

# City of Hesperia

## STAFF REPORT



**DATE:** March 8, 2018

**TO:** Planning Commission

**FROM:** Jeff Codega, Principal Planner

**BY:** Daniel Alcayaga, Senior Planner

**SUBJECT:** Consideration of Appeal APP18-00001 overturning the Development Review Committee's decision to issue certain conditions of approval for SPRE17-00005 pertaining to timelines on code abatement activities and street improvements located on the west side of Topaz Avenue, 300 feet north of Live Oak Street (Applicant: Cal Earth: APNs: 0405-261-24 & 70)

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### RECOMMENDED ACTION

It is recommended that the Planning Commission adopt Resolution No. 2018-04 upholding the Development Review Committee's decision to issue certain conditions of approval for SPRE17-00005 pertaining to timelines on code abatement activities and street improvements.

### BACKGROUND

On October 11, 1990, Precise Plan of Design PPD-90-005 was approved to construct a school of architecture and dormitories for Cal Earth totaling 75,074 square feet on a portion of the subject property. In 1991, a revision was approved creating a phasing plan. PPD-90-005 expired on October 11, 1993, and a land use was not established.

SuperAdobe is a form of earth bag architecture developed by architect and Cal Earth founder Nader Khalili. Cal Earth uses long sandbags ("SuperAdobe Bags"), barbed wire, on-site earth and a few tools to build structures and homes for emergency shelter, disaster relief, and also sustainable healthy housing using the patented SuperAdobe Technology (Attachment 1). There are upwards of 20 structures constructed of SuperAdobe Technology on the property that were constructed without building permits. Cal Earth did obtain approvals from International Conference of Building Officials (ICBO) for the construction type; however, there have been multiple building code updates since the prior ICBO approvals making the prior approvals invalid.

Prompted by code enforcement action, Site Plan Review SPR16-00005 was submitted on May 5, 2016 to construct a Cal Earth Research and Educational Facility, which included: 1) constructing a new campus; and 2) legalizing existing SuperAdobe structures on the site. On November 2, 2016, the Development Review Committee (DRC) approved SPR16-00005 with conditions of approval. Phase 1 included legalizing existing structures, and subsequent phases (i.e. Phases 2 thru 5) were intended for the new campus.

SPR16-00005 required Cal Earth to obtain grading and building permits within six months of the effective date of approval for Phase 1. Staff learned after approving the land use entitlement that permitting the SuperAdobe structures warranted certification and approval by the International Code Council (ICC), and obtaining ICC approval may take up to two years to obtain.

Staff granted another six month extension to provide Cal Earth time to work with ICC, and requested that the applicant continue to work in obtaining approval of civil plans and grading permits for Phase 1. Civil plans required establishment of on-site parking, accessible (handicap) parking and a path of travel, emergency access, as well as construction of street improvements along Topaz Avenue, including curb, gutter and sidewalk. A revised time line would be issued upon the next extension, and the DRC advised Cal Earth that no person shall occupy any unpermitted structures.

On December 12, 2017, an extension of time was filed by Cal Earth. The reason given for the request was that Cal Earth is slated to begin ICC evaluation in February 2018. On January 10, 2018, the DRC approved extension of time SPRE17-00005 with revised code enforcement times:

**Building Permits:**

- Obtain building permits for all unpermitted structures on the property by January 23, 2019 (one year);

**Civil Plans/Grading Permits:**

- Resubmit civil plans to the City by February 5, 2018 (two weeks);
- Civil improvements plans shall be approved by June 23, 2018 (five months);
- Street improvements for Topaz Avenue shall be completed by August 23, 2018 (seven months); and
- Approvals for new campus improvements as shown in Phases 2-5 are automatically extended to January 23, 2021 upon completion of all Phase 1 improvements.

In setting this timeline, the DRC considered prior progress made in satisfying the conditions of approval. The understanding was that additional time can be given if progress continues to be made in obtaining ICC approval and completing other improvements. Even though obtaining ICC approval may take up to two years, the DRC found no reason why other requirements related to civil plans/grading permits could not be satisfied. On January 22, 2018, Cal Earth appealed the conditions of approval.

## **ISSUES/ANALYSIS**

In the appeal, Cal Earth is requesting eight months to complete the street improvements or until February 23, 2019 to construct the improvements. Cal Earth also seeks to construct the proposed driveway on Topaz along with street improvements not to exceed ten feet on either side of the driveway curb return along Topaz (includes curb, gutter and sidewalk improvements). Reasons for this request include extensive cost and time involved in obtaining ICC review and approval, and the length of street improvements bordering the property (Attachment 2).

Staff does not support this appeal. The DRC has been accommodating in providing Cal Earth with sufficient time in satisfying the conditions of approval. The DRC is not opposed to granting additional time as need if progress in satisfying the conditions of approval is being made, and provided the unpermitted structures are not occupied in their daily operation. The drive approach alone with improvements ten feet on both sides is not consistent with City policy and requirements imposed on other developers. The legalization of existing structures is seen as an

establishment of a new use. It is therefore City policy that if a new land use is being established that street improvements must be constructed along the entire project frontage. Cal Earth offers tours and instructional seminars on a regular basis without complying with basic development standards and necessary building permits. Both on-site and off-site improvements, as outlined in the conditions of approval, will achieve compliance with City standards.

### **FISCAL IMPACT**

There is no fiscal impact associated with approval of the recommended action.

### **ALTERNATIVE(S)**

1. Provide alternative direction to staff

### **ATTACHMENT(S)**

1. Structures constructed from SuperAdobe Technology
2. Application for Appeal and Appeal Statement
3. Conditions of Approval for SPRE17-00005
4. Resolution No. 2018-04