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Ballot Measure 64: Clearcutting Ban

City Club of Portland (Portland, Or.)

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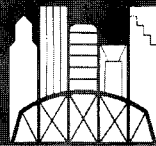
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Ballot Measure 64: Clearcutting Ban

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**CITY
CLUB**
OF PORTLAND

Your Committee Found:

The debate over the health of Oregon's forests has produced passionate reaction for nearly 30 years. Citizens of Oregon have a deep and abiding love for our forests. We want our forests to last forever, and yet, some forest practices—in particular clearcutting—seem harmful to that which we love so much.

The majority of your committee believes Measure 64 will not fix the problems it seeks to address. Your committee found that the measure is convoluted with so much technical detail as to make it unworkable. In spite of Oregon's forest diversity, the measure dictates a one-size-fits-all practice to all forests in the state. It creates a new definition of clearcuts that will discourage the retention of older trees and encourage tree plantations. It takes away the use of pesticides, even when they might be needed to combat infestations and disease. Measure 64 has profound economic consequences. It dramatically reduces revenues to the state and may lead to the loss of 30,000 jobs. Measure 64 allows for the taking of private timber lands without economic recompense and opens the door to an onslaught of possibly frivolous lawsuits.

The intent of Measure 64 is noble. Laws which are now in place and which deal with forest practices have not solved problems fast enough. The proponents of Measure 64 seek to fill that gap, but they take it too far. In fact, it appears that their new definition of clearcutting may virtually eliminate forestry in Oregon. Your committee believes that if a ban on traditional clearcutting is needed, this is not the law to enact it.

The majority of your committee recommends a "No" vote on Measure 64. The minority of your committee believes the intent of the law and its overall, long-term benefit to the environment override the technical shortcomings of the measure and recommends a "Yes" vote on Measure 64.

The City Club membership will vote on this report on Friday, October 2, 1998. Until the membership vote, the City Club of Portland does not have an official position on this report. The outcome of this vote will be reported in the *City Club Bulletin* dated October 16, 1998.

I. INTRODUCTION

Ballot Measure 64 will appear on the ballot as follows:

Caption:	PROHIBITS MANY PRESENT TIMBER HARVEST PRACTICES, IMPOSES MORE RESTRICTIVE REGULATIONS
Result of "Yes" Vote:	"Yes" vote adopts restrictions on timber harvest practices, including federal regulation, allows citizen-suit enforcement.
Result of "No" Vote:	"No" vote retains current regulations concerning timber harvest practices.
Summary:	Prohibits many present timber harvest practices, chemical herbicides, pesticides in forest. Limits size of trees that can be harvested. Covers private, state, federal forest lands. Imposes new harvest regulations including federal regulation by classifying forest land waters as "navigable." State Board of Forestry must adopt new timber harvest methods and regulations to meet new requirements. Requires state to submit new forest land water quality plan to federal Environmental Protection Agency, seek approval before permitting logging. Authorizes citizens suits to enforce new harvest restrictions or other provisions of measure.

(The language of the caption, question, and summary was prepared by the Oregon State Attorney General.)

Your committee met weekly over a period of more than a month to study Measure 64. Committee members were screened prior to their appointment to ensure that no member had an economic interest in the outcome of the study or had taken a public position on the subject of the measure. The committee interviewed proponents and opponents of Measure 64. In addition, committee members conducted a number of individual interviews. The committee also reviewed relevant articles, reports, and other materials.

II. BACKGROUND

A. Historical Context

Oregon's timber industry began shortly after European settlers arrived about 200 years ago. Probably the first logging occurred in 1811, when the Pacific Fur Company cleared forests to build Fort Astoria. In 1827, the Hudson Bay Company exported the first shipload of lumber to the Sandwich (Hawaiian) Islands. The importance of all Oregon forests from the Douglas fir and western Hemlock in the West to the Ponderosa and lodgepole pine in the East rose to significance with settlement of the region in the 1840s. Since those first settlers came, about 582 billion board feet of timber have been harvested in Oregon. A board foot measures one square foot of timber that is one-inch thick.

Preservation of Oregon forests began in 1892 when the 142,000-acre Bull Run Reserve was established by the federal government. The following year 4.5 million acres were designated as the Oregon Cascade and Ashland Reserve. Over the next 65 years, federal reserves were expanded and organized into 13 national forests covering 15.5 million acres, or one fourth of the state's land area, and half of its forest land. The reserves have become national forests and are managed by the Forest Service, under the U.S. Department of Agriculture. In addition, the Bureau of Land Management (BLM), under the U.S. Department of Interior manages 2.4 million acres of forested land in Oregon.

Oregon became the first state to regulate forest harvesting practices on private lands when it passed the Oregon Forest Conservation Act in 1941. This act was developed due to concern about extensive old-growth logging and the need to develop forests for the future. This act was later replaced by the Forest Practices Act of 1971.

