

AMENDED IN SENATE APRIL 28, 2004

AMENDED IN SENATE MARCH 31, 2004

SENATE BILL

No. 1334

Introduced by Senator Kuehl

(Coauthor: Senator Romero)

(Coauthors: Assembly Members Hancock and Liu)

February 18, 2004

An act 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 that a county with oak woodlands, as defined, include in an oak woodlands management plan, or an ordinance, a provision that requires mitigation of any conversion of oak woodlands, and would require that the plan or ordinance contain specified mitigation alternatives and procedures to minimize impacts to oak woodlands in specified areas. The bill would require the county to demonstrate to the Secretary of the Resources Agency that it has adopted and implemented an oak woodlands management plan or ordinance that complies with the requirements of the bill.~~

~~The bill would require that the oak woodlands mitigation alternatives required by the provisions of the bill include a monetary contribution to the Oak Woodlands Conservation Fund, for the purpose of purchasing oak woodlands conservation easements as provided. The bill would authorize the Department of Fish and Game, in consultation with the State Board of Forestry and the Department of Forestry and Fire Protection to establish a mitigation bank to be used to fulfill the offsite mitigation requirements of a conversion of oak woodland projects. By imposing new duties on local governments with respect to the preparation and implementation of an oak woodlands management plan or ordinance, 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: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 ~~SECTION 1.—Chapter 8 (commencing with Section 4810) is~~
2 ~~added to Part 2.5 of Division 4 of the Public Resources Code, to~~
3 ~~read:~~

4

5 ~~CHAPTER 8.—CONVERSION OF OAK WOODLANDS~~

6

7 ~~4810.—The Legislature intends that this article shall govern the~~
8 ~~conversion of oak woodlands from one agricultural use into~~
9 ~~another agricultural use in which the land remains in agricultural~~
10 ~~production.~~

11 ~~4811.—Conversion of oak woodlands, as defined in paragraph~~
12 ~~(3) of subdivision (b) of Section 21083.4, from an agricultural use~~
13 ~~into another agricultural use in which the land remains in~~
14 ~~agricultural production shall be required to meet one of the~~
15 ~~alternatives contained in subdivision (d) of Section 21083.4,~~
16 ~~regardless of whether a county or other local government agency~~
17 ~~has adopted an oak woodlands management plan or local~~
18 ~~ordinance.~~

19 ~~4812.—(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~~
22 ~~provide notice of a proposed conversion to interested members of~~
23 ~~the public.~~

24 ~~(b) The county agricultural commissioner shall make a finding~~
25 ~~that a mitigation alternative contained in Section 21083.4 has been~~
26 ~~implemented for the oak woodlands conversion.~~

27 ~~(c) If paragraph (4) of subdivision (d) of Section 21083.4 is~~
28 ~~used as a mitigation alternative, the county agricultural~~
29 ~~commissioner’s monitoring shall terminate under that~~
30 ~~subdivision.~~

31 ~~(d) The county agricultural commissioner may require a~~
32 ~~licensed arborist or registered professional forester to oversee~~
33 ~~mitigation, and in those instances, the licensed arborist or~~
34 ~~registered professional forester’s reports shall be submitted to the~~
35 ~~county agricultural commissioner.~~



1 ~~(c) Fees may be assessed to cover the administrative costs of the~~
2 ~~county agricultural commissioner.~~

3 ~~4813.—The county agricultural commissioner shall provide to~~
4 ~~the public every other year, commencing on January 1, 2006, a~~
5 ~~report of how many conversions of agricultural oak woodlands~~
6 ~~into other agricultural uses occurred, how many acres were~~
7 ~~involved, what type of mitigation was adopted, and other relevant~~
8 ~~information.~~

9 ~~4814.—Under procedures adopted by the Secretary of the~~
10 ~~Resources Agency, the Secretary may revoke the applicability of~~
11 ~~this article to a county that fails to adequately supervise oak~~
12 ~~woodlands conversions or the mitigation of those conversions.~~

13 ~~SEC. 2.—Section 21083.4 is added to the Public Resources~~
14 ~~Code, to read:~~

15 ~~21083.4.—(a) This division applies to an action by the State~~
16 ~~Board of Forestry and Fire Protection for conversion of~~
17 ~~timberland, as defined in Section 4526 and as required under~~
18 ~~Article 9 (commencing with Section 4621) of Chapter 8 of Part 2~~
19 ~~of Division 4, and to actions of counties for the conversion of oak~~
20 ~~woodlands. This division does not apply to the conversion of oak~~
21 ~~woodlands under Chapter 8 (commencing with Section 4810) of~~
22 ~~Part 2.5 of Division 4.~~

23 ~~(b) For the purposes of this section, the following terms have~~
24 ~~the following meanings:~~

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

31 ~~(2) “Oak” means a native tree species in the genus Quercus,~~
32 ~~not designated as Group A or Group B commercial species~~
33 ~~pursuant to regulations adopted by the State Board of Forestry and~~
34 ~~Fire Protection pursuant to Section 4526.~~

35 ~~(3) “Oak woodlands” means a tree habitat with five or more~~
36 ~~oak trees per acre, except for valley oaks (Quercus lobata) that~~
37 ~~include one or more trees per acre.~~

38 ~~(4) “Onsite” means the project area.~~

39 ~~(c) (1) On or before January 1, 2006, the State Board of~~
40 ~~Forestry and Fire Protection shall adopt regulations pursuant to~~



1 Chapter 3.5 (commencing with Section 11340) of Part 1 of
2 Division 3 of Title 2 of the Government Code to implement the
3 timberland conversion component of subdivision (a).
4 Notwithstanding any other provision of law, the regulations shall
5 provide alternatives, including the alternative included in
6 paragraph (2), that comply with this division for mitigating the
7 conversion of timberland under subdivision (b) of Section 4628.

