

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

FROM: Laurie B. Jester, Acting Director of Community Development

DATE: June 23, 2010

SUBJECT: Consideration of a Master Use Permit Amendment for Modifications to the Hours of Operation, Notification for Special Events, Restaurant Operations, and a Height Variance for a Six-Foot High Roofdeck Noise Barrier at the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operation Company, LLC- Michael A. Zislis, President)

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT THE PUBLIC HEARING, DISCUSS, and ADOPT THE DRAFT RESOLUTION APPROVING THE MASTER USE PERMIT AMENDMENT WITH CONDITIONS AND DENYING THE HEIGHT VARIANCE (RESOLUTION TO BE DISTRIBUTED AT THE MEETING).**

PROPERTY OWNER

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

APPLICANT

Manhattan Inn Operation Company
1221 North Valley Drive
Manhattan Beach, CA 90266

PROJECT OVERVIEW

The Metlox project was approved by the City Council in July 2002 and includes a two-story subterranean public parking structure accommodating approximately 460 cars with a public Town Square on top of the parking deck, as well as a commercial development approximately 63,850 square feet in area. The commercial development includes a 38-room hotel, the Shade Hotel.

The Shade Hotel is requesting that three changes be made to the existing Master Use Permit for the site as follows: 1- Extension of hours of operation, 2- An increase to 125 people for special events (weddings, parties, etc.) without administrative approval, and 3- A full-service restaurant (breakfast, lunch and evening “small plates”). Additionally, the project includes a Variance request for six-foot high noise barriers around the north, south and east sides of the roofdeck. The hotel is currently at the maximum 30 foot height limit. To further mitigate noise impacts, a variety of improvements and conditions are proposed and will be discussed in this report and the draft Resolution. The current Use Permit approval allows hours until 11:00 PM daily for the lobby bar and outside terrace, 10:00 PM daily for the roofdeck, and 11:00 PM Thursday- Sunday and 12 midnight Friday-Saturday for special event use only for the Courtyard, 99 people for special events without notification, and limited food service for guests.

BACKGROUND

This is the fifth public hearing before the Planning Commission for the subject proposal. The first hearing was held on June 24, 2009, at which time the Commission conducted the public hearing, took public testimony, discussed the project, provided direction to staff and continued the public hearing to the July 22nd meeting. At the July meeting the Commission heard from a number of neighbors and residents with concerns about the existing site operations and the proposal to extend the hours and modify the business operations. The main concern that the neighbors have is noise, particularly during the midweek and later at night. The Commission generally supported the requests for no administrative approval for events up to 125 people, and allowing increased food service. The initial requests for dancing throughout the facility and a new interior partition wall between the Zinc Lounge and Courtyard was withdrawn.

The main concern from the Commission at the July 22nd meeting was the noise and its impact to the neighborhood. After hearing public testimony and discussing the item, the Commission then requested that staff have an independent acoustic study conducted to evaluate the existing noise levels and possible mitigation measures to minimize noise impacts. The applicant agreed and the noise impact and mitigation evaluation report was prepared by Behrens and Associates, Inc., under the direction of the City staff. The report was then presented to the Commission on October 28, 2009.

At the October 28th meeting the Commission again expressed concerns with the noise from the Shade Hotel impacting the neighbors. The neighbors indicated that they wanted no increase in hours and they wanted a resolution of the existing noise issues. Although the Shade is in a commercial zone it is adjacent to residential and the Commission expressed that they felt it was necessary for the two uses to coexist. The Commission indicated that they could not support an increase in hours for the skydeck at that time. They encouraged the applicant to work with the neighbors to develop noise mitigation before the Commission could even consider extending the hours. The applicant agreed and offered to work with the neighbors, staff and the consultants to develop a plan to address noise concerns.

The Commission then held a fourth hearing on May 12, 2010. Staff presented the findings from a meeting that was held on March 23, 2010 with the Shade, neighborhood representatives, the architect and the Noise consultants. The applicant outlined at the neighbor meeting a proposal to refine the operations of the hotel to address the neighbors concerns. Although a number of issues were agreed to conceptually, when presented to the entire neighborhood by the neighbor representatives, the proposal was rejected, and then the applicant requested that the proposal then be brought before the Planning Commission.

A second noise report and proposed improvements to the hotel to mitigate noise impacts was also presented to the Commission. The proposals included a permanent glass double door entry vestibule at the front (east) entrance to the hotel, moveable glass panel walls that would roll down to enclose the terrace and a portable temporary folding acoustic screen at the entry to the terrace for nighttime only, and a permanent barrier on the rooftop deck extending 6-foot high above the existing height of the drink service area on the north, south, and east sides.

After discussing all the noise mitigation proposals, the applicant proposal outlined in a chart as Exhibit A- 5/12/10, and concerns of the neighbors, it seemed that no consensus could be reached that would satisfy the neighbors, the applicant, and the Commission. The applicant then asked for a break to discuss options with Nate Hubbard, the neighborhood representative. After the break the applicant indicated that they had reached a conceptual agreement with the neighbor representative, as outlined below and in the draft May 12, 2010 minutes which are included in this agenda packet. The conceptual agreement was as follows:

1. Skydeck current hours of operation to remain in effect.
2. Terrace to be fully enclosed, including the upper 8 feet, with the moveable walls to enclose the area at 9:00 PM.
3. Vestibule to be installed at the front entrance.
4. Queue to be moved to the rear west side of the hotel on Friday and Saturday nights at 9:00 PM.
5. Wall to be installed between the courtyard and the Zinc Lounge to create a hallway for the entry/exit queue.
6. Extension of hours would not be permitted until the mitigation measures are put in place and are shown to be working in accordance with the objective noise standard.
7. Hours as stated in Exhibit A -5/12/10, with the elimination of the proposal to allow 15 registered hotel guests to remain in the Zinc Lounge until 1:00 AM, and look further into Holiday hours.
8. Expanded food service.
9. Up to 125 guests for special events without prior notification to the City.

Since the May 12th meeting staff has met with the Shade owner and the neighbor representative several times to draft specific conditions that would meet these areas of general agreement as well as cover other specific areas of the hotel operations. After several meetings and revisions from all sides, staff then met separately to try to finalize the conditions. Staff was able to assist the applicant and neighbors in reaching agreement on many areas, but the details seem to still pose areas of opposition, which will be discussed in the project description and discussion portion of this report.

PROJECT DESCRIPTION AND DISCUSSION

Attached are draft conditions, which are staffs' recommendation after meeting numerous times with both the applicant and the neighbor representative. Although significant progress was made, when it got down to the details of the conditions, there were some areas where there was not a consensus. Staff did our best to listen to the goals expressed by both sides and come up with conditions that would balance those goals. These are staffs' conditions for the Planning Commission to review and take action on. These conditions have not been agreed to by both sides, and there are areas that both disagree with. Staff feels after one year and five public hearings that we will never reach total agreement, and it is now time for the Commission to take an action.

The Commission is the only body that has the authority to take action on the Use Permit in accordance with Section 10.84.020 of the MBMC. It is the duty of the Commission to conduct

public hearings, make a decision, and place reasonable conditions in accordance with Sections 10.84.050 and 10.84.070 of the MBMC. The Commissions' decision will go to the City Council as a receive and file item unless it is appealed, then it will be set for a Council public hearing.

The neighbors provided findings, which are included as Exhibit B. Staff has not discussed the findings with the neighbors and the applicant, as findings are a summary of the complete public record as drafted by staff and approved by the Commission. The Commission is the only body that has the authority to adopt findings in accordance with Section 10.84.060 MBMC. Staff will provide findings to the Commission in the draft Resolution to be provided on Wednesday at the Commission meeting.

The following is a summary of the proposed Use Permit Amendment and height Variance.

1. **Special Events-**

Allow an increase to 125 people for special events without City notification. The current approval allows 99 people for special events without City notification. The Planning Commission and neighbors indicated support for this Amendment.

2. **Food Service-**

Allow full food service open to the public (breakfast, lunch and evening "small plates"). The approval currently allows limited food service only for hotel guests, with breakfast served from 6:00 AM to 10:00 AM Monday-Friday and 6:00 AM to 11:00 AM Saturday and Sunday, no lunch service and room service at any time. Evening appetizers may be served to the general public, and the ABC license requires that food be available when alcohol is sold. Full food service for guests at special events is allowed. The Planning Commission and neighbors also indicated support for this Amendment.

3. **Corridor Wall-**

The project originally requested approval to allow the installation of an openable accordion-type glass wall to separate the lobby bar from the interior hotel courtyard, instead of the open walkway that currently separates the lobby and the hotel courtyard. This request would create an enclosed hallway to separate the lobby from the hotel courtyard and rooms. This new hallway would also connect the Zinc bar with the public restrooms and the rear entry/exit staircase to the west. Although this request was withdrawn at the October 28th meeting, at the May 12th meeting this wall was again included since the entry/exit queue was moved to the west side of the building and the corridors that is created by the wall is needed.

4. **Dancing-**(withdrawn)

At the June 24th meeting the applicant stated that the request to allow dancing throughout the facility during all hours of operation for all customers, instead of limiting dancing to guests at special events only, was not really necessary and that request was withdrawn.