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B. Forest Statistics

Of the over 27 million acres of forested land in Oregon, 18.3 million acres are classified now as timberland—areas which are capable of growing commercial timber. The table below shows a breakdown of that timberland in Oregon:

Type of Holding	Area: Million Acres	Holdings as % of Commercial Timberland	% of 1997 Timber Harvest
Harvestable Federal Lands	8.6	47	16
Private Large Holdings	5.6	31	65
Small Holdings and Tribal Lands	3.2	17	15
Harvestable State Lands	.9	5	4
Total Commercial Timberland	18.3	100	100

Source: Oregon Dept. of Forestry

Timber harvests increased dramatically in Oregon from the 1940s to the 1970s. Prior to the 1950s most of the harvests had come from non-federal lands, but the harvest from these lands was declining by the mid-1950s as they were logged out. Harvesting then shifted to federal lands, and according to a 1998 report, *Legacy and Promise*, by Dr. John Beuter, the increasing harvest from federal lands exceeded the harvest from non-federal lands in Oregon for the first time in 1963. In western Oregon, the harvests from federal and non-federal lands were about equal in the 1970s and 1980s. However, since 1990, the share from federal lands has been falling as the federal government imposed new restrictions on harvesting. In 1990 the share of harvests from federal lands averaged about 25 percent, and it dropped to less than 10 percent in 1995 and is currently around 16 percent.

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This decline in timber harvests is due to a number of reasons, which include:

- increased protections for endangered and threatened species such as the spotted owl;
- increased public involvement and opposition to large-scale clearcuts;
- lower demand for timber from the forest industry due to increased supplies from other countries and changing market conditions; and
- increased focus by BLM and Forest Service on ecosystem management and recreational uses of forest lands.

In the past, timber harvest levels have fluctuated dramatically. In the 1970s timber harvests reached 9 billion board feet per year. By 1996 that number had declined to 3.9 billion board feet, mainly due to the decline in harvests from federal lands. We may now be entering an era when it is necessary to more carefully calculate what can be sustainably harvested from our forests.

Timber industry supporters and environmental advocates will vigorously debate what sustainable timber harvest levels could be for Oregon. Projections for a sustainable yield level obviously vary, but according to the *Legacy and Promise* report, Oregon could sustain a harvest of 5 billion board feet annually. It is anticipated that harvests in the near future will be below that level due to public policy concerns at both the state and federal level about the environmental impact of logging on wildlife and watersheds.

The Oregon Department of Forestry prepared estimates for the Secretary of State's office that Measure 64 would reduce harvests on private and state-owned lands by 60 to 65 percent. Measure 64 is expected to have a minimal effect on harvests from federal lands due both to already declining harvest levels, and the fact that most federal forest land is already under regulations as restrictive as Measure 64. In addition, it is doubtful that this state measure would apply to federal lands.

Timber sales and wood and paper products remain among Oregon's top exports to foreign countries amounting to about \$1.4 billion, or 15 percent of all international exports from the state (source: National Trade Data Bank). The importance of the timber sector to Oregon's economy has declined relative to the growth in other sectors, but the timber industry still represents 4 percent of Oregon's direct employment (employment directly involved with forestry), and 6 percent of the state's total payroll (60,000 jobs both direct and indirect).

Oregon State Forests provide an important source of revenue to the public schools, in some counties, through the Common School Fund. In addition, county-owned forest lands, which were acquired through tax foreclosures, and are now deeded back to the state for management, must return 90 percent of their tax revenues to schools in those counties. The state's commitment to public school funding through timber tax revenue helps drive the continued harvests on state lands. It is interesting to note that the two major state forests, Tillamook and Elliott, suffered major disastrous fires earlier in the century and are now primarily second-growth forests, though they contain some of the sensitive species normally found in old-growth.

C. Timber Practices

Measure 64 defines clearcutting in a new way. It also contains a great amount of technical detail prescribing how timber harvesting should be conducted. While we hesitate to delve too deeply into the technical aspects of forestry, we feel that in order for voters to make an informed decision on this initiative measure, a basic understanding of forest practices and how the technicalities of this measure would affect them is required.

Clearcutting: Clearcuts generally refer to areas where all the trees have been harvested. Clearcuts are often used because they provide the easiest way to extract timber from an area in the shortest amount of time. Some argue it is also a safer harvesting method since it clears an area and reduces the number of splintered trees and the amount of hazardous debris. The other major argument in favor of clearcutting is for the growth and management of Douglas fir, the primary timber crop in western Oregon. Douglas fir grows best in areas of open sunlight, provided either by clearcutting or natural events such as forest fires. However, other experts stated that Douglas fir can be grown successfully by using various thinning techniques, although the growth rate may not be as rapid.

Under current Oregon forest practices, clearcuts on non-federal lands are generally limited to no more than 120 acres. Within that 120-acre allowance, foresters are required to leave enough timber to minimize damage from run off and mudslides. Once that land has been harvested, there are strict requirements for reforestation within a specified time period. Some special areas cannot be harvested at all. These include set asides for stream protection, for drainage, and for specific scenic areas. Federal regulations limit clear cut areas to 40 acres on Forest Service land. Since these tightened regulations were imposed in 1992, the use of clearcutting has declined dramatically on federal lands.

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Measure 64 sets two criteria for clearcutting, one for eastern and one for western Oregon. Forest land that does not meet the criteria listed below will not be able to be harvested. These criteria not only designate the number of trees of a certain size that must be retained per acre, but also require a specified level of basal area (essentially a measurement of the density of the trees) on an acre. In addition, for a tree to be counted, it must have at least one third live crown. No trees over 30 inches in diameter may ever be harvested.

