

**CITY OF NEWPORT BEACH  
PLANNING DEPARTMENT STAFF REPORT**

May 7, 2009  
Agenda Item 1

**TO:** Thomas W. Allen, Hearing Officer

**SUBJECT:** Ocean Recovery, LLC  
1115 West Balboa Boulevard

- Use Permit No. 2008-030 (PA2008-101)

**APPLICANT:** Ocean Recovery, LLC.

**CONTACT:** Janet Johnson Brown, Associate Planner  
[jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)  
(949) 644-3236

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**PROJECT SUMMARY**

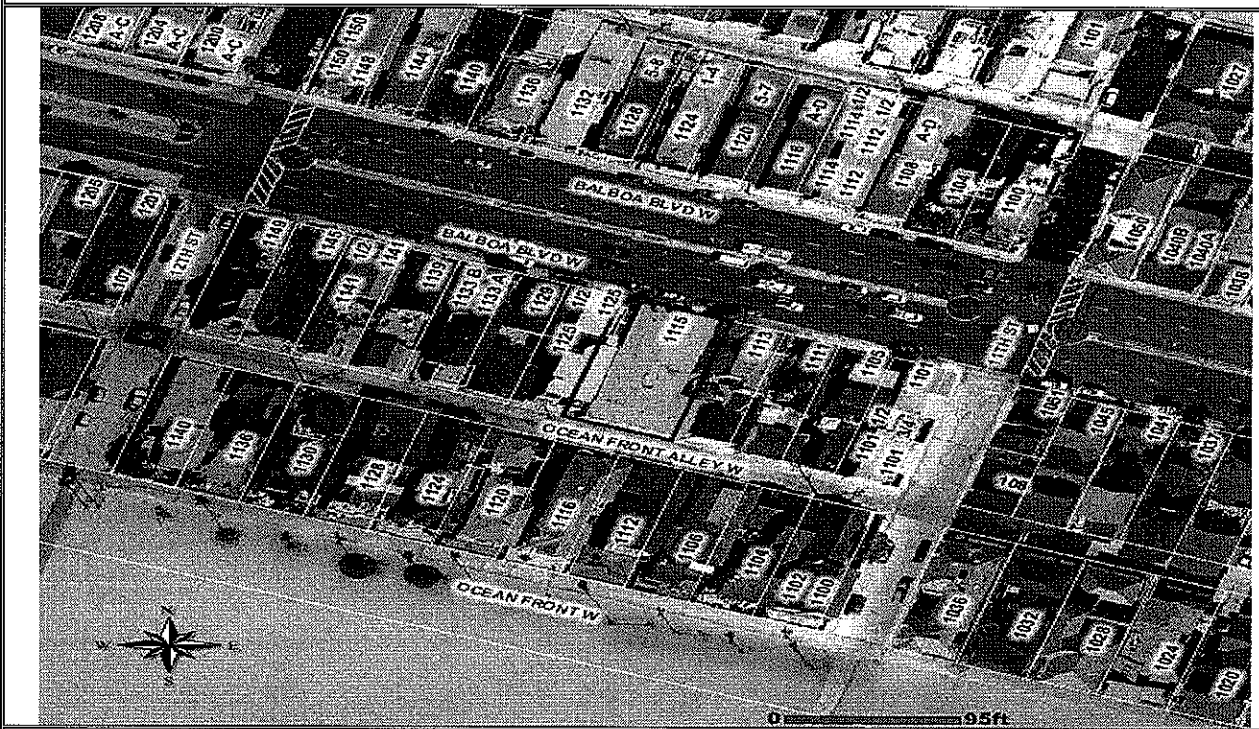
An application requesting approval of a use permit to continue the use of an existing residential care facility that provides state-licensed adult alcohol and/or drug abuse treatment for up to 22 male clients. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. A public hearing of this application was originally scheduled for February 5, 2009. The public hearing was continued to and held on February 12, 2009, at which time testimony was given by city staff, the applicant, and the public. At the February 12, 2009 public hearing the item was continued for a period of six months. This action was appealed. A public hearing on the appeal was conducted by City Council on March 24, 2009, at which time the matter was remanded back to the Hearing Officer for a decision.

**RECOMMENDATION**

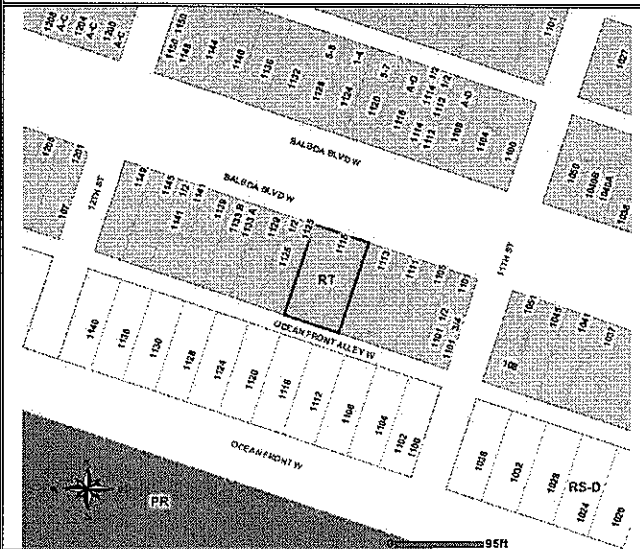
Staff recommends that the Hearing Officer conduct a public hearing, receive testimony from the applicant, the City of Newport Beach and its legal counsel, and members of the public. At the conclusion of the hearing, staff recommends that the Hearing Officer:

1. Approve the application subject to a condition of approval reducing the total permitted number of resident beds from 22 to 18 based on the findings discussed in this report; and
2. Direct staff to prepare a resolution of approval of Use Permit No. 2008-030 subject to the findings discussed in this staff report and the draft conditions of approval which are attached as Exhibit 1.

