

# **EXHIBIT F**

## **DON McPHERSON CORRESPONDENCES DATED**

**10-29-09**

**11-13-09**

**3-9-10**

**3-20-10**

**4-22-10**

**5-1-10**

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**Angela Soo**

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**From:** Don McPherson [dmcphersonla@gmail.com]  
**Sent:** Thursday, October 29, 2009 11:42 AM  
**To:** David Lesser; Jim Fasola; Kathleen Paralusz; Martha Andreani; Sandra Seville-Jones  
**Cc:** Richard Thompson; Laurie B. Jester; Nate Hubbard; Nate Hubbard; Stephanie Hubbard; Teresa Cho; Scott Murch; Steve Wible; Jeff Dooley; Nancy Giabardo; Aksi Kikut  
**Subject:** A Thank You and One Brief Summary

Commissioners,

Thank you for the unprecedented amount of time and effort invested in the Shade application. In my over twenty years of doing this stuff, I have never encountered a planning commission that even came close to exhibiting such understanding and competence, as you do. I keep telling the neighbors, how lucky they are to have you.

I also appreciate our overworked staff, for signing up to conduct a fourth public hearing, in order to resolve the Shade issue, which I believe lies within reach.

If after nearly five hours of Shade last night, you cannot bear to wade through my following summary of the noise-standard testimony, please look at the end of the email for another 'Thank You', regarding the ordinance change for New Year's closing hours.

**Summary of Noise-Standard Testimony (For your Shade file.)**

It appears that some commissioners, if not all, agree that Shade violates the subjective part of the municipal code, which prohibits noise that disturbs the residents.

It also appears that some commissioners question whether Shade does or does not violate the objective standards, set forth in the municipal code in dB units.

The objective standard issue plays a crucial role in obtaining an agreement on the Shade application, because psychologically, in order to get closure, the neighbors must have the city acknowledge that Shade violates the objective standards, as well as the subjective standards.

The neighbors need this, because every week, they get bombarded by Shade noise that clearly exceeds the ambient, background noise, and does so by statistically significant dB amounts. It frustrates them immensely, that the city blandly and bullheadedly refuses to acknowledge this obvious truth. The commissioners heard one such instance of an objective standard violation, in the September 27 Oktoberfest recording, played by Nate Hubbard.

Tom Corbishley, the Behrens analyst, testified to you that Shade does not violate the objective standards, because the ambient background noise exceeds the Shade noise. He further stated the ambient noise background exceeds the numerical standards in the noise regulations, so that the ambient noise level becomes the objective standard.

It does not take a certified, licensed noise expert to understand the following, simple fact. If the ambient noise background exceeds all instances of Shade noise, as Behrens claims, then you could not have heard the Oktoberfest music on the DVD, over the Behrens purportedly higher ambient noise background.

In the noise report, as per Corbishley's testimony, Behrens provides no sound level data correlated with Shade noise events. Nor do they state anywhere in the report the sound levels used in the analysis of the ambient noise, which they say exceeds both the Shade noise, as well as the numeric standards in the noise regulations. If they do not have all those sound level data (which they actually do), how did they

calculate that the ambient levels exceed both the Shade noise and the objective standards, at all four residential locations they instrumented?

At a minimum, in order for the planning commission to make a finding that Shade does not violate the objective noise standards, the city must provide to you, as evidence, certain data in dB. They need to provide, at the four residential locations measured, the ambient noise background levels that Behrens used in the analysis, as well as a representative set of noise level measurements, correlated with audio recordings of Shade noise events, such as music, shouts, yells, and shrieks.

If the city does not provide those data, then the planning commission has no evidence to make the finding that Shade does not violate the objective noise standards. Actually, by virtue of Hubbard's recording of the September 27 Oktoberfest, the commissioners do have the evidence that Shade does violate the objective noise standards. You heard it loud and clear over the ambient background noise.

**Another Thank You.** When reading the October 14 staff report, regarding the DB&PA proposal for extended hours on New Year's and 'other holidays', I felt tremendous relief. Why? Because the planning commission had surgically removed the vague 'other holidays' clause from the ordinance. I had meant to thank you in my testimony last night, but forgot.

So thank you, thank you, Don McPherson

**Donald McPherson**  
1014 1<sup>st</sup> St  
Manhattan Beach CA 90266

Voice: 310-372-2774  
FAX: 310-372-2539

Email: [dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)

2009 NOV 16 PM 12: 14

16 November 2009

Liza Tamura  
City Clerk  
City of Manhattan Beach  
1400 Highland Ave  
Manhattan Beach, CA 90266

Subject: Information Request

I request the following documents and media:

1. Police reports for the 11 indicated of the 12 MBPD disturbance calls listed in Exhibit A, which provides the call numbers, report numbers and dates of the incidents. These disturbance calls occurred at Shade Hotel, 1221 N Valley Dr. Please provide the reports in the same format as shown in Exhibit B, for the disturbance at Shade on 27 September 2009. Presumably, information identifying the callers needs redacting.
2. If possible, for those calls that had evidence booked in the form of audio recordings, I would like CDs of representative noise portions in the evidence.
3. A log of all MBPD disturbance calls, not just Shade, from 1 July 2009 to present, including codes 415, 415M for music and 415P for party. Please provide the logs in the same format as Exhibit C. Preferably, list the 415, 415M and 415P logs separately.
4. For the Shade entertainment permit, dated 19 Dec 08, the fire department over doubled the allowed occupancies at the Shade Zinc bar/lounge and the skydeck. Please provide the analyses and space plan views, including tables, chairs and furnishings, which the MBFD used to compute the Zinc bar/lounge and skydeck occupancies.
5. For the North End Café (formerly Deli) property, 3421 Highland Ave, the following items, preferably in pdf files via email, [dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com) :
  - Minutes of city council meetings for September 18 and October 2 in 2001
  - Staff reports for the subject property agenda items, September 18 and October 2
  - Audio on DVD or CD for the October 2, 2001 meeting (MP3 format, not MP4).

I agree to pay the costs for information provided.

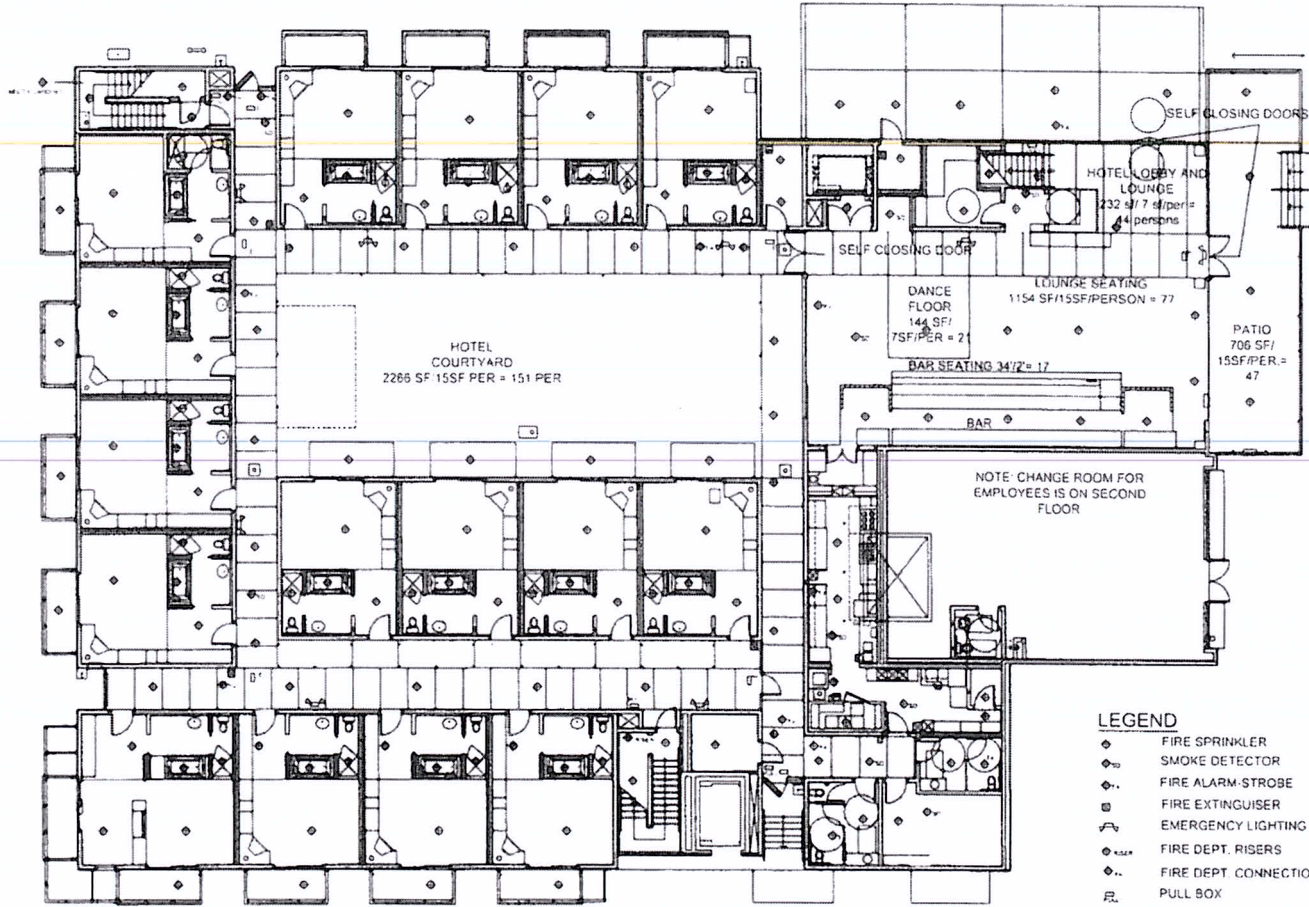
Thanks, Don McPherson

Enclosures: Exhibits A, B & C

The only occupancy loads ever established and approved by the City are shown in the Fire Department Conditions of Approval on the December 19, 2008 Entertainment Permit. For your reference, attached is an "as built" floor plan, which is consistent with the occupant loads posted at the Shade Hotel, with the California Building Code, and the 2008 Entertainment Permit.

**PROJECT DESCRIPTION**

FOOD & BEVERAGE SERVICE FACILITIES FOR SHADE HOTEL.  
 A 38 ROOM LUXURY HOTEL, BAR AND LOUNGE SEATING FOR 50.  
 KITCHEN TO PROVIDE ROOM SERVICE, CATERING FOR SPECIAL  
 EVENTS AND LIGHT MEAL SERVICE TO LOUNGE



**LEGEND**

- ◆ FIRE SPRINKLER
- ◆ SMOKE DETECTOR
- ◆ FIRE ALARM-STROBE
- ◆ FIRE EXTINGUISHER
- ◆ EMERGENCY LIGHTING
- ◆ FIRE DEPT. RISERS
- ◆ FIRE DEPT. CONNECTION
- R. PULL BOX
- EXIT LIGHT

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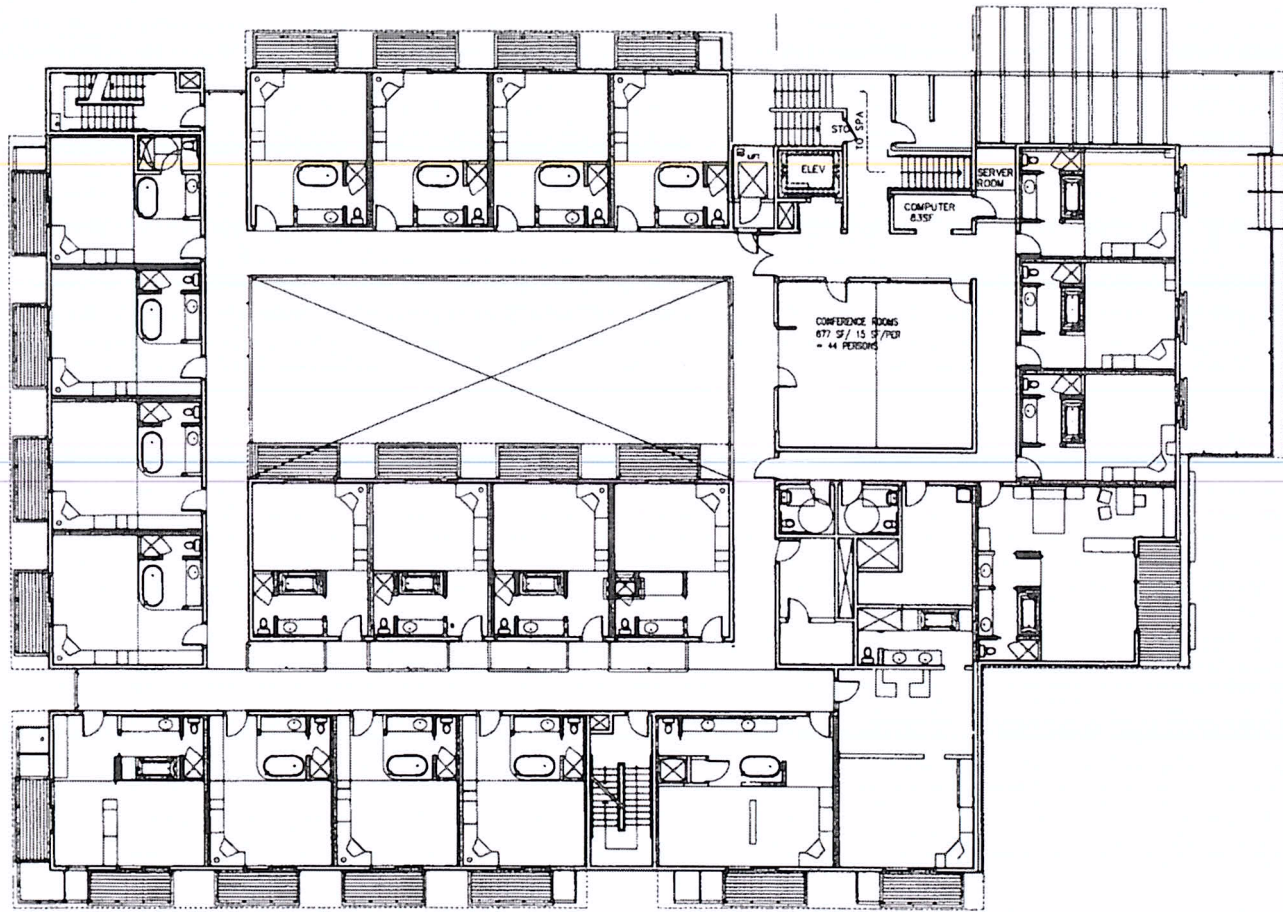
FIRST FLOOR PLAN  
 BAR AND  
 KITCHEN

AS BUILT  
 SHADE HOTEL  
 VALLEY DRIVE  
 MANHATTAN BEACH, CA

LOUIS SKELTON, RA - ARCHITECT  
 2551 D PACIFIC COAST HIGHWAY  
 # 160  
 TORRANCE, CALIFORNIA 90505  
 (310) 575-4442 FAX (310) 575-7455

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**PROJECT DESCRIPTION**  
 FOOD & BEVERAGE SERVICE FACILITIES FOR SHADE HOTEL.  
 A 18 ROOM LUXURY HOTEL, BAR AND LOUNGE SEATING FOR 50.  
 KITCHEN TO PROVIDE ROOM SERVICE, CATERING FOR SPECIAL  
 EVENTS AND LIGHT MEAL SERVICE TO LOUNGE.

REVISED	BY

**SECOND FLOOR PLAN**

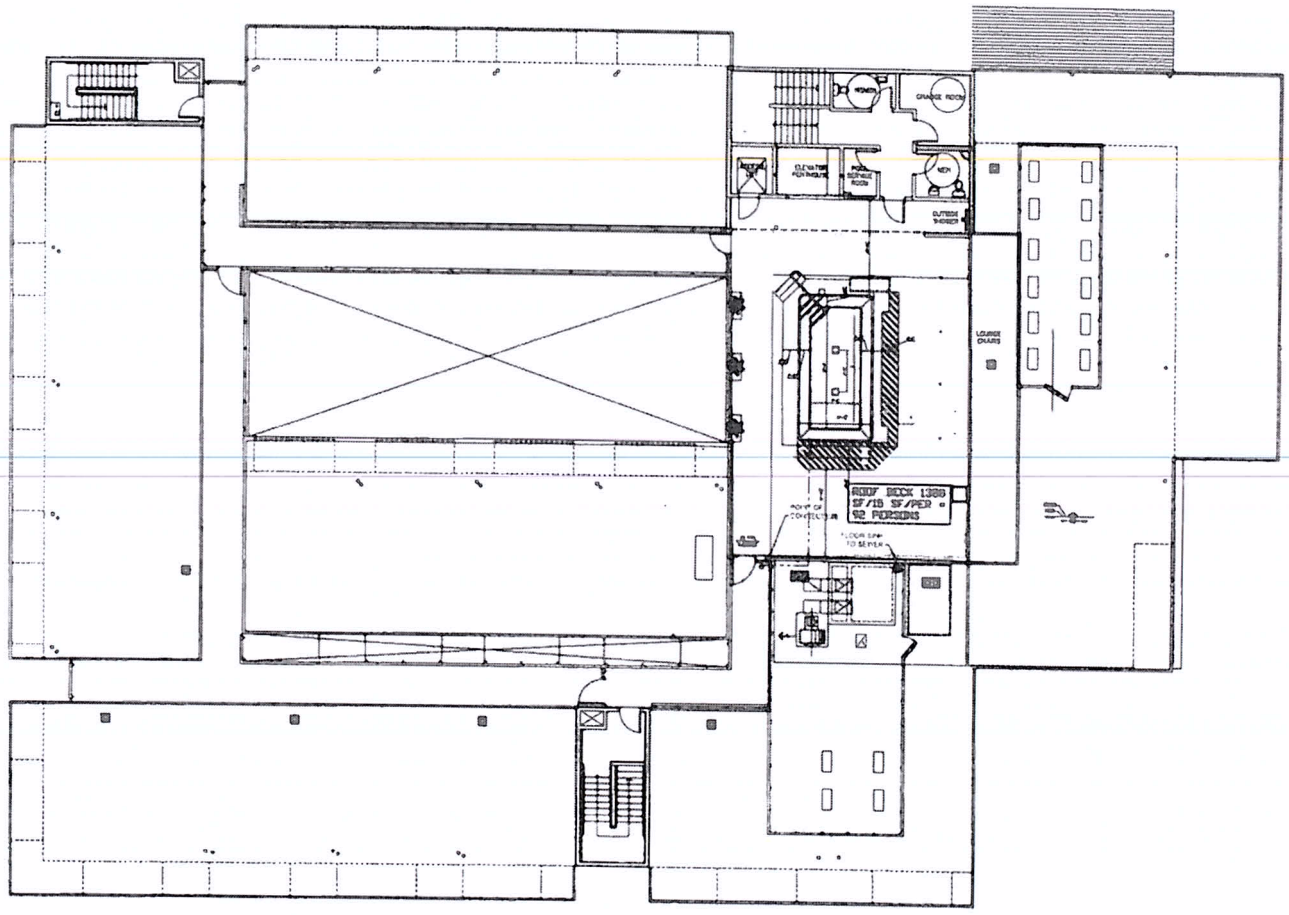
AS BUILT  
 SHADE HOTEL  
 VALLEY DRIVE  
 MANHATTAN BEACH, CA

LOUIS SKELTON, RA - ARCHITECT  
 2551 D PACIFIC COAST HIGHWAY  
 # 168  
 TORRANCE, CALIFORNIA 90505  
 (310) 575-4942 FAX (310) 575-7495

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REVISION	BY

SPA AREA - ROOF TOP  
FLOOR PLAN

A PROJECT  
SHADE HOTEL  
34411 HWY 99  
DUNSMUIR, BC V3C 2S3

LOUIS SKELTON, ARCHITECT  
4011 NE 113TH AVE. SUITE 200  
REDMOND, OR 97053-1111  
TEL: 503.754.2222  
WWW.LSKELTON.COM

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**Angela Soo**

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**From:** Laurie B. Jester  
**Sent:** Tuesday, March 09, 2010 10:05 AM  
**To:** Michael Zislis; 'Katie Kruff'  
**Subject:** FW: New Evidence: Shade Manipulation of City Policy on Metlox Hotel

FYI-  
 Laurie

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**From:** Don McPherson [mailto:dmcphersonla@gmail.com]  
**Sent:** Tuesday, March 09, 2010 7:13 AM  
**To:** David Lesser; Jim Fasola; Kathleen Paralusz; Martha Andreani; Sandra Seville-Jones  
**Cc:** Mitch Ward; Nick Tell; Portia P. Cohen; Richard Montgomery; Wayne Powell; Richard Thompson; Laurie B. Jester; Robert Wadden; Bruce Moe; Liza Tamura  
**Subject:** New Evidence: Shade Manipulation of City Policy on Metlox Hotel

Planning Commissioners,

At the last hearing on Shade in October, the planning commission directed the principals to find a solution for extending hours of the Zinc nightclub, while reducing disturbances in the neighborhood to an acceptable level. Consequently, at the next and presumed final hearing, all involved must focus on restructuring the use permit to accomplish the desired goal.

Since the last hearing, however, we residents have discovered significant new evidence that the planning commission should consider in their deliberations. Rather than detracting from the purpose of the next hearing, we propose to submit this evidence to the commissioners in a few concise presentations conveyed by email, this being the first. We request staff to incorporate our submissions into the Commissioners' packets, so that the public has an opportunity to review the new material.

We have four issues to submit, abstracted as follows:

1. *How Shade manipulated city policy on the Metlox Hotel (this presentation). Evidence indicating Shade may have misrepresented facts to obtain the Type 47 license for full-service to the general public, rather than the Type 70 license tailored to hotels for service to guests only, as intended by the city in the original 2002 Metlox master use permit.*
2. *City exposure to misdemeanor charges and litigation, as result of letting Shade continue to operate as a public nuisance, based on city municipal code and state statutes.*
3. *The significant additions to the use permit proposed by residents, based on facts in the administrative record:*
  - (1) *Prohibition of amplified voice and music on the skydeck, and*
  - (2) *Reversion to fire department occupancies specified in 2006 for alcohol-serving areas.*
4. *Documented evidence of beverage service at the Zinc bar, an hour after the 10:30 PM cut-off condition in the use permit, thereby enabling the nightclub to operate until midnight, rather than the required 11 PM close. The latter witnessed by residents, per their declarations.*

The attached presentation addresses the first issue, regarding how Shade obtained its existing Type 47 license, which permits alcohol service to the general public, rather than the Type 70 license. The latter would have restricted service to hotel guests, as required in the original 2002 Metlox master use permit.

The attachment includes as Exhibit A, an article published this week in the MB Residents Association *Observer*, which relates the historical account by which Shade obtained the Type 47 license.

The presentation has the principal objective of providing the facts and evidence that substantiate the *Observer* article.

For those who do not have the time to review the entire attached presentation, please read the brief *Observer* article, because it concisely relates the history of the Shade Type 47 license. Any questions raised by the article should have answers in the rest of the presentation.

I have blind-copied former councilmembers and commissioners who held office in May-June 2005, when the city approved the use permit amendment for Shade's Type 47 license..

Thanks for taking time to review our material. I apologize for sending Shade information one day before the March 10 commission meeting on other subjects, but we need to submit our evidence as soon as coordinated with the neighbors and produced.

Don McPherson

1014 1<sup>st</sup> St, Manhattan Beach CA 90266

310.487.0383

[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)

## FACTS ON HOW SHADE GOT A TYPE 47 LICENSE TO CREATE THE ZINC NIGHTCLUB

### HOW SHADE MANIPULATED CITY POLICY ON METLOX HOTEL, AND OTHER NEW ISSUES

#### Introduction.

At the Tuesday February 23 joint meeting of the city council and planning commission, Nate and Stephanie Hubbard, as well as myself, testified that the Shade Hotel application comprises far more complexity than merely extending operating hours for the Zinc nightclub.

During nine months since June 2009, when the planning commission held the first public hearing on the Shade application, we have submitted evidence of many use-permit violations by the hotel. As of the last hearing, on October 28, this evidence comprised 49 pages of facts. We now have additional new evidence of serious violations to submit.

In an act of faith, some residents have agreed to an extension of hours for the Zinc nightclub, in exchange for an end of Shade operating as a public nuisance, by disturbing the residential neighborhood. Therein lays the complexity facing all involved. Not only must the city extend the Zinc nightclub hours in such a way to avoid increasing the disturbances, they must restructure the use permit to stop Shade from creating a public nuisance, the current situation. These disturbances have continued since the October 28 hearing.

At the next hearing of the planning commission, we must all focus on restructuring the use permit to stop the Shade disturbances, even with extended Zinc nightclub hours. Consequently, In order to submit our new evidence, during the next seven to ten days, we will provide concise presentations of the facts for four new key issues, as follows:

1. *How Shade manipulated city policy on the Metlox Hotel (this presentation). Evidence indicating Shade may have misrepresented facts to obtain the Type 47 license for full-service to the general public, rather than the Type 70 license tailored to hotels for service to guests only, as intended by the city in the original 2002 Metlox master use permit.*
2. *City exposure to misdemeanor charges and litigation, as result of letting Shade continue to operate as a public nuisance, based on city municipal code and state statutes.*
3. *The significant additions to the use permit proposed by residents, based on facts in the administrative record: (1) Prohibition of amplified voice and music on the skydeck, and (2) Reversion to fire department occupancies specified in 2006 for alcohol-serving areas.*
4. *Documented evidence of beverage service at the Zinc bar, an hour after the 10:30 PM cut-off condition in the use permit, thereby enabling the nightclub to operate until midnight, rather than the required 11 PM closing time.*

The above four issues contribute in critical ways to Shade operating as a public nuisance. Residents will have only a few minutes to testify at the next hearing held by the commission, as well as at the likely appeal to the council. The residents need to address items in the revised use permit of particular importance to the disturbances they suffer, rather than wasting time on Shade violations. Consequently, we will submit these presentations of new evidence to the planning commission during the next week, as well as distribution to the city council.

## **FACTS ON HOW SHADE GOT A TYPE 47 LICENSE TO CREATE THE ZINC NIGHTCLUB**

### **Possible Misrepresentation of Facts in Shade Applications for Type 47 ABC License.**

Exhibit A, an article in the current edition of the MB Residents Association *Observer*, traces the history how Shade obtained an ABC Type 47 license for full-service to the general public, by possibly misrepresenting facts. This action caused a complete reversal of the original city policy regarding the hotel, as specified in the 2002 Metlox master use permit, which itself resulted from more than thirty community meetings and public hearings.

This presentation provides the evidence that substantiates the *Observer* article. The original Metlox master use permit restricted alcohol service in the hotel to room mini-bars, with a beer and wine bar for guests only. In 2005, Shade applied for a use permit amendment, to allow service to the general public, stating that the ABC required a Type 47 license, as follows:

*“An issue has arisen because the Department of Alcohol Beverage Control does not offer an alcohol license or set of licenses to permit the combination of alcohol service circumscribed by the ‘use permit’ approved by the city. The licenses required by the A.B.C. to permit these combined services are a Type 66 Controlled Access Cabinet Permit (which permits in-room ‘mini-bars’) and a Type 47 On-Sale General for Bonafide Eating Place (which permits the sale of liquor)”*

According to a recent staff email (Exhibit B), when submitting the 2005 application, Shade knew that the ABC Type 70 license, tailored for hotels, would enable the Type 66 mini-bar license and allow alcohol service to guests and invitees, almost identical to the original Metlox permit requirements. (Exhibit C describes the ABC license Types 47 and 70.)

At the 25 May 2005 hearing, however, neither staff nor Shade informed the planning commission about the Type 70 license. As per the following quotes, the commissioners approved the amendment, believing that no other option but the Type 47 license existed.

**Commissioner David Simon, 25 May 2005:** *“Mr. Victor brought up the point we should just let it work out the way it was approved in the first place and see what happens. Unfortunately, we do not have that option. That’s not what we’re presented with. That’s why I asked again. It was my understanding ... initially ... mini-bars in the room, and beer and wine in the wine bar area. And that’s just not an option. We can’t say do that, because we’re not permitted to say do that. So we either have to cut out one of these things that were in the initial approval, or expand it. Those are our choices. So it’s not something that we have the choice to do. Something different than that. So the issue is not to leave what it was, but what are we going to do?”*

**Commission Chair Gerry O’Connor, 25 May 2005:** *“On the alcohol issue, I find it’s a unique situation in fact, because we cannot do what we originally prescribed to do.”*

Commissioners Savikas and Kuch voted with Simon and O’Connor, the fifth seat being vacant. Commissioners Simon, O’Connor and Kuch had voted in 2002 for the original Metlox master use permit, with its alcohol restrictions on the hotel. The commissioners had, therefore, an excellent understanding of the alcohol issue and community concerns about it.

In a recent situation eerily reminiscent, at the March 2 council meeting, when councilmembers raised speed limits, state law allowed them no other option. The planning commission in May 2005 also believed they had no choice other than to approve the Type 47 license for Shade. In that case, however, another option did exist, the Type 70 license, unknown to the commissioners at the time, but known by Shade and staff, as per Exhibit B.

**FACTS ON HOW SHADE GOT A TYPE 47 LICENSE TO CREATE THE ZINC NIGHTCLUB**

In their 2005 application for the Type 47 license, Shade stated, “...the Department of Alcohol Beverage Control does not offer an alcohol license or set of licenses to permit the combination of alcohol service circumscribed by the ‘use permit’ approved by the city.”

That statement has some elements of truth, because the restricted Type 70 license requires full-alcohol service to guests and their invitees, rather than just beer and wine. In the table below, compare the impacts of modifications to the 2002 Metlox master use permit for the Type 70 versus Type 47 license. The disturbances resulting from the Type 47 license come primarily from alcohol service and amplified entertainment provided to the general public, over 200 patrons in the Zinc bar and terrace, at any time.

Use Permit Condition Changed	Type 70	Type 47
Service restricted to guests only	Add invitees	Change from guests only to <u>general public</u>
Beer and wine	Add distilled spirits	Add distilled spirits
Breakfast for guests only	None	Food available to general public at all times*

\*The food service change lets Shade compete with nearby restaurants, originally not permitted.

The 2005 application also states that Shade obtained the Type 47 license in 2004, long before they and staff met with the ABC to discuss the type of license needed to meet the restricted conditions in the 2002 Metlox use permit. Shade applied in the ABC 2004 lottery for a Type 47 license, granted 28 October 2004. The application identified Shade as the location of the premises, which for a Type 47 license, required a full kitchen, dining area, operation as a bona-fide restaurant and full alcohol service to the general public.

In 2004, the city use permit specifically prohibited the above features required for a Type 47 license. Consequently, it seems possible that the Shade application for the Type 47 license in the ABC 2004 lottery constituted a misrepresentation of material fact.

Having won the Type 47 license in the ABC lottery, in 2005, as described above, Shade applied to the city for a use permit amendment, requesting, “That the hotel be permitted to sell alcoholic beverages to the general public as opposed to only hotel guests as stated in the ‘use permit’, in order to comply with the Alcohol Beverage Control regulations.” (Their emphasis.)

As per Exhibit B, Shade knew that the Type 70 license would have permitted mini-bars, while restricting alcohol service to guests and invitees. Exhibit D provides a webpage from the Sunnyvale Maple Tree Inn, showing that with a Type 70 license, they provide all the same functions as the Metlox permit allows for Shade, such as weddings, celebrations and meetings. The Sunnyvale staff report for the Maple Tree (Exhibit E) shows what MB staff should have done for Shade at the May 2005 hearing. In conclusion, the ABC does not require service to the general public in order to have mini-bars, as the Shade 2005 application to the city claimed.

