



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
SPECIAL MEETING REPORT**

MEETING DATE: 11/21/2022

ITEM NO: 1

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DATE: November 17, 2022  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Requesting Approval for Construction of a New Single-Family Residence and Site Improvements Requiring a Grading Permit and an Appeal of a Santa Clara County Fire Department Decision Denying a Request for an Exception to the State Minimum Fire Safe Regulations on Property Zoned HR-1. **Located at 17121 Crescent Avenue.** APN 532-21-007. Architecture and Site Application S-21-021.  
PROPERTY OWNERS/APPLICANTS: Eric and Lee Ann Wade.  
PROJECT PLANNER: Sean Mullin.

**RECOMMENDATION:**

Consider approval of a request for construction of a new single-family residence and site improvements requiring a Grading Permit, granting an appeal of a Santa Clara County Fire Department (SCCFD) decision denying a request for an exception to the State minimum Fire Safe Regulations, and addition of a Condition of Approval requiring the applicant to work with the SCCFD to develop an acceptable alternative on property zoned HR-1 located at 17121 Crescent Drive.

**PROJECT DATA:**

General Plan Designation: Hillside Residential  
Zoning Designation: HR-1  
Applicable Plans & Standards: General Plan; Hillside Development Standards and Guidelines  
Parcel Size: 0.95 acres (41,207 square feet)

**PREPARED BY:** Sean Mullin, AICP  
Senior Planner

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Reviewed by: Planning Manager and Community Development Director

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PROJECT DATA (continued):

Surrounding Area:

|       | Existing Land Use   | General Plan         | Zoning |
|-------|---------------------|----------------------|--------|
| North | Residential         | Hillside Residential | HR-1   |
| South | Residential         | Hillside Residential | HR-1   |
| East  | Residential         | Hillside Residential | HR-1   |
| West  | Residential, Vacant | Hillside Residential | HR-1   |

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction.

FINDINGS:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction.
- The project meets the objective standards of Chapter 29 of the Town Code (Zoning Regulations).
- Other than the exceptions to the depth of fill standard and the architectural design standard prohibiting exterior structural supports and undersides of decks not enclosed by walls, the project complies with the Hillside Development Standards and Guidelines (HDS&G).
- The project complies with the Hillside Specific Plan.
- Granting the appeal meets the intent of providing defensible space consistent with the Fire Safe Regulations.

CONSIDERATIONS:

- As required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located on the west side of Crescent Drive, approximately 850 feet south of the intersection with Los Cerritos (Exhibit 1). The subject property is approximately 41,207 square feet, with an average lot slope of 29.7 percent, and is currently developed with a single-family residence (Exhibit 18). The parcel is screened by topography and existing vegetation so that any development would not be visible from any of the Town's viewing areas. A new accessory dwelling unit (ADU) was approved by the Town and will be located north of the site for the proposed residence. Pursuant to State law, the ADU is not the subject of this application.

The Architecture and Site application has been referred to the Planning Commission based on the requested exceptions to the Hillside Development Standards and Guidelines (HDS&G) and for consideration of an appeal of a SCCFD decision denying a request for an exception to the Fire Safe Regulations, also called Public Resource Code 4290 (PRC 4290).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject parcel is approximately 41,207 square feet, located on the west side of Crescent Drive (Exhibit 1). Surrounding the subject parcel is an undeveloped parcel immediately west of the subject property and single-family development to the north, south, and east. From Crescent Drive, the parcel descends approximately 56 feet to the lowest point along the western property line. The Least Restrictive Development Area (LRDA) is concentrated in the eastern and southern portions of the property.

B. Project Summary

The applicant proposes demolition of approximately 48 percent of the existing single-family residence to be repurposed as an accessory structure (pool house), construction of a new two-story single-family residence with an attached garage, and site improvements requiring a Grading Permit. The proposed residence would be located within the LRDA and would not be visible as defined by the HDS&G. The project requires a Grading Permit for the site improvements with earthwork quantities exceeding 50 cubic yards. The project complies with the objective standards of the Town Code and the applicant requests exceptions to the HDS&G for fill depths exceeding three feet and for exterior structural supports and undersides of decks not enclosed by walls.

