

STAFF REPORT TO: AMADOR COUNTY PLANNING COMMISSION
FOR MEETING OF: January 10, 2023

Item 5 - General Plan Amendment (GPA-22;12-1). Proposed amendments to the Kirkwood Specific Plan Tree Ordinance to clarify that dead, dying, diseased, and hazardous trees and vegetation removal required for defensible space clearing per Public Resources Code 4291 do not need a permit from the Tri-County Technical Advisory Committee provided that the tree/vegetation removal is certified by a qualified forest professional.

Applicant: County of Amador

Supervisory District: 3

Location: 732 acres included in the Kirkwood Specific Plan

BACKGROUND: To eliminate confusion between Public Resources Code 4291 (PRC 4291) and the Kirkwood Specific Plan, Appendix 2, Tree Ordinance (Tree Ordinance), the Tri-County Technical Advisory Committee has prepared amendments to codify prior interpretations that the State law overrides the local ordinance. This revision adds an exemption to the tree removal permitting requirements to allow for tree trimming and removal to meet the defensible space requirements of PRC 4291. The revision also eliminates an administrative burden to property owners by abolishing the requirement for tree removal permits for dead, dying, diseased, and hazard trees.

PRIOR COMMITTEE REVIEW: The ordinance revisions were reviewed by the Tri-County Technical Advisory Committee during its February 11, March 11, and April 8, 2022 meeting with significant input and assistance from CalFire, US Forest Service, Kirkwood Firewise Committee, area forest professionals, and the Kirkwood community.

PLANNING COMMISSION ACTION: Following the public hearing, the first action of the Planning Commission should be a decision on the appropriateness of the environmental document, proposed to be Class 7 and Class 8 Categorical Exemptions per CEQA Guidelines. Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

If found exempt, the Planning Commission may then make a recommendation to the Board of Supervisors to approve or deny the amendments to the Kirkwood Specific Plan, Appendix 2, Tree Ordinance, and a recommendation on the following findings.

Recommended Findings: If the Planning Commission moves to recommend approval of the amendments to the Kirkwood Specific Plan, Appendix 2, Tree Ordinance, the following findings are recommended for adoption:

1. The project, as proposed, is consistent with the Amador County General Plan and zoning district at this location, and County Code Section 19.24.038 PD District Regulations and Procedures. Additionally, this project is found to be consistent with CA GOV Code Section(s) 65860 and 65860(c).
2. The project, as proposed, is consistent with CA GOV Code Section 65358(a).
3. Approval of the proposed General Plan Amendment will not create conditions detrimental to public health, safety and general welfare in that the proposed change will not result in a substantial change on the conditions of the existing surrounding neighborhood or environment.
4. The property subject to the proposed General Plan Amendment is physically suitable to accommodate the proposed modifications, including but not limited to, access, physical constraints, topography, provision of utilities, and compatibility with surrounding land uses.
5. There are no project-specific significant, unmitigated effects which are peculiar to the project or its site.
6. The proposed General Plan Amendment was subject to review by Native American Tribal organizations under SB18 requirements. No consultation requests were received during the 90-day tribal consultation request period.
7. A review of the General Plan Amendment was conducted by the Tri-County Technical Advisory Committee who, through their own research, found this project will not have a significant effect on the environment and a Notice of Exemption will be adopted and filed with the County Recorder.
8. On the basis of the administrative record presented, the Board of Supervisors finds that there is no substantial evidence that the project will have a significant environment and that the recommendation of the Notice of Exemption included in the Staff Report reflects the Board of Supervisor's independent judgement and analysis.