For the ABC to issue the Type 47 license, Shade needed to certify that the city use permit allowed it. The evidence indicates that Shade may have misrepresented the facts when applying in 2005 to amend the Metlox permit, which they needed to obtain the Type 47 license.

The ABC Act at §24200 (c) identifies “*misrepresentation of a material fact by an applicant in obtaining a license*” as grounds for revocation, with no statute of limitations. If Shade did misrepresent the facts in their applications to the ABC and to the city for the Type 47 license, then that could result in revocation.

# The Manhattan Beach Observer

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A Publication of  
**MANHATTAN BEACH RESIDENTS ASSOCIATION**  
An All-Volunteer Organization  
P.O.Box 1149 Manhattan Beach, CA 90266  
(310) 379-3277

March 2010

Volume 10 No. 1

## ~~New Management Direction, or Same Old, Same Old?~~

~~...by Gary Osterhout~~

~~Arguably, no single individual affects our city as much as the City Manager. Not only is this individual more schooled and experienced in how to run a city than most in a leadership capacity, but this individual often decides what alternatives are presented and how and what information gets disseminated. This individual also controls the hiring and paychecks of department heads and staff. Thus, in terms of real politics, this individual holds significant powers to influence the course of our city and how it works.~~

~~**Council/Manager Government.** Per Wikipedia, under the council manager form of government, the elected city council is responsible for the legislative function of the city such as establishing policy, passing local ordinances, voting appropriations, and developing an overall vision. The Council appoints a professional manager to oversee the administrative operations, implement its policies, and advise it. Normal City Manager tenure is five to seven years.~~

~~**Lack of Direct Information.** Given the significance of the City Manager, one would expect that any change in this position, especially an unexpected change, would be fully explained to the residents.~~

~~Here's what we officially were told by the City Council, from a short, unagendized comment by the Mayor during the Council's January 19, 2010 meeting:~~

~~The Council wants to go in a new management direction, and they are happily on their way. A process for selecting a new City Manager is in place. The Council is looking for someone in tune with fiscal restraint. The new City Manager will be selected in the next six months.~~

~~Here is what we know, from the newspapers:~~

~~On December 12, 2009, Geoff Dolan resigned after almost 15 years as Manhattan Beach's City Manager. Dolan started with a salary of \$100,272 in January 1995 and left with a salary of \$257,500. His annual contract was to be renewed by January 1. His contract required~~

~~Continue page 10~~

## ~~Did City Staff Whiff, When Up to Bat on Shade ABC License?~~

~~... by Don Mc Pherson~~

~~Shade's evolution to a raucous nightclub, which traumatizes the nearby residential neighborhood, had its origins in a single event; a 2005 use-permit amendment that allows full alcohol service to the general public. The original 2002 Metlox master use permit restricted the hotel to beer and wine - for registered guests only.~~

~~In May 2005, the planning commission approved the amendment, stating that no other option existed to make the ABC license compatible with mini-bars in hotel rooms, a requirement also in the original Metlox permit. Actually, unknown to commissioners, but known by staff and Shade, another option did exist. The ABC Type 70 license, tailored specifically for hotels, enables in-room mini-bars and full alcohol service to registered guests, plus invitees.~~

~~At the 2005 public hearing, city staff and Shade owner Mike Zislis convinced planning commissioners that for mini-bars in hotel rooms, the ABC required a general on-sale license for restaurants, the Type 47. Incidentally, that license also permits service to the general public, giving rise to the Zinc bar, the principal source of noise disturbances that plague nearby residents.~~

~~According to the Shade application for the 2005 amendment, and echoed by the city staff report, "An issue has arisen because the Department of Alcohol Beverage Control does not offer an alcohol license or set of licenses to permit the combination of alcohol service circumscribed by the 'use permit' approved by the city."~~

~~To the contrary, the ABC Type 70 license, customized for hotels, would have satisfied the Metlox permit requirements, requiring only a minor amendment for full alcohol service to guests and invitees, instead of just beer and wine. The city did not need the misguided action in 2005, which threw open doors of the entire hotel for public carousing by the hundreds, any night of the week.~~

~~In response to a recent query about the Type 70 license, in a February 11 email, staff responded, "Planning staff and the applicants from the Shade met several times in 2005 with the State Alcoholic Beverage Control (ABC)~~

~~Continue page 8~~

EXHIBIT A: OBSERVER TYPE 70 ABC LICENSE ARTICLE

Did City Staff....cont' d p. 1

staff to discuss different options for their license. After these discussions the ABC concluded that the Type 47, 66 and 68 licenses are the appropriate licenses for the site. They indicated that the Type 70 is a restrictive license and would not allow the sale of alcohol to the general public."

The 2002 permit restricted alcohol service to hotel guests. The Type 70 license complies with that condition. The Type 70 license also would permit alcohol service to invitees of guests at special events, such as weddings and Christmas parties, exactly what the Metlox permit required. At the May 2005 hearing, the staff recommendation for alcohol service to the general public ran exactly contrary to the stated city intentions for Shade.

What would motivate staff and Shade to inform the ABC that the hotel needed a license for the general public, when the use permit clearly restricted alcohol service to hotel guests? Perhaps the answer lies in the 2005 application, which states that Shade acquired the Type 47 license for full alcohol service in late 2004, before they and staff ever discussed the matter with the ABC.

In the 2004 ABC lottery, Mr. Zislis obtained a Type 47 license, valid only for a 'bona-fide eating place.' The Metlox permit limited hotel food to room service and breakfast for guests. That does not qualify as a 'bona-fide eating place.' Was his application legal?

In 2005, Zislis and staff asked ABC to restrict the Type 47 license to beer and wine for guests. Answer: "No." They did learn that the Type 70 license would work, if with use permit amended for liquor.

Instead of trading the Type 47 for a Type 70, Mr. Zislis applied to have the Metlox permit amended for general public service of full alcohol and food, claiming that the ABC required the changes.

Per their recent email, in 2005, staff unilaterally decided that the use permit allowed alcohol service for the general public. That act disenfranchised the city council, the planning commission and residents from expressing their opinions on the issue. As result, the Shade disturbances constitute a public nuisance. For the current Shade application, the commissioners now have the unenviable job of salvaging whatever possible from this reprehensible mess.

In 2004, the city council anointed Mr. Zislis to develop the Metlox Inn. Did he instead envision Shade as a hot nightspot for singles, with each room decked-out in a hot tub by the bed, martini shaker, seductive mood-lighting and see-through shower? That business model does indeed need a Type 47 license. The future Redondo Beach Shade may dance to that beat, but not Manhattan.

(Michelle Murphy, MBRA president, discovered the Type 70 license. For pdf files of this article and two previous Observer articles on Shade, contact Don McPherson, dmcphersonla@gmail.com.)



Editor's Column....cont' d p. 3

following Observer issue; a brief overview will introduce some of the key points:

~~An MBRA member, researching the 1983 Sanitation Agreement between Manhattan Beach and Western Waste, found that an administrative charge for "billing services and other services provided by the City" had been imposed and collected by the City.~~

~~In May, 1988, the initial monthly charge of \$1.50 was increased to \$1.73. Billing is bi-monthly, but this fee was added to each monthly refuse cost. Added to the billing charges, this fee has never been itemized; instead, it was incorporated into the waste hauler's charge.~~

~~The fee has variously been referred to as 'Administrative Fee' or 'Contingency Fee' or 'Refuse Fund' or 'In lieu fee and taxes'. In the initial Sanitation Agreement, it was stated "All funds derived from refuse account billings shall be maintained by the City in a separate Refuse Fund." We have yet to see this.~~

~~At one time, we were told that part of the Administrative Fee was listed as budget items, including 50% of a Community Development Dept. Associate Planner's salary; varying amounts ranging from 10-40% of salaries to more than half dozen public service and finance dept. employees were listed.~~

~~Mr. Paul Gann, co-author of California's Proposition 13, was interested in the refuse fee information MBRA sent him and came to Manhattan Beach in June 1989, to speak to the members. He stated this might be a Prop 218 violation and would refer it to his People's Advocate team for study. Sadly, his untimely death deprived countless citizens of his committed cause, and us of his further support.~~

~~The charges continue. In 1989 it was conservatively estimated that the Administrative Fee for that year, counting only residential pick-up, amounted to more than \$270,000. We can only guess at the current annual revenue. It is believed that the original charge (never itemized) of 6% is now 17.24%.~~

~~MBRA continues to question whether the revenue is utilized other than for specific trash purposes; this has never been itemized on our bi-monthly statements so that we know precisely what we pay for refuse pickup and how the Administrative Fee, aka Contingency Fee, aka Refuse Fee - any, or all of these are accounted for and how maintained.~~

~~At the February 16, 2010 Council meeting, in response to a Councilmember's question relating to the billing, it was explained that mailing costs have gone up - no mention made that the fees have also increased and that the imposed charges were for each of two months on a bi-monthly billing status or that more than only mailing costs may be involved.~~

~~..We may be discussing trash, but understanding would be priceless.~~

E.B. 1



## EXHIBIT B: STAFF EMAIL RE TYPE 70 LICENSE

**From:** [Laurie B. Jester](#)  
**To:** [Nate Hubbard](#)  
**Cc:** [Richard Thompson](#); [Jeff Dooley](#); [Lloyd Bell](#); [Ralph & Joan Mueller](#); [Joseph Taylor](#); [Gary Osterhout](#); [Maria Reinhart](#); [Ian](#); [Paul Muenchow](#); [Heidi Walter](#); [Don McPherson](#); [Debbie Taylor](#); [Katie Deist](#); [Scott Murch](#); [Steve Wibel](#); [Giabardo Giabardo](#); [Aksi Kikut](#); [Don & Edna Murphy](#); [Teresa Cho](#); [Chris Johnson](#); [Bob & Arleen Neelraeck](#); [Lee & Pat Dolley](#); [Brent Taylor](#); [kddr100@aol.com](#); [Brion T](#); [Stephanie Hubbard](#); [Julie Woodsen](#); [Richard Haft](#); [Andrew & Elizabeth Fouch](#); [DJ Shaeway](#); [Nancy & Dan Giallombardo](#); [RD Cameron](#)  
**Subject:** RE: New Questions re Shade Alcohol Licenses  
**Date:** Thursday, February 11, 2010 1:32:33 PM  
**Attachments:** [ABC\\_DOC.PDF](#)

---

Nate-

Planning staff and the applicants from the Shade met several times in 2005 with the State Alcoholic Beverage Control (ABC) staff to discuss different options for their license. After these discussions the ABC concluded that the Type 47, 66 and 68 licenses are the appropriate licenses for the site. They indicated that the Type 70 is a restrictive license and would not allow the sale of alcohol to the general public. The applicant requested an Amendment and the City processed the request through the public hearing process.

Attached is the only correspondence in the file from the ABC. You may contact the Lakewood office of the ABC for further information on their license requirements.

ABC  
Vincent Cravens  
3950 Paramount Blvd., Suite 250  
Lakewood CA 90712  
(562) 982-1337

[Laurie Jester](#)  
[310-802-5510](#)

---

**From:** Nate Hubbard [mailto:natehubz@mac.com]  
**Sent:** Sunday, February 07, 2010 11:02 AM  
**To:** Laurie B. Jester  
**Cc:** Richard Thompson; Jeff Dooley; Lloyd Bell; Ralph & Joan Mueller; Joseph Taylor; Gary Osterhout; Maria Reinhart; Ian; Paul Muenchow; Heidi Walter; Don McPherson; Debbie Taylor; Katie Deist; Scott Murch; Steve Wibel; Giabardo Giabardo; Aksi Kikut; Don & Edna Murphy; Teresa Cho; Chris Johnson; Bob & Arleen Neelraeck; Lee & Pat Dolley; Brent Taylor; kddr100@aol.com; Brion T; Stephanie Hubbard; Julie Woodsen; Richard Haft; Andrew & Elizabeth Fouch; DJ Shaeway; Nancy & Dan Giallombardo; RD Cameron  
**Subject:** New Questions re Shade Alcohol Licenses

Laurie,

It has come to my attention that the ABC has an on sale general license, Type 70, which for hotels, enables issuance of a Type 66 in-room mini-bar license, while restricting alcohol service to registered hotel guests and their invitees.

Presumably, the Type 70 license would have applied to the Shade Hotel, under conditions

## **EXHIBIT B: STAFF EMAIL RE TYPE 70 LICENSE**

of the original 2002 Metlox Master Use Permit, with only minor modifications. If so, then it appears the city should not have amended the use permit in 2005, for Shade to obtain the Type 47 license, which expanded alcohol service to the general public. The latter expansion of use has caused the disturbances that traumatize our neighborhood.

In the 2005 meetings that staff had with the ABC, surely the latter would have suggested the Type 70 license to enable the Type 66 mini-bar license, while restricting alcohol service to overnight guests and their invitees.

What reasons did the ABC provide, that the Type 70 license did not cover the requirements of the Metlox Master Use Permit for the hotel? What documentation does the city have as evidence, to substantiate the claim that no license or combination of licenses would have worked for Shade?

I do not believe that the city should take any further action on the Shade application, until resolving these issues, including concurrence from the ABC.

Don McPherson has discussed this matter with ABC LBH (Long Beach), as well as requesting relevant information from their administrative record on Shade.

Thanks

Nate Hubbard

**EXHIBIT C: ABC LICENSE TYPES 47 AND 70**

**COMMON ABC LICENSE TYPES  
AND THEIR BASIC PRIVILEGES**

LICENSE TYPE	DESCRIPTION
<b>01</b>	<b>BEER MANUFACTURER - (Large Brewery)</b> Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.
<b>02</b>	<b>WINEGROWER - (Winery)</b> Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
<b>20</b>	<b>OFF SALE BEER &amp; WINE - (Package Store)</b> Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
<b>21</b>	<b>OFF SALE GENERAL - (Package Store)</b> Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.
<b>23</b>	<b>SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery)</b> Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.
<b>40</b>	<b>ON SALE BEER - (Bar, Tavern)</b> Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.
<b>41</b>	<b>ON SALE BEER &amp; WINE – EATING PLACE - (Restaurant)</b> Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
<b>42</b>	<b>ON SALE BEER &amp; WINE – PUBLIC PREMISES - (Bar, Tavern)</b> Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
<b>47</b>	<b>ON SALE GENERAL – EATING PLACE - (Restaurant)</b> Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
<b>48</b>	<b>ON SALE GENERAL – PUBLIC PREMISES - (Bar, Night Club)</b> Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
<b>49</b>	<b>ON SALE GENERAL – SEASONAL -</b> Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.



LICENSE TYPE	DESCRIPTION
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**EXHIBIT C: ABC LICENSE TYPES 47 AND 70**

51	<b>CLUB</b> - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. No off-sale privileges. Food service is not required. Minors are allowed on the premises.
52	<b>VETERAN'S CLUB</b> - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guest only, for consumption off the licensed premises. Food service is not required. Minors are allowed on the premises.
57	<b>SPECIAL ON SALE GENERAL</b> - Generally issued to certain organizations who cannot qualify for club licenses. Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guests only, for consumption off the licensed premises. Food service is not required. Minors are allowed on the premises.
59	<b>ON SALE BEER AND WINE – SEASONAL</b> - Authorizes the same privileges as a Type 41. Issued for a specific season. Inclusive dates of operation are listed on the license certificate.
60	<b>ON SALE BEER – SEASONAL</b> - Authorizes the sale of beer only for consumption on or off the premises where sold. Issued for a specific season. Inclusive dates of operation are listed on the license certificate. Wine or distilled spirits may not be on the premises. Minors are allowed on the premises.
61	<b>ON SALE BEER – PUBLIC PREMISES</b> - (Bar, Tavern) Authorizes the sale of beer only for consumption on or off the licensed premises. Wine or distilled spirits may not be on the premises. Minors are not allowed to enter and remain (warning signs required). Food service is not required.
67	<b>BED AND BREAKFAST INN</b> - Authorizes the sale of wine purchased from a licensed winegrower or wine wholesaler only to registered guests of the establishment for consumption on the premises. No beer or distilled spirits may be on the premises. Wine shall not be given away to guests, but the price of the wine shall be included in the price of the overnight transient occupancy accommodation. Removal of wine from the grounds is not permitted. Minors are allowed on the premises.
70	<b>ON SALE GENERAL – RESTRICTIVE SERVICE</b> - Authorizes the sale or furnishing of beer, wine and distilled spirits for consumption on the premises to the establishment's overnight transient occupancy guests or their invitees. This license is normally issued to "suite-type" hotels and motels, which exercise the license privileges for guests' "complimentary" happy hour. Minors are allowed on the premises.
75	<b>ON SALE GENERAL – BREWPUB</b> - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on a bona fide eating place plus a limited amount of brewing of beer. Also authorizes the sale of beer and wine only for consumption off the premises where sold. Minors are allowed on the premises.
80	<b>BED AND BREAKFAST INN – GENERAL</b> - Authorizes the sale of beer, wine and distilled spirits purchased from a licensed wholesaler or winegrower only to registered guests of the establishment for consumption on the premises. Alcoholic beverages shall not be given away to guests, but the price of the alcoholic beverage shall be included in the price of the overnight transient occupancy accommodation. Removal of alcoholic beverages from the grounds is not permitted. Minors are allowed on the premises.



**MAPLE TREE TYPE 70 LICENSE ENABLES SAME FUNCTIONS AS SHADE...  
(EXCEPT ZINC NIGHTCLUB OPEN TO GENERAL PUBLIC)**

The screenshot displays the Maple Tree Inn website interface. On the left is a vertical navigation menu with links: Home, Location, Accommodations, Meetings, Services, Dining, Things To Do, Email Offers, and Contact Us. Below the menu is a search bar with 'Arrival' set to 3/8/2010 and fields for 'Nights' (1), 'Adults' (1), and 'Children' (0). A 'Check Rates & Availability' button is positioned below the search fields. The main content area features a large banner image of a bride in a white dress holding a bouquet of pink roses, with pink petals scattered on the floor. Below the banner is a 'SPECIALS & PACKAGES' section with a 'VIEW ALL' button and a row of six small thumbnail images. Underneath is a section titled 'SPECIALS & PACKAGES AT MAPLE TREE INN'. The first sub-section is 'Bay Area Wedding Packages - Maple Tree Inn', which includes a paragraph describing the packages and a list of features: one upgrade per 25 or more rooms consumed, complimentary hot buffet breakfast, complimentary high-speed internet, and one pick-up or drop-off service to San Jose International Airport for VIP guests. A note states that a minimum 25-room-night guarantee is required. The second sub-section is 'Wedding Receptions', which includes a paragraph about the new outdoor courtyard and a list of benefits. At the bottom of the page, there are three footnotes: '\*Complimentary Suite for Bride & Groom', '\*Special Rates for Room Blocks', and '\*Complimentary breakfast buffet'.

EXHIBIT E: SUNNYVALE STAFF EMAIL RE TYPE 70 LICENSE FOR MAPLE TREE  
**SUNNYVALE SHOWS WHAT MB SHOULD HAVE DONE WITH SHADE**



**CITY OF SUNNYVALE  
REPORT  
Administrative Hearing**

**March 28, 2007**

**SUBJECT:** **2007-0203 - Flair Hospitality** [Applicant] **Maple Tree Investors** [Owner]: Application on a 2.8-acre site located at **711 East El Camino Real** (near E. Remington Dr.) in a C-2/ECR (Highway Business/El Camino Real Precise Plan) Zoning District.

**Motion** Special Development Permit to allow on-site alcohol sales to guests at an existing hotel (Maple Tree Inn).

**REPORT IN BRIEF**

**Please see red boxes for comparisons between use permit requirements for Shade and the Maple Tree Inn**

**Existing Site Conditions** Hotel

**Surrounding Land Uses**

North Single-family residential

**Same as Shade**

South Auto dealerships (across El Camino Real)

East Mixed-use shopping center/residential

West Restaurant

**Issues** Public safety, neighborhood compatibility

**Environmental Status** A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

**Staff Recommendation** Approve with conditions

**PROJECT DATA TABLE**

	<b>EXISTING</b>	<b>PROPOSED</b>	<b>REQUIRED/ PERMITTED</b>
<b>General Plan</b>	Commercial General Business	Same	Commercial General Business
<b>Zoning District</b>	C-2/ECR	Same	C-2/ECR
<b>Lot Size (s.f.)</b>	122,839	Same	No min.
<b>Gross Floor Area (s.f.)</b>	62,768	Same	No max.
<b>Lot Coverage (%)</b>	20%	Same	35% max.
<b>Floor Area Ratio (FAR)</b>	51.1%	Same	No max.

**ANALYSIS**

**Description of Proposed Project**

The project proposes to change the type of on-site alcohol service at an existing hotel (Maple Tree Inn). The project does not include the addition of bar areas or any other interior or exterior building modification.

Currently, the hotel has a Type 42 license from the Department of Alcoholic Beverage Control (ABC), which allows for on-site sale of beer and wine only, both to guests and to the public. Maple Tree Inn proposes to cancel their Type 42 license and obtain a Type 70 ABC license and a Type 66 ABC permit.

The Type 70 license is a restricted general license which allows for sale of beer, wine, and distilled spirits to guests of the hotel. Although this license expands the types of alcohol which can be sold on the premises, it restricts the sale of alcohol to hotel guests only. Alcohol sales to the general public are not permitted under a Type 70 license. Maple Tree Inn proposes to restrict the sale of alcohol under the Type 70 license to the hotel’s breakfast area, dining area, and lobby.

Same as required by Reso 5770, Cond 38

Maple Tree Inn also proposes to apply for a Type 66 ABC permit, which is available to holders of a Type 70 license. The Type 66 permit allows sale of beer, wine, and distilled spirits from “minibars” in the hotel’s guest rooms.

Mini-Bar, same as Shade

## Angela Soo

---

**From:** Don McPherson [dmcphersonla@gmail.com]  
**Sent:** Saturday, March 20, 2010 1:48 PM  
**To:** David Lesser; Jim Fasola; Kathleen Paralusz; Martha Andreani; Sandra Seville-Jones  
**Cc:** Mitch Ward; Nick Tell; Portia P. Cohen; Richard Montgomery; Wayne Powell; Richard Thompson; Laurie B. Jester; Robert Wadden; Bruce Moe; Liza Tamura; Rod Uyeda  
**Subject:** Shade Hotel: A Public Nuisance

Planning Commissioners  
 City of Manhattan Beach  
 Via Email

Commissioners, for the record,

Since June 2009, in the previous three public hearings on the Shade application to extend hours, the discussion has centered on hotel violations of municipal code noise regulations, as well as the 2002 Metlox master use permit and its 2005 amendment, which approved the Type 47 license. The latter permitted alcohol service to the general public, not originally intended by the city, but responsible for many disturbances.

This input raises an additional class of municipal and state statute violations, namely that Shade constitutes a public nuisance. This issue has importance, because for the city, it creates exposure to misdemeanor charges and litigation, according to state law.

As the attachment describes, city noise regulations comprise two principal categories of restrictions. For the first, which staff labels as the 'subjective' standard, Shade shall neither disturb the peace in the neighborhood nor cause discomfort or annoyance to reasonable persons of normal sensitiveness. Similar state statutes classify this violation as a public nuisance.

The second category of violations, the quantitative standards, relates to the loudness of sound in decibels created by Shade on neighboring properties. This statute has the provision, that if the background or ambient level of noise exceeds the numerical standards, which happens, then Shade cannot create sound on nearby properties that dominates the background. The MBPD has booked evidence of such a violation, as well as a resident for the same incident, which resembles many complaints made to the police by the neighborhood during the past four years.

Because Shade repetitively violates the quantitative standards in the noise regulations, according to another municipal code statute, that also constitutes a public nuisance.

As explained in the attachment, additional state statutes hold the city responsible for not removing a public nuisance, thereby making the city subject to misdemeanor charges and litigation.

The risk of city exposure to these legal actions depends significantly on two unknown, but determinable, factors:

- Case law regarding city conflict of interest, by being both Metlox owner and use permit



enforcer, and;

- Involvement, if any, by city officials in MBPD not issuing citations for the many noise disturbances.

Regarding the attachment, if your eyes glaze over at the prospect of reading about the various numbered statutes, please scan the summary and conclusion. You can quickly grasp the substance of the presentation from these two short narratives.

The attachment constitutes the second installment in four presentations of evidence for the record:

1. *How Shade manipulated city policy on the Metlox Hotel (this presentation). Evidence indicating Shade may have misrepresented facts to obtain the Type 47 license for full-service to the general public, rather than the Type 70 license tailored to hotels for service to guests only, as intended by the city in the original 2002 Metlox master use permit. (Submitted 9 March 2010.)*
2. ***City exposure to misdemeanor charges and litigation, as result of letting Shade continue to operate as a public nuisance, based on city municipal code and state statutes. (This attachment)***
3. *The significant additions to the use permit proposed by residents, based on facts in the administrative record:*
  - (1) *Prohibition of amplified voice and music on the skydeck, and*
  - (2) *Reversion to fire department occupancies specified in 2006 for alcohol-serving areas.*
4. *Documented evidence of beverage service at the Zinc bar, an hour after the 10:30 PM cut-off condition in the use permit, thereby enabling the nightclub to operate until midnight, rather than the required 11 PM close. The latter witnessed by residents, per their declarations.*

Submission of evidence in the four attachments, well in advance of the next Shade hearing by the planning commission, will enable all parties during the meeting to focus on revising the use permit.

Thanks for taking even more time from your already complicated lives to consider this input.

Don McPherson  
1014 1<sup>st</sup> St, Manhattan Beach CA 90266  
310.487.0383  
[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)

Copy: Former 2005 councilmembers and commissioners, Residents, Strumwasser & Woocher

## SHADE THE PARTY HOUSE = 'PUBLIC NUISANCE'

### CITY EXPOSED TO MISDEMEANOR CHARGES AND LITIGATION BY SHADE PUBLIC NUISANCE

#### Summary.

The city intended Shade to anchor the Metlox Plaza, as a high-end hotel that would attract visitors to patronize downtown merchants, without competing with them. To prevent competition with local businesses, the 2002 Metlox master use permit restricted alcohol service to registered guests, while limiting food to breakfast and room service, also only for guests.

For the May 2005 use permit amendment, Shade and city staff claimed, that to enable a Type 66 mini-bar license, the ABC required a Type 47 general on-sale license, which permits alcohol service to the general public. Shade has exploited the Type 47 license to develop a party house for hundreds of patrons, who create disturbances that violate city noise regulations, as well as constituting a public nuisance in terms of city and state statutes.

During the 2005 amendment process, Shade and staff knew that the ABC has a Type 70 license, which enables hotel mini-bars and restricts alcohol service to guests and their invitees. They chose not disclose that fact to planning commissioners, who believed they had no other option than to approve the Type 47 license, which enabled Shade to operate the Zinc nightclub, open to the public, and a principal source of the disturbances.

Page 4 lists violations of city and state law that result in Shade being a public nuisance, thereby exposing the city to misdemeanor charges and litigation. To correct this situation, the city must tighten regulations in the use and entertainment permits, to force Shade back to the city Metlox concept; a non-competitive source of visitors to patronize downtown businesses.

The discussion below explains why Shade noise disturbances create a public nuisance.

#### Discussion (Refer to Page 4 for list of applicable statutes regarding public disturbances.)

##### 1. MBMC §5.48.140 Noise Disturbances and §5.48.160 Exterior Noise Standards.

These city statutes stipulate restrictions on noise that one property can cause on another property. City staff labels MBMC §5.48.140 Noise Disturbances as 'subjective' criteria, a non-quantitative standard based on causing discomfort or annoyance to residents. In planning commission hearings since June 2009, many residents nearby Shade have testified that the hotel disturbs the neighborhood, thus violating this statute.

The second statute, MBMC §5.48.160 Exterior Noise Standards, sets numerical standards for maximum noise levels that one property may cause on another property. Based on findings from the recent Behrens acoustical analysis of the Shade Hotel, the ambient background noise exceeds the numerical sound levels specified in MBMC §5.48.160. In that case, in general, Shade noise must not exceed ambient background levels.

The city cannot measure the hotel noise and the background separately. In that case, MBMC §5.48.160 C states that if Shade sound dominates the background or ambient noise, then that constitutes a violation. Both MBPD and a resident have demonstrated that case.

2. Ordinance No. 1849, Section 7D and CA Civil Codes §3479-3480. Shade noise disturbs the neighborhood repetitively, week after week, in violation of municipal code noise regulations. Therefore, according to this city statute, Shade constitutes a **public nuisance**.

Hotel entertainment noise interferes with the comfortable enjoyment of life or property in the nearby neighborhood for a considerable number of residents and property owners. Therefore, these state statutes also identify Shade as a **public nuisance**.

## SHADE THE PARTY HOUSE = 'PUBLIC NUISANCE'

3. MBMC §5.48.310 and CA Penal Code §372. Both these city and state statutes make Shade guilty of a misdemeanor for creating the **public nuisance** caused by party noise.

Furthermore, the state statute makes the city guilty of a misdemeanor for willfully omitting their legal duty to remove the **public nuisance** caused by Shade.

4. CA Code of Civil Procedure §731 and CA Civil Code §3490. Any resident or property owner injuriously impacted by Shade noise can bring an action to have it removed as a **public nuisance**. Because the **public nuisance** caused by Shade can never become legalized by lapse of time, nearby residents and property owners can bring an action at any time in the future.

5. CA Code of Civil Procedure §731a. This exception to the public right for bringing an action against a **nuisance** does not apply. As shown on Page 5, and explained below, the use permit as amended does not grant Shade a property right to operate a nightclub, nor does Shade need a nightclub to operate as a hotel.

The next section substantiates that the above statutes have no applicable exceptions.

### Non-applicability of statute exceptions.

The list of statutes on Page 4 contains two possible exceptions. Both relate to whether Shade operation as a party house constitutes a necessary use for its operation as a hotel.

As copied from the 2005 amended use permit on Page 5, the Findings L, M, and O, as well as Condition 4, substantiate the city intention to limit Shade for primarily hotel use, as emphasized with text underlining. Consequently, Shade should operate as a hotel, not as a party house, which creates the disturbances that violate city and state law.

In 2004, Shade investors and the Metlox master lease holder accepted the conditions in the Metlox master use permit, when agreeing to build the hotel. If they exercised poor judgment at the time, and now claim that the Zinc nightclub a necessity to service their debt, that does not constitute grounds for claiming exception to statutes cited herein.

**Non-applicability of exception in Noise Regulation MBMC §5.48.140.** This statute refers to "any loud, unnecessary and unusual noise." To operate as a hotel, with alcohol service primarily for registered guests and their invitees, Shade does not need to have hundreds of patrons drinking in the Zinc bar, lounge, terrace courtyard and skydeck, sources of the noise.

For occasions with music, the retractable partition specified in Finding O on Page 5 will contain the noise. Violating its use and entertainment permits, Shade did not install the sound wall, nor as required, do they close off the Zinc bar and lounge area from the open terrace.

In their application for the 2005 amendment to the use permit, which authorized the Type 47 license, Shade identified the requirement for the retractable partition to shield the hotel lobby and rooms from noise. At the 25 May 2005 hearing to the planning commission, Mr. Zislis reiterated the requirement for the retractable sound barrier.

Additionally, Shade violates the quantitative standards of the noise regulation, MBMC §5.48.160 Exterior Noise Standards. In that statute, no exception exists relative to the term, "any loud, unnecessary and unusual noise."

