

Introduced by Senator Kuehl

February 18, 2004

An act to add Article 4 (commencing with Section 51260) to Chapter 7 of Part 1 of Division 1 of Title 5 of the Government Code, and to add Section 21083.4 to the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1334, as introduced, Kuehl. Environmental Quality.

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a discretionary project that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA provides some exemptions from its requirements for specified projects.

This bill would require the provisions of CEQA to apply to timberland conversion and the conversion of oak woodlands, as defined, except for the conversion of oak woodlands under the Williamson Act. The bill would require the State Board of Forestry and Fire Protection, on or before January 1, 2006, to develop regulations, as specified, that, among other things, establish mitigation criteria for those conversions and require an applicant for an oak woodlands conversion permit to pay a fee in an amount determined by the board.

The Williamson Act provides that a landowner and a city or county may enter into a mutually beneficial contract to restrict the use of agricultural land by creating an “agricultural preserve,” as defined, in order to preserve the limited supply of agricultural land necessary to the conservation of the state’s economic resources.

This bill would specify, under that act, requirements for the conversion of oak woodlands from one agricultural use into another agricultural use in which the land remains in agricultural use.

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:

1 SECTION 1. Article 4 (commencing with Section 51260) is
2 added to Chapter 7 of Part 1 of Division 1 of Title 5 of the
3 Government Code, to read:

4

5 Article 4. Conversion of Oak Woodlands

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7 51260. The Legislature intends that this article shall govern
8 the conversion of oak woodlands from one agricultural use into
9 another agricultural use in which the land remains in agricultural
10 production.

11 51261. Conversion of oak woodlands, as defined in paragraph
12 (3) of subdivision (b) of Section 21083.4 of the Public Resources
13 Code, from an agricultural use into another agricultural use in
14 which the land remains in agricultural production shall be required
15 to meet one of the alternatives contained in subdivision (d) of
16 Section 21083.4 of the Public Resources Code, regardless of
17 whether a county or other local government agency has adopted an
18 oak woodlands management plan or local ordinance.

19 51262. (a) The landowner or project proponent shall give
20 notice of a proposed agricultural oak woodlands conversion to the
21 county agricultural commissioner, and the commissioner shall



1 provide notice of a proposed conversion to interested members of
2 the public.

3 (b) The county agricultural commissioner shall make a finding
4 that a mitigation alternative contained in Section 21083.4 of the
5 Public Resources Code has been implemented for the oak
6 woodlands conversion.

7 (c) If paragraph (4) of subdivision (d) of Section 21083.4 of the
8 Public Resources Code is used as a mitigation alternative, the
9 county agricultural commissioner's monitoring shall terminate
10 under that subdivision.

11 (d) The county agricultural commissioner may require a
12 licensed arborist or registered professional forester to oversee
13 mitigation, and in those instances, the licensed arborist or
14 registered professional forester's reports shall be submitted to the
15 county agricultural commissioner.

16 (e) Fees may be assessed to cover the administrative costs of the
17 county agricultural commissioner.

18 51263. The county agricultural commissioner shall provide to
19 the public every other year, commencing on January 1, 2006, a
20 report of how many conversions of agricultural oak woodlands
21 into other agricultural uses occurred, how many acres were
22 involved, what type of mitigation was adopted, and other relevant
23 information.

24 51264. Under procedures adopted by the Secretary of the
25 Resources Agency, the Secretary may revoke the applicability of
26 this article to a county that fails to adequately supervise oak
27 woodlands conversions or the mitigation of those conversions.

28 SEC. 2. Section 21083.4 is added to the Public Resources
29 Code, to read:

30 21083.4. (a) This division applies to an action by the State
31 Board of Forestry and Fire Protection for conversion of
32 timberland, as defined in Section 4526 and as required under
33 Article 9 (commencing with Section 4621) of Chapter 8 of Part 2
34 of Division 4, and to actions of counties for the conversion of oak
35 woodlands. This division does not apply to the conversion of oak
36 woodlands under Article 4 (commencing with Section 51260) of
37 Chapter 7 of Part 1 of Division 1 of Title 5 of the Government
38 Code.

