

AMENDED IN SENATE MARCH 31, 2004

SENATE BILL

No. 1334

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, and to add Chapter 8 (commencing with Section 4810) to Part 2.5 of Division 4 of,~~ the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1334, as amended, 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.~~

6 *SECTION 1. Chapter 8 (commencing with Section 4810) is*
7 *added to Part 2.5 of Division 4 of the Public Resources Code, to*
8 *read:*

9
10 *CHAPTER 8. Conversion of Oak Woodlands*

11
12 ~~51260.~~
13 *4810.* The Legislature intends that this article shall govern the
14 conversion of oak woodlands from one agricultural use into
15 another agricultural use in which the land remains in agricultural
16 production.

17 ~~51261.~~



1 4811. Conversion of oak woodlands, as defined in paragraph
2 (3) of subdivision (b) of Section 21083.4 of the ~~Public Resources~~
3 ~~Code~~, from an agricultural use into another agricultural use in
4 which the land remains in agricultural production shall be required
5 to meet one of the alternatives contained in subdivision (d) of
6 Section 21083.4 of the ~~Public Resources Code~~, regardless of
7 whether a county or other local government agency has adopted an
8 oak woodlands management plan or local ordinance.

9 ~~51262.~~

10 4812. (a) The landowner or project proponent shall give
11 notice of a proposed agricultural oak woodlands conversion to the
12 county agricultural commissioner, and the commissioner shall
13 provide notice of a proposed conversion to interested members of
14 the public.

15 (b) The county agricultural commissioner shall make a finding
16 that a mitigation alternative contained in Section 21083.4 of the
17 ~~Public Resources Code~~ has been implemented for the oak
18 woodlands conversion.

19 (c) If paragraph (4) of subdivision (d) of Section 21083.4 of the
20 ~~Public Resources Code~~ is used as a mitigation alternative, the
21 county agricultural commissioner's monitoring shall terminate
22 under that subdivision.

23 (d) The county agricultural commissioner may require a
24 licensed arborist or registered professional forester to oversee
25 mitigation, and in those instances, the licensed arborist or
26 registered professional forester's reports shall be submitted to the
27 county agricultural commissioner.

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

30 ~~51263.~~

31 4813. The county agricultural commissioner shall provide to
32 the public every other year, commencing on January 1, 2006, a
33 report of how many conversions of agricultural oak woodlands
34 into other agricultural uses occurred, how many acres were
35 involved, what type of mitigation was adopted, and other relevant
36 information.

37 ~~51264.~~

38 4814. Under procedures adopted by the Secretary of the
39 Resources Agency, the Secretary may revoke the applicability of



1 this article to a county that fails to adequately supervise oak
2 woodlands conversions or the mitigation of those conversions.

3 SEC. 2. Section 21083.4 is added to the Public Resources
4 Code, to read:

5 21083.4. (a) This division applies to an action by the State
6 Board of Forestry and Fire Protection for conversion of
7 timberland, as defined in Section 4526 and as required under
8 Article 9 (commencing with Section 4621) of Chapter 8 of Part 2
9 of Division 4, and to actions of counties for the conversion of oak
10 woodlands. This division does not apply to the conversion of oak
11 ~~woodlands under Article 4 (commencing with Section 51260) of~~
12 ~~Chapter 7 of Part 1 of Division 1 of Title 5 of the Government~~
13 ~~Code.~~ *woodlands under Chapter 8 (commencing with Section*
14 *4810) of Part 2.5 of Division 4.*

15 (b) For the purposes of this section, the following terms have
16 the following meanings:

17 (1) "Conversion" of oak woodlands means cutting or
18 removing 30 percent or more of the canopy from an oak woodland
19 and changing the land use so that the converted acreage will not
20 sustain oak species functioning as a biological unit in the future,
21 or undertaking an activity within the dripline of an oak tree in order
22 to convert the land into another use.

23 (2) "Oak" means a native tree species in the genus *Quercus*,
24 not designated as Group A or Group B commercial species
25 pursuant to regulations adopted by the State Board of Forestry and
26 Fire Protection pursuant to Section 4526.

27 (3) "Oak woodlands" means a tree habitat with five or more
28 oak trees per acre, except for valley oaks (*Quercus lobata*) that
29 include one or more trees per acre.

30 (4) "Onsite" means the project area.

31 (c) (1) On or before January 1, 2006, the State Board of
32 Forestry and Fire Protection shall adopt regulations pursuant to
33 Chapter 3.5 (commencing with Section 11340) of Part 1 of
34 Division 3 of Title 2 of the Government Code to implement the
35 timberland conversion component of subdivision (a).
36 Notwithstanding any other provision of law, the regulations shall
37 provide alternatives, including the alternative included in
38 paragraph (2), that comply with this division for mitigating the
39 conversion of timberland under subdivision (b) of Section 4628.



1 (2) An alternative for mitigating the conversion of timberland
2 pursuant to this subdivision shall include a monetary contribution
3 to the California Forest Legacy Program established under
4 Division 10.5 (commencing with Section 12200) that would be
5 expended pursuant to the California Forest Legacy Program Act
6 of 2000 and the guidelines and criteria of the Wildlife
7 Conservation Board, provided that all of the following conditions
8 are met:

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

12 (B) The landowner provides funds for an appraisal approved by
13 the department and for acquisition and management of the
14 timberland.

