

**ASSEMBLY BILL**

**No. 2162**

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**Introduced by Assembly Member Chu**

February 17, 2016

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An act to add Chapter 6.3 (commencing with Section 1625) to Division 2 of the Fish and Game Code, and to repeal Section 21083.4 of the Public Resources Code, relating to forestry, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2162, as introduced, Chu. Oak Woodlands Protection Act.

The Z'berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted to the Department of Forestry and Fire Protection. The Oak Woodlands Conservation Act provides funding for the conservation and protection of California's oak woodlands. Any violation of the Fish and Game Code is a crime.

This bill would enact the Oak Woodlands Protection Act, which would prohibit a person from removing from an oak woodland, as defined, specified oak trees, unless an oak removal plan and oak removal permit application for the oak tree removal has been submitted to and approved by the Director of Fish and Wildlife.

By June, 30, 2016, the bill would require the Fish and Game Commission to adopt regulations to implement the act, including regulations establishing an oak removal permit application fee. The bill would require the fee to be deposited into the Oak Woodlands Protection Act Fund, as created by the bill. Moneys in the fund would be continuously appropriated to the department for purposes of paying the

total costs incurred by the department in administering and enforcing the act, thereby making an appropriation.

The bill would provide that any person who violates the act is subject to a civil penalty of not more than \$25,000 for each violation. The bill would require all civil penalties collected to be apportioned in a specified manner, including 50% to be distributed to the Wildlife Conservation Board for deposit into the Oak Woodlands Conservation Fund.

Existing law requires a county to determine whether a project may result in a conversion of oak woodlands that will have a significant effect on the environment, and if it does, existing law requires the county to require one or more specified oak woodlands mitigation alternatives to mitigate the significant effect.

This bill would delete this law.

To the extent this bill would provide for additional criminal prosecutions for violations of the Fish and Game Code, the 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: yes. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 6.3 (commencing with Section 1625) is  
2 added to Division 2 of the Fish and Game Code, to read:

3  
4 CHAPTER 6.3. OAK WOODLANDS PROTECTION ACT

5  
6 1625. This chapter shall be known, and may be cited, as the  
7 Oak Woodlands Protection Act.

8 1626. The Legislature hereby finds and declares all of the  
9 following:

10 (a) The conservation of oak woodlands enhances the natural  
11 scenic beauty for residents and visitors, increases real property  
12 values, promotes ecological balance, provides sustainable habitat  
13 for over 300 wildlife species and 2,000 plant species, reduces soil  
14 erosion, sustains healthy watersheds and water quality, moderates

1 temperature extremes and climate change, and aids with nutrient  
2 cycling, all of which affect and improve the health, safety, and  
3 general welfare of the residents of the State of California.

4 (b) Widespread changes in land use patterns across the landscape  
5 and habitat loss due to the pathogen *Phytophthora ramorum*,  
6 commonly known as Sudden Oak Death, and infestations of the  
7 Goldspotted Oak Borer parasite, are fragmenting oak woodlands'  
8 wildland character over extensive areas of the state. The  
9 combination of human impact and other impacts will cumulatively  
10 fragment oak ecosystem continuity unless appropriate conservation  
11 steps are taken immediately.

12 (c) The future viability of hundreds of California's wildlife  
13 species are dependent on the maintenance of biologically functional  
14 and contiguous oak woodland ecosystems at local and bioregional  
15 scales.

16 (d) A program to encourage and make possible the long-term  
17 conservation of oak woodlands is a necessary part of the state's  
18 wildlands protection policies. It is hereby declared to be the policy  
19 of the state to conserve oak woodlands and maintain oak ecosystem  
20 health.

21 1627. It is the intent of the Legislature that this chapter be  
22 construed in light of the following primary objectives:

23 (a) To conserve oak woodland ecological attributes remaining  
24 in California and to provide habitat for wildlife species that are  
25 associated with that habitat.

26 (b) To provide maximum conservation of the oak woodlands  
27 ecosystem.

28 (c) To ensure that land use decisions affecting oak woodlands  
29 and dependent wildlife are based on the best available scientific  
30 information and habitat mitigation measures.

31 (d) To restore and perpetuate the state's most biologically  
32 diverse natural resource for future generations of Californians.

