

***Exhibit No. 4***  
***Correspondence Received from***  
***Residents and Applicant***

## Brown, Janet

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**From:** Paul Lopez [PaulLopez@surmodics.com]  
**Sent:** Friday, March 20, 2009 9:03 AM  
**To:** Kiff, Dave  
**Cc:** Larry Mathena; Colleen Darling  
**Subject:** RE: ocean recovery 1115 w. balboa

Dave,

I am confused. The City's condition of use regulation states that there should be no detectable second hand smoke on adjoining properties. Furtherer, the City Staff report recommended that there would be no smoking outdoors. No pun intended, but who's blowing smoke up who's a\_\_ here? I would appreciate your feedback on why Mr. Mc Closkey is under the impression that his client's can smoke outside. Four smokers will generate second hand smoke on adjoining properties, including mine. I have documented this fact to Jim and the City already.

Thanks, Paul

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**From:** McCloskey, Jim [mailto:Jim.McCloskey@tfgroup.com]  
**Sent:** Friday, March 20, 2009 8:22 AM  
**To:** Paul Lopez  
**Cc:** Kiff, Dave  
**Subject:** FW: ocean recovery 1115 w. balboa

Paul:

Thank you for your recent emails. I was at the site on the 18th and did not hear any loud noises. I checked with the on-manager who worked that night, and I am told that while there were two people playing ping pong, there were no noises that you should have heard. Nevertheless, we have decided to prohibit ping pong after 9:00 p.m.

Concerning your comments on our Good Neighbor Rules, I have the following comments, which are in **red** below:

Thank you

Jim

**From:** Paul Lopez [mailto:PaulLopez@surmodics.com]  
**Sent:** Monday, March 16, 2009 12:51 PM  
**To:** jmccloskey@oceanrecovery.com  
**Cc:** Kiff, Dave; Larry Mathena  
**Subject:** RE: ocean recovery 1115 w. balboa

Dear Jim,

I have reviewed your "Good Neighbor Rules" proposal. It should be noted that you still have not made a conscious effort to engage your neighbors in a meaningful and serious conversation about how you could minimize the impact of this facility to the neighborhood. YOU MAY INDEED WANT TO MEET WITH THEM FACE TO FACE.

Since you have asked for input on your proposed "Good Neighbor" policies, here are a few thoughts as your direct neighbor:

-Lights out at 11:00PM on all nights of the week. Your direct neighbors are generally in bed by then- especially children. **[Comment: There is still quiet time every night after 9:00 p.m. While we appreciate your input, we see no need to have lights out by 11:00 p.m. on Friday and Saturday.]**

-Loitering in alleyways and gathering outside of the facility should be strictly prohibited. At the public hearing, you heard how intimidating your group of residents are to neighbors and their visitors. Keep your clients on your property.

**[Comment: I am not sure what the issue is here; our rule does say that "loitering in alleyways and gathering outside the facility in a manner disruptive to our neighbors is strictly prohibited." ]**

-As requested by the City, park your vans and staff cars in the garages. Stop using garages as meeting and/or living rooms.

**[Comment: We do plan to abide by this request by the City, but did not put it in our "Good Neighbor Rules," as we view this as more of an operational issue than a "Good Neighbor" issue. Nevertheless, we will amend our "Good Neighbor Rules" and include relevant additions.]**

-Have your clients arrive and depart from the front of your facility. Your clients' use of the back alley on their bikes or by foot is most disruptive to the neighborhood and my building. Mandate that all client foot and bike traffic be accommodated through the front of your facility.

**[Comment: Again, we appreciate your input, but your suggestion is simply not practical. ]**

-Your smoking policy is unacceptable. Here's what the City proposed as a condition of use:

"Ocean Recovery will have to adequately control second hand smoke. The facility's current operational regulations discourage smoking at the facility..... If approved, the use permit will include a condition of approval requiring that smoking be restricted to a designated area interior to the facility or an area that is enclosed on all sides but can be open to the sky to prevent secondhand smoke from impacting adjacent residences. Smoking outdoors is prohibited."

**[Comment: The "smoking outdoors is prohibited" reference was clarified at the February 12 public hearing. Both Mr. Allen and Mr. Kiff clarified that the intent was not to prohibit all smoking outdoors. We have also limited smoking to no more than four persons at a time. Nevertheless, I am willing to meet with you to discuss other ideas you may have. ]**

The City stated in their staff recommendation that smoking is not allowed outside and should be accommodated interior to the facility, your proposed policy states that smoking in the interior of the facility is prohibited, and that up to four smokers can smoke outside at a time.

If you think that your clients' smoking inside the courtyard and close to the stairs is minimizing the second hand smoke to neighboring properties, you are mistaken. In fact, this new smoking location is now presenting more second hand smoke to my residence as it finds its way down the hall and directly into my entry way (i.e. my front door) and up the side windows to my living room and bedroom.