Recording requested by:
BOARD OF SUPERVISORS

When recorded send to:
PLANNING DEPARTMENT

**BEFORE THE BOARD OF SUPERVISORS OF THE
COUNTY OF AMADOR, STATE OF CALIFORNIA**

IN THE MATTER OF:

RESOLUTION APPROVING A GENERAL PLAN)
AMENDMENT (GPA-21;10-1) FROM THE AT,)
AGRICULTURAL-TRANSITION LAND USE) RESOLUTION NO. 23-XXX
DESIGNATION TO THE SPA, SPECIAL PLANNING)
AREA LAND USE DESIGNATION FOR 7.29 ACRES OF)
LAND IDENTIFIED BY ASSESSOR’S PARCEL)
NUMBER 030-090-063)

WHEREAS, the County of Amador is requesting a General Plan Amendment for amendments to the Kirkwood Specific Plan, Appendix 2, Tree Ordinance; and

WHEREAS, the Planning Commission of the County of Amador held a public hearing on December 13, 2022 to consider the subject project and the environmental documentation prepared for the project and recommended approval to the Amador County Board of Supervisors; and

WHEREAS, on January 10, 2023, said Board of Supervisors held a public hearing to consider the subject application and the environmental documentation prepared for the project; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred; and

WHEREAS, the Board of Supervisors considered and accepted the Notice of Exemption prepared for the project for the purpose of compliance with the California Environmental Quality Act;

NOW, THEREFORE, BE IT HEREBY RESOLVED the Board of Supervisors of the County of Amador, State of California, that said Board does hereby adopt Resolution No. 23-XXX approving General Plan Amendment #22;12-1 by amending the Kirkwood Specific Plan, Appendix 2, Tree Ordinance as shown in attached Exhibit A.

The foregoing resolution was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 10th day of January, 2023, by the following vote:

AYES:
NOES:

ABSENT:

Chair
Board of Supervisors

ATTEST:

JENNIFER BURNS, Clerk of the
Board of Supervisors, Amador County,
California

By:

(RESOLUTION NO. 23-XXX)

(XX/XX/23)

EXHIBIT A: AMENDMENTS TO:
2003 KIRKWOOD SPECIFIC PLAN
APPENDIX 2
TREE ORDINANCE

This ordinance has been established to provide procedures for tree removal and trimming for all trees within the Plan boundary. Trees on national forest lands are excluded from these guidelines; however, they are subject to USFS guidelines. These guidelines recognize the need to establish a permitting process and standards for the removal/trimming of trees at Kirkwood. It is not the intent of this ordinance to hinder development, but instead to promote harmony between land improvements and their surroundings.

This Ordinance in no way relieves the property owner and/or Licensed Timber Operator from adhering to the requirements of the California Department of Forestry and Fire Protection (CDF) for tree harvesting activities on private lands within the State of California.

A. DEFINITIONS

1. **Approving Body:** The approving body shall be the Tri-County Technical Advisory Committee.
2. **DBH:** Diameter at breast height; diameter of tree measured at four and one-half feet (4 ½ ‘) above the ground on the high side of a tree.
3. **Qualified Forest Professional:** A licensed arborist, licensed forester, licensed timber operator, or defensible space inspector employed by the California Department of Forestry and Fire Protection or a local Fire Protection District.

B. PERMIT PROCEDURE

1. No person, firm, corporation, public agency or utility provider shall destroy, remove, cut down, kill, damage, trim, top or prune any tree on any private property without a tree permit and authorization by the approving body.
2. The following are exempted from the above:
 - A) Trees that have been identified for removal as part of a conditional use permit, special use permit, building permit, or other land use/development permits.

B) Trees that have been identified by a qualified forest professional as dead, dying, diseased, or in a hazardous condition presenting an immediate danger to health or property; trees cut during emergencies which present immediate danger to health and property. In the event that a tree is removed without prior approval or verification from a qualified forest professional, a permit shall be applied for after the fact.

C) Trees that have been permitted by the California Department of Forestry and Fire Protection, either through exemption, conversion, or an approved Timber Harvest Plan.

D) Trees and branches that have been identified and documented by a qualified forest professional to be removed to meet the defensible space requirements for distances from structures and vertical and horizontal spacing per the California Public Resources Code 4291 and the associated guidance documents for fuels management provided by the California Department of Forestry and Fire Protection (CAL FIRE) as they currently exist and as may be amended in the future.