Clearcut Criteria	Western Oregon	Eastern Oregon
Minimum trees per acre	70	80
Basal Area in Square Feet	120	60
Minimum tree diameter	11 inches	10 inches
Maximum tree diameter	30 inches	30 inches
Percent of live crown	33.3 %	33.3 %

Typically, a fully stocked young forest in western Oregon contains 200 to 300 trees per acre before any thinning or harvesting is done. While it is fairly easy to visualize the number of trees on an acre, the basal area measurement, as proposed in Measure 64, does not directly correlate to the minimum tree requirement. A uniform stand of 70 trees of 11 inch diameters equals only 46 square feet of basal area. To meet the basal area criteria of Measure 64 requires at least 182 trees of 11 inch diameter at breast height (DBH) before any harvest can begin.

Pesticide Use: In current practice, pesticides and herbicides are most commonly applied shortly after clearcutting to eliminate competing plant species and prepare the area for planting. Further pesticide application occurs generally only once or twice more during the 60 to 100 year life of that forest, except in the case of insect or fungal infestations. Pesticides have been applied by aerial spraying in the past, but most application is now done using backpack sprayers. Current state law requires that pesticide use comply with the federal Environment Protection Act (EPA) requirements and Oregon Department of Agriculture pesticide control laws. The Oregon Forest Practices Act (FPA) prohibits direct application of pesticides in or near wetlands, streams and lakes. The U.S. Forest Service has an even more restrictive list of pesticides that may be used on federal lands and prohibits aerial spraying.

Measure 64 allows no use of pesticides and appears to allow for no exceptions. Pesticides include all herbicides, insecticides, fungicides and rodenticides.

Slash Burning: Currently, most of the slash (debris) remaining after an area has been logged is piled and burned on site. This is generally done to reduce the fire hazard from the dry slash and to prepare the harvest area for reforestation. Under current forest practices, slash burning must meet fire control laws and smoke management restrictions and requires the protection of soils, riparian areas and any remaining timber.

Measure 64 would prohibit any on-site burning of slash.

Habitat: Current state law requires some dead and downed wood be left to provide wildlife habitat. In areas not designated for reforestation, foresters must leave at least two dead trees and two downed logs per acre. The requirements increase near streams where water protection rules apply.

Measure 64 requires the landowner to “maintain or maximize development of sufficient numbers of large, live trees, standing dead trees, and large downed logs... on at least 50 percent of each harvest-unit.”

Road Construction: The construction of forest roads is a major contributor to soil erosion and run off. The main problem is roads that were poorly designed in the past, and it is extremely difficult to repair that past damage. Road design and location techniques are improving but there is an ongoing debate over the location and amount of roads needed in forests.

Measure 64 calls for minimizing the construction of roads and the use of heavy equipment but makes no specific suggestions.

Enforcement: All non-federal forest lands in Oregon are subject to the state Forest Practices Act, state laws, regulations, and monitoring. The Oregon Board of Forestry enforces the FPA and may levy penalties and fines. In addition, stream water quality in Oregon is currently regulated by both the Board of Forestry and the Oregon Department of Environmental Quality (DEQ). Federal agencies enforce their regulations and U.S. law on federal forest lands.

Under Measure 64, the board would continue to enforce state requirements, but

individual citizens could also file suit in state court. Measure 64 also requires that current state programs conform with the Federal Water Pollution Prevention Act and be approved by the federal Environmental Protection Agency (EPA). Measure 64 also states that its provisions would apply to federal lands. It is not clear if this would be the case.

Sustainable Forestry: In the course of its research, your committee learned about new programs under which forest lands are certified as being sustainably managed. Though they are voluntary programs, they foster the development of links between the environmental community and landowners willing to develop sustainable forest plans. One of these programs, SmartWood, affiliated through the Forest Stewardship Council (FSC), an international non-profit organization, uses independent third-party certifiers, and has certified over 100,000 acres in Oregon. Clearcutting and the use of pesticides are not prohibited under most sustainable forestry certification programs, but are viewed as tools that should be used only sparingly. Tailored planting and harvesting plans are developed to make the most environmentally sound use of each specific piece of forest land while also allowing landowners to continue their economic activities. FSC-accredited certification programs are developed for specific ecosystems, and each regional certifier will use dozens of criteria in developing a specific forest management plan.

The criteria are not usually strict numerical criteria, such as those specified in Measure 64. Rather, certifiers work with forest owners to develop forests that will be in compliance with the overall standards and objectives of the program. These standards center around the following four areas:

- **Environment:** Forest management should reduce the impact of logging and conserve the biological diversity of the forests, its water resources, soils and unique ecosystems.
- **Sustainability:** Forest management should identify and implement harvest plans that ensure the long-term survival of the forest, both as a habitat, as a timber resource, and as a source of multiple forest products.
- **Social:** Forest management should promote long-term economic and social benefits to forest workers and local communities, and respect the rights of indigenous peoples to forest lands.
- **Management:** Forest management will include the development of written plans, which state the long-term objectives for the forests and the specific means for achieving them. Monitoring and assessment will be conducted of the forest, its condition, its yield, and the impact of harvesting on the social and environmental objectives.

The proponents of this approach are trying to encourage a stronger linkage between the producers of forest products and consumers of wood products. Products are marketed as having been produced in a sustainable manner and often carry a slight price premium. Consumers then make the determination if they are willing to look for and purchase wood products produced from sustainable timber harvests. This process is similar to the organic food certification process, which has been used with success in marketing fresh produce.

D. Legal Framework

The Oregon Forest Practices Act: In the 1970s, the citizens of Oregon, and all levels of government, began putting forests and forest practices under increasing scrutiny. As a consequence, Oregon passed the Oregon Forest Practices Act (FPA) in 1971. The FPA regulates forest practices on all non-federal land. According to the act, the state Board of Forestry was mandated to adopt rules to protect water, soil, air, fish, and wildlife resources, regulation of road construction, logging practices and reforestation.