The "law" states that you will not allow second hand smoke from 1115 to penetrate neighboring properties. You continue to be in violation of this law and are proposing to continue to do so. Additionally, I continue to hear second hand smoke complaints from the neighbors on the east side of your facility, and I have just told you that you have now created a worse problem for my family at 1115. W. Balboa Blvd. and my neighbor at 1125 W. Balboa Blvd.

I look forward to hearing how you will address these above concerns.

Sincerely,

Paul Lopez  
951-316-1992

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**From:** jmcloskey [mailto:jmcloskey@oceanrecovery.com]  
**Sent:** Saturday, March 14, 2009 7:44 AM  
**To:** Paul Lopez  
**Subject:** ocean recovery 1115 w. balboa

Dear Neighbors:

Attached hereto are Ocean Recovery's "Good Neighbor Rules."

As I hope you will be able to tell, we have spent a fair amount of time preparing this document. The "Good Neighbor Rules" address various concerns raised at the February 12<sup>th</sup> public hearing. These rules also incorporate some of the applicable "Good Neighbor Principles" prepared by the City.

We are also taking steps to ensure that these rules are enforced and followed. We are doing our best to be a good neighbor, and we think that these rules show our commitment in that regard. Please contact me if you have any comments regarding these rules or if you have any ideas as to how we can within reason further improve these rules.

By the way, as you may know, we have a supervisor on site 24 hours per day, seven days per week. If you have any concerns that need immediate attention, we may be reached 24/7 at the number referenced on the rules (949 723-2388).

Sincerely,  
Jim McCloskey

## Brown, Janet

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**From:** Paul Lopez [PaulLopez@surmodics.com]  
**Sent:** Monday, March 23, 2009 4:41 PM  
**To:** McCloskey, Jim  
**Cc:** Kiff, Dave  
**Subject:** RE: ocean recovery 1115 w. balboa

Jim,

Thanks for the follow-up. I appreciate the input and I would like to take you up on sitting down and discussing some of the aspects of your operations at 1115 W. Balboa Blvd. Please advise of a few times and dates that might be convenient for you.

Paul

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-As requested by the City, park your vans and staff cars in the garages. Stop using garages as meeting and/or living rooms.

**[Comment: We do plan to abide by this request by the City, but did not put it in our "Good Neighbor Rules," as we view this as more of an operational issue than a "Good Neighbor" issue. Nevertheless, we will amend our "Good Neighbor Rules" and include relevant additions.]**

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-Your smoking policy is unacceptable. Here's what the City proposed as a condition of use:

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Sincerely,  
Jim McCloskey

Dear Mr. Kiff and Mr. Allen,

I am requesting that this letter included as part of the public record for the May 7<sup>th</sup> hearing regarding the Group Residential Use Permit for 1115 W. Balboa Blvd. (Ocean Recovery, LLC).

I am writing you again to voice my strong opposition to the Group Residential Use Permit for this facility. The public record is very clear, reinforced at the original use permit application hearing on February 12, 2009 and again at the City Council appeal hearing on March 24, 2009, that all neighbors surrounding this facility are in strong opposition to this use permit application and have requested that you deny it.

Once again, here is why you should deny this use permit. A total of 143 petition signatures were submitted to the City requesting denial of this application. Additionally, the City received numerous letters, pictures and public testimony from local neighbors that clearly highlight that this facility and its clients have consistently operated in a manner that is detrimental to the local neighborhood for the past five years. Noise, profanity, illegal gatherings, excessive second hand smoke on adjoining properties, no full time supervision, utilization of parking garages for meeting rooms were all substantiated by the neighbors. Additionally, this facility is within 100 feet of the residential care facility previously approved at 1132 W. Balboa Blvd., which represents an over concentration of these businesses in our neighborhood, **and importantly, the number of these businesses that are close to Newport Elementary School and playgrounds.** I believe the local neighbors have provided the City with strong and compelling evidence that should have led you to deny this permit at the February 12<sup>th</sup> hearing, so I am now asking you again to deny this permit on May 7<sup>th</sup>. Although I have heard that one of the garage spaces has been converted over from a meeting room to parking, I have not seen any significant change in this operation and even understand that the City has received additional complaints since the initial hearing. This operator has been given ample time to get his house in order, but hasn't. Enough is enough.

Bob and Laura Keane  
808 West Oceanfront  
Newport Beach, CA 92661

RECEIVED BY  
PLANNING DEPARTMENT

MAY 04 2009

CITY OF NEWPORT BEACH

Dear Mr. Kiff and Mr. Allen,

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Kim & Frankie Flores  
1113 ½ West Balboa Blvd.  
Newport Beach, Ca 92661

RECEIVED BY  
PLANNING DEPARTMENT  
MAY 04 2009  
CITY OF NEWPORT BEACH

## Brown, Janet

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**From:** Kiff, Dave  
**Sent:** Monday, May 04, 2009 2:45 PM  
**To:** 'Tom Allen'; Brown, Janet  
**Subject:** FW: Ocean Recovery Rehearing

For the record.