E) Removal of any trees in compliance with paragraph B.2.D, above, or **removal of any trees within a public utility easement**, with a 14" DBH or less shall not require prior approval or verification from a qualified forest professional.

3. Any entity desiring to cut down, remove, or trim/prune one or more trees not exempt per Section B.2, above, shall apply for a tree removal permit through the approving body. The application shall be submitted by the lot owner and shall include the following:

A) Name, address and phone number of applicant and owner of record of the land on which the activity is to occur.

B) Written consent of the owner of record of the land, if other than the applicant.

C) The location of the land on which the removal/trimming is to occur.

D) Method of removal of the material and identification of measures to protect residual trees, vegetation and soils within the site

E) A plot plan drawn to scale showing accurate location, number, species, size (DBH) and approximate age of the trees to be removed/trimmed. The

APRIL 2022 DRAFT REVISIONS TO:

2003 Kirkwood Specific Plan – Appendix 2

Amador County Resolution No. 03-319 and Ordinance No. 1569

Tree Ordinance

Page 2

plan should also show the general location, characteristics and densities of the trees to be left on the site and any improvements on the property, and, all areas that are part of the active work area, including access routes, staging areas, log decks, and skidding or dragging routes.

F) A brief statement of the reasons for the activity.

~~G) An application fee of \$50.~~

H) Any additional information that may be requested by the approving body. Written documentation from a qualified forest professional regarding items in paragraph B.3.5 A through G, below.

~~4. Notification of the proposed tree removal shall be provided to owners of all property within 300 feet of the parcel from which the tree(s) is proposed to be removed. Notice shall be in accordance with the standard notification procedure of the jurisdiction in which the action is proposed.~~

5. Prior to the issuance of a tree removal permit, the approving body shall ascertain whether the tree can be removed. The determination of the approving body in granting or denying a permit shall be based upon, but not limited to, the following:

A) Whether or not the preservation of the tree would unreasonably compromise the owner's development of the land.

B) The condition of the tree with respect to disease, general health, danger of falling, etc.

C) The approximate age of the tree compared to its life span;

D) The number of existing trees in the area and the effect of the removal upon public health, safety, visual beauty and general welfare of the area;

E) The effect of the removal on soil erosion and stability, particularly near streams or steep slopes.

F) The potential for the tree to be a public nuisance or interfere with utility service;

G) Present and future visual screening potential;

H) Any other information the approving body finds pertinent to the decision including, if necessary, information obtained at a previous Tri-TAC meeting.

APRIL 2022 DRAFT REVISIONS TO:

2003 Kirkwood Specific Plan – Appendix 2

Amador County Resolution No. 03-319 and Ordinance No. 1569

Tree Ordinance

Page 3

6. If a permit is denied, written notification shall be provided to the applicant including the reasons for denial.

~~7. A permit that is granted is valid for a period of 90 days unless otherwise specified. An extension of the permit time may be granted upon written request prior to the permit's expiration.~~

8. The approving body shall have discretion to require that a cash bond of up to \$500 be provided to the applicable county. The purpose of the bond is to insure compliance with the requirements **of** the approved permit. The decision of the approving body ~~TC~~TAG in on whether or not to require a bond shall be based on the scope of the activities authorized under the permit and the potential for adverse environmental impacts if the terms of the permit are not followed.

9. The approving body may revoke the permit whenever there has been a false statement or misrepresentation in the application upon which the permit was based.

C. TREE REMOVAL PROVISIONS

1. It shall be the responsibility of the person removing or trimming any tree to maintain a copy of the approved tree removal permit, building permit, or other permit of which the tree removal is a part, at the tree removal site.

2. Existing healthy trees, soils and native vegetation on the site shall be preserved and protected by adequate means during any construction or felling of adjacent trees.