The state FPA is a dynamic document. In 1978 the Federal Clean Water Act generated review of the FPA and produced rule changes. Important among these was a rule requiring a 15-day waiting period to allow review of operations before any logging operations could occur. Additional rules in 1980, 1983 and 1985 placed further restrictions on operations and were designed to protect the environment.

A 1987 amendment of the state FPA was the most significant piece of forest policy legislation since the original act in 1971. It required landowners to submit written plans for forest operations and was intended to protect streams and streamside vegetation. It subjected landowners to civil penalties for violating provisions of the legislation. These rules were the first to establish specific riparian protection zones of three times the stream width on each bank with a minimum width of 25 feet on each bank.

The Oregon FPA continued to change with the times. In 1991 and again in 1997 it was amended to respond to public concern about salmon, and limited the size and distribution of clearcuts. The Oregon Department of Forestry was also given authority to defer road building and clearcut timber harvesting on steep slopes above homes and public roads to minimize landslides and erosion into streams. Oregon has been strengthening its requirements but in many cases still falls short of federal rules. For example, in 1990, Oregon's Senate Bill 1125 established

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clearcut acreage limitations, and in 1991 the FPA further limited clearcut sizes to 120 acres, but the current limit for Forest Service lands is 40 acres.

To assure timber for future harvests, the Oregon FPA requires landowners' adherence to a timetable for reforestation. The timetable requires replanting to be completed within a year after harvest and mandates that, by the sixth year, the established stand of young timber meet conditions set by the Act. Over 95 percent of the state harvested areas were in compliance between 1989 and 1994.

The state FPA is not the only act regulating Oregon's forests. In 1973 the federal Endangered Species Act began listing sensitive species for protection and affected logging practices. In 1974 the federal Forest and Rangeland Renewable Resources Planning Act began requiring an assessment of the nation's natural resources every 10 years, and in 1976 the Federal Land Policy and Management Act required that biological diversity and economic feasibility be considered in planning timber sales and resource use.

Other states and Canada: Oregon is not the first state to grapple with forest practices nor with the issue of clearcutting. In 1990, California's ballot contained an initiative measure to limit logging, clearcutting, and burning. The measure would have also mandated public acquisition of designated ancient forests. The initiative was narrowly defeated. In 1996, Maine voters soundly defeated an initiative measure to promote forest rehabilitation and eliminate clearcutting. This year one of Canada's largest timber companies, MacMillan Bloedel, voluntarily decided to abandon clearcutting of old-growth timber. MacMillan Bloedel admitted this shift in practice is due, in large part, to the increase in social attitudes against the practice. The company has projected the change will increase its lumber prices only 2.5 percent, therefore the increase in finished product price would be minimal.

Legal Aspects: Measure 64 allows citizens of the United States to file suit in state Circuit Court to enforce any provision of the measure. This "citizen suit" provision is modeled after similar provisions contained in federal environmental laws and is intended to encourage strict enforcement of the law. The measure also provides that any person (other than the government itself) bringing suit shall recover attorney fees if successful in the lawsuit. Opponents fear a substantial increase in litigation, together with accompanying costs and higher risks of doing business. Proponents contend that citizen suits are the only practical means of ensuring enforcement action, either because of political considerations or because of limited budgets for enforcement.

Taking: An argument proffered by opponents of Measure 64 is that prohibiting the practice of clearcutting would effectively operate as an unconstitutional taking of property. The issue is whether the measure can be shown to deprive the landowner of all economically viable uses of the property. Opponents argue that the measure deprives them of the ability to harvest timber and thus removes the economic viability of the land. Proponents contend that timber can still be harvested by non-clearcutting techniques.

Supremacy Clause: The measure imposes restrictions on private, state and federal forest lands. The state's ability to regulate timber harvest practices on federal land is problematic. The Supremacy Clause of the U.S. Constitution generally prohibits any state from enacting a law that is inconsistent with, or interferes with, federal law. Historically, regulation of federal forests has been the exclusive domain of the federal government. However, it is not uncommon for some federal agencies to require compliance with applicable state law, and in other circumstances, to defer to state regulation to promote harmony between the states and the federal government.

How the federal government would react to the passage of this particular measure is unknown. Certainly, some form of legal challenge to the measure's applicability to federal forestlands is likely.

III. ARGUMENTS PRO AND CON

A. Arguments Advanced in Favor of the Measure:

- Clearcutting is ugly.
- Clearcutting is an unsustainable forest practice.
- Clearcut logging substantially increases the likelihood of large landslides.
- Clearcut logging contributes to erosion, which results in increased silting and turbidity in streams and degraded water supplies.
- Clearcutting is a major factor in the decline of Northwest fish populations, including salmon.
- Clearcut logging displaces thousands of forest products jobs by requiring machine-intensive technologies and discouraging investment in highly-skilled labor.
- The legislature has the power to fine-tune and clarify provisions of the measure to assure its workability.

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- Chemical herbicide and pesticide use on forestlands is ecologically destructive and puts humans, fish and wildlife at risk of toxic exposure.
- Pesticide and herbicide use destroys the nutrient and organic content of forest soils.
- Pesticide and herbicide use threatens the health and safety of forest products workers.
- Pesticide use has degraded ground and surface water supplies and introduced toxic pollutants and killed aquatic organisms.
- Labor-intensive alternatives to herbicide and pesticide use exist and increased use of these methods would create thousands of new job opportunities.
- Maintaining the environmental quality of the region helps to maintain the perceived quality of life and attract business and economic activity.
- Increased recreation and tourism activity will outweigh any losses in the forest products industry.