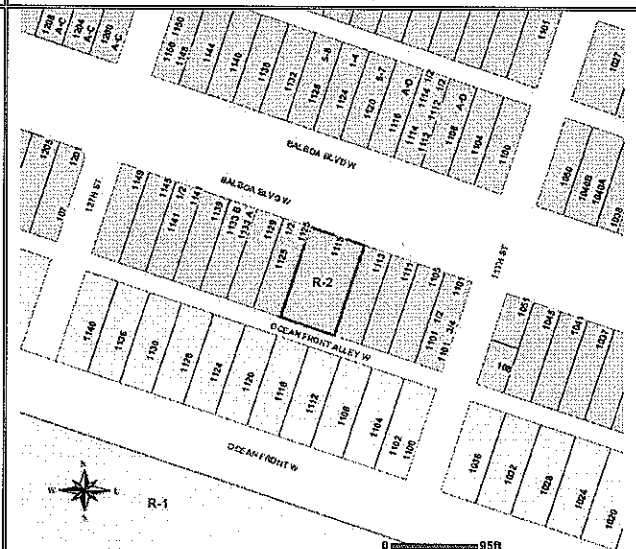
**VICINITY MAP**



**GENERAL PLAN**



**ZONING**



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	RT, Two-Unit Residential	R-2, Two-Family Residential	Residential Care Facility
NORTH	RT, Two-Unit Residential	R-2, Two-Family Residential	Residential use
SOUTH	RS-D, Single Unit Residential Detached	R-1, Single-Family Residential	Residential use
EAST	RT, Two-Unit Residential	R-2, Two-Family Residential	Residential use
WEST	RT, Two-Unit Residential	R-2, Two-Family Residential	Residential use

## **BACKGROUND**

On February 12, 2009 a public hearing was held on Use Permit No. 2008-030. A copy of the February 12, 2009 staff report is included as Exhibit 2. Several letters and emails were received by the City from residents and concerned individuals regarding negative secondary impacts associated with the operation of the facility, which are described in detail in Exhibit 2. The following summarizes the allegations raised by neighbors as described in Exhibit 2 which staff also expressed concern with and which were analyzed by the Hearing Officer as part of the public hearing review of Use Permit No. 2008-030 on February 12, 2009.

- Threatening, confrontational, or age-inappropriate interactions of clients with neighbors;
- Excessive profanity, especially when youth are nearby;
- Excessive noise, as well as noise late at night;
- Poor and inappropriate responses from clients when neighbors attempt to remedy inappropriate interactions, noise concerns, or profanity from clients;
- Excessive secondhand smoke, described as more than usually expected if the facility held an identical amount of persons not in recovery;
- Trash problems such as odor, vectors, and cans placed too early and removed too late;
- Curfew violations; and
- An apparent lack of adequate on-site supervision.

In response to the concerns raised at the public hearing, the applicant agreed to conditions of approval which included the formulation of a management and operations plan for review and approval by the City, to operate with no more than 18 residents at any one time, and to work with neighbors to address their concerns including those related to secondhand smoke, noise, inappropriate interactions, trash, and general supervision of clients and facility management. The proposed operations and management plan, and house rules adopted for implementation by Ocean Recovery are included as Exhibit 3.

The Hearing Officer continued the public hearing to August 12, 2009 in order to determine whether the applicant could demonstrate that the facility could be adequately supervised and whether a maximum resident occupancy of 18 should be made a permanent condition of continued operations. At the public hearing on the use permit, Ocean Recovery representatives asserted that many of the problems identified by neighboring residents were caused by residents at an unlicensed sober living facility located at 1129 West Balboa Boulevard. The City's code enforcement department has informed staff that the sober living home located at 1129 West Balboa Boulevard was abated in late April 2009.

On February 26, 2009, an appeal of the Hearing Officer's continuation of the public hearing of the use permit until August 12, 2009 was filed with the City. The appeal was a request that the City Council reverse the decision of the Hearing Officer and direct the

Hearing Officer to make a final decision on Use Permit No. 2008-030. On March 24, 2009 the City Council conducted a public hearing on the appeal and remanded the application for Use Permit 2008-030 back to the Hearing Officer for further consideration.

## **DISCUSSION**

### **Description of Project Operations**

As described in the February 12, 2009 staff report, Ocean Recovery is licensed by the State of California's Department of Alcohol and Drug Programs (ADP) to operate and maintain an adult residential alcohol and/or drug abuse/recovery or treatment facility at 1115 West Balboa Boulevard with a total occupancy of 22 men. In the application materials submitted by Ocean Recovery, the manager of the facility had informed staff that the occupancy of the facility was generally maintained at 20 residents. The manager of the facility has informed staff that the occupancy of the facility has now been limited to a total of 18 residents.

Ocean Recovery operates another similar facility located at 1601 West Balboa Boulevard in the City of Newport Beach, which is an ADP licensed 16-bed residential care facility for women only. Ocean Recovery received a use permit for this facility to operate with a maximum client occupancy of 14 resident beds. Ocean Recovery has recently received an ADP license to operate a "six and under" facility at 1217 West Bay Avenue for women who are dually-diagnosed with eating disorders and alcohol or drug dependency. Subject to litigation in federal court, the City is currently precluded from regulating the 1217 West Bay Avenue facility as an "integral use" with either the facility at 1115 West Balboa Boulevard or the facility at 1601 West Balboa Boulevard.