The applicant is also requesting that the Planning Commission grant an appeal of a SCCFD decision denying a request for an exception to the Fire Safe Regulations. A detailed discussion of the appeal is provided below.

PROJECT DESCRIPTION (continued):

C. Zoning Compliance

A single-family residence, accessory structures, and swimming pool are permitted in the HR-1 zone. The proposed residence is in compliance with the zoning regulations for allowable floor area, height, setbacks, and on-site parking requirements for the property.

DISCUSSION:

A. Architecture and Site Analysis

Pursuant to the HDS&G, when determining the maximum allowable floor area for a hillside property, the gross lot area is reduced based on its average slope. The subject property is approximately 41,207 square feet with an average lot slope of 29.7 percent. Based on this average slope, the net lot area is 16,854 square feet, which provides for a maximum allowable floor area of 4,400 square feet.

The applicant has provided a Written Description/Letter of Justification detailing the project (Exhibit 4). The applicant proposes demolition of approximately 980 square feet of the existing 2,040-square foot single-family residence with attached garage. The reduced size structure would be repurposed as a pool house. The applicant proposes construction of 3,107-square foot, two-story residence with an attached 498-square foot garage and a swimming pool (Exhibit 18). The project proposes a contemporary style residence with neutral colors and materials. Proposed exterior materials include: a standing-seam metal roof; vertical board and batten cement board siding; smooth stucco siding; faux-wood tongue-and-groove siding; metal-clad wood windows and doors; and metal garage doors (Exhibit 5). The proposed residence includes 385 square feet of below-grade square footage that would be exempted from floor area. The residence also includes a 498-square foot attached garage, 98 square feet of which would count toward the total floor area allowed for the property. A summary of the proposed floor area for the property is included in the table on the following page.

DISCUSSION (continued):

| <b>Floor Area Summary</b>  |                 |
|----------------------------|-----------------|
| Maximum Allowed Floor Area | 4,400 sf        |
| <b>Proposed Floor Area</b> |                 |
| First Floor                | 840 sf          |
| Second Floor               | 2,652 sf        |
| Garage                     | 498 sf          |
| Pool House                 | 1,080 sf        |
| Subtotal                   | 5,070 sf        |
| Below-Grade Square Footage | (385 sf)        |
| Garage Exclusion           | (400 sf)        |
| <b>Total</b>               | <b>4,285 sf</b> |

The proposed residence would be sited on the eastern portion of the parcel within the LRDA. The maximum height of the proposed residence is 25 feet, where a maximum of 30 feet is allowed by the Town Code and a maximum of 25 feet is allowed by the HDS&G for nonvisible homes. The project requires a Grading Permit for the site improvements with earthwork quantities exceeding 50 cubic yards. The applicant requests exceptions to the HDS&G for fill depths exceeding three feet and for exterior structural supports and undersides of decks not enclosed by walls.

B. Building Design

The project proposes a contemporary style residence with neutral colors and materials. Proposed exterior materials include: a standing-seam metal roof; vertical board and batten cement board siding; smooth stucco siding; faux-wood tongue-and-groove siding; metal-clad wood windows and doors; and metal garage doors (Exhibit 5). Pursuant to the HDS&G, exterior colors for nonvisible homes in the hillside area may not exceed an average light reflectivity value (LRV) of 30. The proposed exterior colors and materials comply with the LRV limitation as shown on Exhibit 5.

The proposed residence has been designed with a linear form and sited to run with the contours of the property (Exhibit 18). The upper floor would be visible from Crescent Drive and would present as a single-story mass. The lower floor would be primarily visible from the interior of the property and partially screened by vegetation from portions of Crescent Drive. The proposed residence incorporates a hip roof with projecting gable-end portions at the front entry and the kitchen at the rear. The upper floor of the residence would be clad with vertically oriented cement board and batten siding while the lower floor would be clad with stucco with a smooth finish. Portions of the residence at the front entry and the

DISCUSSION (continued):

stairwell at the rear would be accented with faux-wood tongue-and-groove siding in a natural appearing wood finish. The upper floor of the residence includes the primary living areas, the main bedroom suite, a bedroom suite, and the attached two-car garage. A deck and balcony would be located off the rear elevation of the upper floor. The lower floor includes two additional bedroom suites.

