

Jackson | DeMarco | Tidus
Peckenpaugh

A L A W C O R P O R A T I O N

City of Huntington Beach

AUG 11 2008

August 8, 2008

Direct Dial: 949.851.7638
Email: pgosney@jdtplaw.com
Reply to: Irvine Office
File No: 6115-48728

VIA OVERNIGHT MAIL

Members of the Planning Commission
c/o Joan Flynn, City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Re: TOMRA Pacific, Inc.; Application for Conditional Use Permit No. 2007-047

Dear Members of the Planning Commission:

We represent TOMRA Pacific, Inc. ("TOMRA"), in connection with its application for Conditional Use Permit No. 2007-047 ("Use Permit") to operate a small beverage container recycling and redemption center ("Recycling Center" or "Center") in the Ralphs Supermarket ("Ralphs") parking lot located in the Beachmont Plaza shopping center at 10081 Adams Avenue ("Site") in the City of Huntington Beach ("City").

Please include this letter and its attachments in the administrative record in this matter.

1. INTRODUCTION AND SUMMARY OF ARGUMENT.

On June 4, 2008, the City Zoning Administrator denied TOMRA's application for the Use Permit on grounds that the proposed Recycling Center would be detrimental to the public welfare and/or injurious to the properties and improvements surrounding the Site because it is incompatible with surrounding residential land uses. In support of the denial, the Zoning Administrator made the following three *noise-related* findings: (1) traffic and operational noise impacts caused by the Recycling Center would "intensify the noise level" at the Site and negatively impact residences situated to the north and east of the proposed Center; (2) the Center would be incompatible with surrounding land uses due to its proximity to nearby residences and unique location behind the Ralphs Supermarket; and (3) the Center is inconsistent with certain goals and policies of the City General Plan relating to commercial noise impacts on adjacent residential land uses.¹ (See Attachment 1.)

LATE COMMUNICATION #B-1

¹ The "Suggested Findings For Denial" contained in the August 12, 2008, Staff Report are substantively identical to the Zoning Administrator's June 4, 2008, findings in support of denial of the Center. As such, and unless otherwise specified, any reference to the Zoning Administrator's June 4, 2008 findings shall also refer to the present "Suggested Findings For Denial."

Irvine Office
2030 Main Street, Suite 1200
Irvine, California 92614
t 949.752.8585 f 949.752.0597

Westlake Village Office
2815 Townsgate Road, Suite 200
Westlake Village, California 91361
t 805.230.0023 f 805.230.0087

www.jdtplaw.com

The Zoning Administrator's denial of the Use Permit was wrong, and should not be affirmed by the Planning Commission for the following reasons:

- City staff erred in requiring TOMRA to apply for and obtain a conditional use permit in order to operate the Recycling Center. ***The City's Zoning Code specifically provides that operation of the Recycling Center is permitted as a matter of right so long as the primary use to which the Center is attached—Ralphs Supermarket—is not a conditionally permitted use within the Site's Commercial General ("CG") Zone. (See Zoning Code, §§ 230.44, 211.04.)*** Because Ralphs devotes less than ten percent of its retail floor area to "sales, display, and storage of alcoholic beverages..." (see Zoning Code, § 204.10, subdivision (K)(1)), it does not require a conditional use permit in order to operate within the City's CG Zone. ***As an accessory use to Ralphs' primary permitted use, the Recycling Center is therefore also exempt from the City's conditional use permit requirement.*** Thus, the City had no basis under the Zoning Code for subjecting the Recycling Center to discretionary conditional use permit review, and the Planning Commission should promptly and unconditionally approve TOMRA's application to license the Center.
- The Zoning Administrator's findings for denial of the Use Permit are not supported by evidence in the administrative record. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348.) In fact, the administrative record directly contradicts the Zoning Administrator's findings that operation of the Center will "intensify" noise levels at the Site to an extent that will cause the Center to be incompatible with, and negatively impact, surrounding residences. A noise study commissioned by TOMRA at the request of City staff confirms that the proposed Center would operate well within the City's statutorily-defined noise standards, and would cause only a "barely perceptible" increase in current noise levels at these neighboring residences. (Attachment 2.) ***As such, the City cannot deny the Use Permit on grounds that the Recycling Center creates, or fails to protect surrounding residences from, speculative and imperceptible noise impacts. (See Louis & Diederich, Inc. v. Cambridge European Imports, Inc. (1987) 189 Cal.App.3d 1574, 1584-85; Marshall v. Parkes (1960) 181 Cal.App.2d 650, 655.)***

2. **BACKGROUND.**

TOMRA originally filed its application for the Use Permit on December 20, 2007. The application was deemed complete on January 15, 2008, and a hearing before the Zoning Administrator was scheduled for February 13, 2008. ***On February 6, 2008, approximately one week before the anticipated February 13 hearing, City staff contacted TOMRA to express concerns about potential noise impacts related to the Center's location at the Site, and to***

*inform TOMRA that the City would be recommending denial of the Use Permit based upon these grounds.*² In order to prevent denial of the Use Permit, TOMRA requested that the February 13, 2008, hearing be continued until March 12, 2008, so that TOMRA could consider alternative locations for the Center at the Site and/or perform a sound study to demonstrate that the proposed Center would not create any adverse noise impacts to the surrounding residential community.

Shortly thereafter, TOMRA contacted the property owner of the Site, Bruce Cowgill of Brookhust & Adams, LLC, to see about possible alternative locations for the Center. When these discussions stalled, TOMRA was forced to request a second continuance of the Zoning Administrator's hearing (until April 9, 2008), so as to allow for further discussions between the parties to proceed. Eventually, and despite TOMRA's diligent efforts, the property owner refused to consider locating the Center at any place other than the proposed location behind the Ralphs Supermarket, including in front of the shopping center. (See Attachment 3. [E-mail correspondence].) TOMRA promptly notified City staff of the property owner's decision, and began preparations to perform the City-requested noise study. Due to delays associated with finding and hiring a reputable engineering firm to perform the study, the April 9, 2008, hearing was continued once more, to May 28, 2008.

TOMRA hired Albert A. Webb Associates ("Webb"), an established and reputable civil engineering firm based in Riverside, California, to perform acoustical monitoring at the Site and analyze the potential noise impacts generated by the Center. Webb completed its analysis and submitted a final report to TOMRA outlining its conclusions on May 20, 2008 ("Sound Study"). (See Attachment 2.) *Briefly summarized, the Sound Study confirms that the Recycling Center—situated 128 feet and 132 feet from adjacent residences located to the north and east of the proposed Center—would operate well within the City's daytime noise standard (55 dBA), and would create no adverse noise impacts to the surrounding neighborhood.* In fact, the Sound Study expressly concluded that operation of the Recycling Center would result in only a .5 dBA and 1.6 dBA increase in existing noise levels at the property lines of these neighboring residences—amounts significantly less than the 3 dBA required for even a "barely perceptible" noise level increase.

Once completed, TOMRA immediately forwarded the Sound Study on to City staff so that staff and the Zoning Administrator would have sufficient time to analyze the report's findings before the scheduled May 28, 2008, hearing. In light of the Sound Study's conclusions, TOMRA was confident that it had adequately addressed the City's noise concerns regarding the Center, and, as such, that there would be no further obstacles to the City's approval of the Center. Thus, upon reviewing the staff report for the May 28, 2008, hearing, TOMRA was surprised to learn that City staff were recommending denial of the Use Permit based almost entirely on alleged noise-related impacts attributable to the Center—impacts conclusively disproved by the Sound Study.

² Prior to February 6, 2008, City staff had also raised concerns about the Center's impact on parking facilities at the Site; however, these issues were eventually resolved.

At the May 28 hearing, TOMRA representatives presented their case to the Zoning Administrator for approval of the Recycling Center. TOMRA emphasized that the property owner of the Site would not permit the Center to be located anywhere other than the proposed location behind the Ralphs Supermarket, but that, as the Sound Study confirmed, permitting the Center at this location would cause no adverse noise impacts to the surrounding residential neighborhood. A handful of neighborhood residents spoke in opposition to the Use Permit and expressed their fears that the Center would increase noise and attract transients and other undesirable elements to the neighborhood. In light of these residents' concerns, the Zoning Administrator continued his decision on the Use Permit until June 4, 2008, so as to permit City staff to obtain additional comments from the City Police and Building and Safety departments.

In an e-mail dated May 28, 2008, commenting on the proposed Center, the City Chief of Police acknowledged that "recycling centers are a necessary part of [the] community," and conceded that he was unaware of any problems associated with TOMRA's other recycling facilities in the City.³ (See Attachment 4.) Despite these statements, the Chief of Police nevertheless speculated that the proposed Center would increase homelessness and related impacts at the Site.⁴

Notwithstanding the Sound Study's unequivocal conclusions, and disregarding the Police Department's inability to accurately identify any specific problems with TOMRA's other approved recycling centers currently operating in the City, the Zoning Administrator denied the Use Permit at the June 4 hearing based upon the following three *noise-related* findings:

- traffic and operational noise impacts caused by the Recycling Center would "intensify the noise level" at the Site and negatively impact residences situated to the north and east of the proposed Center;
- the Center would be incompatible with surrounding land uses due to its proximity to nearby residences, and unique location behind the Ralphs Supermarket; and
- the Center would be inconsistent with certain goals and policies of the City General Plan relating to buffering of commercial noise impacts on adjacent residential land uses.