5. **Hours-**

The following is a summary chart that compares the allowed hours of operation under the existing Use Permit with the proposed revisions to the hours. The conditions in Exhibit A

have more detailed information.

SHADE HOTEL CLOSING HOURS		
LOCATION	CURRENT USE PERMIT	STAFF'S PROPOSAL 6-23-10
Zinc bar and Lounge	11:00 PM Daily	<ul style="list-style-type: none"> • Sunday-Thursday- 11:00 PM • Friday-Saturday, and Sundays Before Memorial Day and Labor Day - 12:00 AM midnight • Alcohol Service to stop 20 minutes prior to closing
Terrace/ Patio South Side	11:00 PM Daily	
Conference (Green) Room	11:00 PM Daily	
Interior Courtyard- Special Events Only	<ul style="list-style-type: none"> • Sunday-Thursday- 11:00 PM • Friday-Saturday- 12:00 AM midnight 	<p>Special Events-</p> <ul style="list-style-type: none"> • Sunday-Thursday- 11:00 PM • Friday-Saturday, and Sundays Before Memorial Day and Labor Day - 12:00 AM midnight <p>Functions- - 10:00 PM Daily</p> <p>Special Events and Functions- Alcohol Service to stop 20 minutes prior to closing</p>
Skydeck/ Rooftop Deck	10:00 PM Daily	<p>10:00 PM Daily</p> <p>Alcohol service to stop 60 minutes prior to closing</p>

Staff Discussion

Staff believes that there needs to be a balanced approach with this request, and that the Planning Commission should focus on how best to minimize and mitigate impacts associated with the Shade Hotel operations. One of the key issues to recognize is that the hotel is a 24-hour operation; however the bar is not. This is the fifth public hearing before the Planning Commission, two Noise reports have been prepared, and numerous e-mails, phone calls and meetings have been exchanged with the neighbors and the Shade. The applicant has requested that the Planning Commission reach a decision and take final action. The Planning Commission decision will then be received and filed by the City Council, unless it is appealed, then a public hearing will be held before the Council.

The areas where the neighbors and Shade seem to have the most disagreement are as follows, although there are a number of other details that they disagree on:

- 1- **Defining types of events:** Special, non-profit/charity and functions. The neighbors have concerns that the Courtyard will be used for large noisy public functions, that events will spill over from the bar and there is no noise mitigation in the Courtyard, and they want no public functions in the Courtyard. The hotel wants to continue to use the Courtyard for all types of events and functions. The noise consultant indicated that the Courtyard is not a major source of noise. Staff proposes to place further limits on amplified sound and hours for special events and public functions.
- 2- **Special Events- Charges-** The neighbors wanted a statement that all special events shall pay charges consistent with other special events. The applicant and staff feel this is not an appropriate condition and depending on the event, and the entire package that is being purchased, there could be price differentials for events.
- 3- **Holidays-** The applicant wants the Sundays before Memorial Day and Labor Day included as Holidays with hours the same as a Friday or Saturday night. Staff feels this is reasonable; the neighbors want no holiday hours.
- 4- **Skydeck- New Years-** The applicant wants the Skydeck to be open until 1:00 AM on New Years, the same hours as allowed for all venues Citywide. Staff feels this is reasonable for this one night only, the neighbors want the skydeck to always close at 10:00 PM.
- 5- **Skydeck- Alcohol-**The applicant wants alcohol service to be allowed on the Skydeck until 20 minutes before closing, the same as is allowed throughout the Shade. This would be 9:40 PM instead of 9:00 PM. Staff and the neighbors disagree and feel it should be kept at 9:00 PM .
- 6- **Skydeck- Amplified sound-** The applicant wants non-background type music and amplification until 9:40 or 9:50 PM as long as it is not audible to the neighbors. Staff and the neighbors propose limiting non-background music and amplification only until 9:00 PM consistent with the hours of alcohol service and the Entertainment Permit.
- 7- **Skydeck- Dancing at functions-**The neighbors do not want to allow dancing at functions. The applicant and staff want to allow dancing for all special events and function . Since there will be background music only after 9:00 PM, staff feels this should not be an issue.
- 8- **Valet, Taxis, Entry-Exit Queue, West Entry- Hours-** The neighbors had a variety of modified hours and operations, but generally conditions would be implemented after 9:00 PM daily. Staff felt that the modified hours and operations should focus on the peak times of after 9:00 PM on Fridays, Saturdays, and Sundays before Memorial and Labor Day, New Years Eve and for special events and functions.
- 9- **Entertainment Permit-** Many of the Entertainment Permit conditions have been placed as conditions in the Resolution, but conditions in the Entertainment Permit itself will not be tied directly to the Resolution. The neighbors want any changes to the Entertainment Permit to require Commission approval, which is not appropriate as the Entertainment Permit is a staff action and authority, not Commission.

10-Promotion and Advertising- Basically the neighbors do not want any significant changes to the existing conditions. Staff and the applicant propose changes that allow more flexibility.

Master Use Permit, Variance and Coastal Permit

In accordance with Chapter 10.84 of the MBMC, the Planning Commission conducts a public hearing and has the authority to approve, approve with conditions or deny the Use Permit Amendment and a Variance. With any action the Use Permits findings must be considered (10.84.060 A and B) , and conditions (10.84.070) may be placed on an application. The Commission has the ability to approve only portions of the request and modify the proposal to meet the Use Permit and Variance purpose, findings and criteria.

The Coastal Development Permit for the original Master Use Permit was issued by the California Coastal Commission and because there are no relevant coastal issues related to the subject application an amendment to the Coastal Permit is not required.

CONCLUSION

The project before the Planning Commission is an Amendment to the Master Use Permit and a height Variance for the Shade Hotel. Staff recommends that the Planning Commission review the information presented in the report, open the public hearing, discuss the project, close the public hearing, and adopt the draft resolution to be provided at the Planning Commission meeting. The Resolution will replace the existing Shade Resolution No PC 05-08, and staff will incorporate any other needed changes from that Resolution into the new Draft Resolution.

ATTACHMENTS

- Exhibit A: Staff draft recommended conditions of approval- 6-18-10
- Exhibit B: Draft findings and conditions from neighbors with staff comments- June 16, 2010
- Exhibit C: E-mail from Nate Hubbard dated June 17, 2010

- c: Mike Zislis- Shade Hotel
- Jon Tolkin- Tolkin Group
- Glenn Loucks- Tolkin Group
- Bryan Klatt, Police
- Don Behrens and Tom Corbishley, Behrens and Associates

CONDITIONS.

RC-1. Definitions.

RC1-1. Closed. Music off and lights turned up in all public areas. Terrace, courtyard, skydeck, Zinc bar and Lobby, and all public areas vacated, except for staff throughout, as well as registered guests in the Lobby only. All members of the general public, including special event and function guests who are not registered guests, shall be out of the hotel. In the Zinc bar and lobby, terrace, courtyard, skydeck and all public areas, without exception, on or before closing, staff shall collect all alcoholic beverages, including from registered guests, to comply with the ABC definition of closed, as “no sale, service, or consumption of alcoholic beverages.”

RC1-2. Special event. An event under contract that has exclusive use of one or more venues or a portion of a venue. Attendees at special events shall have a written invitation from the host client. The general public may not join nor participate in special events. Special events include non-profit or charitable events such as Chamber events, Downtown Open House and Charity Education Wine Auction.

RC1-3. Function. A “themed” function held periodically for the general public, such as, Oktoberfest, Halloween, New Years, Valentines, St Patrick’s Day, AVP, Surf Festival, Mothers Day, Fathers Day and Six-Man. Functions shall not include “spillover” of the general public from day-to-day operations from the Zinc bar and lobby, or any other area, into the Courtyard.

RC1-4. Registered Guest. A guest who occupies a room overnight. Privileges for registered guests extend to their invitees only, and not the general public.

RC1-5. Invitee. Invited guests of a registered guest.

RC1-6. Marketing and Promotion. Any marketing, promotion or advertising, using any media, including but not limited to, fliers, newspapers, radio-TV, Internet, social networking sites, email to the general public and the Shade website. This does not include marketing and promotions to customers who have specifically signed up to be included on a Shade mailing, e-mailing or similar mass notification list.

RC1-7. Background music. Sound intensity anywhere in a room or venue not greater than 65 dBa, or normal conversation for 4 people at a range of 3 to 5 feet, whichever less.

RC1-8 Public Areas. Any public area or space where sales, service and consumption of alcoholic beverages is permitted.

RC-2. Entertainment and Noise Regulations

RC2-1. General- The Director of Community Development shall not reduce restrictions or conditions as set forth in this Amendment, without approval by the Planning Commission, with notice to property owners within a 300 foot radius with standard notice procedures.

RC2-2. Entertainment and amplified sound- Non-amplified music and sound is permitted in any venue for special events and functions, to the extent that the Noise standards of the MBMC are complied with. All amplified music and sound shall use the house system only and shall be limited to background music with the following exceptions;

1- The Courtyard may have one annual event, Oktoberfest, with live amplified entertainment , from 4 to 8 PM.