33 1628. For purposes of this chapter, the following terms have  
34 the following meanings:

35 (a) "Canopy cover" means the area, measured as a percentage  
36 of total ground area, directly under the live branches of an oak  
37 tree.

38 (b) "Oak removal" means causing an oak tree to die or be  
39 removed as a result of human activity by any means including, but

1 not limited to, cutting, dislodging, poisoning, burning, pruning,  
2 topping, or damaging of roots.

3 (c) “Oak removal permit” means a discretionary permit  
4 approving an application to remove, from an oak woodland during  
5 any calendar year, oak trees, as specified in Section 1629.

6 (d) “Oak removal plan” means an oak woodlands biological  
7 impacts evaluation and site-specific management plan.

8 (e) “Oak tree” means any tree in the genus *Quercus* that is not  
9 growing on timberland.

10 (f) “Oak woodland” means a land with a greater than ten percent  
11 oak canopy cover, or that can be demonstrated to have historically  
12 supported greater than ten percent oak canopy cover, and that  
13 meets either of the following:

14 (1) A nontimberland area on a parcel of five or more acres  
15 containing oak trees.

16 (2) A nontimberland area on a parcel of at least one or more  
17 acres containing valley oak trees.

18 (g) “Parcel” means a single assessor’s parcel of land as shown  
19 on maps produced by the county assessor.

20 (h) “Riparian hardwood” means native broadleaved evergreen  
21 and deciduous trees that produce flowers and grow within 50 feet,  
22 measured horizontally, of any watercourse, lake, or reservoir.

23 (i) “Timberland” has the same meaning as defined in Section  
24 4526 of the Public Resources Code.

25 (j) “Watercourse” means any well-defined channel with  
26 distinguishable bed and bank showing evidence of having contained  
27 flowing water indicated by deposit of rock, sand, gravel, or soil,  
28 including, but not limited to, a “stream” as defined in Section 4528  
29 of the Public Resources Code.

30 1629. (a) (1) Unless an oak removal plan and oak removal  
31 permit application for oak removal has been submitted to and  
32 approved by the director, a person shall not remove from an oak  
33 woodland during a calendar year either of the following:

34 (A) A valley oak tree greater or equal to 10 inches in diameter  
35 at breast height.

36 (B) For oak trees other than valley oak trees, 10 or more oak  
37 trees greater than or equal to 10 inches in diameter at breast height.

38 (2) The director’s authority to approve an oak removal plan and  
39 oak removal permit application pursuant to this subdivision may  
40 be delegated by the director to regional managers in the department.

1 (b) An oak removal plan and oak removal permit application  
2 shall be prepared and signed by a registered professional forester.

3 (c) Applications for oak removal permits shall be on a form  
4 prescribed by the director.

5 (d) By June 30, 2016, the commission shall adopt regulations  
6 to implement this chapter, including regulations establishing an  
7 application fee for the cost of processing an application for an oak  
8 removal permit. The fee charged shall be established in an amount  
9 necessary to pay the total costs incurred by the department in  
10 administering and enforcing this chapter. The regulations shall  
11 ensure that the canopy cover and mapping information contained  
12 in all oak removal plans submitted as part of an oak removal permit  
13 application is incorporated into a vegetation classification and  
14 mapping program maintained by the department.

15 (e) The fee established pursuant to this section shall be deposited  
16 into the Oak Woodlands Protection Act Fund, which is hereby  
17 created in the State Treasury. Notwithstanding Section 13340 of  
18 the Government Code, moneys in the fund are continuously  
19 appropriated to the department for the purposes described in  
20 subdivision (d).

21 1630. An oak removal plan, in a form prescribed by the  
22 commission, shall become part of the application for an oak  
23 removal permit. The oak removal plan shall set forth, but not be  
24 limited to, the following information:

25 (a) Present and future parcel use.

26 (b) Existing and proposed parcel canopy cover percentages.

27 (c) A parcel map indicating the location of all proposed oak  
28 removal.

29 (d) Diameter at breast height and type of oak species to be  
30 removed.

31 (e) Number of acres on which oak removal will occur.

32 (f) Habitat mitigation measures.

33 (g) Information required pursuant to Section 21160 of the Public  
34 Resources Code.

35 1631. (a) The director's decision to approve an oak removal  
36 permit pursuant to this chapter is a discretionary project approval  
37 subject to the California Environmental Quality Act (Division 13  
38 (commencing with Section 21000) of the Public Resources Code).