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

17 (d) (1) A county that contains oak woodlands shall include in
18 the oak woodlands management plan, as defined in subdivision (i)
19 of Section 1361 of the Fish and Game Code, a provision that
20 requires mitigation as provided in this subdivision of all
21 conversions of oak woodlands as these terms are defined in
22 subdivision (b). The mitigation provisions may alternatively be
23 adopted pursuant to a county ordinance. Mitigation shall not be
24 required on lands operated by the Department of Parks and
25 Recreation. The oak woodlands management plan or local
26 ordinance shall provide alternatives for mitigating the conversion
27 of oak woodlands that comply with this division.

28 For purposes of this subdivision, “plan” means an oak
29 woodlands management plan; and, “county ordinance” means a
30 county ordinance with mitigation provisions as required by this
31 subdivision.

32 (2) A county government that demonstrates to the Secretary of
33 the Resources Agency that it has adopted and implemented a
34 management plan or ordinance that complies with this subdivision
35 is in compliance with this section. At that time, the secretary,
36 following public notice via the Internet and an opportunity for
37 public comment, shall make an initial finding of compliance that
38 may be revoked or modified in appropriate circumstances in
39 accordance with procedures developed by the secretary.



1 (3) The mitigation alternatives required under paragraph (1)
2 shall include a monetary contribution to the Oak Woodlands
3 Conservation Fund, as established under subdivision (a) of Section
4 1363 of the Fish and Game Code, for the purpose of purchasing
5 oak woodlands conservation easements, as specified under
6 paragraph (1) of subdivision (d) of that section and the guidelines
7 and criteria of the Wildlife Conservation Board, provided that both
8 of the following conditions are met:

9 (A) The landowner provides funds for an appraisal approved
10 by the department and for acquisition and management of the oak
11 woodlands conservation easement.

12 (B) The landowner's monetary contribution is placed in escrow
13 prior to final approval by the lead agency of the oak woodlands
14 conversion application.

15 (4) The mitigation alternatives required under paragraph (1)
16 may include the planting of replacement trees on up to 10 acres for
17 each oak woodlands conversion project. The planting mitigation
18 alternative may be used in conjunction with the other available
19 mitigation alternatives. This alternative shall require the planting
20 of oaks at appropriate locations to achieve a biologically
21 functioning oak woodland, and in which willing landowners
22 restore oak woodlands and establish them in conservation
23 easements in perpetuity. A plan or county ordinance shall provide
24 requirements for the planting, care, maintenance, monitoring, and
25 replanting of dead or diseased trees. A plan or county ordinance
26 shall provide that the obligation to care for these plantings does not
27 expire until at least seven years after the planting.

28 (5) Except as provided in paragraph (8), all mitigation options
29 included in an oak woodlands management plan or county
30 ordinance shall double in acreage the land converted and shall
31 provide equivalent biological value. Counties may develop a
32 procedure, following an opportunity for public review and
33 comment, to reduce the required mitigation acreage when
34 conservation easements on, or fee title of, superior quality
35 mitigation lands are obtained within the same county as the
36 conversion. For projects within an existing urbanized area, an
37 urban reserve line or urban services line, or within a sphere of
38 influence of a city as approved by LAFCO, the mitigation acreage
39 may equal the acreage of the proposed project.



1 For the purposes of this subdivision “equivalent biological
2 value” means that the mitigation shall provide for the biological
3 relationships between the affected oak woodland and the needs of
4 affected plant and wildlife species in order to accommodate the
5 normal life cycle of those species, including migration corridors,
6 food availability, denning, spawning, nesting, and other functions
7 necessary to complete a life cycle. The habitat components shall
8 be in sufficient quantities and arranged to support the diverse plant
9 and animal species that are normally found on or use the affected
10 oak woodlands. A county or other local government shall use all
11 reasonable efforts to minimize impacts to oak woodlands along
12 riparian zones, near wetlands, and those that contain snags, or that
13 are near caves, cliffs, and burrows used by wildlife.

14 (6) An oak woodlands management plan or county ordinance
15 may provide an onsite mitigation option that requires the
16 dedication in perpetuity of a conservation easement on mitigation
17 lands that are contiguous to the project and that will provide for a
18 biologically functional oak woodlands.

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

23 (B) In consultation with the State Board of Forestry and Fire
24 Protection and the Department of Forestry and Fire Protection, and
25 subject to funding in the annual budget, the Department of Fish
26 and Game may establish a mitigation bank. The mitigation bank
27 may be used to fulfill the offsite mitigation requirements of a
28 conversion of oak woodlands project, but no landowner may be
29 compelled to use the mitigation bank. The department shall
30 develop procedures and other necessary regulations to implement
31 this subdivision if the mitigation bank is created.

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

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

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



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

3 (C) An approved Natural Community Conservation Plan or
4 approved subarea plan within an approved Natural Community
5 Conservation Plan that includes oaks as a covered species.

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

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

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

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

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

27 _____

28 CORRECTIONS

29 Text — Page 3.

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