There were two apparent code violations related to the facility located at 1115 West Balboa Boulevard which include the conversion of garages to non-parking uses and conducting assembly uses at the facility. To staff's knowledge both code violations have been corrected.

### **RECENT PUBLIC INPUT ON THIS APPLICATION**

Since the February 12, 2009 public hearing staff has received the following input from area residents on Use Permit No. 2008-030.

#### **WRITTEN CORRESPONDENCE:**

Within a form letter:

"I am writing to object to the decision of the Hearing Officer to continue the public hearing to a date certain (i.e. 6 months). 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 overconcentration 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 the Hearing Officer and the City to deny this Ocean Recovery Use Permit. I am now asking the City Council to direct the Hearing Officer to make his decision now and deny this Use Permit without further delay. It is now time for the City to consider the safety and wellbeing of the neighborhood.

From Terry and Laurie McKenzie:

"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 overconcentration 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."

From Susan Stiles:

"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."

From Jim McCloskey:

"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 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). "

An E-mail Combining Comments from Paul Lopez and Jim McCloskey (the latter in italics):

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.

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

-Lights out at 11:00 p.m. 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."

Mr. Lopez also complained directly to Mr. McCloskey about residents playing ping pong after 9:00 p.m. on or about March 18, 2009. Mr. McCloskey responded as follows:

"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. "

#### AT THE MARCH 24<sup>th</sup>, 2009 COUNCIL MEETING

At the Newport Beach City Council's meeting of March 24, 2009, the Council was asked to consider appealing the hearing officer's action to continue Ocean Recovery's use permit hearing for six months. Generally, the discussion was limited to the merits of appealing the hearing officer's action -- as opposed to inviting new testimony about the proposed use at 1115 West Balboa. However, in an attempt to characterize the testimony, the following comments were offered:

- Mr. Lopez referred to clients with cars, garages being used as meeting rooms, second-hand smoke, and the presence or absence of a full-time manager.
- Ms. Darling noted second hand smoke, noise, and large amounts of people.
- Ms. Oberman believed that the home contributed to overconcentration in the area.

#### COUNCIL'S ACTION ON MARCH 24, 2009

At that same meeting, the Council voted 6-1 to:

- A. Find that a decision was made and that the granting of a temporary use permit constituted an abuse of discretion, made without substantial evidence;
- B. Remand the matter to the Hearing Officer to make a prompt decision on the merits of the matter; and
- C. In considering the merits, request that the hearing officer review whether false or misleading statements have been made and to consider including the smoking regulations consistent with the Ordinance as one of the conditions if a Use Permit is granted.

In response to Item C above, staff has updated a proposed condition if the Use Permit were to be issued to reflect directly the language of Ordinance No. 2008-05. Staff has not concluded that one party or another made "false or misleading statements" as a part of testimony.

Is they relate to several of the existing operational aspects of the facility at 1115 West Balboa Boulevard, specifically with regard to the ability of management to adequately supervise their clients and with regard to impacts associated with secondhand smoke, trash, and noise levels, staff believes that conditions of approval could be applied to the use to allow this use to remain and be consistent with Ordinance No. 2008-05.

## **ANALYSIS**

Pursuant to NBMC Section 20.91A.040, the Hearing Officer is designated to approve, conditionally approve, or disapprove applications for use permits. The Hearing Officer's decision may be appealed to the City Council. Pursuant to Section 20.91A.060 of the NBMC, the Hearing Officer shall make certain specific findings before approving or conditionally approving an application for a use permit in a residential district. Should the Hearing Officer make the determination to approve or conditionally approve an application for a use permit, the Hearing Officer may impose conditions suitable to assure compatibility of the proposed use with other uses in the vicinity.

In order to approve or conditionally approve an application for a use permit, the Hearing Officer is required to make each of the 11 findings listed in Section 20.91.035 (A) and in Section 20.91A.060 of the NBMC. Failure of the Hearing Officer to make one or more of these findings shall constitute grounds to deny the use permit application.

Four primary criteria are evaluated as part of the determination as to whether all eleven findings can be made. These four criteria and a discussion of each are summarized below.

**1 – Overconcentration of Group Residential Uses.** Using the City's Ordinance No. 2008-05 (Section 20.91A.060 D.3) the Hearing Officer has determined that a block length within the mid-Balboa Peninsula area is 617 feet in length, which is the calculable median block length within the Nonstandard Subdivision Areas, including the Balboa Peninsula. The following factors affect the Hearing Officer's determination when evaluating whether a use constitutes overconcentration:

- The Code's definition of a block. The City's Ordinance (NBMC Section 20.03.030 – Definitions) defines a block as follows:

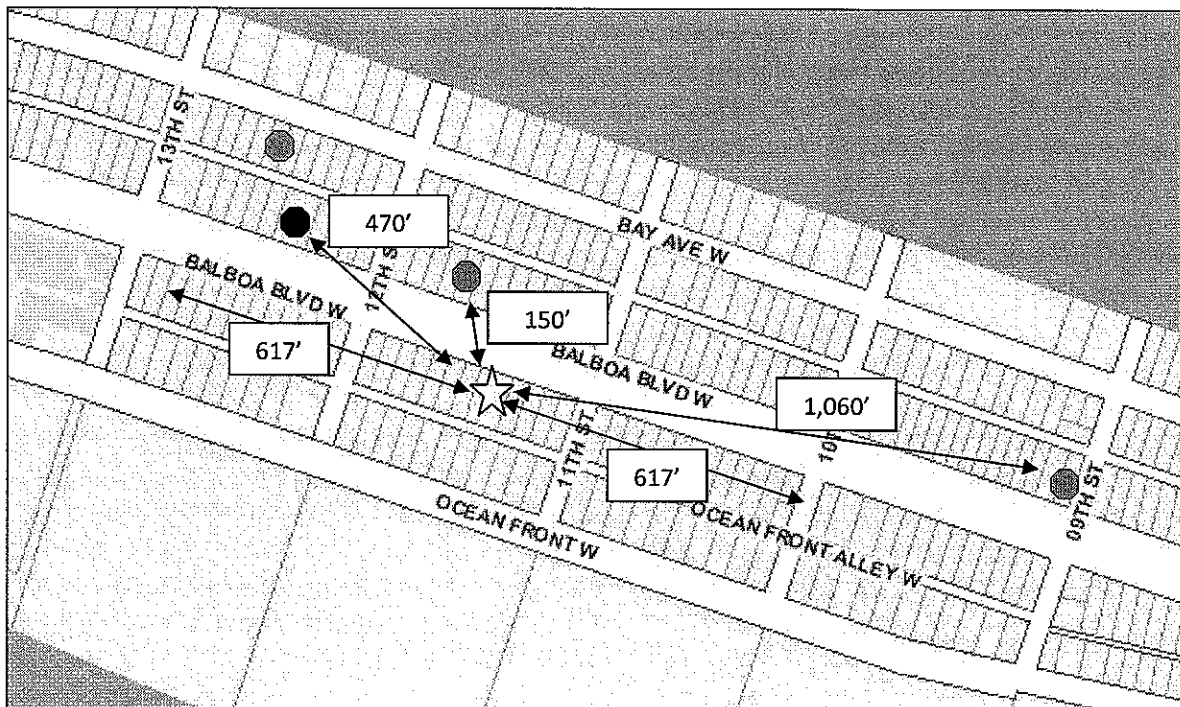
*"Block" means an area of land that is bounded on all sides by streets or by streets and a shoreline or by streets and a cul-de-sac or by any other form of termination of the street (i.e., dead end not a cul-de-sac).*

- The Code's inclusion of the American Planning Association's (APA) standard. The APA Standard is contained within NBMC Section 20.91A.060 and states that the

Hearing Officer can consider whether it is appropriate to apply the APA Standard in various cases, such standard being *one or two such uses per block*.

With the abatement of the unlicensed sober living facility located at 1129 West Balboa Boulevard, the 22-bed Ocean Recovery facility is the only residential care facility located on the south side of West Balboa Boulevard within a block length of 617 feet, as illustrated on Diagram A. The nearest other operating residential care facilities, Balboa Horizons and Newport Coast Recovery, are located within another block on the north side of West Balboa Boulevard. Balboa Horizons was granted approval of a use permit. Newport Coast Recovery was denied a use permit and has appealed the denial. The City Council has not yet acted on the appeal, but has instead moved to re-open Newport Coast's use permit hearing based on evidence acquired after Newport Coast's initial use permit hearing.

Diagram A  
1115 West Balboa Proximity



**LEGEND:**

- Red Dot = Newport Coast Recovery, 1216 West Balboa (denied Use Permit)
- Green Dots = Balboa Horizons, 1132 West Balboa; LMS Properties, 900 West Balboa (approved Use Permit or approved reasonable accommodation, respectively)
- Blue Dot = Ocean Recovery, 1217 West Bay (not subject to Use Permit)
- Star = Ocean Recovery, 1115 West Balboa (use permit pending)

Staff believes that the NBMC directs the Hearing Officer to consider the center of Balboa Boulevard as a dividing line between blocks for the purposes of the APA standard. Staff believes that the APA standard does not suggest that "drawing a circle" around a proposed use, and applying a distance to it is intended. Instead, the APA

standard suggests "one or two group homes on a single block." Because the City's ordinance considers a block as "an area that is bounded on all sides by streets," then the facilities on the opposite side of Balboa Boulevard from the subject site are on a separate block. Therefore, with the application of the APA standard of one use per block, granting a use permit to 1115 West Balboa Boulevard would be consistent with the code.

Please see Exhibit 5 for a more detailed discussion about the *APA Policy Guide on Community Residences*.

**2 – Proximity to Other Uses.** The proposed Ocean Recovery facility is approximately 1,220 feet from an existing large licensed day care facility and approximately 730 feet from Newport Elementary School, a distance sufficient from these facilities so that the use, if approved with conditions, would not affect or be affected by the use or operations of these facilities.

**3 – Management and Operational Issues.** The findings required by NBMC Section 20.91A.060 require that the use comply with specific operational standards in order for all findings required for the use permit to be made. In order for the facility to meet the standards required by the findings for approval of use permit staff recommends that certain conditions of approval be incorporated into the project as described below.

**a. Maximum Number of Beds**

Occupancy of the facility shall be limited to a maximum of 18 resident beds plus up to two house managers and shall be restricted to male residents only.

**b. Quiet Hours**

The facility manager shall enforce Quiet Hours for the property between 9:00 p.m. to 8:00 a.m. daily. During these periods, no noise (including music, TVs, voices) shall be audible from beyond the property line except during emergencies.

**c. Assembly Uses**

Assembly uses involving persons who do not reside at the facility where the meeting is taking place, including but not limited to meetings and group counseling sessions, are prohibited, except that house staff and family members of persons residing at the facility may meet with residents provided such meetings preserve the quiet of the neighborhood.

**d. Parking, Client and Staff Transportation, Garages**

Ocean Recovery's clients shall not have personal vehicles during their stay at the facility. Garages shall be cleared and available for staff vehicle parking. Staff shall park in the garages whenever possible. Staff shall familiarize clients with local OCTA bus stops and routes, keeping a current route map and schedule in the facility at all times.