39 (b) For the purposes of this section, the following terms have
40 the following meanings:



1 (1) “Conversion” of oak woodlands means cutting or
2 removing 30 percent or more of the canopy from an oak woodland
3 and changing the land use so that the converted acreage will not
4 sustain oak species functioning as a biological unit in the future,
5 or undertaking an activity within the dripline of an oak tree in order
6 to convert the land into another use.

7 (2) “Oak” means a native tree species in the genus *Quercus*,
8 not designated as Group A or Group B commercial species
9 pursuant to regulations adopted by the State Board of Forestry and
10 Fire Protection pursuant to Section 4526.

11 (3) “Oak woodlands” means a tree habitat with five or more
12 oak trees per acre, except for valley oaks (*Quercus lobata*) that
13 include one or more trees per acre.

14 (4) “Onsite” means the project area.

15 (c) (1) On or before January 1, 2006, the State Board of
16 Forestry and Fire Protection shall adopt regulations pursuant to
17 Chapter 3.5 (commencing with Section 11340) of Part 1 of
18 Division 3 of Title 2 of the Government Code to implement the
19 timberland conversion component of subdivision (a).
20 Notwithstanding any other provision of law, the regulations shall
21 provide alternatives, including the alternative included in
22 paragraph (2), that comply with this division for mitigating the
23 conversion of timberland under subdivision (b) of Section 4628.

24 (2) An alternative for mitigating the conversion of timberland
25 pursuant to this subdivision shall include a monetary contribution
26 to the California Forest Legacy Program established under
27 Division 10.5 (commencing with Section 12200) that would be
28 expended pursuant to the California Forest Legacy Program Act
29 of 2000 and the guidelines and criteria of the Wildlife
30 Conservation Board, provided that all of the following conditions
31 are met:

32 (A) The mitigation is consistent with this division and includes
33 at least the same amount of acreage as the acreage proposed for
34 conversion.

35 (B) The landowner provides funds for an appraisal approved by
36 the department and for acquisition and management of the
37 timberland.

38 (C) The landowner’s monetary contribution is received prior to
39 final approval of the timberland conversion application.



1 (d) (1) A county that contains oak woodlands shall include in
2 the oak woodlands management plan, as defined in subdivision (i)
3 of Section 1361 of the Fish and Game Code, a provision that
4 requires mitigation as provided in this subdivision of all
5 conversions of oak woodlands as these terms are defined in
6 subdivision (b). The mitigation provisions may alternatively be
7 adopted pursuant to a county ordinance. Mitigation shall not be
8 required on lands operated by the Department of Parks and
9 Recreation. The oak woodlands management plan or local
10 ordinance shall provide alternatives for mitigating the conversion
11 of oak woodlands that comply with this division.

12 For purposes of this subdivision, “plan” means an oak
13 woodlands management plan; and, “county ordinance” means a
14 county ordinance with mitigation provisions as required by this
15 subdivision.

16 (2) A county government that demonstrates to the Secretary of
17 the Resources Agency that it has adopted and implemented a
18 management plan or ordinance that complies with this subdivision
19 is in compliance with this section. At that time, the secretary,
20 following public notice via the Internet and an opportunity for
21 public comment, shall make an initial finding of compliance that
22 may be revoked or modified in appropriate circumstances in
23 accordance with procedures developed by the secretary.

24 (3) The mitigation alternatives required under paragraph (1)
25 shall include a monetary contribution to the Oak Woodlands
26 Conservation Fund, as established under subdivision (a) of Section
27 1363 of the Fish and Game Code, for the purpose of purchasing
28 oak woodlands conservation easements, as specified under
29 paragraph (1) of subdivision (d) of that section and the guidelines
30 and criteria of the Wildlife Conservation Board, provided that both
31 of the following conditions are met:

32 (A) The landowner provides funds for an appraisal approved
33 by the department and for acquisition and management of the oak
34 woodlands conservation easement.

35 (B) The landowner’s monetary contribution is placed in escrow
36 prior to final approval by the lead agency of the oak woodlands
37 conversion application.

38 (4) The mitigation alternatives required under paragraph (1)
39 may include the planting of replacement trees on up to 10 acres for
40 each oak woodlands conversion project. The planting mitigation



1 alternative may be used in conjunction with the other available
2 mitigation alternatives. This alternative shall require the planting
3 of oaks at appropriate locations to achieve a biologically
4 functioning oak woodland, and in which willing landowners
5 restore oak woodlands and establish them in conservation
6 easements in perpetuity. A plan or county ordinance shall provide
7 requirements for the planting, care, maintenance, monitoring, and
8 replanting of dead or diseased trees. A plan or county ordinance
9 shall provide that the obligation to care for these plantings does not
10 expire until at least seven years after the planting.