Consequently, according to the municipal code, Shade constitutes a public nuisance, by operating in violation of either MBMC §5.48.140 or §5.48.160, or both.

**Non-applicability of exception in CA Code of Civil Procedure §731a.** This statute, an exception to state law on nuisances, refers "to the reasonable and **necessary operation** in any such...commercial zone...of any use **expressly permitted** therein..."

## SHADE THE PARTY HOUSE = 'PUBLIC NUISANCE'

The amended use permit specifically enjoins Shade from operating a nightclub for the general public, as opposed to the 'necessary operation' and 'expressly permitted' phrases in the statute.

Furthermore, at the May 2005 meeting of the planning commission on the amendment and the subsequent 21 June 2005 approval by the city council, Shade never raised the issue of needing a nightclub to ensure successful operation of the hotel.

At the May 2005 hearing, the planning commissioners approved the amendment for a Type 47 license, only because they believed no other option existed. As recently established, staff understood at the time that an ABC Type 70 general on-sale restricted license would have enabled the Type 66 mini-bar license, but they chose not to disclose that. The commissioners certainly did not approve the Type 47 license, just so Shade could operate as a party house.

Even if hard liquor service to guests and invitees constitutes a requirement for hotel operation, as stated by a councilmember at the June 2005 amendment approval, the Type 70 license would have satisfied that requirement, while precluding the Shade nightclub operation.

### Conclusion.

Shade proponents cite its location in a commercial zone as justification for disturbing the neighborhood. The municipal code does not exempt commercial properties from violating the noise regulations, specifically, when the hotel constitutes the dominant sound source, compared to background. Also, state law does not exempt Shade from being a public nuisance, because the party house use does not constitute a necessity for operation of Shade as a hotel.

If hotel investors cannot service their debt without the Zinc nightclub, they should have raised that issue at the 25 May 2005 hearing of the planning commission, when Shade and staff misrepresented the facts to amend the use permit and obtain the Type 47 license. Failure to do so has resulted in the investors making a bad decision, the risk they took. Regardless, the city does have a viable hotel on its property, although not worth what the investors paid for it.

The city never intended nor anticipated that Shade would run a raucous, noisy bar. The Metlox use permit and its 2005 amendment as written make it difficult, if not impossible, for the MBPD to enforce noise regulations. Consequently, the city must revise the use permit to ensure enforcement of the municipal code, to stop Shade from operating as a public nuisance.

The principal relevant noise regulation, MBMC 5.48.140 C, states that Shade must not create noise that dominates the background on adjoining properties. The latest Behrens's acoustical analysis shows that physical means have limited effectiveness on reducing noise. Consequently, the use permit absolutely requires procedural means to end the disturbances.

Therefore, the city must take a systems approach to solving the Shade public nuisance problem. The residents' draft use permit, submitted in December, does just that.

The revised use permit must provide means for enforcement, so that Shade does not continue to violate times for alcohol end-of-service and bar closure. Permit conditions must address disturbances created outside the hotel front entrance, by intoxicated guests gabbling or fighting there, an issue not addressed in Shade's proposal. Neither the courtyard nor the skydeck have proposed noise mitigation measures that work, so the use permit must stipulate maximum sound levels for those venues.

Since the last public hearing on 28 October 2009, research has disclosed additional necessary conditions, as well as modifications, needed for the use permit. Residents will submit a revised draft use permit, prior to the next Shade hearing by the planning commission.

**SHADE THE PARTY HOUSE = 'PUBLIC NUISANCE'**

**SHADE CAUSES A PUBLIC NUISANCE, AS PER CITY AND STATE LAW**

(Bolding and underline emphasis added)

1. Shade party noise violates the following municipal code regulations.

MBMC §5.48.140 "...it shall be unlawful for any person to willfully make...any loud, unnecessary and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness."

MBMC §5.48.160 B & C. "...no person shall operate or cause to be operated, any source of noise which causes the noise level when measured on any other property to exceed the standards...of this section."

2. Shade party noise constitutes a **public nuisance**, as per city and state statutes.

MBMC Ordinance No. 1849, Section 7D. "In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of provisions of this Code shall be deemed a **public nuisance** and may be summarily abated by the City, and each day such condition continues shall be regarded as a new and separate offense."

CA Civil Code §3479. "Anything which is...offensive to the senses...so as to interfere with the comfortable enjoyment of life or property...is a **nuisance.**"

CA Civil Code §3480. "...A **public nuisance**...affects at the same time an entire community or neighborhood, or any considerable number of persons..."

3. Both Shade **and city** risk misdemeanor charges, as per city and state statutes.

MBMC §5.48.310. "Penalty for violation. Any person violating any of the provisions of this chapter (Chapter 5.48 Noise Regulations) shall be guilty of a **misdemeanor...**"

CA Penal Code §372. "Every person who maintains or commits any **public nuisance**, the punishment for which is not otherwise prescribed, or **who willfully omits to perform any legal duty** relating to the removal of a **public nuisance**, is guilty of a **misdemeanor.**

4. Any injured party can bring an action, and their public right to do so never expires.

CA Code of Civil Procedure §731. "An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by a **nuisance...**"

CA Civil Code §3490. "No lapse of time can legalize a **public nuisance**, amounting to an actual obstruction of public right."

5. The following exception does not apply, because Shade parties do not qualify as a 'necessary operation', for the hotel or city.

CA Code of Civil Procedure §731a. "Whenever any city...shall have established zones or districts...wherein certain...commercial...uses are expressly permitted, ...no person or persons, firm or corporation shall be enjoined or restrained by the injunctive process from the reasonable and **necessary operation** in any such...commercial zone...of any use expressly permitted therein, nor shall such use be deemed a **nuisance** without evidence of the employment of unnecessary and injurious methods of operation."

**SHADE THE PARTY HOUSE = 'PUBLIC NUISANCE'**

**USE PERMIT RESTRICTS SHADE TO A HOTEL, NOT A PARTY HOUSE**

**USE PERMIT 2005 AMENDMENT, RESOLUTION PC 05-08**

**(Underlining emphasis added)**

*Finding L, Resolution PC 05-08.* No changes to the previously approved hours of operation are proposed for either the alcohol sales or the special events. Breakfast Service in the Living Room, Porch, and/or Courtyard is proposed from 6:00 AM to 10:00 AM Monday-Friday and 6:00 AM-11:00 AM Saturday and Sunday. The "Wine Bar" is proposed to operate in the evenings from 5:00 PM to 11:00 PM daily, although flexibility for earlier hours based on the needs of the customer is desired. Although the emphasis of the "Wine Bar" will be on providing a wide selection of premium wines, full liquor will be available. Additionally, the Wine Bar will provide a variety of appetizers in order to qualify as an eating establishment as required by the ABC. Mid-day (lunch) food service will not be provided, except for room service.

*Finding M, Resolution PC 05-08.* The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. The changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. All advertising, marketing and promotions will be focused on potential hotel guests and not the general public.

*Finding O, Resolution PC 05-08.* Potential noise concerns will be addressed through the review of the annual Entertainment Permit as well as a retractable partition in the Living Room will be installed which is capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events as the room will have a STC (Sound Transmission Code) rating of 50.

The Sun Deck is designed to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east and six feet in all others directions.

*Condition 4, Resolution 05-08.* All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Wine Bar (now called "Zinc") and Sun Deck will not be marketed to the general public as separate hospitality attractions.

**Angela Soo**

---

**From:** Don McPherson [dmcphersonla@gmail.com]  
**Sent:** Thursday, April 22, 2010 10:12 AM  
**To:** David Lesser; Jim Fasola; Kathleen Paralusz; Sandra Seville-Jones; Martha Andreani  
**Cc:** Mitch Ward; Nick Tell; Portia P. Cohen; Richard P. Montgomery; Wayne Powell; Richard Thompson; Bruce Moe; Laurie B. Jester; Liza Tamura; Robert Wadden  
**Subject:** Critique: City Acoustics Analysis Favors Shade- Don McPherson 4-22-10  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

Planning Commission  
 City of Manhattan Beach  
 Via Email

Commissioners, for the record,

Subject: Critique of 10 March 2010 Report, City Acoustic Analysis for Shade Hotel

To my series of four evidence submittals on Shade Hotel issues, I add a fifth, the attached critique of a recent report from the city acoustics study (the second attachment.) This report evaluates methods to mitigate noise from Shade in the residential neighborhood.

Shade proposes a combination of three noise-reduction measures, listed in order of effectiveness:

- Partial enclosure of the open south terrace, or patio, facing Petros Restaurant
- A glass vestibule at the hotel lobby entrance, to provide a double-door entry
- Extension of glass windscreens on the roof-top skydeck.

According to the subject report, the terrace enclosure will make it sound half as loud. The lobby vestibule will reduce noise considerably less, and the extended skydeck walls will have virtually no effect. As the attached critique shows, these modest reductions will not lower Shade noise in the neighborhood below maximum levels permitted by the municipal code.

The city study did not analyze any noise-reduction measures included in the draft use permit, submitted by residents last December. For example, the current use permit requires a folding, sound-absorbing wall between the Zinc bar and the lobby, which Shade never installed. The wall will reduce noise at the lobby entrance by over 99%, a huge improvement compared to the paltry performance estimated for the proposed front-door vestibule.

The city acoustics analysis has ignored this bar-lobby wall, required by the use permit. In summary, since its inception, the acoustics study has favored Shade, as follows:

- Noise measurements by the contractor did not include amplified voice or music, the principal source of disturbances in the neighborhood. Last August, I requested staff to simulate amplified music in the tests, with recordings, but they limited measurements to hotel operations without amplified sound.
- The acoustic analysis of compliance with city noise regulations, presented at the October 28 hearing, did not include a -5 dB reduction in permitted sound levels, required by code for 'impulsive' noise (MBMC §5.48.160 E.) The city uses a local-government standard for noise regulations, widely adopted elsewhere, such as

Sacramento, Berkeley, Santa Monica, Los Angeles, and San Luis Obispo County. In such cases, local government codes identify music as 'impulsive', requiring a -5 dB reduction for permitted noise levels. The city acoustics analysis disallowed this reduction.

- The city acoustics analysis incorrectly imposes a +5dB increase in permitted noise levels for Shade, claiming that the residential zone has a common border with the hotel commercial zone. Clearly, the Valley-Ardmore OS zone separates the residential and commercial zones, rendering the 5 dB increase in MBMC §5.48.160 F as inapplicable. The combination of this erroneous +5 dB increase for a common-zone border, as well as disallowance of the above -5dB decrease for music as impulsive noise, results in permitted noise levels for Shade 10 dB above municipal code requirements. This invalid +10 dB increase in maximum allowed sound levels wipes out the up to -10 dB reductions estimated for proposed Shade mitigation methods.
- The attached critique provides a detailed investigation of the noise reduction estimated for the proposed front-door vestibule. It appears that the city study inappropriately modified the methodology for processing and presenting noise-reduction data. As result, the city analysis overstates the effectiveness of the lobby vestibule.

By necessity, the attached six-page critique contains considerable technical detail. If short on time, you can obtain an overview by skimming the one-page summary, briefly perusing the graphics, and reading the conclusion.

Because of the technical complexity, if possible, I would like to discuss my review of the recent city acoustics report with commissioners separately.

The attached critique constitutes the third installment in five presentations of evidence:

1. *(Submitted 9 March 2010.) How Shade manipulated city policy on the Metlox Hotel. Evidence indicating Shade may have misrepresented facts to obtain the Type 47 license for full-service to the general public, rather than the Type 70 license tailored to hotels for service to guests only, as intended by the city in the original 2002 Metlox master use permit.*
2. *(Submitted 20 March 2010.) City exposure to misdemeanor charges and litigation, as result of letting Shade continue to operate as a public nuisance, based on city municipal code and state statutes.*
3. ***(This submission) Critique of city acoustics analysis report, dated 10 March 2010.***
4. *The significant additions to the use permit proposed by residents, based on facts in the administrative record: (A) Prohibition of amplified voice and music on the skydeck, and (B) Reversion to fire department occupancies specified in 2006-2008 for alcohol-serving areas.*
5. *Documented evidence of beverage service at the Zinc bar, an hour after the 10:30 PM cut-off condition in the use permit, thereby enabling the nightclub to operate until midnight, rather than the required 11 PM close. The latter witnessed by residents, per their declarations.*

Submission of evidence for these five issues, well in advance of the next Shade hearing by the planning commission, will enable all parties during the meeting to focus on revising the use permit.

Thanks for taking time to consider this input of evidence on the Shade application.

Don McPherson  
1014 1st St, Manhattan Beach CA 90266  
310.487.0383  
[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)



Copy: Former 2005 councilmembers and commissioners, Residents, Strumwasser & Woocher

## CRITIQUE: CITY ACOUSTICS STUDY REPORT FAVORS SHADE

### SUMMARY.

The March 10 report from the city acoustics analysis evaluates three noise mitigation measures proposed by Shade. These include a vestibule at the hotel front door, a partial enclosure of the south terrace, and extension of the windscreen glass on the roof-top skydeck.

Partially enclosing the terrace will reduce loudness by one-half. According to testimony, Shade rock bands physically shake houses on Ardmore, south of the hotel. It will take more than a 50% reduction to lower music volumes, so they comply with noise regulations.

The front-door vestibule reduces noise even less. Additionally, according to the report, extending glass windscreens on the skydeck “make little difference to the noise levels.”

Last December, residents submitted a draft use permit that offers far more effective measures for noise mitigation. Principal sound-reduction conditions, listed in the conclusion of this critique, include complete enclosure of the terrace, as well as enforcement of the use permit requirement for the folding, sound-absorbing wall between the Zinc bar and lobby.

Close examination of the city acoustics analysis makes its estimated noise reductions even more questionable, for these reasons:

- The acoustic measurements recorded by the contractor in 2009 did not include amplified voice or music, the principal source of noise disturbances. Consequently, staff has no data on maximum dB levels created by Shade in the residential area, nor how much the mitigation methods must reduce sound to comply with city noise regulations.
- Noise-difference maps in the report, such as on the next page, portray reduction levels with shades of brown, some closely similar. This makes it virtually impossible to visually verify the dB decreases stated in the report, for the proposed mitigation measures.
- A computer analysis based on red-green-blue constituents of the mapped brown shades questions the validity of the 6-8 dB noise reduction claimed for the front-door vestibule.
- Shade fails to propose mitigation for the courtyard, presumably because the city acoustics analysis does not identify it as a noise source. At the October 28 meeting, commissioners listened to music from the 2009 Oktoberfest, played by a band in the courtyard, recorded 250-feet away. MBPD ordered the event stopped, because of loud music. The courtyard does constitute a noise source, not addressed in the report.

The noise-difference maps, such as on the next page, provide the only evidence to substantiate the reductions claimed in the report for the proposed mitigation methods.

The report states that the vestibule reduces noise by 6-8 dB. A red-green-blue (RGB) analysis of brown shades on the vestibule map puts the reduction closer to 4-6 dB. Presumably, the city acoustics analysis processed the noise-difference data and color map presentation in such a way as to make it appear that the vestibule will reduce noise by 6-8 dB.

Bottom Line. Until staff provides validated noise-difference maps, the dB reduction values stated in the report for the proposed mitigation measures appear questionable.

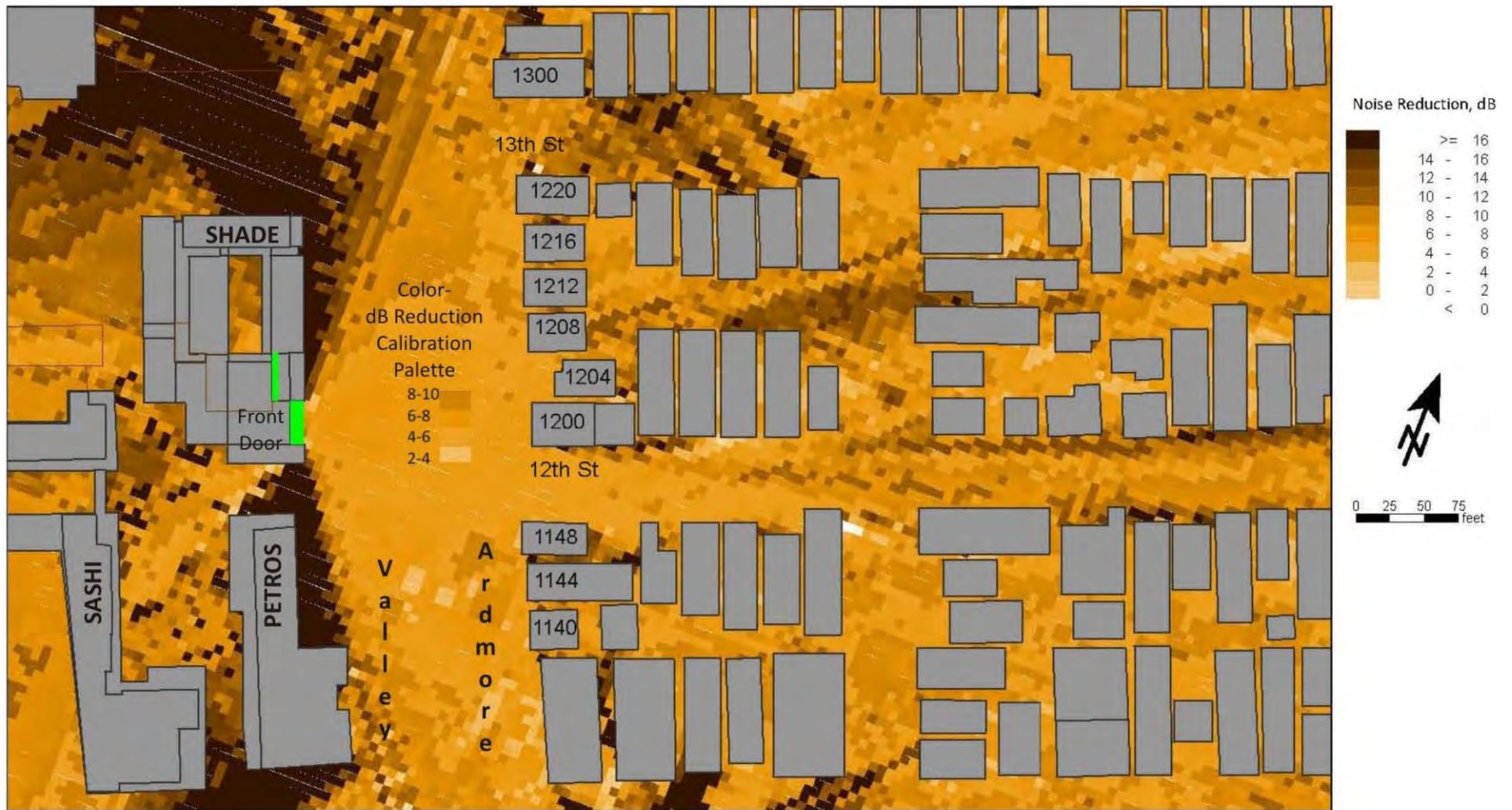
Even then, the three proposed mitigation measures will not reduce amplified voice and music to levels below noise regulation requirements.

The discussion below provides evidence to substantiate the above findings. Subsections follow the order in the report: front-door vestibule, terrace enclosure and skydeck glass walls. The introductory subsection, however, establishes the framework needed for the discussion.



**ANNOTATED FIGURE 3 IN BEHRENS 10 MARCH 2010 REPORT**

**Figure 3. Noise Difference Map - Mitigation of Front Entrance Noise at 1<sup>st</sup> Floor**



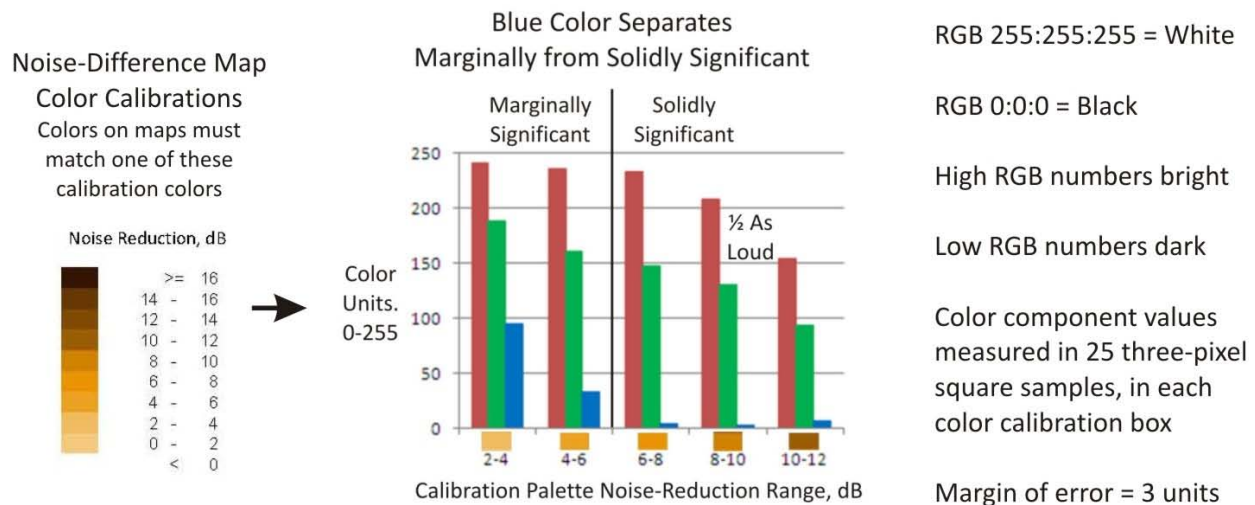
## CRITIQUE: CITY ACOUSTICS STUDY REPORT FAVORS SHADE

### DISCUSSION.

At the March 23 meeting with Shade, attended by their team, city staff and residents, the acoustics contractor identified the following rule-of-thumb for evaluating noise reductions:

- 3 dB: Discernible
- 5 dB: Substantial
- 10 dB: Sounds like half as loud.

As per the summary, the subtle shades of brown in the noise-difference maps make it nearly impossible to visually verify the stated dB reductions, compared to the red-to-blue colors used by the contractor in all their other noise maps. The graphic below illustrates how to characterize the brown-shaded calibration boxes in the noise-difference maps, in terms of their constituent RGB color-levels and the contractor’s rule-of-thumb.



Despite the 4-6 dB and 6-8 dB boxes appearing nearly identical, the 33 units of blue for the 4-6 dB box clearly separate it from the negligible four units of the 6-8 dB box. The contractor’s rule-of thumb for dB reductions results in the 4-6 dB and 6-8 dB calibration boxes sitting on opposite sides of the significance divide. Statistics show that any map color with over ten units of blue correlates with marginal noise-reduction, not a 6-8 dB reduction.

### **Front-Door Vestibule.**

The annotated noise-difference map on the previous page includes an inset of relevant calibration boxes overlaid on the Valley-Ardmore area, between Shade and the residences.

Careful examination of the calibration-box inset shows the 6-8 dB box as darker than the uniform gold background. Whereas for the sharp-eyed, the 4-6 dB box may appear lighter. To discern between these two shades of brown, it helps to magnify the display or print it.

As discussed below, the gold background in the Valley-Ardmore area does not match the RGB values for either the 4-6 dB box or the 6-8 dB box. It should match one of the calibration boxes, however, according to the methodology used to produce the noise maps.

The report states that the vestibule reduces noise by 6-8 dB. On the vestibule noise-difference map, the prominent gold color in the Valley-Ardmore area visually does not match the 6-8 dB calibration box, as required by the contractor’s methodology. Why not?

## CRITIQUE: CITY ACOUSTICS STUDY REPORT FAVORS SHADE

The graphic on the next page provides the answer. The prominent gold background filling the area between Shade and the residences has a substantial amount of blue color, not the negligible four units of the 6-8 dB calibration box, shown on the previous page.

The left side of the graphic portrays the Valley-Ardmore area, between Shade and the residences, with 'Line 1' running south to north for 240 feet. At the intervals A-B and C-D, the line enters and leaves dark areas at the south and north ends, respectively.

At the right side of the graphic, the red-green-blue graphs plot RGB values for over eighty points along Line 1. Look at the red graph between A-B and C-D. The points correlate fairly well with the 8-10 dB calibration line. Likewise, on the green graph, the A-B and C-D segments also correlate fairly well with the 8-10 dB calibration line. Consequently, the dark blotches ringing the Valley-Ardmore area correspond to the 8-10 dB reduction box.

Notice that Line 1 starts in a small light patch. For the first ten feet, before point A, both the green and blue measurements correlate fairly well with the 2-4 dB calibration lines. Consequently, the light blotches on the map correspond to the 2-4 dB reduction box.

In between light and dark patches, the noise-difference map should show two colors, one for the 4-6 dB box and one for the 6-8 dB box, respectively. Clearly between B-C, Line 1 traverses through only one level of noise reduction, not corresponding to the 6-8 dB box.

In the red graph, the 2-4 dB, 4-6 dB and 6-8 dB calibration lines lie too close to make a determination for the long B-C segment. In the green graph, the calibration lines separate, but not enough to choose 4-6 dB or 6-8 dB.

The blue graph shows, however, that the long B-C segment has a significant amount of blue, at points, even reaching the 4-6 dB calibration line. Consequently, this precise red-green-blue evaluation of the brown shades in the noise-difference map contradicts the 6-8 dB reduction claimed by the city acoustics analysis for the front-door vestibule.

This critique recorded over 1200 color measurements, entered into a spreadsheet, and evaluated with three statistical methods. Each color measurement typically has an expected error of two to four units, depending on location, out of a total of 256 units (0-255).

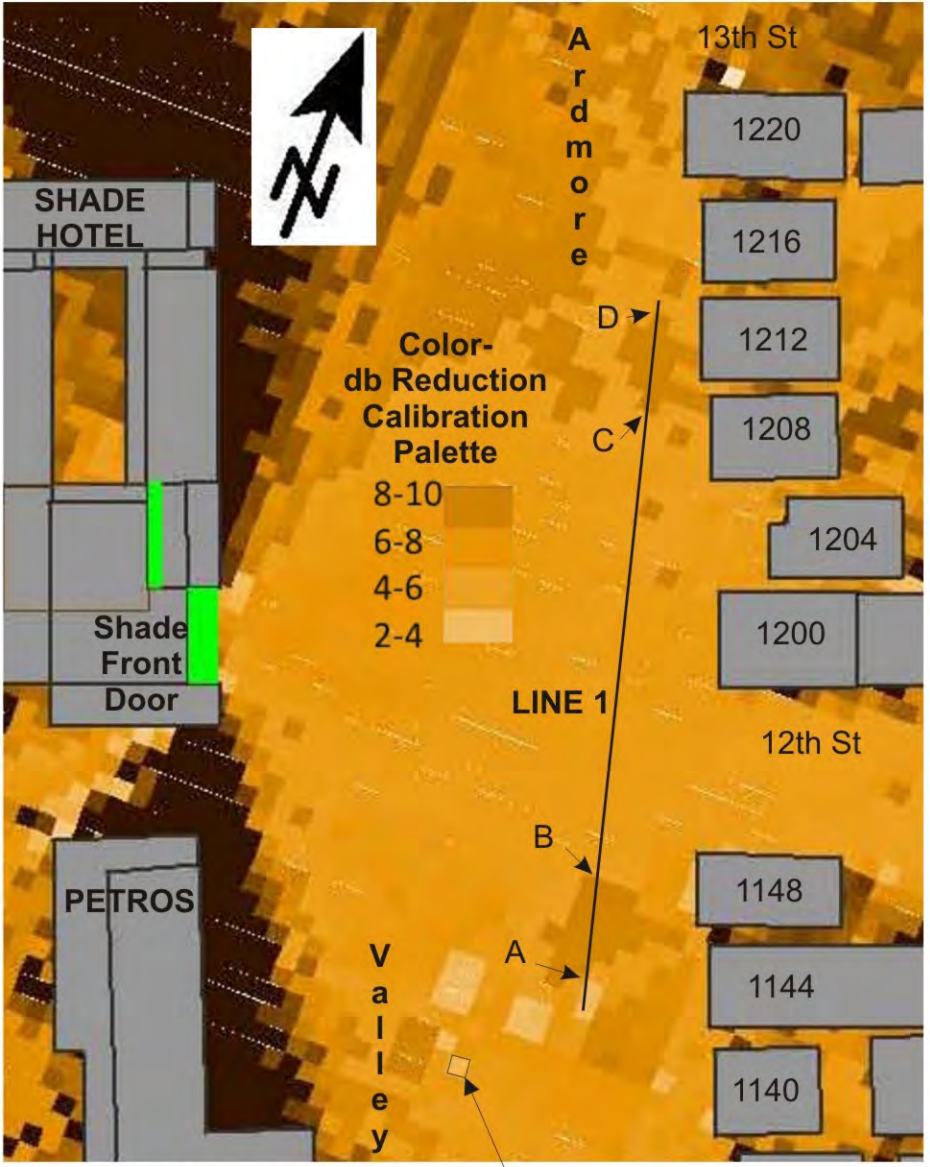
Bottom Line. Considerable evidence, mostly not presented, points to additional processing of data in the noise-difference map for the vestibule, compared with the typical red-to-blue noise maps produced by the contractor. A graphics utility, such as 'Color Mask', could have selected pixels with 4-6 dB and 6-8 dB colors and render them into the single gold shade.

Some such additional processing presumably combined noise-reduction dB values for the 4-6 dB and 6-8 dB boxes into a single box, represented on the vestibule map as a fairly-uniform gold color, with RGB values shown on the Page 5 graphic. These values do not correspond to the 6-8 dB box, as claimed in the report. They lie closer to the 4-6 dB box.

As result, the apparently modified methodology for processing and presenting the noise-difference data overstates the effectiveness of the proposed front-door vestibule.

The difference between the 4-6 dB and 6-8 dB boxes does not, in itself, constitute the major issue. Combining these values into a single 4-8 dB box, however, essentially smooths the choppy nature of the noise, more into a steady-state background. The recording of the 2009 Oktoberfest music has an annoying warbling character. Presumably, an unadulterated color map for the vestibule would display that modulation with a far more blotchy appearance.

