

AMENDED IN SENATE MAY 24, 2004
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 the Public Resources Code, relating to environmental quality.~~ *An act to add Section 1373 to the Fish and Game Code, and to add Section 21083.4 to the Public Resources Code, relating to oak woodlands conservation.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1334, as amended, Kuehl. ~~Environmental quality~~ *Oak woodlands conservation: environmental quality.*

The

(1) The Oak Woodlands Conservation Act provides funding for the conservation and protection of California's oak woodlands.

This bill would require a county with oak woodlands, in conjunction with agricultural and conservation organizations, to develop voluntary oak conservation mitigation alternatives for oak woodlands that are proposed to be converted to other agricultural uses. The bill would also require that county to direct the county agricultural commissioner or another county officer or agency to monitor agricultural oak woodlands conversions, as specified. By imposing new duties on local governments with respect to the development of voluntary oak



conservation mitigation alternatives for oak woodlands conversions, the bill would impose a state-mandated local program.

(2) *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 that a county with oak woodlands, as defined, include in an oak woodlands management plan, or an ordinance developed pursuant to the Oak Woodlands Conservation Act, 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~~

(3) *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. *Section 1373 is added to the Fish and Game
2 Code, to read:*

3 1373. (a) *In conjunction with agricultural and conservation
4 organizations, a county with oak woodlands shall develop
5 voluntary oak conservation mitigation alternatives for oak
6 woodlands that are proposed to be converted to other agricultural
7 uses. It is the intent of the Legislature that a county develop
8 voluntary oak conservation mitigation measures for agriculture
9 that conform with Section 21083.4 of the Public Resources Code.*

10 (b) *A county with oak woodlands shall direct the county
11 agricultural commissioner or another county officer or agency to
12 monitor agricultural oak woodlands conversions. The designated
13 official or agency shall monitor proposed conversions of
14 agricultural lands into other agricultural uses, and shall maintain
15 records that include, but are not limited to, all of the following:*

- 16 (1) *Location of the conversion.*
- 17 (2) *Number and species of oak trees that were removed.*
- 18 (3) *Whether mitigation was required and successfully
19 implemented.*
- 20 (4) *Whether the mitigation was in conformance with Section
21 21083.4 of the Public Resources Code.*

22 SEC. 2. *Section 21083.4 is added to the Public Resources
23 Code, to read:*

24 ~~21083.4. (a) For purposes of this section, the following terms
25 have the following meanings:~~

26 ~~(1) "Conversion" of oak woodlands means cutting or
27 removing 30 percent or more of the canopy from an oak woodland
28 and changing the land use, or undertaking an activity within the
29 dripline of oaks within that woodland in order to convert the land
30 into another use.~~

31 ~~(2) "Oak"~~



1 21083.4. (a) For purposes of this section, “oak” means a
2 native tree species in the genus *Quercus*, not designated as Group
3 A or Group B commercial species pursuant to regulations adopted
4 by the State Board of Forestry and Fire Protection pursuant to
5 Section 4526.

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

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

10 (b) (1) A county with oak woodlands shall include in an oak
11 woodlands management plan, ~~or an ordinance developed pursuant~~
12 ~~to the Oak Woodlands Conservation Act (Article 3.5 (commencing~~
13 ~~with Section 1360) of Chapter 4 of Division 2 of the Fish and Game~~
14 ~~Code), a provision that requires mitigation as provided in this~~
15 ~~subdivision of a conversion of oak woodlands. The oak woodlands~~
16 ~~management plan or ordinance shall provide for all of the~~
17 ~~following:~~

18 (A) Alternatives for mitigating the ~~conservation~~ conversion of
19 oak woodlands that comply with this division.

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

23 ~~(C) Alternatives that shall double in acreage the land~~
24 ~~converted, except for projects within an urbanized area, or within~~
25 ~~a sphere of influence, as defined pursuant to Section 56076 of the~~
26 ~~Government Code, the mitigation acreage may equal the acreage~~
27 ~~of the land converted.~~

28 ~~(2) A county shall demonstrate to the Secretary of the~~
29 ~~Resources Agency that it has adopted and implemented an oak~~
30 ~~woodlands management plan or ordinance that complies with this~~
31 ~~section. The secretary, or his or her designee, following public~~
32 ~~notice, including notice by means of the Internet, and after an~~
33 ~~opportunity for public comment, shall make a finding of~~
34 ~~compliance if an oak woodlands management plan or ordinance~~
35 ~~complies with this section. The management plan or ordinance~~
36 ~~may be revoked or modified in appropriate circumstances, in~~
37 ~~accordance with procedures developed by the secretary.~~

38 ~~(e) The mitigation alternatives required pursuant to paragraph~~
39 ~~(1) of subdivision (b) shall include a monetary contribution to the~~
40 ~~Oak Woodlands Conservation Fund, as established under~~