2-The Courtyard may use amplification, other than the house system for background music and microphones, for wedding ceremonies only prior to 9 PM and not to exceed 30 minutes in length;

3- The Zinc bar and lobby may have amplified DJ's, live entertainment or music, other than background music. All doors leading to the outside shall remain closed. A maximum of 6 performers shall be permitted at any one time. Dancing is limited to a 15' by 20' area.

RC2-3. Terrace enclosure- A deployable means (glass or similar panels that roll or slide down from the top portion of the terrace) shall entirely enclose the terrace, including a closable south entrance that meets Building Safety and other City requirements. Existing walls shall have gaps acoustically sealed. The ceiling of the terrace shall have sound-absorbing fixtures installed. The enclosure and entire terrace area shall be acoustically sealed, designed and constructed to meet the City Noise consultants' acoustical standards consistent with their noise studies. The terrace shall remain open at all times except, between 9 PM and 6 AM each day and when raining. Shade staff shall be responsible for enclosing and opening the terrace daily. If the terrace has drapes or other decorative features to enclosure the area, they may only be closed during special events and when raining.

RC2-4. Front (East) Entry Vestibule- A permanent front entrance vestibule, bonded and sealed to the building, shall be constructed to enclose the front doors. The vestibule shall be acoustically sealed, designed and constructed to meet the City Noise consultants' acoustical standards consistent with their noise studies. The vestibule shall also meet all Building Safety and other City requirements, including but not limited to emergency egress and disabled access. Between 9:00 PM and 6:00 AM on Friday, Saturday, New Years Eve and Sundays before Memorial Day and Labor Day, the front entrance doors shall be closed and only operable through the interlock/double door vestibule. The hotel clerk or other hotel employee shall only allow passage for disabled, or registered hotel guests. All others shall use the west entrance. The

vestibule may also be operable with a hotel room key. Additionally, only one set of doors may be opened at any time.

RC2-5. Courtyard-Only special events and functions may use the courtyard. No general public gatherings permitted in the courtyard, and no “spillover” from the Zinc bar and lobby or other public areas.

RC2-6. Courtyard-bar corridor wall-A new acoustic moveable wall shall be installed to separate the interior courtyard from the corridor north of the lobby bar. After 9 PM Friday, Saturday, New Years Eve and Sundays before Memorial and Labor Day, and any day if the entry/exit queue is greater than 5 people for more than 10 minutes, both corridor walls (adjacent to the courtyard and the lobby bar) shall remain closed, unless there is a special event or function using both the Courtyard and Zinc bar/ lobby. Whenever the Zinc bar and lounge has amplified sound, other than background music, after 9 PM the north acoustic wall shall remain closed. There shall be no sale, service or consumption of alcohol in the corridor when one or both moveable walls are closed.

RC2-7. Skydeck- All amplified music and sound shall use the house system only. No DJ’s or live amplified music is permitted. Amplified sound is prohibited on the skydeck after 9 PM, except for background music. The hotel shall relocate house speakers nearer to floor-level, not atop glass windscreen posts. The location and number of the speakers shall be based on the recommendations from an audio specialist in cooperation with the City’s noise consultant, and shall be designed to mitigate off-site noise impacts and maximize efficiency on-site.

RC2-9. Sound audibility- The volume of music, entertainment, group singing, or voice, whether or not amplified, may not be audible outside of the hotel facilities to the following extent. For any length of time, except for Oktoberfest, the noise may not dominate the background ambient noise, as defined in the MBMC noise regulations, nor disturb surrounding residents. After cessation of alcohol service in any venue or for any event or function, only background music is permitted.

RC2-10. Temporary Use Permit- Special events and functions of more than 125 attendees require City notice and a temporary use permit.

RC2-11. Dancing- Dancing is limited to the Zinc bar/lounge in a 15-foot by 20-foot area. Dancing on skydeck and in Courtyard also permitted, but only for special events and functions-

RC2-12. Entertainment Permit- Each year, the hotel shall apply for an annual entertainment permit on or before March 1, in accordance with Condition 40 in Resolution 5770, Metlox Master Use Permit.

EXHIBIT A- PC 6-23-10 SHADE STAFF DRAFT CONDITIONS

RC2-13. Resident notification- The hotel shall e-mail to residents who sign-up, the schedule of special events and functions sent to the City.

RC2-14. Balconies- A permanent notice shall be placed on the doors to the hotel room balconies informing guests to be respectful of the neighbors at all times and to make no noise on the balconies or outside after 10:00 PM.

RC2-15 –Exterior Doors- All exterior doors to the public areas of the hotel facility shall be closed after 9:00 PM on Friday, Saturday, Sundays before Memorial Day and Labor Day, New Years Eve, and daily for all special events and functions.

RC-3. Hours for alcohol service

Alcohol service restricted to venues below; not permitted in any other public areas.

<u>Venue/Event/Services</u>	<u>Venue Closing Time (Closed); Open 6 AM- per Cond. 39, Reso. 5770</u>	<u>End of Alcohol Service, Before Closed, Minutes</u>
Zinc bar and lounge, Fri-Sat and Sundays before Memorial Day and Labor Day	Midnight	20
Zinc bar and lounge, Sun-Thu	11 PM	20
Terrace	11 PM Sun-Thu; midnight Fri-Sat and Sundays before Memorial Day and Labor Day	20
Conference (Green) Room(s)	11 PM Sun-Thu; midnight Fri-Sat and Sundays before Memorial Day and Labor Day	20
Courtyard- Special events	11 PM Sun-Thu; midnight Fri-Sat and Sundays before Memorial Day and Labor Day	20
Courtyard- Functions	10 PM	20
Skydeck	10 PM	60

Note 1. New Years Eve closed for all venues as permitted by MBMC- currently 1:00 AM

RC-4. General Conditions.

RC4-1. Substantial Compliance- The proposed changes shall be in substantial conformance with the plans submitted, and the project description as approved by the Planning Commission, subject to any special conditions set forth in this amendment. The design, specifications and layout of sound mitigation measures is subject to further review and approval by the Director of Community Development, and the Planning Commission as determined to be necessary by the Director of Community Development. Any substantial deviation from the approved plans, or project description, shall have review and approval by the Planning Commission.

RC4-2 Occupancy Limits- Required occupancy loads shall not be exceeded and required access and exits shall remain unobstructed at all times. The exact occupancy numbers stated below 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

RC4-3- Terrace Use- The terrace shall not be a conditioned interior space as defined by the Building Code.

RC4-4 Public property clean up- The Shade staff shall monitor the area so that Shade patrons do not litter adjacent public property, including but not limited to the sidewalk, street, Metlox Town Square and all other public areas at Metlox. The hotel staff shall police and promptly clean up all areas with any litter and spills after all special events and functions. Public Works may bill Shade for any special event and function related public property clean-up costs.

RC-5. Ingress-Egress Control

RC5-1. Valet- The Shade valet service shall relocate away from the Shade east or south entrances. The podium shall be located so that it has no line of sight to residences. Everyone, except for registered hotel guests, shall be prohibited from picking up their vehicles from the Shade front (east) entrance after 9 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after special events and functions any day of the week. The hours and days may be modified to be more, but not less, restrictive as determined to be necessary by the Director of Community Development. The valet shall keep all driving lanes, parking back up areas, and all vehicular and pedestrian accessways free and accessible to the general public, subject to approval of the Director of Community Development.

EXHIBIT A- PC 6-23-10 SHADE STAFF DRAFT CONDITIONS

RC5-2. Taxis- Hotel employees shall discourage the public from using taxis on Valley Dr after 9 PM. Taxi pickups and drop-offs for the general public at the Shade entrance shall be prohibited after 9 PM. Everyone, except for registered hotel guests, shall be directed to the taxi stand on Morningside Drive and 13th Street, after 9 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve and after special events and functions any day of the week. Hotel staff may call for a taxi to pickup registered guests at the entrance at any time.

RC5-3. Entry-Exit Queue- The hotel shall locate the entry and exit queue at the west side of the building as required in condition XXX, but the queue shall not extend past the south or north sides of the building .

RC5-4. West entry-exit- After 9:00 PM on Friday, Saturday, Sundays before Memorial Day and Labor Day, New Years Eve, and for special events, and functions, everyone except registered hotel guests and disabled shall use the west door, opening on to the Metlox Plaza, to enter and exit the hotel. The front east door that opens onto Valley Drive, and the south terrace doors shall not be used for entry and exit at these times, except registered hotel guests and disabled may use the front east door.

On Sunday through Thursday, if more than five patrons are waiting for more than 10 minutes to enter, staff shall establish the queue at the west side of the building. Employees shall close and monitor the front (east) entry door as required to ensure access only by registered hotel guests and the disabled, and that everyone else uses the west door. Employees shall remind the patrons as they depart to respect the neighbors and to minimize noise and disturbance.

The hours and days may be administratively modified in the annual entertainment permit to be more, but not less, restrictive as determined to be necessary by the Director of Community Development.

RC5-5. Staff parking- The hotel shall ensure that their employees, contract employees, contractors servicing events, and all others providing services to the Hotel shall not park on the public streets east of Valley Drive, in the residential areas or in Parking Lot 8 (the lot in the median of Valley and Ardmore). All parking shall be on the Metlox site or in other public parking structures or lots such as Lot 3.