11 (5) Except as provided in paragraph (8), all mitigation options
12 included in an oak woodlands management plan or county
13 ordinance shall double in acreage the land converted and shall
14 provide equivalent biological value. Counties may develop a
15 procedure, following an opportunity for public review and
16 comment, to reduce the required mitigation acreage when
17 conservation easements on, or fee title of, superior quality
18 mitigation lands are obtained within the same county as the
19 conversion. For projects within an existing urbanized area, an
20 urban reserve line or urban services line, or within a sphere of
21 influence of a city as approved by LAFCO, the mitigation acreage
22 may equal the acreage of the proposed project.

23 For the purposes of this subdivision “equivalent biological
24 value” means that the mitigation shall provide for the biological
25 relationships between the affected oak woodland and the needs of
26 affected plant and wildlife species in order to accommodate the
27 normal life cycle of those species, including migration corridors,
28 food availability, denning, spawning, nesting, and other functions
29 necessary to complete a life cycle. The habitat components shall
30 be in sufficient quantities and arranged to support the diverse plant
31 and animal species that are normally found on or use the affected
32 oak woodlands. A county or other local government shall use all
33 reasonable efforts to minimize impacts to oak woodlands along
34 riparian zones, near wetlands, and those that contain snags, or that
35 are near caves, cliffs, and burrows used by wildlife.

36 (6) An oak woodlands management plan or county ordinance
37 may provide an onsite mitigation option that requires the
38 dedication in perpetuity of a conservation easement on mitigation
39 lands that are contiguous to the project and that will provide for a
40 biologically functional oak woodlands.



1 (7) (A) An oak woodland management plan or county
2 ordinance may provide for offsite mitigation by requiring the
3 procurement of oak woodland habitat that shall be purchased in fee
4 or by a conservation easement and conserved in perpetuity.

5 (B) In consultation with the State Board of Forestry and Fire
6 Protection and the Department of Forestry and Fire Protection, and
7 subject to funding in the annual budget, the Department of Fish
8 and Game may establish a mitigation bank. The mitigation bank
9 may be used to fulfill the offsite mitigation requirements of a
10 conversion of oak woodlands project, but no landowner may be
11 compelled to use the mitigation bank. The department shall
12 develop procedures and other necessary regulations to implement
13 this subdivision if the mitigation bank is created.

14 (8) A county may impose a fee to cover administrative costs
15 and the costs of monitoring and enforcing mitigation activities.

16 (9) The oak woodlands management plan or county ordinance
17 may exempt the following activities:

18 (A) The conversion of three acres or less of oak woodlands,
19 under procedures established in the plan or county ordinance. A
20 person or other legal entity shall not use the exemption established
21 in this subparagraph more than once in each five-year period.

22 (B) The harvesting of fuelwood for noncommercial use by the
23 landowner on the parcel from which it is harvested.

24 (C) An approved Natural Community Conservation Plan or
25 approved subarea plan within an approved Natural Community
26 Conservation Plan that includes oaks as a covered species.

27 (D) The removal of dead and diseased trees that pose
28 significant risks to life, property, or to healthy trees.

29 (E) Projects within oak woodlands in which no oak trees
30 greater than five inches in diameter at breast height are to be
31 removed or projects that do not encroach upon the dripline of oak
32 trees greater than five inches at breast height.

33 (F) Affordable housing projects for low and very low income,
34 as defined in the Community Redevelopment Law (Part 1
35 (commencing with Section 33000) of Division 24 of the Health
36 and Safety Code), that are located within an existing urbanized
37 area, an urban reserve or urban services line, or within a sphere of
38 influence of a city as approved by LAFCO.



1 (10) Nothing in this section shall prohibit a county from
2 adopting a plan or ordinance that is more protective of oak trees
3 or oak woodlands than provided in this section.

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 a local agency or school district has the authority to levy service
7 charges, fees, or assessments sufficient to pay for the program or
8 level of service mandated by this act, within the meaning of
9 Section 17556 of the Government Code.

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