The Town's Consulting Architect reviewed the proposed residence on July 26, 2021 (Exhibit 6). In the report the Consulting Architect noted that the proposed residence is well designed and comparable to the size of nearby homes. The Consulting Architect identified several issues and concerns and provided recommendations for changes to the original design to increase compatibility with the Residential Design Guidelines. In response to these recommendations, the applicant made several modifications to the design of the residence, summarizing the changes in a written response (Exhibit 7). The Consulting Architect's issues and recommendations are provided below, followed by the applicant's response in *italics*.

Issues and Recommendations:

1. The artificial turf area proposed very close to the road would be out of character with the more natural edges along the remainder of the road. Eliminate the artificial turf near Crescent Drive in favor of natural landscaping.

*Understood, removed.*

2. The spacing of the standing seams on the metal roof seem too close together, and visually very busy. Refine the standing seam texture of the roof.

*Corrected.*

3. The entry is a bit weak. Refine the entry details.

*Corrected. See Sheet 10. Ten-inch square columns added to entry porch roof.*

4. Windows without trim would not be consistent with Residential Design Guideline 3.7.4. Add wood trim to all doors and windows consistent with the Residential Design Guideline.

*Corrected. All windows and doors now have 3.5-inch-wide trim on all sides.*

5. The exact materials are not called out for the garage doors except for the note that they are "Contemporary Style Roll Up Doors." When I see that note, I would be concerned if

DISCUSSION (continued):

the door panels were glass that would provide a visual lantern at night which would be quite out of character for the semi-rural character of this neighborhood. Provide solid panels in the garage doors unless glazing is limited to the top door panels.

*Noted. See Sheet 10. Garage doors do not incorporate glass windows. All panels are solid.*

6. The tall multiple window areas on the rear elevation do not seem to yet have the appropriate traditional detailing for the home's proposed architectural style. Refine the large rear elevation windows by separating upper and lower panes with wood framing in lieu of the segment of wall siding shown.

*Understood. The windows over doors are to be "field mulled." This feature perpetuates the contemporary feel of the home. It also conforms to the design guidelines by allowing increased solar heating during the winter months. The extended eave at these locations provide protection during the summer months.*

7. The Town's Hillside Design Guidelines generally discourage the type of open deck support shown at the rear of the house, but the portion of the rear elevation where this occurs is small and not visually awkward. However, the columns on the rear elevation supporting upper-level decks are rather skinny compared to their height. Increase the size of the rear deck supports.

*Corrected. Deck support posts are now seven-inch square.*

The applicant responded to the Consulting Architect's issues and recommendations through design revisions. Staff determined that the applicant adequately addressed all issues and concerns raised in the Consulting Architect's report.

C. Neighborhood Compatibility

Pursuant to the HDS&G, the maximum allowable floor area for the subject parcel is 4,400 square feet. The table on the following page reflects the current conditions of the development in the immediate area and the proposed project.

DISCUSSION (continued):

| FAR Comparison - Neighborhood Analysis                                                                 |             |                   |                 |            |              |             |                |
|--------------------------------------------------------------------------------------------------------|-------------|-------------------|-----------------|------------|--------------|-------------|----------------|
| Address                                                                                                | Zoning      | Gross Lot Area SF | Residential SF* | Garage SF  | Total SF**   | FAR         | No. of Stories |
| 17089 Crescent Dr                                                                                      | HR-1        | 49,328            | 2,281           | 468        | 2,749        | 0.06        | 2              |
| 17095 Crescent Dr                                                                                      | HR-1        | 31,738            | 2,534           | 501        | 3,035        | 0.10        | 2              |
| 17177 Crescent Dr                                                                                      | HR-1        | 39,929            | 1,840           | 440        | 2,280        | 0.06        | 2              |
| 17130 Crescent Dr                                                                                      | HR-1        | 78,469            | 4,251           |            | 4,251        | 0.05        | 1              |
| 17120 Crescent Dr                                                                                      | HR-1        | 29,788            | 3,029           | 478        | 3,507        | 0.12        | 2              |
| 17110 Crescent Dr                                                                                      | HR-1        | 27,015            | 2,522           | 0          | 2,522        | 0.09        | 1              |
| 17100 Crescent Dr                                                                                      | HR-1        | 30,607            | 1,901           | 400        | 2,301        | 0.08        | 1              |
| 17160 Crescent Dr                                                                                      | HR-1        | 54,665            | 4,539           | 861        | 5,400        | 0.10        | 1              |
| 17140 Crescent Dr                                                                                      | HR-1        | 133,454           | 3,399           | 729        | 4,128        | 0.03        | 1              |
| <b>17121 Crescent Dr (E)</b>                                                                           | <b>HR-1</b> | <b>41,207</b>     | <b>1,660</b>    | <b>400</b> | <b>2,060</b> | <b>0.05</b> | <b>1</b>       |
| <b>17121 Crescent Dr (P)</b>                                                                           | <b>HR-1</b> | <b>41,207</b>     | <b>4,196</b>    | <b>498</b> | <b>4,694</b> | <b>0.11</b> | <b>2</b>       |
| * Residential square footage includes the residence and detached accessory structures, except garages. |             |                   |                 |            |              |             |                |
| ** The total square footage numbers do not include below grade square footage.                         |             |                   |                 |            |              |             |                |

