

PLANNING COMMISSION MEETING OF 2/12/14 LATE & OVERSIZED COMMENTS:

1. Don McPherson 1/31/14: Chronology of Shade CUP's 2002 – Present
2. MBMS 2/12/14: Shade Letter
3. MBUSD 2/11/14: Zislis Group Letter
4. McPherson 2/10/14: Comments Neighborhood Critique of Staff Report
5. Mike Zislis 2/11/14: Shade Hotel Noise Monitoring Analysis
6. Osterhout 2/11/14: Shade Master Use Permit Hearing
7. Partridge 2/10/14: Comments Staff Report for Meeting of 2/12/14
8. Don McPherson 2/12/14: Handout Regarding Inadequate Shade Noise Mitigation

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Angela Soo

Subject: FW: Resend RE: Chronology of Shade CUP's, 2002 to Present
Attachments: 140126-Chronology-Shade-UsePermits-2002to2014.pdf

From: Don McPherson [<mailto:dmcphersonla@gmail.com>]
Sent: Friday, January 31, 2014 9:06 AM
To: Martha Andreani; Christopher Conaway; Paul Gross; Steve Ortmann; Kathleen Paralusz
Cc: John Jalili; David Biggs; Richard Thompson; Laurie B. Jester; Liza Tamura; Nate Hubbard; Wayne Partridge
Subject: Resend RE: Chronology of Shade CUP's, 2002 to Present

Planning Commission
City of Manhattan Beach
Via Email

Subject: Resend of Shade Hotel CUP Chronology

Yesterday, I emailed the chronology of Shade Hotel CUP's from 2002 to present, but the city rejected the email.

Today, I attach only the chronology, but include a link to DropBox, for all the attachments that provide the evidentiary documentation, such as meeting minutes and other items in the record.

The DropBox folder contains all of the files, including the chronology attached above and the email below. The chronology includes minor edits to the version sent yesterday.

Here are the links to DropBox. Click on either one. If the links do not work, copy the long one into your browser.

[DropBox-Link-ShadeHotel-CUP-Chronology](#)

<https://www.dropbox.com/sh/fkpv9fn59yzauw1/vB3RsTaIO2>

As always, if you cannot obtain the attachments or attached chronology, please inform me.

Thanks,
Don McPherson
1014 1st St, Manhattan Beach CA 90266
310 487 0383
dmcphersonla@gmail.com

From: Don McPherson [<mailto:dmcphersonla@gmail.com>]
Sent: 30 January, 2014 16:41
To: Martha Andreani (mandreani@citymb.info); Chris Conaway (cconaway@citymb.info); Paul Gross (pgross@citymb.info); Steve Ortmann (sortmann@citymb.info); Kathleen Paralusz (kparalusz@citymb.info)
Cc: John Jalili (jjalili@citymb.info); David Biggs (dbiggs@citymb.info); Richard Thompson (rthompson@citymb.info); Laurie Jester (ljester@citymb.info); Liza Tamura (LTamura@citymb.info); Nate Hubbard (natehubz@mac.com); Wayne Partridge (wepmako@gte.net)
Subject: Chronology of Shade CUP's, 2002 to Present

Planning Commission

City of Manhattan Beach
Via Email

Subject: Chronology of Shade Hotel Use Permits, 2002 to Present

At your January 22 meeting, Commissioner Gross requested background information and documentation on the various lives of the use permits for Shade Hotel.

The first attachment in this email provides a bulleted “Chronology” of significant events, since approval of the Metlox Master Use Permit, Resolution 5770, in July 2002. The second attachment provides the supporting documentation in 33 exhibits, all in the public record.

The seven-page Chronology has a reasonable amount of white space and stands more or less alone, without the need to refer to the supporting documentation.

I suggest you carefully review the events up to and including the city hearings on the 2005 CUP, which remains in effect, according to staff. **This early material includes critically important facts regarding intent and interpretation of 2005 CUP requirements, that the 2010 planning commission did not have before them.** The hearings comprise the PC meeting on 25 May 2005 and the council consent calendar item on 21 June 2005.

The third attachment provides excerpts for all Shade material in minutes of meetings conducted by the planning commission [PC] and city council from 2005 to present. Additionally, the Chronology includes hot links to the city website, if commissioners wish to download clean copies of the minutes. The excerpts have annotations relative to the citations in the Chronology.

These annotations in the minutes excerpts typically constitute underlined statements for facts cited in the Chronology.

The fourth attachment provides a legal opinion filed by my attorneys with the city, that the Shade Hotel 2010 CUP took effect when approved by the city council in September 2010. That is now water under the bridge, so we now focus on amending the Shade use permit, whatever that is, to stop the noise disturbances in the adjoining neighborhood.

The fifth attachment is a briefing on Shade Hotel that we presented on December 9, to Interim City Manager Jalili.

The sixth attachment provides a little analogy, to assist in understanding the dB unit of sound.

The Exhibits and Minutes are bookmarked, which will help you greatly to navigate.

Thanks,

Don McPherson
1014 1st St, Manhattan Beach CA 90266
310 487 0383
dmcphersonla@gmail.com

Copy: J. Jalili, D. Biggs, R. Thompson, L. Jester, L. Tamura, N. Hubbard, W. Partridge

P.S. Considering my experience last week, lots can go wrong with this email from here, through the city, and then to addresses. Please inform me as to any problems.

CHRONOLOGY OF SHADE HOTEL USE PERMITS

30 January 2014

16 Jul 2002. **Metlox Master Use Permit, Resolution 5770, Alcohol Conditions [Exhibit 1]**

- Use permit Reso 5770 permitted Shade to have full-liquor mini-bar in rooms only and to serve only wine and beer to hotel guests in common areas. The CUP did not permit full-liquor service in common areas nor alcohol service to the general public; and,
- Reso 5770 Condition 38. “The Inn may provide beer and wine service for its guests only, and may also provide full liquor self-service in room ‘mini-bars’.” [Exhibit 1, Reso 5770]

August 2004. **Mr. Zislis applied in the annual ABC lottery for a Type 47 license, which permits full-liquor service to the public**

- On 4 October 2004, the ABC informed Mr. Zislis he had won a Type 47 license, one of 25 offered annually in LA County [Telecom with ABC Ms. Richard, 18 Feb 2010]; and,
- Nine months before obtaining city approval for full liquor service to the public, Mr. Zislis took action with the ABC to obtain the required license that would violate Condition 38 in Reso 5770, which limited alcohol service to hotel guests.

26 Jan 2005. **Mr. Zislis applies to the ABC for the full-liquor service Type 47 license**

- Mr. Zislis did not apply for the ABC Type 70 license for hotels, which permits full-liquor service, but does not permit service to the public, as does the Type 47 [Exhibit 2];
- In Exhibit 3 dated 2 Feb 2011, Ms. Jester stated that the Type 70 hotel license would not have worked, because it “would not allow the sale of alcohol to the general public,” exactly what the city council intended for Shade with Condition 38 in Reso 5770; and
- Purportedly, the city has no records of meetings with the ABC, regarding discussions on the Shade Hotel license, except for an ABC letter approving the Type 47 license.

25 May 2005. **PC hearing on Shade application for full-alcohol service to the general public**

[\[25May2005-PC-Minutes\]](#) , Minutes Excerpts Pg 2; **The minutes materially misrepresent testimony in the video.** See Exhibit 4.]

- Staff did not present to the 2005 PC the Type 70 hotel alcohol license as an option to the Type 47, for which Mr. Zislis applied;
- Staff testified to the 2010 PC, “We looked at all of the (other) licenses and **there wasn’t one that worked for what the applicant wanted to do.**” [12 May 2010 video, 00:32 hh:mm];
- At the 2005 hearing, Ms. Jester testified the terrace would not serve food or alcohol. [Exhibit 4];
- Shortly later, Mr. Zislis testified that the terrace would close for service at 10 AM weekdays and 11AM weekends, with seating for 22 occupants. [*Ibid.*];
- At the end of the hearing, Ms. Jester added alcohol and food service to the terrace. [*Ibid.* and Exhibit 5 Finding L, Resolution No. PC 05-08, the “2005 CUP”];
- The above three points represent the sum total of terrace facts received by the 2005 PC. The application, staff report and draft resolution did not mention the terrace. [Exhibits 6, 7 & 8. The 2005 CUP refers to the terrace as the “Porch.”];

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- The 11 June 2006 entertainment permit increased the terrace hours to 11 PM, from 10 AM weekdays and 11 AM weekends in the 2005 CUP Finding L. [Exhibit 9];
- The Shade application, staff report and draft resolution all describe the sound barrier wall between the Zinc Lounge as required to isolate the hotel lobby from the nightclub [Exhibits 6, 7, & 8, Finding O in the 2005 CUP];
- Mr. Zislis's testimony to the 2005 CUP cited the same reason for the sound wall, to isolate the lobby from the Zinc nightclub. [Exhibit 4];
- All entertainment permits from 2006 through March 2013 require the Zinc-lobby wall, [Exhibit 9 provides example for 11 Jul 2006 entertainment permit];
- Shade never implemented the sound barrier wall between the Zinc bar and the lobby.
- The 2005 PC approved the 2005 CUP, Resolution No. PC 05-08; and,
- The 2005 PC amended Condition 38 in the Metlox Master Use Permit Reso, 5770, to permit sale of alcohol to the general public.

21 Jun 2005. City council considered the 2005 CUP as a consent calendar item for appeal

- Councilmembers asked questions regarding changes to the use permit [[21Jun2005-Council-Minutes](#) ; Minutes Excerpts Pg 9];
- Staff failed to disclose the most significant change; that the new alcohol license would permit service to the general public, rather than to hotel guests only; and,
- Council voted to accept and file the planning commission decision for the 2005 CUP.

2005-2009. Police call logs for Shade Hotel disturbances

- During this time, the police received 97 calls regarding Shade disturbances, or two per month for four years. [Exhibit 10]

16 Apr 2009. Shade application for increases in hours, restaurant service and dancing [Exhibit 11]

- Zinc Lounge hours to increase from 11 PM to midnight Sun-Thu and 1 AM Fri-Sat;
- Terrace hours to increase as above, from 10 AM weekdays and 11 AM weekend;
- Rooftop Skydeck hours to increase as above, from 10 PM;
- Restaurant to increase from breakfast and evening tapas to full-service, with lunch;
- Dancing to increase from the 15' by 20' Zinc dance floor to throughout the hotel; and,
- Elimination of the sound-barrier wall requirement between Zinc Lounge and hotel lobby.

24 Jun 2009. First of six PC hearings on new 2010 CUP to supersede the 2005 CUP

- Ten nearby residents complained regarding noise from Shade Hotel. [[24Jun2009-PC-Minutes](#) ; Minutes Excerpts Pg 12];
- Commissioner Andreani stated that the extended hours, size of special events, and extended food service do not comply with the intended use of the property [*Ibid.*];
- Commissioner Paralusz opposed extended hours, because of noise impacts. She supported extended food service [*Ibid.*];
- Commissioner Lesser requested a detailed description of noise mitigation measures and an acoustic study. He supported patrons exiting to the west into Metlox Plaza. [*Ibid.*];

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- PC Chair Seville-Jones opposed extended hours, but accepted lunch service. She desired patrons exiting to the west and requested more on noise mitigation [*Ibid.*]; and,,
- The PC continued the public hearing to 22 July 2009.