³ In compliance with the California Beverage Container Recycling and Litter Reduction Act (Public Resources Code, section 14500 et seq.), TOMRA currently operates four (4) other small collection facilities at the following City locations: (1) Ralphs Grocery Shopping Center, located at 6942 Warner Avenue; (2) Albertsons Grocery Shopping Center, located at 19640 Beach Boulevard; (3) Ralphs Grocery Shopping Center, located at 19081 Golden West Avenue; and (4) Ralphs Grocery Shopping Center, located at 5241 Warner Avenue. The first TOMRA facility (6942 Warner Avenue) began operating in the City nearly ten years ago in May 1999, and the most recent center (19081 Golden West Avenue) was approved by the City and began operations in February 2006.

⁴ On July 23, 2008, the Chief of Police sent a memo to the Planning Commission reiterating the Police Department's opposition to the Center, and purporting to list the number of police service calls to other TOMRA facilities within the City involving homeless persons. (See Attachment 6.) Significantly, the Chief of Police's memo acknowledges that the service call list is neither "complete," nor an "accurate representation of the issues" surrounding the proposed Center.

In response to the Zoning Administrator's denial of the Use Permit, TOMRA promptly filed this appeal to the City Planning Commission and a hearing was set for August 12, 2008. During the interim period, on August 4, 2008, TOMRA arranged to meet with residents of the community located adjacent to the proposed Recycling Center in the hopes of resolving their concerns about the impacts of the proposed Center. Although the meeting was positive, the parties were unable to come to an understanding that would allow TOMRA to operate the Center while ensuring that the residents' concerns were adequately addressed.

3. **LEGAL ARGUMENT.**

A. **The City Erred in Requiring TOMRA to Apply for and Obtain a Conditional Use Permit for the Recycling Center.**

As set forth below, the City's Zoning Code specifically provides that the Recycling Center is permitted as a matter of right within the Site's CG Zone, so long as the primary use to which it is attached—Ralphs Supermarket—is not itself a conditional use under the Zoning Code. (See Zoning Code, §§ 230.44, 211.04.) Because Ralphs devotes less than ten percent of its retail floor area to alcohol sales, neither it (as the primary use) nor the Recycling Center (as an accessory use) require a conditional use permit in order to operate at the Site.

Therefore, City staff erred in requiring TOMRA to apply for and obtain a conditional use permit for the Center, and in subjecting the Recycling Center to discretionary permit review. The Planning Commission should promptly and unconditionally approve TOMRA's application to license the Center.

1. *The Recycling Center is Permitted as an Accessory Use at the Site.*

Recycling operations similar to TOMRA's proposed Center are specifically addressed in Section 230.44 of the Huntington Beach Zoning Code. In pertinent part, and with emphasis added, Section 230.44 states:

“Collection containers shall be permitted for charitable organizations such as Goodwill. ***Recycling containers shall be permitted as an accessory use to a permitted use.*** Recycling and collection containers shall not be located within required parking or landscaped areas or obstruct pedestrian paths. Recycling as an accessory use shall not exceed 500 square feet including any required attendant parking space. A recycling operation as a primary use shall comply with the development standards contained in Chapter 212.”

The City does not dispute that the proposed Recycling Center occupies less than 500 square feet, will not be located within any required parking or landscaped areas, and will not obstruct any proposed or existing pedestrian paths. As such, the proposed Recycling Center falls squarely within the language of Section 230.44, and is properly classified as an accessory use.

2. *Accessory Uses Do Not Require a Conditional Use Permit Unless Located on the Site of a Designated Conditional Use.*

Accessory uses and structures are defined in section 204.14 of the Zoning Code as “[U]ses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site.” *Under the land use controls table set forth in Zoning Code, section 211.04, accessory uses and structures in the CG Zone require a conditional use permit only if located on the site of a designated conditional use (“P/U”).* If the proposed use is accessory to a primary permitted use, however, then the accessory use is itself also permitted as a matter of right.

Here, the Recycling Center is proposed to be located immediately behind, and on the same “site” as, the Ralphs Supermarket. (See Zoning Code, § 204.14.) Thus, in accordance with Zoning Code Section 211.04, the Recycling Center is a *permitted accessory use* at the Site so long as the Ralphs Supermarket is also a permitted use within the City’s CG Zone.

3. *Ralphs is a Permitted Use Within the City’s Commercial General Zone and is Not Subject to a Conditional Use Permit Requirement.*

Food and beverage sales operations, including grocery stores, are addressed in Section 204.10 of the Zoning Code. *Section 204.10 provides that supermarkets are permitted (“P”) uses within Commercial General Zones—and not subject to a conditional use permit requirement—so long as “no more than 10 percent of the [retail] floor area [is] devoted to sales, display, and storage of alcoholic beverages...”* (See Zoning Code, § 204.10, subd. (K)(1) [emphasis added].) In contrast, retail food and beverage operations with alcohol sales/display/storage that exceed this ten percent threshold require a conditional use permit authorized by the Zoning Administrator (“ZA”) in order to operate within the CG Zone. (*Id.*)

In a letter dated November 6, 2002, from the City to the State Department of Alcoholic Beverage Control approving Ralphs to sell alcohol in conjunction with the supermarket, the City expressly acknowledged that Ralphs devotes less than ten percent of its total floor area to alcohol sales. (See Attachment 5.) *Therefore, consistent with Zoning Code Section 204.10, this letter establishes and confirms that Ralphs is a permitted (“P”) use within the City’s Commercial General Zone, and, as such, does not require a conditional use permit in order to operate at the Site.⁵ In addition, this letter further confirms that the Recycling Center, as an accessory use to Ralphs’ primary permitted use, is also exempt from the City’s conditional use permit requirement under Zoning Code Section 211.04.*

⁵ In 2002, the City required the property owner of the Site, Bruce Cowgill, to obtain a conditional use permit for the demolition, construction, and renovation of the shopping center, including activities related to the Ralphs Supermarket and Sav-On Pharmacy (“2002 CUP”); however, the 2002 CUP has no effect on Ralphs’ and the Recycling Center’s present exemption from the Zoning Code’s conditional use permit requirement. The 2002 CUP was limited in purpose and scope to the *renovation, remodel, and reconstruction* of the shopping center, and had no independent effect on Ralphs’ right to *operate* at the Site under the City Zoning Code. Moreover, the 2002 CUP was broadly worded and governs construction and renovation activities related to the *entire shopping center*—not just those activities related to Ralphs.

Thus, City staff erred in subjecting the Center to discretionary permit review under the conditional use classification, and had no basis under the Zoning Code for requiring TOMRA to apply for and obtain a conditional use permit for the Center. In light of the City's clearly established error, the Planning Commission should promptly and unconditionally approve TOMRA's application to license the Center.

B. The Zoning Administrator's Findings For Denial Are Not Supported By Evidence In The Administrative Record.

Under California law, every administrative agency must make findings in support of its decisions, and these findings must form an "analytic bridge between the evidence and the agency's decision" so as to enable the parties to determine whether, and upon what basis, they should seek review of the decision. (*See Topanga Association for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1356.) While an administrative agency's findings may consist of inferences, such inferences must be "a product of logic and reason" and "must rest on the evidence." (*Louis & Diederich, Inc. v. Cambridge European Imports, Inc.* (1987) 189 Cal.App.3d 1574, 1584.) ***Inferences that are the result of mere speculation or conjecture cannot support a finding.*** (*Id.*, at p. 1585; *Marshall v. Parkes* (1960) 181 Cal.App.2d 650, 655). ***Moreover, "reasonable" inferences do not include those which are contrary to uncontradicted evidence in the administrative record and are of such a nature that reasonable people would have no basis upon which to doubt their veracity.*** (*See Gaffney v. Downey Savings & Loan Assn.* (1988) 200 Cal.App.3d 1154, 1168.)

As set forth below, the Zoning Administrator's June 4, 2008, findings for denial of the Use Permit based upon alleged adverse noise impacts to the surrounding community are not only not supported by evidence in the administrative record, but are, in fact, directly contradicted by the administrative record—namely, the undisputed conclusions set forth in the Sound Study. Therefore, the City's findings fail evidentiary scrutiny and cannot be relied upon by the Planning Commission in its consideration of TOMRA's application for the Center.

