives:

(1) To protect old-growth trees in the State of California, in the interest of heritage preservation and ecosystem conservation, for the benefit of present and future generations.

(2) To maintain the ability of ancient and old-growth trees to sequester carbon, thereby helping to avoid an increase in the level

of greenhouse gases in the atmosphere.

(3) To maintain the ability of ancient and old-growth trees to transpire water and to provide shade and large woody debris to streams, rivers, and creeks.

(4) To provide habitat for endangered and threatened wildlife species that are dependent on or associated with old-growth trees.

(5) To encourage, as appropriate, the retention of dead, dying, downed, or deteriorating trees that provide necessary habitat for wildlife and nutrients essential for forest health and retain moisture that enhances water quality and quantity.

(6) To ensure that timber operations and other operations within heritage tree buffer zones are modified and conducted to be consistent with this article and to protect the integrity of the heritage trees.

(b) It is not the intent of the Legislature that this act discourage people from growing large trees in long rotation cycles for timber production, or for other private and public trust purposes.

4595.3. The following definitions apply to this article:

(a) "Emergency" means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" may include fire, flood, earthquake or other soil or geologic movements, as well as riot, accident, or sabotage.

(b) "Forestland" means land, other than land owned by the federal government, that was, as of the effective date of this section, available for and capable of growing a crop of trees of any commercial species used to produce lumber and other forest products, including Christmas trees. Commercial species are those species so designated by the board.

(c) (1) "Heritage tree" means any old-growth tree on forestland, and listed in paragraph (2), that has at least the minimum diameter at stump height, measured outside the bark, as specified in paragraph (2) for that species. "Heritage tree" means all stems of multistemmed trees on forestland, and listed in paragraph (2), that have a stem that is an old-growth tree and for which the sum of the cross-sectional areas of all of the stems at stump height, measured outside the bark, is equal to or greater than the area of a circle with the diameter specified in paragraph (2) for that species.

(2) The minimum diameter at stump height is the following for the following tree species:

- (A) Coast redwood: 42 inches.
- (B) Douglas fir: 40 inches.
- (C) Giant sequoia or sierra redwood: 50 inches.
- (D) Hardwoods: 28 inches.
- (E) Port orford cedar: 28 inches.

(d) "Heritage tree buffer zone" means an area of protection surrounding a heritage tree. The buffer zone for the heritage trees of the genus *Sequoiadendron* has a horizontal radius of 100 feet. The buffer zone for the heritage trees of any other genus is 35 feet. Any tree for which the trunk at stump height is completely or partially within the area of a buffer zone is in the buffer zone.

(e) "Old-growth tree" means any tree that has a stem that existed in 1850.

(f) "Stump height" means the height at which a tree was cut from the stump if cut, or 12 inches above the ground on the side adjacent to the highest ground level, whichever is closest to the ground.

4595.4. (a) Except as authorized by this section, the following apply:

- (1) A person may not cut or cause a substantial probability of

significant harm to any heritage tree in the state. Timber and other operations shall be modified and conducted to be consistent with this article and shall protect the integrity of any heritage tree.

(2) A person may not use a heritage tree or heritage tree buffer zone in a manner that significantly harms a heritage tree.

(3) A person may not cut a heritage tree pursuant to any of the exemptions in Section 4584 or 4628 or any other statutory or regulatory provision of law.

(b) (1) Except as authorized by this section, ~~native trees~~ a native tree larger than eight inches in diameter at stump height may be cut within a heritage tree buffer zone only by a single-tree selection management method.

(2) A heritage tree within a heritage tree buffer zone may not be harvested or significantly harmed.

(3) Except as authorized by this section, stocking standards adopted by the board pursuant to Section 4561.1 shall be the same or stricter for each heritage tree buffer zone as adopted for the same site ~~classifications~~ classification in the same district.

(4) Retained trees to meet the stocking standards of this article shall be comprised of the largest native trees within the stand prior to harvest. Prior to any preharvest inspection, the boundaries of the heritage tree buffer zone shall be personally flagged, and all trees to be harvested within a heritage tree buffer zone shall be personally marked on both the trunk and the stump, by a registered professional forester.