22 Jul 2009. Second of six PC hearings on new 2010 CUP to supersede the 2005 CUP

- Many residents testified in favor of Shade Hotel. Five nearby residents opposed the proposal, because of noise. [[22Jul2009-PC-Minutes](#) ; Minutes Excerpts Pg 20];
- Commissioner Paralusz supported extension of hours to midnight for Friday and Saturday, contingent on other restrictions and favored patrons exiting west. [*Ibid.*];
- Commissioner Andreani requested a noise report before considering extended hours. She favored patrons exiting to the west [*Ibid.*];
- Commissioner Lesser stated Shade had “traumatized” the neighborhood. [22 Jul 2009 video, 04:14 hh:mm] He supported extended hours, contingent on an acoustic analysis and a substantive plan for noise mitigation. He favored west exit of patrons [*Ibid.*];
- Chair Seville-Jones stated she could not agree with extension of hours, until the existing noise disturbances addressed [*Ibid.*]; and,
- The PC tabled the public hearing.

28 Oct 2009. Third of six PC hearings on new 2010 CUP to supersede the 2005 CUP

- The City acoustic expert, Behrens, presented a noise study, which showed in the residential area, that Shade did not violate the objective standards of dB levels in the noise ordinance, MBMC 5.48.160. [Exhibit 12];
- Eight residents living near Shade complained about the noise. Many residents not living near Shade either supported or opposed the project [[28Oct2009-PC-Minutes](#) ; Minutes Excerpt Pg 31];
- Commissioner Andreani stated that the noise disturbances result from Shade’s lack of compliance with the Metlox Master Use Permit and failure by the City for enforcement. She observed that Shade had not installed the Zinc-lobby wall required by the 2005 CUP, an area identified as a noise source by the acoustic study [*Ibid.*];
- Commissioner Lesser stated that without question, Shade noise disturbs residents. He observed the city cannot impose noise mitigation measures, without increasing hours. He supported letting the applicant continue to explore noise mitigation [*Ibid.*];
- Commissioner Paralusz believed Shade might violate the subjective standards in the noise ordinance, of disturbing residents. She wanted mitigation measures installed, before considering extension of hours. [*Ibid.*];
- Chair Seville-Jones stated Shade Hotel violates the reasonable-person subjective standard in the noise ordinance. She believed noise mitigation infeasible and suggested denying the application. [*Ibid.*]; and,
- The PC tabled the public hearing.

Nov-Dec 2009.

- Shade and residents met in November for mitigation measure discussions and,
- On 3 Dec 2009, residents submitted their draft for the new Shade CUP. [Exhibit 13]

CHRONOLOGY OF SHADE HOTEL USE PERMITS

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Feb 2010 Residents' presentation on Shade to joint meeting of PC and city council

- Residents testified of having received no response from staff regarding their submission of draft CUP. [Minutes not available on city website]

Mar 2010. Behrens' analysis report of noise mitigation effectiveness

- Behrens analyzed noise reduction for a double-door vestibule at the front entrance and partial enclosure of the terrace, with noise reductions of 6 to 8 dB and 6 to 10 dB, respectively. [Exhibit 14]
- Mr. McPherson submitted a report challenging the analytical validity of the Behrens noise reduction report, stating it overestimated noise reductions. [Exhibit 15]

23 Mar 2010 Meeting between residents and Shade regarding a noise-mitigation proposal

- Mr. Hubbard conducted a poll of neighbors regarding the proposed mitigation measures presented at the meeting by Shade. All sixteen replies rejected the Shade proposal.

12 May 2010. Fourth of six PC hearings on new 2010 CUP to supersede the 2005 CUP

- Nine residents in the Shade neighborhood presented evidence of noise disturbances [[12May2010-PC-Minutes](#) , Minutes Excerpts Pg 43];
- In response to Commissioner Lesser, Ms. Jester stated the Hotel/Motel ABC Type 70 license "would not work for the subject application." [*Ibid.*];
- Mr. Zislis testified he would prefer not having a wall separating the Zinc Lounge from the lobby [*Ibid.*];
- Mr. Hubbard testified regarding conditions required by the neighborhood, including the retractable wall between the Zinc Lounge and lobby [*Ibid.*];
- Commissioner Andreani stated she would consider extended hours, only if mitigation measures implemented and tested. She required patron ingress-egress at the west door during nighttime [*Ibid.*];
- Commissioner Seville-Jones stated Shade violates the subjective standards in the noise ordinance and questioned effectiveness of the proposed mitigation measures. She doubted that the application could receive approval [*Ibid.*];
- Commissioner Lesser stated that the applicant has the right to reject noise mitigation measures, and that Mr. Zislis opposes the wall between the Zinc Lounge and lobby.
- Vice-Chair Paralusz doubted that further discussions between Mr. Zislis and the neighbors would prove helpful. [*Ibid.*];
- The commissioners appeared to conclude the matter had reached an impasse [*Ibid.*];
- Mr. Zislis requested a private consultation with Mr. Hubbard [*Ibid.*];
- Upon returning, Mr. Hubbard stated he had conceded the Zinc Lounge-lobby wall and accepted extension of hours, to enable the proceedings to go forward [*Ibid.*];
- Ms. Jester summarized conditions agreed to by Mr. Zislis, Mr. Hubbard and commissioners, to include the following: 1) Elimination of the Zinc-lobby wall; 2) Hours increased to midnight for Friday and Saturday, not including the skydeck, 3) Patron ingress-egress at the west door; 4) Double-door vestibule at the front entrance; and, 5) Full enclosure of the terrace. [*Ibid.*].

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23 Jun 2010. Fifth of six PC hearings on new 2010 CUP to supersede the 2005 CUP

- The written staff report included a draft resolution for the 2010 CUP, based on residents' draft CUP filed December 2009 [Exhibit 16];
- At the hearing, Ms. Jester introduced a new clause in Condition 23, which made it unenforceable. Condition 23 had the intent that the 2010 CUP would take effect, as soon as approved by the city council. [Exhibit 17] The minutes state that Ms. Jester testified the City Attorney prepared the new clause. **The meeting video does not include MS. Jester making that statement.** [[23Jun2010-PC-Minutes](#) , Minutes Excerpts Pg 58];
- Mr. McPherson stated staff had modified language in conditions that completely changed their meaning. He requested the final language brought back in a public hearing, before the PC approved the resolution [*Ibid.*]
- The PC considered every finding and condition in the draft resolution, making several changes [*Ibid.*]; and,
- Without requesting the final language brought back for review in a public hearing, the PC approved the resolution, as No. PC 10-04. [*Ibid.*].

28 Jul 2010. Sixth of six PC hearings on new 2010 CUP to supersede the 2005 CUP

- The PC considered the renamed Resolution No. PC 10-05, to make non-substantive editing changes [[28Jul2020-PC-Minutes](#) , Minutes Excerpts Pg 75];
- Mr. Zislis submitted a request for 13 changes, including the renumbered Condition 22, which originally had the intent that the 2010 CUP would take effect immediately, when approved by the city council [Exhibit 18];
- Mr. Hubbard submitted a request for three changes; two typos and rewording the renumbered Condition 22. [Exhibit 19];
- Commissioner Seville-Jones observed that Condition 22 as written had the intent that the 2010 CUP would take effect when approved by the city council. [Exhibit 20];
- Ms. Jester agreed with Commissioner Seville-Jones regarding Condition 22. [*Ibid.*]; and,
- After making non-substantial edits, but not modifying Condition 22, the PC approved Resolution No. PC 10-05. [*Ibid.*].

11 Aug 2010 Agreement by Mr. Hubbard for more concessions to avoid substantive appeal

- Mr. Zislis proposed additional concessions, in exchange for waiving a substantive appeal;
- Mr. Hubbard entered into an agreement with Mr. Zislis, to make further concessions, in exchange for a pro forma appeal hearing; and,
- On 11 Aug 2010, the Parties filed said agreement with the city. [Exhibit 21]

7 Sep 2010. 15-Minute Appeal of Shade Hotel Resolution No. PC 10-05

- The city council conducted the appeal in summary fashion, complimenting all Parties for reaching an agreement [[7Sep2010-CC-Minutes](#) , Minutes Excerpt Pg 80]; and,
- The city council approved Resolution 6275, the "2010 CUP." [Exhibit 22]

CHRONOLOGY OF SHADE HOTEL USE PERMITS

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Sep 2010. Planning Division directs MBPC to enforce the 2005 CUP, not the 2010 CUP

- Shortly after the city council approved the 2010 CUP, the Planning Division directed the police to enforce the old 2005 CUP, instead of the new 2010 CUP. [Exhibit 23];
- CUP 2010 Finding Y states that Resolution 6275 superseded the 2005 CUP;
- CUP 2010 Sections 5 & 6, state that Resolution 6275 took effect when approved by the city council; and,
- CUP 2010 Condition 46 states, “**Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.”

Oct-Nov 2011. Staff asserted the 2010 CUP never took effect

- On 26 October 2011, during Planning Commission Items, in response to Commissioner Seville-Jones, Director Thompson testified they had not implemented the 2010 CUP, because Mr. Zislis encountered problems providing fire access to the three hotel-room balconies overlooking the terrace [[26Oct2011-PC-Minutes](#) , Minutes Excerpts Pg 82]; and,
- On 9 November 2011, Police Chief Eve Irvine emailed Mr. Hubbard that the police had received directions to enforce the 2005 CUP, because Mr. Zislis had not completed requirements for the 2010 CUP. [Exhibit 24]

19 Feb 2013. At the council meeting, residents asked why the 2010 CUP never implemented

- During public comment, four residents from the Shade neighborhood related continuing noise disturbances and requested the council to do something about the 2010 CUP. [[19Feb2013-CC-Minutes](#) , Minutes Excerpts Pg 84]; and
- In response to Mayor Powell’s questions, Ms. Jester stated that the city cannot force applicants to implement use permits. Furthermore, building officials and the Shade architect met “many, many” without solving some code issues. [Exhibit 25]

Mar-Aug 2013. Public comment testimony to council, meeting staff, & written inputs

- During this time, residents: 1) Testified four times to the council at Public Comment regarding the Shade 2010 CUP issue; 2) Met with staff; and, 3) Provided written input listing privileges from the 2010CUP used by Shade. [Exhibit 26];
- In response to a Public Record Act request, the City Clerk responded that the City had no records regarding code problems that prevented implementation of the 2010 CUP [Exhibit 27]; and,
- Mr. McPherson’s attorneys filed a legal opinion that the 2010 Cup had taken effect when approved in September 2010. [See attached legal opinion, Attachment 4].

3 Sep 2013. The city council conducted a business item to address the 2010 CUP issue

[[3Sep2013-CC-Minutes](#) , Minutes Excerpts Pg 86]

- The written staff report states a use permit cannot take effect until all conditions satisfied, such as the physical noise mitigation in the 2010 CUP. [Exhibit 28]; and,
- Mr. McPherson testified that if the 2010 CUP cannot take effect, then the 2005 CUP never took effect either, because Shade never implemented the sound wall between the

CHRONOLOGY OF SHADE HOTEL USE PERMITS

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Zinc Lounge and the lobby. Therefore, the original Metlox CUP remains in effect, so Shade cannot sell alcohol to the public. [Exhibit 29]

Sep-Oct 2013. Public comment testimony to council, meeting staff, & written input

- During this time, residents: 1) Testified three times to the council at Public Comment regarding the Shade 2010 CUP; 2) Met with staff; and 3) Provided a written input requesting the council to resolve the CUP in issue in a business item. [Exhibit 30]; and,
- At the Sep 17 meeting, Mayor Lesser directed the City Attorney to prepare a legal analysis of why the 2010-CUP never took effect. [17 Sep 2013 video, 05:56 hh:mm]

Nov 2013 Shade CUP application, MBPD citation for noise, & Superior Court complaint

- On 6 Nov 2013, residents met with staff and the Fire Department Chief, who stated as feasible, a fire-code compliant ingress-egress for the terrace;
- In early November 2013, Shade filed an application to modify their CUP, thereby blocking any further action by the city council on use permit violations;
- On 14 Nov 2013, the police cited Shade for violating the noise ordinance [Exhibit 31];
- On 19 Nov 2013, residents testified to council that staff had not kept them informed of activities related to the Shade Hotel CUP, such as the CUP application; and,
- On 27 Nov 2013, the City Prosecutor filed in Superior Court a complaint that Shade violated its use permit and the noise ordinance. [*Ibid.*].