RC5-6. Buses- Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area on the east side after 9 PM daily, but shall load and unload off of Morningside Drive or 13th Street. The vehicles shall observe and comply with all parking regulations in these areas.

RC5-7. Town Square- Special Events and functions may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that Shade facility patrons are not gathering in the Town Square and public areas outside of the hotel and disturbing the neighbors after the hotel public areas are close. The doorman or other Shade employee shall ensure that patrons do not leave the hotel facility premises with alcoholic beverages.

RC5-8 Front Drop Off- The drop off driving lane, in front of the hotel off Valley Drive, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times, except for vehicles transitioning during valet drop off and pick up.

RC-6 Food service.

RC6-1. Food Service- The hotel may serve food in all public areas during the hours consistent with the service of alcohol. This shall not preclude 24-hour room service.

RC-7. Promotion and Advertising.

All these are up to the Planning Commission- **Neighbors suggestions in yellow and Staff suggestions in blue.**

RC7-1. Marketing-

Any marketing and promotion of the facility will be first and foremost as a hotel use. The availability of the hotel for special events and functions shall not be marketed as the primary use. The hotel website may have pages that describe various venues, including costs and availability, but may not advertise individual functions or periodic events such as pool parties.

Any marketing and promotion of the facility will be first and foremost as a hotel use. The availability of the hotel for special events and functions shall not be marketed as the primary use. The hotel website may have pages that describe various venues, including costs and availability, but may not advertise pool parties.

RC7-2. Marketing-Happy Hour

All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc bar/lounge, terrace and Skydeck will not be marketed to the general public as separate hospitality attractions. All advertising, marketing and promotions will be focused on potential hotel guests and not the general public.

EXHIBIT A- PC 6-23-10 SHADE STAFF DRAFT CONDITIONS

The hotel shall not advertise, market or promote drink or “happy hour” type of specials. Primary advertising and marketing shall be for the hotel, food and special events. Marketing and promotion for the bar and functions shall be secondary.

RC7-3. Menu Posting: The hotel shall not post any drink or food menus or any drink or food signage outside of the hotel.

The hotel may post drink or food menus or signage outside of the hotel, with the exception of no posting of any drink or “happy hour” type of specials.

RC7-5 Review. All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after completion of improvements and yearly thereafter. At any time in the future, the Planning Commission or City Council may review the Master Use Permit Amendment for the purposes of revocation or modification. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.

FINDINGS.

I will write my own facts/findings for the resolution that summarize the public record.

RF-1. The governing use permits, Resolution 5770 and PC Resolution 05-08, state the intent that Shade shall operate as a hotel, with the primary purpose of attracting visitors to support downtown businesses, as well as providing residents with a special place for celebrations.

RF-2. Based on testimony from many neighboring residents, Shade Hotel makes noise that discomforts and irritates reasonable persons of normal sensitiveness. The MBPD has responded to numerous calls regarding Shade disturbances, and for several of these incidents, have booked as evidence, reports and recordings of noise from Shade.

RF-3. At the May 25, 2005 public hearing on Shade, the planning commission at that time was led to believe that the Department of Alcoholic Beverage Control (ABC) required a Type 47 general license to enable mini-bars in the hotel rooms, and that no other option existed. The Type 47 license requires service to the general public, which creates the disturbances in the neighborhood. As result, additional mitigation measures are required to abate the noise.

RF-4. Also at the May 25, 2005 meeting, the planning commission at that time was led to believe that the outdoor terrace on the south side of the hotel would not serve alcohol. As result, by virtue of its open design, the terrace has inadequate soundproofing and constitutes a major noise source that requires special attention to abate.

RF-5. The hotel has not complied with certain requirements in the governing use permits, such as prohibition of promotions for the Zinc bar, terrace and skydeck, as well as special events and public functions.

RF-6. Community Development has conducted an acoustics analysis that has evaluated physical mitigation measures to reduce Shade noise. Because of the complexity involved, particularly the subjective nature of the disturbances in the neighborhood, mitigation measures must be evaluated *in situ* for a trial period, to determine whether they suffice to abate the disturbances. If not, at their discretion, the Planning Commission and Community Development shall require additional mitigation measures to ensure compliance with noise regulations, by means of the entertainment permit.

RF-7. Physical mitigation measures alone cannot abate the disturbances. Administrative measures, such as closing times, play a critical role. Consequently, the MBPD and Community Development require unambiguous, easily-determined criteria to enforce requirements.

RF-8. Many uncertainties exist regarding the effectiveness of proposed noise-reduction measures. To provide flexibility, Community Development uses the entertainment permit to require compliance with noise regulations, by imposing new conditions, or by modifying existing conditions, regardless of whether those conditions or modifications relate to entertainment *per se*. Community Development shall submit a draft revised entertainment permit, as part of this resolution.

RF-9. Taxi pickup and drop-off on Valley Drive create disturbances. The city should prohibit taxi pickup and drop-off on Valley Drive after 9 PM each day, between 13th St and MB Blvd.

CONDITIONS.

RC-1. Definitions.

RC1-1. Closed ~~or closing times.~~ Music off and lights turned up. Terrace, courtyard, and skydeck and all public areas vacated, except for cleaning staff. All members of the general public, including special-event ~~and function~~ guests who are not registered guests, out of the hotel. Registered guests may occupy the lobby area ~~or hotel rooms.~~ In the Zinc bar & lobby bar, terrace, courtyard, and skydeck, ~~and all public areas~~ without exception, on or before closing, staff shall collect all glasses, bottles, and drinks, including from registered guests, to comply with the ABC definition of closed, as “no sale, service, or consumption of alcoholic beverages.”

RC1-2. Special event. An event under contract that has exclusive use of one or more venues. All special events shall pay charges consistent with those for other special events of similar nature and scheduling. Attendees at special events shall have a written invitation from the host client. The general public may not join nor participate in special events.

RC1-3. Function. A ~~special themed~~ function event held ~~occasionally~~ periodically for the general public, ~~nonprofits or charities~~, such as, ~~Chamber events, Downtown Open House,~~ Oktoberfest, Halloween, New Years, Valentines, St Patrick’s Day, AVP ~~and~~ Surf Festival, Mothers Day and Six-Man. Does not include functions such as Chamber gatherings or Downtown Open House. The entertainment permit will identify such activities classified as charitable or nonprofit, as cited in this amendment..

RC1-4. Registered Guest. A guest who occupies a room overnight. Privileges for registered guests extend to their invitees only as explicitly stated in this amendment.

RC1-5. Invitee. A guest of a registered guest.

RC1-6. Marketing and Promotion. Any marketing, promotion or advertising, using any media, including but not limited to, fliers, newspapers, radio-TV, Internet, social networking sites, email to the general public and the Shade website.

RC1-7. Background music. Sound intensity anywhere in a room or venue not greater than 65 dBm, or normal conversation for 4 people at a range of 3 to 5 feet, whichever less.

RC1-8. Public areas. Any area or space where sales, service and consumption of alcoholic beverages permitted. ~~Holidays—The Sunday nights before Labor Day and Memorial Day.~~

RC-2. Entertainment and Noise Regulations

RC2-1. Community Development shall not reduce restrictions in the entertainment permit, without approval by the Planning Commission, with notice to property owners within a 300 foot radius with standard notice procedures.

RC2-2. All music and sound shall use the house system only. DJ’s, live entertainment or music or anything other than background music is only permitted in the Zinc Lounge. All live amplified entertainment shall be restricted to the Zinc bar. One annual event, Oktoberfest, may have live

amplified entertainment in the courtyard, from 4 to 8 PM.

RC2-3. A deployable means (glass or similar panels that roll or slide down from the top portion of the terrace) shall entirely enclose the terrace, including a closable south entrance that meets MBFD-Building Safety and other City requirements. ~~Existing gaps in glass walls shall be sealed. Glass~~ Existing walls shall have existing gaps sealed. The ceiling of the terrace shall have ~~a complete covering of~~ sound-absorbing fixtures. The enclosure and entire terrace area shall be acoustically sealed, designed and constructed to meet the City Noise consultants' acoustical standards consistent with their noise studies. The terrace shall remain open at all times except, after 9 PM each day ~~and until the terrace area is closed (as defined in this Resolution) daily.~~ Shade staff shall be responsible for enclosing and opening the terrace daily. ~~If the terrace has drapes, at closing time, staff shall open them to enable external visual inspection.~~ The terrace shall not have drapes or other decorative features to enclosure the area, however decorative faux drapes immediately adjacent to the support columns are permitted.

RC2-4. A permanent front-entrance vestibule, bonded and sealed to the building, shall be constructed to enclose the east front door. The vestibule shall be acoustically sealed, designed and constructed to meet the City Noise consultants' acoustical standards consistent with their noise studies. The vestibule shall also meet all Building Safety and other City requirements, including but not limited to emergency egress and disabled access. Between 9:00 PM and 6:00 AM daily the front entrance (east) doors shall be closed and only operable through the interlock/double door vestibule. The hotel clerk or other hotel employee shall only allow passage for ~~hotel guests or disabled, and or hotel-registered guests may pass~~ with a room key. Additionally, only one set of doors may be opened at any time.