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**From:** Ronel Mathena [mailto:ronelis@pacbell.net]  
**Sent:** Monday, May 04, 2009 2:40 PM  
**To:** Kiff, Dave  
**Cc:** Ronel Mathena  
**Subject:** Re: Ocean Recovery Rehearing

Dear Mr. Kiff:

Since the last hearing with the Hearing Officer, there has been continuing ongoing interaction between the residents of Ocean Recovery and the building directly across the street at 1120 West Balboa Boulevard. The apparent alumni of Ocean Recovery continue their ongoing occupancy across the street.

The residents of Ocean Recovery regularly go shopping with, and in the car of, the residents of 1120 West Balboa Boulevard. The residents of 1120 West Balboa Boulevard often visit Ocean Recovery. They regularly make gang type signs at me.

The smoking problem has simply moved from next to the east side neighbor of Ocean Recovery to my property. The residents of Ocean Recovery now sit and smoke in a crowd near the garage building. The smoke now funnels through the pathway between their two buildings and goes directly into my front walkway. It is overpowering. They also smoke as they walk away from the Ocean Recovery buildings and simply put out their cigarettes on the sidewalk and in the streets.

Please forward my email to the Hearing Officer.

Thank you

Ronel Mathena

May 4, 2009

Dear Mr. Kiff and Mr. Allen,

I am requesting that this letter included as part of the public record for the May 7<sup>th</sup> hearing regarding the Group Residential Use Permit for 1115 W. Balboa Blvd. (Ocean Recovery, LLC).

I am writing you again to voice my strong opposition to the Group Residential Use Permit for this facility. The public record is very clear, reinforced at the original use permit application hearing on February 12, 2009 and again at the City Council appeal hearing on March 24, 2009, that all neighbors surrounding this facility are in strong opposition to this use permit application and have requested that you deny it.

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Terry and Laurie McKenzie

1151 West Balboa Blvd.  
Balboa, CA 92661

RECEIVED BY  
PLANNING DEPARTMENT

MAY - 4 2009

CITY OF NEWPORT BEACH

From: Sean O'Connor [mailto:SOConnor@sheppardmullin.com]  
Sent: Tuesday, May 05, 2009 9:25 AM  
To: Kiff, Dave  
Cc: McCloskey, Jim  
Subject: Conditions in Staff Report

Dave - I left you a voice mail message a bit ago about some concerns we have regarding some proposed conditions of approval. While I have a few other comments, my quick comments on the most important issues are in red.

i. Recovery Program and Industry Practices

Ocean Recovery will ensure that any client or resident removed from the Ocean Recovery program has the resources necessary to return home. Ocean Recovery is responsible for its clients' or residents' arrival back at their home city or state.

This condition is well intentioned but unmanageable and likely illegal. We can't force a client to return to his/her "home city or state." If a client chooses to remain in Orange County, he/she is free to do so, and we can't require otherwise. OK – our concern is that the person not be dumped in the back alley with his or her stuff (yes, we have had one home do that – the folks then roam the alleys knocking on doors for help). How about: "Ocean Recovery will ensure that any client or resident removed from the Ocean Recovery program has the resources necessary to return home, or if the client refuses, to obtain appropriate short-term shelter in the region." We understand your concern, but we're still concerned about the very end. We would be ok with the provision stating "Ocean Recovery will ensure that any client or resident removed from the Ocean Recovery Program has the resources necessary to return home." The way it reads, we could technically be responsible to obtaining (and paying for) short-term housing. Thoughts?

j. House Staffing

Ocean Recovery shall staff the facility with at least one qualified on-site manager, who shall be a certified addiction specialist and who shall be present at all times unless an emergency draws them elsewhere.

As a preliminary matter, we don't know what a "certified addiction specialist" is. If you mean a licensed counselor, those people are 1) in short supply, and 2) very expensive. We are happy to have a qualified on-site manager at the property at all times, and often the manager is a licensed counselor, but requiring a licensed counselor at all times is unreasonable. If you just delete the words "who shall be a certified addiction specialist and" this provision would be acceptable. OK. I agree that the person who is a qualified counselor does not need to be there at all hours – it is likely more necessary in one-person staff homes, but not yours. Will change this to: "Ocean Recovery shall staff the facility with qualified on-site managers, one of whom shall be present at all times." With this change, it is acceptable.

m. California Building Code (CBC)

The subject property is a Residential Group R-4 Occupancy Classification within the California Building Code. R-4 occupancies include buildings arranged for occupancy as residential care/assisted living facilities including more than six ambulatory clients, excluding staff, and include alcoholism or drug abuse recovery or treatment facilities.

Ocean Recovery agrees to work with the City's Fire Marshal to improve the fire safety of the subject property, if necessary, and in a reasonable and cost-effective manner.