Dec 2013 Resident testimony to council regarding MBMC 10.104.030 and briefing to Interim City Manager Jalili

- At meetings on Dec 3 and Dec 10, residents requested the city council to schedule a business item, to make a determination that Shade has violated its use permit, pursuant to MBMC 10.104.030, Revocation and Modification of Discretionary Permits [Exhibits 32 & 33]; and,
- On 9 Dec 2013, residents presented to Interim City Manager Jalili, an overview briefing of the Shade CUP issue. [See attached Jalili briefing, Attachment No. 5]



Note bookmarks,
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**SHADE HOTEL USE PERMIT
CHRONOLOGY
EXHIBITS
29 JANUARY 2014**

EXHIBIT 1. RESOLUTION 5770, METLOX MASTER USE PERMIT

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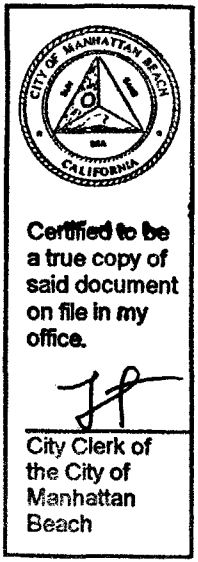
RESOLUTION NO. 5770

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH APPROVING A MASTER USE PERMIT AND COASTAL DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF A NEW COMMERCIAL DEVELOPMENT, PUBLIC AREAS, AND RELATED IMPROVEMENTS, AT THE METLOX SITE- 1200 MORNINGSIDE DRIVE (Metlox, LLC c/o Tolkin Group)

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach, California, hereby makes the following findings:

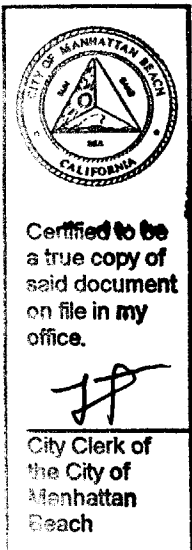
- A. Metlox, LLC c/o Tolkin Group is seeking approval of a Master Use Permit and Coastal Development Permit, to allow the construction of a new commercial development, public areas, and related improvements, at the Metlox site- 1200 Morningside Drive in the City of Manhattan Beach.
- B. In accordance with the Manhattan Beach Local Coastal Program (MBLCP) a Use Permit approval is required for the project in the Downtown Commercial Zone.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, in the non-appealable area, and is subject to a Coastal Development Permit.
- D. The applicant is Metlox, LLC c/o Tolkin Group and the property owner is the City of Manhattan Beach.
- E. The following is a summary of some of the key milestones for the Metlox site:
 - 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner based on a project consisting of 141,000 square feet - project size reduced several times over the years due to public concern and the project proposed is 63,850 square feet
 - April 2001- The City Council certified the EIR and directed Staff and the Tolkin Group to work together to revise the project to:
 - Reduce the size to 60-65,000 square feet
 - Reduce the height to 26 feet, and
 - Consider reducing the height or eliminating the Lookout Tower
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - May 2002- The City Council approved two levels of public parking on the Metlox site
 - June 2002- Application for a Master Use Permit and Coastal Development Permit for the Metlox site submitted
- F. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meeting of June 26, 2002 and continued the public hearing to July 10, 2002. The public hearings were advertised pursuant to applicable law and testimony was invited and received. At the meeting of July 10, 2002, the Planning Commission adopted Resolution No. PC 02-17 determining compliance with the California Environmental Quality Act (CEQA) and a previously certified Environmental Impact Report which includes Mitigation Measures and a Mitigation Monitoring Program, and adopting a Statement of Overriding Considerations, Resolution No. PC 02-18, approving the Master Use Permit and Coastal Development Permit for the commercial development and the public areas, and Resolution No.



Res. 5770

PC 02-19, approving the Master Use Permit and Coastal Development Permit for the subterranean public parking structure. All decisions set forth in those resolutions are based upon substantial evidence received at said public hearings.

- G. The City Council of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meetings of July 16, 2002. The public hearing was advertised pursuant to applicable law and testimony was invited and received. All decisions set forth in this resolution are based upon substantial evidence received at said public hearing.
- H. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, public Library and on the City's website. On June 26 and July 10, 2002 the Planning Commission held public hearings to discuss the proposed project, including the Master Use Permit, Coastal Development Permit, and compliance with the requirements of CEQA. On July 10, 2002 the Planning Commission adopted Resolution No. PC 02-17 determining the project is in compliance with CEQA, and adopting a Statement of Overriding Considerations with regard to unavoidable significant impacts.
- H. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the properties to the north are zoned Downtown Commercial and Public and Semipublic, and the properties to the east are zoned Open Space.
- I. The General Plan designation for the property is Downtown Commercial.
- J. The proposed project will provide a new approximate 63,850 square foot commercial development and approximately 40,000 square feet of public areas. A separate Master Use Permit and Coastal Development Permit for approximately 430 subterranean public parking spaces on the project site is proposed. Street improvements were approved with the Public Safety Facility Use Permit and Coastal Development Permit, including the extension of 13th Street as a two-way street from Morningside Drive east to Valley Drive, conversion of Valley Drive from one-way southbound traffic to two-way traffic between 13th and 15th Streets, and conversion of Morningside Drive to one-way northbound traffic between Manhattan Beach Boulevard and 13th Street.
- K. The existing surface parking lot at 1148 Morningside Drive, approximately 400 square feet in area and located south of the Metlox loading area, may be added to the project site to provide a pedestrian and/or vehicular entryway into the project from Morningside Drive. The City is currently in the process of negotiating the purchase of the parking lot site. This may result in more than three buildings being included in the project however the total approved square footage (63,850 square feet) would not be exceeded. The total parking provided in the subterranean public parking structure would increase by approximately 28 spaces.
- L. Construction of the commercial buildings and public areas are anticipated to take approximately 10 months beginning in October 2003, with completion in August 2004. Prior to construction of the commercial building and the public areas, the subterranean parking structure will be constructed, with construction anticipated from January 2003 through October 2003.
- M. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- N. This Resolution, upon its effectiveness, constitutes the Master Use Permit and Coastal Development Permit for the subject property.
- O. Based upon State law, and MBLCP Section A.84.050, relating to the Master Use Permit application for the proposed project, the following findings are hereby made:
 - 1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed Metlox project is consistent with the Downtown Commercial (CD) Zone purpose in that the appearance and



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effect of the buildings are harmonious with the character of the area in which they are located. The building materials, scale, roof pitches, and details are compatible with the existing Downtown environment, the Civic Center, and the surrounding commercial and residential uses. The scale and articulation of the façade of the proposed structures is consistent with the surrounding residential and commercial area, which has 1 to 3 story buildings, approximately 30 feet in height. The Metlox project is primarily 2-story, 26 feet in height with limited architectural features up to 30 feet in height, with the possibility of a limited third story for the Inn.

The parking and loading facilities are adequate in that they will expand the existing onsite parking and will exceed the parking demand. The buildings are also pedestrian oriented, providing doors and windows at the sidewalk and Plaza, and maintaining pedestrian links within the site and to the Civic Center and other surrounding sites which then link to parks, open space and the beaches.

The project provides a full range of office, retail commercial, and service commercial uses needed by residents of, and visitors to, the city and region. Metlox will strengthen the city's economic base, but also protect small businesses that serve city residents. The project is intended to create a suitable environment for various types of commercial uses, and protect surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts. Additionally the Metlox project is intended to accommodate a broad range of community businesses and serves beach visitors.

- 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the Metlox project is consistent with the following General Plan Goals and Policies. Additionally, since the project is consistent with the Local Coastal Program (LCP), as discussed below, and since the LCP is consistent with the General Plan, the project is also consistent with the General Plan.

GOALS AND POLICIES: LAND USE

GOAL 1: MAINTAIN THE LOW PROFILE DEVELOPMENT AND SMALL TOWN ATMOSPHERE OF MANHATTAN BEACH.

Policy 1.1: Limit the height of new development to three stories where the height limit is 30 feet or to two stories where the height limit is 26 feet, in order to protect the privacy of adjacent properties, reduce shading, protect views of the ocean, and preserve the low profile image of the community.

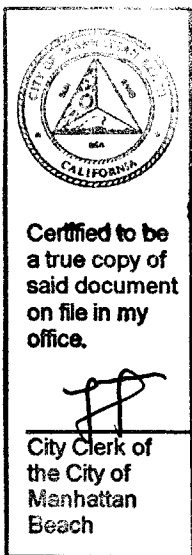
Policy 1.2: Require the design of all new construction to utilize notches, or balconies, or other architectural details to reduce the size and bulk.

Policy 1.3: Require the use of landscaping and setbacks to reduce the bulk in new buildings and add visual interest to the streetscape.

Policy 2.3: Protect public access to and enjoyment of the beach while respecting the privacy of beach residents.

GOAL 3: ENCOURAGE THE PROVISION AND RETENTION OF PRIVATE LANDSCAPED OPEN SPACE.

Policy 3.1: Develop landscaping standards for the Downtown which serve as a unifying and humanizing theme for the area.



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Policy 3.3: Encourage the replacement of mature trees removed by new construction activity throughout the City with specimen trees.

Policy 4.1: Protect all small businesses throughout the City which serve City residents.

Policy 5.1: The City recognizes the need for a variety of commercial development types and has designated areas appropriate for each. The City shall encourage development proposals which meet the intent of these designations.

Policy 5.2: Require the separation or buffering of low-density residential areas from businesses which produce noise, odors, high traffic volumes, light or glare, and parking through the use of landscaping, setbacks, and other techniques.

GOAL 6: CONTINUE TO SUPPORT AND ENCOURAGE THE VIABILITY OF THE "DOWNTOWN" AREA OF MANHATTAN BEACH.

Policy 6.1: Encourage the upgrading and expansion of business in the Downtown area to serve as a center for the community and to meet the needs of beach area residents.

Policy 6.2: Develop and encourage the use of design standards for the Downtown area to improve its visual identification as a unique commercial area.

GOAL 7: PROTECT EXISTING RESIDENTIAL NEIGHBORHOODS FROM THE INTRUSION OF INAPPROPRIATE AND INCOMPATIBLE USES.

- 3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the issuance of a certificate of occupancy.
- 4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the Metlox commercial development and public areas portion of the EIR will all be complied with. Conditions to conform to applicable Code standards will apply. A temporary construction plan will ensure that construction impacts will be minimized to the extent feasible.