**e. Security & Safety**

The entrances and exits of each facility shall be secured and monitored. Fire exits shall be marked in accordance with the California Building Code. Smoke detectors and fire extinguishers shall be kept in operable condition. Exit passages shall be kept clear at all times.

**f. Side Property Wall**

The "pony wall" that exists along the eastern side property line of the facility shall be increased to up to 6 feet in height (except within the 10-foot front yard setback). All construction associated with this condition shall be subject to issuance of a City Building Permit and shall comply with the California Building Code. Ocean Recovery shall complete construction work within 60 days of the issuance of a Use Permit. Ocean Recovery shall install landscaping screening material, such as bamboo or other appropriate plantings, along the interior of the raised walls to further reduce impacts and interaction of facility residents with adjacent neighbors.

The City Manager or his designee shall review and approve the construction and landscape plans for improvements to the side property walls, to assure that they are aesthetically appropriate and comply with Municipal Code requirements.

1115 West Balboa  
Pony Walls, Eastern Side Yard



**g. Clients Referred by Governmental Agencies**

Ocean Recovery shall not provide any services to any client or house any client who has been referred or caused to be referred to Ocean Recovery's facility by any governmental agency, including, but not limited to, probationers or parolees, due to the limitations that California Building Code §509.9 places on Group I and R occupancies.

**h. Trash**

Ocean Recovery shall abide by the City's regulations regarding trash disposal, including providing the proper number of cans for the facility's use to ensure that cans do not overflow by placing the cans out no earlier than 7:00 p.m. the evening prior to collection, and by placing the cans back in the side yard (or other contained area) no later than 6:00 p.m. the day of collection.

**i. Recovery Program and Industry Practices**

Ocean Recovery shall preserve and maintain its present (May 2009) recovery model, which provides State-licensed non-medical residential treatment for persons in recovery from alcohol and/or drug addiction. Ocean Recovery shall not operate its facilities in a manner that does not comply with its state license.

Ocean Recovery shall use its industry's best practices to ensure that its clients succeed in their recovery at the Ocean Recovery facility by requiring clients to adhere to House Rules prohibiting the use of alcohol or drugs, prohibiting the possession of items containing alcohol or drugs; providing for scheduled testing, random testing, counseling, etc.

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.

**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.

**k. Nuisances**

The subject property shall not be unsafe, unsightly or poorly maintained. If Ocean Recovery receives a nuisance violation from the City, Ocean Recovery shall correct the violation within seven days or contact the City directly to negotiate a mutually agreeable timeline.

**l. Client or Staff Behavior**

Ocean Recovery shall not tolerate lewd behavior or lewd speech at the subject property, nor shall Ocean Recovery tolerate profanity spoken or yelled by staff or clients at a level audible to neighboring residents. Ocean Recovery shall enforce house rules against lewd speech, lewd behavior, or profanity.

**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.

**n. Smoking & Cigarette Litter**

Per NBMC Section 20.91A.050(A), no clients, guests, or any other users of the subject property may smoke in an area from which the secondhand smoke may be detected on any parcel other than the subject parcel upon which the facility is located. Ocean Recovery shall restrict smoking to an area within the facility with an air filter to minimize or eliminate second hand smoke on its property. Smoking outdoors on the property is prohibited.

Ocean Recovery shall enforce house rules against litter, including prohibiting clients, staff, or residents from littering cigarette butts on the ground, sidewalk, gutter, or street.

**o. Deliveries**

Business and food or supply deliveries shall only be made during normal business hours, which are between 8:00 a.m. and 5:00 p.m. on weekdays.

**p. Contact Information**

Ocean Recovery shall provide its neighbors and the City with the contact name, phone number, and e-mail address of the on-site manager or a higher level employee to assist residents and the City with problems or concerns arising from the subject property. E-Mails or messages left with Ocean Recovery's contact name shall be returned in a prompt manner.

**q. House Rules**

Ocean Recovery shall post and enforce the House Rules as shown in Exhibit 4.

**4. Traffic and Generated Trips.** The Institute of Transportation Engineers (ITE) establishes and publishes standards for trip generation rates based on the use classification of a site. In the case of an apartment building, the standard trip rate is based on 6.72 average daily trips per each dwelling unit. Trip rates for residential care facilities are based on 2.74 average daily trips per each occupied bed. Based on these standards, a six-unit apartment complex would generate approximately 40 average daily trips. An 18-bed facility would generate approximately 50 average daily trips, unless personal vehicle restrictions were imposed, as is proposed.

## **REQUIRED FINDINGS**

In analyzing the application and in light of the recommended conditions of approval, staff is able to establish supporting evidence to make all of the 11 required findings per NBMC Sections 20.91.035 (A) and 20.91A.060. The required findings, and discussion of each finding, are as follows:

NBMC Section 20.91.035 (A) Findings 1 through 4:

**1. Finding: That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.**

The use is in conformance with the objectives of this code and the purposes of the district in which the site is located and this finding can be made for the following reasons:

The subject property is within an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed application for Use Permit No. 2008-030 is in accord with the objectives and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The objectives of the code include provisions intended to reduce, through the use permit process, the potential for overconcentration of residential care facilities within a neighborhood and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use.

The City has determined that an overconcentration would exist if more than one residential care facility exists within one block length. Within the mid-Balboa Peninsula area, the City has determined that a block length is 617 feet, which is the calculable median block length within the Nonstandard Subdivision Areas, including the Balboa Peninsula. It is appropriate for the Hearing Officer to consider the center of Balboa Boulevard as a dividing line for purposes of applying the standard of block length and that a block length does not constitute a 617 foot radius distance surrounding a proposed use on all sides because the City's ordinance considers a block as "an area that is bounded on all sides by streets." The areas on the opposite side of West Balboa Boulevard are considered as separate blocks. Rather than characterizing smaller streets such as 12<sup>th</sup> and 11<sup>th</sup> Street as block boundaries, these streets may be included within a block in order to eliminate the differences in block lengths to achieve a 617-foot block length standard.