1. *The Center Will Not Cause Adverse Noise Impacts to the Surrounding Community.*

Zoning Administrator Finding No. 1 states that the Recycling Center will be incompatible with surrounding land uses because it will "increase operational and traffic-generated noise" at the Site, while failing to adequately protect surrounding residential properties from these potential noise impacts. This finding is directly contradicted by the conclusions set forth in the Sound Study—an acoustical analysis performed by a highly reputable civil engineering firm at the express request of City staff and provided to City staff for consideration well in advance of the May 28, 2008, and June 4, 2008, hearings. In fact, on this precise issue the Sound Study concluded that operation of the Recycling Center at its proposed location (128 feet and 132 feet from neighboring residences) would result in only a .5 dBA and 1.6 dBA increase in existing noise levels at these adjacent residential properties. (*See Attachment 2*, pp. 2-3.) The .5 dBA and 1.6 dBA numerical amounts are significantly less than the 3 dBA required for even a "barely

perceptible” (under laboratory conditions) increase in noise. (*Id.*) ***The City cannot reasonably expect TOMRA to protect surrounding residences from imperceptible noise impacts.***

Moreover, the City neglects to provide any independent evidence to refute the Sound Study’s determinations and/or bolster the City’s own noise impact conclusions. Instead, the City blindly states that, although the “numeric” decibel increases caused by the Center may be imperceptible, “the sounds and resonance of recyclables are identifiable,” and will therefore adversely impact neighboring residences. (August 12, 2008, Staff Report, p. 10.) ***Contrary to City staff’s assertions, the “sounds and resonance of recyclables” were accounted for in Webb’s monitoring of reference noise levels at TOMRA’s Murrieta facility, and therefore are accurately reflected in the Sound Study’s analysis and conclusions. As such, these variables have no independent evidentiary value or relevance.*** The City’s failure to provide any relevant evidence to contradict the Sound Study or otherwise support the City’s own noise determinations belies any present claim by the City that the Sound Study’s conclusions are subject to reasonable dispute. (See *Gaffney*, 200 Cal.App.3d at p. 1168.)

In sum, the City cannot base its denial of the Recycling Center upon purely speculative noise impacts—especially where the existence of such impacts have been conclusively disproved by evidence in the administrative record. (See *Louis & Diedrich, Inc.*, 189 Cal.App.3d at pp. 1584-85; *Gaffney*, 200 Cal.App.3d at p. 1168.) For these reasons, Zoning Administrator Finding No. 1 constitutes invalid grounds upon which to deny the Recycling Center.

2. *The Center is Compatible With Surrounding Land Uses.*

Zoning Administrator Finding No. 2 states that the Recycling Center will be incompatible with surrounding land uses because it is “an outdoor commercial facility within close proximity of residential uses,” and is located to the rear, rather than the front, of the Ralphs Supermarket and shopping center. Significantly, the City can point to no provision of the Zoning Code, Municipal Code or General Plan that ***prohibits*** locating an “outdoor commercial facility” like the Recycling Center either to the rear of an existing shopping center, or within close proximity of neighboring residential uses. This reason for this is simple. So long as residential uses are sufficiently buffered from impacts attributable to an adjacent commercial use, the mere proximity of these disparate uses is not, in and of itself, valid grounds for denial of a project. (See, e.g. Zoning Code, § 230.74, subd. (B); General Plan Policies LU 10.1.6, N.1.4.)

In this case, the City does not, and has not ever, contended that the residential properties located adjacent to the rear of the Ralphs shopping center are insufficiently buffered from ***current*** noise impacts attributable to Ralphs and/or the Site’s other commercial tenants. Rather, the City speculates that operation of the Recycling Center would increase these impacts to an extent that would render the two uses materially incompatible. ***In doing so, the City completely ignores the uncontradicted conclusions set forth in the Sound Study that the Recycling Center would cause no perceptible increase in existing noise levels at the Site.*** As discussed above, speculative inferences that are contrary to uncontradicted evidence in the administrative record cannot support a finding. (See *Louis & Diedrich, Inc.*, 189 Cal.App.3d at pp. 1584-85; *Gaffney*, 200 Cal.App.3d at p. 1168.) Thus, the City’s finding of incompatibility cannot be sustained.

Furthermore, the City appears to be attempting to improperly stretch the Zoning Code standards applicable to a traditional “outdoor facility” (Zoning Code, § 230.74) to extend and cover TOMRA’s proposed Recycling Center. Under Zoning Code Section 230.74, outdoor commercial facilities require a conditional use permit within the City’s CG Zone and may be denied a permit where adverse impacts to surrounding uses caused by the proposed facility cannot be adequately prevented. (*See* Zoning Code, § 230.74, subd. (B).) Notwithstanding the Recycling Center’s outdoor nature, Zoning Code Section 230.74 has no application to the proposed Center. *First*, recycling operations, including “outdoor” facilities like the Center, are governed by a separate and independent provision of the Zoning Code (*see* Zoning Code, § 230.44), pursuant to which recycling facilities are treated as accessory uses and require a conditional use permit *only* if located on the site of a designated conditional use. *Second*, the very language of Zoning Code Section 230.74 fails to describe the Recycling Center and, in fact, appears to specifically preclude any connection or relationship between these two types of facilities. Zoning Code Section 230.74 specifically states that it applies only to facilities involving “[O]utdoor storage and display of merchandise, materials and equipment...” The Recycling Center does not fall within this definition because it neither stores nor displays “merchandise, materials [or] equipment” outdoors. In contrast to those facilities governed by Zoning Code Section 230.74, the Center is a fully-contained consumer market redemption site consisting of reverse vending machines whose purpose is to enable members of the general public (consumers and area residents) who have been charged a deposit for recyclable materials at the store registers to redeem the deposit value as mandated by California law.

Finally, although the proposed location for the Center is unique, it is not completely unheard of for accessory commercial uses, including small recycling/redemption facilities like the Center,⁶ to “occur and be oriented away from street frontages.” For instance, retail purchase pick-up, supply delivery, and waste transfer services are often located at the rear of commercial businesses. Notwithstanding the fundamental differences between these activities and the drop-off and collection of recyclable beverage containers, the seemingly disparate services are comparable in both nature and impact to the surrounding community. As such, the unique location of the Center does not, in and of itself, render the Center inconsistent with other existing uses at the shopping center.

Based upon the above, Zoning Administrator Finding No. 2 is not supported by evidence in the administrative record and should not be relied upon by the Planning Commission in its evaluation of the Recycling Center.

3. *The Center is Consistent With the Goals and Policies of the City General Plan.*

Zoning Administrator Finding No. 3 states that the Recycling Center should be denied because it will adversely affect the City General Plan by conflicting with the following three *noise-related* General Plan goals and policies:

⁶ For example, TOMRA’s facility at the Albertsons Supermarket located at 933 E. Las Tunas Dr. in the City of San Gabriel, and the small collection facility operated by Bionet, Inc., a TOMRA competitor, at the 99 Ranch Market located at 5402 Walnut Avenue in the City of Irvine, are both situated behind the adjacent supermarkets.

- Require that commercial projects abutting residential properties adequately protect the residential use from the excessive or incompatible *impacts of noise*, light, vehicular traffic, visual character, and operational hazards. (LU 10.1.6)
- Minimize the adverse impacts of *traffic-generated noise* on residential and other *"noise sensitive"* uses. (N 1.3)
- Minimize *noise spillover* or encroachment from commercial and industrial land uses into adjoining residential neighborhoods or *"noise-sensitive"* uses. (N 1.4)

The General Plan policies highlighted above collectively reflect the City's aim to minimize commercial noise impacts on adjacent or abutting residential uses. TOMRA does not dispute the legitimacy of this goal, and, where such impacts are actually present, TOMRA acknowledges that these policies may bar the licensing or approval of an offending project. *In this case, however, the administrative record clearly and conclusively demonstrates that the Recycling Center will neither create nor exacerbate any adverse noise impacts.* The Sound Study confirms that the proposed Center would operate within the City's statutorily-defined noise standards, and would cause only a "barely perceptible" increase in current noise levels at the residential properties situated to the north and east of the proposed location of the Center. (See Attachment 2.) Absent evidence to refute these conclusions, the City's finding that the Center conflicts with the General Plan polices outlined above is *purely speculative* and, as such, cannot be sustained. (See *Louis & Diederich, Inc.*, 189 Cal.App.3d at pp. 1584-85; *Gaffney*, 200 Cal.App.3d at p. 1168.)

Therefore, the General Plan is not implicated by City approval of the Center, and Zoning Administrator Finding No. 3 constitutes invalid grounds upon which to base denial of the Recycling Center.⁷

4. *The Center Will Not Create Any Nuisance Impacts to the Surrounding Community.*

Finally, in addition to the findings discussed above, the Zoning Administrator also noted that TOMRA's application for the Center should be denied because the Center would create "nuisance impacts" to the surrounding community. Not surprisingly, the City fails to provide any insight into the nature and/or extent of these alleged impacts. In fact, the City can point to no evidence to support this finding other than *speculative inferences* based upon the Police Department's and local residents' *unsubstantiated assumptions* that the Center would increase the number of homeless persons visiting the area and thereby increase the potential for homeless-related nuisance impacts. However, as discussed previously, although an administrative agency's findings may consist of inferences, such inferences must be "a product of logic and reason" and "must rest on the evidence." (*Louis & Diederich, Inc.*, 189 Cal.App.3d at pp. 1584-85.) *Inferences that are the result of mere speculation, like those upon which the City bases*

⁷ Similar to Finding Nos. 1 and 2, Zoning Administrator Finding No. 3 also alleges that the Recycling Center will intensify traffic and operational noise levels at the Site while failing to protect the abutting residential properties from these potential noise impacts. For the same reasons discussed earlier in Section III.B. above, these assertions also lack evidentiary foundation and thus are improper grounds for denial of the Center.

its nuisance assumptions, cannot support a finding. (*Id.* at p. 1585; *Marshall*, 181 Cal.App.2d at p. 655).