The properties in the immediate neighborhood are developed with one- and two-story residences and include a mix of architectural styles. The property sizes within the immediate neighborhood range from 0.6 to 3.1 acres. Based on Town and County records, the square footage of the residences located in the immediate neighborhood range from 1,840 square feet to 4,539 square feet. The applicant is proposing a 3,107-square foot residence with an attached 498-square foot garage and a 1,080-square foot pool house on a 0.96-acre parcel, where a maximum total floor area of 4,400 square feet is allowed by the HDS&G. The proposed project would be the second largest in terms of total square footage and Floor Area Ratio (FAR).

D. Site Design

The subject property is located on the west side of Crescent Drive. The parcel slopes downward from the roadway approximately 56 feet to the lowest point along the western property line and is wooded outside of the developed areas. The LRDA is concentrated in the eastern and southern portions of the property, within which all proposed development would occur.

The applicant proposes partial demolition of the existing residence located in the southern portion of the property, which would be repurposed as a pool house. A new rectangular pool would be constructed just north of the proposed pool house. The proposed main residence and attached garage are sited in the southeastern portion of the property.



DISCUSSION (continued):

The proposed driveway would provide access to the attached two-car garage from the west side of Crescent Drive, utilizing the footprint of the existing driveway to minimize impacts to adjacent trees (Exhibit 18, Sheet 3). Four additional on-site guest parking spaces are required by the Hillside Specific Plan and would be provided by two spaces located along the west side of the roadway and by two spaces located in the second driveway serving the approved ADU. The required parking space for the ADU will be accommodated in the driveway serving the main residence in a tandem configuration consistent with the Town Code.

Outdoor living areas are concentrated at the rear of the residence and include a deck adjacent to the kitchen, a balcony at the primary bedroom, and a patio adjacent to the proposed swimming pool.

E. Tree Impacts

The development plans were reviewed by the Town's Consulting Arborist who inventoried seven protected trees within the project area and made recommendations for their preservation (Exhibit 8). The applicant responded to the recommendations by including Sheet T-1 in the Development Plans showing tree preservation measures consistent with the recommendations of the Town's Consulting Arborist (Exhibit 18).

Of the seven trees included in the inventory, one is proposed for removal (#716) and one was removed in 2021 under an approved permit (#719). Tree #716 is a 10-inch Brazilian pepper tree in good condition with a 20-foot canopy. Given the canopy size of tree #716, three new trees are required to be planted on site or payment of in-lieu fees provided by the applicant. The Landscape Plans do not propose any new trees.

If the project is approved, tree protection measures would be implemented prior to construction and maintained for the duration of construction activity. Arborist recommendations for tree protection and requirements for obtaining a Tree Removal Permit have been included in the Conditions of Approval (Exhibit 3).

F. Landscaping

The applicant proposes new landscaping adjacent to the residence consisting of shrubs, bushes, and deer grass (Exhibit 18, Sheet L-2.0). No new trees are proposed and the remainder of the property would remain in its current state. All the species included in the proposed Landscape Plan are native to California, and eight of the ten are included in Appendix A of the HDS&G.

DISCUSSION (continued):G. Visibility

The parcel is screened by topography and existing vegetation and any development would not be visible from any of the Town's viewing areas (Exhibit 18, Sheet 14).