RC2-5. Only ~~special events~~ Oktoberfest, special, nonprofit, and charity events ~~and functions~~ may use the courtyard. ~~Except for Oktoberfest, no general public permitted in the courtyard~~ Otherwise, no general public permitted in the courtyard.

RC2-6. A new folding wall ~~will~~ shall be installed to separate the interior courtyard from the corridor north of the lobby bar. After 9 PM ~~each day~~ Friday, Saturday and holidays, and if the entry/exit queue is greater than 5 people, ~~except for special events,~~ both corridor walls (adjacent to the courtyard and the lobby bar) shall remain closed, ~~except for special, nonprofit and charity events and functions.~~ There shall be no sale, service or consumption of alcohol in the corridor when one or both folding walls are closed. ~~, except for Oktoberfest, special, events, and Oktoberfest nonprofit and charity events.~~ The north folding wall shall remain closed whenever the Zinc bar and lounge has amplified sound other than background music.

RC2-7. Amplified ~~sound~~ ~~voice and music is~~ prohibited on the skydeck after 9 PM, except for background music. ~~At weddings, the principals may have amplified voice, but not a master of ceremonies or other such participant.~~ All music and sound shall use the house system only, and no DJ's or live music is permitted. Background music only is permitted. The hotel shall relocate speakers for background music ~~shall be located~~ nearer to floor-level, not atop glass windscreen posts. The location and number of the speakers shall be based on the recommendations from an audio specialist in cooperation with the City's noise consultant, and shall be designed to mitigate off-site noise impacts and maximize efficiency on-site.

~~RC2-8. When used for special events, penthouses shall have balcony doors locked after 9 PM.~~ The penthouse shall not be used for special events or functions. Use of the penthouse is limited to registered hotel guests and their invitees, not to exceed a maximum of eight (8) occupants.

RC2-9. (From entertainment permit CD-5; *modifications italicized*) The volume of music, entertainment, *group singing, or voice, whether or not amplified,* may not be audible outside of the hotel facilities to the *following* extent. *For any length of time, except for Oktoberfest, the noise may not dominate the background ambient noise, as defined in municipal code noise regulations, nor disturb surrounding tenants. After cessation of alcohol service in any venue or for any event or function, only background music permitted.*

RC2-10. (From Reso 05-08 Condition 2; Special events and *functions of more than 125 attendees* require notice and a temporary use permit. *In the annual entertainment permit, Community Development may reduce the maximum number of attendees for special events and functions not needing notification, but cannot increase the maximum number.*

RC2-11. (From entertainment permit CD-3, *rewritten as italicized*) *Dancing is limited to the Zinc bar/lounge in a 15-foot by 20-foot area. Dancing on skydeck permitted only for special, nonprofit and charity events* ~~and functions.~~

RC2-12. Each year, the hotel shall apply for an annual entertainment permit on March 1, in accordance with Condition 40 in Resolution 5770, Metlox Master Use Permit.

RC2-13. The hotel shall ~~maintain on its website a schedule of all special events and functions~~ e-mail residents who sign-up, the schedule of special events and functions sent to the City.

~~RC2-14. The hotel shall continue to maintain surveillance video coverage at all times, to provide law enforcement officers with evidence to support arrests made of hotel patrons.~~

RC2-14. A permanent notice shall be placed on the doors to the hotel room balconies informing guests to be respectful of the neighbors at all times and to make no noise on the balconies or outside after 11:00 PM.

RC-3. Hours for alcohol service (*Changes and additions italicized.*)

Hours for alcohol service restricted to venues below; no other spaces permitted.

Venue/Event/Services	Venue Closing Time; Open 6 AM, per Cond. 39, Reso. 5770	End of Alcohol Service, Before Closing, Minutes
<i>Zinc bar and lounge, Fri-Sat and Holidays</i>	<i>Midnight (Note 1)</i>	20
Zinc bar and lounge, Sun-Thu	11 PM (Note 1)	20
Terrace	Same as Zinc bar and lounge	20
Conference (Green) Room(s)	<i>Special events and functions only; no public</i> (Note 1)	Same as special events and functions
<i>Penthouses, two, (See Note2)</i>	<i>Special events only; no public</i>	Same as special events
Skydeck	10 PM; no exceptions (see Note 2)	60
Courtyard	Same as special events and functions	Same as special events and functions
Special Events and functions (Note 1)	11 PM Sun-Thu; midnight Fri-Sat	20
<i>Room Service, Alcohol</i>	<i>Same as Zinc</i>	<i>0 (Zinc closing time)</i>

Note 1. New Years Eve closing, **only** as permitted by ordinance. **On the Sundays prior to Memorial Day and Labor Day, the Zinc bar, terrace and courtyard special events may remain open until midnight.**

Note 2. Skydeck closes at 10 PM. ~~no~~ without exceptions. **No one except staff permitted on the skydeck after 10 PM, including special events and functions and New Years Eve.**

RC-4. Event Space Layouts and Building Plans.

~~RC4-1. (From Event Space Layout plan in the entertainment permit) Except for special events, alcohol serving venues shall maintain tables, chairs, and other furnishings as typical of daily hotel operations, such as shown in the annual entertainment permit dated December 19, 2008, for which the Fire Department will determine maximum occupancies. Arrangements shall expedite food consumption.~~

~~RC4-2.~~ **RC4-1.** (From Reso 05-08 Condition 1; *revised as italicized*) The proposed *changes* shall be in substantial conformance with the plans submitted, ~~and~~ the project description *and revised entertainment permit*, as approved by the Planning Commission, subject to any special conditions set forth *in this amendment*. The **design, specifications and** layout of sound mitigation measures is subject to further review and approval by **the Director of Community Development**, and *the Planning Commission as determined to be necessary by* ~~and~~ the Director of Community Development. Any substantial deviation from the approved plans, **or** project description, *and revised entertainment permit* **must shall be have** reviewed and approved by the Planning Commission.

RC-5. Ingress-Egress Control

RC5-1. The general Metlox Plaza valet service shall relocate away from the Shade east or south entrances. The podium shall be located so that it has no line of sight to residences. ~~from 13th St or the 12th St walkway.~~ Except for registered hotel guests, after 9 PM each day, special-event guests, invitees, guests and the general public shall be prohibited from picking up their vehicles from the Shade front (east) entrance.

RC5-2. Hotel employees shall discourage the public from using taxis on Valley Dr after 9 PM. Taxi pickups and drop-offs for the general public at the Shade entrance shall be prohibited after 9 PM. The public, not registered hotel guests, shall be directed to the taxi stand on Morningside Drive and 13th Street, after 9 PM daily. Hotel staff may call for a taxi to pickup registered guests at the entrance at any time.

RC5-3. The hotel ~~will~~ shall locate the entry and exit queue at the west side of the building as required in condition ~~R3-4~~ RC5-4 below, but it ~~may~~ shall not extend past the south or north sides of the building .

RC5-4. (From entertainment permit CD-10, *modification italicized*) After 9: 00 PM on Friday, ~~and~~ Saturday, ~~on~~ holidays, ~~as well as~~ special events, and functions ~~at the hotel during any day of the week, non-registered~~ hotel guests ~~at the hotel facilities~~ shall use the west door, opening on to the Metlox Plaza, to enter and exit the hotel, and not the front ~~entry-east~~ door that opens onto Valley Drive, nor the south terrace ~~doors entry~~. On Sunday through Thursday, if more than five patrons are waiting to enter, staff shall establish the queue at the west side of the building. Employees shall close and monitor the front (east) entry door as required to ensure access only by registered hotel guests and the disabled, and that non-registered guests use the west door while maintaining required emergency and disabled access. Employees shall also remind the patrons as they depart to respect the neighbors and to minimize noise and disturbance. The hours and days may be administratively modified in the annual entertainment permit to be more, but not less, restrictive as determined to be necessary by the Director of Community Development.

RC5-5. (From entertainment permit CD-6) The hotel shall ensure that their employees, contract employees, contractors servicing events, and all others providing services to the Hotel shall not park on the public streets east of Valley Drive, in the residential areas or in Parking Lot 8 (the lot in the median of Valley and Ardmore). All parking shall be on the Metlox site or in other public parking structures or lots such as Lot 3.

RC5-6. (From entertainment permit CD-8) Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area on the east side after 9 PM daily, but shall load and unload off of Morningside Drive or 13th Street. The vehicles shall observe and comply with all parking regulations in these areas.

RC5-7. (From Reso 5770 Condition 28 and Reso 05-08 Condition 2) Special Events and functions may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.

RC-6 Food service.

RC6-1. (From Reso 05-08 Finding L and Conditions 3 and 5; *rewritten as italicized*) *The hotel may serve food in all public areas during the hours consistent with the service of alcohol. This shall not preclude 24-hour room service.*

RC-7. Promotion and Advertising.