B. Arguments Advanced Against the Measure:

- Enactment of the measure would lead to a decrease in timber tax revenues to the state, counties and localities and a decrease in revenues to the schools.
- The measure would reduce timber harvests by 60 percent leading to a dramatic reduction in economic activity in the timber industry and a loss of 30,000 jobs.
- Enactment of the measure would put many small woodlot owners out of business.
- The measure would result in a virtual ban on timber harvesting due to the technicalities of how clearcutting is defined.
- Reducing timber harvest in Oregon could lead to larger and more environmentally destructive harvests in other countries.
- The measure would discourage landowners from growing large trees and lead to more tree farms of similar-aged trees.
- The restrictive nature of the measure may cause landowners to convert their property to non-forest uses.
- The ban on pesticide and herbicide use would leave the state's forest vulnerable in case of insect or disease epidemics.
- The ban on burning slash could lead to dangerous build-up of dry matter and larger fires, particularly in eastern Oregon.

- The measure could be interpreted as a taking of private land leading to expensive court battles.
- The ease with which individuals can bring legal cases may lead to many frivolous suits.
- The current Forest Practices Act has been, and can be, revised to require appropriate improvements in forest practices.
- This is a one-size-fits-all prescription for forest practices that does not take into account the diversity of forests and land-use patterns in this state.
- Even those landowners currently practicing sustainable forestry would have to reduce their harvests under the restrictions of this measure.
- The ballot measure is too technical, badly drafted, and is a poor use of the initiative process.
- Selective logging has many more safety problems than clearcutting.
- \$104 million worth of unharvested timber is now under contract. If the act passes, \$74 million will be illegal to cut. There will be costly contractual damages and purchasers will need to be compensated.

IV. DISCUSSION

In our interviews with individuals and groups concerned with Measure 64, we found three major points of view. First, the creators and supporters of the measure who feel passionately that the status quo of forestry practice in the state cannot continue. Second, the opponents to any type of measure that would further restrict timber harvesting. Third, those who oppose this measure because it has serious technical flaws, but who feel that some changes in current forest practices could and probably should be made.

The last group, those who favor some changes in forest practices but who oppose Measure 64, represent the majority voice, and many of their concerns about the measure centered on the technical details of how a clearcut was defined and the interaction of various elements of that definition. Other major areas of concern centered around the environmental impacts of logging, the economic impacts of this measure, and the legal ramifications of the implementation of this measure.

Technical Impacts: In crafting this initiative, OLIFE (Oregonians for Labor

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Intensive Forest Economics), the measure's sponsors, found that to ban clearcutting they first had to define the meaning of a clearcut. In developing their definition they referred to the previous initiatives in Maine and California. Unfortunately, through our contacts with numerous industry and non-profit environmental groups, it became clear that there was minimal consultation with other groups within Oregon during the drafting of this measure. Many of these groups noted support for the objectives of the measure, but disagreed vehemently with the technical aspects of the measure.

Opponents cited the following areas as major concerns:

The prohibition of cutting a tree over 30" in diameter will force the development of "tree plantations" of younger and more uniform age trees since landowners would never allow a tree to get over 30" in diameter.

The prohibition of cutting a tree over 30" in diameter would not allow firms to manage for bio-diversity and large trees or for rotations of over 100 years.

Growing and holding trees to full maturity would be discouraged by the limitation in the basal area calculation to not include any additional area for trees over 20" in diameter.

In addition, the interaction of the basal area requirement and the tree-per-acre requirement results in situations where forest areas can meet one but not the other condition. For example, in western Oregon, the measure requires a minimum of 120 square feet per acre of basal area and 70 trees of 11-inch diameter per acre before any harvesting can occur. However, to meet the 120 square feet of basal area requirement would require 182 trees of 11-inch diameter. Opponents note that in stands that thick it becomes difficult to meet another requirement of the measure—that one-third of the tree have a live crown. They also note that in stands this thick it is difficult to get natural regeneration. This new definition of clearcuts will mean that many well-managed, over-stocked and even old-growth stands would be designated as clearcuts.

The technical detail contained in this measure is of a magnitude not appropriate for a citizens' initiative. According to Secretary of State Phil Keisling, the measure is incredibly complex and profound and its potential scope is far-reaching. Though the legislature could act to clarify and define the measure, there can be no certainty that this would happen. Moreover, statewide

legislation is not the appropriate venue for setting forest practices in a state as diverse as Oregon. The existence of varied "geo-regions" in the state, each with differing forest characteristics, requires more flexible rule making.

The ban on pesticide use was opposed by many as excessive and too restrictive. Their main concerns were that it does not leave landowners with a good option to deal with invasive exotic plants and that the alternatives, such as multiple years of burning, might be even worse. It would also leave Oregon's forests vulnerable in the event of an insect or fungal infestation. However, most of those interviewed noted that chemical use should be limited and aerial spraying prohibited.

The prohibition on burning slash was also viewed as excessive since the elimination of burning can lead to dangerous accumulation of dry matter in forest areas, especially in eastern Oregon. In addition, on-site burning of slash helps return nutrients to the soil.