(5) All forest practices within the heritage tree buffer zone shall demonstrably protect the canopy, trunk, roots, and wind-firmness of heritage trees. Heavy equipment associated with timber operations is excluded from any heritage tree buffer zone, except upon ~~permanent roadways~~ a permanent roadway in existence on January 1, 2004.

(6) A period of at least 10 years shall elapse before reharvesting a heritage tree buffer zone under this subdivision, except for the removal of ~~nonnative trees~~ a nonnative tree

(7) Slash burning may not be conducted within a heritage tree buffer zone.

(8) At least 50 percent of the native understory vegetation present before the commencement of timber operations shall be left living and well distributed within the heritage tree buffer zone to maintain soil stability.

(9) The site or habitat, respectively, of a rare, threatened, or endangered plant or animal may not be disturbed, threatened, or damaged.

(c) The basal areas and point counts of heritage trees may not be included or used to meet the stocking standards of this article.

~~(d) Trees, other than heritage trees, may be cut as necessary within heritage tree buffer zones for the construction and maintenance of permanent public roads by government agencies, access ways and driveways to reach government-owned facilities, private roads and driveways as the sole access to an approved and legally permitted structure for human habitation that complies with the California Building Code, and public fire protection agency community fire breaks, if there is no other feasible routing that avoids greater environmental harm, and if the cutting, construction, and maintenance does not endanger the stability, health, and longevity of the heritage tree.~~

(d) If there is no other feasible routing that avoids greater

environmental harm and if the cutting, construction, and maintenance does not endanger the stability, health, and longevity of the heritage trees, trees, other than the heritages trees, may be cut as necessary within a heritage tree buffer zone for the construction and maintenance of any of the following:

(1) A permanent public road by a government agency.

(2) An access way or driveway to reach a government-owned facility.

(3) An access to a utility line or facility.

(4) A private road or driveway as the sole access to an approved and legally permitted structure for human habitation that complies with the California Building Code.

(5) A public fire protection agency community fire break.

(e) A heritage tree or any tree within a heritage tree buffer zone may be cut or harmed if it is necessary in an emergency.

(f) A heritage tree or any tree within a heritage tree buffer zone may be cut or harmed ~~if it~~ under any of the following conditions:

(1) The tree poses an imminent danger of falling into a utility line or facility

(2) The tree poses an imminent danger to a utility employee or member of the public.

(3) The tree poses an imminent danger of falling on a residence, hotel, motel, lodge, or other similar place of human habitation, registered historic building, or site of cultural or archaeological importance.

(g) A heritage tree or any tree within a heritage tree buffer zone may be sanitation logged if all of the following occur:

(1) A registered professional forester certifies in a form prescribed by the board that the tree is dead or dying.

(2) The director concurs with the registered professional forester's certification that there is a substantial likelihood of the spread of disease or insect infestation to surrounding trees if the diseased or infested tree is not immediately removed. If the director concurs with the certification, the director shall sign the concurrence.

(h) A prescribed burn for the purpose of reducing the risk of harm to a heritage tree due to fire hazard, insects, disease, or invasive species may be conducted at the direction of the governmental agency responsible for fire suppression. Prior to the prescribed burn, accumulated fuels shall be manually pulled away from each heritage tree within the anticipated area of the prescribed burn to minimize the risk of harm to the heritage tree.

(i) Measures such as bracing, tree and limb cabling and guying, cutting away and sealing of infected or infested tissues, balancing, reducing windsail of branches, and applying or injecting protective agents may be performed upon a heritage tree if solely for the bona fide purpose of protecting, enhancing, and extending the wind-firmness, stability, health, or longevity of the heritage tree.

(j) (1) Each environmental document, as defined in paragraph (3), shall identify and inventory all heritage trees within the area covered by the environmental document. The environmental document shall describe the measures to be taken to protect a heritage tree, if any heritage trees are believed to be present. Each environmental document shall indicate on its face whether heritage trees are present within the area covered by the environmental document.

(2) If a heritage tree or heritage tree buffer zone is present in an area covered by an environmental document submitted to the department, the department shall provide notice of the filing of the

environmental document to any person who requests the notification in writing.