(b) The director or commission may apply to the Secretary of the Natural Resources Agency to certify this program pursuant to Section 21080.5 of the Public Resources Code.

1632. (a) The director shall not approve an oak removal permit if any of the following exist:

(1) The application and oak removal plan do not comply with this chapter or the regulations adopted by the commission to implement this chapter.

(2) The director cannot make the findings specified in Section 21081 of the Public Resources Code.

(3) Oak tree removal contemplated in the permit would remove more than 10 percent of the oak canopy cover that existed on January 1, 2015.

(4) Oak or riparian hardwood trees would be removed within 50 feet of any watercourse, lake, or reservoir.

(5) There is evidence that the information contained in the application or oak removal plan is, in a material way, either incorrect, incomplete, or misleading, or is insufficient to evaluate the plan's environmental effects.

(6) The applicant does not have a legal or equitable interest in the property subject to the application.

(7) Implementation of the oak removal plan as proposed would cause a violation of any applicable law.

(b) Paragraphs (3) and (4) of subdivision (a) do not apply to the removal of dead trees or the removal of oak trees to create legally required fire breaks, fuel breaks, and rights-of-way.

1633. (a) The applicant may appeal the director's denial of an oak removal permit to the commission by filing a notice of appeal with the department within 15 days after notice of the denial. The commission shall hear the appeal within 60 days after the appeal is filed unless a later hearing date is mutually agreed upon by the applicant and the commission.

(b) An applicant whose application for an oak removal permit has been denied is entitled to a hearing before the commission conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The commission shall hear and decide appeals de novo.

1634. (a) A person may maintain an action for declaratory and equitable relief to restrain any violation of this chapter. On a prima

1 facie showing of a violation of this chapter, preliminary equitable  
2 relief shall be issued to restrain any further violation of this chapter.

3 (b) Oak removal permits approved pursuant to this chapter are  
4 construction projects as that term is used in Section 529.1 of the  
5 Code of Civil Procedure. In any civil action brought pursuant to  
6 this chapter in which a temporary restraining order, preliminary  
7 injunction, or permanent injunction is sought, it is not necessary  
8 to allege or prove at any stage of the proceeding either of the  
9 following:

10 (1) That irreparable damage will occur if the temporary  
11 restraining order, preliminary injunction, or permanent injunction  
12 is not issued.

13 (2) The remedy at law is inadequate.

14 1635. The permittee shall cause an approved oak removal  
15 permit to be recorded in each county in which the property is  
16 located before beginning any operations contemplated under the  
17 permit.

18 1636. (a) A person who violates this chapter is subject to a  
19 civil penalty of not more than twenty-five thousand dollars  
20 (\$25,000) for each violation.

21 (b) The civil penalty imposed for each violation pursuant to this  
22 section is separate from, and in addition to, any other civil penalty  
23 imposed for a violation pursuant to this section or any other  
24 provision of law.

25 (c) In determining the amount of any civil penalty imposed  
26 pursuant to this section, the court shall take into consideration the  
27 nature, circumstance, extent, and gravity of the violation. In making  
28 this determination, the court may consider whether the effects of  
29 the violation may be reversed or mitigated, and with respect to the  
30 defendant, the ability to pay, any voluntary mitigation efforts  
31 undertaken, any prior history of violations, the gravity of the  
32 behavior, the economic benefit, if any, resulting from the violation,  
33 and any other matters the court determines justice may require.

34 (d) Every civil action brought under this section shall be brought  
35 by the Attorney General upon complaint by the department, or by  
36 the district attorney or city attorney in the name of the people of  
37 the State of California and any actions relating to the same violation  
38 may be joined or consolidated.

(e) All civil penalties collected pursuant to this section shall not be considered fines or forfeitures as described in Section 13003 and shall be apportioned in the following manner:

(1) Fifty percent shall be distributed to the county treasurer of the county in which the action is prosecuted. Amounts paid to the county treasurer shall be deposited in the county fish and wildlife propagation fund established pursuant to Section 13100.

(2) Fifty percent shall be distributed to the Wildlife Conservation Board for deposit in the Oak Woodlands Conservation Fund created by Section 1363. These funds may be expended to cover the costs of any legal actions or for any other law enforcement purpose consistent with Section 9 of Article XVI of the California Constitution.