But beyond finding fault with the requirements in the initiative, several of those interviewed noted that establishing essentially uniform standards for forests as varied as those we have in Oregon was "ridiculous." This "cookie-cutter" approach does not allow forests to be managed in as productive and environmentally sound a manner as possible. Some firms that are currently involved in certified sustainable forestry note that their operations, which allow selective use of clearcuts and pesticides, would be shut down if this measure passed.

Proponents of the measure noted that they would have preferred retaining a minimum of 100 trees per acre but that the 70 figure was a compromise number. The requirements for trees per acre and for basal area were developed to ensure that enough trees were retained to limit erosion, a serious problem with traditional clearcuts. Proponents noted that several firms are using selective forestry and are getting long-term, sustainable yields. They did concede that in at least one case it has taken 12 years for that forest to become profitable.

Proponents felt very strongly that pesticides need to be banned. They noted that extremely hazardous pesticides, such as 2,4-D, continue to be used, mainly to prepare slopes for replanting. They argue that instead of using pesticides the work could be done by hand providing more jobs.

Economic Impacts: The true economic impacts of this measure are extremely

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difficult to calculate since the measure deals with a long-term resource and with unquantifiable issues such as environmental quality and the general quality of life.

It has been argued that one of the reasons behind the economic growth in our region is people seeking to live here near scenic forests and pristine streams. In 1995, over 100 economists in the region published a study, *Economic Well-Being and Environmental Protection in the Pacific Northwest*. They made the point that the quality of life in the PNW has been one of the major factors behind the region's economic growth by attracting people and businesses to the region. Many people view the quality of life here as a "second pay check" and have been willing to accept lower salaries for the opportunity to live in this region.

This point of view was reinforced by another economic study in 1996, *The Cost of Doing Nothing*, which stated, "Natural resources are the 'natural capital' upon which all economies are based. Depletion of this natural capital through environmental pollution or waste eventually results in fewer economic options, a reduced job base and a net 'economic drag' on regional and local economies."

At the same time as we have seen this economic growth, natural resource extraction has become less important to the region's economy. They concluded that if the region wants to maintain a healthy economy it will need to make the economic and political investments necessary to guard against environmental degradation.

Proponents of this measure have stated that it will safeguard the long-term productivity of our forests while also maintaining clean streams and promoting biological diversity. These benefits have not often been clearly quantified, but the costs of clearcutting have become more obvious in recent years. There is little dispute that clearcutting leads to increased erosion which allows more sediment into streams degrading them as habitat for fish and as a water supply for humans. The costs of restoring fish habitats and developing filtration systems for municipal water supplies are quantifiable economic impacts.

Proponents of the measure also note that increased mechanization has resulted in many more jobs being lost in the timber industry in recent years than by any environmental protection actions. Their proposal to practice a more labor-intensive forestry would lead to an increase in jobs, even if a smaller quantity of trees were being harvested.

The only calculations your committee was able to locate on the direct economic effects of this measure were linked to the Secretary of State's financial impact report. While this report provides a starting place to look at economic impacts, its analysis is limited by the fact that it looks only at the direct financial impact of government revenues lost due to reduced timber harvests in the short term. It did not look at broader issues such as the improvement in water quality or salmon habitat that could occur if this measure was passed or the potential increase in recreation and tourism revenues or increased quality of life by maintaining greater forest cover.

The Secretary of State's report assumed this initiative would cause harvests to be reduced by 60 percent in western Oregon and 65 percent in eastern Oregon. This would result in a loss of state revenues of \$25 million a year. The resulting decrease in state expenditures will impact many forest-related programs such as fire fighting and smoke management. The major financial impact was estimated to be a decrease in school revenues of \$33.2 million a year and a decrease in revenues to counties of \$7.8 million a year. Revenues that contribute to the Common School Fund will be reduced by \$8.7 million annually due to decreased harvest on Common School Fund Trust lands. The result is a total negative financial impact of about \$75 million per year. Since these estimates do not take into account the full costs or the full benefits of this measure to the state, but only the affect on state and local public sector revenues, they provide an incomplete picture.

Opponents noted that, of greater significance is the general loss in economic activity that would be associated with a 60 percent reduction in timber harvests. Many small woodlot owners felt they would be put out of business, and larger forest companies indicated that they might relocate their operations outside of Oregon. The Secretary of State's report upholds the opponents' view that this measure could lead to the loss of 30,000 jobs in Oregon as timber operations are closed. Opponents also noted that increasing the labor intensity in the timber industry, as OLIFE says this measure would do, would probably lead to a decline in the productivity per worker in that sector. While there might be more jobs, it is likely that they would be lower-paying jobs.

There appears little doubt that in the short term there would be a negative economic impact on the state and on people involved in forestry, timber harvesting, and processing if this measure passed. It is much less clear what the long-term economic impact would be, and valid arguments can be made that there would be a long-term positive economic effect of eliminating clearcutting in the state. However, many of those benefits would occur outside of the timber industry.

Environmental Impacts: The strongest arguments in favor of Measure 64 are linked to the beneficial impacts it would have on the environment. Among the people we interviewed there was broad-based consensus that we need to continue to learn how to better manage our forests and minimize environmental degradation.

Many proponents referred to the dramatic landslides in 1996 as evidence that we need to restrict cutting on steep slopes and better manage erosion-causing practices and that this measure would in large part achieve those objectives. In addition, erosion from clearcuts increases silting and turbidity in streams which has a negative impact on fish populations. Erosion is not the only thing that affects the habitat of fish. The cutting of trees too close to stream beds also contributes to increases in water temperature, and removal of large wood in streams negatively affects the stream flow for salmon. This measure would enhance spawning areas, which would benefit from the existence of more standing trees.