H. Grading

The project includes site improvements with grading quantities exceeding 50 cubic yards, which requires approval of a Grading Permit. Site improvements adjacent to the residence would require 206 cubic yards of cut and 363 cubic yards of fill.

| Site Grading Summary |     |      |       |
|----------------------|-----|------|-------|
|                      | Cut | Fill | Total |
| Driveway/yard        | 206 | 363  | 569   |

The Town's Parks and Public Works Engineering staff have included a condition of approval requiring submittal and evaluation of a Grading Permit in parallel with the required Building Permits (Exhibit 3).

I. Exceptions to the Hillside Development Standards and Guidelines

The applicant is requesting exceptions to two standards in the HDS&G: the grading standard limiting the depth of fill to three feet (Chapter III, Standard A.1, page 20); and the architectural design standard prohibiting exterior structural supports and undersides of decks not enclosed by walls (Chapter V, Standard H.1, page 43).

The applicant requests an exception to the three-foot depth of fill standard to fill in an existing dirt service road created by a previous owner. The fill area requiring the exception is located adjacent to the northeast portion of the proposed residence and would require a fill depth of three feet, 10-inches. The applicant discusses the requested exception in their Letter of Justification (Exhibit 4), indicating that reducing the fill depth in the area in question requires that the entire residence be lowered into the site, increasing excavation and site grading quantities and resulting in more off-haul and impacts to the neighborhood. The requested exception would reduce overall grading activities, off-haul, and impacts to the neighborhood during construction.

The applicant also requests an exception to the architectural design standard prohibiting exterior structural supports and undersides of decks not enclosed by walls unless no alternative type of construction is feasible, and that fire safety and aesthetic considerations have been addressed. The applicant proposes a deck on the rear of the residence that would be supported by seven-inch square posts. The top of the tallest post would be

DISCUSSION (continued):

approximately 17 feet above the adjacent finished grade. In their Letter of Justification, the applicant states:

- The deck post is not visible from the road as its located at the back of the house;
- The deck post is not visible from the down slope neighbor due to the dense vegetation between the two homes;
- The distance from the deck post to the house has been reduced to just 8 feet from the back wall of the house; and
- The property is sloping. A deck at the back of the house provides exterior living space immediately adjacent to the home and reduces the need to create cut and fill patios elsewhere on the property.

Staff discussed two alternatives to the proposed design with the applicant: lowering the residence approximately four feet to limit the height of the tallest post to five feet; and creating outdoor living space via an at-grade patio. While both of the alternatives may be feasible, each would increase the required excavation and site grading quantities, increasing off-haul and having a greater impact on the neighborhood. Regarding fire safety, the property is located in the Wildland Urban Interface (WUI) requiring specific materials and construction methods that address fire safety. Additionally, the project was reviewed by the SCCFD and, while not approved for reasons discussed below, did not include any comments related to the proposed deck. Regarding aesthetic considerations, the project was reviewed by the Town's Consulting Architect who noted that these types of deck supports are generally discouraged by the HDS&G, but given the location of the deck at the rear of the residence and its slight impact to the rear elevation, it would not be visually awkward. Further, the Consulting Architect noted that the posts as originally presented were rather skinny relative to their height and recommended increasing the size of the posts. The applicant responded by increasing the size of the posts to seven-inches square.

Based on the analysis provided above, staff supports to the proposed exceptions to the HDS&G.

J. Appeal of a SCCFD Decision Denying a Request for an Exception to the State Minimum Fire Safe Regulations

The applicant is appealing the decision of the SCCFD denying a request for an exception to the Fire Safe Regulations.

*Background on PRC 4290 and the Fire Safe Regulations*

In 1991, the Board of Forestry (BOF) adopted PRC 4290 (Exhibit 9) requiring that the BOF establish minimum fire safety standards applicable to lands located in the State

DISCUSSION (continued):

Responsibility Area (SRA) and as of July 1, 2021, within lands classified and designated as Very High Fire Hazard Severity Zones (VHFHSZ) within the Local Responsibility Area (LRA) (Exhibit 10). The Fire Safe Regulations (Exhibit 11) as adopted by the BOF establish the minimum wildfire protection standards for building and construction related to:

- Road standards and fire equipment access;
- Standards for signs identifying streets, roads, and buildings;
- Minimum private water supply reserves for emergency fire use; and
- Fuel breaks and greenbelts.