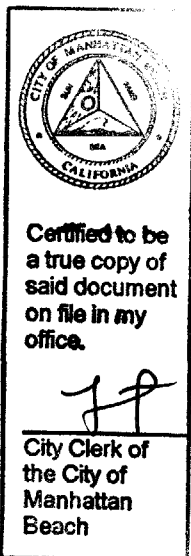
P. Based on the MBLCP Sections A.96.150 the following findings are made:
That the project, as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified Manhattan Beach Local Coastal Program, since the project is consistent with the following applicable policies from Chapter 4 of the Local Coastal Program:

COASTAL ACCESS POLICIES

A. Access Policies

Policy I.A.1: The City shall maintain the existing vertical and horizontal accessways in the Manhattan Beach Coastal Zone.

Policy I.A.3: The City shall preserve pedestrian access systems including the Spider Web park concept (Spider Web park concept: a linear park system linking the Santa Fe railroad right-of-way jogging trail to the beach with a network of walkstreets and public open spaces. See Figure NR-1 of the General Plan).



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B. Transit Policies

Policy I.B.3: The City shall encourage pedestrian and bicycle modes as a transportation means to the beach.

II. COASTAL LOCATING AND PLANNING NEW DEVELOPMENT POLICIES

Policy II.1: Control Development within the Manhattan Beach coastal zone.

A. Commercial Development

Policy II.A.2: Preserve the predominant existing commercial building scale of one and two stories, by limiting any future development to a 2-story maximum, with a 30' height limitation as required by Sections A.04.030, A.16.030, and A.60.050 of Chapter 2 of the Implementation Plan.

Policy II.A.3: Encourage the maintenance of commercial area orientation to the pedestrian.

Policy III.3: The City should continue to maintain and enforce the City ordinances that prohibit unlawful discharges of pollutants into the sewer system or into the tidelands and ocean. (Title 5, Chapter 5, Article 2; Chapter 8).

Policy III.14: City Storm Water Pollution Abatement Program: The City of Manhattan Beach has initiated a storm water pollution abatement program that involves not only several of the City departments working together, but also the other cities in the Santa Monica Bay watershed. The initial action plan was to create a new ordinance regarding illegal dumping to catch basins and the storm drain systems. In the process it was found that a number of ordinances already exist on the books that cover most of the original concerns. It was determined that those significant codes contain strong enforcement capabilities and that the present city staff needs to be educated and made aware of those existing codes, some of which date back to the 1920's but are still enforceable. The program is to develop codes and building standards to implement the Good Housekeeping requirement and the Best Management Procedures of the Santa Monica Bay Restoration Project Action Plan, educate staff, eliminate potential loopholes within the existing code sections, and initiate supplemental ordinances regarding storm water pollution abatement giving the County the right to prosecute polluters to the County storm drain system (a requirement of the Santa Monica Bay storm way discharge permit).

The Final EIR for the Civic Center/Metlox project also provides a discussion on consistency with the policies of the LCP.

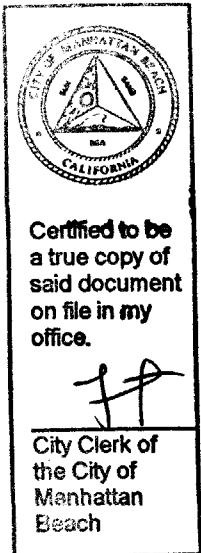
SECTION 2. The City Council of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit and Coastal Development subject to the following conditions.

General Conditions

1. The proposed project shall be in substantial conformance with the plans submitted and the project description, as approved by the City Council on July 16, 2002, subject to any special conditions set forth below. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.

Site Preparation/Construction

2. A Traffic Management and Construction Plan shall be submitted in conjunction with any construction and other building plans, to be approved by the Police and Public Works Departments prior to issuance of building permits. The plan shall provide for the management of all construction related traffic during all phases of construction, including but not limited to delivery of materials and parking of construction related vehicles.



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3. During the demolition and construction phases of development, a daily clean-up program for all areas affected by the project shall occur, including the pickup of all debris (utilizing an approved trash dumpster or other trash control method) at day's end and the sweeping and continued watering down of the site to assist in mitigating the movement of dirt and dust upon adjoining properties.
4. All electrical, telephone, cable television system, and similar service wires and cables shall be installed underground to the appropriate utility connections in compliance with all applicable Building and Electrical Codes, safety regulations, and orders, rules of the Public Utilities Commission, the serving utility company, and specifications of the Public Works Department. Existing utility poles and lines on the project site and immediately adjacent to the project site, not including any across any street, must be placed underground pursuant to the requirements of Public Works.

Operational

5. Operations shall comply with all South Coast Air Quality Management District Regulations and shall not transmit excessive emissions or odors across property lines.
6. Plans shall be submitted to the Director of Community Development for review and approval that shows all proposed rooftop mechanical equipment screened from the public right-of-way in accordance with the requirements of the MBMC. Equipment and screening may be incorporated into the architectural features allowed on the buildings. Equipment shall be installed per the approved plans prior the building permit final.
7. Post construction (operational) noise emanating from the site shall be in compliance with the Manhattan Beach Municipal Code Noise Ordinance, Chapter 5.48.
8. Delivery operations shall be conducted in such a manner so as not to be in violation of the city's noise ordinance. The term "delivery activities" shall include, vehicles or delivery equipment being started or idled, playing of radios, tape players or other devices, loud talking, and unloading of materials. Business delivery doors shall not be opened before hours of permitted deliveries as specified herein. Delivery vehicles shall park in designated commercial loading areas only and shall not obstruct designated fire lanes.
9. Landscaping and maintenance activities (including, but not limited to parking lot cleaning, grounds-keeping, and outdoor equipment cleaning) shall occur in accordance with a Landscape Maintenance Plan to be approved by the Director of Community Development. The Maintenance Plan shall establish permitted hours of operation for specific maintenance activities and areas of site, based on compatibility with nearby land uses, both on and adjacent to the center.
10. All landscaping materials shall be maintained to the satisfaction of the Director of Community Development.
11. Routine trash collection on the entire site shall be consistent with the hours that are specified in the City's trash contract (which is currently after 7:30 a.m. and before 6:00 p.m.), unless other hours are approved by the Public Works Director. Construction material trash collection activities (drop off and pick-up) shall be limited to hours of permitted construction as specified in the City's Noise Ordinance, which is between 7:30 and 6:00 p.m. Mondays through Fridays, and between 9:00 a.m. and 6:00 p.m. on Saturdays.
12. All trash storage areas shall be screened, secured and maintained in a sanitary condition and all tenants/business owners shall take appropriate measures to prevent prohibited or undesirable activities as defined in the Municipal Code (Sec. 5.24.060) including but not limited to, scavenging, excessive accumulation of refuse, and allowing any portion of the property to become a breeding ground for flies, wild rodents or other pests. Trash storage areas shall be designated and bins shall be maintained within the designated areas.
13. The facility operator shall prohibit employees from parking personal vehicles on the surrounding public streets. Employees must park on-site or be transported to the site from other off-street parking facilities subject to Community Development Department approval. The property owner shall include prohibitions against employee parking on local streets in any lease and/or rental agreements.

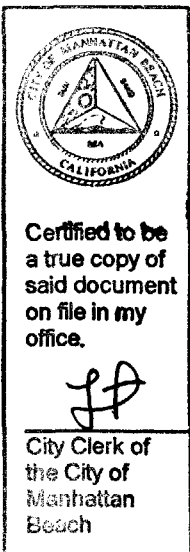


EXHIBIT 1. RESOLUTION 5770, METLOX MASTER USE PERMIT

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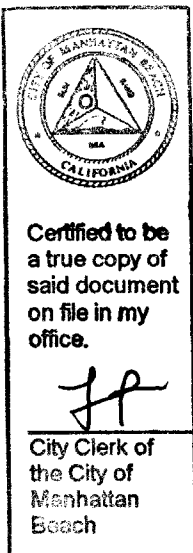
- 1 14. The operators of the facility shall police the property, and all areas immediately adjacent to the businesses, during the hours of operation to keep it free of litter.
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- 3 15. The operators of the facility shall provide adequate management and supervisory techniques to prevent loitering and other security concerns outside the subject businesses.
- 4 16. Public bicycle parking shall be incorporated into the design of the project. Plans shall be submitted to the Director of Community Development for review and approval showing the bicycle parking.
- 5 17. Safety and security features shall be incorporated into the design of the project. The Security Plan shall be submitted to the Police Chief and Director of Community Development for review and approval. The Security Plan shall include but not be limited to, security lighting.
- 6
- 7 18. The applicant shall make every effort to provide shower facilities for use by the office tenants. The facilities shall be shown on the plans and installed prior to the issuance of a Certificate of Occupancy.
- 8
- 9 19. The applicant is required to eliminate any Congestion Management Plan (CMP) debits created by the project prior to the issuance of a Building Permit for the Commercial buildings.
- 10 20. All tenants in the project are encouraged to join the Downtown Business Association.

Public Works

- 11 21. The plans shall be checked and stamped for approval by the Public Works Department before the building permit is issued. Project must comply with all Public Works requirements. All Public Works notes and corrections must be printed on the plan and all requirements must be completed per the approved plans prior to the issuance of a building final.
- 12
- 13 22. The new trash enclosure(s) shall meet all Public Works requirements. Trash must be picked up by a refuse company as often as necessary to ensure that the trash enclosure has adequate space to accommodate the needs of the entire site. No trash storage/disposal shall be placed in the public right-of-way on Manhattan Beach Boulevard, Morningside Drive, 13th Street or Valley Drive.
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- 15 23. No outside cleaning of kitchen floor mats or other items will be permitted on the site. All kitchen floor mats and other items shall be cleaned in such a manner that the run-off wastewater drains only to a private sewer drain on the premises.
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- 18 24. There shall be no discharge of construction wastewater, building materials, debris, or sediment from the site.
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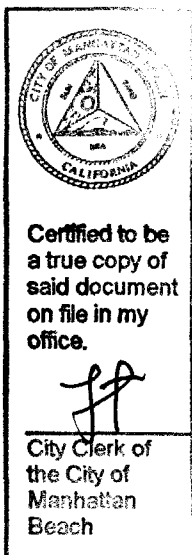
Land Use