The proposed Ocean Recovery facility is the only proposed residential care facility on the south side of West Balboa Boulevard within a block length of 617 feet. The nearest other operating residential care facilities, Balboa Horizons and Newport Coast Recovery, are located within another block on the north side of West Balboa Boulevard. Balboa Horizons was granted approval of a use permit, and Newport Coast Recovery has been denied a use permit (subject to a re-opened public hearing). For this reason, the proposed Ocean Recovery facility, if approved with conditions, would be compatible with the residential character of the surrounding neighborhood and would not contribute to creating an institutional character for the area.

The proposed Ocean Recovery facility is approximately 1,220 feet from an existing large licensed day care facility and approximately 730 feet from Newport Elementary School, a distance sufficient from these facilities so that the use, if approved with conditions, would not impact the use or operations of these facilities, or be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use.

2. **Finding: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.**

The location of the proposed use is consistent with the General Plan and, if approved with conditions, will be consistent with the purpose of the district in which the site is located and this finding can be made for the following reasons:

General Plan Policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of a use permit for the proposed Ocean Recovery facility includes conditions regulating the use and operational characteristics of the facility, including a reduction in the total number of permitted beds within the facility, control of secondhand smoke, screening and buffering requirements, methods to reduce noise, and transportation of clients. A use permit conditioned to regulate the use and operational characteristics of this facility is consistent with this policy. The continued use of the facility as a residential care facility will be subject to conditions of approval requiring that the facility be operated in a manner to ensure that its operation will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

Current operational standards and proposed operational standards to be used by the facility in the future will be implemented through the adoption of conditions of approval attached to this use permit action. To achieve this Finding, the facility shall adhere to the following recommended conditions of approval:

- a. Ocean Recovery shall have at least one qualified supervisor on-site at all times (24 hours a day, seven days a week);
- b. The facility must maintain Quiet Hours to the extent that persons on the street or on adjacent properties cannot hear any noise from 1115 West Balboa Boulevard between the hours of 9:00 p.m. to 8:00 a.m. daily. During these quiet hours, all residents must be inside except during emergencies;
- c. This facility's maximum number of permitted resident beds shall be reduced to eighteen (18);
- d. Security shall be enhanced via increasing the height of the property's eastern side yard "pony wall" to up to six feet, with landscape screening added;
- e. Smoking shall be restricted to an enclosed area inside the facility. Smoking outdoors shall be prohibited;
- f. The facility shall abide by the City's regulations regarding trash disposal, including providing the proper number of cans for the facility's use to ensure that cans do not overflow, by placing the cans out no earlier than 7:00 p.m. the evening prior to collection, and by placing the cans back in the side yard (or other contained area) no later than 6:00 p.m. the day of collection; and
- g. In the event the Operator provides counseling or educational sessions to family members of persons housed at the facility the following conditions shall apply:
  1. The counseling and educational sessions shall be expressly authorized within the facility's ADP license;
  2. In no event shall the facility provide counseling or educational sessions to persons who either do not have a relative receiving in patient treatment at the facility or provide alumni sessions.
  3. In no event shall the facility conduct "AA" type meetings or group sessions for persons who do not reside at the facility.

The proposed Ocean Recovery facility is located approximately 1,220 feet from an existing large licensed day care facility and approximately 730 feet from Newport Elementary School, a distance sufficient from these facilities so that the proposed use is not affected by and will not affect the use or operations of these facilities.

Ocean Recovery utilizes on-street parking for staff and visitors during special sessions, and family counseling. The facility provides for six on-site garage parking spaces. Approval of a use permit for the facility includes conditions requiring a reduction in the maximum number of resident beds and limitations on assembly uses in order for the facility to be consistent with the NBMC off-street parking requirement to provide one off-street parking space per three beds for a total of six off-street parking spaces, and requires provision of adequate off-street

parking for staff, cleaning persons' vehicles, and visitors. In addition, the condition of approval requires the continued operation of a van for client transportation.

3. **Finding: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.**

The facility, if approved subject to conditions included with the use permit, will comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Finding No. A below and this finding can be made.

4. **Finding: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91.A and conforms to all requirements of that Chapter.**

The use, if approved subject to conditions included with the use permit, will conform to the standards set forth in Section 20.91A and this finding can be made as follows.

The proposed Ocean Recovery facility is a nonconforming use as specified in Chapter 20.91A of the NBMC, and an application for a use permit requesting to continue the use has been filed by Ocean Recovery, the project applicant, consistent with the requirements of Chapter 20.91A. If approved, Use Permit No. 2008-030 would include conditions of approval requiring the continued use of the subject property as a residential care facility to be operated in a manner that conforms to all requirements of Chapter 20.91A by reducing the number of resident beds within the facility, providing for adequate parking, raising the height of the eastern side-yard "pony wall," limiting smoking to an interior area, ensuring that contact information for the facility is available at all times, that the facility operates pursuant to the terms of the license issued to the facility by ADP, that other certifications, as appropriate be obtained by the facility, and requiring the names of all owners of the facility to be available to the City.