We already have clearance from the fire department, and obtaining that clearance was incredibly time-consuming, expensive, and frustrating. The language whereby we agree to "work with the City's Fire Marshal to improve the fire safety of the subject property" has the possibility of becoming a moving target, whereby we may never be able to satisfy the Fire Marshall's wish list of improving the property. This condition was not part of the proposed conditions in February and should be deleted. Let me check with Steve Bunting to see if he has any known issues with 1115 West Balboa – if there are none, I am OK taking this out. OK; we'll wait to hear back on this.

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Sheppard Mullin <<http://www.sheppardmullin.com/images/smrhlogo-mini.jpg>>

650 Town Center Drive  
4th Floor  
Costa Mesa, CA 92626-1993  
714.513.5100 office  
714.513.5130 fax  
[www.sheppardmullin.com](http://www.sheppardmullin.com) <<http://www.sheppardmullin.com/>>

Sean O'Connor

714.424.2846 direct | 714.428.5961 direct fax  
[SOConnor@sheppardmullin.com](mailto:SOConnor@sheppardmullin.com) | Bio <<http://www.sheppardmullin.com/attorneys-472.html>>

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Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

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F A C S I M I L E C O V E R S H E E T

**\*\* THIS FACSIMILE TRANSMISSION WILL NOT BE MAILED \*\***

Date: April 30, 2009

File Number: 14YP-136436

Total number of pages:  
(including 1-page cover sheet) 14

If all pages are not received, please call  
Sheppard Mullin at 714-513-5100

<u>TO:</u>	<u>Facsimile No.</u>	<u>Telephone No.</u>
Thomas W. Allen, Hearing Officer David Kiff, Assistant City Manager	949-644-3229	949-644-3200

From: Sean P. O'Connor

Re: \_\_\_\_\_

**MESSAGE:** Correspondence of today's date.

NOTE: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.



650 Town Center Drive | 4th Floor | Costa Mesa, CA 92626-1993  
714-513-5100 office | 714-513-5130 fax | [www.sheppardmullin.com](http://www.sheppardmullin.com)

Writer's Direct Line: 714-424-2846  
[soconnor@sheppardmullin.com](mailto:soconnor@sheppardmullin.com)

Our File Number: 14YP-136436

April 30, 2009

***VIA E-MAIL AND FACSIMILE***

Mr. Thomas W. Allen, Hearing Officer  
Mr. Dave Kiff, Assistant City Manager  
City of Newport Beach  
Newport Beach City Hall  
3300 Newport Blvd.  
Newport Beach, CA 92663

Re: Use Permit Application for 1115 W. Balboa Blvd.; Use Permit  
Nos. 2008-030

Gentlemen:

This firm represents Ocean Recovery LLC, operator of a group residential facility located at the above-referenced address. This letter is submitted in support of Ocean Recovery's use permit application.

This matter was initially heard on February 12, 2009. At the conclusion of the February 12, 2009 hearing, the hearing officer continued this matter to August 12, 2009. This continuance was appealed and heard before the City Council on March 24, 2009. The City Council upheld the appeal, ordering that this matter be remanded and heard promptly (i.e., before August 12, 2009). In accordance with the City Council's decision, this matter was reset for hearing on May 7, 2009.

As a preliminary matter, and as set forth in this firm's May 20, 2008 letter to the City (a copy of which is attached as Exhibit No. 1), Ocean Recovery has chosen to proceed through the use permit application process, even though (as explained more fully herein) Ocean Recovery contends that the process and Ordinance No. 2008-05 (the "Ordinance") are unlawful. Accordingly, Ocean Recovery is proceeding through this process but is doing so under protest and with full reservation of rights.

**1. Ocean Recovery and Its Operations**

Ocean Recovery has been in business for approximately eight years. Unlike many operators in the City, Ocean Recovery has concentrated on providing assistance to a limited number of people at only two locations – 1115 W. Balboa Boulevard and 1601 W.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Mr. Thomas W. Allen, Hearing Officer  
Mr. Dave Kiff, Assistant City Manager  
April 30, 2009  
Page 2

Balboa Boulevard.<sup>1</sup> Ocean Recovery has intentionally run a small operation under only two locations so they can have the best possible supervision of their residents and provide the best possible care. Also, unlike many operators in the City, both of Ocean Recovery's facilities are licensed by the ADP.

In order to provide the highest level of service to its clients, Ocean Recovery hires only highly qualified counselors and employees. Ocean Recovery requires that a supervisor be on-site seven days a week, 24 hours a day. Ocean Recovery is also selective concerning the clients it will admit, and has a stringent application review and selection process. Unlike most operators in the City, Ocean Recovery does not take court-appointed clients.