Section §1270.06 (a) of the Fire Safe Regulations outlines a process allowing applicants to request exceptions to the regulations where it is shown that the exceptions provide the same practical effect as the Fire Safe Regulations (Exhibit 11). In Los Gatos, exception requests are considered by the SCCFD. As defined in the Fire Safe Regulations, same practical effect means an exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety, including:

- a. Access for emergency wildland fire equipment;
- b. Safe civilian evacuation;
- c. Signing that avoids delays in emergency equipment response;
- d. Available and accessible water to effectively attack wildfire or defend a structure from wildfire; and
- e. Fuel modification sufficient for civilian and fire fighter safety.

Pursuant to Section §1270.06 (c) of the Fire Safe Regulations, when an exception is not granted, the applicant may file an appeal to be heard by the local jurisdiction who can establish or utilize an existing appeals process. Consistent with the Town Code, an appeal of a SCCFD denial of an exception request to the Fire Safe Regulations is considered by the Planning Commission. Because the Fire Safe Regulations are imposed by the State, the Planning Commission has the authority to remove or modify the conditions relating to Fire Safe Regulations only if requiring an applicant to comply with the Conditions would violate federal or state law. As discussed in more detail below, staff believes that requiring improvement of the bridle path right-of-way to allow vehicular travel would constitute an unconstitutional taking and does not recommend that the Town impose that condition.

*SCCFD Review of this Application*

The applicant submitted the Architecture and Site application on July 7, 2021. Through the Town's development review process, the SCCFD reviewed iterations of the application three

DISCUSSION (continued):

times, providing comment letters on August 5, 2021, March 23, 2022, and May 18, 2022. Each letter deemed the application incomplete and outlined deficiencies related to PRC 4290, the Fire Safe Regulations, and other SCCFD standards.

In the most recent comment letter dated May 18, 2022, the SCCFD identified six provisions of the Fire Safe Regulations to which the application was deficient (Exhibit 12). On May 25, 2022, the applicant applied for an exception to these regulations and provided reasoning as to how the provided alternatives achieve the same practical effect as the Fire Safe Regulations (Exhibit 13). On July 20, 2022, the SCCFD denied the exception request on the basis of three outstanding deficiencies: road widths; turnarounds; and dead-end roads (Exhibit 14). The applicant is appealing the decision of the SCCFD to the Planning Commission (Exhibit 4).

The SCCFD's denial of the exception request is based on three aspects of the fire safe Regulations. First, Section §1273.01 (a) requires that "all roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping" (Exhibit 14). The applicant's exception request indicates that the current road is on average 20-feet wide (Exhibit 13). The applicant provided a road study exhibit showing road widths of 17 to 24 feet along Los Cerritos Drive from Phillips Avenue and continuing up Crescent Drive to the subject property (Exhibit 18, Sheet 17). In response to the exception request, the SCCFD states that the existing road widths are capable of providing the same practical effect, but additional validation is required (Exhibit 14).

Second, Section §1273.05 (a) requires that turnarounds be provided on driveways and dead-end roads and that (b) the minimum turning radius for a turnaround shall be forty (40) feet, not including parking, in accordance with the figures in 14 CCR §1273.05(e) and §1273.05(f). If a hammerhead/T is used instead, the top of the "T" shall be a minimum of sixty (60) feet in length. The applicant's exception request included a SCCFD Type A turnaround located at the proposed driveway. In response to the exception request, the SCCFD indicated that the proposed turnaround did not comply with the Fire Safe Regulations by dimension or location and did not meet the SCCFD's prescriptive dimensions (Exhibit 14). Further, the SCCFD indicated that a compliant turnaround may be considered a component of the same practical effect if properly designed and dedicated for public use and/or emergency vehicle access. In response, the applicant revised the development plans to include a SCCFD Type B turnaround located at the southeast corner of the property. Staff has included a Condition of Approval that all necessary easements be recorded prior to issuance of a Building Permit (Exhibit 3).