NBMC Section 20.91A.060 Findings A through G:

- A. **Finding: The use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows:**
- a. **No secondhand smoke can be detectable outside the property.**
  - b. **Facility must comply with state and local law, and the submitted management plan including any modifications required by this use permit.**

- c. **A contact name and number must be provided to the City**
- d. **No services requiring a license can be provided if the facility does not have a license for those services.**
- e. **There shall be no more than two persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.**
- f. **If certification from an entity other than ADP's licensing program is available, applicants must get that certification.**
- g. **All individuals and entities involved in the facility's operation and ownership must be disclosed.**
- h. **No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.**

The use, if approved subject to conditions included with the use permit, will conform to the standards set forth in Section 20.91A.050, and this finding can be made as follows.

- a. If approved, the use permit will include a condition of approval that smoking be permitted only inside the facility. Smoking outdoors is prohibited.
- b. The operations of this facility are in compliance with the State ADP license, and as conditioned, the facility will comply with the approved Operations and Management Plan for the facility.
- c. Appropriate names and contact information numbers are provided within the application, and as a condition of approval of this application, the appropriate "after hours" names and contact information numbers would be provided to the City.
- d. The Operation and Management Plan for the facility provides that only those services permitted by the facility's ADP license are performed within the facility. The ADP license does not permit treatment services to non-resident clients, nor does it allow non-clients to interact with clients unless all clients have signed privacy rights waivers authorizing non-clients to know that the clients are in recovery.
- e. The facility is licensed for a maximum occupancy of 22 residents. The facility contains 11 bedrooms currently occupied by a maximum of two persons per bedroom. As a condition of approval of the use permit, the

maximum occupancy permitted for client residents shall be reduced to 18 residents with no more than two persons per bedroom consistent with the residential occupancy design of the building and the occupancy standards of NBMC Section 20.91A.050 of two residents per bedroom.

- f. A condition of approval is included as part of the approval of the use permit, requiring the applicant to consider the merits of additional certification available, including but not limited to an Orange County Adult Alcohol and Drug Sober Living certification. In the event that the applicant deems such certification inapplicable to this treatment use, the applicant is required to prepare a letter so stating these facts and to submit the letter to the City within 60 days of the issuance of a use permit.
- g. All employees and management personnel have been disclosed in the application documentation.
- h. According to information provided in the application documentation the owners and managers of the facility own and operate a similar facility located at 1601 West Balboa Boulevard in the City of Newport Beach. The State of California ADP license for each facility is in good standing and expires in December 2010. However, in the exercise of caution, a condition of approval shall be included directing specifically that all actions, whereby a client resident's identity is released or made known to non-clients, must comply with ADP's privacy rules and regulations.

**B. Finding: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.**

This project, as conditioned, will include sufficient on-site parking and this finding can be made for the following reasons:

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The facility provides a total of six off-street parking spaces. However, the facility is licensed for a total of 22 beds requiring provision of eight off-street parking spaces. If the maximum permitted occupancy of the facility is limited to 18 beds or less and clients are prohibited from having personal vehicles, the facility will provide adequate off-street parking to meet the parking requirements of the NBMC.

Currently, client residents are not permitted to have personal vehicles on-site except for a limited number of clients nearing the end of their stay, who are permitted by the facility to use their personal vehicles to drive to and from work. Ocean Recovery utilizes on-street parking for staff and visitors during special sessions, and family counseling. In order for these activities to continue, the following conditions shall apply:

- All assembly uses must cease, except those that involve client residents of the facility (and in some cases small meetings of a client's family members with facility staff);
- Client residents shall not be permitted to have vehicles during their stay at Ocean Recovery;
- On-site parking garages shall be kept clear and available for parking of vehicles;
- The operator shall make parking available for a minimum of four staff members per daytime shift, one staff member per nighttime shift, and visitors. To fulfill this requirement the facility may utilize six on-site parking spaces and up to three on-street permit parking spaces. In order to use the on-street parking spaces, all six garage spaces must be occupied with staff or visitor's vehicles;
- The operator shall purchase three master parking permits from the City for use of on-street parking;
- The facility's use shall not occupy more than three on-street parking spaces at any time; and
- The client transport van, when not in use, shall be parked in a garage space.

A facility van provides transportation for the residents on a weekly schedule dispersed throughout the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and unloading is conducted in front of the facility along Balboa Boulevard. As part of the approval of this use permit, a condition of approval is included that restricts loading and unloading of van passengers to be conducted within open parking spaces along Balboa Boulevard and prohibits van drivers from stopping or double-parking in a traffic lane.

**C. Finding: The property and existing structures are physically suited to accommodate the use.**

The property and existing structures are physically suited to accommodate the proposed use and this finding can be made as follows:

The building is similar to many other residential structures along West Balboa Boulevard constructed on a parcel that measures approximately 60 feet wide by 100 feet deep. The six-unit building was constructed on two lots in 1952 with the approval of Use Permit No. 56, when the subject property was zoned R-3.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all residential care facilities and residences. The subject property has an approved fire clearance from the City of Newport Beach Fire Department dated January 3, 2005, for a maximum occupancy of 22 residents, as well as staff. Separate from the use permit, the applicant may be required to conduct an architectural code analysis of the facility to determine if

the facility complies with current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially issued a "fire clearance."

- D. Finding: The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer shall consider, as appropriate, the following factors:**
- a. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;**
  - b. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and**
  - c. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.**

The proposed use, as conditioned, will be compatible with the residential character of the surrounding neighborhood and will not contribute to creating an

institutional character for the area, and this finding can be made for the following reasons:

The proposed Ocean Recovery facility is approximately 1,220 feet from an existing large licensed day care facility and approximately 730 feet from Newport Elementary School. The subject property is a sufficient distance from these facilities so that the use will not impact the operations or use of these facilities.