**2. Ocean Recovery's History of Being a Responsible Operator and Good Neighbor**

Due to the fact that Ocean Recovery runs a smaller, more selective operation, with the best possible staff and constant on-site supervision, Ocean Recovery has enjoyed a reputation as being one of the best operators of group residential facilities in the City. As the City well knows, residential care facility operators have been under the microscope for the last several years and there has been enormous public scrutiny of group homes and their operations. Despite this high level of scrutiny, Ocean Recovery has received very few, if any, complaints concerning its operations until very recently. Indeed, until just before the February 12, 2009 hearing, there were remarkably few complaints regarding Ocean Recovery's operations.<sup>2</sup>

The relative lack of complaints is a clear indication that Ocean Recovery can provide much needed care to its clients while at the same time being compatible with the neighborhood in which it operates.

**3. The Current Use at the Ocean Recovery Facility Represents a Better, More Compatible Use Than Do Alternatives Allowable Under the Code**

Both of Ocean Recovery's facilities would be prime rental properties for high occupancy college students and/or summer vacationers. If this were to occur, not only would a total of 36 to 38 people in need of care be deprived of rehabilitation services, but the alternatives

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<sup>1</sup> Ocean Recovery obtained a use permit for the 1601 W. Balboa Boulevard facility at the February 12, 2009 hearing.

<sup>2</sup> The timing of the recent complaints – just days before the February 12, 2009 hearing - is very curious. Ocean Recovery had operated at this location for years with a relative dearth of complaints yet received a number of complaints immediately before the February hearing for its use permit.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Mr. Thomas W. Allen, Hearing Officer  
Mr. Dave Kiff, Assistant City Manager  
April 30, 2009  
Page 3

to the neighbors could be far worse. If the Ocean Recovery facilities were converted to rental properties, the following would likely occur:

- More people (potentially twice as many or more) would occupy the property than is currently the case;
- Parking would likely be dramatically worse, as renters would have cars compared to Ocean Recovery residents who do not have cars;
- There would be no qualified, individual supervision of the residents, compared to the professional 24/7 supervision that currently exists;
- There would be more trash generated by more occupants on the property;
- There would be no curfew, as currently exists at the property; and
- There would be no written rules<sup>3</sup> or internal enforcement mechanisms regarding profanity, smoking and other public behavior which the City cannot control in the private context.

Ocean Recovery understands that residential care facilities are not popular among many City residents, but the fact remains that these residents have a legal right to be here, and when properly analyzed, Ocean Recovery's operation represents a better use than is the case with alternatives allowable under the City's Code.

#### **4. The Recent Complaints From Neighbors and Ocean Recovery's Response to Them**

Before addressing the recent complaints and Ocean Recovery's response to them, two points need to be made. First, the complaints come from a small, well organized group of neighbors who live close to (if not adjacent to) Ocean Recovery's facility. This group has made well known its hostility toward all group operators and has a particular bias in this instance given that they live right next to Ocean Recovery. Second, Ocean Recovery believes that it has been unfairly blamed for problems caused by other group home operators. This issue was addressed briefly at the February 12, 2009 hearing, but Ocean Recovery believes that some of the complaints about group home clients were the result of clients of the operator at 1129 W. Balboa Boulevard.

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<sup>3</sup> Ocean Recovery's new Good Neighbor Rules are discussed infra.

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Mr. Dave Kiff, Assistant City Manager  
April 30, 2009  
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While the recent complaints against Ocean Recovery are suspect, Ocean Recovery has nevertheless made dramatic changes to its operations to ensure that its operations will no adversely affect the quality of life for its neighbors.

**A. Smoking**

The biggest complaints from the neighbors at the February 12, 2009 hearing concerned smoking. In particular, some of the neighbors complained about Thursday afternoon barbeques which attracted large numbers of people, some of whom smoked. Several things have been done to eliminate this smoking issue. First, Ocean Recovery has cancelled the Thursday afternoon barbeques. Second, Ocean Recovery has implemented a new rule stating that when smoking does occur, it must be in a designated area on the patio, with no more than four people smoking at one time. While this in itself would be a dramatic improvement, Ocean Recovery is going one step further: it will eliminate all outdoor smoking on the patio, and confine smoking to an indoor area.<sup>4</sup>

**B. Profanity**

At the February 12, 2009 hearing, some of the neighbors complained about profanity, allegedly from some of Ocean Recovery's clients. Ocean Recovery has always discouraged use of profanity by its clients, but it has now formalized this policy in a new Good Neighbor Rule: "Profanity and lewd speech is strictly prohibited. Profanity spoken or yelled at a level heard by neighboring residents will not be tolerated. Violation of this rule shall subject the client to dismissal from the program." Ocean Recovery has an onsite manager 24 hours a day/7 days a week enforcing all of the Good Neighbor Rules, including this one.

**C. Noise**

Another complaint lodged by the neighbors concerned noise from the Ocean Recovery facility. Ocean Recovery's newly enacted Good Neighbor Rules including the following to address any noise issues:

- Loud music is prohibited. Stereos can only be played at a reasonable level so as not to disturb roommates or neighbors. After 9:00 p.m. headphones must be used. TV's will be turned off between the hours of 8:00 a.m. and 5:00 p.m.
- No personal TV's or radios are allowed without permission of the house manager.