The City argues that the existence of nuisance conditions at other shopping centers within the City containing similar TOMRA facilities provides support for its finding and justifies denial of the Center. The City's argument fails. ***Even assuming that the City were able to demonstrate the existence of nuisance impacts at these other locations, under California law, the City cannot deny the Center absent direct evidence that either TOMRA's facilities and/or its customers are responsible for causing these conditions.*** (See *New Way Recycling Center v. City of Pasadena* (2003) WL 22436023 [City erred in revoking conditional use permit for recycling center absent "direct evidence" linking recycling center and/or its customers to problems at supermarket; including loitering, littering, noise and public intoxication issues].) The City is unable to meet this evidentiary burden because, as the City concedes, any problems of homelessness and related impacts at these locations are longstanding and directly attributable to the nearby County-run Santa Ana River Trail. ***The City cannot punish TOMRA for its frustration with the County's failure to effectively maintain the Santa Ana River Trail.***

Accordingly, the City's unsubstantiated inferences that the Center will create adverse impacts to the surrounding neighborhood do not and cannot support the Zoning Administrator's finding to that effect.

4. **CONCLUSION**

For the reasons set forth above, TOMRA respectfully requests that the City approve its application to operate the Recycling Center, and permit TOMRA to continue its near decade-long history of providing the citizens of Huntington Beach with recycling and redemption services in a convenient, efficient, and economic manner.

Sincerely,



Paige H. Gosney

PHG/dt
Enclosures

cc: Jennifer McGrath, City Attorney
Scott Hess, Planning Director

ATTACHMENT 1

ATTACHMENT NO. 1

FINDINGS FOR DENIAL

CONDITIONAL USE PERMIT NO. 2007-047

FINDINGS FOR DENIAL - CONDITIONAL USE PERMIT NO. 2007-047:

1. Conditional Use Permit No. 2007-047 for the establishment, maintenance and operation of a portable beverage-recycling center as an accessory use within an existing commercial shopping center will be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The portable recycling center is proposed to be located at the northeast corner of the subject site behind the existing commercial buildings. The facility will increase operational and traffic-generated noise along the rear of the existing buildings during normal business hours of operation. The location of the proposed facility is approximately 100 feet from the adjacent residential district to the north and east of the subject site. The adjacent residential uses are not sufficiently buffered from potential noise impacts resulting from customer drop-off of recyclable materials and normal operation of the facility. In addition, the facility also has the potential to create nuisance impacts to the surrounding area.
2. The conditional use permit will not be compatible with surrounding uses because the proposed use is an outdoor commercial facility within close proximity of residential uses. The recycling operations will occur and be oriented away from street frontages, which is inconsistent with the existing uses in the shopping center. In addition, the facility also has the potential to create nuisance impacts to the surrounding area.
3. The granting of the conditional use permit will adversely affect the General Plan. It is not consistent with the following goals and policies of the General Plan:
 - LU 10.1.6 Require that commercial projects abutting residential properties adequately protect the residential use from the excessive or incompatible impacts of noise, light, vehicular traffic, visual character, and operational hazards.
 - N 1.3 Minimize the adverse impacts of traffic-generated noise on residential and other "noise sensitive" uses.
 - N 1.4 Minimize noise spillover or encroachment from commercial and industrial land uses into adjoining residential neighborhoods or "noise-sensitive" uses.

The proposed recycling facility will not protect the abutting residential properties from potential noise impacts. The use will generate more vehicular and pedestrian traffic closer to residential properties. The operation of the recycling facility and pickup of storage containers will intensify the noise level. Other properties with similar recycling facilities provide operations in front of the building and away from residential properties.

ATTACHMENT 2

A L B E R T

A.

WEBB

A S S O C I A T E S

3788 MCCRAY STREET • RIVERSIDE, CA 92506
PHONE: 951.686.1070 • FAX: 951.788.1256
WWW.WEBBASSOCIATES.COM

May 20, 2008

Mr. Joe Perez
Tomra Pacific, Inc.
150 Klug Circle
Corona, CA 92880

RE: Acoustical Monitoring of Future Recycling Buy-Back Center – Huntington Beach (Addendum)

Dear Mr. Perez:

Albert A. Webb Associates is pleased to present this letter addendum which details the results of noise monitoring performed at a future Re-Planet Recycling Buy-Back Center (project) site, located in the city of Huntington Beach, as shown on **Figure 1, Location Map**. This addendum was prepared to show analysis for the project in a location the City preferred (rear parking lot). The proposed project site is located on the backside of an existing Ralph's shopping center at 10081 Adams Avenue, in the city of Huntington Beach.

Noise sensitive receptors in the area are limited to existing residences north and east of the rear of the shopping center. The distance between the acoustical center of the proposed project (noise source) and the northern property line is 128 feet; the distance to the eastern property line is 132 feet. Residences to the north and east of the shopping center are shielded by an existing 7.0-foot concrete wall. Of note, the wall appears to be constructed of wood veneer but is actually constructed of concrete, thereby qualifying it as a viable acoustical barrier.

Ambient noise levels are dominated by vehicular noise from both Adams Avenue and Brookhurst Street which are adjacent to the front side of the shopping center. While the line-of-sight is interrupted by the buildings in the shopping center, vehicular noise does flank around the sides of the buildings into the area that is proposed for the project.

City of Huntington Beach noise standards require that noise generated from one property onto another be under the allowable exterior noise level for the applicable land use according to Section 8.408050 Exterior Noise Standards, of the Huntington Beach Municipal Code. The applicable noise standards are summarized in **Table 1, Applicable Noise Standards** below. Since the project will not operate before 7:00 AM or after 10:00 PM, it is only subject to the daytime standard.

CIVIL
ENGINEERING

WATER
RESOURCES
ENGINEERING

ASSESSMENT/
SPECIAL TAX
CONSULTING

PLANNING &
ENVIRONMENTAL
SERVICES

CONSTRUCTION
MANAGEMENT
AND INSPECTION

TRAFFIC &
TRANSPORTATION
ENGINEERING

LAND
SURVEYING

PUBLIC
WORKS

Table 1, Applicable Noise Standards

Designated Noise Zone Land Use (Receptor Property)	Time Interval	Allowed Exterior Noise Level (dB)
All Residential Properties	10:00 PM to 7:00 AM (nighttime)	50
	7:00 AM to 10:00 PM (daytime)	55

Source: City of Huntington Beach (Also available at http://www.surfcity-hb.org/files/users/city_clerk/MC0840.pdf.)

Noise monitoring was performed with a Larson Davis model 820 SLM that was field calibrated with a model CAL 150B calibrator. Noise monitoring positions are indicated on **Figure 2, Noise Monitoring Positions**. As shown in **Table 2, Noise Monitoring Results**, existing ambient noise levels at one of the two monitoring positions already exceeds the established daytime noise standards.

Table 2, Noise Monitoring Results

Site	Start Time	End Time	L_{eq}	L_{max}	L_{min}	L_5	L_{10}	L_{35}	L_{50}	L_{67}	L_{90}
HB1a	2:05 PM	2:15 PM	56.6	78.1	49.4	56.2	54.6	52.5	51.7	51.2	50.3
Noise Monitor Position: at property line to north. Comments: Predominant noise source is vehicular noise from Brookhurst Street and Adams Avenue. Line of sight broken, but noise flanking in from sides. Limited activity in the rear parking lot.											
HB2b	2:25 PM	2:35 PM	51.2	56.7	48.5	54.3	53.5	51.2	50.1	49.6	49.0
Noise Monitor Position: at property line to east. Comments: Predominant noise source is vehicular noise from Brookhurst Street and Adams Avenue. Line of sight broken, but noise flanking in from sides. Limited activity in the rear parking lot.											
L_{eq} = Equivalent Sound Level (single-value descriptions of average sound exposure over various periods of time), L_{max} = the maximum or peak recorded noise level, L_{min} = the minimum recorded noise level, L_r = the percentile-exceeded sound level (the sound level exceeded during a given percentage of a measurement period)											

As shown above, the applicable noise standard is exceeded at one of the two monitored positions, without the inclusion of project noise; therefore a level of significance and the project's contribution to impacted residences was established in order to determine project compliance. As with most cities, the city of Huntington Beach has not established a level of significance for noise impact increases. However, generally speaking, most people have difficulty distinguishing the louder of two sound sources if they differ by less than 1.5 to 2.0 dBA ("A-weighted" decibels). Research into the human perception of changes in sound level indicates the following:

- A 3 dBA change is barely perceptible, (typically under laboratory conditions);
- A 5 dBA change is clearly perceptible;
- A 10 dBA change is perceived as being twice or half as loud.

ALBERT A. WEBB ASSOCIATES

A doubling or halving of acoustic energy will change the resulting sound level by 3 dBA, which corresponds to a change that is barely perceptible. In practice, this means that a doubling of traffic volume on a roadway, doubling the number of people in a stadium, or doubling the number of wind turbines in a wind farm will, as a general rule, only result in a 3 dBA, or barely perceptible, increase in noise.

Below, **Table 3, Project-Specific Noise Contours** summarizes the distances to the 55, 50 and 45 dBA Leq noise contours based upon reference levels obtained from an operational Re-Planet Recycling Buy-Back Center located in Murrieta, California.

Table 3, Project-Specific Noise Contours

Noise Level (dBA CNEL)	Distance from Center of Noise Source (in feet)
55	25
50	79
45	250

The ambient noise levels that were monitored at the proposed project location were used to determine post-project noise levels. This is done by combining the ambient noise levels with reference noise levels from another Recycling Buy-Back Center location that is already in use. The resulting post-project noise increases are summarized below in **Table 4, Post Project Noise Impact Summary**.