3. Damage to residual trees and vegetation shall be avoided. Damaged trees shall be repaired in accordance with Item #2 under the Penalties section of this Ordinance.

4. No tree shall be intentionally felled into a perennial or seasonal stream.

5. Any stump left in the ground shall be treated with approved chemicals or methods to prevent the spread of forest tree diseases. In addition, all stumps left in the ground shall be left at a height not more than 12 inches on the high side (uphill) of the stump.

6. Slash, debris and non-merchantable timber generated by the removal shall be disposed of in a manner approved by the approving body. Where material will be

APRIL 2022 DRAFT REVISIONS TO:

2003 Kirkwood Specific Plan – Appendix 2

Amador County Resolution No. 03-319 and Ordinance No. 1569

Tree Ordinance

Page 4

transported off site for disposal, documentation of disposal may be required.

7. All tree removal sites shall be winterized before the end of the construction season to prevent erosion and loss of soil from the site.

8. Activities permitted under this ordinance shall comply with all other applicable ordinances and regulations with particular attention to grading, soil erosion and sediment control requirements.

9. Removal of trees within an identified wetland must adhere to the regulatory guidance of the US Army Corps of Engineers, US Fish and Wildlife Service, and California Department of Fish and Wildlife.

D. DAMAGED OR HAZARDOUS TREES

1. The approving body may determine, on the advice of a competent authority, that a tree is diseased, insect infested or hazardous to the public, and may declare the tree to constitute a public nuisance. Upon making such a determination, the approving body shall, by written notice, notify the owner of the land on which the tree or trees are located of the condition and his duty to remove it within a specified period. If the owner refuses or fails to do so, the approving body shall take the necessary steps to remove the nuisance and charge the owner the cost, which shall be a lien on the property.

2. All diseased and bug-infested trees shall be treated prior to removal by approved methods to prevent the spread of such disease or infestation.

3. For each damaged or hazardous tree removed, it may be required that five seedlings of the same or similar species be planted on the property. These seedlings shall be planted in locations specified by the licensed arborist or forester who determined the trees to be damaged or hazardous. The arborist or forester shall be particularly aware of the visual impact the removed trees will have on the property and surrounding properties, and shall locate the seedlings accordingly. A minimum of sixty percent of the required seedlings shall be successfully established and thriving following two growing seasons after planting.

E. APPEAL PROCEDURES

To appeal conditions or denial of a permit, the lot owner may appeal to the Planning Commission of the appropriate county (Alpine, Amador, or El Dorado). The county shall levy appropriate fees.

APRIL 2022 DRAFT REVISIONS TO:

2003 Kirkwood Specific Plan – Appendix 2

Amador County Resolution No. 03-319 and Ordinance No. 1569

Tree Ordinance

Page 5

F. PENALTIES

1. Any party that is in violation of the provisions of this ordinance shall be subject to conditions of restoration of the site or monetary penalties as follows:

A) For each tree removed without authorization, the replacement of the tree shall be based on a replacement value of \$30.00/inch at DBH for each illegally removed tree. The replacement shall consist of trees of the same or similar species. The approving body will determine the actual replacement size.

B) If a project site is not capable of supporting all the replacement trees, the violator shall pay the sum equivalent to \$30.00/inch at DBH for each illegally removed tree to the affected County. ~~All funds collected for violations shall be put into a Kirkwood Reforestation Fund. The Tri-County Technical Advisory Committee shall approve distribution of the funds.~~

2. Any damage to surrounding trees during the removal process shall be repaired with tree sealer and any necessary tree surgery.

Note: This Ordinance does not address the requirements for Timber Harvest Plans. THP's are required to comply with the Forest Practices Act (FPA) and California Board of Forestry rules. In most instances, THP's are required to be prepared by a Registered Professional Forester.

APRIL 2022 DRAFT REVISIONS TO:

2003 Kirkwood Specific Plan – Appendix 2

Amador County Resolution No. 03-319 and Ordinance No. 1569

Tree Ordinance

Page 6