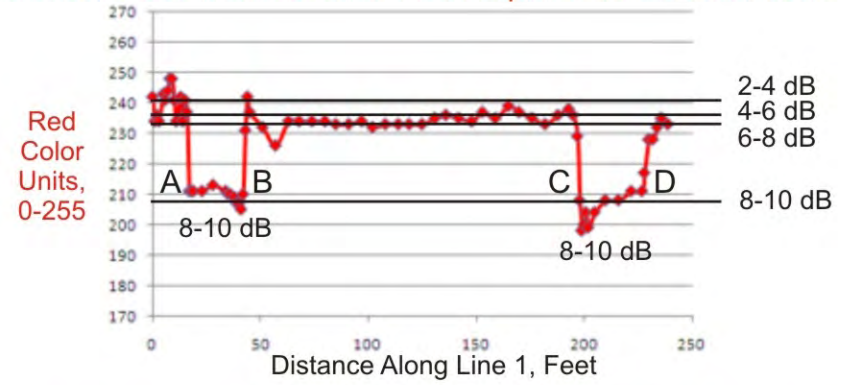
# MEASUREMENTS ALONG 240 FEET OF LINE 1 SHOW NO 6-8 dB REDUCTION, AS REPORT CLAIMS



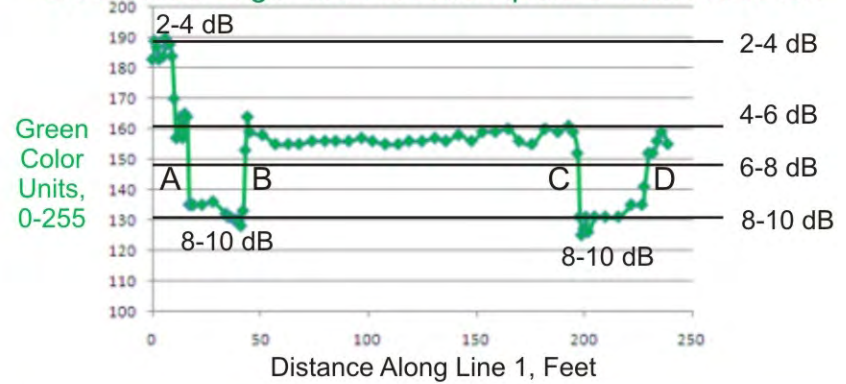
0 25 50 75 feet  
1 Inch = 63.6 Feet

Raster Cell = 5.5 Ft Square

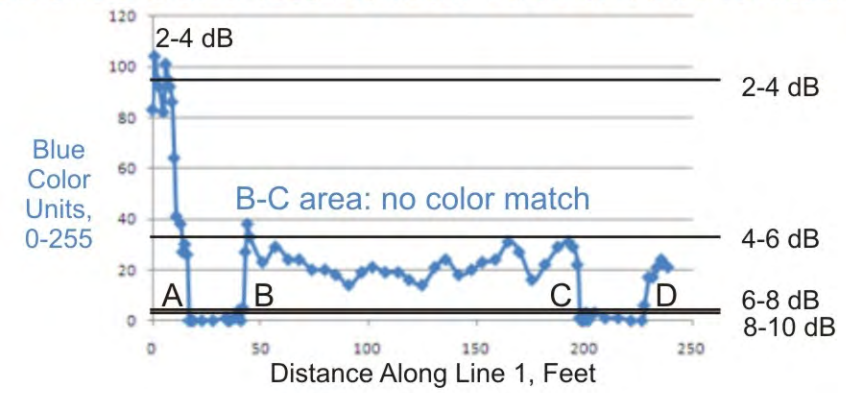
Red shows A-B and C-D dark areas equal 8-10 dB reduction



Green shows light area at start equals 2-4 dB reduction



Blue shows B-C area does not match 4-6 dB or 6-8 dB reduction



## CRITIQUE: CITY ACOUSTICS STUDY REPORT FAVORS SHADE

### South Terrace.

Sufficient time did not exist to analyze the noise-difference maps for the south terrace. A survey of the graphic for the partial enclosure proposed by Shade, Figure 6 in the report, does show discrepancies, similar to those found in the vestibule noise-difference map.

The report does not separately identify sound reductions from the eight-foot high, 24-foot wide barrier across the 12<sup>th</sup> St walkstreet, between Shade and Petros, nor the absorption panels hung from the terrace ceiling. Consequently, no way exists to evaluate their values.

Shade proposes to partially enclose the terrace, with an entrance open to the south and an eight-foot high opening between the roll-up glass closures and the roof. The 6-10 dB noise reduction, estimated at most as a one-half decrease in loudness, will not reduce high volumes from Zinc bar rock bands to comply with noise regulations in the residential neighborhood.

The contractor's 21 October 2009 report states that total enclosure of the terrace will reduce noise by 20 dB. Presumably, absorption panels hung from the terrace ceiling will result in an additional reduction, as well as replacing the drapes with an Acousti-Curtain equivalent.

The residents' draft use permit calls for total enclosure of the terrace during evening hours, with the queue relocated to the hotel west door. The latter condition will facilitate moving valet parking for non-registered guest to Morningside Drive.

### Skydeck and Courtyard.

Regarding extension of glass windscreens on the skydeck, the acoustics report states, "Generally the barriers make little difference to the noise levels experienced at the residential properties and therefore cannot be considered an effective mitigation measure." The report concludes that only administrative means or total enclosure can mitigate skydeck disturbances.

The report does not consider courtyard noise, addressed in the conclusions below.

### CONCLUSION.

The city acoustics analysis should have started from the premise of mitigating noise from Shade amplified voice and music. Without having measured the noise levels in the neighborhood caused by amplified sound, and then determining necessary reductions to comply with noise regulations, staff's study embarked on a somewhat aimless effort.

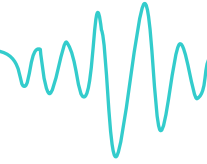
The report dwells on nuances of two-dB differences in a range of 5 to 10 dB reductions. Quite possibly, inaccuracies in computer modeling eclipse the two-dB measurement steps.

The residents' draft use permit lists mitigation measures based on fact and common sense, not the house of glass proposed by Shade. Residents propose the following measures:

- Zinc bar. Folding, sound-absorbing STC-50 wall, to isolate the lobby from the bar, as required by the existing use permit. Reduces lobby entrance loudness by over 99%.
- Terrace. Full enclosure, ceiling absorbers, and drapes replaced by Acousti-Curtain equivalent. Provides over 20 dB noise reduction, as per consultant's October 2009 report.
- Courtyard. Existing drapes replaced by Acousti-Curtain equivalent.
- Skydeck. Amplified voice and music prohibited; no extension of hours.
- Throughout. Reduced occupancies, rolled-back to MBFD requirements in 2006-2008.

# Behrens and Associates, Inc.

*Acoustics, Noise and Vibration Consultants*



March 10, 2010

City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

Attention: Laurie Jester, Planning Manager

Subject: Shade Hotel Noise Mitigation Evaluation Report

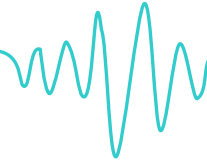
Dear Ms. Jester,

We have completed the noise mitigation evaluation for the Shade Hotel, located at 1221 N Valley Dr in the City of Manhattan Beach. This report provides an assessment of mitigation measures that have been designed to reduce the hotel noise experienced at the residential properties east of Ardmore Avenue. Our previous report, dated October 21, 2009, identified the three main sources of noise at the hotel as being the front entrance, the south terrace and the rooftop deck. The mitigation measures assessed in this report are an enclosed glass vestibule at the front entrance to the hotel, movable panel walls enclosing the terrace at the south end of the hotel and barriers extending above the existing walls on the north, east and south sides of the rooftop deck.

This report presents both calibrated unmitigated noise maps and predicted mitigated noise maps showing the noise after the proposed mitigation measures have been installed. In addition, 'noise difference maps' are presented. These maps are calculated by subtracting the mitigated noise level from the unmitigated level at every point over the mapped area. They therefore show the reduction in noise with the mitigation measures installed. For each mitigated noise map presented in this report, a corresponding difference map is shown. In the difference maps, increasing noise reduction is shown with progressively darker shades of brown. The noise levels presented represent the levels experienced during a typical weekend evening when there is activity in the Zinc lounge and south terrace and a party event on the rooftop deck.

It is difficult to estimate the amount of noise reduction required to bring the noise levels down to a value that would be perceived to be acceptable to the residents. In our previous study, our findings showed that the noise levels of the hotel are below the background noise levels in each  $L_n$  percentile category analyzed pursuant to Section 5.48.160 of the City of Manhattan Beach Municipal Code. This indicates that the noise problem perceived by the residents is strongly influenced by the character of the noise. This report therefore assesses each mitigation measure on whether that particular noise control solution can significantly reduce the noise levels. When assessing noise reduction, a decrease in noise level of a minimum of 5 dB must be achieved to be considered significant. The term 'significant' means that the noise reduction will be noticeable but does not necessarily mean that the mitigation measure will reduce the noise to a level where it is no longer an issue for the residents.





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All noise impact modeling was completed using SoundPLAN versions 6.5 and 7.0 software. This noise model predicts noise levels based on the locations, noise levels and frequency spectra of the noise sources, and the geometry and reflective properties of the local terrain, buildings and barriers.

The noise measurements made for the sound survey were performed with Type 1 hand-held Analyzer Type 2250 integrating sound level meters manufactured by Brüel & Kjær. The sound level meters were calibrated using a model QC-10 calibrator manufactured by Quest Technologies.

## **Front Entrance Noise (Figures 1 to 3)**

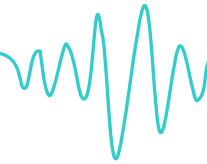
The unmitigated noise map for the front entrance noise only is presented in Figure 1. This noise map indicates that the properties most affected by the entrance noise are those located directly opposite the entrance between 12<sup>th</sup> Street and 13<sup>th</sup> Street, and just south of 12<sup>th</sup> Street. The front entrance was modeled with an enclosed glass vestibule in front of the door. The mitigated noise map for first floor locations is provided in Figure 2. The difference map in Figure 3 shows that this mitigation measure will reduce the noise by 6 to 8 dB at the residences. Therefore, the vestibule significantly reduces the noise from this source and can be considered an effective mitigation measure.

## **South Terrace Noise (Figures 4 to 12)**

The unmitigated noise map for the terrace noise only is presented in Figure 4. This noise map indicates that the residential properties most affected by this noise are those located south of 12<sup>th</sup> Street.

It has been proposed that the south terrace is enclosed with moveable panels to reduce noise emanating from this area. Two designs for the south terrace have been modeled. The first design involves partially enclosing the terrace area, leaving a gap approximately 8 feet in height between the roof and the wall on the south side. The purpose of this gap is to maintain the view from the south-facing balcony windows of the rooms located on the second floor at the south end of the hotel. The entrance to this partially enclosed area will be open and a folding screen will be positioned to help block noise escaping from this opening. This design is shown in the referenced drawings, produced by Louis Skelton & Associates. The ceiling of the terrace area was modeled with acoustically absorptive baffles.

The mitigated noise maps and difference maps for this design are provided in Figures 5 through 8. Figures 7 and 8 show the noise levels at the 3<sup>rd</sup> floor elevation. The area



City of Manhattan Beach

March 10, 2010

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modeled is at a constant height relative to the topography, so the noise impact at residents' 3<sup>rd</sup> floor areas can be evaluated at all locations in the residential area. The noise maps indicate that the architect's partially enclosed design will reduce noise at the residences south of 12<sup>th</sup> Street by 6 to 10 dB.

The second design was modeled with the south wall of the terrace extended upwards to meet the roof above the area. In this design the terrace is almost fully enclosed, with the entrance being the only opening through which noise can escape. The mitigated noise maps and difference maps for this design are provided in Figures 9 through 12. This alternative design will reduce the noise by approximately 8 to 10 dB at the residential properties south of 12<sup>th</sup> Street. The noise maps show this design to be better at reducing the terrace noise over a greater proportion of the residential community.

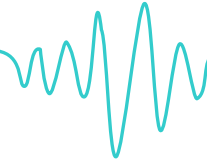
## **Rooftop Deck Noise (Figures 13 to 15)**

The unmitigated noise map for the rooftop deck noise only is presented in Figure 13. Our analysis indicates that the noise from this source contributes significantly to the overall noise level experienced at all the residences.

For the mitigated noise model, the rooftop deck was modeled with vertical extensions of varying heights above the existing walls. The heights of the barriers were increased incrementally from their existing heights to 6 feet above the roof of the drink service area in 1 foot increments. The noise was modeled at the four measurement points used in our previous report. These are at the third floor deck at the front of 1300 Ardmore Avenue, the front yard of 1212 Ardmore Avenue, the rear yard of 1212 Ardmore Avenue and the third floor deck at the front of 1148 Ardmore Avenue. These locations are shown in Figure 14. The noise reduction of the barriers for each of the modeled barrier heights for each location is shown in Figure 15. The data indicates that even for the highest barriers modeled, the reduction in noise level will only be significant at one of the modeled locations (1300 Ardmore Ave.). Generally the barriers make little difference to the noise levels experienced at the residential properties and therefore cannot be considered an effective mitigation measure.

## **Combined Noise Levels (Figures 16 to 20)**

Figure 16 shows the combined unmitigated noise levels of all three major noise sources at first floor level. Figures 17 and 18 shows the noise levels and difference map with the terrace partially enclosed, the vestibule on the front entrance and no activity on the rooftop deck. For this situation, the noise levels are generally reduced by 6 to 12 dB over the entire residential area.



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Figures 19 and 20 show the noise levels and difference map with the terrace partially enclosed, the vestibule on the front entrance and activities still occurring on the rooftop deck.

The noise maps in Figures 17 and 18 indicate that when no noise is produced on the rooftop deck, the proposed noise control measures for the front entrance and south terrace significantly reduce the overall noise levels of the hotel. By comparing Figure 18 with Figure 20, it can be seen that the overall noise is not reduced significantly when there is still activity on the deck. Therefore, for the combined noise levels to be significantly reduced, the rooftop deck noise must be mitigated.

## **Noise Control Recommendations**

The proposed entrance vestibule will be effective at reducing the noise coming from the front entrance. The vestibule should be well sealed to the wall and should not have any holes, vents or other open areas in its surfaces. Both the existing hotel entrance doors and the vestibule doors should be kept closed during noisy periods.

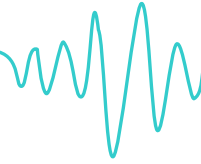
The terrace area should be enclosed as fully as possible with solid walls. For the best noise control solution, the fully enclosed design is preferred over the partially enclosed design proposed by the architect. If the partially enclosed version is to be constructed, it is recommended that consideration is given to the fact that the wall may have to be extended up to the roof in the future if further noise control is necessary. The existing gaps around the sheets of glass in the wall at the east end of the terrace should be sealed in addition to sealing any gaps around the metal frame. The folding barrier shown in the referenced drawings should be positioned so that it can be folded around the enclosed terrace entrance so as to block noise from this opening during noisy periods.

Acoustically absorptive baffles should be attached to the ceiling of the terrace area. These will help to reduce the build-up of noise that will occur when this area is enclosed. A suitable product is 3-inch Whisperwave acoustical baffles manufactured by Pinta Acoustic. At least 12 of these baffles measuring 8 feet by 2 feet should be installed.

The noise produced on the rooftop deck cannot be effectively mitigated using barrier extensions to the walls. This source is best mitigated using either administrative controls to manage the level of noise and the times during which noisy events take place, or by enclosing this part of the hotel.

# **Behrens and Associates, Inc.**

*Acoustics, Noise and Vibration Consultants*



City of Manhattan Beach

March 10, 2010

Page 5

## **References**

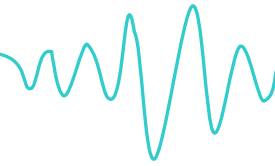
1. *MBSshade2009-A-3.0\_A-3.1-Elev.dwg*. Shade Hotel Architectural Drawings. Louis Skelton & Associates. Received January 3, 2010.
2. *MBSshade2009\_sound study\_1stFP-Rev010510.pdf*. Shade Hotel Architectural Drawings. Louis Skelton & Associates. Received January 6, 2010.

Please contact the undersigned with any questions or comments.

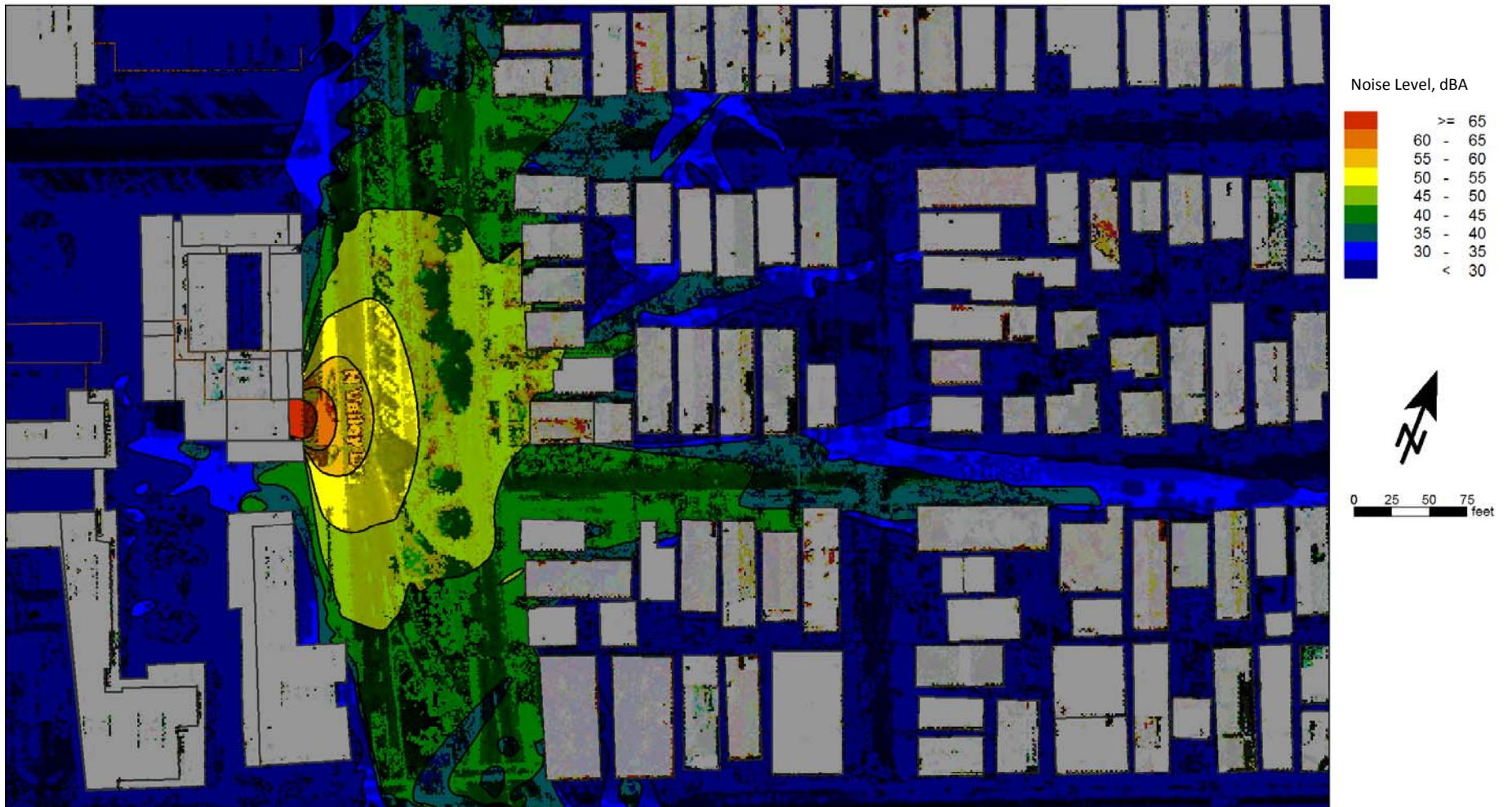
Very truly yours,

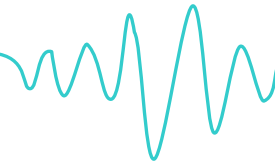
Don Behrens  
President

Attachments

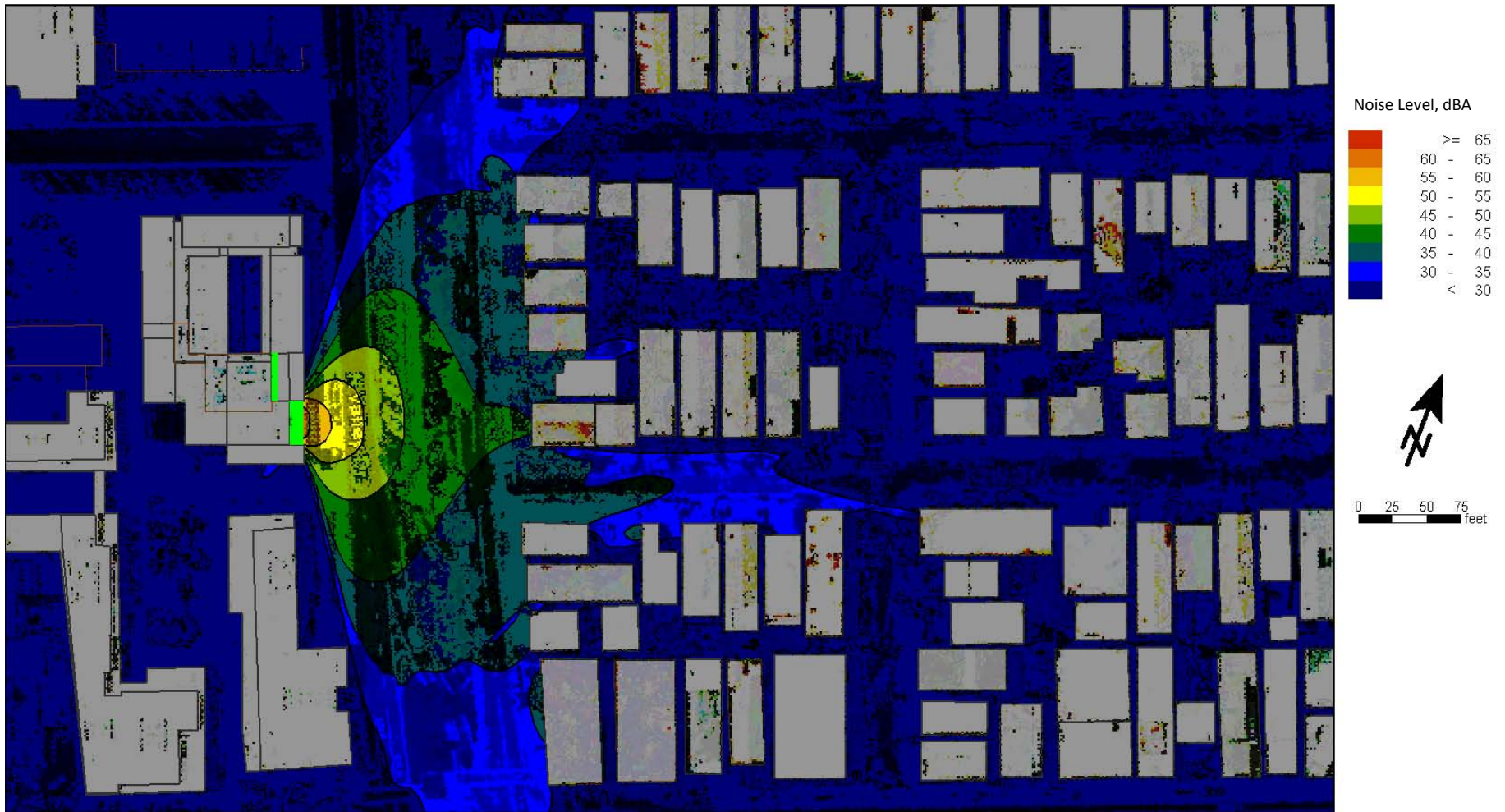


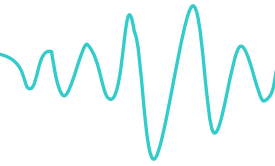
**Figure 1. Unmitigated Average Noise Level at 1<sup>st</sup> Floor - Front Entrance**



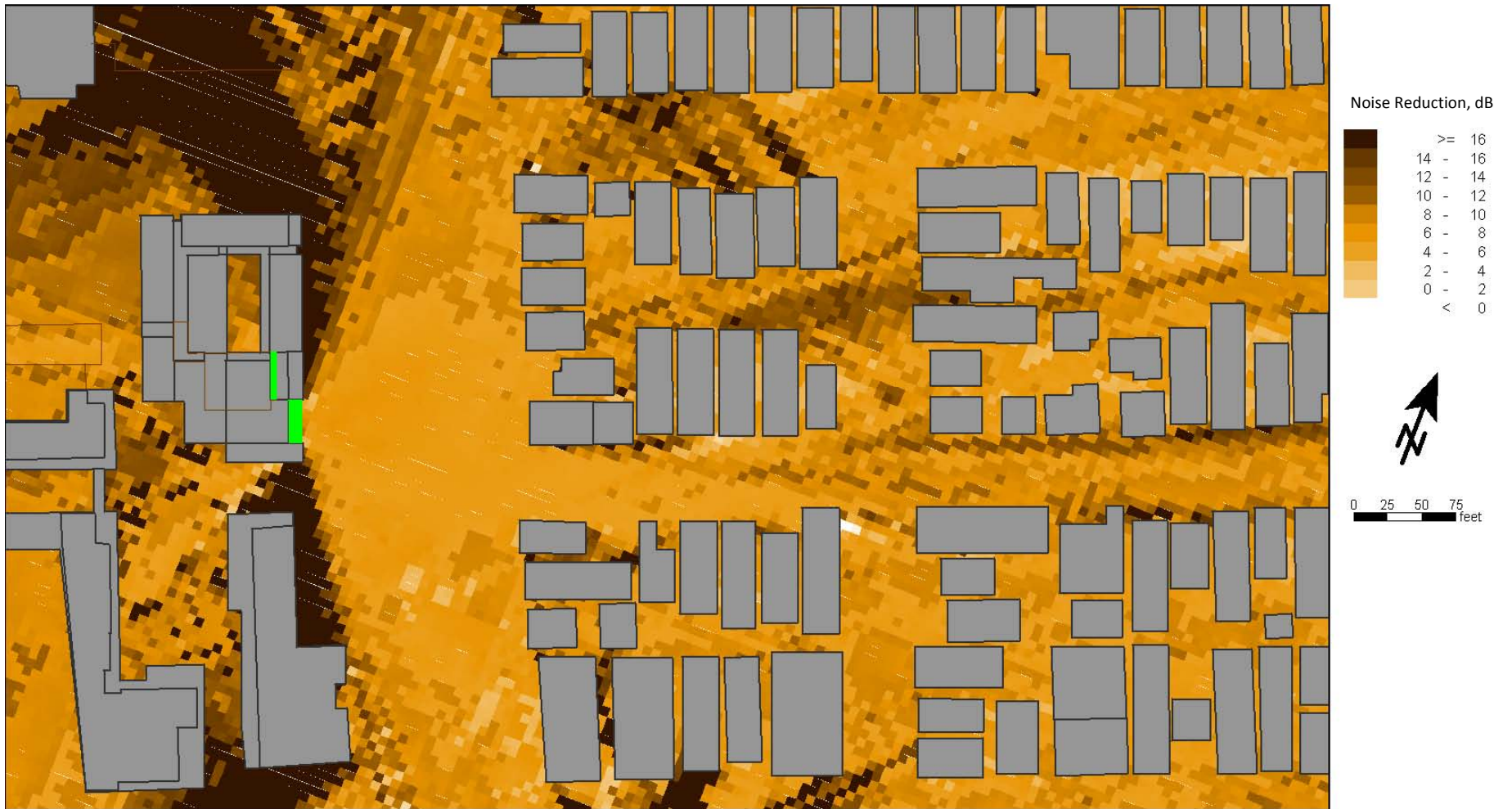


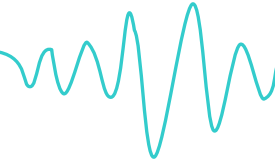
**Figure 2. Mitigated Average Noise Level at 1<sup>st</sup> Floor - Front Entrance Only**



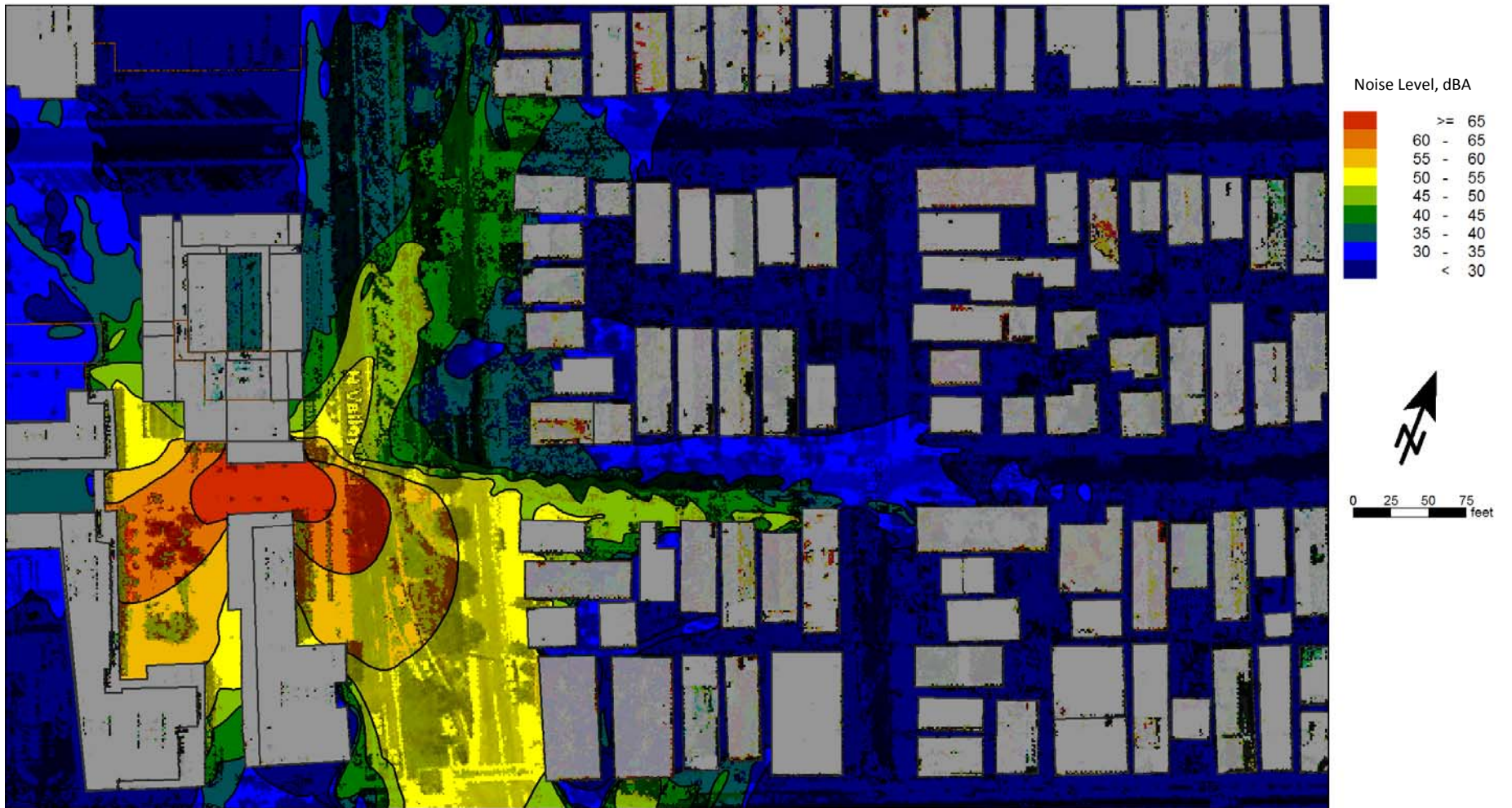


**Figure 3. Noise Difference Map - Mitigation of Front Entrance Noise at 1<sup>st</sup> Floor**

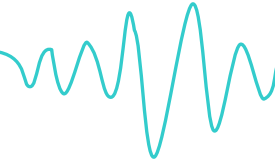




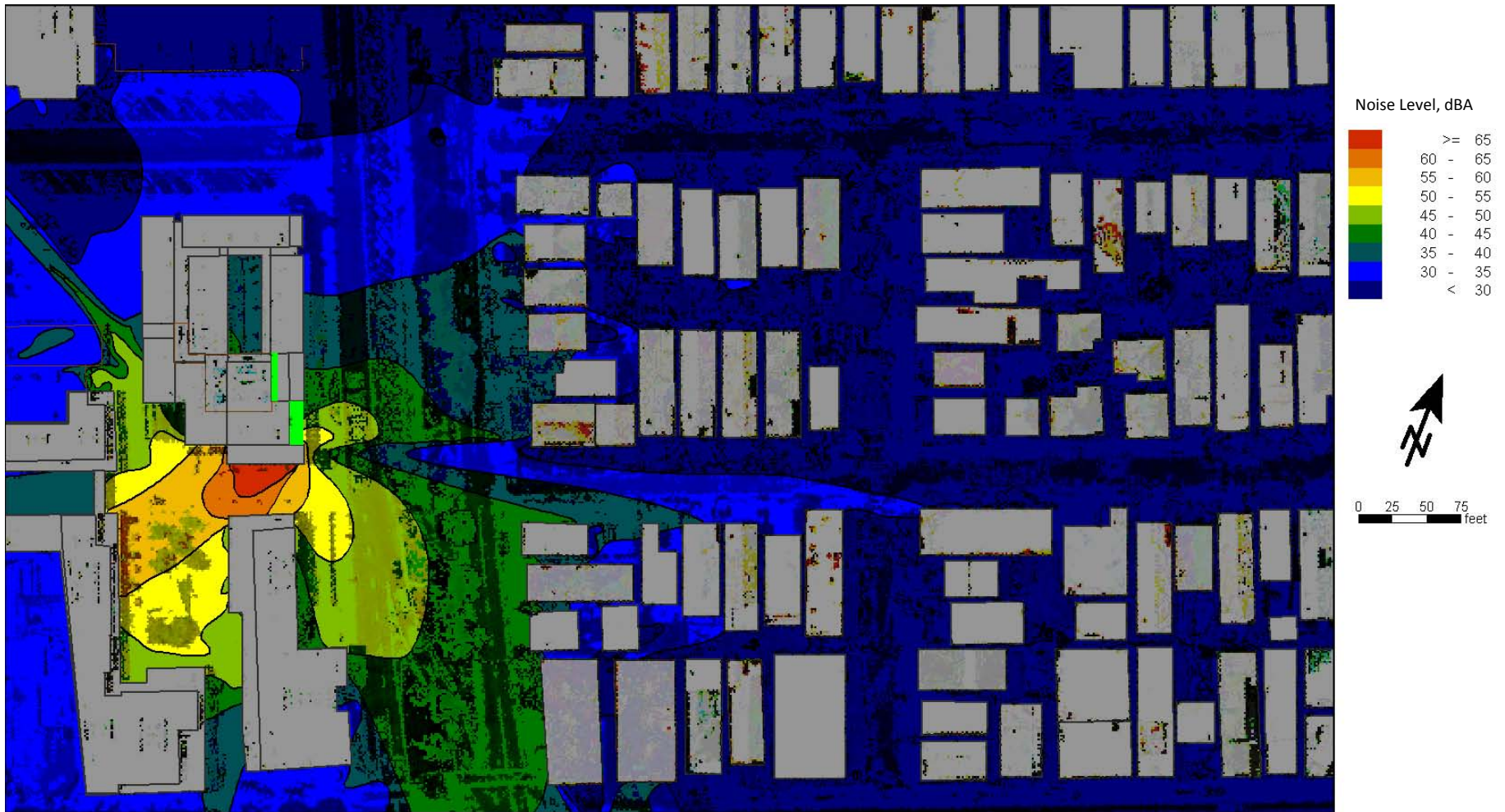
**Figure 4. Unmitigated Average Noise Level at 1<sup>st</sup> Floor - South Terrace Only**