It has been charged that pesticide and herbicide spraying has degraded surface and ground-water supplies, and that the drift from aerial spraying is hazardous to humans, wildlife, and fish. This measure would eliminate those risks, if any, on lands managed as forestlands. It would not eliminate this risk from other sources on other lands in the state.

Retaining slash and fallen trees in the forest is a vital component in providing habitat for numerous species, and the decomposition of this vegetation helps enrich soil fertility.

Even opponents of the measure almost uniformly agreed that we need to continue to improve our understanding of how forests function and to continue to modify and improve the state Forest Practices Act. Throughout its 20-year history, the Forest Practices Act has changed in response to new information and new concerns. The act will continue to evolve with shifting societal values. Opponents were particularly concerned that we need to better manage steep forested slopes and forest roads to limit erosion, and that we need to improve our protection of riparian areas.

In addition, several opponents noted that while they did not agree with a complete ban on clearcutting, they felt strongly that the size of clearcuts could be much more limited than it currently is without harming forest operations. For

example, the Forest Service currently limits clearcuts to 40 acres while the state limit is 120 acres. Clearcuts could also be greatly reduced by using more selective logging and variable retention of clumps of trees. However, opponents were clear that this measure was not the way to achieve those objectives.

Opponents of the measure also noted that Oregon has a perfect climate for the production of forest products, and if harvesting here is dramatically reduced it will occur in some other country where the environmental impact and degradation may be even worse.

Finally, opponents expressed concern that this measure is already harming efforts to improve forest practices since the measure is so extreme it has polarized people. Most of the environmental groups we contacted were not taking a position on this measure because while they approved of the objective they disagreed with the method. These groups were dismayed that so much time and energy would now be spent to combat a bad measure, rather than getting people to work together to find a more proactive solution to the environmental problems in our forests.

Legal Issues: In the legal area it became almost immediately clear that if this measure passes it will open the doors to numerous legal battles. The broad mandate for citizens to bring suit against landowners with little fear of incurring great expense is one aspect. Landowners could also bring cases against the state claiming that they had been deprived of economically viable uses of their land which constitutes a taking. Both of these issues were discussed in greater detail earlier in this report. It also appears that this measure would not be enforceable on federal lands, but if the measure is enacted as it is written the stage is set for legal battles on that issue as well.

V. MAJORITY CONCLUSION

It is the conclusion of a majority of your committee that Measure 64 deserves a "No" vote. The intent of the measure is noble. Those who see ugly clearcuts on forested hillsides, and cloudy, silted streams say, "We want something better for Oregon!" When we read of diminished salmon runs or pesticide run off, we are indignant and dismayed. But we also do not want to see mills closing and workers losing jobs, or find that tax revenues for vital services such as schools

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are drying up. We need to fix this problem, but how?

As the committee interviewed witness after witness, we began to see that while the problem does indeed need fixing, this measure is not the vehicle to accomplish it. What leads to this conclusion?

- The definition of “clearcut” in the measure is ambiguous and would mean that there are carefully managed, healthy and sustainable forest tracts on which cutting would be prohibited forever;
- The calculation of basal area conflicts with the measure’s language mandating the leaving of specified numbers of trees per acre. Again, the opportunity for any future cutting could be precluded;
- Because of the two foregoing conditions, many responsible, environmentally conscious timber owners could suffer severe economic harm;
- The use of herbicides or pesticides would be totally banned. Controlled, judicious use of these products is necessary to forest health;
- Though it is argued that there is long-term economic benefit in maintaining a pristine forest environment, short-term economic loss would be catastrophic.
- The prohibition on cutting any tree over 30 inches in diameter would mean that responsible timber owners who have nurtured trees of this size to produce high quality lumber would never be able to cut them. This prohibition would permanently discourage longer rotations.
- The prohibition of on-site slash burning implies that such slash must remain permanently. Particularly in eastern Oregon, such slash will burn on its own with potentially disastrous results. The inference that slash could be removed to another site to burn is not economically feasible.
- The provision for citizen lawsuits almost certainly means that there will be litigation. There may also be constitutional challenges on the issues of “taking.” This path to change is adversarial and costly.

In addition to the foregoing reasons, Oregonians should realize that forest practices are gradually evolving and that there are better ways to bring about beneficial change. Amendments to the Forest Practices Act are possible and probable as new technologies and scientific evidence emerge.

In addition to the traditional regulatory approach, innovative programs are being developed that provide market incentives for landowners to manage their forests in a more environmentally friendly manner. One example of these programs, is the increasing demand for wood products that have a "sustainable" certification attached to them.

As long as we continue to consume forest products they must be grown and produced somewhere. Oregon forests are better suited than most to produce the wood products we need and still be able to provide wildlife habitat, recreational opportunities and continuing regeneration of productive forest stands.

VI. MAJORITY RECOMMENDATION

For these reasons, the majority of your Committee recommends a "No" vote on Measure 64.