- 20 25. The following land uses and maximum square footages, as defined and approved by the DDA/Ground Lease, and shall allowed:
- 21 A) Retail Sales and services, including food service uses, 20,000 square feet total maximum, including:
- 22 a) Retail sales;
- 23 b) Personal Services;
- 24 c) Retail/specialty food service uses that are non-destination type establishments such as a bakery, tea salon, coffee house, ice cream shop, yogurt, candy, cookies, juices, and other similar limited specialty food items. Each business is limited to a maximum of 300 square feet of outdoor seating area, including table, chairs and benches, within the Town Square and Public Areas-; and,
- 25 d) Similar uses identified as permitted (by right) in the underlying zoning district (CD) which are not included in this Master Use Permit shall be left to the discretion of the Director of Community Development.
- 26
- 27 B) Eating and Drinking Establishments (restaurants), two (2) total maximum, 8,000 square feet total maximum, (including 6,400 square feet maximum dining/seating area regardless of whether located indoors or outdoors).
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- C) Offices, however no offices shall be permitted on the first floor, and Personal Services, 17,500 square feet total maximum, including;
- a) Offices, Business and Professional;
 - b) Personal Services; and,
 - c) Similar uses identified as permitted (by right) in the underlying zoning district (CD) which are not included in this Master Use Permit shall be left to the discretion of the Director of Community Development.
- D) Visitor Accommodations (Bed and Breakfast Inn), 35 to 40 rooms, 26,000 square feet total maximum.
26. Uses identified as conditionally permitted (use permit required) in the underlying zoning district (CD) shall require an amendment to the Master Use Permit at a duly noticed public hearing, unless otherwise permitted in this Resolution.
27. There shall be no drive-through service allowed in conjunction with any Eating and Drinking Establishment (restaurant) or any other use.
28. The Inn may provide wedding, party, and other special event services in their Courtyard, Meeting Room, and Living Room, as a secondary service to the primary Inn use. These types of events are limited to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday. Events are limited to a maximum of 60 people, or whatever the maximum occupancy is as determined by the Building or Fire Code limits, whichever is less. The Director of Community Development may approve Temporary Use Permits for events which exceed 60 people, not to exceed the maximum occupancy as allowed by the Building or Fire Code limits. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. The availability of the Inn for special events shall not be marketed as the primary use.
29. The hours of operation for the site shall be permitted as follows:
- Restaurant, food service, retail and personal service: Up to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday.
 - Offices: Up to 24 hours
 - Town Square and Public Areas: Up to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday, seasonal, depending on weather.
30. The second floor roof deck with the jacuzzi at the Inn shall be redesigned. The floor level of the roof deck may not exceed 21 feet in height, and the deck area must be properly screened. The deck area may only be open for use from 6:00 a.m. to 10 p.m., seven days a week.
31. Any outdoor uses in the Town Square and Public Areas shall meet all access and safety requirements of the Uniform Building and Fire Codes and any other similar safety regulations. Retail and food service carts or kiosks may be allowed subject to review and approval of the City Manager. Standard liability insurance naming the City as additionally insured shall be provided and subject to approval of the Director of Community Development. Insurance shall meet approval of the City's Risk Manager and shall be as set forth in the DDA/Ground Lease (currently a minimum \$3 million insurance endorsement). Tenants with said outdoor uses shall be responsible for maintaining the area clean and free of trash and debris.
32. A restroom shall be available to the public at all times when the non-office uses are open to the public. Adequate signage to direct the public to the restroom(s) shall be provided throughout the Town Square and public areas, subject to review and approval of the Director of Community Development. The tenant or building owner, not the City, shall be responsible for maintaining and securing the restroom(s).
- Design Review**
33. The applicant shall submit plans, material boards, color samples, renderings, and other visual displays for Design Review to the Planning Commission at a noticed public hearing prior to issuance of building permits for the commercial buildings. The general location of the building footprints, as shown on the plans approved by the Planning Commission on July 10, 2002, are approved with this



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Master Use Permit and Coastal Development Permit and are not subject to Design Review. The plans shall address the following design issues and details:

- Facades/elevations
- Colors, textures, and materials
- Landscaping, lighting, signage, and public art
- Gateway treatment
- Town Square, 13th Street Garden and Public areas
- Civic Center linkage, relationship and compatibility
- Streetscape design- pavement treatment, sidewalks, pedestrian crosswalks, street furniture
- Pedestrian orientation
- Incorporation of the Metlox sign

The plans and details shall address linkage to the Downtown and the Civic Center, pedestrian orientation, the Downtown Design Guidelines, the City's vision for the site, access from Morningside Drive near 12th Street (12th Walk), and other design details of the project. The possibility of limited third story rooms for the Inn will be considered.

34. A sign program in accordance with the requirements of the MBMC shall be submitted for review and approval of the Director of Community Development. Signage shall be consistent with the Downtown Design Guidelines and the conceptual plans submitted for Design Review. Signs shall be installed per the approved plans prior the building permit final.

35. An outdoor lighting program shall be submitted for review and approval of the Director of Community Development. Outdoor lighting shall be shielded and meet all other requirements of the MBMC and shall be consistent with the plans submitted for Design Review. Lighting shall be installed per the approved plans prior the building permit final.

36. A site landscaping plan, utilizing drought tolerant plants to the extent feasible, shall be submitted for review and approval. The landscaping shall be in compliance with the Downtown Design Guidelines and the requirements of the MBMC. All plants shall be identified on the plan by the Latin and common names. The current edition of the Sunset Western Garden Book contains a list and description of drought tolerant plants suitable for this area. This plan shall be reviewed and approved by the Public Works and Community Development Departments. Landscaping shall be installed per the approved plans prior to the building permit final.

37. A low pressure or drip irrigation system shall be installed in landscaped areas. Details of the irrigation system shall be noted on the landscape plans. The type and design shall be subject to the approval of the Public Works and Community Development Departments. Irrigation shall be installed per the approved plans prior to the building permit final.

Alcohol

38. The two restaurants may provide full liquor service, which is incidental to, and in conjunction with, the service of food. Service of alcohol at the restaurants shall be in conjunction with the service of food at all times during all hours of operation. The Inn may provide beer and wine service for its guests only, and may also provide full liquor self-service in room "mini-bars". Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.

39. Restaurant uses, including the service of alcoholic beverages, shall be limited in their operation to the hours between 6:00 a.m. to 11:00 pm, Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday.



Certified to be a true copy of said document on file in my office.

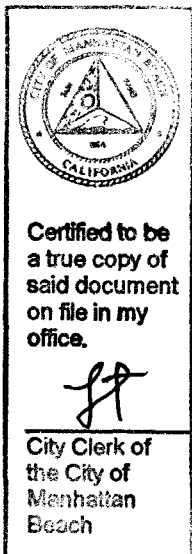
City Clerk of the City of Manhattan Beach

Entertainment

40. Dancing and amplified live music is prohibited within the business establishments. Non-amplified live music or entertainment, limited to background-type music, with a maximum of 2 entertainers is permitted. Any live entertainment proposed in conjunction with any use (with exception of background music, television and no more than 3 games or amusements per business establishment) shall require a Class I annual Entertainment Permit consistent with the provision of Section 4.20.050 of the Manhattan Beach Municipal Code. The Entertainment Permit shall be submitted to the Director of Community Development for review and approval, with input from the Police and Fire Departments. Appropriate conditions shall be placed on the Permit to minimize potential negative impacts. These conditions shall include, but not be limited to, hours, size and location of performance or dance area, size of band and number of performers, numbers of performance days per week, type and location of amplification, speakers and soundproofing, and volume of amplification. The Permit will be reviewed annually to determine if it is appropriate to renew the permit, deny the permit, or modify the conditions of approval.

Procedural

- 41. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.
- 42. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.
- 43. Lapse of Approval. The Master Use Permit shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.
- 44. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.
- 45. Effective Date. Unless appealed to the City Council, the subject Master Use Permit and Coastal Development Permit shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
- 46. Review. All provisions of the Use Permit are subject to review by the Community Development Department 6 months after occupancy and yearly thereafter. At any time in the future, the Planning Commission or City Council may review the Use Permit for the purposes of revocation or modification. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.
- 47. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
- 48. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.
- 49. Assignment. Pursuant to Section A.96.220 of the City's certified Local Coastal Program (Implementation Program), the Coastal Development Permit may be assigned to any qualified persons subject to submittal of the following information to the Director of Community Development.
- 50. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.



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Mitigation Measures (CEQA)

The following Mitigation Measures as identified in the EIR, and as discussed within Resolution No. 5769 adopted July 16, 2002, determining compliance with CEQA, are applicable to the Metlox project.

51. AESTHETICS/VIEWS

The project shall be developed in conformance with the following City of Manhattan Beach Downtown Design Guidelines:

- A. Where feasible, incorporate landscaped areas into new development and existing development. Such landscaped areas could utilize window boxes and similar landscape amenities. Landscaping should be designed to enhance and accentuate the architecture of the development.
- B. Signs should be designed at a scale appropriate to the desired village character of downtown. The size and location of signs should be appropriate to the specific business. Pre-packaged "corporate" signs should be modified to a scale and location appropriate to the desired village character of downtown Manhattan Beach. Signs should not block, or obliterate, design details of the building upon which they are placed. Pedestrian oriented signage is encouraged. Such signs may be located on entry awnings, directly above business entrances, and "hanging signs" located adjacent to entrances.
- C. Low level ambient night lighting shall be incorporated into the site plans to minimize the effects of light and glare on adjacent properties.

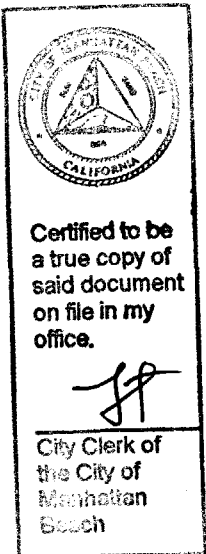
52. Air Quality

- A. The construction area and vicinity (500-foot radius) shall be swept and watered at least twice daily.
- B. Site-wetting shall occur often enough to maintain a 10 percent surface soil moisture content throughout all site grading and excavation activity.
- C. All haul trucks shall either be covered or maintained with two feet of free board.
- D. All haul trucks shall have a capacity of no less than 14 cubic yards.
- E. All unpaved parking or staging areas shall be watered at least four times daily.
- F. Site access points shall be swept/washed within thirty minutes of visible dirt deposition.
- G. On-site stockpiles of debris, dirt, or rusty material shall be covered or watered at least twice daily.
- H. Operations on any unpaved surfaces shall be suspended when winds exceed 25 mph.
- I. Car-pooling for construction workers shall be encouraged.

53. PUBLIC SAFETY

Although no significant impacts upon public safety (police services) have been identified, the following mitigation measures shall be implemented to further reduce the risk to public safety.

- A. Prior to the issuance of building permits, project site plans should be subject to review by the Manhattan Beach Police Department and Manhattan Beach Fire Department. All recommendations made by the Manhattan Beach Police Department and Manhattan Beach Fire Department relative to public safety (e.g. emergency access) should be incorporated into the project prior to project completion.
- B. Prior to the approval of the final site plan and issuance of each building permit, plans shall be submitted to the Manhattan Beach Police Department for review and approval for the purpose of incorporating safety measures in the project design, including the concept of crime prevention through environmental design (i.e., building design, circulation, site planning, and lighting of



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parking structure and parking areas). Design considerations should include an evaluation of electronic surveillance systems, emergency call boxes and lighting systems in addition to architectural elements that allow direct vertical and horizontal views outside of the structure.

- C. The provision of an on-site valet attendant and/or patrol by private security officers during operation of the project shall be considered at peak parking demand times, as needed. This mitigation measure shall be incorporated into the conditions of project approval (i.e., Master Land Use Permit or Development Agreement) at the discretion of the City Council.

54. RISK OF UPSET

Potential impacts associated with the release of potentially hazardous substances during demolition activities can be mitigated to a level of insignificance by the following mitigation measure:

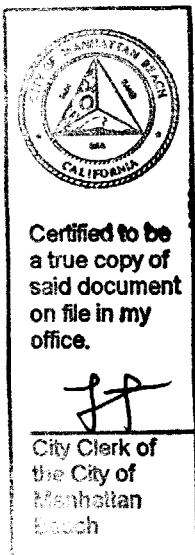
- A. Comprehensive surveys for asbestos containing materials (ACMs), lead based paint, and Poly Chlorinated Biphenyls (PCBs) shall be conducted by a registered environmental assessor for each existing on-site structure to be demolished or renovated under the proposed project. ACMs, lead based paint, or PCBs found in any structures shall be stabilized and/or removed and disposed of in accordance with applicable laws and regulations including, but not limited to, SCAQMD Rule 1403 and Cal OSHA requirements.
- B. If during construction of the project, soil contamination is suspected, construction in the area should stop and appropriate Health and Safety procedures should be implemented. The Department of Toxic Substances Control (DTSC) Voluntary Cleanup Program (VCP) should be contacted at (818) 551-2866 to provide the appropriate regulatory oversight.