SEC. 2. Section 21083.4 of the Public Resources Code is repealed.

~~21083.4. (a) For purposes of this section, “oak” means a native tree species in the genus Quercus, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Section 4526, and that is 5 inches or more in diameter at breast height.~~

~~(b) As part of the determination made pursuant to Section 21080.1, a county shall determine whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment. If a county determines that there may be a significant effect to oak woodlands, the county shall require one or more of the following oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands:~~

~~(1) Conserve oak woodlands, through the use of conservation easements.~~

~~(2) (A) Plant an appropriate number of trees, including maintaining plantings and replacing dead or diseased trees.~~

~~(B) The requirement to maintain trees pursuant to this paragraph terminates seven years after the trees are planted.~~

~~(C) Mitigation pursuant to this paragraph shall not fulfill more than one-half of the mitigation requirement for the project.~~

~~(D) The requirements imposed pursuant to this paragraph also may be used to restore former oak woodlands.~~

~~(3) Contribute funds to the Oak Woodlands Conservation Fund, as established under subdivision (a) of Section 1363 of the Fish~~



1 and Game Code, for the purpose of purchasing oak woodlands  
2 conservation easements, as specified under paragraph (1) of  
3 subdivision (d) of that section and the guidelines and criteria of  
4 the Wildlife Conservation Board. A project applicant that  
5 contributes funds under this paragraph shall not receive a grant  
6 from the Oak Woodlands Conservation Fund as part of the  
7 mitigation for the project.

8 (4) Other mitigation measures developed by the county.

9 (e) Notwithstanding subdivision (d) of Section 1363 of the Fish  
10 and Game Code, a county may use a grant awarded pursuant to  
11 the Oak Woodlands Conservation Act (Article 3.5 (commencing  
12 with Section 1360) of Chapter 4 of Division 2 of the Fish and  
13 Game Code) to prepare an oak conservation element for a general  
14 plan, an oak protection ordinance, or an oak woodlands  
15 management plan, or amendments thereto, that meets the  
16 requirements of this section.

17 (d) The following are exempt from this section:

18 (1) Projects undertaken pursuant to an approved Natural  
19 Community Conservation Plan or approved subarea plan within  
20 an approved Natural Community Conservation Plan that includes  
21 oaks as a covered species or that conserves oak habitat through  
22 natural community conservation preserve designation and  
23 implementation and mitigation measures that are consistent with  
24 this section.

25 (2) Affordable housing projects for lower income households,  
26 as defined pursuant to Section 50079.5 of the Health and Safety  
27 Code, that are located within an urbanized area, or within a sphere  
28 of influence as defined pursuant to Section 56076 of the  
29 Government Code.

30 (3) Conversion of oak woodlands on agricultural land that  
31 includes land that is used to produce or process plant and animal  
32 products for commercial purposes.

33 (4) Projects undertaken pursuant to Section 21080.5 of the Public  
34 Resources Code.

35 (e) (1) A lead agency that adopts, and a project that  
36 incorporates, one or more of the measures specified in this section  
37 to mitigate the significant effects to oaks and oak woodlands shall  
38 be deemed to be in compliance with this division only as it applies  
39 to effects on oaks and oak woodlands.

1     ~~(2) The Legislature does not intend this section to modify~~  
2     ~~requirements of this division, other than with regard to effects on~~  
3     ~~oaks and oak woodlands.~~

4     ~~(f) This section does not preclude the application of Section~~  
5     ~~21081 to a project.~~

6     ~~(g) This section, and the regulations adopted pursuant to this~~  
7     ~~section, shall not be construed as a limitation on the power of a~~  
8     ~~public agency to comply with this division or any other provision~~  
9     ~~of law.~~

10     SEC. 3. No reimbursement is required by this act pursuant to  
11     Section 6 of Article XIII B of the California Constitution because  
12     the only costs that may be incurred by a local agency or school  
13     district will be incurred because this act creates a new crime or  
14     infraction, eliminates a crime or infraction, or changes the penalty  
15     for a crime or infraction, within the meaning of Section 17556 of  
16     the Government Code, or changes the definition of a crime within  
17     the meaning of Section 6 of Article XIII B of the California  
18     Constitution.