Table 4, Post Project Noise Impact Summary

Monitoring Position	Distance From Project (feet)	Project Only Noise Level (dBA Leq)	Ambient Noise Level (dBA Leq)	Combined Noise Level (dBA Leq)	Net Increase (dBA Leq)
HB1a	128	47.9	56.6	57.1	0.5
HB2a	132	47.8	51.2	52.8	1.6

As indicated in Table 3, project-specific noise levels are at the city's daytime noise threshold (55.0 dBA Leq) at 25 feet from the acoustic center. Positioned 79 feet from the acoustic center, the project would meet the nighttime standard. Therefore, since the project will not operate during the hours that the city has deemed "nighttime" hours, the project can be positioned to within 25 feet of a noise sensitive receptor's property line and still meet the city's daytime noise standard.

In summary, ambient noise levels are exceeded at the northern property line under existing (pre-project) conditions. Project-specific noise levels are below the daytime standard at 25 feet,

ALBERT A. **WEBB** ASSOCIATES

Mr. Joe Perez
Tomra Pacific, Inc.
May 20, 2008
Page 4

minimum, from the noise source. Project-specific noise levels are below the nighttime standard at 79 feet, minimum, from the noise source. Therefore, provided the project operates within the applicable distances discussed above, project compliance will be achieved with regards to noise.

We appreciate the opportunity to be of service and look forward to assisting you on future projects. If you have questions or require additional analysis please feel free to contact us.

Sincerely yours,

ALBERT A. WEBB ASSOCIATES



Mike Rosa
Transportation/Environmental Planner

Attachments: Appendix A – Applicable Noise Standards
Appendix B – Calculations

ALBERT A. **WEBB** ASSOCIATES

Appendix A
Applicable Noise Standards

Chapter 8.40**NOISE CONTROL**

(1006-10/63, 1072-11/64, 1354-11/67, 1935-11/74, 2364-5/79, 2379-7/79, Urg. 2434-5/80, 2533-2/82, 2788-9/85, 3131-4/92, 3216-12/93, 3514-12/01)

Sections:

- 8.40.010 Declaration of policy
- 8.40.020 Definitions
- 8.40.030 Noise level measurement criteria
- 8.40.040 Designated noise zones
- 8.40.050 Exterior noise standards
- 8.40.060 Exterior noise levels prohibited
- 8.40.070 Interior noise standards
- 8.40.080 Interior levels of noise prohibited
- 8.40.090 Special provisions
- 8.40.095 Leaf blowers
- 8.40.100 Schools, hospitals and churches--Special provisions
- 8.40.110 Air conditioning, refrigeration--Special provisions
- 8.40.111 Prohibited noises
- 8.40.112 Loud noises
- 8.40.120 Manner of enforcement
- 8.40.130 Variance procedure
- 8.40.140 Noise Variance Board
- 8.40.150 Appeals
- 8.40.160 Appeals--Notice of hearing
- 8.40.170 Action of council
- 8.40.180 Violations--Misdemeanor

8.40.010 Declaration of policy. In order to control unnecessary, excessive and annoying sounds emanating from incorporated areas of the City, it is hereby declared to be the policy of the City to prohibit such sounds generated from all sources as specified in this chapter.

It is determined that certain noise levels are detrimental to the public health, welfare and safety and contrary to public interest; therefore, the City Council does ordain and declare that creating, maintaining, causing or allowing to create, maintain or cause any noise in a manner prohibited by, or not in conformity with the provisions of this chapter, is a public nuisance and shall be punishable as such. (2379-7/79)

8.40.020 Definitions. The following words, phrases and terms as used in this chapter shall have the meaning as indicated below:

- (a) "Ambient noise level" shall mean the all-encompassing noise level associated with a given environment, being a composite of sounds from all sources, excluding the alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made.
- (b) "Commercial property" shall mean a parcel of real property which is developed and used either in part or in whole for commercial purposes including, but not limited to, retail and wholesale businesses and professional offices.
- (c) "Cumulative period" shall mean an additive period or time composed of individual time segments which may be continuous or interrupted.
- (d) "Decibel" (db) shall mean a unit which denotes the ratio between two (2) quantities which are proportional to power; the number of decibels corresponding to the ratio of two (2) amounts of power is ten (10) times the logarithm to the base ten (10) of this ratio.

- (e) "Emergency machinery, vehicle or work" shall mean any machinery, vehicle or work used, employed or performed in an effort to protect, provide or restore safe conditions in the community or for the citizenry, or work by private or public utilities when restoring utility service.
- (f) "Fixed noise source" shall mean a stationary device which creates sounds while fixed or motionless, including but not limited to, industrial and commercial machinery and equipment, pumps, fans, compressors, generators, air conditioners and refrigeration equipment.
- (g) "Grading" shall mean any excavating or filling of earth material, or any combination thereof, conducted to prepare said site for construction or the placement of the improvements thereon.
- (h) "Impact noise" shall mean the noise produced by the collision of one mass in motion with a second mass which may be either in motion or at rest.
- (i) "Industrial property" shall mean a parcel of real property which is developed and used in part or in whole for manufacturing purposes including research and development uses.
- (j) "Mobile noise source" shall mean any noise source other than a fixed noise source.
- (k) "Noise level" shall mean the "A" weighted sound pressure level in decibels obtained by using a sound level meter at slow response with a reference pressure of twenty (20) micropascals (micronewtons per square meter). The unit of measurement shall be designated as db(A).
- (l) "Person" shall mean a person, firm, association, co-partnership, joint venture, corporation or any entity, public or private in nature.
- (m) "Residential property" shall mean a parcel of real property which is developed and used either in part or in whole for residential purposes, other than transient uses such as hotels or motels.
- (n) "Predominant tone noise" shall mean a noise characterized by a predominant frequency or frequencies so that other frequencies cannot be readily distinguished.
- (o) "Sound pressure level" of a sound, in decibels, shall mean twenty (20) times the logarithm to the base of ten (10) of the ratio of the pressure of the sound to a reference pressure, which reference pressure shall be explicitly stated. (2379-7779)

8.40.030 Noise level measurement criteria. Any noise level measurements made pursuant to the provisions of this chapter shall be performed using a sound level meter as defined in this chapter. The location selected for measuring exterior noise levels shall be at any point on the property line of the offender or anywhere on the affected property. Interior noise measurements shall be made within the affected unit. The measurement shall be made at a point in the affected unit at least four (4) feet from the wall, ceiling or floor nearest the noise source. All noise level measurements shall be performed in accordance with procedural rules and regulations of the Orange County Health Department. (2379-7779)

8.40.040 Designated noise zones. The properties hereinafter described, whether within or without the City, are hereby assigned to the following noise zones:

Noise Zone 1: All residential properties;

Noise Zone 2: All professional office and public institutional properties;

Noise Zone 3: All commercial properties with the exception of professional office properties; and

Noise Zone 4: All industrial properties. (2379-7779)

8.40.050 Exterior noise standards.

(a) The following noise standards, unless otherwise specifically indicated, shall apply to all residential property within a designated noise zone:

Exterior Noise Standards		
Noise Zone	Noise Level	Time Period
1	55 db(A)	7 a.m. - 10 p.m.
	50 db(A)	10 p.m. - 7 a.m.
2	55 db(A)	Anytime
3	60 db(A)	Anytime
4	70 db(A)	Anytime

(b) In the event the alleged offensive noise consists entirely of impact noise, simple tone noise, speech, music, or any combination thereof, each of the above noise levels shall be reduced by five (5) db(A). (2379-8/79, 2788-9/85)

8.40.060 Exterior noise levels prohibited. It shall be unlawful for any person at any location within the incorporated area of the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person, which causes the noise level when measured on any residential, public institutional, professional, commercial or industrial property, either within or without the City, to exceed the applicable noise standards:

- (a) For a cumulative period of more than thirty (30) minutes in any hour;
- (b) Plus 5 db(A) for a cumulative period of more than fifteen (15) minutes in any hour;
- (c) Plus 10 db(A) for a cumulative period of more than five (5) minutes in any hour;
- (d) Plus 15 db(A) for a cumulative period of more than one (1) minute in any hour; or
- (e) Plus 20 db(A) for any period of time.

In the event the ambient noise level exceeds any of the first four noise limit categories above, the cumulative period applicable to said category shall be increased to reflect said ambient noise level. In the event the ambient noise level exceeds the fifth noise limit category, the maximum allowable noise level under said category shall be increased to reflect the maximum ambient noise level. (2379-7/79)

8.40.070 Interior noise standards.

(a) The following noise standards, unless otherwise specifically indicated, shall apply to all real property within a designated noise zone:

Interior Noise Standards		
Noise Zone	Noise Level	Time Period
1	55 db(A)	7 a.m. - 10 p.m.
	45 db(A)	10 p.m. - 7 a.m.
2, 3, 4	55 db(A)	Anytime

- (b) In the event the alleged offensive noise consists entirely of impact noise, simple tone noise, speech, music, or any combination thereof, each of the above noise levels shall be reduced by five (5) db(A). (2379-7/79, 2788-9/85)

8.40.080 Interior levels of noise prohibited. It shall be unlawful for any person at any location within the incorporated area of the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person, which causes the noise level when measured within any other structure on any residential, public institutional, commercial, or industrial property to exceed:

- (a) The noise standard for a cumulative period of more than five minutes in any hour;
- (b) The noise standards plus 5 db(A) for a cumulative period of more than one (1) minute in any hour; or
- (c) The noise standard plus 10 db(a) for any period of time.