RC7-1. (From Reso 5770 Condition 28, Reso 05-08 Condition 2 and entertainment permit UP-7; *modifications italicized*) *Any marketing and promotion of the facility will be first and foremost as a hotel use.* The availability of the ~~inn~~ *hotel* for special events and functions shall not be marketed as the primary use. *The hotel website may have pages that describe various venues, including costs and availability, but may not advertise individual functions or periodic events, such as pool parties.*

RC7-2. (From Reso 05-08 Finding M & Condition 4, and entertainment permit UP-9; *modifications italicized*) *All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc bar/lounge, terrace and Skydeck will not be marketed to the general public as separate hospitality attractions. All advertising, marketing and promotions will be focused on potential hotel guests and not the general public. The hotel shall not advertise, market or promote drink or "happy hour" type of specials. Primary advertising and marketing shall be for the hotel, food and special events. Marketing and promotion for the bar and functions shall be secondary.*

RC7-3. (From Reso 05-08 Condition 6 and entertainment permit UP-11) *The hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.*

~~RC7-4. The penthouse shall not be used for special events or functions. Use of the penthouse is limited to registered hotel guests and their invitees, not to exceed a maximum of eight (8) occupants.~~

RC-8 ~~RC7-5~~ Review.

~~RC8-1.~~ All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after completion of improvements and yearly thereafter. At any time in the future, the Planning Commission or City Council may review the Master Use Permit Amendment for the purposes of revocation or modification. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.

Laurie B. Jester

From: Laurie B. Jester
Sent: Thursday, June 17, 2010 5:55 PM
To: Angela Soo
Subject: FW: Introduction to Residents' Shade Use Permit Conditions
 For PC packet for shade

From: Nate Hubbard [mailto:natehubz@mac.com]
Sent: Thursday, June 17, 2010 5:44 PM
To: List - City Council; List - Planning Commission
Cc: Laurie B. Jester; Richard Thompson; Liza Tamura
Subject: Introduction to Residents' Shade Use Permit Conditions

Planning Commissioners
 City of Manhattan Beach
 Via Email

Subject: Introduction to Residents' Shade Use Permit Conditions, with Attached Proposed Findings and Rationale

Commissioners, For the Record, Including Attached Proposed Findings and Rationale

Since the May 12 hearing, I have negotiated with Shade and staff to agree upon conditions for the use-permit amendment and to identify issues on which we disagree. These discussions continue, so we cannot present the details at this time, but will have to wait until reviewing the draft resolution, available Friday evening, June 18.

We have not had neighborhood participation in this process. After reviewing the draft resolution, we will summarize the situation for the neighbors.

With this email for the record, I propose to get some preliminaries out of the way, so that at the June 23 hearing, we can focus on the remaining unresolved issues.

The attachment to this email provides our proposed findings and rationale, solidly based on facts in the public record, as explained in the narrative. Although our negotiations have used as a basis the draft use permit we residents submitted in December 2009, participants have addressed only the conditions, and not the proposed findings for the resolution.

Consequently, please review our proposed findings and supporting rationale provided in the attachment.

For several reasons listed below, we request that the commission consider the draft resolution, provide direction to staff, and schedule resolution approval at a continuation of the public hearing to the July 28 meeting.

Our Concessions.

In addition to extending hours for Friday and Saturday, from 11 PM to midnight, we have conceded a number of intensity-increasing items to Mike Zislis, the total listed as follows:

- Extension of bar hours on Friday and Saturday from 11 PM to midnight

06/18/2010

- Deletion of use permit requirement for a folding wall between the Zinc bar and lobby
- Special, nonprofit and charity events permitted on skydeck
- Skydeck dancing for special, nonprofit and charity events
- Oktoberfest live music in the courtyard
- Amplified music on the terrace
- Full-service restaurant.

If necessary, we can provide the citations for these concessions, as referenced in the Metlox Master Use Permit and the amendment, PC Resolution 05-08.

Major Objectives.

We have the following major objectives for the June 23 hearing:

- Inclusion of our findings into the resolution, especially the controversial ones that have resulted in Shade becoming a public nuisance that disturbs the neighborhood. As previously stated, this email includes our paper on proposed findings, so please review it.
- Unambiguous, easily-implemented criteria for enforcing use permit conditions, such as closing. For the latter, please review the attached findings paper for Item RF-7, which applies the ABC definition of 'closed' to Shade.
- Revised entertainment permit as part of the draft resolution package, for planning commission review and approval. To be consistent with the new amendment to the use permit, the entertainment permit will require a total overhaul, which staff presumably has not accomplished. We want that done as part of the approval process, and not pushed off to sometime in the future.

Schedule.

We do not believe it appropriate for the planning commission to approve the resolution at the June 23 hearing, for a number of reasons, as follows:

- It appears that the commissioners will have many changes to make in the draft resolution. They should not approve the resolution until seeing those changes properly implemented in the document
- Presumably, staff has not prepared a thoroughly-revised entertainment permit, at least we have not seen one. Having that entertainment permit adequately reviewed by all and then approved by the commission constitutes one of our high-priority goals
- Commissioner Andreani presumably will not attend the June 23 hearing, which in principle enables a minority of two commissioners to approve the resolution. We believe that neither ethical nor fair to the residents, much less considerate to Commissioner Andreani, who has participated throughout the one-year long proceedings.
- If the commission approves the resolution on June 23, that will result in an appeal on July 20, when I am out of town. In principle, that denies the residents an organized opportunity to participate in an appeal, or even to exercise their right to an appeal.

Time is certainly not of essence here. Shade and staff spent over six months between the October 28 and May 12 hearings, accomplishing little more than some annotations of mitigation measures on existing building plans and running an acoustic analysis on a computer program that had been configured last October.

Consequently, I request the planning commission to consider the draft resolution, provide direction to staff, and schedule resolution approval at a continuation of the public hearing to the July 28 meeting, which I can attend.

Thanks, Nate Hubbard

1300 13th St, Manhattan Beach CA 90266

natehubz@mac.com

Cc: City Council, R Thompson, L Jester, L Tamura

PROPOSED FINDINGS FOR SHADE RESOLUTION, BASED ON PUBLIC RECORD FACTS

SUMMARY.

Since the May 12 hearing, Nate Hubbard has held negotiations with Shade and staff to agree upon conditions for the use-permit amendment. Those discussions continue, so we cannot present them at this time, but will have to wait until reviewing the resolution.

Although the negotiations addressed the framework of the draft use permit we originally submitted in December 2009, they did not include the proposed findings. This input provides the rationale for our proposed findings, based on facts in the public record.

The planning commission has strived to understand how Shade evolved into a public nuisance that disturbs the neighborhood, from the small hotel stipulated in the Metlox Master Use Permit, with alcohol service restricted to registered guests.

Consequently, for future use by city officials, the resolution must accurately capture in findings made by the commissioners what exactly happened to create this problem.

Our proposed findings, Exhibit A, group into the major categories listed below. We have characterized each category by an estimated degree of conflict with the findings that staff will presumably propose in their resolution, as follows:

- City policy that Shade operate primarily as a hotel (low conflict)
- Shade noise disturbances and use-permit violations (high conflict)
- Public record regarding Type 47 alcohol license at May 2005 hearing (high conflict)
- Mitigation measures and acoustics analyses (low conflict)
- Approval of revised entertainment permit by planning commission (medium conflict)

The discussion below provides the facts from the public record that support our proposed findings.

DISCUSSION.

In the following, we present the rationale for each of our proposed nine findings listed in Exhibit A.

City Policy for Shade.

RF-1. Both governing use permits, the Metlox Use Permit and its amendment, Reso 05-08, state that Shade shall primarily operate as a hotel. The public record from the four hearings on the current amendment to extend hours does not contain a single statement by commissioners or staff contrary to this policy statement.

This finding has the important role of reaffirming the city intent that Shade must operate primarily as a hotel, not a nightclub.

Shade Disturbances and Use Permit Violations.

RF-2. Many residents have testified, with some filing depositions, that Shade noise discomforts and irritates reasonable persons of normal sensitiveness, the criteria in the municipal code for violation of the subjective noise regulation, MBMC 5.48.140.

PROPOSED FINDINGS FOR SHADE RESOLUTION, BASED ON PUBLIC RECORD FACTS

The police have booked as evidence reports and recordings of noise and have referred some incidents to the city attorney for determination whether to file misdemeanor charges.

This finding provides crucial evidence that the city must require Shade to install noise mitigation measures.

RF-3. Shade has not complied with certain requirements in the use permits, such as bar closing time, no lunch service to the general public, and prohibition of promotions for Zinc, terrace, skydeck and public functions.

We have submitted considerable evidence that Shade serves alcoholic beverages for an hour or more after the 10:30 PM cutoff. MBPD has booked audio recordings of officers responding to disturbance calls on 18 July 2009 and 14 August 2009, for which the Zinc bar and terrace had 100-200 patrons at 11:30 PM and 11:15 PM, respectively.

We submitted a deposition relating observations of the terrace jammed shoulder-to-shoulder at 11:45 PM on 31 July 2009, with new patrons entering at 11:30 PM.

Consequently, during four weeks in July-August 2009, evidence exists on three occasions that Shade served alcohol well after closing time, because 100-200 patrons will not hang around for an hour or more after alcohol-service cutoff.

In the MBPD audio-recording evidence, Shade staff claimed to officers that they prevent patrons from leaving the bar for 60-90 minutes after alcohol-service cutoff, to reduce impact on Metlox Plaza, an absurd explanation. The patrons stay because they get served after cutoff.