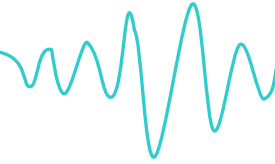




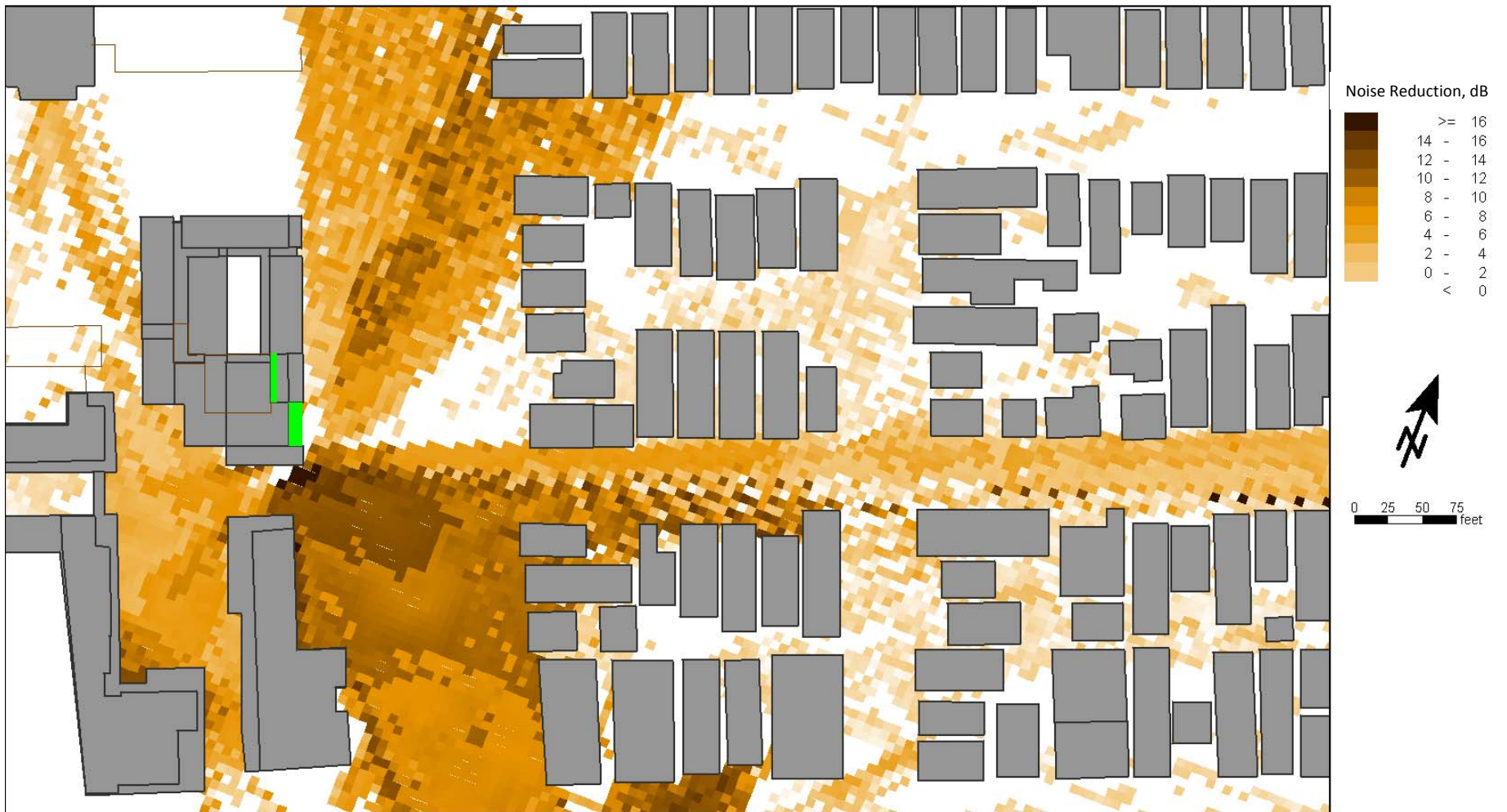


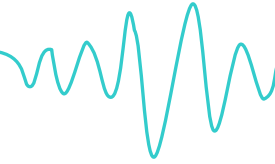
**Figure 5. Mitigated Average Noise Level at 1<sup>st</sup> Floor - Partially Enclosed South Terrace Only**



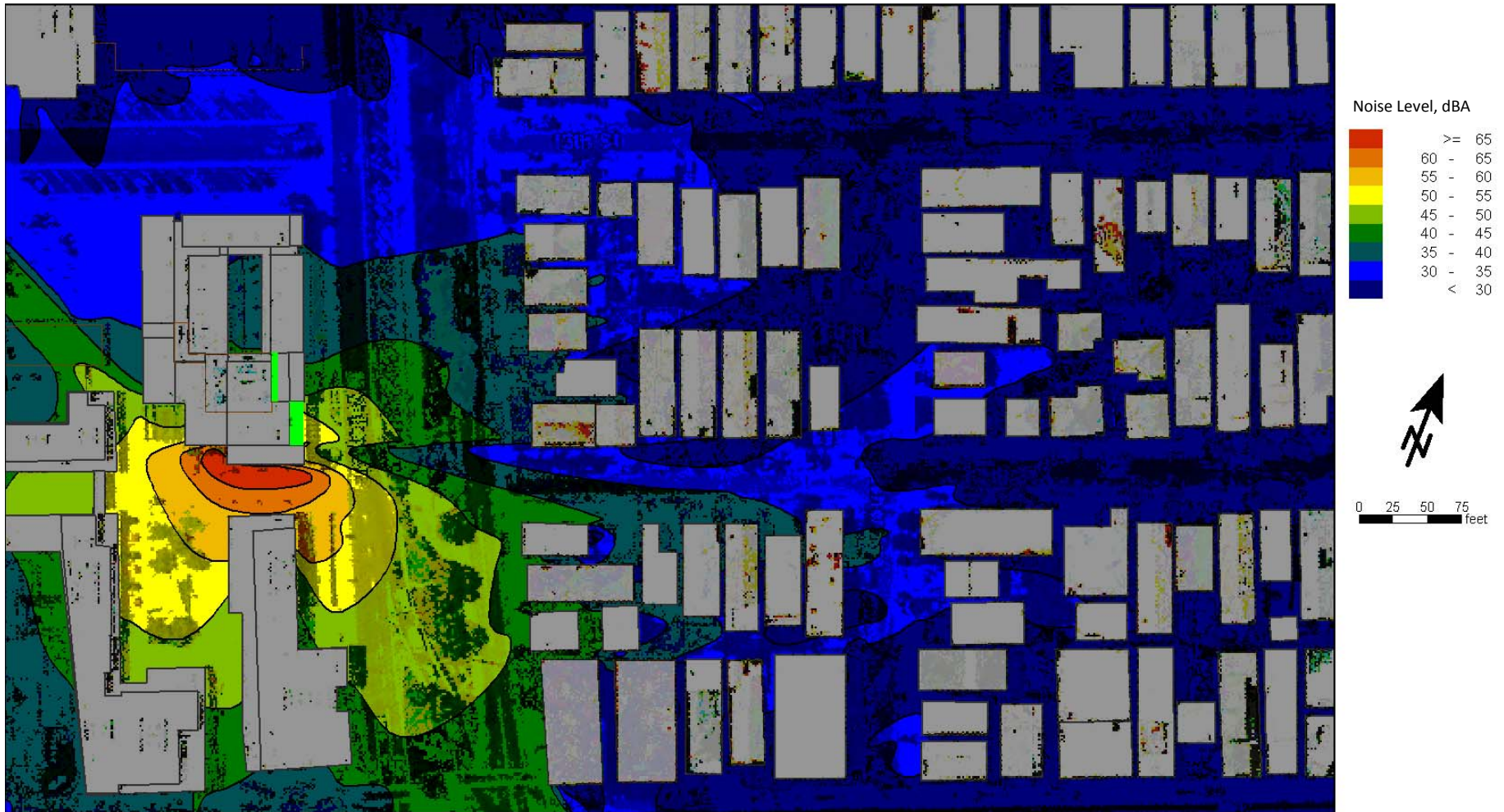


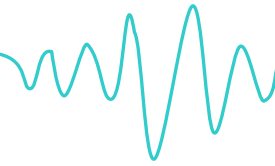
**Figure 6. Noise Difference Map - 1<sup>st</sup> Floor Noise Reduction with Partially Enclosed South Terrace**



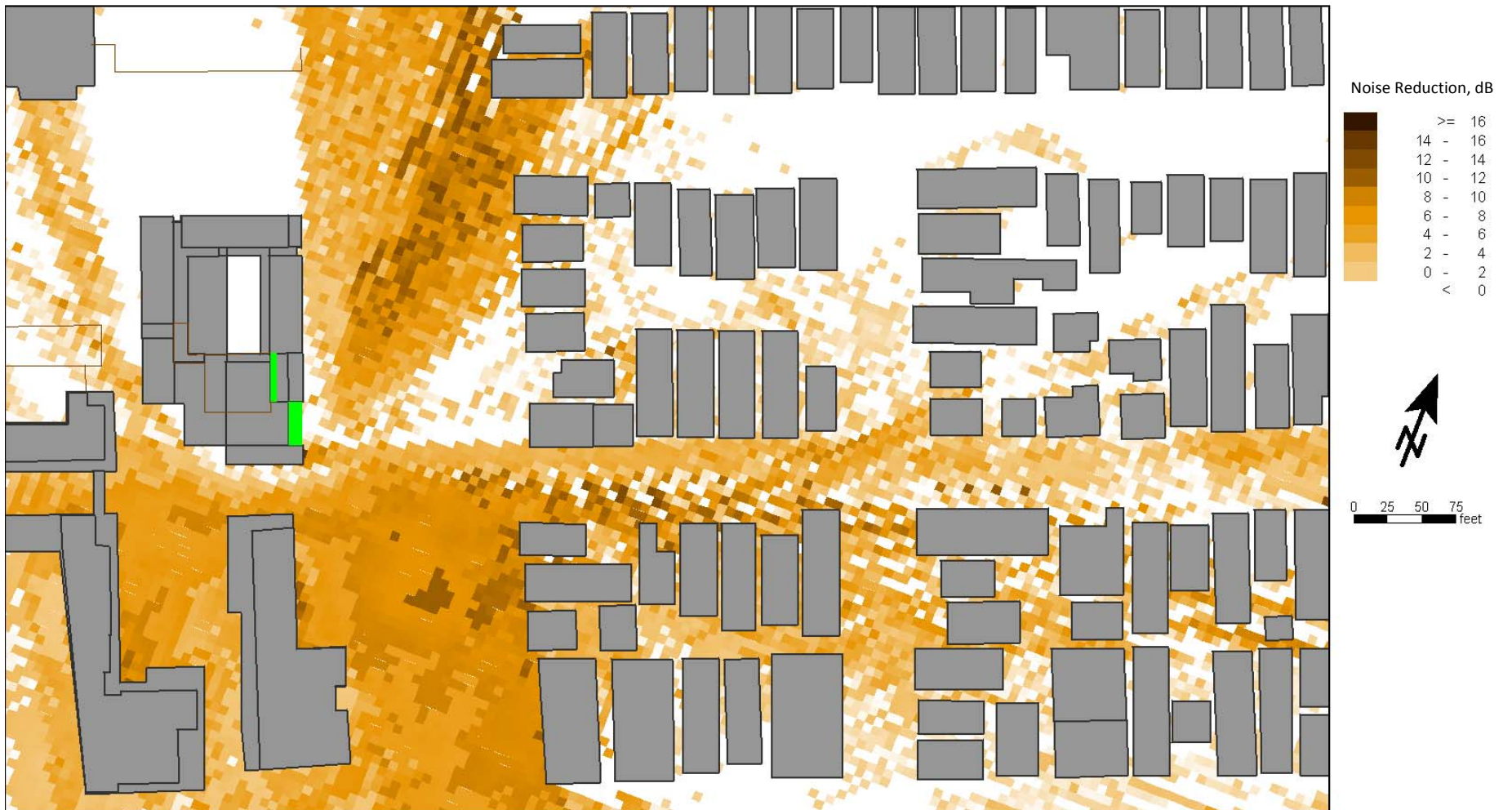


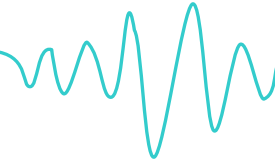
**Figure 7. Mitigated Average Noise Level at 3<sup>rd</sup> Floor - Partially Enclosed South Terrace**



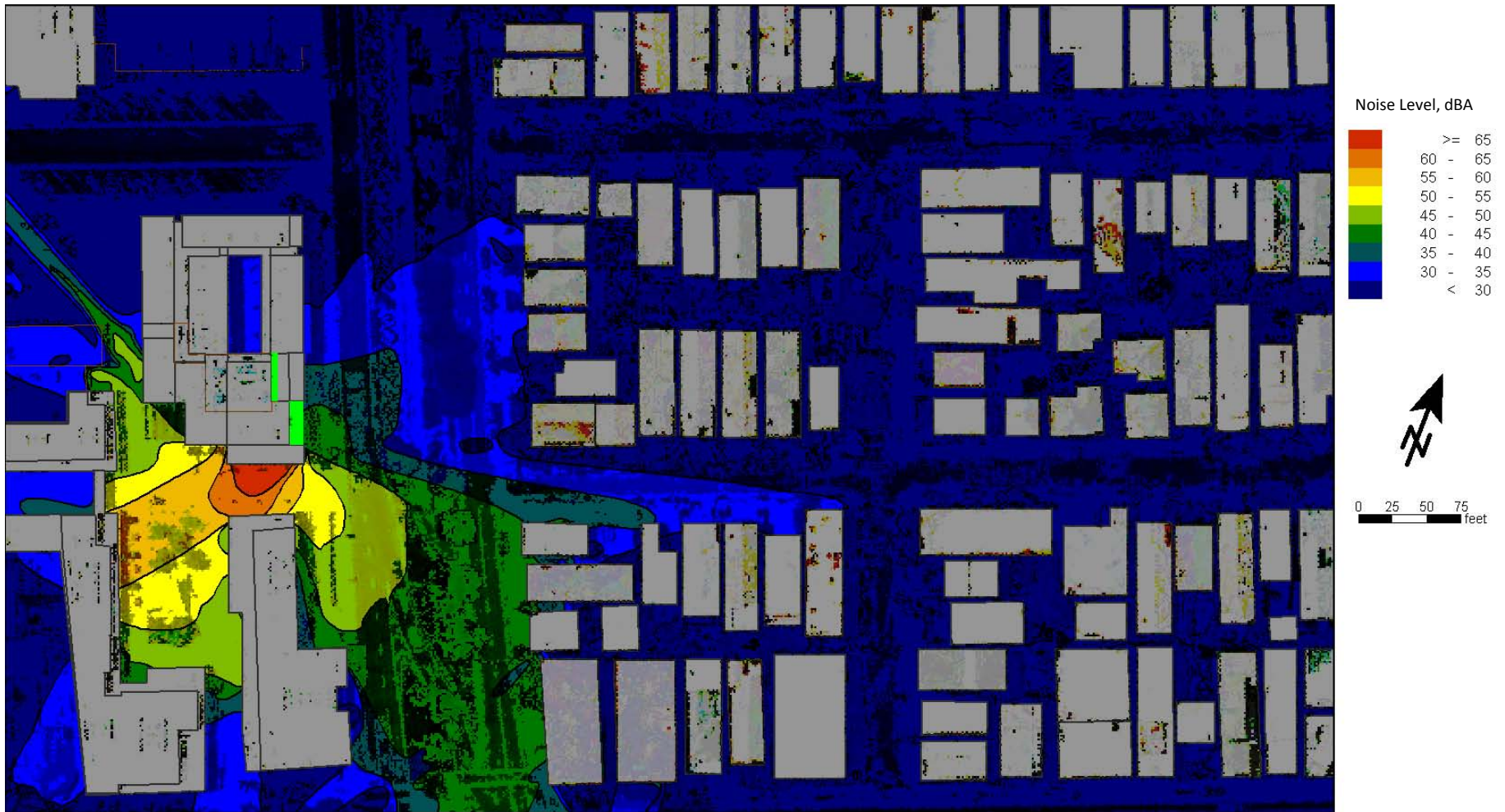


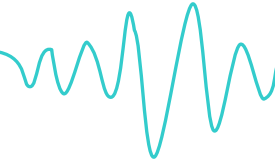
**Figure 8. Noise Difference Map - 3<sup>rd</sup> Floor Noise Reduction with Partially Enclosed South Terrace**



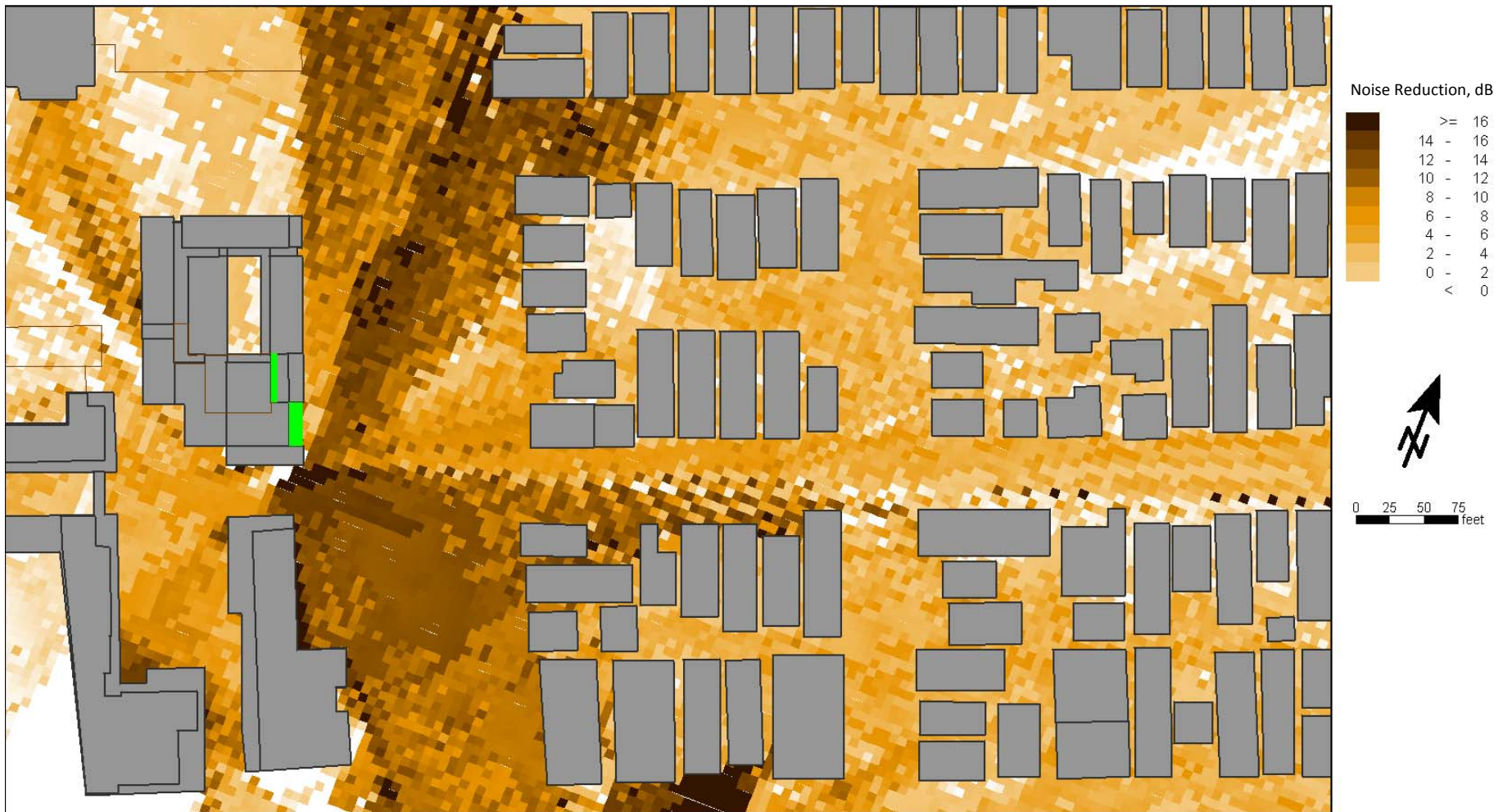


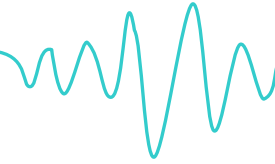
**Figure 9. Mitigated Average Noise Level at 1<sup>st</sup> Floor - Enclosed South Terrace**



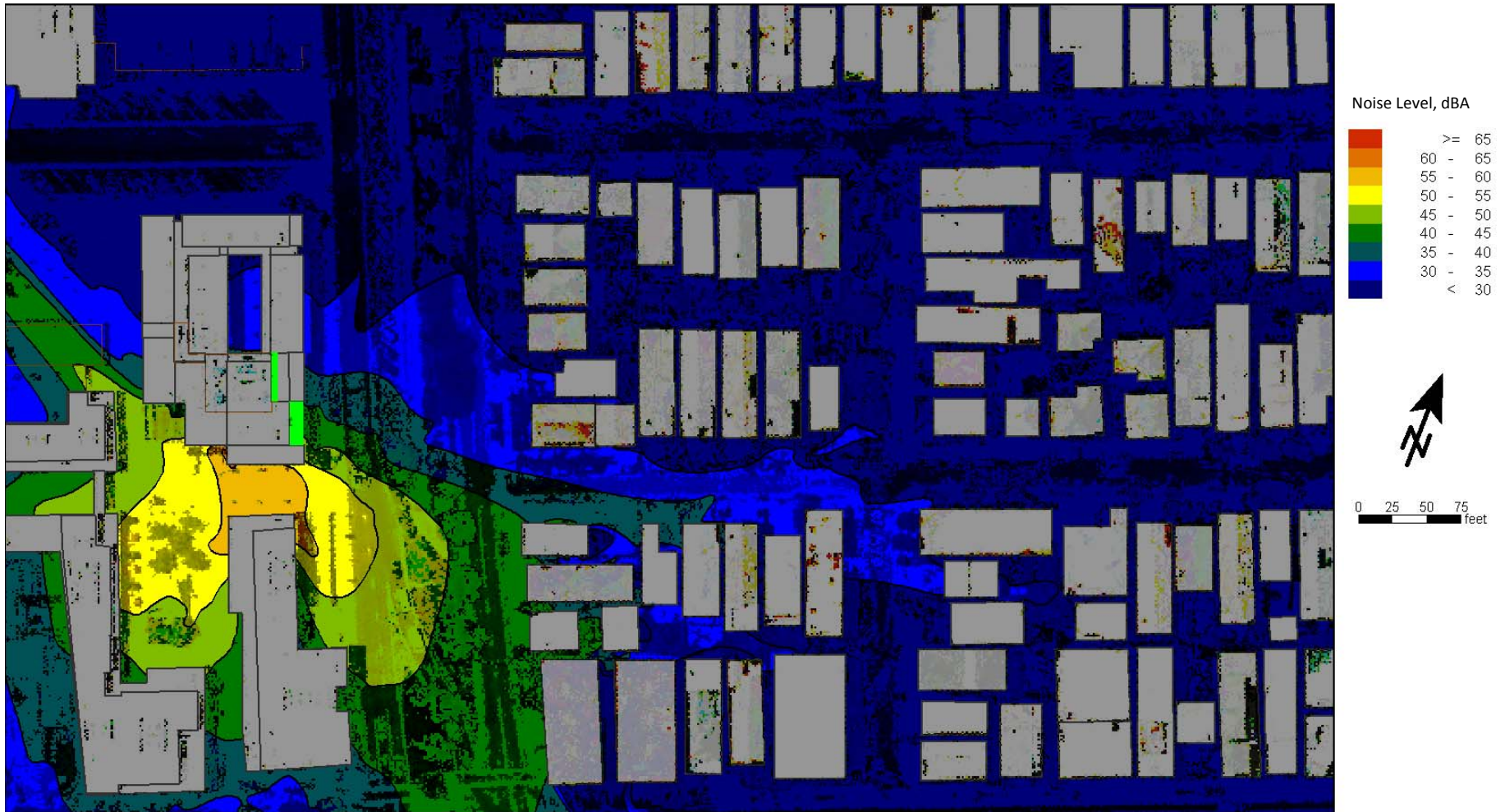


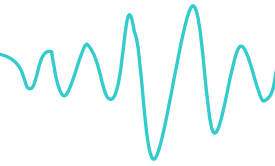
**Figure 10. Noise Difference Map - 1<sup>st</sup> Floor Noise Reduction with Enclosed South Terrace**