In the event the ambient noise level exceeds either of the first two noise limit categories above, the cumulative period applicable to said category shall be increased to reflect said ambient noise level. In the event the ambient noise level exceeds the third noise level, the maximum allowable noise level under said category shall be increased to reflect the maximum ambient noise level.

Each of the noise limits specified above shall be reduced by 5 db(A) for impact or predominant tone noises, or for noises consisting of speech or music.

In the event that the noise source and the affected property are within different noise zones, the noise standards of the affected property shall apply. (2379-7/79)

8.40.090 Special provisions. The following activities shall be exempt from the provisions of this chapter:

- (a) School bands, school athletics and school entertainment events, provided such events are conducted on school property or authorized by special permit from the City;
- (b) Activities otherwise lawfully conducted in public parks, public playgrounds and public or private school grounds;
- (c) Any mechanical device, apparatus or equipment used, related to or connected with emergency machinery, vehicle or work;
- (d) Noise sources associated with construction, repair, remodeling, or grading of any real property; provided a permit has been obtained from the City; and provided said activities do not take place between the hours of 8 p.m. and 7 a.m. on weekdays, including Saturday, or at any time on Sunday or a federal holiday.
- (e) All mechanical devices, apparatus or equipment which are utilized for the protection or harvest of agricultural crops during periods of potential or actual frost damage or other adverse weather conditions;
- (f) Mobile noise sources associated with agricultural operations provided such operations do not take place between the hours of 8 p.m. and 7 a.m. on weekdays, including Saturday, or at any time on Sunday or a federal holiday.
- (g) Mobile noise sources associated with agricultural pest control through pesticide application, provided that the application is made in accordance with restricted material permits issued by or regulations enforced by the Agricultural Commissioner;

- (h) Noise sources associated with the maintenance of real property provided said activities take place between the hours of 8 a.m. and 8 p.m. on any day except Sunday or between the hours of 9 a.m. and 6 p.m. on Sunday or a federal holiday;
- (i) Leaf blower shall be governed by section 8.40.095. (3131-4/92)
- (j) Any activity or equipment to the extent that design regulation thereof has been pre-empted by state or federal laws. (2379-7/79)

8.40.095 Leaf blowers. (3131-4/92)

- (a) **Definitions.** As used in this section, the following terms shall have meanings as set forth below: (3131-4/92)
 - (1) "Leaf blower" means any machine, however powered, used to blow leaves, dirt and other debris off sidewalks, driveways, lawns and other surfaces. (3131-4/92)
 - (2) "Parcel" means an area of real property with a separate or distinct number or other designation shown on a plat recorded in the office of the County Recorder. Contiguous parcels owned by the same individual or entity shall be considered one parcel for purposes of this section. (3131-4/92)
- (b) **Unlawful to propel debris beyond parcel boundary.** It shall be unlawful for any person to use or operate any leaf blower in such a manner as to blow, dispel or make airborne, dust, leaves, grass cuttings, paper, trash or any other type of unattached debris or material, beyond the parcel boundaries of the parcel being cleaned, unless the consent of the adjoining owner or person in possession is obtained. It shall be unlawful for any person to use or operate any leaf blower within the City in such a way as to blow leaves, dirt and other debris onto the public rights-of-way or private property and to allow such debris to remain there in excess of thirty (30) minutes. (3131-4/92)
- (c) **Special prohibitions.** It shall be unlawful for any person to operate a leaf blower within a residential zone or within one hundred feet of a residential zone of the City of Huntington Beach, except under the following conditions: (3131-4/92)
 - (1) Time restriction. Noise sources associated with the maintenance of real property provided said activities take place between the hours of 8:00 A.M. and 8:00 P.M. on any day except Sunday or between the hours of 9:00 A.M. and 6:00 P.M. on Sunday or a federal holiday. (3131-4/92)
 - (2) Distance restriction. Leaf blowers shall not be operated within a horizontal distance of ten (10) feet of any operable window, door, or mechanical air intake opening or duct; (3131-4/92)
 - (3) Duration of use restriction. Leaf blowers shall not be operated for more than fifteen (15) minutes per hour, per day, on parcels less than one-half acre and no more than thirty (30) minutes per hour on parcels greater than one-half acre up to one acre. Leaf blowers shall not be operated for more than two (2) hours on parcels of one acre or more. (3131-4/92)
 - (4) Number restriction. No person shall operate more than one (1) leaf blower per parcel on one-half acre, no more than two (2) leaf blowers on parcels greater than one-half acre and no more than three (3) leaf blowers on parcels greater than one acre or more. (3131-4/92)
 - (5) The maximum decibel level of 70 dba as measured ten (10) feet from the leaf blower shall not be exceeded. (3131-4/92)

8.40.100 Schools, hospitals and churches--Special provisions. It shall be unlawful for any person to create any noise which causes the noise level at any school, hospital or church while same is in use, to exceed the noise limits specified for exterior noise standards in this chapter, or which noise level unreasonably interferes with the use of such institutions or which unreasonably disturbs or annoys patients in the hospital, provided conspicuous signs are displayed in three (3) separate locations within one-tenth (1/10) of a mile of the institution indicating the presence of a school, hospital or church. (2379-7/79)

8.40.110 Air conditioning, refrigeration--Special provisions. During a one (1) year period following the effective date of this chapter, the noise level standards specified in this chapter shall be increased by 5 db(A) where the alleged noise source is an air-conditioning apparatus or refrigeration system, which was installed prior to the effective date of this chapter. (2379-7/79)

8.40.111 Prohibited noises. Notwithstanding any other provisions of this chapter and in addition thereto, it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area. (3216-12/93)

The standard which may be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following: (3216-12/93)

- (a) The level of the noise; (3216-12/93)
- (b) Whether the nature of the noise is usual or unusual; (3216-12/93)
- (c) Whether the origin of the noise is natural or unnatural; (3216-12/93)
- (d) The level and intensity of the background noise, if any; (3216-12/93)
- (e) The proximity of the noise to residential sleeping facilities; (3216-12/93)
- (f) The nature and zoning of the area within which the noise emanates; (3216-12/93)
- (g) The density of the inhabitation of the area within which the noise emanates; (3216-12/93)
- (h) The time of the day and night the noise occurs; (3216-12/93)
- (i) The duration of the noise; (3216-12/93)
- (j) Whether the noise is recurrent, intermittent or constant; and (3216-12/93)
- (k) Whether the noise is produced by a commercial or noncommercial activity. (3216-12/93)

8.40.112 Loud noises. It shall be unlawful for any person to: (3514-12/01)

- (a) Use, operate, or permit to be operated any radio, receiving set or device, television set, musical instrument, phonograph, CD, DVD, tape player, juke box, or other machine or device for producing or reproducing sound in such a manner as to disturb the peace, quiet, and comfort of other persons. (3514-12/01)
- (b) Make or allow to be made any noise which continues for more than a five minute period between the hours of 10PM and 7AM if such noise is audible for fifty feet or more from the source of the noise. (3514-12/01)
- (c) Maintain, manage, or control any business or residential property in violation of sections (a) or (b). (3514-12/01)

(d) Own, maintain, control, operate, take care or custody of, or otherwise provide any premises, and allow noise to continue after being informed, anytime within the preceding thirty days by the Police Department, that a violation of this chapter has been committed on said premises. (3514-12/01)

(e) Violations of this section are hereby declared a nuisance. (3514-12/01)

8.40.120 Manner of enforcement. Except for Sections 8.40.111 and 8.40.112, the Orange County Health Officer and his duly authorized representatives are directed to enforce the provisions of this chapter. The Orange County Health Officer and his duly authorized representatives are authorized pursuant to Penal Code section 836.5 to arrest any person without a warrant when they have reasonable cause to believe that such person has committed a misdemeanor in their presence. (3216-12/93)

If the Orange County Health Officer or his duly authorized representatives conduct db(A) tests or readings for purposes of enforcement, and the noise level is found to exceed those levels stipulated as permissible in this chapter, the owner or operator of the noise source shall be required to pay the cost of the db(A) tests or readings.

No person shall interfere with, oppose or resist any authorized person charged with the enforcement of this chapter while such person is engaged in the performance of his duty. (2379-7/79, 2533-2/82)

8.40.130 Variance procedure. The owner or operator of a noise source which violates any of the provisions of this chapter may file an application with the Health Officer for a variance from the provisions thereof wherein said owner or operator shall set forth all actions taken to comply with said provisions, the reasons why immediate compliance cannot be achieved, a proposed method of achieving compliance, and a proposed time schedule for its accomplishment. Said application shall be accompanied by a fee in the amount of seventy-five dollars (\$75).

A separate application shall be filed for each noise source; provided, however, that several mobile sources under common ownership, or several fixed sources on a single property may be combined into one application. Upon receipt of said application and fee, the Health Officer shall refer it with his recommendation thereon in accordance with the provisions of this chapter.