Lastly, Section §1273.08 (a) sets the maximum length of dead-end roads for parcels zoned for less than one acre to 800 feet (Exhibit 11). The subject property is zoned HR-1 with a minimum lot size requirement of 40,000 square feet, or 0.92 acres. The SCCFD indicates

DISCUSSION (continued):

that the subject property is located approximately 1,500 feet from the intersection of Phillips Avenue and Los Cerritos Drive, exceeding the 800-foot limitation (Exhibit 14). The Development Plans show an existing bridle path leading from the roadway at the southeast corner of the property to Los Cerritos Drive, approximately 150 feet from the intersection with Phillips Avenue (Exhibit 18, Sheet 17). This bridle path was dedicated to the public use along with other rights-of-way in 1929 with the recorded Crescent Hill Subdivision map (Exhibit 15). The applicant's exception request (Exhibit 13) reasoned that the same practical effect to this regulation is achieved through:

- The existing 20-foot wide primary access road;
- The safe civilian evacuation from Crescent Drive provided via the bridle path right-of-way;
- The addition of a signage;
- Availability of accessible water supply as verified by San Jose Water (Exhibit 13); and
- Through completed fuel reduction on the subject property.

In response to the exception request, the SCCFD indicated that while an improved bridle path right-of-way would provide a civilian evacuation route, it would not provide unobstructed traffic circulation during a wildfire, as intended by the Fire Safe Regulations (Exhibit 14). The applicant has appealed this determination (Exhibit 4), indicating that the SCCFD has incorrectly interpreted PRC 4290 to restrict or deny approval for residential building applications located on existing roads as they apply to:

- New home construction of any kind. This includes both from the ground up new construction or removal of existing and complete replacement; and
- Home remodeling that exceeds the Town's 50 percent demolition policy.

The applicant's appeal also indicates that the SCCFD are the only department in California interpreting PRC 4290 to include existing roads, which can result in restricting the replacement or upgrading of existing structures with more fire-safe structures. The applicant also indicates that the SCCFD's application of PRC 4290 results in a regulatory taking.

*Staff's Analysis*

One of the SCCFD requirements being appealed relates to access to the property. Section §1273.08 sets forth the maximum length of a dead-end road based upon a parcel's zoning. The minimum lot size required by the Town Code for HR zoned parcels is 40,000 square feet. Pursuant to Section §1273.08, the dead-end road length would be limited to 800 feet. The subject property is approximately 1,500 feet beyond the intersection of Phillips Avenue

DISCUSSION (continued):

and Crescent Drive. The applicant has met with SCCFD to discuss alternatives to the requirement for an 800-long road.

As discussed above, the 1929 Crescent Hill Subdivision dedicated the bridle path right-of-way for public use east of the property (Exhibit 15). The applicant states that the bridle path right-of-way would provide a pedestrian evacuation route during an emergency (Exhibit 13). In their denial of the requested exception, the SCCFD states that the bridle path does not meet the Fire Safe Regulations to provide unobstructed traffic circulation during a wildfire and that the bridle path could be considered for elimination of the dead-end road if it were improved as a one-way road (Exhibit 14). In staff's view, imposing a requirement to improve the bridle path to provide vehicular circulation would constitute an unconstitutional taking. Application of a law to a particular property becomes a taking if the law either:

1. Does not substantially advance legitimate state interests; or
2. Denies an owner economically viable use of his or her land. (*Agins v. City of Tiburon*, 447 U.S. 255 (1980)).

With regard to the first question, when reviewing an exaction imposed on a project, courts will consider the connection between what is being required and the impacts of the project. In the *Dolan* decision, the United States Supreme Court discusses the required degree of connection between the exaction imposed and the projected impacts of the proposed development (*Dolan v. City of Tigard*, 512 U.S. 374 (1994)). The *Dolan* court held that, in making an adjudicative decision, a city must demonstrate a "reasonable relationship" between the conditions imposed on a development permit and the development's impacts. In evaluating a "takings" claim, a court must first determine whether an "essential nexus" exists between the "legitimate state interests" and the permit condition exacted by the city. Second, if it finds that a nexus exists, the required exaction must be "roughly proportional" to the projected impacts of the private development.