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<sup>4</sup> The City has tentatively approved a situation where smoking will be allowed in one of Ocean Recovery's garages.

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- Curfew hours are 10:00 p.m. Sunday through Thursday, and 11:00 p.m. Friday and Saturday. Special arrangements can be made with the house manager in advance for special circumstances.
- Lights out at 11:00 p.m. Sunday through Thursday and midnight Friday and Saturday.
- Quiet time (meaning that televisions, music, and talking cannot be heard off the facility) is observed from 9:00 p.m. to 8:00 a.m. daily.

Again, Ocean Recovery has a manager onsite 24 hours a day/7 days a week to enforce these rules.

**D. Ocean Recovery's Voluntary Adoption of the Good Neighbor Rules**

As mentioned above, Ocean Recovery has always prided itself in being a good neighbor. However, Ocean Recovery has taken steps to ensure that it will be an even better neighbor. Specifically, following the February 12, 2009 hearing in this matter, Ocean Recovery spent considerable time and effort crafting a new set of Good Neighbor Rules, a true and correct copy of which is attached hereto as Exhibit 2.

These Good Neighbor Rules address all of the core complaints brought forth by certain neighbors at the February 12, 2009 hearing. Ocean Recovery presented these Good Neighbor Rules in draft form to the City Staff to solicit Staff comments. City Staff made some comments which were incorporated into the Good Neighbor Rules. Ocean Recovery also presented these Good Neighbor Rules to its neighbors and solicited input from the neighbors. This has been a very proactive process on Ocean Recovery's part, to ensure the maximum level of protection for Ocean Recovery's neighbors.

**5. The Ordinance is Unlawful**

While Ocean Recovery is going through this use permit process, Ocean Recovery is compelled to state its very strong contention that the Ordinance in general and the use permit process in particular are unlawful. Ocean Recovery has been working cooperatively with the City and looks forward to a mutually acceptable resolution through this process. Ocean Recovery hopes that it is not forced into a position to specifically address and challenge the legality of the Ordinance as Ocean Recovery would be forced to establish, among other things, the following:

- The Ordinance, and its related enforcement mechanisms such as this use permit process are being applied in a discriminatory and unlawful manner, violate the Americans with Disabilities Act ("ADA").

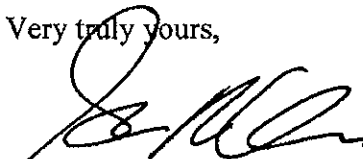
SHEPPARD MULLIN RICHTER & HAMPTON LLP

Mr. Thomas W. Allen, Hearing Officer  
Mr. Dave Kiff, Assistant City Manager  
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Page 6

- The Ordinance and its enforcement mechanisms are being applied in a discriminatory manner and violate section 504 of the Rehabilitation Act of 1973, 29 U.S. Code section 794(a).
- The Ordinance is being applied in a discriminatory and unlawful manner and violates the Fair Housing Amendments Act, 42 U.S. Code section 3601, et seq. ("FHAA") which extended the federal guarantee of fair housing to individuals with disabilities.
- The Ordinance as applied constitutes a violation of the equal protection clause. 42 U.S. Code section 1983 prohibits an agency or local government such as the City from violating any provision of the United States Constitution or federal statutes under color of law in violation of the 14th amendment guarantee of equal protection of the law.
- The Ordinance as it relates to licensed facilities is preempted by State law.
- The Ordinance is being applied in an unfair and/or discriminatory manner and is prohibited by the California Fair Employment and Housing Act ("FEHA"), which prohibits discrimination in providing housing for the handicapped.

As a reminder, Ocean Recovery specifically requests that this letter be included in the record and considered as part of the use permit application process. Please contact me with any questions.

Very truly yours,



Sean P. O'Connor

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:NSOW401513186.1

Enclosures

cc: Jim McCloskey

**EXHIBIT 1**



650 Town Center Drive | 4th Floor | Costa Mesa, CA 92626-1993  
714-513-5100 office | 714-513-5130 fax | [www.sheppardmullin.com](http://www.sheppardmullin.com)

Writer's Direct Line  
714-424-2846  
[soconnor@sheppardmullin.com](mailto:soconnor@sheppardmullin.com)

May 20, 2008

Our File Number: 14YP-136436

*Via Personal Delivery*

City of Newport Beach – City Manager's Office  
Attn: Dave Kiff  
Group Residential Use Permit Application  
Newport Beach City Hall  
3300 Newport Boulevard  
Newport Beach, California 92663

Re: Use Permit Application for 1115 West Balboa Boulevard & 1601 West Balboa Boulevard

Dear Mr. Kiff:

As you know, this firm represents Ocean Recovery LLC, operator of two group residential facilities located at the above-referenced addresses. Pursuant to notice received from the City that Ocean Recovery is subject to Ordinance No. 2008-05 (the "Ordinance"), and in order to preserve its rights to challenge any aspect of the City's application process and the application of the Ordinance to Ocean Recovery's operations, Ocean Recovery hereby submits the enclosed Use Permit Applications for its facilities, but does so under protest and with full reservation of its rights. Ocean Recovery's applications are submitted under duress and threat of unlawful municipal action, including, but not limited to forced closure of its businesses.