(3) For purposes of this subdivision, "environmental document" means a timber harvesting plan, program timber harvesting plan, program timberland environmental impact report, nonindustrial timberland management plan, modified timber harvesting plan, any other timber operations plan, notice of emergency timber operations, an exemption notice pursuant to Section 1038 or 1104.1 of Title 14 of the California Code of Regulations as those sections read on January 1, 2003, other notice of timber operations, plan amendment, categorical exemption filing, or any construction, grading, or use permit application submitted to any state or local agency.

(k) Except as authorized by this section, the following apply:

(1) The board may not adopt a regulation pursuant to this section or any other provision of law that requires or authorizes the cutting of, or significant harm to, any heritage tree.

~~(2) Clearances required by Section 4291, 4292, 4293, 4294, or 4296.5 or this section, may not be achieved by the cutting or significant harming of a heritage tree. If feasible, clearances required by those sections shall be achieved by the location or relocation of facilities. If it is not feasible to achieve the clearances required under those sections by the location or relocation of facilities, a heritage tree may be minimally pruned if the pruning does not endanger the stability, health, or longevity of the heritage tree.~~

(2) At the direction of an electrical corporation or local publicly owned utility, a heritage tree may be pruned or cut as necessary to comply with an order or tariff of the California Public Utilities Commission, the Federal Energy Regulatory Commission, the California Independent System Operator, or the Department of Transportation's Office of Pipeline Safety. In siting a new facility, consideration shall be given to the proximity of heritage trees.

(1) Upon determining that the exemption is consistent with the purposes of this article, the board may exempt from this article any person engaged in forest management within a heritage tree buffer zone whose activities are limited to the cutting and removal of trees and brush, other than heritage trees, in compliance with Sections 4290 and 4291. To be exempt, the cutting or removal of brush shall be for the purpose of eliminating the vertical continuity of vegetative fuels and minimizing the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak for a distance of not more than 150 feet on each side from an approved and legally permitted structure for human habitation that complies with the California Building Code. The cutting or removal of brush shall be conducted in compliance with this section. As minimally necessary in order to minimize the vertical continuity of vegetative fuels, heritage trees may be pruned from the ground to a height and in a manner to be determined by the board. Pruning pursuant to this section may not significantly harm a heritage tree.

(1) The cutting, removal, or pruning of ~~trees~~ a tree pursuant to this subdivision is limited to cutting, removal, or pruning of ~~trees~~ a tree that will result in a reduction of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree ~~crowns~~ crown. The cutting, removal, or pruning of ~~trees~~ a tree shall be solely for the purpose of fire threat reduction. The cutting, removal, or pruning of ~~trees~~ a tree shall be in accordance

with any statutes enacted, or regulations adopted by the board, in implementation of this section.

(2) (A) Surface fuels, including logging slash and debris, low brush, and deadwood that could promote the spread of wildfire, shall be chipped or removed from all areas of timber operations on or before 45 days after the date of commencement of timber operations.

(B) (i) If the surface fuels are not removed on or before 45 days after the date of commencement of timber operations, the surface fuels may be determined to be a nuisance and may be subject to abatement by the department or the city or county having jurisdiction.

(ii) The department, city, or county, as the case may be, that abates the nuisance upon any parcel of land subject to the timber operations, may recover costs including, but not limited to, those costs related to investigation, boundary determination, and measurement, by a special assessment or lien against the parcel of land by the department, county, or city. The special assessment may be collected at the same time and in the same manner as ordinary ad valorem taxes, and is subject to the same penalties and the same procedure and sale in case of delinquency that is provided for ad valorem taxes.

(3) The site or habitat, respectively, of a rare, threatened, or endangered plant or animal may not be disturbed, threatened, or damaged.

(m) This article does not require a revision of the Jackson Demonstration State Forest management plan.

(n) This section does not exempt the owner of any timber harvested from registering with the State Board of Equalization or from the payment of any applicable timber yield taxes imposed pursuant to Section 38115 of the Revenue and Taxation Code.