The objectives of the code include provisions to ensure, through the use permit process, that a proposed residential care facility is compatible with the surrounding residential neighborhood, and specifically, that the approval of a use permit for the continued operation of a residential care facility does not result in an institutionalization of the surrounding neighborhood through an overconcentration of facilities. The subject property is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as Section 20.91A 060 (D.3) indicates median block lengths in different areas of Newport Beach widely range from 300 feet in the nonstandard subdivision areas to as much as 1,422 feet in standard subdivision areas, a block length for the mid-Balboa Peninsula area where this use is located may be established. In order to establish a block length for the mid-Balboa Peninsula area, the City has determined that it is appropriate to apply a median block length pursuant to the standards of the American Planning Association. The City's Hearing Officer has determined that a calculable median block length of 617 feet is a reasonable block length for purposes of evaluating the mid-Balboa Peninsula area. The placement of more than one residential care facility per this median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood.

It is appropriate for the Hearing Officer to consider the center of Balboa Boulevard as a dividing line for purposes of applying the standard of block length, and to determine that a block length does not constitute a 617-foot radius distance surrounding a proposed use because the City's ordinance considers a block as "an area that is bounded on all sides by streets." The areas on the opposite side of West Balboa Boulevard are considered as separate blocks. By applying the block length standard as being on one side of West Balboa Boulevard, and including smaller streets such as 12<sup>th</sup> and 11<sup>th</sup> Streets within a "block," the differences in block lengths can be achieved to provide a 617-foot block length standard.

The proposed Ocean Recovery facility is the only residential care facility located on the south side of West Balboa Boulevard within a calculable median block of 617 feet in length proposed for continued operation pursuant to an approved use permit. The nearest other operating residential care facilities are Balboa Horizons, located at 1132 West Balboa Boulevard, and Newport Coast Recovery, located at 1216 West Balboa Boulevard. These other facilities are in a separate block located on the north side of West Balboa Boulevard, a 100-foot wide primary roadway separating the blocks. Balboa Horizons was granted approval

of a use permit to continue operations, and Newport Coast Recovery has been denied a use permit (subject to a re-opened public hearing).

- E. Finding: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.**

The transportation of residents to and from the site can be managed through conditions of approval so as not to generate vehicular traffic substantially greater than normally generated by residential traffic and this finding can be made for the following reasons:

A facility van provides transportation for the residents on a weekly schedule dispersed throughout the day and among the days of the week so that van transportation is not concentrated during peak traffic times. A condition of approval is included requiring the loading and unloading of the transportation van passengers to occur only in open parking spaces on West Balboa Boulevard, and prohibiting the van drivers from stopping or double-parking in a traffic lane.

- F. Finding: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.**

The use is in conformance with the requirements of this finding, and this finding can be made for the following reasons:

Business products and other packages and goods are delivered to the facility by staff members using their private vehicles during weekdays between the hours of 9:00 a.m. and 5:00 p.m. These days and hours for deliveries are consistent with normal working hours, and as such, are compatible with and will not adversely affect the peace and quiet of neighboring properties.

- G. Finding: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.**

With the appropriate conditions of approval, the use will be in conformance with the requirements of this finding and this finding can be made for the following reasons:

A condition shall be applied directing Ocean Recovery to abide by the City's regulations regarding trash disposal, including providing the proper number of cans for the facility's use to ensure that cans do not overflow, by placing the cans out no earlier than 7:00 p.m. the evening prior to collection, and by placing the cans back in the side yard (or other contained area) no later than 6:00 p.m. the day of collection.

## **SUMMARY**

As indicated at the beginning of this report, staff recommends approval of this application for the following reasons:

1. The ability to make all of the findings required by the NBMC Sections 20.91.035 (A) and 20.91A.060 with appropriate conditions of approval.
2. The proposed use is consistent with the purposes and requirements of Chapter 20.91A.

If, after reviewing this report, and hearing testimony from the applicant and the public, the Hearing Officer agrees with staff's recommendation for approval, staff requests the Hearing Officer's direction to prepare a Resolution for Approval for adoption at a time and date set by the Hearing Officer.

## **ALTERNATIVES**

If, after reviewing this report and hearing testimony from the applicant and the public, the Hearing Officer determines that all of the required findings cannot be made, the Hearing Officer should direct staff to prepare a resolution for denial, stating the findings that cannot be made and the reasons for the Hearing Officer's inability to make the findings. A resolution for denial prepared by staff shall to be brought back for action by the Hearing Officer at a time and date set by the Hearing Officer.

## **ENVIRONMENTAL REVIEW**

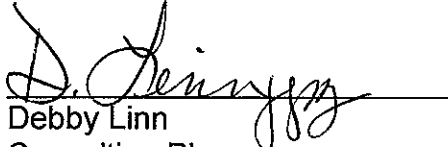
This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA.

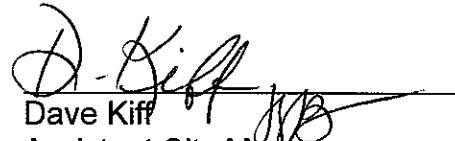
## **PUBLIC NOTICE**

Notice of this hearing was published in the Daily Pilot, mailed to property owners and occupants within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the city website.

Prepared by:

Submitted by:

  
Debby Linn  
Consulting Planner

  
Dave Kiff  
Assistant City Manager

## EXHIBITS

1. Draft Conditions of Approval
2. February 12, 2009 Staff Report
3. Proposed Operations and Management Plan and House Rules
4. Correspondence Received from Residents and Applicant
5. About the APA Policy Guide
6. Transcript of the February 12, 2009 Use Permit Hearing
7. Minutes of the March 24, 2009 Council Meeting