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

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

19 (B) The landowner provides funds for an appraisal approved by
20 the department and for acquisition and management of the
21 timberland.

22 (C) The landowner's monetary contribution is received prior to
23 final approval of the timberland conversion application.

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

35 For purposes of this subdivision, "plan" means an oak
36 woodlands management plan; and, "county ordinance" means a
37 county ordinance with mitigation provisions as required by this
38 subdivision.

39 (2) A county government that demonstrates to the Secretary of
40 the Resources Agency that it has adopted and implemented a



1 management plan or ordinance that complies with this subdivision
2 is in compliance with this section. At that time, the secretary,
3 following public notice via the Internet and an opportunity for
4 public comment, shall make an initial finding of compliance that
5 may be revoked or modified in appropriate circumstances in
6 accordance with procedures developed by the secretary.

7 ~~(3) The mitigation alternatives required under paragraph (1)~~
8 ~~shall include a monetary contribution to the Oak Woodlands~~
9 ~~Conservation Fund, as established under subdivision (a) of Section~~
10 ~~1363 of the Fish and Game Code, for the purpose of purchasing~~
11 ~~oak woodlands conservation easements, as specified under~~
12 ~~paragraph (1) of subdivision (d) of that section and the guidelines~~
13 ~~and criteria of the Wildlife Conservation Board, provided that both~~
14 ~~of the following conditions are met:~~

15 ~~(A) The landowner provides funds for an appraisal approved~~
16 ~~by the department and for acquisition and management of the oak~~
17 ~~woodlands conservation easement.~~

18 ~~(B) The landowner's monetary contribution is placed in escrow~~
19 ~~prior to final approval by the lead agency of the oak woodlands~~
20 ~~conversion application.~~

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

34 ~~(5) Except as provided in paragraph (8), all mitigation options~~
35 ~~included in an oak woodlands management plan or county~~
36 ~~ordinance shall double in acreage the land converted and shall~~
37 ~~provide equivalent biological value. Counties may develop a~~
38 ~~procedure, following an opportunity for public review and~~
39 ~~comment, to reduce the required mitigation acreage when~~
40 ~~conservation easements on, or fee title of, superior quality~~



1 mitigation lands are obtained within the same county as the
2 conversion. For projects within an existing urbanized area, an
3 urban reserve line or urban services line, or within a sphere of
4 influence of a city as approved by LAFCO, the mitigation acreage
5 may equal the acreage of the proposed project.

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

19 (6) An oak woodlands management plan or county ordinance
20 may provide an onsite mitigation option that requires the
21 dedication in perpetuity of a conservation easement on mitigation
22 lands that are contiguous to the project and that will provide for a
23 biologically functional oak woodlands.

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

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

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

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



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

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

7 ~~(C) An approved Natural Community Conservation Plan or~~
 8 ~~approved subarea plan within an approved Natural Community~~
 9 ~~Conservation Plan that includes oaks as a covered species.~~

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

12 ~~(E) Projects within oak woodlands in which no oak trees~~
 13 ~~greater than five inches in diameter at breast height are to be~~
 14 ~~removed or projects that do not encroach upon the dripline of oak~~
 15 ~~trees greater than five inches at breast height.~~

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

22 ~~(10) Nothing in this section shall prohibit a county from~~
 23 ~~adopting a plan or ordinance that is more protective of oak trees~~
 24 ~~or oak woodlands than provided in this section.~~

25 ~~SEC. 3.—~~

26 *SECTION 1. Section 21083.4 is added to the Public*
 27 *Resources Code, to read:*

28 *21083.4. (a) For purposes of this section, the following terms*
 29 *have the following meanings:*

30 *(1) "Conversion" of oak woodlands means cutting or removing*
 31 *30 percent or more of the canopy from an oak woodland and*
 32 *changing the land use, or undertaking an activity within the*
 33 *dripline of oaks within that woodland in order to convert the land*
 34 *into another use.*

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



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

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

5 (b) (1) A county with oak woodlands shall include in an oak
6 woodlands management plan, or an ordinance, a provision that
7 requires mitigation as provided in this subdivision of a conversion
8 of oak woodlands. The oak woodlands management plan or
9 ordinance shall provide for all of the following:

10 (A) Alternatives for mitigating the conservation of oak
11 woodlands that comply with this division.