The Shade surveillance video from 4 January 2008 shows Zinc serving drinks 75 minutes after cutoff. At the May 12 hearing, Mr Zislis testified the bar clock had the wrong time (the Shade Zinc bar video matched the MBPD report time and displays on two MBPD vehicles). He also testified that in 2008, the closing hour changed in the use permit from midnight to 11 PM, another absurdity.

Testimony by staff and Shade at the June and July 2009 hearings substantiates that Shade serves lunch to the general public, in violation of the use permit.

At the 28 October 2009 hearing, we submitted evidence that Shade violates the prohibition on advertising and promoting the Zinc bar. We have compiled additional evidence since then, but chose not to waste time at the May 2010 hearing.

This finding proves that the use permit needs amending to provide unambiguous criteria for enforcement of conditions, such as closing time.

Type 47 Alcohol License Approval at the May 2005 Planning Commission Hearing.

RF-4. At the May 2005 hearing that approved the Type 47 general license, commissioners were led to believe no other option existed, other than the Type 47 license. In contrast, the Type 70 license, which limits alcohol service to hotel guests and their invitees, provided a better match to the Metlox Master Use Permit.

According to Ms Jester's testimony at the May 12 hearing and her email of 11 May 2010 (Exhibit B), she and Mr Zislis misrepresented the facts in their meeting with the ABC that Shade needed a license that permitted service to the general public. In contrast, the Metlox Master Use Permit restricted alcohol service to registered guests.

PROPOSED FINDINGS FOR SHADE RESOLUTION, BASED ON PUBLIC RECORD FACTS

At the May 2005 hearing of the planning commission for the Type 47 license, in their written inputs and testimony, as per the public record, Mr Zisli and Ms Jester misrepresented the facts that the ABC had no license other than the Type 47 which would permit hotel room mini-bars, whereas the Type 70 license also meets that requirement.

At your 12 May 2010 hearing, Mr Gerry O'Connor, chairperson of the 2005 planning commission, testified regarding the May 2005 proceedings. After careful consideration of the evidence cited above, Mr O'Connor concluded that staff had misled the commission in May 2005 that they had no other option other than to approve the Type 47 license.

This finding explains how Shade evolved into a public nuisance, rather than the small hotel stipulated in the Metlox Master Use Permit.

RF-5. At the May 2005 hearing that approved the Type 47 general license, commissioners at that time were led to believe that the terrace would not have alcohol service, so they expressed no concerns about impact of the open area on residents.

Exhibit C provides a transcript of the exchange between Commissioner David Simon and Ms Laurie Jester at the 2005 hearing, regarding use of the terrace. The transcript unequivocally shows that Ms Jester testified to the planning commission that the terrace would not have alcohol service. Specifically, she stated, ***“there would not be service of food or alcohol in that area.”***

At the recent 12 May 2010 hearing, Commissioner David Lesser questioned Ms Jester regarding her testimony on the terrace at the 2005 hearing. Ms Jester replied that, according to the May 2005 minutes, her testimony at the time referred to confusion over possible alcohol service on the Metlox Plaza, outside the Shade premises.

As shown in Exhibit C, the May 2005 minutes do not support Ms Jester's answer to Commissioner Lesser's question regarding the terrace alcohol service issue. At the 12 May 2010 hearing, Ms Jester misled the commission with her answer to Mr Lesser's question, just as she misled the 2005 commission that the terrace would not have alcohol service.

This finding shows why the 2005 commission did not address noise mitigation on the terrace, which the present commission will do, by requiring full enclosure at night.

Mitigation measures and acoustics analyses.

RF-6, RF-7, and RF-8. These three findings do not appear particularly controversial. We briefly summarize them as follows:

RF-6. This finding on physical mitigation measures has the principal features that the measures need to be evaluated relative to the acoustics analysis predictions. If in the future, additional noise mitigation becomes necessary, the city can impose that by means of the entertainment permit.

RF-7. This finding relates to unambiguous criteria for enforcement of use permit conditions, such as closing time. Because the planning commission deleted the requirement for the sound wall between the Zinc bar and the lobby, closing must be defined differently than vacating the public areas.

PROPOSED FINDINGS FOR SHADE RESOLUTION, BASED ON PUBLIC RECORD FACTS

RF-7 (continued). We have redefined closing as collection of all glasses, bottles, and drinks, including from registered guests, to comply with the ABC definition of closed, as “no sale, service, or consumption of alcoholic beverages.” Exhibit D, a letter from the ABC, provides their definition of closing.

RF-8. This finding regarding disturbances caused by taxis cannot be imposed as a condition on Shade in the use permit, because it requires city action to prohibit pickup and drop-off on Valley Drive after 9 PM, between 13th St and Manhattan beach Blvd.

Approval of revised entertainment permit in resolution by planning commission.

RF-9. This finding requires approval by the planning commission of the revised entertainment permit, as part of the resolution package.

The Metlox Master Use Permit limits entertainment to two entertainers, without amplification. Any additional entertainment requires an annual entertainment permit.

By this means, Shade entertainment does not become an entitlement or property right. As Director Richard Thompson explained at the May 2005 hearing that approved the Type 47 license, the city can clamp down on Shade amplified sound, by limiting what they are permitted in the entertainment permit.

Among other items, the entertainment permit lists the requirements imposed by MBPD for notification of events. It stipulates the number of entertainers permitted. We suggest that it should also define the differences between public functions and those conducted under charity or nonprofit auspices.

During the past year, in the four hearings, the city has not yet addressed the structure or outline of the Shade entertainment permit in context with the proposed amendment to the use permit. They must perform that task as part of the current application proceeding.

We believe the city needs to include the revised entertainment permit in the resolution, for planning commission review and approval. At this date, it appears that staff does not agree.

CONCLUSION.

Our proposed findings address four principal issues:

- Documentation of what actually happened in the Shade history, which caused the hotel to become a public nuisance, as distasteful as that might seem to the city
- A rigorous program to evaluate performance of Shade noise mitigation measures and to provide a means via the entertainment permit to correct any problems in the future
- Specification of unambiguous, easily-determined criteria as conditions in the use permit to enable effective enforcement
- Inclusion of the revised entertainment permit in the resolution to implement disturbance management in the future.

We have solidly based each of our proposed findings on facts documented in the administrative record.

EXHIBIT A. RESIDENTS' PROPOSED FINDINGS, BASED ON FACTS IN THE PUBLIC RECORD

FINDINGS.

RF-1. The governing use permits, Resolution 5770 and PC Resolution 05-08, state the intent that Shade shall operate as a hotel, with the primary purpose of attracting visitors to support downtown businesses, as well as providing residents with a special place for celebrations.

RF-2. Based on testimony from many neighboring residents, Shade Hotel makes noise that discomforts and irritates reasonable persons of normal sensitiveness. The MBPD has responded to numerous calls regarding Shade disturbances, and for several of these incidents, have booked as evidence, reports and recordings of noise from Shade.

RF-3. The hotel has not complied with certain requirements in the governing use permits, such as prohibition of promotions for the Zinc bar, terrace and skydeck, as well as special events and public functions.

RF-4. At the May 25, 2005 public hearing on Shade, the planning commission at that time was led to believe that the Department of Alcoholic Beverage Control (ABC) required a Type 47 general license to enable mini-bars in the hotel rooms, and that no other option existed. The Type 47 license requires service to the general public, which creates the disturbances in the neighborhood. As result, additional mitigation measures are required to abate the noise.

RF-5. Also at the May 25, 2005 meeting, the planning commission at that time was led to believe that the outdoor terrace on the south side of the hotel would not serve alcohol. As result, by virtue of its open design, the terrace has inadequate soundproofing and constitutes a major noise source that requires special attention to abate.

RF-6. Community Development has conducted an acoustics analysis that has evaluated physical mitigation measures to reduce Shade noise. Because of the complexity involved, particularly the subjective nature of the disturbances in the neighborhood, mitigation measures must be evaluated *in situ* for a trial period, to determine whether they suffice to abate the disturbances. If not, at their discretion, the Planning Commission and Community Development shall require additional mitigation measures to ensure compliance with noise regulations, by means of the entertainment permit.

RF-7. Physical mitigation measures alone cannot abate the disturbances. Administrative measures, such as closing times, play a critical role. Consequently, the MBPD and Community Development require unambiguous, easily-determined criteria to enforce requirements.

RF-8. Taxi pickup and drop-off on Valley Drive create disturbances. The city should prohibit taxi pickup and drop-off on Valley Drive after 9 PM each day, between 13th St and MB Blvd.

RF-9. Many uncertainties exist regarding the effectiveness of proposed noise-reduction measures. To provide flexibility, Community Development uses the entertainment permit to require compliance with noise regulations, by imposing new conditions, or by modifying existing conditions, regardless of whether those conditions or modifications relate to entertainment *per se*. Community Development shall submit a draft revised entertainment permit, as part of this resolution.

EXHIBIT B. STAFF EMAIL THAT SHADE REQUIRED ABC LICENSE FOR GENERAL PUBLIC SERVICE

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 THAT SHADE REQUIRED ABC LICENSE FOR GENERAL PUBLIC SERVICE

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. STAFF TESTIMONY AT MAY 2005 HEARING OF NO ALCOHOL SERVICE ON TERRACE

SUMMARY.