Ocean Recovery contends the Ordinance is unlawful for a variety of reasons, including, among other reasons, the following:

- The Ordinance, and its related enforcement mechanisms such as the use permit application and the standards of conduct required therein as a condition of application, if applied in a discriminatory and unlawful manner, violate the Americans with Disabilities Act ("ADA").
- The Ordinance and its enforcement mechanisms, if applied in a discriminatory manner, violate section 504 of the Rehabilitation Act of 1973, 29 U.S. Code section 794(a).
- The Ordinance, if applied in a discriminatory and unlawful manner, violates the Fair Housing Amendments Act, 42 U.S. Code section 3601, *et seq.* ("FHAA")

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City of Newport Beach – City Manager's Office  
Group Residential Use Permit Application  
May 20, 2008  
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which extended the federal guarantee of fair housing to individuals with disabilities.

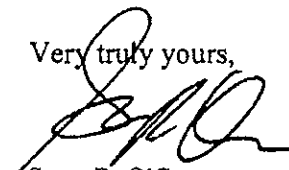
- The Ordinance, if applied, constitutes a violation of the equal protection clause. 42 U.S. Code section 1983 prohibits an agency or local government such as the City from violating any provision of the United States Constitution or federal statutes under color of law in violation of the 14<sup>th</sup> amendment guarantee of equal protection of the law.
- The Ordinance as it relates to licensed facilities is preempted by State law.
- The Ordinance, if applied in an unfair and/or discriminatory manner, is prohibited by the California Fair Employment and Housing Act ("FEHA"), which prohibits discrimination in providing housing for the handicapped.

Ocean Recovery reserves its right to submit Reasonable Accommodation requests in connection with its applications, and further specifically protests the City's requirements that Ocean Recovery must establish local need (Evidence of Capacity and Need) for its facilities, or agree to discriminatory and illegal standards such as the City's Secondhand Smoking and Good Neighbor policies as a condition of these applications.

Based on the foregoing, Ocean Recovery contends that application of the Ordinance to Ocean Recovery, and the attendant use permit application process are unlawful. Ocean Recovery also specifically reserves its rights to challenge the legality of the Ordinance, enforcement thereof, and the use permit process. Such challenges may include, but are not limited to, instituting litigation against the City, should the Ordinance be applied to Ocean Recovery's facilities in an unlawful manner.

Please contact me with any questions.

Very truly yours,



Sean P. O'Connor

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:3MPB1400846270.1

Enclosures

**EXHIBIT 2**



### OCEAN RECOVERY GOOD NEIGHBOR RULES

**NOTE: IT IS IMPERATIVE THAT ALL CLIENTS UNDERSTAND AND ABIDE BY THESE RULES. VIOLATION OF ANY OF THESE RULES SHALL SUBJECT THE CLIENT TO REMOVAL FROM THE PROGRAM.**

- Clients are reminded that this facility is in a residential neighborhood with families including children in close proximity. Clients are to respect the quality of life and neighborhood character of the community and treat all neighbors with respect.
- Profanity and lewd speech is strictly prohibited. Profanity spoken or yelled at a level heard by neighboring residents will not be tolerated. Violation of this rule shall subject the client to dismissal from the program.
- Loud music is prohibited. Stereos can only be played at a reasonable level so as not to disturb roommates or neighbors. After 9:00 p.m. headphones must be used. TV's will be turned off between the hours of 8:00 a.m. and 5:00 p.m.
- No personal TV's or radios are allowed without permission of the house manager.
- Curfew hours are 10:00 p.m. Sunday through Thursday, and 11:00 p.m. Friday and Saturday. Special arrangements can be made with the house manager in advance for special circumstances.
- Lights out at 11:00 p.m. Sunday through Thursday and midnight Friday and Saturday.
- Quiet time (meaning that televisions, music, and talking cannot be heard off the facility) is observed from 9:00 p.m. to 8:00 a.m. daily.

3419 Via Lido #310 Newport Beach, California 92663  
Ph. (949) 723-2388, (800) 641-2388 Fax. (949) 723-1288



- Loitering in alleyways and gathering outside the facility in a manner disruptive to our neighbors is strictly prohibited.
- Clients should refrain from engaging neighboring residents in conversation unless the conversation is initiated by the neighboring resident.
- Clients should refrain from all times from any verbal altercations with neighboring residents.
- Musical instruments are not allowed on the premises unless special arrangements are made with, and approved by, the House Manager. Drums are not allowed on the premises. In no event shall musical instruments be played after 9:00 p.m.
- No smoking in Ocean Recovery buildings, surrounding sidewalks, streets or alleys – smoking is only permitted on the patio away from neighbors homes.
- When smoking does occur on the designated patio, no more than 4 people shall be permitted to smoke at any one time. Smoking should be done in a manner that does not send second hand smoke to adjacent residences' doors and windows or onto neighbors' patio areas.
- Clients recognize that cigarette butts are unsightly litter and will be disposed of properly. In no circumstances will clients leave cigarette butts on the ground, floor, deck, sidewalk, gutter, or street.
- Clients recognize and respect the City's prohibition against smoking on beaches, the ocean front walk and other public places.