An applicant for a variance shall remain subject to prosecution under the terms of this chapter until a variance is granted. (2379-7/79)

8.40.140 Noise variance board. The noise Variance Board shall evaluate all applications for variance from the requirements of this chapter and may grant said variances with respect to time for compliance, subject to such terms, conditions and requirements as it may deem reasonable to achieve maximum compliance with the provisions of this chapter. Said terms, conditions and requirements may include, but shall not be limited to, limitations on noise levels and operating hours. Each such variance shall set forth in detail the approved method of achieving maximum compliance and a time schedule for its accomplishment.

In its determination said board shall consider the magnitude of nuisance caused by the offensive noise; the uses of property within the area of impingement by the noise; the time factors related to study, design, financing and construction of remedial work; the economic factors related to age and useful life of equipment; and the general public interest and welfare. Any variance granted by said board shall be by resolution and shall be transmitted to the Health Officer for enforcement. Any violation of the terms of said variance shall be unlawful.

Members of the Variance Board shall be appointed by, and shall serve at the pleasure of the Orange County board of supervisors. The Variance Board shall adopt reasonable rules and regulations for its own procedures in carrying out its functions under the provisions of this chapter.

Three (3) members shall constitute a quorum and at least three (3) affirmative votes shall be required in support of any action.

The Health Officer, or his appointed representative, shall be a nonvoting ex officio member of the Variance Board, and shall act as secretary of the board.

Meetings of the noise Variance Board shall be held at the call of the secretary and at such times and locations as said board shall determine. All such meetings shall be open to the public.
(2379-7/79)

8.40.150 Appeals. Within fifteen (15) days following notice to the City of the decision of the Variance Board on an application, the applicant, the Health Officer, or any member of the City Council, may appeal the decision to the City Council by filing a notice of appeal with the secretary of the Variance Board. In the case of an appeal by the applicant for a variance, the notice of appeal shall be accompanied by a fee to be computed by the secretary on the basis of the estimated cost of preparing the materials required to be forwarded to the City Council as discussed hereafter. If the actual cost of such preparation differs from the estimated cost, the applicant shall pay the difference to the secretary and the secretary shall pay the amount of any excess to the applicant. (2379-7/79)

8.40.160 Appeals--Notice of hearing. Within fifteen (15) days following the receipt of a notice of appeal and the appeal fee, the secretary of the Variance Board shall forward to the City Council copies of the application for variance; the recommendation of the Health Officer; the notice of appeal; all evidence concerning said application received by the Variance Board and its decision thereon. In addition, any person may file with the City Council written arguments supporting or attacking said decision and the City Council may, in its discretion, hear oral arguments thereon. The City Clerk shall mail to the applicant a notice of the date set for hearing of the appeal. The notice shall be mailed at least ten (10) days prior to the hearing date.
(2379-7/79)

8.40.170 Action of Council. Within sixty (60) days following its receipt of the notice of the appeal, the City Council shall either affirm, modify or reverse the decision of the Variance Board at a duly noticed public hearing. Such decision shall be based upon the City Council's evaluation of the matters submitted to it in light of the powers conferred on the Variance Board and the factors to be considered as set out in this chapter.

As part of its decision, the council may direct the Variance Board to conduct further proceedings on said application. Failure of the City Council to affirm, modify or reverse the decision of the Variance Board within said sixty (60) day period shall constitute affirmation of the board's decision. (2379-7/79)

8.40.180 Violations--Misdemeanor. Any person violating any of the provisions of this chapter shall be deemed guilty of a MISDEMEANOR. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. The provisions of this chapter shall not be construed as permitting conduct not proscribed herein and shall not affect the enforceability of any other applicable provisions of law. (2379-7/79)

Appendix B
Calculations

NOISE IMPACT ADDITION WORKSHEET

Entered by: **Mike**
 W.O.: **2008-0138**
 Project: **Re-Planet Recycle Buy-Back Center Noise Monitoring**
 City/County Agency: **Huntington Beach**
 Noise Impact Threshold: **50 dBA**

Site: **Huntington Beach Ralph's Parking Lot**

Obs. Location: **North (HB1a @ 128 feet)**

Conditions: **Ambient and With Project**

Noise Source	Noise Level (dBA)	Equivalent Pressure Units
Ambient	56.6	457,088.2
with project	47.9	61,659.5
unused	0.0	--

Total Pressure Units: **518,747.7**

ied Ambient and With Project noise level from all sources:

57.1 dBA

rking Lot North (HB1a @ 128 feet) noise impact threshold:

Not Met

NOISE IMPACT ADDITION WORKSHEET

Entered by: **Mike**

W.O.: **2008-0138**

Project: **Re-Planet Recycle Buy-Back Center Noise Monitoring**

City/County Agency: **Huntington Beach**

Noise Impact Threshold: **50 dBA**

Site: **Huntington Beach Ralph's Parking Lot**

Obs. Location: **East (HB2a @ 132 feet)**

Conditions: **Ambient and With Project**

Noise Source	Noise Level (dBA)	Equivalent Pressure Units
Ambient	51.2	131,825.7
with project	47.8	60,256.0
unused	0.0	--

Total Pressure Units: **192,081.6**

ed Ambient and With Project noise level from all sources:

52.8 dBA

arking Lot East (HB2a @ 132 feet) noise impact threshold:

Not Met

Reference Noise Level Projection Worksheet

Project: Acoustical Monitoring of Future Recycling Buy-Back Center
 City/County Agency: Huntington Beach

Entered By: Mike
 W.O.: 2008-0138

Subject Noise Source: **Recycling Buy-Back Center**

Reference Noise Data Source: Recycling Buy-Back Center Reference Noise Level, Murrieta
 Webb Associates, dated 05/09/08

REFERENCE DATA

Unmitigated Noise Level:

Distance: 30.0 feet
 Leq: 54.2 dBA
 Lmax: - -
 L2: - -
 L8: - -
 L25: - -
 L50: - -

PROJECTED DATA

Observer Elevation: 0.0 feet
 Observer Height: 5.0 feet

Noise Source Elevation: 0.0 feet
 Noise Source Height: 5.0 feet

Unmitigated Noise Level:

Distance: 25.0 feet
 Leq: 55.0 dBA
 Lmax: - -
 L2: - -
 L8: - -
 L25: - -
 L50: - -

Mitigated Noise Level:

Dist. to Barrier: 25.0 feet Barrier Height: 0.0 feet
 Leq: - -
 Lmax: - -
 L2: - -
 L8: - -
 L25: - -
 L50: - -

Albert A. Webb Associates

Reference Noise Level Projection Worksheet

Project: Acoustical Monitoring of Future Recycling Buy-Back Center
City/County Agency: Huntington Beach

Entered By: Mike
W.O.: 2008-0138

Subject Noise Source: **Recycling Buy-Back Center**

Reference Noise Data Source: Recycling Buy-Back Center Reference Noise Level, Murrieta
Webb Associates, dated 05/09/08

REFERENCE DATA

Unmitigated Noise Level:	
Distance:	30.0 feet
Leq:	54.2 dBA
Lmax:	--
L2:	--
L8:	--
L25:	--
L50:	--

PROJECTED DATA

Observer Elevation:	0.0 feet	Noise Source Elevation:	0.0 feet		
Observer Height:	5.0 feet	Noise Source Height:	5.0 feet		
Unmitigated Noise Level:		Mitigated Noise Level:			
Distance:	79.0 feet	Dist. to Barrier:	79.0 feet	Barrier Height:	0.0 feet
Leq:	50.0 dBA	Leq:	--		
Lmax:	--	Lmax:	--		
L2:	--	L2:	--		
L8:	--	L8:	--		
L25:	--	L25:	--		
L50:	--	L50:	--		

Albert A. Webb Associates

Reference Noise Level Projection Worksheet

Project: Acoustical Monitoring of Future Recycling Buy-Back Center
City/County Agency: Huntington Beach

Entered By: Mike
W.O.: 2008-0138

Subject Noise Source: Recycling Buy-Back Center

Reference Noise Data Source: Recycling Buy-Back Center Reference Noise Level, Murrieta
Webb Associates, dated 05/09/08

REFERENCE DATA

Unmitigated Noise Level:

Distance: 30.0 feet
Leq: 54.2 dBA
Lmax: - -
L2: - -
L8: - -
L25: - -
L50: - -

PROJECTED DATA

Observer Elevation: 0.0 feet
Observer Height: 5.0 feet

Noise Source Elevation: 0.0 feet
Noise Source Height: 5.0 feet

Unmitigated Noise Level:

Distance: 250.0 feet
Leq: 45.0 dBA
Lmax: - -
L2: - -
L8: - -
L25: - -
L50: - -

Mitigated Noise Level:

Dist. to Barrier: 250.0 feet **Barrier Height:** 0.0 feet
Leq: - -
Lmax: - -
L2: - -
L8: - -
L25: - -
L50: - -

Reference Noise Level Projection Worksheet

Project: Acoustical Monitoring of Future Recycling Buy-Back Center
City/County Agency: Huntington Beach

Entered By: Mike
W.O.: 2008-0138

Subject Noise Source: Recycling Buy-Back Center

Reference Noise Data Source: Recycling Buy-Back Center Reference Noise Level, Murrieta Webb Associates, dated 05/20/08

REFERENCE DATA

Unmitigated Noise Level:

Distance: 30.0 feet
Leq: 54.2 dBA
Lmax: - -
L2: - -
L8: - -
L25: - -
L50: - -

PROJECTED DATA

Observer Elevation: 0.0 feet
Observer Height: 5.0 feet

Noise Source Elevation: 0.0 feet
Noise Source Height: 5.0 feet

Unmitigated Noise Level:

Distance: 128.0 feet
Leq: 47.9 dBA
Lmax: - -
L2: - -
L8: - -
L25: - -
L50: - -

Mitigated Noise Level:

Dist. to Barrier: 128.0 feet **Barrier Height:** 0.0 feet
Leq: - -
Lmax: - -
L2: - -
L8: - -
L25: - -
L50: - -

Albert A. Webb Associates

Reference Noise Level Projection Worksheet

Project: Acoustical Monitoring of Future Recycling Buy-Back Center
City/County Agency: Huntington Beach

Entered By: Mike
W.O.: 2008-0138

Subject Noise Source: **Recycling Buy-Back Center**

Reference Noise Data Source: Recycling Buy-Back Center Reference Noise Level, Murrieta
Webb Associates, dated 05/20/08

REFERENCE DATA

Unmitigated Noise Level:

Distance: 30.0 feet
Leq: 54.2 dBA
Lmax: - -
L2: - -
L8: - -
L25: - -
L50: - -

PROJECTED DATA

Observer Elevation: 0.0 feet
Observer Height: 5.0 feet

Noise Source Elevation: 0.0 feet
Noise Source Height: 5.0 feet

Unmitigated Noise Level:

Distance: 132.0 feet
Leq: 47.8 dBA
Lmax: - -
L2: - -
L8: - -
L25: - -
L50: - -

Mitigated Noise Level:

Dist. to Barrier: 132.0 feet Barrier Height: 0.0 feet
Leq: - -
Lmax: - -
L2: - -
L8: - -
L25: - -
L50: - -

ATTACHMENT 3

"Western Realty"
<westernrealty@ear
<susan.moore@ralphs.com>
thlink.net>

To:

cc:

Subject: RE: Ralphs 20

03/06/2008 05:30
PM

PROPERTY OWNER RESPONSE BEINGS HERE.
Susan,

The owners have tried to reasonably accommodate Ralphs request for a recycling facility by agreeing to a location that does not negatively impact the Center's aesthetics or the customer parking areas. While it is unfortunate that the City of Huntington Beach may not approve our location, we do not believe that a recycling facility in the front of the shopping center is in the best interest of the Plaza.

Bruce Cowgill
Co-Manager
Brookhurst & Adams, LLC

ATTACHMENT 4

Arabe, Jill

From: Small, Ken
Sent: Wednesday, May 28, 2008 1:54 PM
To: Arabe, Jill
Subject: RE: 10081 Adams - Recycling Center - PD's opinion

Hi Jill...

Our position is that the presence of a recycling center will add to an increase in the number of homeless and transient people who visit and loiter at the shopping center. The one next to the Albertson's at the Newland Center is a good example. The owners of the center and customers complain about the panhandlers and homeless who loiter at the center. Many are brought there by the presence of the recycling center. Some live or spend the day at Bartlett Park. At Adams and Brookhurst, the situation is the same. We get many complaints about homeless people and panhandlers in the area. Most stay in the area of the Santa Ana River Trail. I am not specifically aware of calls directly related to the recycling centers, but we do get calls and complaints about the homeless people and panhandlers in the area. Having said that, I do understand that recycling centers are a necessary part of our community. I would just make sure that the center owners have a good understanding that the recycling center may have an adverse impact on the businesses in the center if they lose customers who don't want to be confronted by panhandlers and homeless people. Hope that helps.

Ken Small

From: Arabe, Jill
Sent: Wednesday, May 28, 2008 11:16 AM
To: Small, Ken
Subject: 10081 Adams - Recycling Center - PD's opinion

Chief Small –

I have received several letters regarding a proposed recycling center at the northeast corner of Brookhurst and Adams – Beachmont Plaza. The proposed location will be behind the buildings, specifically at the northeast portion of the site.

Although the plans were not initially routed to PD, I wanted to clarify what the Police Department's position is for the proposed use? Several of the letters have referenced PD calls in relation to existing recycling centers.

If possible, please respond.

Jill Ann Arabe
Planning Aide
City of Huntington Beach
(E) jarabe@surfcity-hb.org
(P) 714.374.5357

5/28/2008

ATTACHMENT RC. 4

ATTACHMENT 5

20FB



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING

Phone 536-5271
Fax 374-1540
374-1648

November 6, 2002

Investigator Charlie Sento
Department of Alcoholic Beverage Control
Santa Ana District Office
28 Civic Center Plaza, Room 369
Santa Ana, CA 92701

SUBJECT: LETTER OF COMPLIANCE-SECTION 23958.4, CA BUSINESS AND PROFESSIONS CODE. RALPHS GROCERY CO. AT THE NORTHEAST CORNER OF ADAMS AVENUE AND BROOKHURST STREET, HUNTINGTON BEACH, CA 92646

Dear Madam or Sir:

The City of Huntington Beach would like to inform you that Ralphs Grocery Company, located at the former Vons site at the northeast corner of Adams Avenue and Brookhurst Street, has been approved to sell alcohol (<10% of the total floor area) in conjunction with the supermarket.

The City's Zoning and Subdivision Ordinance exempts the sale of alcohol in supermarkets provided less than 10% of the floor area is allocated for sales and display. The City of Huntington Beach has determined that public convenience will be served by issuance of a Type 21 License, in compliance with Section 23958.4 of the California Business and Professions Code. As a result, a Type 21 license may be issued to Ralphs Grocery Company.

If you have any further questions, please contact me at (714) 536-5271.

Sincerely,

resubmit file

c: Virginia Rader, Ralphs Co., P.O. Box 54143, Los Angeles, CA 90054

G:\PLANNING\Zoning Letters\Ralphs@Adams.Brookhurst_abc2.doc

ATTACHMENT 6



CITY OF HUNTINGTON BEACH

INTER-DEPARTMENT COMMUNICATION Huntington Beach

JUL 25 2008

TO: Planning Commission
VIA: Paul Emery, Interim City Administrator
FROM: Kenneth W. Small, Chief of Police *KWS*
DATE: July 23, 2008
SUBJECT: Ralph's Recycling Center Permit No. 07-047

cc - PC
SH
HF
JA

The Police Department understands and supports the concept of neighborhood recycling centers. However, we also recognize that these centers have the potential to create adverse impacts on surrounding businesses and residential communities.

In response to your request at the study session on July 22, 2008, the police department opposes the placement of a recycling center in the Ralph's Shopping Center at Brookhurst and Adams. We believe the potential adverse impacts far surpass the benefits of having a recycling center at that location. The presence of a recycling center at that location will result in an increase in the number of transient and homeless people who visit and loiter in the shopping center. It will also result in an increase in the number of transient and homeless people walking through and loitering in the residential community east of the shopping center because there is a pedestrian gate that allows access from the shopping center into the residential area.

Homeless people collect recyclables and return them for money. If a recycling center is located in the shopping center, it will attract homeless people who collect recyclables. Once the homeless people are in the shopping center, they will loiter and panhandle within the parking lot and near the fronts of the stores. Confrontations between homeless people who are panhandling for money and shoppers are not uncommon.

The shopping center at Brookhurst and Adams is in very close proximity to the Santa Ana River Trail (approximately one block). There are currently a large number of homeless people living in or around the river trail. Residents in the area of the river trail frequently complain about problems related to the homeless population who come into the city from the river trail. They also complain about being confronted by homeless people when using the river trail. In the past several years, there have been significant incidents, including one murder, which involved homeless people in the area of the river trail. The recycling center will only exacerbate an already existing problem we have with the homeless people in that area. The river trail homeless problem is so significant to the residents that the police department is entering into an agreement with the County of Orange that will allow us to conduct enforcement operations in the county

area along the river trail. Adding a recycling center to the Ralph's Shopping Center will be counterproductive to the efforts of the police department.

Shoppers want to have a sense of safety and security when they visit retail establishments in shopping centers. If there are homeless people panhandling and loitering in the shopping center, it creates the illusion of an unsafe area. Just the mere presence of the homeless population (because of their unkempt appearance) makes some people nervous and uneasy. Their presence also has the potential of having an adverse impact on businesses if shoppers choose to shop elsewhere to avoid transients and panhandlers.

We were asked to provide the number of calls to the police department at locations where recycling centers currently operate. The number of calls at these locations is not a complete and accurate representation of the issues mentioned in this memo. Many of the calls and complaints we receive do not come through our communications center and are therefore not included in the calls listed below.

Ralph's Market (Warner and Airport) June 2007 through July 2008

This location shows that in the time frame listed above, there were 12 calls to the police department that can be directly attributed to the recycling center involving a homeless person.

Ralph's Market (Garfield and Golden West) February 2006 through July 2008

This location shows that in the time frame listed above, there were 10 calls to the police department that can be directly attributed to the recycling center involving a homeless person.

Albertson's Market (Newland Center) January 2006 through July 2008

This location shows that in the time frame listed above, there were 14 calls to the police department that can be directly attributed to the recycling center involving a homeless person.

If you have any further questions about this matter, please feel free to contact me at (714) 536-5902.