The video of the 25 May 2005 hearing by the planning commission to approve the Shade Type 47 license shows that Laurie Jester told the commissioners that the terrace would not have alcohol service. At the end of the 2005 meeting, with a motion on the floor for approval, Ms Jester slipped into the resolution a clause enabling terrace alcohol service.

At the recent 12 May 2010 hearing on Shade, in response to a question on the terrace alcohol issue by Commissioner David Lesser, Ms Jester answered that her 2005 testimony involved a discussion of alcohol service on the Metlox Plaza, not the terrace.

Ms Jester stated that the minutes from the 2005 hearing support her claim. Those minutes make no reference to a discussion about alcohol service outside the Shade premises. Furthermore, the 2005 video discloses no discussion about alcohol service on the Metlox Plaza.

Unless Ms Jester provides evidence otherwise, it appears she deliberately misled the commission on the 2005 terrace alcohol issue, in response to Commissioner Lesser's question.

DISCUSSION.

In the four-minute long transcript below from the 2005 hearing, Commissioner David Simon questioned Ms Jester about the terrace. She appeared not to know its existence. When other commissioners directed her to the terrace location in the plans, at the south side of Shade, adjoining the 12th St walk-street, she stated that *"there would not be service of food or alcohol in that area."*

TRANSCRIPT REGARDING ALCOHOL SERVICE ON TERRACE, MAY 2005 HEARING ON SHADE TYPE 47 LICENSE (Emphasis added to the word, 'terrace'.)

- 30:22 Commissioner David Simon (DS), "My understanding too on that one point there, if I may jump in. In the breakfast service in the living room and courtyard is proposed 6 AM to 10 PM Monday through Friday, 6 AM to 11 AM Saturday and Sunday. How does that tie into the **terrace** out there?"
- 30:43 Laurie Jester (LJ), "Hours of operation are the same as for the roof deck."
- 30:49 DS, "What I just read doesn't say **terrace** specifically."
- 30:53 LJ, "I'm sorry, which page are you looking at?"
- 30:55 DS, "Page 2, your second full paragraph, second sentence."
- 31:08 DS, "See, we're talking about breakfast service in the living room."
- 31:14 LJ, "There will not be breakfast service on the roof deck, if that's what you're talking about."
- 31:17 DS, "I'm going to the outside **terrace**."
- 31:20 LJ, "Oh. Okay. That's why I said living room or courtyard. The living room is the lobby area. The courtyard is the interior courtyard."
- 31:27 DS, "What are the hours for the **terrace**?"
- 31:29 LJ, "When you say **terrace**, do you mean roof deck?"

EXHIBIT C. STAFF TESTIMONY AT MAY 2005 HEARING OF NO ALCOHOL SERVICE ON TERRACE

**CONTINUED TRANSCRIPT REGARDING ALCOHOL SERVICE ON TERRACE,
MAY 2005 HEARING ON SHADE TYPE 47 LICENSE**

- 31:33 DS, "On your map, the public area outside the lobby."
31:38 LJ, "We call that the courtyard. You call that the [unintelligible]?"
31:41 DS, "I call the courtyard the courtyard, sorry."
31:45 LJ, "There's only one courtyard. It's right in the middle, totally surrounded by the building."
31:50 DS, "So there you have the lobby, and the wine bar area, and then you have the outside **terrace**."
31:59 LJ, "Correct. **Terrace**, or courtyard, we're calling it here."
32:00 DS, "So we have two courtyards, or is the whole thing called a courtyard."
32:04 LJ, "Let me show you on the plans." (Jester goes to plans behind commissioners.)
32:15 LJ, "This area is the courtyard. It's totally surrounded by the building. There's a guest room, a guest room, a guest room. Then the kitchen, the bakery, which is a separate tenant. And there is the lobby and wine bar. So this area, which is identified on the plans as dining room, this is where breakfast could be served, in this area or out in the courtyard, or the **terrace** you call it, if the weather is nice. Special events can take place in these two areas." (Zinc bar/lounge and courtyard.)
32:54 DS, "Actually, I am talking about going on the other side of the lobby."
33:00 Other voices, "Porch. It says porch on my drawing. To the right, on 12th Street."
33:08 LJ, "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**. At least that's my understanding from the applicant."
33:19 Commissioner Muriel Savikas, "What's it called?"
33:22 LJ, "You're right, it does say porch there. At least that's my understanding from the applicant. And maybe they can clarify that."
33:42 Director Richard Thompson, "He'll clarify all these issues in his presentation."
33:47 LJ, "This is a covered porch. It's just off the hotel. There's a grade change between... This is a walkway, 12th walk. This is a raised covered porch."

Inclusion in PC Resolution 05-08 of alcohol service on the terrace.

At the May 2005 hearing, after the above exchange between Commissioner Simon and Ms Jester, no further testimony or discussion ensued regarding the terrace alcohol service.

Mr. Zislis did not mention terrace alcohol service in his remarks, so did not clarify the issue, as Mr Thompson stated he would.

At the end of the hearing discussion, Commissioner Bruce Kuch moved to approve the resolution. With the motion on the floor, before the second, Ms. Jester interrupted the proceedings to slip in a clause that enabled alcohol service on the terrace.

EXHIBIT C. STAFF TESTIMONY AT MAY 2005 HEARING OF NO ALCOHOL SERVICE ON TERRACE

Question at recent 12 May 2010 hearing by Commissioner Lesser regarding above testimony.

At the recent 12 May 2010 hearing, Commissioner David Lesser questioned Ms Jester regarding her above testimony on terrace alcohol service at the 2005 hearing. Ms Jester answered that according to the minutes from the May 2005 hearing, her testimony quoted above referred to a question regarding alcohol service on the Metlox Plaza, not the terrace.

Contrary to Ms Jester's claim, the minutes from the 2005 hearing make no mention of the above transcribed exchange between Commissioner Simon and her, nor do they address a discussion of confusion over alcohol service on the Metlox Plaza, outside the Shade premises.

The transcript from the 12 May 2010 hearing of Commissioner Lesser's question and Ms Jester's answer on the terrace alcohol service issue at the 2005 hearing follows.

TRANSCRIPT FROM 12 MAY 2010 HEARING, REGARDING COMMISSIONER LESSER'S QUESTION ABOUT TERRACE ALCOHOL SERVICE

- 34:05 Commissioner David Lesser, "The issue of service of alcohol on the terrace. It has been suggested that this was not something that the commissioners realized that they had a choice over. And the approval of it occurred at the last minute without their full awareness that they were approving alcohol on the terrace. Do you have any comments on the approval in 2005 of alcohol service on the terrace?"
- 34:25 Laurie Jester, "I think it's very clear in the minutes that there was a question, would alcohol be served outside. And I think there was some confusion over about are we talking outside in the Metlox common plaza. And so there was a clarification, no it would not be outside in the Metlox courtyard, but yes, it would include the terrace. "And then the vote was taken after that, so it was very clear in the minutes that they would be serving alcohol in the terrace. "Now the draft resolution was not that clear, so at that time, there was a clarification that they would include that in the resolution. And that's what the commissioners voted on and approved."

The 2005 minutes contain nothing that corresponds to Ms Jester's testimony above.

The minutes of the 2005 hearing contain nothing corresponding to Ms Jester's testimony quoted directly above. Neither the 2005 minutes nor the hearing video address the topic of confusion over alcohol service on the Metlox Plaza, other than a single, standalone, nonrelated comment by Chair Gerry O'Connor.

Ms Jester's answer to Commissioner's Lesser's question certainly does not address the four-minute exchange between her and Commissioner Simon at the 2005 hearing, in which Ms Jester told the commissioners that the terrace would not have alcohol service, specifically, ***"there would not be service of food or alcohol in that area."***

CONCLUSION.

Unless Ms Jester can provide evidence otherwise, it appears that she deliberately misled the planning commission at the 12 May 2010 hearing, when responding to Commissioner Lesser's question regarding the issue of alcohol service on the terrace at the May 2005 hearing.

EXHIBIT D. ABC DEFINITION OF 'CLOSED'

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor



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



May 11, 2010

Don McPherson
1014 1st Street
Manhattan Beach, Ca 90266

Dear Mr. McPherson,

This letter is in response to your letter dated April 26, 2010 where you posed the following questions:

- (1) Can a hotel with a Type 47 general license exclude the general public, if the premise continues to serve alcoholic beverages to registered guest after the closing hours to the general public?
- (2) Regarding the Department's definition of "closed", would that allow patrons to occupy the premises after closing, if alcoholic beverages are not being sold.

A type 47 licensee cannot exclude the general public while they are exercising the privileges of sales, service and consumption of their alcoholic beverage license

Secondly, patrons can remain in a location after closing hours so long as there is no a sale, service or consumption of alcoholic after the ABC conditioned hours or 2:00 am. The Shade Hotel does not have ABC conditioned hours for sale, service and consumption of alcohol therefore the 2:00 am-time frame would apply. If you have any further questions please contact me at the above phone number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Vincent E. Cravens'. The signature is written over a horizontal line.

Vincent E. Cravens
District Administrator