3419 Via Lido #310 Newport Beach, California 92663  
Ph. (949) 723-2388, (800) 641-2388 Fax. (949) 723-1288



- Friends may only visit the house with the permission of the house manager. Visitors are confined to the designated visiting area and are not permitted in the apartments. No visitors after 9:00 p.m. All visitors must check in with and be approved by the manager. No overnight visitors. Visitors are not allowed to participate in recreations or workshops that are held during visiting hours. Visiting must not conflict with scheduled group times. Clients are responsible for directing and ensuring that visitors abide by all of the rules contained herein.
- Clients are not allowed cars, motorcycles, or any other motorized form of transportation.
- Clients are strictly prohibited from attending Saturday 9:30 a.m. NA Beach meetings.
- Clients are strictly prohibited from attending Sunday 9:30 a.m. AA Beach meetings.

3419 Via Lido #310 Newport Beach, California 92663  
Ph. (949) 723-2388, (800) 641-2388 Fax. (949) 723-1288

## Brown, Janet

---

**From:** Kiff, Dave  
**Sent:** Wednesday, May 06, 2009 9:59 AM  
**To:** Brown, Janet  
**Subject:** FW:  
**Attachments:** Ocean+Recovery+Good+Neighbor+Rules[1].pdf

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**From:** jmccloskey [mailto:jmccloskey@oceanrecovery.com]  
**Sent:** Saturday, March 14, 2009 1:18 PM  
**To:** Kiff, Dave  
**Subject:**

Dear Neighbors:

Attached hereto are Ocean Recovery's "Good Neighbor Rules."

As I hope you will be able to tell, we have spent a fair amount of time preparing this document. The "Good Neighbor Rules" address various concerns raised at the February 12<sup>th</sup> public hearing. These rules also incorporate some of the applicable "Good Neighbor Principles" prepared by the City.

We are also taking steps to ensure that these rules are enforced and followed. We are doing our best to be a good neighbor, and we think that these rules show our commitment in that regard. Please contact me if you have any comments regarding these rules or if you have any ideas as to how we can within reason further improve these rules.

By the way, as you may know, we have a supervisor on site 24 hours per day, seven days per week. If you have any concerns that need immediate attention, we may be reached 24/7 at the number referenced on the rules (949 723-2388).

Sincerely,  
Jim McCloskey



### **OCEAN RECOVERY GOOD NEIGHBOR RULES**

**NOTE: IT IS IMPERATIVE THAT ALL CLIENTS UNDERSTAND AND ABIDE BY THESE RULES. VIOLATION OF ANY OF THESE RULES SHALL SUBJECT THE CLIENT TO REMOVAL FROM THE PROGRAM.**

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Ph. (949) 723-2388, (800) 641-2388 Fax. (949) 723-1288



**OCEAN RECOVERY**  
Foundation for Hope

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**OCEAN RECOVERY**  
Foundation for Hope

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Ph. (949) 723-2388, (800) 641-2388 Fax. (949) 723-1288

## Brown, Janet

---

**From:** Kiff, Dave  
**Sent:** Wednesday, May 06, 2009 9:58 AM  
**To:** Brown, Janet  
**Subject:** FW: 1115 Balboa

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**From:** susustiles@aol.com [mailto:susustiles@aol.com]  
**Sent:** Tuesday, March 24, 2009 2:23 PM  
**To:** Kiff, Dave  
**Subject:** 1115 Balboa

Mr. Kiff:

I'm writing this in response to our phone conversation of March 23, 2009. I received an email about hearings concerning recovery houses in Newport Beach. The facility I am concerned with is at 1115 W. Balboa. My house is in the 1000 block of Balboa Blvd. I have witnessed several people parking cars in front of my house and my neighbors and walking to that house. In the winter there is always parking on my block and now there isn't. When walking in the alley behind that house my husband and I noticed that the trash cans for 1115 are filled with beer cans and liquor bottles. We both thought what a joke for a recovery house. I have seen people walking down the alley and go into 1115 carrying beer. Also, I have been awoken late at night when people have been urinating in my parking space and standing in my yard talking. I have gone out and chased them away. They always go into 1115.

I Totally understand people need a chance to better their lives, but these facilities need to be run in a more efficient manner. The safety and life style of homeowners of Newport Beach needs to be a top concern, not the amount of money these companies make.

Thank you,  
  
Susan Stiles

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