55. TRANSPORTATION AND CIRCULATION

REQUIRED MITIGATION MEASURES

The following traffic-related mitigation measures are required to mitigate potentially significant project-related traffic impacts:

- A. Prior to any construction activities, a Construction Plan, which shall include phasing of construction of the project, shall be submitted for review and approval to the City of Manhattan Beach Public Works Department and Community Development Department. Construction Plans shall address parking availability and minimize the loss of parking for existing on-site Civic Center operations that will continue to operate throughout the construction period, as well as provide parking for Civic Center visitors and construction workers. To minimize potential adverse impacts upon the Downtown Commercial District construction workers shall not be permitted to park within in the adjacent public parking structures or street parking spaces. The parking plans shall provide adequate on-site parking areas for construction workers and/or consider providing additional construction parking at off-site parking lot locations and providing bussing or car-pool services to the construction site. The proposed construction plan shall designate appropriate haul routes into and out of the project area. Truck staging areas shall not be permitted on residential roadways or adjacent to any school site.
- B. Manhattan Beach Blvd. & Sepulveda Blvd. -Contribute to the installation of dual left-turn lanes in the northbound and eastbound directions. A fair-share contribution will be required. The City is currently actively pursuing implementation of this Mitigation Measure. These projects are identified in the City's 2004-2005 Capital Improvement Program (CIP). The City is currently in the process of having engineering studies conducted for the design of the dual left-turn lanes. A Grant application will be submitted to the Metropolitan Transportation Authority (MTA) in their Call- for- Projects after completion of the engineering study.
- C. Highland Avenue & 13th Street -Install a two-phase signal at this intersection if warranted based on actual traffic counts taken after the project is developed. The implementation of peak-hour southbound left-turn restrictions at this intersection is another option to mitigate project impacts as this restriction would improve traffic flow through this intersection, as it would reduce northbound through and southbound left-turn conflicts, and allow for the free flow of southbound



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traffic. In addition, the conversion of 13th Street to a one-way eastbound scheme is another option.

- D. Manhattan Beach Blvd. & Valley Drive/Ardmore Ave. -Install a dual southbound left-turn lane at this intersection at such a time that two left turn lanes are warranted based on actual traffic counts.
- E. The City Traffic Engineer shall conduct secondary "post-project" traffic assessments at the intersections of Highland Avenue & 13th Street, and Manhattan Beach Boulevard & Valley Drive/Ardmore Avenue to determine the actual traffic impacts of the proposed project. Should the results of this assessment verify significant impacts are realized, the mitigation measures recommended in the Draft EIR, or measures of equivalent effectiveness shall be implemented.
- F. An employee parking program shall be required for the Metlox commercial establishments to alleviate the parking demands within the Downtown Commercial District. Potential mitigation options may include satellite parking programs and/or providing tandem parking stalls designated for employees only.

RECOMMENDED MITIGATION MEASURES

Although the proposed project will meet the shared parking demand anticipated for the planned development, the following parking mitigation measures are recommended to further increase parking availability on the project site, reduce traffic congestion, and to promote shared parking within the Downtown Commercial District:

- G. Valet parking operations should be considered during peak demand times, as needed. Valet parking operations should utilize tandem parking methods within the parking garage(s) to increase parking availability for the project site.

56. HYDROLOGY/WATER QUALITY

The following mitigation measures would ensure water quality impacts would be less than significant:

- A. The project shall comply with the requirements of the National Pollution Discharge Elimination System (NPDES) General Permit for stormwater discharge. Such compliance shall include submittal of a drainage plan to the City of Manhattan Beach Department of Public Works in accordance with the minimum applicable requirements set forth in the Los Angeles County Standard Urban Stormwater Mitigation Plan (SUSMP).
- B. Design criteria for the project should, to the extent feasible, minimize direct runoff to the adjacent streets and alleys by directing runoff from roofs and impervious surfaces to landscaped areas. In addition to reducing runoff volumes, due to infiltration into the soil, landscaped areas may also filter some pollutants from stormwater, such as particulate matter and sediment.
- C. Commercial trash enclosures must be covered so that rainwater cannot enter the enclosure and the trash enclosure must be connected to the sanitary sewer system.

57. NOISE

The following mitigation measures are recommended to reduce noise impacts during the construction phases of the proposed project:

- A. Use noise control devices, such as equipment mufflers, enclosures, and barriers.
- B. Erect a temporary sound barrier of no less than six feet in height around the construction site perimeter before commencement of construction activity. This barrier shall remain in place throughout the construction period.
- C. Stage construction operations as far from noise sensitive uses as possible.



Certified to be a true copy of said document on file in my office.

[Signature]
City Clerk of the City of Manhattan Beach

Res. 5770

- D. Avoid residential areas when planning haul truck routes.
- E. Maintain all sound-reducing devices and restrictions throughout the construction period.
- F. When feasible, replace noisy equipment with quieter equipment (for example, a vibratory pile driver instead of a conventional pile driver and rubber-tired equipment rather than track equipment).
- G. When feasible, change the timing and/or sequence of the noisiest construction operations to avoid sensitive times of the day.
- H. Adjacent residents shall be given regular notification of major construction activities and their duration.
- I. A sign, legible at a distance of 50 feet, shall be posted on the construction site identifying a telephone number where residents can inquire about the construction process and register complaints.
- J. An annual City permit in accordance with Chapter 4.20 of the MBMC shall be required prior to the installation/setup of any temporary, or permanent, PA or sound system.
- K. The maximum allowable sound level shall be in conformance with Chapter 5.48 of the MBMC.

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

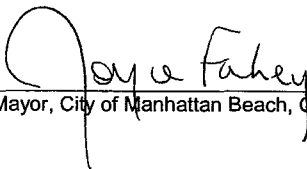
SECTION 4. This resolution shall take effect immediately.

SECTION 5. The City Clerk shall certify to the adoption of this resolution; enter it into the original records of the City and thenceforth and thereafter the same shall be in full force and effect.

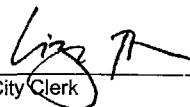
SECTION 6. The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.

PASSED, APPROVED AND ADOPTED this 16th day of July 2002.

Ayes: Dougher, Napolitano, Aldinger, Wilson and Mayor Fahey.
 Noes: None.
 Absent: None.
 Abstain: None.


 Mayor, City of Manhattan Beach, California

ATTEST:


 City Clerk



Certified to be a true copy of the original of said document on file in my office.



 City Clerk of the City of Manhattan Beach, California

EXHIBIT 2. ABC LICENSE TYPES

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

See Type 70 license for hotels, next page

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



LICENSE TYPE	DESCRIPTION
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EXHIBIT 2. ABC LICENSE TYPES

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



SPECIAL EVENTS

The Department also issues licenses and authorizations for the retail sale of beer, wine and distilled spirits on a temporary basis for special events. The most common are listed below. Other less common ones are found in Business and Professions Code Section 24045.2, et seq.

SPECIAL DAILY BEER AND/OR WINE LICENSE - (Form ABC-281) Authorizes the sale of beer and/or wine for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to non-profit organizations. (Rule 59, California Code of Regulations)

DAILY ON SALE GENERAL LICENSE - (Form ABC-281) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to political parties or affiliates supporting a candidate for public office or a ballot measure or charitable, civic, fraternal or religious organizations. (Section 24045.1 and Rule 59.5 California Code of Regulations)

CATERING AUTHORIZATION - (Form ABC-218) Authorizes Type 47, 48, 51, 52, 57, 75 and 78 licensees (and catering businesses that qualify under Section 24045.12) to sell beer, wine and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events. Type 47, 48 and 57 licensees may cater alcoholic beverages at any ABC-approved location in the State. Type 51 and 52 licensees may only cater alcoholic beverages at their licensed premises. All licensees wishing to cater alcoholic beverages must obtain prior written authorization from the Department for each event. At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399 and Rule 60.5 California Code of Regulations)

EVENT AUTHORIZATION - (Form ABC-218) Authorizes Type 41, 42, 47, 48, 49, 57, 75 and 78 licensees to sell beer, wine and distilled spirits for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public. *The licensee shall obtain prior approval of the local law enforcement agency.* At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises (including any license conditions) and violations of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399)

WINE SALES EVENT PERMIT - (Form ABC-239) Authorizes Type 02 licensees to sell bottled wine produced by the winegrower for consumption off the premises where sold and only at fairs, festivals or cultural events sponsored by designated tax exempt organizations. The licensee must notify the city and/or county where the event is being held and obtain approval from ABC for each event (Form ABC-222). The licensee must also comply with all restrictions listed in Business and Professions Code Section 23399.6.

Note:

1. "Minor" means any person under 21 years of age.
2. Consult Section 25663(b) regarding age of employees in off-sale premises; consult Sections 25663(a) and 25663.5 regarding age of employees in on-sale premises.
3. In certain situations, ABC may place reasonable conditions upon a license, such as restrictions as to hours of sale, employment of designated persons, display of signs, restrictions on entertainment or dancing, etc. If a license has been conditioned, it will be endorsed as such on the face of the license. (Conditional licenses, Sections 23800-23805.)
4. Licensees whose license allows minors on the premises may have a "house policy" restricting minors from entering certain areas of the premises or prohibiting minors in the premises during certain hours.
5. This handout contains only abbreviated information. Contact your local ABC office for full information before doing anything which may jeopardize your license. Also available from the ABC: Quick Summary of Selected ABC Laws (form ABC-608); Alcoholic Beverage Control Act (complete laws); Rules & Regulations; and P-90 (describes privileges of non-retail licenses).

EXHIBIT 3. MS. JESTER: WHY TYPE 70 HOTEL LICENSE DOES NOT WORK FOR SHADE

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 3. MS. JESTER: WHY TYPE 70 HOTEL LICENSE DOES NOT WORK FOR SHADE

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

2005 CUP FINDING L AND CONDITION 5: TERRACE OPEN ONLY FOR BREAKFAST; 22 SEAT OCCUPANCY

STAFF AND APPLICANT TESTIMONY AT 2005 CUP HEARING

(25 May 2005 Planning Commission Meeting)

See Pg 2 for Ms. Jester's testimony of no food or alcohol service on the terrace; and,
See Pg 3 for Mr. Zislis's testimony that terrace closes 10 AM weekdays and 11 AM weekends

Video Summary: Testimony and statements in the three short clips below from the city video of the 2005 CUP hearing provide the only information regarding use of the Shade terrace, prior to the 2010 CUP. No other facts regarding use of the terrace exist in the remainder of the entire administrative record for the Metlox Master Use Permit, Resolution 5770 and for the 2005 CUP amendment. Regarding the terrace, the commissioners based their decision on the 2005 CUP solely on the facts provided to them by staff and the applicant below. They had no other information before them.

Staff Statement of No Alcohol or Food Service on Terrace.

Time in city video of 25 May 2005 meeting for 2005 CUP: 00:30:22 hh:mm ..

First video clip summary: Commissioner David Simon requests hours of operations for the ground-level terrace, which opens off the Zinc Bar, bordering the 12th St walkway, on the south. Staff acts as though she does not know the terrace location. When commissioners guide her to it, she states the terrace would have no alcohol or food service.