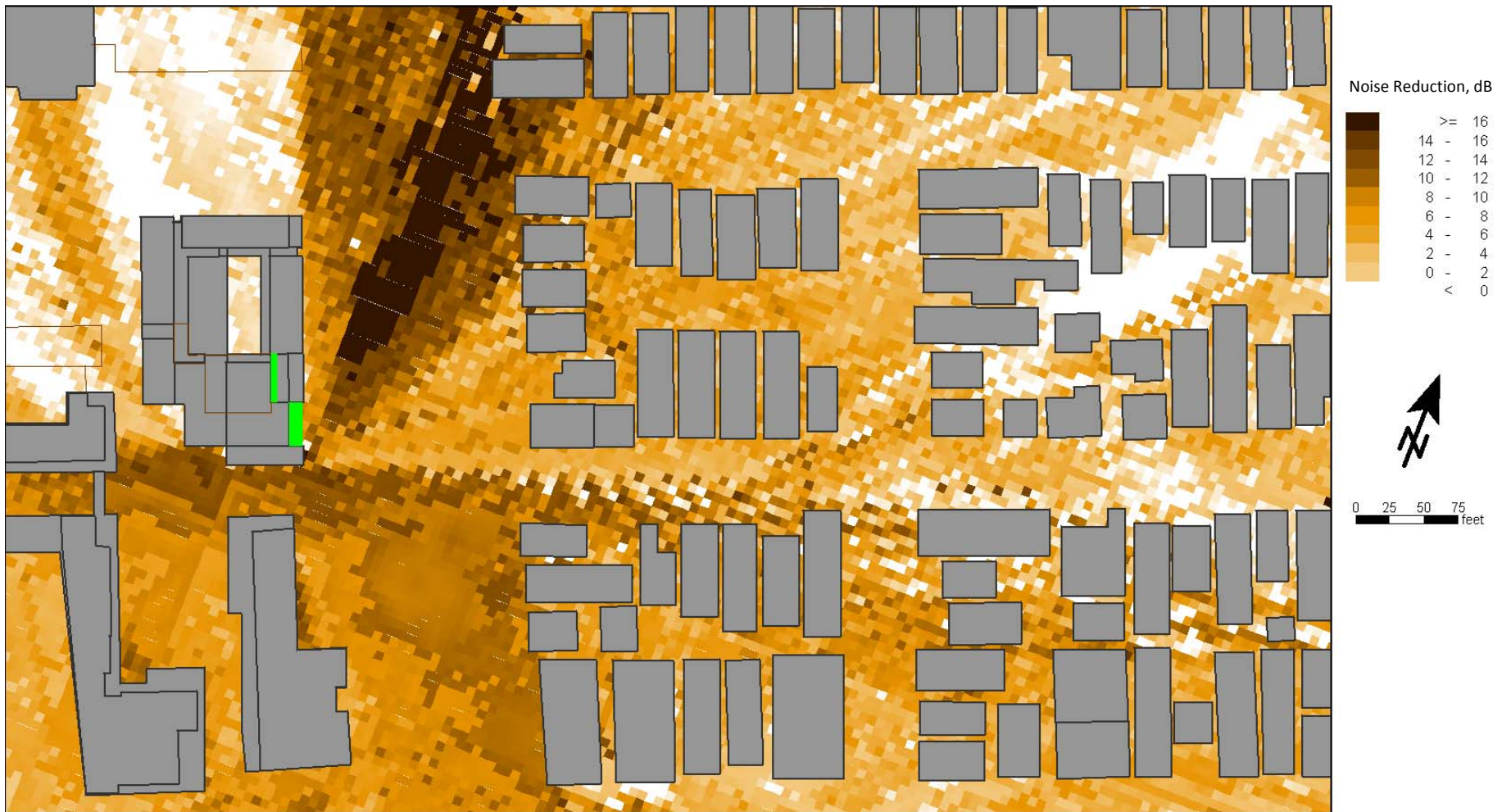


**Figure 11. Mitigated Average Noise Level at 3<sup>rd</sup> Floor - Enclosed South Terrace**

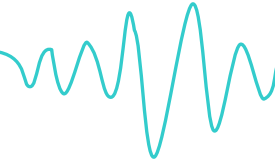




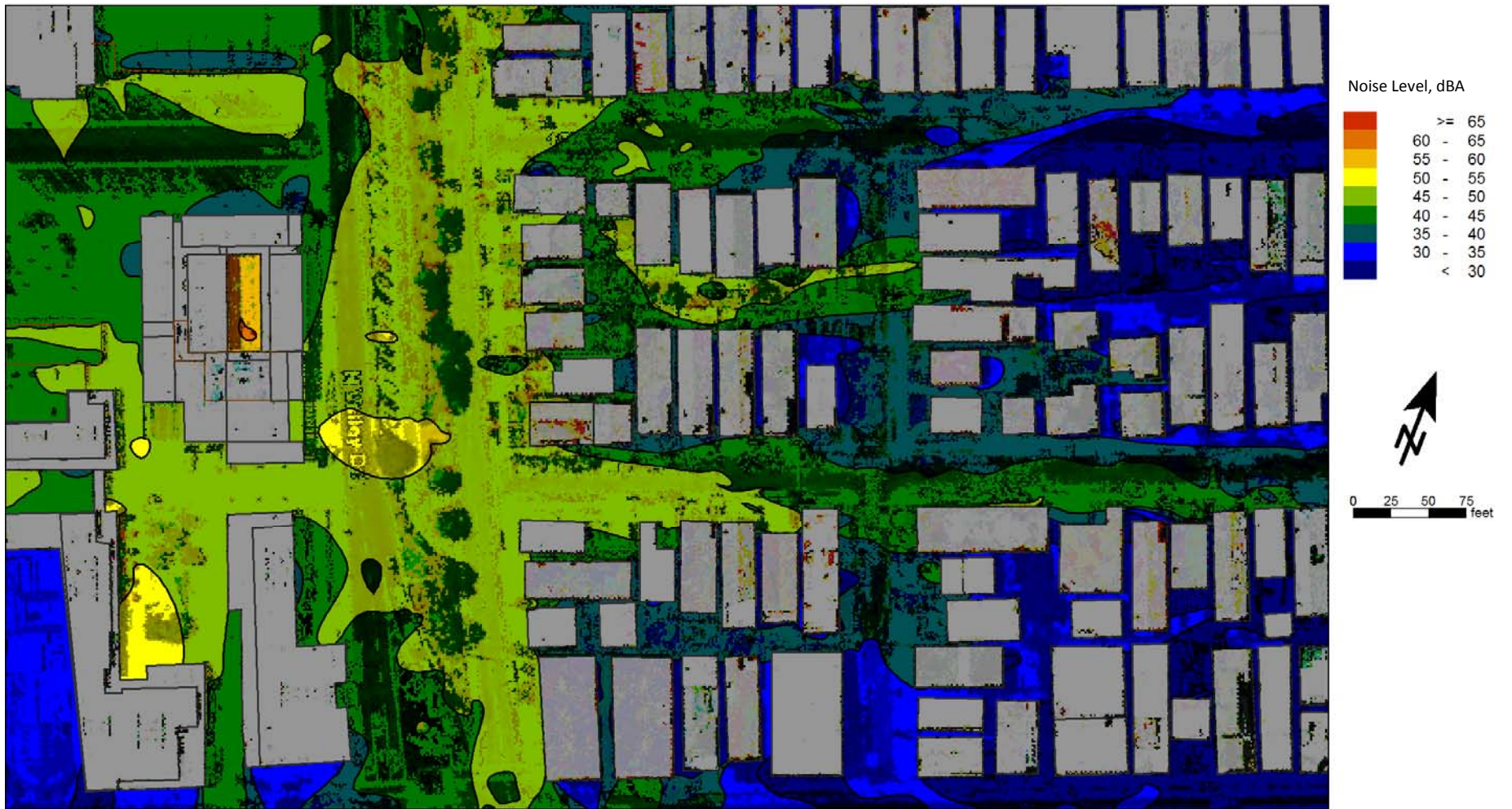
**Figure 12. Noise Difference Map - 3<sup>rd</sup> Floor Noise Reduction with Enclosed South Terrace**

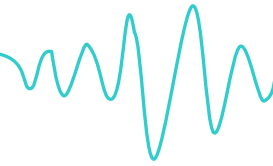






**Figure 13. Unmitigated Average Noise Level at 1<sup>st</sup> Floor - Rooftop Deck Only**



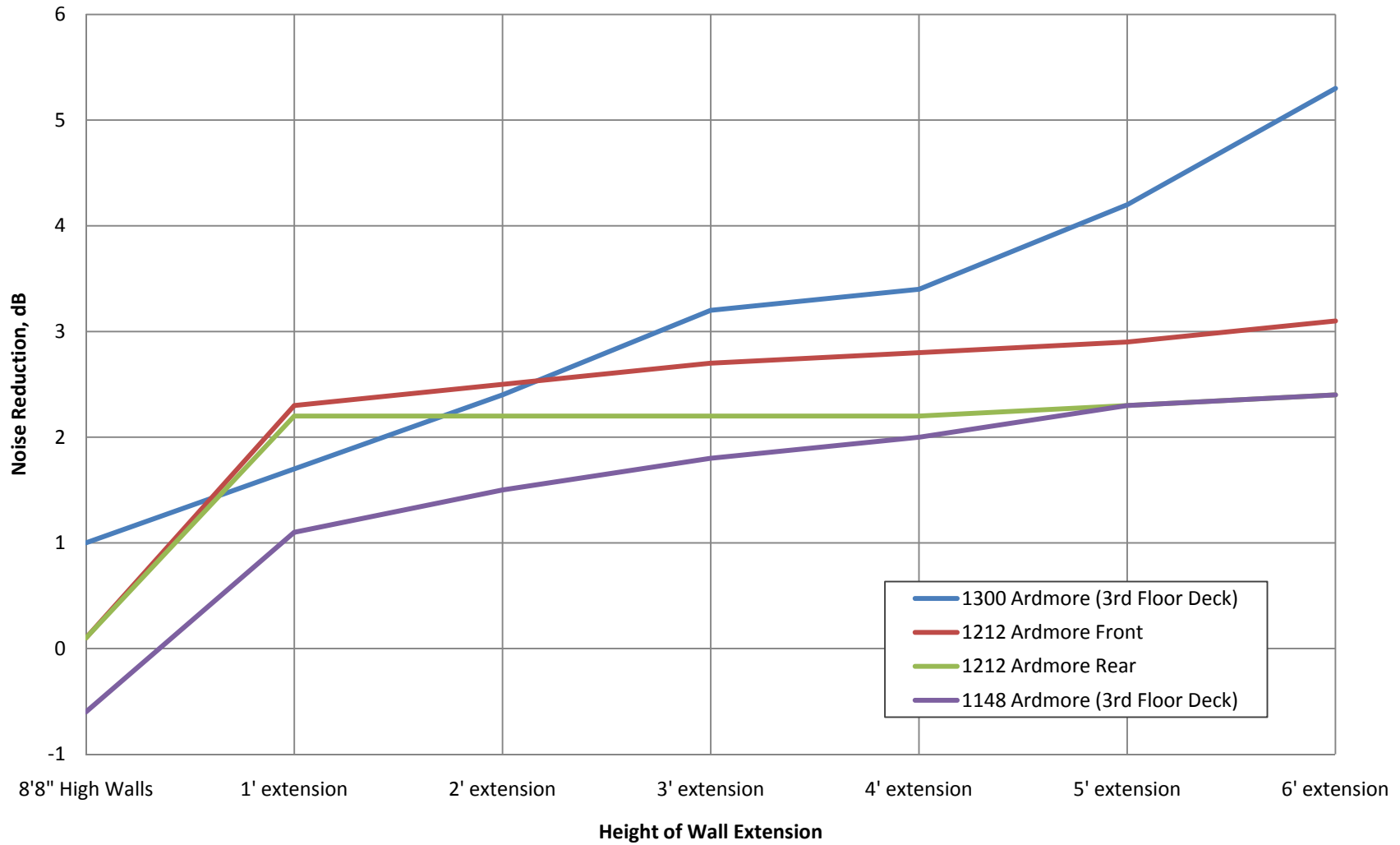


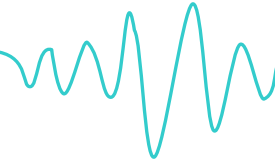
**Figure 14. Rooftop Deck Modeling Locations**



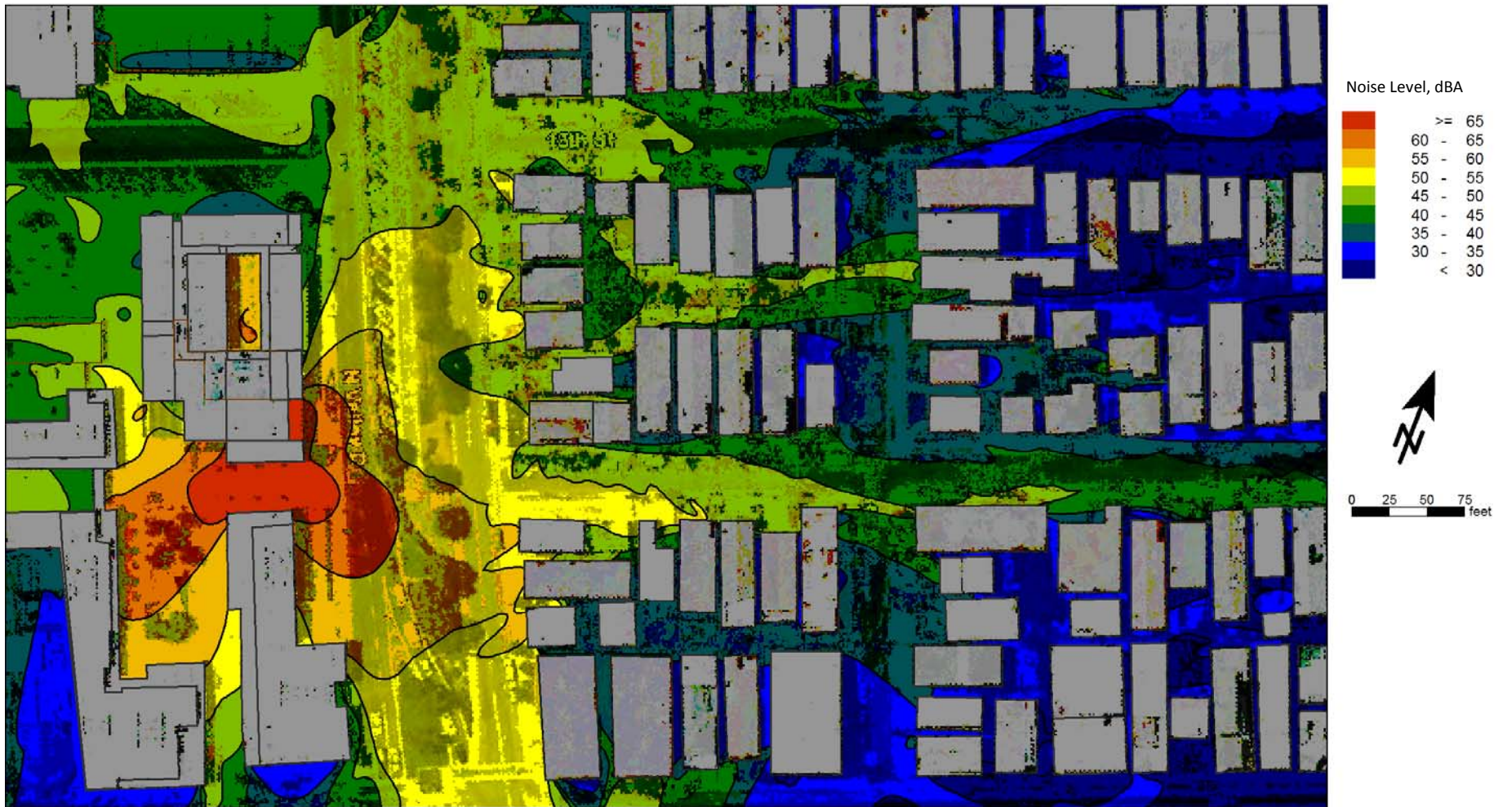


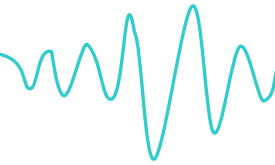
**Figure 15. Reduction of Rooftop Deck Noise with Extended Barrier Walls**



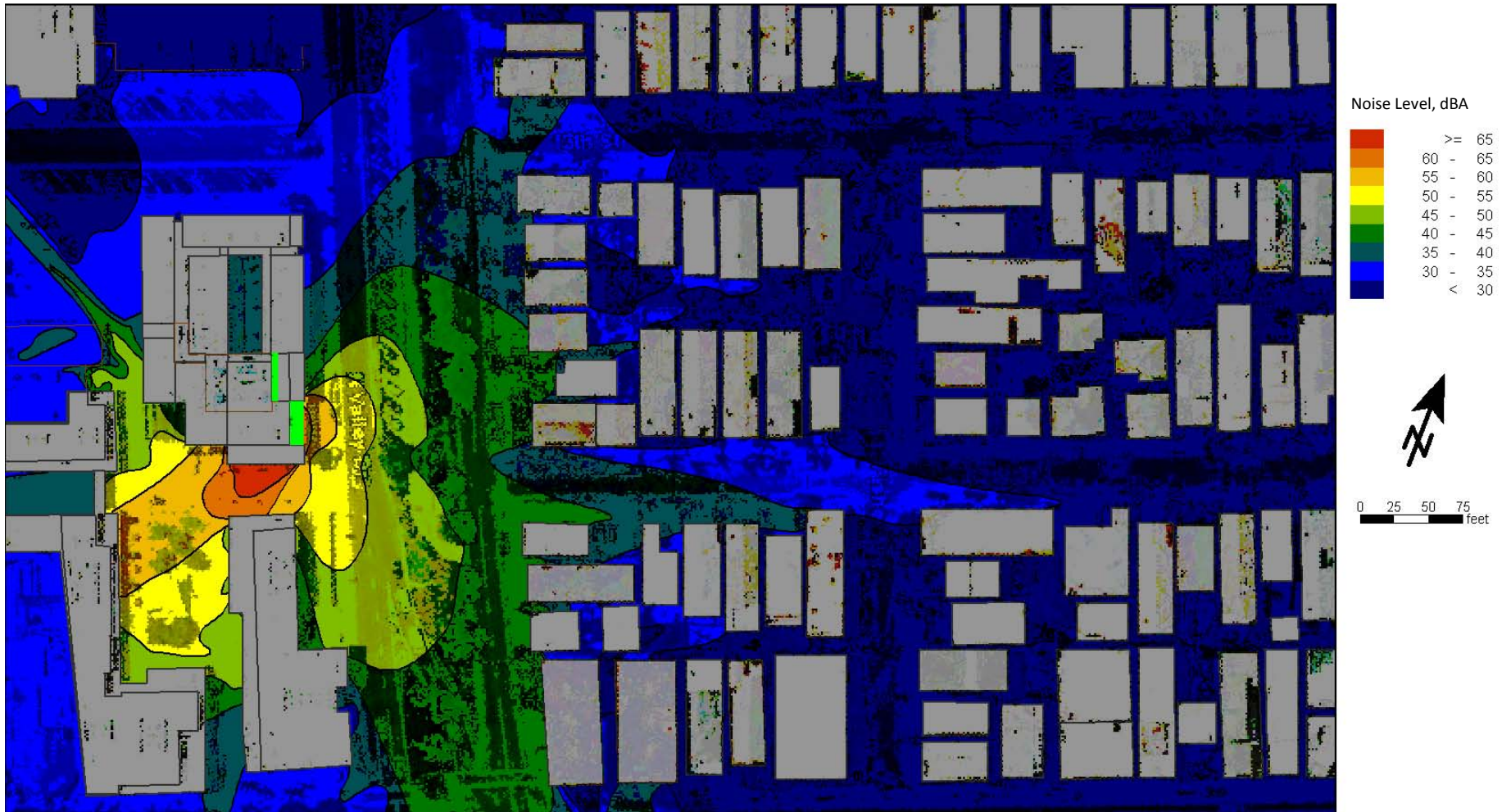


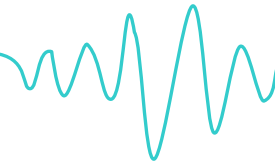
**Figure 16. Unmitigated Average Noise Level at 1<sup>st</sup> Floor - All Sources**



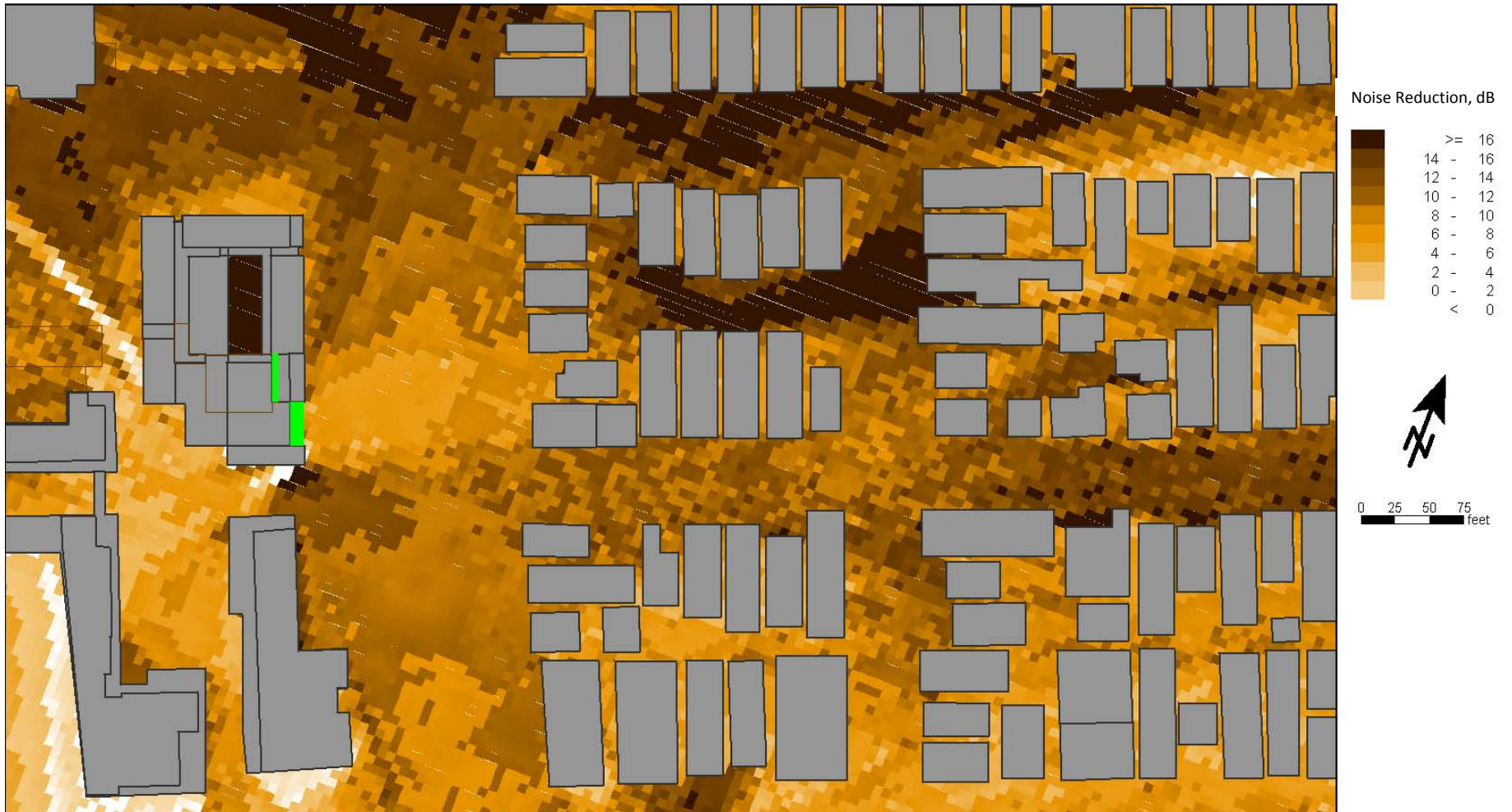


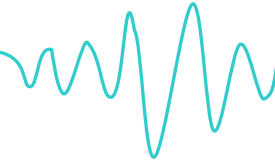
**Figure 17. Mitigated Average Noise Level at 1<sup>st</sup> Floor - Partially Enclosed South Terrace, Front Entrance Vestibule and No Rooftop Deck Activity**



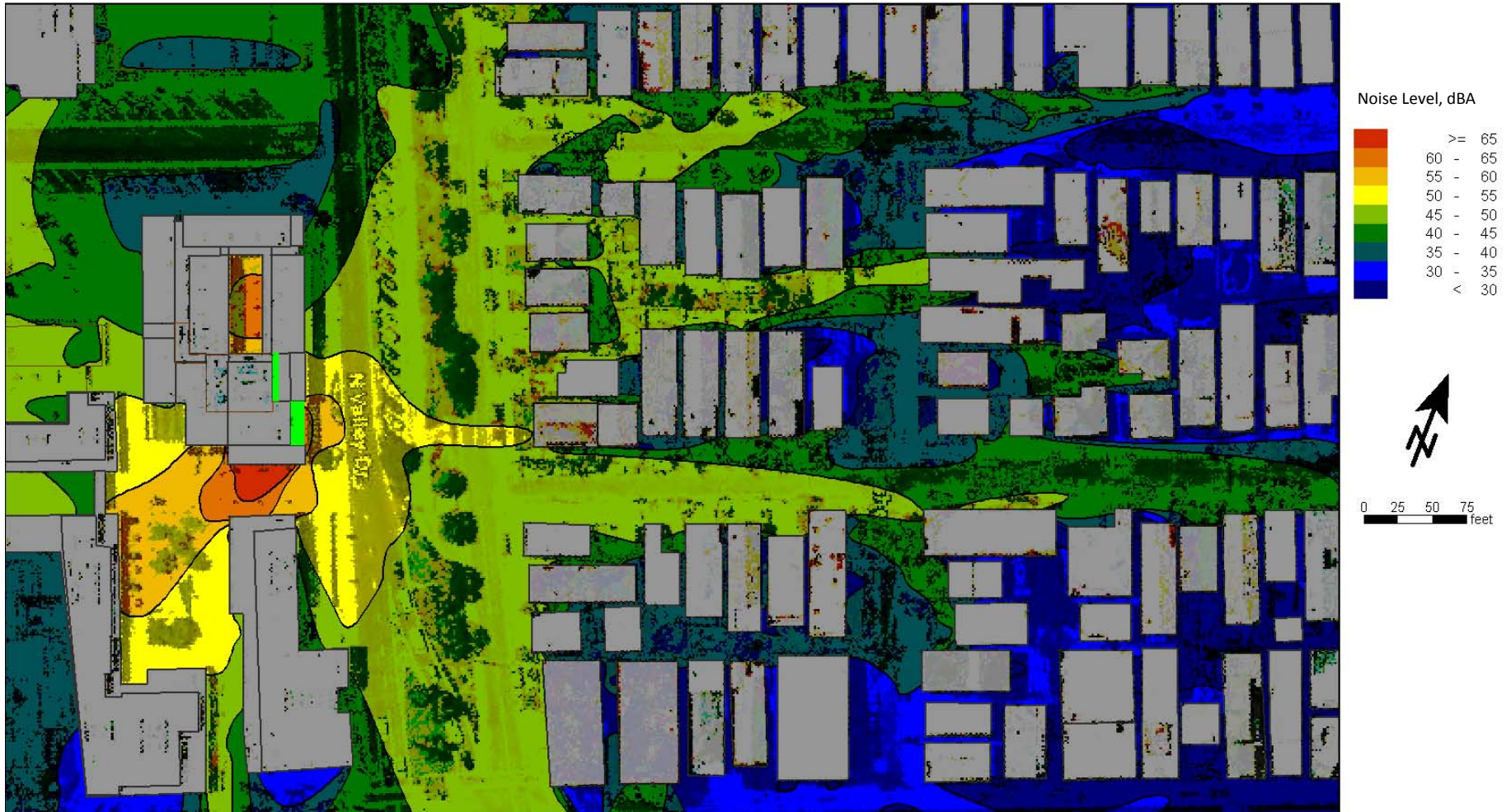


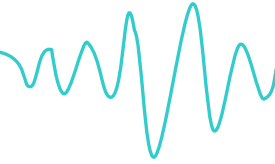
**Figure 18. Noise Difference Map - 1<sup>st</sup> Floor Noise Reduction with Partially Enclosed South Terrace, Front Entrance Vestibule and No Rooftop Deck Activity**





**Figure 19. Mitigated Average Noise Level at 1<sup>st</sup> Floor - Partially Enclosed South Terrace, Front Entrance Vestibule with Rooftop Deck Activity**





**Figure 20. Noise Difference Map - 1<sup>st</sup> Floor Noise Reduction with Partially Enclosed South Terrace, Front Entrance Vestibule with Rooftop Deck Activity**





**Angela Soo**

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**From:** Don McPherson [dmcphersonla@gmail.com]  
**Sent:** Saturday, May 01, 2010 6:37 AM  
**To:** David Lesser; Jim Fasola; Kathleen Paralusz; Martha Andreani; Sandra Seville-Jones  
**Cc:** Mitch Ward; Nick Tell; Portia P. Cohen; Richard P. Montgomery; Wayne Powell; Richard Thompson; Bruce Moe; Robert Wadden; Laurie B. Jester; Rod Uyeda; Scott Ferguson; Liza Tamura  
**Subject:** More Improprieties in Shade May 2005 Hearing on Type 47 License

Planning Commission  
 City of Manhattan Beach  
 Via Email

Commissioners, for the record,

Subject: Principal Conditions Required by Residents for Extended Shade Hours

This submission summarizes the principal conditions required by residents for extension of bar hours, in exchange for noise mitigation to stop Shade disturbances.

In the May 2005 hearing to consider the Type 47 license, staff and Shade misled the planning commission to believe that the outside terrace would not serve alcohol. As result, the commissioners never addressed the issue of noise and bar disturbances on the terrace, a major Shade noise source.

As presented previously, staff and Shade manipulated the commissioners into believing that they had no choice, except to approve the Type 47 license. Ms Jester and Mr Zislis did not disclose that a Type 70 license would have enabled the Type 66 mini-bar license, while restricting alcohol service to registered hotel guests and their invitees, a requirement in the 2002 Metlox master use permit.

These deceptions by staff and Shade have caused residents grievous harm.

For the current application, the planning commission can now redress these wrongs, by revising the use permit with changes that will stop Shade disturbances in the neighborhood.

The revisions will also force Shade to operate more as a hotel, rather than a nightclub, in accordance with stated policy of the city.

As described in the attached summary, the four principal conditions outlined below represent a seamless evolution from the amendment approved May 2005 by the planning commission, as Resolution PC 05-08, which authorized the Type 47 alcohol license.

This continuity resulted from an exhaustive study of the video for the May 2005 hearing. As result, commissioners will learn new facts that have significant bearing on the Shade application that they now consider. Among exhibits in the attachment, an index will guide commissioners to quickly view the salient scenes from the May 2005 hearing, if they so wish.

The following briefs present the residents' four principal conditions.

**Folding sound-absorbing wall between Zinc and lobby, required by current use permit.**

In his 2005 application, Mr Zislis initiated the concept of the sound wall between the bar and the lobby, as a condition to obtain the Type 47 license. In his testimony at the May 2005 hearing, Mr Zislis acknowledged the wall as a requirement to protect registered guests from bar noise. Unfortunately, Mr Zislis reneged on his commitment to install the wall.

The MBPD has stated they cannot enforce Zinc bar closing times, because it shares a common area with the lobby, which remains open all night. The bar-lobby wall will isolate Zinc, so that in the future, MBPD can enforce closing times.

In their October 2009 report, the city acoustics contractor evaluated a wall between the front entrance and lobby desk, estimating a 15 dB reduction in noise. The residents' wall, as envisioned by Mr Zislis in his application, spans the entire bar. Being sound-absorbing, it will reduce noise by over 20 dB, far in excess of the 4-8 dB proposed by Shade for the front-door vestibule.

**Full enclosure of the terrace, including sound-absorbing drapes and ceiling fixtures.**

At the onset of the May 2005 hearing, in response to questions, Ms Jester stated that the terrace would not have alcohol service. At the end of the hearing, after a motion to approve the resolution, Ms Jester interrupted the process with a modification that permitted alcohol service on the terrace. No discussion on this issue occurred during the hearing.

Consequently, the commissioners never had the opportunity to consider the terrace as an outdoor extension of the Zinc bar. After Ms Jester's testimony regarding no alcohol on the terrace, Director Thompson stated that Mr Zislis would clarify issues regarding the area. Mr Zislis addressed only breakfast service.

Considering the concerns that commissioners expressed in 2005 regarding full-alcohol service in the lobby bar and on the skydeck, they certainly would have viewed with alarm any alcohol on the open terrace.

Regarding Shade's proposal to mitigate terrace noise, their suggested partial enclosure provides a 6-10 dB reduction, corresponding to less than 50% decrease in loudness.

In their October report, the city acoustics contractor estimated a 20 dB noise reduction for fully enclosing the terrace. Residents additionally require sound-absorbing ceiling fixtures and drapes, which will boost noise reduction well over 20 dB. Compare that to Shade's 6-10 dB.

**No amplified live entertainment on skydeck, other than marriage vows by principals.**

At the May 2005 hearing, one commissioner expressed considerable concern about the full-alcohol bar on the skydeck and parties there, particularly regarding noise in the neighborhood. She enquired about entertainment on the roof-deck.

Staff unequivocally stated that the skydeck would not have entertainment. In the October 2008 entertainment permit, however, staff approved a sound system for amplified live voice and music on the skydeck.

In their March report, the city acoustics consultant stated that the windscreen extensions proposed by Shade would not provide effective noise reduction.

As result, the residents require a prohibition of live entertainment, as well as amplified voice and music on the skydeck, other than background music. The residents will accept amplification of marriage vows. All sound, however, must comply with city noise regulations.

**Reduce occupancies, by compliance with certain city and ABC regulations.**

At the May 2005 hearing, commissioners believed reasonable the proposed 22 people seated on the terrace for breakfast only, and 32 occupants on the skydeck.

The MBFD has approved far more, 47 on the terrace and 92 on the skydeck.

In 2008, between October and December, the MBFD over doubled the occupancies for the Zinc bar and the skydeck. As of this writing, staff has yet to determine why.

The answer appears to lie with Shade clearing alcohol venues of tables, chairs and furnishings, to increase bar occupancy. This process violates the Type 47 license requirement

to maintain a dining area. It also violates the event space layouts in the entertainment permits, which require tables and chairs in all alcohol venues.

The residents require tables, chairs and furnishings in all alcohol venues, compliant with the entertainment permit and the Type 47 license requirement for a dining area. Additionally, the bar-lobby barrier will enable reduced occupancy, by virtue of prohibiting alcohol service and consumption in the lobby, isolated from Zinc by the wall.