The applicant indicates that improving the bridle path right-of-way to support one-way vehicular traffic is estimated to cost approximately \$4,500,000. In addition, because the path was dedicated as a bridle path and park, the applicants would need to acquire an easement interest to expand on the scope of the allowable use to include vehicular access. The project is a single-family home. In staff's view, the cost of the proposed requirement is not "roughly proportional" to the impacts of the single-family home and is therefore not defensible. As a result, staff recommends approving the project and replacing Conditions of Approval #102 through #106 related to the Fire Safe Regulations with a condition to require that the applicant work with the SCCFD to develop alternatives that comply with the Fire Safe Regulations and are constitutionally defensible (Exhibit 3).

DISCUSSION (continued):

K. Neighbor Outreach

The owners have indicated that they have been communicating with the surrounding neighbors to discuss the proposed project. A summary of their outreach efforts is included as Exhibit 16.

L. CEQA Determination

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15303: New Construction.

PUBLIC COMMENTS:

Story poles and project signage were installed on the site by November 3, 2022, in anticipation of the November 21, 2022, Planning Commission hearing. Public comments received by 11:00 A.M., Thursday, November 17, 2022 are included as Exhibit 17.

CONCLUSION:

A. Summary

The applicant is requesting approval of an Architecture and Site application for construction of a new a single-family residence and site improvements requiring a Grading Permit. The project is well designed and compatible with the properties in the immediate area. The project is consistent with the Zoning and General Plan Land Use designation for the property. The applicant requests two exceptions to the HDS&G as discussed above and otherwise complies with the applicable sections of the HDS&G and Hillside Specific Plan.

The applicant is also requesting that the Planning Commission grant an appeal of a SCCFD decision denying a request for an exception to the Fire Safe Regulations.

B. Recommendation

Based on the analysis above, staff recommends approval of the Architecture and Site application subject to the recommended conditions of approval (Exhibit 3) and granting the appeal of the SCCFD's decision denying a request for an exception to the SRA/VHFHSZ Fire Safe Regulations. If the Planning Commission finds merit with the proposed project, it should:



CONCLUSION (continued):

1. Make the finding that the proposed project is Categorically Exempt, pursuant to the adopted Guidelines for the implementation of the California Environmental Quality Act, Section 15303: New Construction (Exhibit 2);
2. Make the finding that the project complies with the objective standards of Chapter 29 of the Town Code (Zoning Regulations) (Exhibit 2);
3. Make the finding that due to the constraints of the site, exceptions to the depth of fill standard, and the architectural design standard prohibiting exterior structural supports and undersides of decks not enclosed by walls, are appropriate, and the project is otherwise in compliance with the applicable sections of the Hillside Development Standards and Guidelines (Exhibit 2);
4. Make the finding that the project complies with the Hillside Specific Plan (Exhibit 2);
5. Make the considerations as required by Section 29.20.150 of the Town Code for granting approval of an Architecture and Site application (Exhibit 2); and
6. Make the finding that granting the appeal of the Santa Clara County Fire Department's decision denying a request for an exception to the SRA/VHFHSZ Fire Safe Regulations meets the intent of providing defensible space consistent with the SRA/VHFHSZ Fire Safe Regulations as provided in the Statement of Reasons included in Exhibit 2;
7. Grant the appeal of the Santa Clara County Fire Department's decision denying a request for an exception to the SRA/VHFHSZ Fire Safe Regulations and replacing Conditions of Approval #102 through #106 with a new Condition of Approval #111 as discussed above (Exhibit 3); and
8. Approve Architecture and Site Application S-21-031 with the conditions contained in Exhibit 3 and the development plans in Exhibit 18.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction; or
2. Approve the application with additional and/or modified conditions; or
3. Deny the application.

EXHIBITS:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Letter of Justification
5. Color and Materials Board
6. Consulting Architect's Report
7. Applicant's Response to Consulting Architect's Report
8. Consulting Arborist's Report
9. Public Resources Code 4290
10. Fire Hazard Severity Zones Map
11. SRA/VHFHSZ Fire Safe Regulations
12. SCCFD Deficiency Letter, dated May 18, 2022
13. Applicant's Exception Request to the Fire Safe Regulations, dated May 25, 2022
14. SCCFD Denial of Applicant's Exception Request to the Fire Safe Regulations, dated July 20, 2022
15. Crescent Hill Subdivision Map, 1929
16. Applicant's Neighbor Outreach Effort Summary
17. Public Comments received by 11:00 A.M., Thursday, November 17, 2022
18. Development Plan