Commissioner David Simon: 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?

Planner Laurie Jester: The hours of operation are the same as for the roof deck.

Commissioner Simon: What I just read doesn't say terrace specifically.

Planner Jester: I'm sorry, which page are you looking at?

Commissioner Simon: Page 2, your second full paragraph, second sentence. See, we're talking about breakfast service in the living room.

Planner Jester: There will not be breakfast service on the roof, if that's what you're talking about.

Commissioner Simon: I'm going to the outside terrace on the ground floor

Planner Jester: Oh. Okay. That's why I said living room or courtyard. The living room is the lobby area. The courtyard is the interior courtyard.

Commissioner Simon: What are the hours for the terrace?

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

Commissioner Simon: On your map, the public area outside the lobby.

Planner Jester: We call that the courtyard. You call that the [unintelligible]?

Commissioner Simon: I call the courtyard the courtyard, sorry.

Planner Jester: There's only one courtyard. It's right in the middle, totally surrounded by the building.

Commissioner Simon: So there you have the lobby and the wine bar area, and then you have the outside terrace.

Planner Jester: Correct. Terrace, or courtyard, we're calling it here.

Commissioner Simon: So we have two courtyards, or is the whole thing called a courtyard.

Planner Jester: Let me show you on the plans. (Jester goes to plans behind commissioners.) 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're calling it, if the weather is nice. Special events can take place in these two areas. (Zinc bar/lounge and courtyard.)

Commissioner Simon: Actually, I am talking about going on the other side of the lobby.

Other voices: Porch. It says porch on my drawing. To the right, on 12th Street.

Planner Jester: Oh! Here! Oh! That's a ...no...no. There would not be...no. ***There wouldn't be services of food or alcohol in that area.*** (emphasis added.) At least that's my understanding from the applicant.

Commissioner Muriel Savikas: What's it called?

Planner Jester: You're right, it does say porch there.

Commissioner Simon: Okay.

Planner Jester: At least that's my understanding from the applicant. And maybe they can clarify that.

Director Richard Thompson: He'll clarify all these issues in his presentation.

Planner Jester: This is a covered porch. It's part of the hotel. There's a grade change between... This is a walkway, you can see here, 12th walk. This is a raised covered porch.

Applicant Statement that 22-Seat Terrace Serves Only Breakfast.

Time in city video of 25 May 2005 meeting for 2005 CUP: 00:42:48 hh:mm:ss

Second video clip summary: Commissioner Simon requests from the applicant hours of operations for the porch-terrace. Mr. Michael Zislis states that terrace closing times are 10 AM on Monday through Friday and 11 AM on Saturday-Sunday. Mr. Zislis also noted the staff report had a typo regarding using 'PM' for 'AM.'" Commissioner Savikas asks whether the terrace is enclosed. Mr. Zislis replies it is not enclosed, but open only for breakfast, with 22 seats, so will not cause a disturbance. These facts represent the only information stated for the terrace in the entire 2005 CUP proceedings. Neither the application nor the staff report for the 2005 CUP mentioned the terrace. Both documents list the areas for alcohol service, which do not include the terrace.

Commissioner Simon: We had a discussion on the hours of serving food on the porch-terrace.

Mr. Zislis: Yeah. The hours for the terrace would be I think, 7 AM to 10 AM Monday through Friday and 8 AM to 11 AM on Saturday and Sunday.

Commissioner Simon: 11 AM.

Mr. Zislis: 11 AM. I think there's a typo, if you look at, they put PM there. For the breakfast service, it's AM.

Commissioner Simon: Okay.

Mr. Zislis: So I noticed. So that's the thought.

Commissioner Savikas: Is that terrace walled-in?

Mr. Zislis: No, that terrace is right on the, if you look at the top picture, that's right on the courtyard for the whole Metlox property. So that looks out on to the water feature, and everything. The terrace. It's 22 seats for breakfast. I don't see that as being any louder than...It's right across the street from the terrace for the Mediterranean restaurant. They look at each other. So it's no different use.

Staff Revises 2005 CUP to Include Alcohol and Breakfast Service on Terrace.

Time in city video of 25 May 2005 meeting for 2005 CUP: 01:30:34 hh:mm:ss

Third video clip summary: Staff interrupts voting on the 2005 CUP, to revise Finding J, Finding L and Condition 5 for inclusion of alcohol and breakfast on the terrace.

Chair O'Connor: I think we probably could entertain a motion.

Commissioner Kuch: I'll make a motion. That we approve the resolution as written.

Director Thompson: We do have some suggested clarifications to the resolution and Laurie would like to go over some of those, based on the discussion tonight.

Planner Jester: On Page 2, Item J, which is one of the findings. I'd just like to clarify that the Porch...Do we all know what the Porch is now, or terrace...

Chair O'Connor: Page 2, Page 2 of the resolution.

Planner Jester: J, last sentence.

Commissioner Simon: Let me catch up with you. You're looking at the proposed resolution. Right?

Planner Jester: Proposed resolution.

Commissioner Simon: Let me go through my stack here.

Planner Jester: Page 2.

Commissioner Simon: I'm with you now, okay.

Planner Jester: Item J, last sentence, where it lists where full liquor is allowed, which is throughout all public areas of the hotel, basically.

Chair O'Connor: (Unintelligible) Living Room...

Planner Jester: Living Room, wine bar, meeting room, rooftop Sun Deck, we would like to add on there, the Porch. So that is clarified.

Planner Jester (continued): The next Item K, which is again a finding. We would like to clarify, right after 99 people, put, put 'comma', "without a temporary use permit." Because there can be more people with a temporary use permit.

Under L, first sentence, same thing, "breakfast service in the Living Room, courtyard, and/or Porch."

And then the typo Mr. Zislis pointed out, 'PM' should be 'AM', 6 to 10 AM Monday through Friday, and 6 to 10 AM, I'm sorry, 11 AM Saturday and Sunday. That's breakfast.

Chair O'Connor: Just the 11 gets changed. Right? Right? Not the 10.

Planner Jester: No, the 10.

Chair O'Connor: Pardon me.

Planner Jester: Just the breakfast. Breakfast.

Chair O'Connor: Oh, breakfast. Okay.

Planner Jester: Then on Page 5, Condition Number 5. Same thing with adding the Porch. "Breakfast may be served daily, Living Room, courtyard and/or Porch. And those are the changes we suggest.

Commissioner Kuch: I will make a motion to approve the resolution as clarified by Laurie.

Commissioner Savikas: I'll second.

Chair O'Connor: Sarah, roll call please.

VOTING

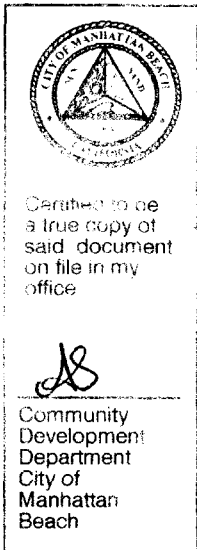
RESOLUTION NO. PC 05-08

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED ALCOHOL SALES AND SPECIAL EVENTS AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATION COMPANY, LLC- MICHAEL A. ZISLIS, PRESIDENT)

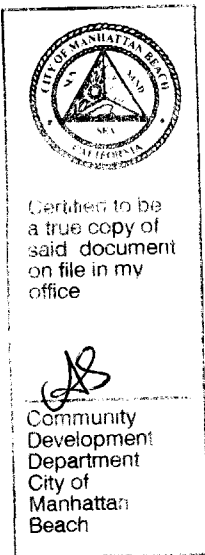
THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Manhattan Beach, California, hereby makes the following findings:

- A. Manhattan Inn Operation Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previously approved alcohol sales and special events at the Shade Hotel, Metlox site, 1221 north Valley Drive in the City of Manhattan Beach.
- B. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission and therefore they will review the project and make a determine if an amendment to the Permit will be required to be processed.
- D. The applicant is Manhattan Inn Operation Company, LLC and the property owner is the City of Manhattan Beach.
- E. The following is a summary of some of the key milestones for the Metlox site:
 - 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner
 - April 2001- The City Council certified the EIR
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
 - November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
 - February 2003- Groundbreaking for the Metlox parking structure
 - January 2004- Grand opening of public parking structure with 460 parking spaces
 - April 2004- Shade Hotel construction commenced
 - September 2004- Construction of the Metlox commercial buildings started
- F. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meeting of May 25, 2005. The public hearing was advertised pursuant to applicable law and testimony was invited and received.

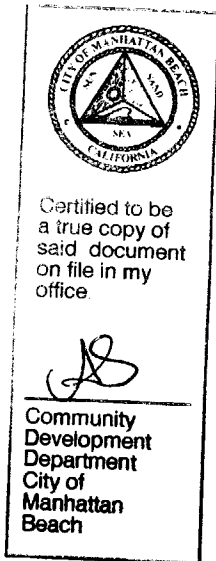


- G. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.
- H. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space.
- I. The General Plan designation for the property is Downtown Commercial.
- J. The proposed project is a modification of the previously approved alcohol sales for the Shade Hotel to provide high quality service to their customers consistent with the business plan for the four-star hotel, as well as to provide consistency with the State Alcoholic Beverage Control (ABC) regulations. The previous approval (Condition No. 38- City Council Resolution No. 5770) allows full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The State Alcoholic Beverage Control (ABC) regulations require a full liquor license throughout the Hotel facility (Type 47 license) that is open to the general public and includes the service of food in order to allow the in-room mini-bar license (Type 66 license). There is no ABC license, or series of licenses that would allow beer and wine only for guests, and full liquor for the mini-bars. A portable bar with full liquor (Type 68 license), for special events, is also proposed. Full liquor is proposed throughout the Hotel including the Courtyard, the Living Room which includes the Lobby and Wine Bar, the Porch, the Meeting Room and the rooftop Sun Deck. Alcohol is only allowed to be consumed on the site, it may not be taken off-site for consumption.
- K. The previous approval (Condition No. 28- City Council Resolution No. 5770) also limits special events (weddings, parties, etc.) to 60 people, and the modification requests a maximum of 99 people, without approval of a Temporary Use Permit.
- L. No changes to the previously approved hours of operation are proposed for either the alcohol sales or the special events. Breakfast Service in the Living Room, Porch, and/or Courtyard is proposed from 6:00 AM to 10:00 AM Monday-Friday and 6:00 AM-11:00 AM Saturday and Sunday. The "Wine Bar" is proposed to operate in the evenings from 5:00 PM to 11:00 PM daily, although flexibility for earlier hours based on the needs of the customer is desired. Although the emphasis of the "Wine Bar" will be on providing a wide selection of premium wines, full liquor will be available. Additionally, the Wine Bar will provide a variety of appetizers in order to qualify as an eating establishment as required by the ABC. Mid-day (lunch) food service will not be provided, except for room service.
- M. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. The changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. All



advertising, marketing and promotions will be focused on potential hotel guests and not the general public.