**Attached Summary of Residents Principal Conditions.**

The attachment substantiates the above facts and provides other disclosures, by quoting staff and Shade in testimony at the May 2005 hearing. The format presents the quotes in sidebars, complemented with an explanatory narrative running side-by-side.

For each citation from the archived video of the May 2005 meeting, Exhibit B in the attachment provides an indexed entry of time and brief identification of the item. Exhibit B also includes instructions for finding and opening the video, as well as locating specific scenes.

If commissioners have the time, perusing the video with aid of the index will provide a wealth of information and understanding of how Shade developed into a nightclub. Listen to what staff and Shade really said.

This submission constitutes the fourth installment in five presentations of evidence:

1. *(Submitted 9 March 2010.) How Shade manipulated city policy on the Metlox Hotel. Evidence indicating Shade may have misrepresented facts to obtain the Type 47 license for full-service to the general public, rather than the Type 70 license tailored to hotels for service to guests only, as intended by the city in the original 2002 Metlox master use permit.*
2. *(Submitted 20 March 2010.) City exposure to misdemeanor charges and litigation, as result of letting Shade continue to operate as a public nuisance, based on city municipal code and state statutes.*
3. *(Submitted 20 April 2010.) Critique of city acoustics analysis report, dated 10 March 2010.*
4. ***(This submission) Principal conditions required by residents for extension of Shade hours.***
5. *Documented evidence of beverage service at the Zinc bar, an hour after the 10:30 PM cut-off condition in the use permit, thereby enabling the nightclub to operate until midnight, rather than the required 11 PM close. The latter witnessed by residents, per their declarations.*

The city will receive the fifth and final submission by May 6.

I hope this paper provides easier reading than the acoustics analysis critique.

Don McPherson  
1014 1st St, Manhattan Beach CA 90266  
310.487.0383  
[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)

Copy: Former 2005 councilmembers and commissioners, Residents, Strumwasser & Woocher

## **MAJOR CONDITIONS REQUIRED BY RESIDENTS FOR EXTENDED SHADE HOURS**

### **SUMMARY.**

At the October 28 hearing on Shade, the planning commission directed residents and the applicant to negotiate an extension of Zinc bar and terrace hours from 11 PM to midnight on Friday and Saturday, in exchange for noise mitigation measures that will stop disturbances in the neighborhood. This submission supports the principal conditions required by the residents, discussed in the following order:

- Folding sound-absorbing wall between Zinc and lobby, required by current use permit
- Full enclosure of the terrace, including sound-absorbing drapes and ceiling fixtures
- No amplified live entertainment on skydeck, other than marriage vows by principals
- Reduced occupancies, by compliance with certain city and ABC regulations.

To supplement discussion of the above items, the *Residents' Use Permit*, submitted in December 2009, provides more detail. The city will receive an updated version by May 5.

The disturbances result principally from Shade operating as a nightclub for hundreds of bar patrons, often with overly-loud music. In complete contrast, stated city policy constrains Shade to primarily hotel use, intended to anchor Metlox Plaza and to provide patronage of downtown businesses by overnight guests.

The hotel has become a public nuisance, by abusing the Type 47 ABC license approved in 2005. At the time, the planning commissioners believed they had no other option, because Shade and staff failed to disclose the Type 70 license, which restricts alcohol service to registered guests and their invitees, as originally intended by the Metlox master use permit.

One such abuse arises from alcohol service, long after the 10:30 PM cut-off in the use permit, resulting in the Zinc bar often going full blast until midnight. Based on Shade's history of use-permit violations, for the proposed extension to midnight, the Zinc bar will operate until one AM. Now, MBPD cannot enforce closing time, because Zinc shares space with the lobby, open all night. The bar-lobby wall will isolate Zinc, so that MBPD can order it closed on time.

When approving the Type 47 license in 2005, the commissioners believed that sufficient safeguards existed to prevent Shade from disturbing the neighborhood. They based their decision on evidence in the application, testimony by Shade and staff at the hearing, as well as the draft resolution. Unfortunately, some required safeguards never saw the light of day, such as the wall between the bar and the lobby. For those that did get included in the use permit, such as no promotion of the Zinc bar, Shade runs roughshod over them. To compound the problem, authorities have neglected to enforce both the use and entertainment permits.

Residents understand that the city cannot reverse its 2005 approval of the Type 47 license. The discussion below approaches the Shade disturbance problem from perspective of what the planning commission intended in 2005. Realistically, their reasonable expectations at the time now lay beyond reach. For the current application, however, the commissioners can force Shade to operate much closer to hotel use, rather than the existing noisy nightclub.

### **DISCUSSION.**

With few exceptions, the residents' required conditions follow those in the existing use and entertainment permits, but have significant distinctions of composition and organization to make them unambiguous and enforceable. Compliance with quantitative requirements in the city noise regulations plays a lesser role in formulation of the residents' conditions.

## MAJOR CONDITIONS REQUIRED BY RESIDENTS FOR EXTENDED SHADE HOURS

### Folding sound-absorbing wall between Zinc bar and lobby.

The wall required in the 2005 use permit between the Zinc bar and lobby has the crucial function of enabling MBPD to enforce closing times, which they currently cannot do. Zinc and the lobby share a common area, open all night. As per Exhibit A, city staff and MBPD concluded they cannot enforce the 11 PM closing time for this reason.

If they cannot enforce the 11 PM close, because the bar and lobby share the same space, then it follows that they cannot enforce an 11:30 PM close, nor a midnight close, despite the statement otherwise in the Exhibit A email. On weekends and holidays, the Zinc bar proves MBPD powerless to enforce closing times, by routinely staying open until midnight or later.

Figure 1 (next page) shows the folding sound-absorbing wall isolates the lobby from Zinc, thereby enabling enforcement of closing times, as defined by all patrons out of the bar.

In his 2005 application, as per the sidebar, Me Zislis initiated the Zinc-lobby wall, as a condition to obtain the Type 47 license. When commissioners approved alcohol service to the general public, they did so with the understanding that the sound-absorbing wall would isolate the lobby from Zinc.

At the May 2005 hearing (see sidebar), Commissioner Savikas expressed concern about blocking off events, so that they do not disturb hotel guests. Mr. Zislis testified that the sound wall between Zinc and the lobby would block the noise.

Shade installed the ceiling track, but not the wall, a condition mandated by the commission in 2005, when approving the Type 47 license. The city now has the legal and moral responsibility to require the wall, as a necessary condition, on which the commissioners based their 2005 approval.

At the last hearing, October 28, staff stated that hotel construction from STC-50 materials precludes the need for the Zinc-lobby wall.

Staff errs. In 2005, the commission had concerns about the bar disturbing both the neighborhood and hotel guests, as evidenced by Commissioner Savikas's comment above. Even Mr Zislis stated, "You don't want to interfere with your guests." Rooms near Zinc go for a discount. The lobby has noise intensity near OSHA maximums. The Zinc-lobby wall fixes those problems.

In their October 2009 report, the acoustics consultant estimated a 15 dB noise reduction for a wall between the front entrance and the lobby front desk, shown in red on the next-page Figure 1. The sound-absorbing wall spanning the entire bar, as envisioned by Mr. Zislis in his 2005 application, will conservatively provide over a 20 db noise reduction, vastly exceeding the marginal 4 to 8 dB reduction estimated for the currently-proposed front-door vestibule.

Staff ignores the wall. Why? It works, and MBPD needs it to enforce bar closing times.

#### **Shade application for 2005 approval of general-public Type 47 ABC license.**

"The hotel will construct, as part of its design, a retractable partition in the Living Room capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events ... **the room will have a STC (Sound Transmission Code) rating of 50, which will more than sufficiently mute the noise.**"  
*(Emphasis added)*

#### **Zislis testimony at May 2005 hearing.**

Commissioner Savikas: "If you were to have an event in the courtyard, you can block off the courtyard...?"

Zislis: "In the lobby bar, we have an acoustic wall, that runs right down the hall, the whole bar area, so we can shutdown that lobby to a private space, so its acoustically..., because if you do have a wedding, you're going to have a band playing and the dance floor, and you don't want to interfere with your guests."

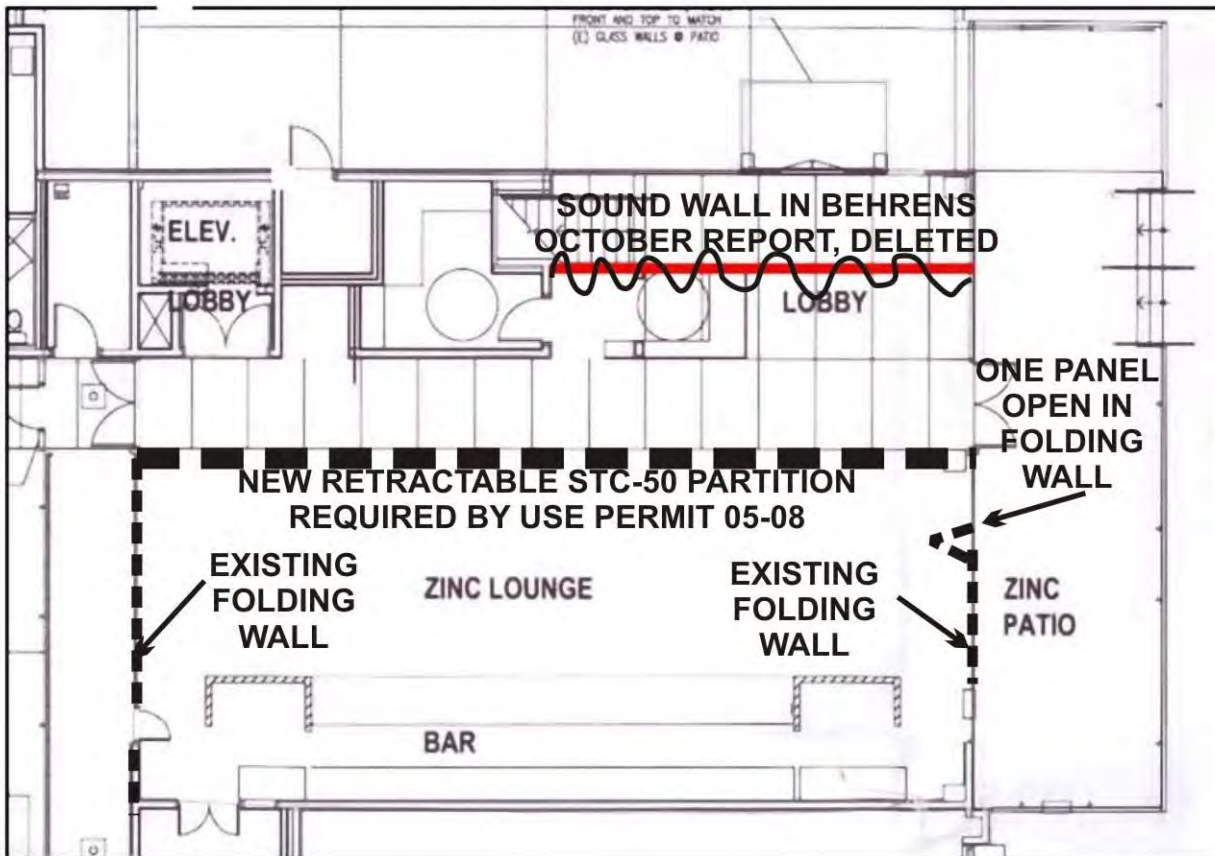
**FIGURE 1**

**LAYOUT OF ZINC SOUNDPROOFING  
REQUIRED BY USE PERMIT RESOLUTION 05-08**

Text of Finding O, PC RESOLUTION 05-08, Shade amendment to use permit.

O. Potential noise concerns will be addressed through the review of the annual Entertainment Permit as well as a retractable partition in the Living Room will be installed which is capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events as the room will have a STC (Sound Transmission Code) rating of 50.

Note: Underlying graphic taken from acoustic engineering report, Figure 2-23.



## MAJOR CONDITIONS REQUIRED BY RESIDENTS FOR EXTENDED SHADE HOURS

### Full enclosure of the terrace, including sound-absorbing drapes and ceiling fixtures.

The open terrace functions acoustically as a huge band shell that reflects music and bar babble into the neighborhood. It requires full enclosure to sufficiently mitigate the noise.

At onset of the May 2005 PC hearing on the Type 47 license, Laurie Jester testified that the terrace would not include alcohol service.

At hearing end, she interrupted a motion to approve the resolution, with a change that added alcohol service to the terrace.

The sidebar provides the sum total testimony and discussion. After Jester's statement of no alcohol on the terrace, Director Thompson said the applicant would clarify her statements. In response to questions, Mr Zislis addressed only terrace breakfast service.

Jester's action in 2005 on terrace alcohol service denied the commission the opportunity to discuss the area as an outdoor extension of the Zinc bar. Considering their concerns over full alcohol service in the lobby bar and on the skydeck, the commissioners would have objected to alcohol on the terrace, at least in evening.

As result, for the present application, the commission has the duty to redress the harm inflicted on the neighborhood, caused by Jester's 2005 misstatement on terrace alcohol service.

The terrace requires substantial noise mitigation. Shade proposes partial enclosure, including an 8-foot high, 24-foot long wall at the south entrance, across the 12<sup>th</sup> St walkway. The consultant's March analysis estimates a 6-10 dB reduction, less than a 50% loudness decrease, inadequate for music levels that shake houses.

The October 2009 report from the acoustics consultant, at Figure 2-20, estimated a 20 dB reduction for full enclosure of the terrace. If the commission adds sound-absorbing ceiling fixtures included in the Shade proposal, as well as drape replacement with an AcoustiCurtain equivalent, they will achieve a decent noise reduction, well over 20 dB.

Full enclosure of the terrace after 9 PM also addresses ingress-egress at the south entrance by the bar crowd. In evening, these patrons will use the west door of the hotel, near the relocated Metlox valet parking on Morningside Dr. In contrast, Shade's proposal ignores disturbances at 12<sup>th</sup> St and Valley, caused by the general public exiting the terrace late at night.

#### Testimony from May 2005 PC hearing. (Exhibit B explains city video use.)

##### ● Staff Testimony on Terrace.

Long exchange between Commissioner Simon and L Jester, such as:

Simon: "What are the hours for the terrace?"

Jester: "When you say terrace, do you mean roof deck?"

Voices direct Jester to terrace on easel drawings behind commissioners.

Jester: "Oh! Here! Oh. That's a...no...no. there would not be...no.

**There would not be service of food or alcohol in that area."** (*Emphasis*)

##### ● Applicant's Testimony re Terrace.

Simon: "We had a discussion on the hours at serving food on the terrace."

Zislis: "The hours for the terrace would be 7 AM to 10 AM, Monday through Friday, and 8 AM to 11 PM Saturday through Sunday."

Commissioner Savikas: "Is the terrace walled in?"

Zislis: "No, that terrace is (*deleted*). It's 22 seats for breakfast."

##### ● Commissioners' Discussion (no other mention of terrace.)

-Commissioner Kuch moves to approve resolution.

-L Jester interrupts to add the terrace to venues with alcohol service.

-Commission approves Resolution PC 05-08 for the Type 47 license.

## MAJOR CONDITIONS REQUIRED BY RESIDENTS FOR EXTENDED SHADE HOURS

### No amplified live entertainment on skydeck, other than marriage vows by principals.

Residents living blocks away from Shade have testified about being disturbed by amplified music and voice from the skydeck, clearly hearing grooms repeat marriage vows.

In their March report, the acoustics consultant states that raising the glass windscreens on the skydeck, proposed by Shade, will not effectively mitigate noise. They further conclude that only full-enclosure of the skydeck or administrative measures will work.

Regarding the latter, at the May 2005 PC hearing, staff unequivocally testified: no live entertainment on the skydeck, as per sidebar.

On the next page, the Figure 2 Event Space Layout tells a different story, permitting amplified live voice and music on the skydeck. Residents often get bombarded by loud offers of 'twofer' drinks at the rooftop bar.

In October 2008, staff approved an entertainment amplification system on the skydeck, despite their 2005 testimony otherwise.

The residents' use permit prohibits live entertainment on the skydeck, as well as amplified voice and music, other than background music inaudible outside the premises.

As a significant concession, residents will accept amplified marriage vows by the bride, groom and certified official presiding over the wedding, but not a master of ceremonies.

Shade shall remove the entertainment speaker system shown on the next page layout and relocate background music speakers from top of the windscreen posts to near floor-level. Marriage vows shall use the background amplification system, the operation of which must comply with city noise regulations at all times.

### Reduce occupancies, by compliance with certain city and ABC regulations.

At the May 2005 hearing on the Type 47 license, in response to questions from Commissioner Savikas, Mr Zislis testified that the occupancy for the terrace would seat 22, and that the skydeck occupancy amounted to 32.

In Commissioner Kuch's summary of the 2005 Shade hearing, he stated,

"I understand the logic that you used to come up with the occupancy and I agree with it. I think it's quite conservative."

The entertainment permit issued 19 December 2008 lists 47 for the terrace and 92 for the skydeck, over doubling the terrace number heard in 2005 by the commissioners, and nearly tripling the skydeck count. How did that happen?

#### Testimony from May 2005 PC hearing. (Exhibit B explains city video use.)

##### ●Commissioners' Discussion.

##### Commissioner Savikas, re skydeck:

"The first thought that comes to mind is that the noise level is different for a wine bar than it is for when you add alcohol. And then, you're also subject to the permit for entertainment. Is that going to go up there?"

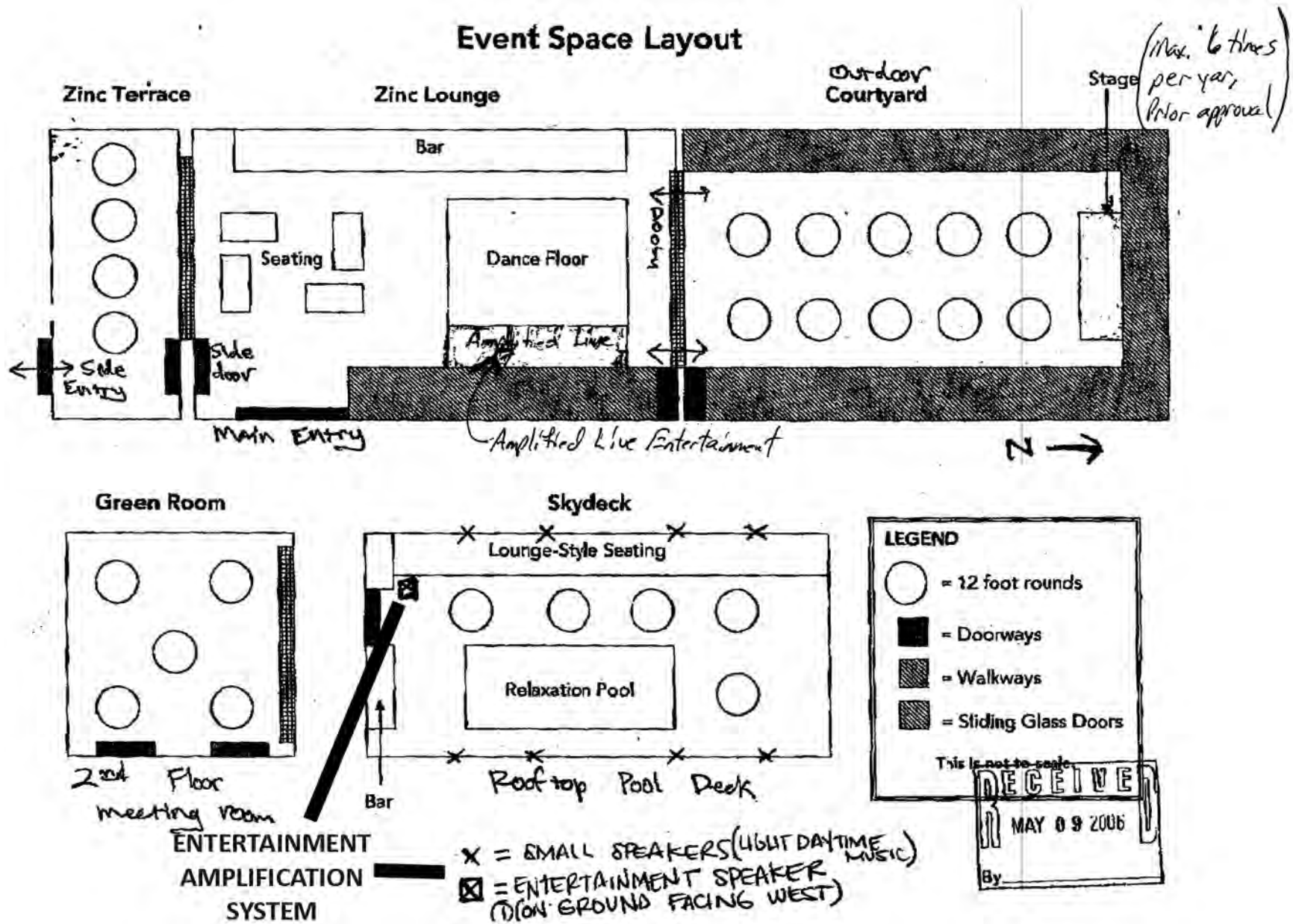
Director Thompson: "No!"

Ms Jester: "No!"

Director Thompson: "Absolutely not! Absolutely not! I'll be the first to say that and the first to enforce that. No entertainment up there. I know the operator is not interested in having entertainment on the top deck too."



FIGURE 2



## MAJOR CONDITIONS REQUIRED BY RESIDENTS FOR EXTENDED SHADE HOURS

The mystery deepens, when examining MBFD occupancy numbers in the entertainment permits for 3 October 2008 and 19 December 2008, as shown in Exhibit C. In a three-month span, MBFD over doubled their calculated occupancies for the Zinc bar and the skydeck, from October 2008 to December 2008, as shown in the table below. Why did they do that?

2005 Occupancies versus MBFD Permitted Occupancies

Venue	May 2005 Hearing	3 October 2008	19 December 2008
Roof Deck	32	45	92
Lobby Bar (Zinc Lounge)	None Listed	77	159
Patio to south of Zinc Lounge	22	47	47
Courtyard Area	None Listed	200	151
Conference Room	None Listed	None Listed	44

Obviously, the currently permitted occupancies far exceed commissioners' expectations in 2005. Inexplicably, the Zinc and skydeck occupancies jumped even further, by over 100% from October to December 2008. Although, the courtyard number declined by 49, that has little effect, because the entertainment permit limits courtyard use to six events a year.

Examination of the MBFD methodology for calculating occupancies may explain the doubling of the Zinc and skydeck numbers from October to December 2008. Exhibit D, obtained from a public records request, shows that for December 2008, MBFD used square footage corresponding to spaces totally cleared of tables, chairs and other furnishings. This conflicts with the Event Space Layout on the previous page, which shows 12-foot table rounds throughout. Including tables and chairs will reduce floor area, and thereby occupancy.

By clearing the drinking areas for standing-room only, Shade violates their Type 47 license, which requires a dining room. People standing and drinking, cannot eat meals. Shade's procedure of clearing drinking areas to increase occupancy additionally contributes to their possible violation of the 50-50 alcohol-to-food ratio condition in the ABC license.

The residents' use permit requires tables, chairs and furnishings in the alcohol venues, which will reduce occupancies. Furthermore, the Zinc-lobby wall will significantly reduce bar occupancy, by making the reception area off-limits to alcohol service and consumption.

### **CONCLUSION.**

The residents' primary conditions require: 1. A folding sound-absorbing wall between Zinc and lobby, 2. Full enclosure of the terrace, 3. No amplified live entertainment on the skydeck, and 4. Compliance with certain city and ABC regulations that will reduce occupancies.

The formulation of these conditions, and others in the *Residents' Use Permit*, resulted from a logical extension of the 2005 PC hearing, but with the objective of returning Shade to primarily hotel use, as per city policy, rather than the current raucous nightclub.

In the 2005 hearing, Shade and staff corrupted the outcome, by concealing their intent to enable alcohol on the terrace and by manipulating the commissioners into believing they had no choice other than to approve the Type 47 license, being unaware of the Type 70 license.

If Shade and staff had not deprived commissioners from making those key decisions, that body might still have approved the Type 47 license. Presumably, the commissioners would also have required additional conditions, similar to those of the residents, as described herein.

**EXHIBIT A**

**From:** John Dye <[jdye@citymb.info](mailto:jdye@citymb.info)>  
**Date:** October 9, 2009 8:22:21 PM PDT  
**To:** Nate Hubbard <[natehubz@mac.com](mailto:natehubz@mac.com)>  
**Cc:** Rod Uyeda <[ruyeda@citymb.info](mailto:ruyeda@citymb.info)>, Derrick Abell <[dabell@citymb.info](mailto:dabell@citymb.info)>, Tim Hageman <[thageman@citymb.info](mailto:thageman@citymb.info)>  
**Subject: RE: Metlox courtyard at 11pm**

Nate:

I have received updated enforcement instructions regarding the Shade's hours. The Chief and Richard Thompson met today and it was decided that the outside patio is still to close at 11pm. The interior lobby/bar area presents some other issues since it's a common area for both the bar, and hotel patrons operated on a 24 hrs. basis. The lobby bar is still to close at 11pm but no enforcement citations are to be issued due to people being in the lobby finishing their beverages until after 11:30pm.

The roofdeck and courtyard areas have not changed.

I am sending this to you so you know what my actions will be based on the time frames for the different locations.

Thanks.

Lt. John Dye

## EXHIBIT B

# INDEX TO QUOTES FROM CITY WEBSITE VIDEO OF MAY 2005 SHADE HEARING

### INSTRUCTIONS FOR USING ARCHIVED VIDEO OF 25 MAY 2005 SHADE HEARING

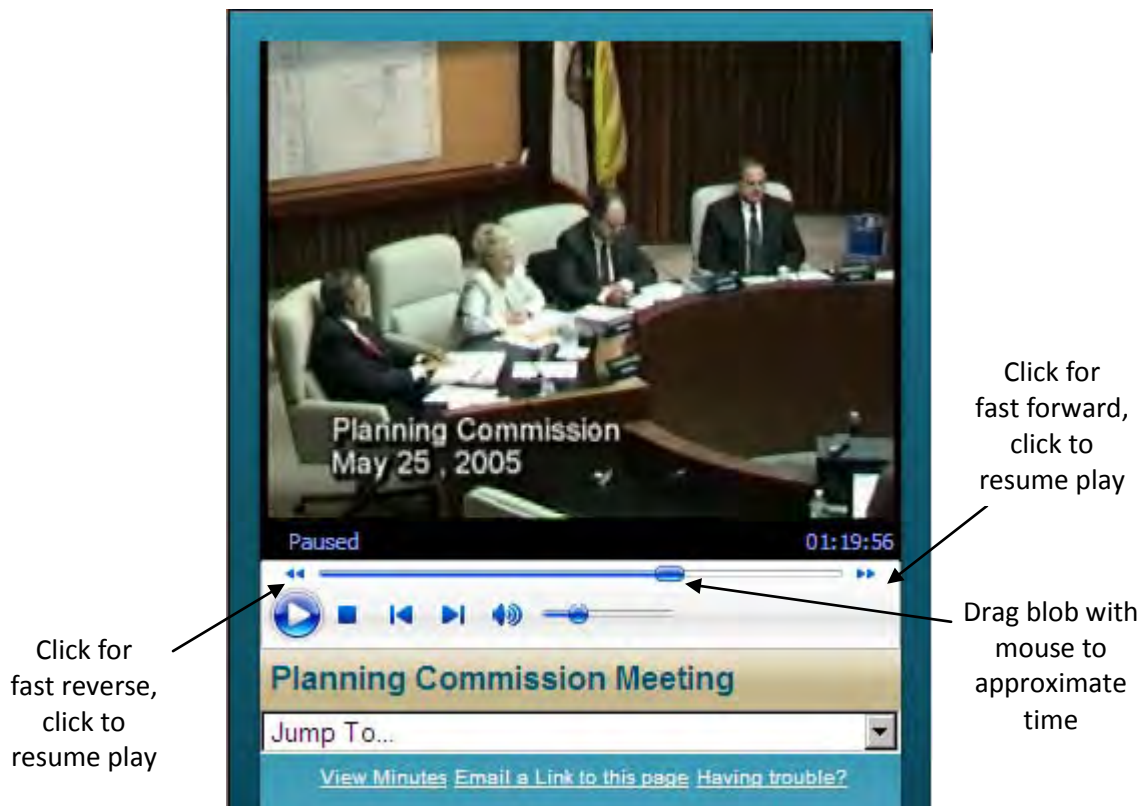
On city website, go to City Government/Boards and Commissions/Planning Commission.

- Scroll down to Archived Meetings
- Click on 2005
- Scroll down to May 25, 2005 meeting
- Click on date, 'May 25, 2005'. Do not click on 'Video'.

On the left, the display will show the media player, depicted below, with the agenda to right (not shown). The time since meeting start displays at lower-right, in the photograph. To select a time:

- With the mouse, drag the little oblong blob in the time bar to approximate time
- For fine time adjustment, forward or reverse, click on >> or << at time-bar ends
- Clicking the second time, resumes play forward
- If display hangs, click on Pause or Stop, then Play

Commissioners, L to R: Simon, Savikas, O'Connor, Kuch. Montgomery seated on council



The next page provides times for various items, organized as follows:

1. General hearing items, such as Staff Report, Applicant's Testimony, etc,
2. Staff's and Shade's arguments for the Type 47 license
3. Folding sound-absorbing wall between Zinc bar and lobby
4. Testimony and comments regarding the terrace
5. Live entertainment on skydeck
6. Occupancies.

## **EXHIBIT B**

### **INDEX TO QUOTES FROM CITY WEBSITE VIDEO OF MAY 2005 SHADE HEARING**

#### **1. General Hearing Items.**

- 0:07:24 Staff report
- 0:34:25 Applicant presentation
- 0:45:37 Public testimony
- 0:57:41 Mr Bill Victor (testimony cited by commissioners later)
- 1:08:20 Close public hearing; commissioners discussion
- 1:30:35 to 1:33:15 See Item 4 below, for Planner Jester's change to allow alcohol on terrace
- 1:33:15 Resolution PC 05-08 approved by planning commission

#### **2. Staff's and Shade's arguments for the Type 47 license.**

- 0:09:40 Ms Jester presentation
- 0:26:40 Chair O'Connor interprets Ms Jester's testimony that the ABC does not have a license to allow mini-bar Type 66 license, other than Type 47. Staff concurs.
- 0:36:50 Mr Zislis testimony on Type 47 license
- 1:15:50 Commissioner Simon: long discourse that they have no choice other than Type 47
- 1:19:20 Commissioner Savikas followed along the lines of Mr Simon's statement
- 1:19:00 Commissioner Kuch agreed with alcohol license request
- 1:29:10 Chair O'Connor, (paraphrased) city cannot have mini-bars unless Type 47 license

#### **3. Folding sound-absorbing wall between Zinc bar and lobby.**

- 0:44:35 Commissioner Savikas's question about events interfering with hotel guests.
- 0:44:48 Mr Zislis's response regarding sound wall between Zinc bar and lobby.
- 1:20:25 Commissioner Savikas convinced and liked layout of the interior (Zinc-lobby wall) to protect guests and keep the noise level down.