4595.5. (a) ~~Agents of the state who are~~
An agent of the state who is responsible for allocating moneys, credits, or other benefits for preservation of endangered species and natural lands, including, but not limited to, conservation easements, purchases, and purchases of development rights and other interests, may provide assistance to owners of heritage trees and heritage tree buffer zones in obtaining these benefits if available. The benefits include, but are not limited to, state partnership grants under Section 6 of the federal Endangered Species Act (16 U.S.C. Sec. 1535), grants under Title VIII of the federal Department of the Interior and Related Agencies Appropriations Act, 2001 (Land Conservation, Preservation and Infrastructure Improvement, P.L. 106-291), and grants under the federal Land and Water Conservation Fund Act of 1965 (P.L. 88-578), or any successor provisions of law, and moneys in the Heritage Tree Preservation Fund established by Section 4595.6. Any moneys obtained from these or any other sources for the purpose of carrying out this article that are not distributed directly to property owners pursuant to this article may be deposited into the fund.

(b) The Wildlife Conservation Board shall spend moneys in the fund for the purchase of fee title or of interests in real property of heritage trees and heritage tree buffer zones protected pursuant to this article. An interest in real property shall be for a period of time that is not less than the natural life of the heritage trees protected, in order to protect the integrity and value of the heritage tree or heritage tree buffer zone and to provide habitat for associated wildlife species.

4595.6. (a) The Heritage Tree Preservation Fund is hereby established in the State Treasury. Upon appropriation by the Legislature, the moneys in the fund may be expended by the Wildlife

Conservation Board for the purposes of this article.

(b) Moneys from any source may be deposited in the fund. The Wildlife Conservation Board may accept gifts for deposit into the fund. Proceeds from the sale of gifts of real property or interests in real property by the Wildlife Conservation Board may be deposited into the fund. The Wildlife Conservation Board shall retain for public ownership any gifts of real property or interests in real property that would have qualified for purchase under subdivision (f).

(c) All moneys deposited in the fund and any income generated by moneys in the fund shall be available for expenditure by the Wildlife Conservation Board to carry out the purposes of this article.

(d) An appropriation or expenditure of moneys in, or income generated by, the fund, for any purpose that is not authorized by this article is void.

(e) Moneys in the fund may not be appropriated or expended to repay the principal of any bond, to pay the interest on any bond, or to refund any bond. Moneys in the fund may not be lent or pledged for any purpose.

(f) Income generated by, and the principal of, the fund, are available for the direct, permanent protection of old-growth trees, which includes, but is not limited to, fee title acquisition and conservation easement acquisition.

4595.7. (a) (1) Any person who performs, conducts, orders, or directs timber operations or any other action in violation of this article is subject to the penalties of Article 8 (commencing with Section 4601) of this chapter, and an additional civil penalty in an amount that is equal to the greater of one of the following:

(A) The amount of the proceeds, value, or income received or promised in connection with the violation.

(B) The amount of the anticipated economic benefit to be derived as a result of the violation, if the amount can be reasonably determined.

(C) Three times the fair market value of the tree affected by the violation.

(2) Any moneys collected from the additional civil penalty authorized by paragraph (1) shall be deposited in the Heritage Tree Preservation Fund. In addition to any other penalties imposed by law, the court may seize and confiscate the proceeds, value, or income from the sale of an illegally cut tree. If an illegally cut tree has not been sold, the court may order the tree to be confiscated and sold. If an illegally cut tree is of the genera *Sequoiadendron* or *Sequoia* and it has not been removed from the forest or sold, the court may order that the tree remain in the forest. All proceeds, after actual expenses, from the sale of a tree pursuant to this subdivision shall be deposited in the fund.

(b) The penalties and remedies of this section are concurrent and not alternative to any other civil, criminal, or administrative rights, remedies, or penalties for that violation.

(c) The time period for commencing a civil action pursuant to Section 338 of the Code of Civil Procedure shall be within three years after the cause of action is not deemed to have accrued until the discovery by the department of the facts constituting the grounds for commencing the action.

4595.8. (a) All timber operations shall comply with this article.

(b) This article is enforceable by any state or local public officer having appropriate jurisdiction.

(c) The board shall adopt regulations that the board considers necessary to implement and to obtain compliance with this article and

to protect life, property, and the environment.

(d) The board shall adopt regulations, initially as emergency regulations in accordance with subdivision (e), that the board considers necessary to implement and to obtain compliance with Section 4595.5 and subdivision (a) of Section 4595.7, and to protect life, property, and the environment.

(e) The emergency regulations adopted pursuant to subdivision (d) shall be adopted in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of emergency regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.