12 (B) Procedures to minimize impacts to oak woodlands along
13 riparian zones, near wetlands, and those that contain snags, or
14 that are near caves, cliffs, and burrows that are used by wildlife.

15 (C) Alternatives that shall double in acreage the land
16 converted, except for projects within an urbanized area, or within
17 a sphere of influence, as defined pursuant to Section 56076 of the
18 Government Code, the mitigation acreage may equal the acreage
19 of the land converted.

20 (2) A county shall demonstrate to the Secretary of the
21 Resources Agency that it has adopted and implemented an oak
22 woodlands management plan or ordinance that complies with this
23 section. The secretary, or his or her designee, following public
24 notice, including notice by means of the Internet, and after an
25 opportunity for public comment, shall make a finding of
26 compliance if an oak woodlands management plan or ordinance
27 complies with this section. The management plan or ordinance
28 may be revoked or modified in appropriate circumstances, in
29 accordance with procedures developed by the secretary.

30 (c) The mitigation alternatives required pursuant to paragraph
31 (1) of subdivision (b) shall include a monetary contribution to the
32 Oak Woodlands Conservation Fund, as established under
33 subdivision (a) of Section 1363 of the Fish and Game Code, for the
34 purpose of purchasing oak woodlands conservation easements, as
35 specified under the guidelines and criteria of the Wildlife
36 Conservation Board, if all of the following conditions are met:

37 (1) The landowner provides funds for an appraisal approved by
38 the department and for acquisition and management of the oak
39 woodlands conservation easement.



1 (2) *The landowner's monetary contribution is placed in escrow*
2 *prior to final approval by the lead agency of the oak woodlands*
3 *conversion application.*

4 (3) *The landowner is not a recipient of grant moneys from the*
5 *Oak Woodlands Conservation Fund to purchase an easement for*
6 *mitigating conversion of oak woodlands provided under Section*
7 *1366 of the Fish and Game Code.*

8 (d) *The mitigation alternatives prepared pursuant to*
9 *paragraph (1) of subdivision (b) may include any of the following:*

10 (1) *Planting of replacement trees for each oak woodlands*
11 *conversion project. The planting mitigation alternative may be*
12 *used in conjunction with the other available mitigation*
13 *alternatives. This alternative shall do all of the following:*

14 (A) *Require the planting of oaks at appropriate locations to*
15 *achieve a biologically functioning oak woodlands, and in which*
16 *willing landowners restore oak woodlands and establish these*
17 *oaks in conservation easements in perpetuity.*

18 (B) *Provide requirements for the planting, care, maintenance,*
19 *monitoring, and replanting of dead or diseased trees.*

20 (C) *Provide that the obligation to care for these plantings does*
21 *not expire until at least seven years after the date of the planting.*

22 (2) *Onsite mitigation that requires the dedication in perpetuity*
23 *of a conservation easement on mitigation lands that are*
24 *contiguous to the project.*

25 (3) (A) *Offsite mitigation that requires the procurement of oak*
26 *woodland habitat that shall be purchased in fee or by a*
27 *conservation easement and conserved in perpetuity.*

28 (B) *In consultation with the State Board of Forestry and Fire*
29 *Protection and the Department of Forestry and Fire Protection,*
30 *and subject to funding in the annual budget, the Department of*
31 *Fish and Game may establish a mitigation bank. The mitigation*
32 *bank may be used to fulfill the offsite mitigation requirements of a*
33 *conversion of oak woodlands project, but a landowner may not be*
34 *compelled to use the mitigation bank. The department shall*
35 *develop procedures and other necessary regulations to implement*
36 *this subparagraph if the mitigation bank is created.*

37 (e) *The oak woodlands management plan or county ordinance*
38 *may exempt the following activities:*

39 (1) *The conversion of three acres or less of oak woodlands,*
40 *under procedures established in the plan or county ordinance. A*



1 *person or other legal entity shall not use the exemption established*
2 *in this subparagraph more than once in each five-year period.*

3 (2) *The harvesting of fuelwood for noncommercial use by the*
4 *landowner on the parcel of land from which it is harvested.*

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

8 (4) *The removal of dead and diseased trees that pose significant*
9 *risks to life, property, or to healthy trees.*

10 (5) *Projects within oak woodlands in which oak trees that are*
11 *not greater than five inches in diameter at breast height are to be*
12 *removed or projects that do not encroach upon the dripline of oak*
13 *trees greater than five inches at breast height.*

14 (6) *Affordable housing projects for lower income households,*
15 *as defined pursuant to Section 50079.5 of the Health and Safety*
16 *Code, that are located within an urbanized area, or within a sphere*
17 *of influence as defined pursuant to Section 56076 of the*
18 *Government Code.*

19 (f) *This section, and the regulations adopted pursuant to this*
20 *section, may not be construed as a limitation on the power of a*
21 *public agency to comply with this division or any other provision*
22 *of law.*

23 SEC. 2. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 a local agency or school district has the authority to levy service
26 charges, fees, or assessments sufficient to pay for the program or
27 level of service mandated by this act, within the meaning of
28 Section 17556 of the Government Code.