#### **4. Testimony and comments regarding the terrace.**

- 0:30:22 Commissioner Simon has long exchange with Ms Jester regarding hours for the terrace, which she repeatedly confuses with skydeck and courtyard. Voices direct Ms Jester to terrace location on easel drawings, behind the commissioners.
- 0:33:08 Ms Jester testifies that the terrace will not have alcohol service.
- 0:33:40 Director Thompson states that applicant will clarify issues on terrace
- 0:42:46 Commissioner Simon questions Mr Zislis regarding terrace hours. Mr Zislis provides hours for breakfast service on terrace.
- 0:43:15 Commissioner Savikas questions Mr Zislis whether terrace closed in. He answers negative and states terrace seats 22 for breakfast.
- 1:30:35 Commissioner Kuch moves to approve resolution
- 1:30:44 Staff interrupts to modify resolution
- 1:31:20 Ms Jester adds terrace to alcohol serving venues; no discussion by commissioners
- 1:32:55 Commissioner Kuch moves again makes a motion to approve resolution

## **EXHIBIT B**

### **INDEX TO QUOTES FROM CITY WEBSITE VIDEO OF MAY 2005 SHADE HEARING**

#### **5. Live entertainment on skydeck**

1:22:30 Commissioner Savikas concerned about entertainment on skydeck

1:22:40 Ms Jester and Director Thompson unequivocally claimed no entertainment

#### **6. Occupancies.**

0:43:15 Commissioner Savikas: Terrace walled in? Mr. Zislis: No. Seats 22 for breakfast.

1:23:53 Commissioner Savikas: Capacity on skydeck? Mr. Zislis in background: 32

**EXHIBIT C**

**GROUP ENTERTAINMENT PERMIT:** Class I. Effective to March 1, 2009.  
Location: 1221 N Valley- Shade Hotel- Metlox

**CONDITIONS OF APPROVAL**

**Police Department:**

1. The Police Department shall be notified of entertainment scheduling in writing at least 7 days prior to any event. Notification shall include operating details pertaining to type of entertainment, including size and location of performance or dance area, size of band and number of performers, hours, type of instruments, type of music, type and location of amplification, speakers and other equipment, volume of amplification, type of event, number of guests, location of event, food service, supervision, hours of event including setup and breakdown, and type of transportation for guests. Contact Traffic Sgt. Office at 310-802-5156.
2. The applicant shall comply with all of the requirements of Chapter 5.48 Noise Regulations, of the City of Manhattan Beach Municipal Code. (See Sections 5.48.140 and 5.48.160 for specific noise standard regulations)

**Fire Department:**

Required occupancy loads shall not be exceeded and exits shall remain unobstructed. The exact numbers are required to be posted on the site:

- Roof Deck - 45
- Lobby Bar (Zinc Lounge)- 77
- Patio to south of Zinc Lounge- 47
- Courtyard Area - 200

**Community Development Department:**

1. Hours for special events with entertainment or amplified sound shall be limited to 10 AM to 10:00 PM daily.
2. Entertainment or amplified sound shall be in conformance with the attached approved floor plan including: the designated amplified live entertainment/performer location adjacent to the east wall of the Zinc Lounge, and a dance floor area approximately 15' by 20' adjacent to the performer area. Entertainment or amplified sound is prohibited on the Zinc Terrace. The outdoor courtyard to the north of the Zinc Lounge and the Skydeck may only be used for live entertainment, amplified sound or events with a 14 day prior notice and approval of the City. A maximum of 6 events per year may take place in this outdoor courtyard and the Skydeck.
3. A maximum of 4 performers shall be permitted at any time. Entertainment that would result in dancing which exceeds the capacity of the 15' by 20' dance floor shall be prohibited. Entertainment and dancing shall conform to the attached floor plan. Amplified sound shall be allowed a maximum of 4 times per month. Entertainment at other times shall be limited to acoustic performances only and limited to a maximum of 2

**AMENDED GROUP ENTERTAINMENT PERMIT:** Class I. Effective to March 1, 2009.

Location: 1221 N Valley- Shade Hotel- Metlox

**CONDITIONS OF APPROVAL**

**Police Department:**

1. The Police Department shall be notified of entertainment scheduling in writing at least 7 days prior to any event. Notification shall include operating details pertaining to type of entertainment, including size and location of performance or dance area, size of band and number of performers, hours, type of instruments, type of music, type and location of amplification, speakers and other equipment, volume of amplification, type of event, number of guests, location of event, food service, supervision, hours of event including setup and breakdown, and type of transportation for guests. Contact Traffic Sgt. Office at 310-802-5156.
2. The applicant shall comply with all of the requirements of Chapter 5.48 Noise Regulations, of the City of Manhattan Beach Municipal Code. (See Sections 5.48.140 and 5.48.160 for specific noise standard regulations)

**Fire Department:**

Required occupancy loads shall not be exceeded and exits shall remain unobstructed. The exact numbers are required to be posted on the site:

- Roof Deck - 92
- Lobby Bar (Zinc Lounge) - 159
- Patio to south of Zinc Lounge- 47
- Courtyard Area - 151
- Conference Room - 44

**Community Development Department:**

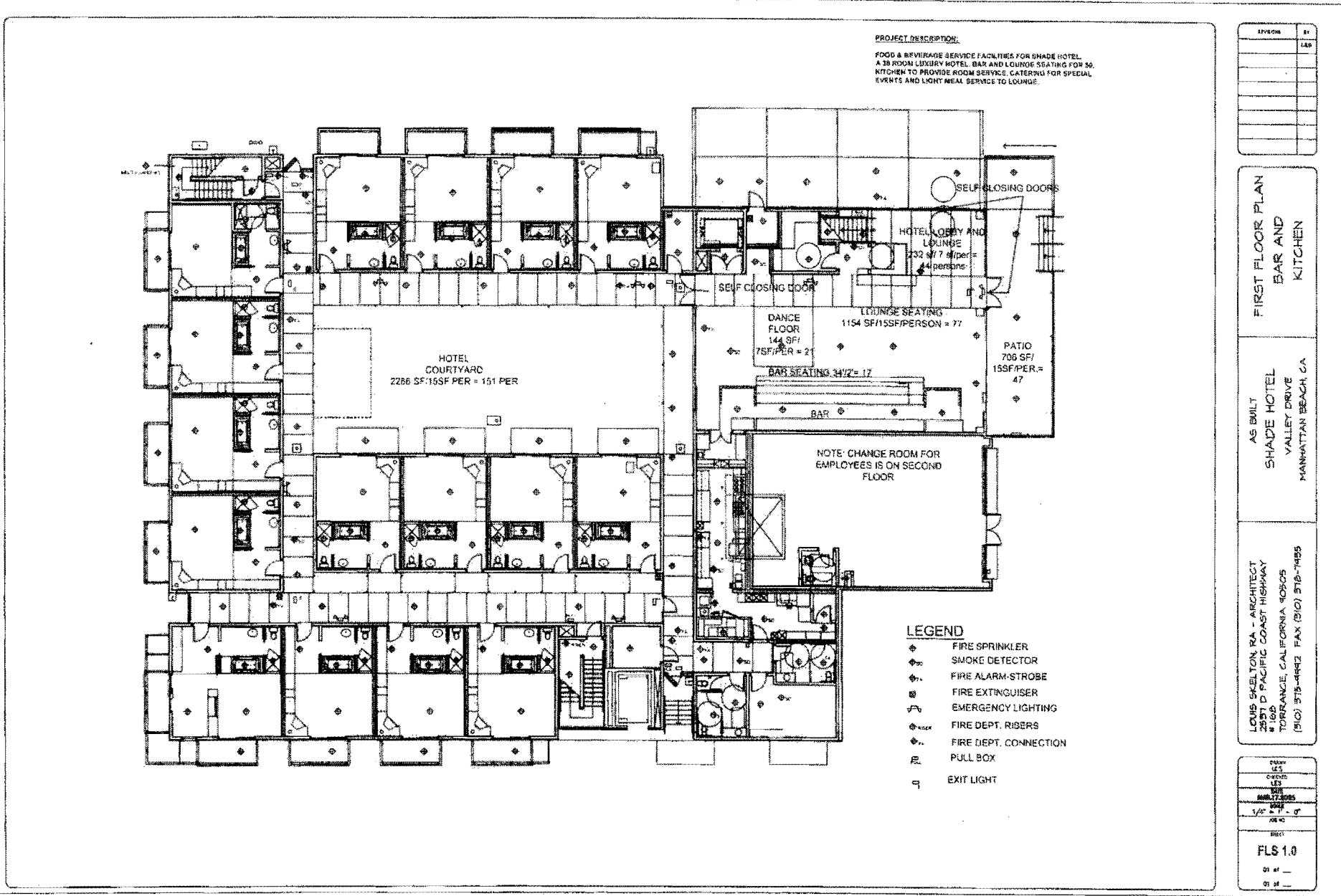
1. Hours for special events with entertainment or amplified sound shall be limited to Sunday-Thursday: 10 AM to 11:00 PM, and Friday-Saturday: 10 AM to Midnight.
2. Entertainment or amplified sound shall be in conformance with the attached approved floor plan including: the designated amplified live entertainment/performer location adjacent to the east wall of the Zinc Lounge, and a dance floor area approximately 15' by 20' adjacent to the performer area. Entertainment or amplified sound is prohibited on the Zinc Terrace. The outdoor courtyard to the north of the Zinc Lounge and the Skydeck may only be used for live entertainment, amplified sound or events with a 14 day prior notice and approval of the City.
3. A maximum of 6 performers shall be permitted at any time that amplified sound is incorporated. Entertainment that would result in dancing which exceeds the capacity of the 15' by 20' dance floor shall be prohibited. Entertainment and dancing shall conform to the attached floor plan. All doors leading to the outside shall remain closed at all times.



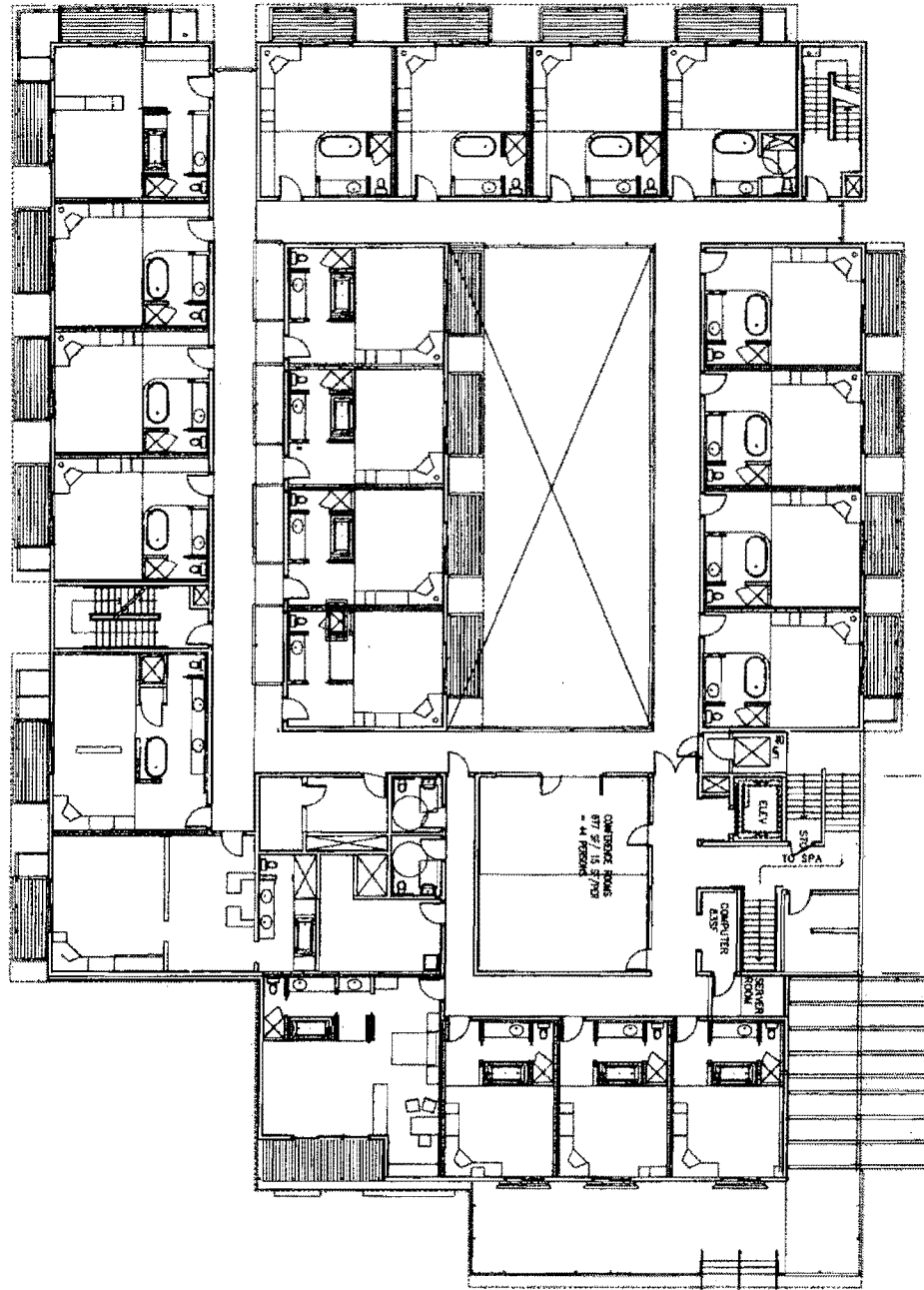
**EXHIBIT D**

The only occupancy loads ever established and approved by the City are shown in the Fire Department Conditions of Approval on the December 19, 2008 Entertainment Permit. For your reference, attached is an "as built" floor plan, which is consistent with the occupant loads posted at the Shade Hotel, with the California Building Code, and the 2008 Entertainment Permit.

**EXHIBIT D**



**EXHIBIT D**



PROJECT DESCRIPTION:  
 A 200+ BED ROOMS SERVICE FACILITIES FOR SHADE HOTEL, AS BUILT. THE HOTEL IS A 100% FULLY OPERATIONAL HOTEL, WITH A KITCHEN TO PROVIDE ROOM SERVICE, CATERING FOR SPECIAL EVENTS AND LIGHT MEAL SERVICE TO LOUNGE.

DATE	DESCRIPTION
1/11/05	AS BUILT
1/11/05	AS BUILT
1/11/05	AS BUILT
1/11/05	AS BUILT
1/11/05	AS BUILT
1/11/05	AS BUILT
1/11/05	AS BUILT
1/11/05	AS BUILT
1/11/05	AS BUILT

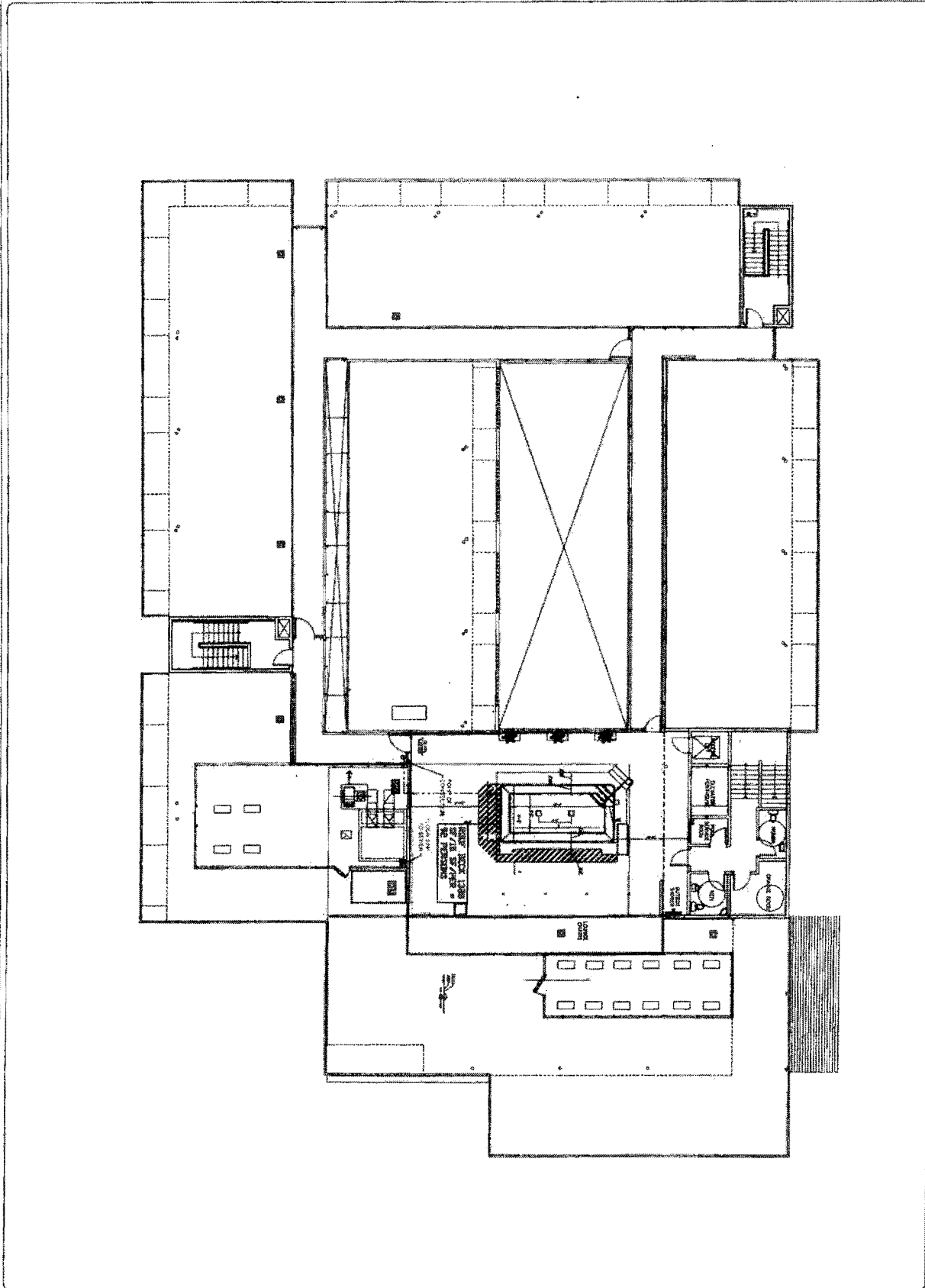
LOUIS SKELTON RA - ARCHITECT  
 2551 D PACIFIC COAST HIGHWAY  
 # 102  
 TORRANCE, CALIFORNIA 90503  
 (310) 575-4942 FAX (310) 575-7435

AS BUILT  
 SHADE HOTEL  
 VALLEY DRIVE  
 MANHATTAN BEACH, CA

SECOND FLOOR PLAN

NO.	DATE	DESCRIPTION

**EXHIBIT D**



DATE	10/1/11
SCALE	AS SHOWN
PROJECT	RENOVATION
CLIENT	RENOVATION
ARCHITECT	LOUIS SKELTON, ARCHITECT
NO.	1/2"
DATE	10/1/11
<p><b>FLS12</b></p>	

**LOUIS SKELTON, ARCHITECT**  
 10270 WILSON AVENUE, SUITE 101  
 MANHATTAN BEACH, CALIFORNIA 90266  
 (310) 487-0383  
[www.dmcpherson.com](http://www.dmcpherson.com)  
 1014 1<sup>ST</sup> ST, MANHATTAN BEACH, CA 90266

A RENOVEL  
**SHADE HOTEL**  
 VALLEY DRIVE  
 MANHATTAN BEACH, CA

SPA AREA - ROOF TOP  
 FLOOR PLAN

NO.	1
DATE	10/1/11
SCALE	AS SHOWN
PROJECT	RENOVATION
CLIENT	RENOVATION
ARCHITECT	LOUIS SKELTON, ARCHITECT
NO.	1/2"
DATE	10/1/11

**Angela Soo**

---

**From:** Don McPherson [dmcphersonla@gmail.com]  
**Sent:** Thursday, May 06, 2010 4:30 PM  
**To:** David Lesser; Jim Fasola; Kathleen Paralusz; Martha Andreani; Sandra Seville-Jones  
**Cc:** Mitch Ward; Nick Tell; Portia P. Cohen; Richard P. Montgomery; Wayne Powell; Richard Thompson; Bruce Moe; Robert Wadden; Rod Uyeda; Bryan Klatt; Laurie B. Jester; Liza Tamura  
**Subject:** Evidence: Apparent Violation by Shade of Alcohol Service, Bar Closing Times

Planning Commission  
 City of Manhattan Beach  
 Via Email

Commissioners, for the record,

**Subject: Evidence of Possible Shade Violations of Alcohol Service Cutoff and Closing Times**

The Shade Zinc bar often goes full-blast to midnight and beyond, well past the 11 PM closing time. As booked evidence shows, to MBPD officers, Shade invokes the pretext that it takes well over an hour after alcohol service cutoff at 10:30 PM to empty the bar.

This submission provides video camera evidence that apparently Shade serves alcohol to 11:45 PM, perhaps longer. As part of a response to a public records request, the city provided videos from Shade surveillance cameras for an assault and battery incident on January 4, 2008.

As the attachment explains, this video evidence underlines the need for the Zinc bar-lobby wall required by the use permit. Mr Zislis committed to this wall in his application and testimony for the 2005 amendment that approved the Type 47 general purpose license. He did not install the wall, a lapse reportedly agreed to by staff.

The attachment provides collages of video stills that make the following points:

- Violation of alcohol-service cutoff can significantly contribute to noise disturbances
- The reception lobby becomes a rowdy bar scene; a concern of the 2005 commission
- Late-arriving guests have to fight their way through the bar crowd to register.

This submission constitutes the fifth installment in five presentations of evidence:

1. *(Submitted 9 March 2010.) How Shade manipulated city policy on the Metlox Hotel. Evidence indicating Shade may have misrepresented facts to obtain the Type 47 license for full-service to the general public, rather than the Type 70 license tailored to hotels for service to guests only, as intended by the city in the original 2002 Metlox master use permit.*
2. *(Submitted 20 March 2010.) City exposure to misdemeanor charges and litigation, as result of letting Shade continue to operate as a public nuisance, based on city municipal code and state statutes.*
3. *(Submitted 20 April 2010.) Critique of city acoustics analysis report, dated 10 March 2010.*
4. *(Submitted 30 April 2010) Principal conditions required by residents for extension of Shade hours.*
5. ***(This submission) Documented evidence of beverage service at the Zinc bar, an hour after the 10:30 PM cut-off condition in the use permit, thereby enabling the nightclub to operate until midnight, rather than the required 11 PM close.***

This submission completes the series of five data inputs on the Shade Hotel noise disturbance issue, which should enable the commissioners to focus on the use permit revision at the Wednesday May 12 hearing. Thanks for your time and patience to consider our material.

Don McPherson  
1014 1st St, Manhattan Beach CA 90266  
310.487.0383  
[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)

Copy: Former 2005 councilmembers and commissioners, Residents, Strumwasser & Woocher

## **SHADE SELLS ALCOHOL LONG AFTER CITY-REQUIRED CLOSING TIMES**

### **INTRODUCTION**

For those who have observed the Zinc bar near midnight, jamming full-blast, crammed with 100-200 shouting patrons standing shoulder-to-shoulder, presumably, they know that Shade violates alcohol-service cutoff at 10:30 PM.

Despite Shade's protestations otherwise, it appears they violate closing times. The only question; how blatantly? This submission of evidence, from Shade surveillance cameras, shows that the Zinc bar serves at least until 11:45 PM. That equates to 45 minutes after closing time and 75 minutes after alcohol-service cut-off.

The city provided a Shade surveillance video, in response to a public records request for evidence booked with MBPD reports filed on Shade disturbances. This particular video came from an alleged assault and battery incident on a rainy winter night, January 4, 2008.

In the larger picture, this evidence underlines the requirement for the folding, sound-absorbing wall between the Zinc bar and the lobby, so that MBPD can enforce closing times. Currently, MBPD states that they cannot enforce closing times, or the same thing, cannot issue citations, because the bar shares common space with the lobby, which remains open all night.

The discussion presents three collages of scenes from Shade surveillance cameras, illustrating the following points:

- Shade violates alcohol-service cutoff, significantly contributing to noise disturbances
- The reception lobby becomes a rowdy bar scene; a concern of the 2005 commission
- Late-arriving guests have to fight their way through the bar crowd to register.

### **DISCUSSION.**

The videos from Shade surveillance cameras lack quality. If the stills provided in this report do not clearly depict the action, the video clip for the hearing will clarify the issue.

#### **Zinc Serves until 11:45 PM.**

The Shade surveillance video provided by the city shows Zinc serving drinks until nearly 11:45 PM. The video ended before drink service ended, so it could have gone on much longer.

Figure 1, next page, shows four frames of a drink being ordered, prepared and served. The video clip for the Wednesday hearing includes all the frames, about two a second.

First, to get orientation, look at Frame 4, lower-right in the chart. The white arrow points to the barkeep, who clearly sets a full glass on the bar, with the patron reaching for it. The time at upper-left in the frame reads 23:33:47 (11:33:47 PM), over an hour past the 10:30 PM cutoff required by the use permit, and over a half-hour past the 11 PM Zinc bar closing.

In Frame 1, the barkeep gestures toward a patron for a drink order. Frame 2 shows him pouring from a bottle. Mix gets added in Frame 3, with the drink served in Frame 4.

For the sharp-eyed, in Frame 3, scan further along the bar, toward upper left. There, in the background, another barkeep serves a drink. For the most complicated beverage, it takes about thirty seconds from getting the order until serving, and the action never stops.

The video clip for the Wednesday meeting makes the bar service much easier to discern, providing a scene with two drinks prepared and served. The city video shows other actions, such as the barkeep in the foreground counting out bills for change. Each frame, however, requires multiple steps of tedious manual processing, so the two-drink scene must suffice.

# FIGURE 1

## SHADE SERVES ALCOHOL OVER HOUR PAST CUTOFF TIME REQUIRED BY USE PERMIT





## **SHADE SELLS ALCOHOL LONG AFTER CITY-REQUIRED CLOSING TIMES**

### **Reception Lobby a Rowdy Bar Scene.**

Figure 2 shows frames taken from a camera behind the reception desk, looking toward the terrace, with the hotel front-entrance at left and Zinc bar to upper right. Even on a rainy, blustery night, patrons pack the reception lobby, an extension of the bar.

The incident involved a patron becoming violent, thus being removed by Shade security. Reception telephoned MBPD about 11:30 PM. Three squad cars responded to south Metlox Plaza at MB Blvd, arresting the suspect for assault and battery, about 11:45 PM.

The first frame shows receptionists craning to view Shade security hauling the suspect out the front door. Patrons leaning against the lobby desk turn to see the action. In the next frame, the receptionist calls MBPD at 11:30 PM, corresponding to the time the police received, shown in Frame 3. Frame 4 confirms the time, recorded by a camera in a responding squad-car.

These photographs prove the need for the Zinc bar-lobby wall to protect guests, a concern expressed by the 2005 commission, when approving the Type 47 license. At the hearing, Mr. Zislis testified that the bar-lobby wall would shield guests from Zinc lounge noise.

Figure 3 illustrates the impact on late-arriving guests, who drove-up to Shade, just prior to the assault and battery incident. At upper-left, Frame 1 shows men retrieving luggage from the rear of a SUV. In the second frame, two older women emerge from the passenger side. In Frame 3, the guests abruptly stop at the entrance, as Shade security men drag the suspect out the front door. In Frame 4, the women have retreated to the SUV, while all watch the incident.

Afterwards, to register, the guests must enter the lobby bar scene depicted in Figure 2.

In June 2005, when the city council approved the Shade Type 47 license, one member expressed the opinion that late-arriving guests should have the opportunity to relax with a drink in the lobby bar. Obviously, no one anticipated that hotel guests would share that moment with 100-200 babbling patrons, in the standing-room only, boisterous lobby.

### **CONCLUSION.**

To approve the Type 47 license in 2005, the planning commission believed Mr. Zislis would install the wall between the Zinc bar and the lobby, based on his application, his testimony, and the requirement in the resolution. The commission understood the need for the wall to shield registered hotel guests from bar noise, as did Mr Zislis in his tetimony.

Staff's and Shade's failure to install the wall has undermined a major reason why the 2005 commission approved the Type 47 license.

Because Shade operation as a noisy nightclub disturbs the neighborhood, the present commission understands the need to mitigate noise from the combined bar and reception area.

The Behrens October acoustics analysis shows the most effective way requires a wall between the lobby and entrance. The wall spanning the entire bar, as envisioned by Mr. Zislis in his 2005 application, provides far better noise reduction, because it will absorb sound. Shade's proposed vestibule does not absorb noise, but rather reflects it back into the lobby.

Currently, in order to sell drinks until midnight, Shade violates the alcohol service cutoff and closing times required by the use permit.

Without the wall to separate the bar and lobby, MBPD cannot enforce closing times. Consequently, if the city extends Zinc hours from 11 PM to midnight, without requiring the wall, presumably, Shade will simply operate its bar until 1 AM, in blatant disregard of city authorities.

## FIGURE 2

# SHADE LOBBY PACKED WITH PATRONS 45 MINUTES AFTER BAR CLOSURE REUIRED BY PERMIT

HOTEL RECEPTIONISTS & LOBBY ZINC BAR CROWD  
WATCH SUSPECT BOUNCED, 11:29:47 PM (23:29:47)

1



HOTEL RECEPTIONIST CALLS MBPD, 11:30:31 PM (23:30:31)  
LOBBY BAR CROWD RESUMES PARTY; ZINC BAR UPPER RIGHT

2



3

**Incident Report** 08-53 Supplement No  
ORIG  
**Manhattan Beach Police Department**

420 15TH STREET  
 MANHATTAN BEACH, CA 90266  
 Business: (310) 802-5100  
 (310) 802-5140  
 (310) 802-5107

Reported Date: 01/04/2008  
 Crime/Incident: 241 (B) PC  
 Officer: ROSENBERGER, MICHAEL

**REPORT TIME: 11:32 PM (23:32)**

**Administrative Information**

Agency	Manhattan Beach Police Department	Report No.	08-53	Supplement No.	ORIG	Reported Time	01/04/2008 23:32
CAD Call No.	080040712	Status	REPORT	Assigned	ASLT PO/EMERG FRESH/ETC	City	MANHATTAN BEACH
Location	1221 N VALLEY DR	From Date	01/04/2008	From Time	23:30	Officer	20241/ROSENBERGER, MICHAEL
	SHADE HOTEL	Assignment	20241	SWINGSHIPT PATROL	SWINGSHIPT PATROL	Approval Date	01/05/2008
Approval Time	21:25:00	# Offenses	1	Offense	240/242PC	Description	ASSAULT & BATTERY
		# Offenses	2	Offense	415 (3) PC	Description	OFFENSIVE WORDS: PUBL

MBPD RECEIVES SHADE CALL, 11:32 PM (23:32)

4



REPORTING OFFICER AT ARREST SCENE, 11:38:10 PM (23:38:10)

### FIGURE 3

## LATE-ARRIVING HOTEL GUESTS GREETED AT SHADE FRONT DOOR BY BOUNCED SUSPECT

11:29:17 PM: REGISTERED GUESTS ARRIVE;  
MAN ON LEFT WITH SUITCASE

11:29:32 PM: WOMAN EMERGES FROM PASSENGER SIDE  
MAN WITH SUITCASE BESIDE HER

1



2



3



4



11:29:35 PM GUESTS STOPPED AT HOTEL ENTRANCE  
BY SUSPECT BEING BOUNCED

11:29:42 PM WOMEN RETREAT TO SUV;  
GUESTS WATCH SUSPECT BEING BOUNCED

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**PAGE**

**LEFT**

**INTENTIONALLY**

**BLANK**