1 ~~subdivision (a) of Section 1363 of the Fish and Game Code, for the~~
2 ~~purpose of purchasing oak woodlands conservation easements, as~~
3 ~~specified under the guidelines and criteria of the Wildlife~~
4 ~~Conservation Board, if all of the following conditions are met:~~

5 ~~(1) The landowner provides funds for an appraisal approved by~~
6 ~~the department and for acquisition and management of the oak~~
7 ~~woodlands conservation easement.~~

8 ~~(2) The landowner's monetary contribution is placed in escrow~~
9 ~~prior to final approval by the lead agency of the oak woodlands~~
10 ~~conversion application.~~

11 ~~(3) The landowner is not a recipient of grant moneys from the~~
12 ~~Oak Woodlands Conservation Fund to purchase an easement for~~
13 ~~mitigating conversion of oak woodlands provided under Section~~
14 ~~1366 of the Fish and Game Code.~~

15 ~~(d) The mitigation alternatives prepared pursuant to paragraph~~
16 ~~(1) of subdivision (b) may include any of the following:~~

17 ~~(1) Planting of replacement trees for each oak woodlands~~
18 ~~conversion project. The planting mitigation alternative may be~~
19 ~~used in conjunction with the other available mitigation~~
20 ~~alternatives. This alternative shall do all of the following:~~

21 ~~(A) Require the planting of oaks at appropriate locations to~~
22 ~~achieve a biologically functioning oak woodlands, and in which~~
23 ~~willing landowners restore oak woodlands and establish these oaks~~
24 ~~in conservation easements in perpetuity.~~

25 ~~(B) Provide requirements for the planting, care, maintenance,~~
26 ~~monitoring, and replanting of dead or diseased trees.~~

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

29 ~~(2) Onsite mitigation that requires the dedication in perpetuity~~
30 ~~of a conservation easement on mitigation lands that are contiguous~~
31 ~~to the project.~~

32 ~~(3) (A) Offsite mitigation that requires the procurement of oak~~
33 ~~woodland habitat that shall be purchased in fee or by a~~
34 ~~conservation easement and conserved in perpetuity.~~

35 ~~(B) In consultation with the State Board of Forestry and Fire~~
36 ~~Protection and the Department of Forestry and Fire Protection, and~~
37 ~~subject to funding in the annual budget, the Department of Fish~~
38 ~~and Game may establish a mitigation bank. The mitigation bank~~
39 ~~may be used to fulfill the offsite mitigation requirements of a~~
40 ~~conversion of oak woodlands project, but a landowner may not be~~



1 ~~compelled to use the mitigation bank. The department shall~~
2 ~~develop procedures and other necessary regulations to implement~~
3 ~~this subparagraph if the mitigation bank is created.~~

4 ~~(e)~~

5 *(C) Mitigation implemented pursuant to this subdivision shall*
6 *fully mitigate the significant effects of a project. Mitigation shall*
7 *conserve in perpetuity, through the use of conservation easements,*
8 *two oak trees of the same species for each oak tree that is removed,*
9 *except as provided in subparagraph (D).*

10 *(D) Up to 20 percent of the total mitigation for a project*
11 *undertaken pursuant to this subdivision may be mitigated by the*
12 *planting of seedlings. A county shall require the planting of three*
13 *seedlings for each oak tree that is removed provided that both of*
14 *the following conditions are met:*

15 *(i) Requirements for the planting, care, maintenance,*
16 *monitoring, and replanting of dead or diseased trees are*
17 *incorporated into the mitigation.*

18 *(ii) The requirements to maintain the plantings and replace*
19 *dead or diseased trees does not expire for seven years.*

20 *(E) The mitigation may occur on the site of a project or may*
21 *occur within the county or as close to the project as is reasonably*
22 *practicable, provided that the same species of oak trees affected by*
23 *the project are indigenous to the area proposed for mitigation.*
24 *Conservation easements in perpetuity shall be obtained to protect*
25 *all trees planted as mitigation pursuant to this section.*

26 *(2) Notwithstanding any other provision of law, a county may*
27 *use a grant awarded pursuant to the Oak Woodlands Conservation*
28 *Act (Article 3.5 (commencing with Section 1360) of Chapter 4 of*
29 *Division 2 of the Fish and Game Code) to prepare an oak*
30 *conservation element for a general plan, an oak protection*
31 *ordinance, or an oak woodlands management plan, or*
32 *amendments thereto, that meets the requirements of this*
33 *subdivision.*

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

36 ~~*(1) 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.*~~

40 ~~*(2)*~~



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

3 ~~(3)~~

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

7 ~~(4)~~

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

10 ~~(5)~~

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

15 ~~(6)~~

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

21 ~~(f)~~

22 (d) This section, and the regulations adopted pursuant to this
23 section, may not be construed as a limitation on the power of a
24 public agency to comply with this division or any other provision
25 of law.

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