Respectfully submitted,

Jeannie Burt

Kent Clark

Thomas Cleary

Henry Fitzgibbon

Leanne Hogie

Dr. Roslyn Elms Sutherland

Ruth Robinson, chair

VII. MINORITY CONCLUSION

A minority of the committee takes the position that Measure 64 deserves a "Yes" vote. The arguments in favor are more compelling than those against. The environment of Oregon is especially appealing. The minority believes, as is stated *Economic Well Being and Environmental Protection in the Pacific Northwest*, "

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.. the higher quality living environments in the Pacific Northwest have been one of the driving forces behind its economic vitality. Because people care where they live and because businesses care where people choose to live, environmental quality has a positive impact on the local economy. Put negatively, degraded environments are associated with lower incomes and depressed economic conditions.”

The minority believes that:

- Clearcut logging is an unsustainable forest practice, incompatible with long-term forest productivity and detrimental to fish, wildlife, water quality and the sustained yield of high quality wood products.
- Clearcut logging substantially increases the likelihood of landslides and flooding.
- Chemical herbicide and pesticide use is ecologically destructive, putting humans, fish and wildlife at risk of toxic exposure, destroying nutrient and organic content of soil and threatening health of forest product workers.
- These practices have resulted in serious degradation of surface and ground water supplies, introducing toxic pollutants and killing aquatic organisms.
- The issue here is forest practices – clearcutting and pesticide use – and their effect on our environment. It is not school funding, and it is not jobs.
- The negative impacts of Measure 64 are overstated, and do not take into consideration the long-term economic aesthetics and environmental impacts of a shift to sustainable forest practices.
- If Measure 64 is technically flawed, the legislature can fix the problems while retaining the fundamental intent of the measure.

Is Measure 64 harsh and restrictive? You bet your roots it is. So was the ban on DDT and the ban on Freon. In 1974, a scientist had a theory that chlorinated fluorochemicals (CFCs) would diffuse into the upper atmosphere and react with the ozone layer. He was called a lunatic. But decades later, holes started appearing in the ozone layer over the South Pole. A ban on certain CFCs was instituted. The automobile industry bitterly protested; it forecast drastic consequences without Freon for air conditioners. Freon is no longer used in automobile air conditioners. Yet the automobile industry not only survives but thrives. As the use of CFCs lessens, the ozone holes will heal. When DDT was banned the bald eagle made a dramatic comeback without the feared increase in mosquito borne disease.

The minority opinion is that Measure 64 is rightly harsh and restrictive, because its long-term benefits are so far reaching. Regardless of the short-term

consequences to the forest products industry, elimination of clearcutting and pesticides will promote healing of the forests.

VIII. MINORITY RECOMMENDATION:

The Minority of your committee recommends a "Yes" vote on Measure 64.

Respectfully submitted,

M. Edward Borasky

Thane Tienson, research advisor (for majority and minority)

Paul Leistner, research director (for majority and minority)

IX. APPENDICES

APPENDIX A: WITNESS LIST

Jeff Allen, executive director, Oregon Environmental Council

David Bayles, director of conservation, Pacific Rivers Council

Dr. John Beuter, professor of Forestry, Oregon State University

Jonathan Brinckman, reporter, *The Oregonian*

Rick Brown, resource specialist, National Wildlife Federation

Mike Ferris, public affairs officer, U. S. Forest Service

Jeff Fryer, chair, Columbia Group, The Sierra Club

Carrie Greenwood, Oregon Department of Forestry

Steve Gretzinger, technical coordinator, Rogue Institute for Ecology and Economy

Doug Hiken, Oregon Natural Resources Council

Mike Katz, lecturer in economics, Portland State University

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Phil Keisling, Oregon Secretary of State

Paul Ketcham, director of conservation, Portland Audubon Society

Bill Marlett, Oregon Natural Desert Association

Pat McCormick, Healthy Forests Alliance

Janet McLennan, past chair, Oregon Board of Forestry

Regna Merrit, Oregon Natural Resources Council

Greg Miller, Weyerhaeuser Corp.

Wade Mosby, vice president of marketing, Collins Pine

James Musameci, Oregonians for Labor Intensive Forest Economics (OLIFE)

Rod Nichols, public affairs, Oregon Department of Forestry

Geoff Pampush, executive director, Oregon Trout

Lisa Pearson, budget analyst, Oregon Secretary of State's Office

Richard Recker, director, Sustainable Forestry Partnership, Oregon State University

Glen Spain, northwest regional director, Pacific Federation of Fisherman's Associations

Barte Starker, landowner, Starker Forests

Charles Swindells, staff attorney, 1,000 Friends of Oregon

Lyndon Werner, forester, Bureau of Land Management

Tim Wigley, president, Oregon Forest Industries Council

APPENDIX B: RESOURCE MATERIALS

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—. "Timber industry to fight clear-cutting measure," July 24, 1998.

—. "Clear-cut foes ignite fire with hard-edged initiative," August 17, 1998.

(letter to the editor). "Re: clear-cutting: Battle over Measure 64 rages on," August 7, 1998.

Oregonian:

Bernton, Hal and Jonathan Brinckman. "State analysis shows forest plan may slash into timber revenues," July 20, 1998.

Brinckman, Jonathan. "25,000 Oregonians sign initiative to ban clear-cuts," March 8, 1998.

Brinckman, Jonathan. "Kitzhaber opposes ban on clear-cuts," August 25, 1998.

(letter to the editor). "Door-to-door method best for initiative drives," July 20, 1998.

(letter to the editor). "Measure 64 would limit selective logging, also," September 3, 1998.

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Mayer, James and Victor Chen. "Three initiatives make ballot with dollar duel,"
July 18, 1998.

Reinhard, David. "Loving forests to death," September 3, 1998.

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July 31, 1998.



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