- N. As part of the ABC license application process completed in February 2005 public notices were mailed to the neighbors located within a 500 yard radius of the property, the application sign was posted on the exterior of the property for thirty days, and the application was advertised publicly in the newspaper three times. Not one neighbor or citizen protested the application.
- O. Potential noise concerns will be addressed through the review of the annual Entertainment Permit as well as a retractable partition in the Living Room will be installed which is capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events as the room will have a STC (Sound Transmission Code) rating of 50. The Sun Deck is designed to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east and six feet in all others directions.
- P. The ABC has identified the Downtown area of Manhattan Beach as having an "undue concentration" of alcohol licenses, which is typical for South Bay Cities. The criteria that the ABC uses in their calculations and determination of "undue concentration" takes into account all of Los Angeles County, including areas with very little population. This tends to create areas of "undue concentration" of alcohol licenses in areas where there is concentration of people and businesses, such as Downtown and other commercial areas. The Planning Commission makes the findings of public convenience and necessity for the alcohol license as the license for the hotel use is compatible with similar uses that have alcohol licenses, and other Downtown uses and the City Council has reviewed alcohol licenses in the past and has supported alcohol in conjunction with food service and hotel uses.
- Q. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- R. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution only amends Conditions No's 28 and 38 of Resolution No. 5770, all other conditions remain effective and in full force.
- S. Based upon State law, and MBLCP Section A.84.050, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
 1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the 'use permit' of Shade Hotel are consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the city's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts.
 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the proposed amended 'use permit' of this



business property is consistent with the General Plan for the Commercial Downtown designation, because it is merely the granting of additional privileges to an already approved use that will result in no fundamental change of that use. Amending the 'use permit' to comply with ABC regulations and the approval of larger special events will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the boutique hotel. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city. Additionally, the project is consistent with the following General Plan Goals and Policies:

GOALS AND POLICIES: LAND USE

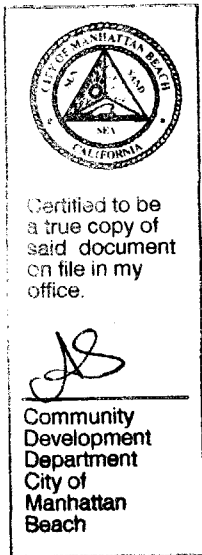
Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

Policy LU-6.1: Support and encourage small businesses throughout the City.

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the issuance of a certificate of occupancy. The proposed amended 'use permit' for the boutique hotel is consistent with the already approved primary and secondary uses of the facility. The new uses will comply with the provisions and conditions of this title.
4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the boutique hotel, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.



SECTION 2. The Planning Commission of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment subject to the following conditions.

General Conditions

1. The proposed project shall be in substantial conformance with the plans submitted and the project description, as approved by the Planning Commission on May 25, 2005, subject to any special conditions set forth below. The layout of the Lobby area, including the sound insulation, and roof deck is subject to further review and approval

by the Director of Community Development. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.

Land Use

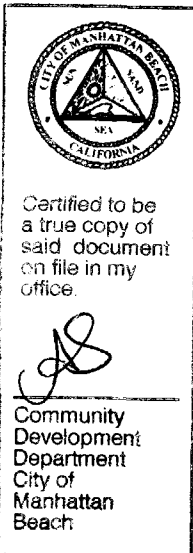
2. (This condition replaces Condition No. 28- City Council Resolution No. 5770) The Inn may provide wedding, party, and other special event services in their Courtyard, Meeting Room, and Living Room, as a secondary service to the primary Inn use. These types of events are limited to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday. Events are limited to a maximum of 99 people, or whatever the maximum occupancy is as determined by the Building or Fire Code limits, whichever is less. The Director of Community Development may approve Temporary Use Permits for events which exceed 99 people, not to exceed the maximum occupancy as allowed by the Building or Fire Code limits. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. The availability of the Inn for special events shall not be marketed as the primary use.

Alcohol

3. (This condition replaces Condition No. 38- City Council Resolution No. 5770) The two restaurants may provide full liquor service, which is incidental to, and in conjunction with, the service of food. Service of alcohol at the restaurants shall be in conjunction with the service of food at all times during all hours of operation. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.

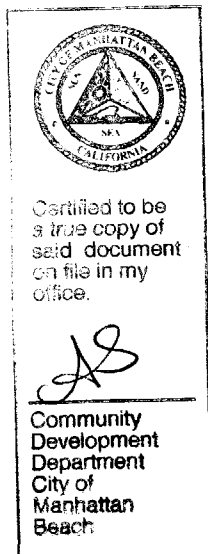
New conditions

4. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Wine Bar (now called "Zinc") and Sun Deck will not be marketed to the general public as separate hospitality attractions.
5. The Wine Bar shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room, Porch, and/or Courtyard.
6. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
7. The Sun Deck shall stop regular alcohol service no later than 9:00 p.m. daily.
8. Alcohol service at events and functions shall stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday - Thursday; 11:30 p.m., Friday and Saturday.



Procedural

9. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.
10. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.
11. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.
12. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.
13. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
14. Review. All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after occupancy 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.
15. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
16. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.
17. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.



SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.


I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of **May 25, 2005**, and that said Resolution was adopted by the following vote:

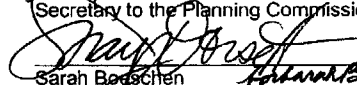

AYES: Chairman O'Connor, Vice-Chair Savikas, Commissioners Kuch and Simon

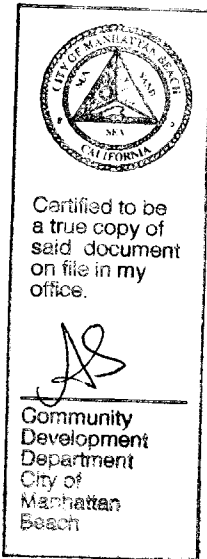
NOES: None

ABSTAIN: None

ABSENT: None



RICHARD THOMPSON
Secretary to the Planning Commission

Sarah Boesch
Recording Secretary




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SHADE HOTEL

Application for Amendment to Use Permit

Shade Hotel seeks to amend the ‘use permit’ approved by the city for the new Metlox commercial development as it pertains to the hotel property. Shade Hotel requests that three changes be made to the existing ‘use permit’:

1. That full liquor service be permitted at all public service areas of the hotel as required by the Type 47 license. The service areas include the in-room ‘mini-bars’, the Courtyard, the Wine Bar (called “Zinc”), the Living Room (defined as the Wine Bar and a certain area of the Lobby that can be partitioned and closed to the public -- see enclosed cut sheet), the Meeting Rooms, and the Sun Deck located on the roof.
2. That the hotel be permitted to sell alcoholic beverages to the general public as opposed to only hotel guests as stated in the ‘use permit’, in order to comply with the Alcohol Beverage Control regulations.
3. That the size of events be increased from a maximum of sixty to ninety-nine people. The approved occupancies of the event spaces can comfortably accommodate the change. The occupancy of the first level, as per the approved plans, is 204 people.

The reason for seeking these changes is to comply with the requirements of the Department of Alcohol Beverage Control, as already explained in this application, and to improve the services offered at the hotel. **The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors.** The requested changes to the ‘use permit’ will not affect the primary use and purpose of the hotel and will have no impact on the community (not on residents, adjacent businesses, city services, or parking). The changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. In booking functions, Shade Hotel’s first concern will always be given to the hotel’s guests, so the hours and size of events will be restricted by how they impact the entire hotel operation. Although the general public cannot be denied access to alcohol service in the public areas, as regulated by the A.B.C., Shade Hotel makes the commitment to the city that all its advertising, marketing and promotions will be focused on potential hotel guests and not the general public.

Alcohol Service

Permitting full liquor at all the alcohol service areas of the hotel should not present a great concern to the city or community. First, because the hotel will be a four-star facility, it will attract a mature, up-scale, affluent clientele. Second, as the city has learned over the years, it is not alcohol, per se, that potentially may cause issues for a community, but rather it is the type of establishment offering the alcohol that may lead to problems. Night clubs and bars tend to draw the wrong crowd and it is these younger, rowdier patrons who may have the propensity to engage in undesirable behavior. Many bonafide restaurants in the downtown area serve liquor – Fonz’s, Café Pierre, Manhattan Beach Brewing Co., Avenue – and generate no problems for the community. Shade Hotel is situated away from the other nightlife in Manhattan Beach, and the business concept of operating as a hotel does not attract trendy “party-goers”.

Shade Hotel has been conferring and meeting regularly with the Alcohol Beverage Control and the Manhattan Beach Community Development Department for the past several months to address and minimize any potential issues and concerns. After the hotel acquired the Type 47 license at the end of 2004, it submitted the alcohol application to the A.B.C. in January, 2005. As part of the A.B.C. alcohol license application an applicant must: (1) mail public notices to the neighbors located within a 500 yard radius of property, (2) post the application sign on the exterior of the property for thirty days, and (3) advertise the application publicly in the newspaper three times. Shade Hotel completed this procedure in February. The result achieved was that **not one neighbor or citizen protested the application.** According to Margo Hoffman, the A.B.C. investigator assigned to this case, it is uncommon when an application does not elicit some minimal protest. This is a strong indication that the community supports the concept of a small, first-rate hotel located in the downtown area offering a variety of services and uses. Four-star hotels and wedding venues typically hold Type 47 licenses – including Belamar Hotel, the Marriott, and Veranda (wedding venue) in Manhattan Beach – and the community appears to accept this industry standard.

If the city approves the requested amendments to the ‘use permit’, then the A.B.C. is in the position to immediately issue the Type 47 license.

One concern expressed by the Community Development Department is the issue of noise generated by events, entertainment, and alcohol consumed in a festive atmosphere. Again, Shade Hotel’s first priority will be the guests staying at the hotel. All events will be planned around the convenience and comfort of the guests. The hotel will construct, as part of its design, a retractable partition in the Living Room capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events ... the room will have a STC (Sound Transmission Code) rating of 50, which will more than sufficiently mute the noise. The hotel designers specifically planned the Sun Deck to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east (Ardmore Blvd.) and six feet in all others directions (facing commercial uses). The size of the Sun Deck is 430 square feet with an occupancy

of 45 people. The intended use of this facility is for hotel guests and their visitors, and for small events or private uses.

To further allay any potential concerns the city or citizens may have by amending the 'use permit', Shade Hotel proposes that certain mitigating conditions can be imposed upon the hotel operation:

1. All hotel marketing, advertising, and promotions must be limited to attracting potential hotel guests and event planners. The Wine Bar (now called "Zinc") and Sun Deck will not be marketed to the general public as separate hospitality attractions. (The brochure included in this application demonstrates the intent of Shade Hotel.)
2. The Wine Bar will limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the Type 47. The Wine Bar will not operate as a restaurant. (Breakfast will be served daily in the Living Room or Courtyard depending upon weather conditions.)
3. Shade Hotel will not post any drink or food menus, or any drink or food signage outside of the hotel.
4. The Sun Deck will stop regular alcohol service prior 9:00 p.m. daily.
5. Alcohol service at events and functions will stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday – Thursday; 11:30 p.m., Friday and Saturday.

These self-imposed conditions will go a long way to eliminate any potential issues that may arise. The city, of course, possesses the powerful **annual prerogative to approve or restrict the hotel's entertainment permit** made available in the existing 'use permit'. With this overwhelming leverage, the city can influence the conduct of any affected business operator to ensure he or she conforms to the needs and values of the community. Responsible, prudent alcohol service will simply not be an issue at the hotel. The operators of Shade Hotel have a long history in Manhattan Beach as hands-on owners and managers of two reputable restaurants located downtown. Both restaurants – Manhattan Beach Brewing Company (15 years) and Rock'N Fish (4 ½ years) – offer liquor beverages to its customers, and both espouse a "good citizen" philosophy emphasizing conservative alcohol service and professional operational practices consistent with the community's standards.

Event Size

The need to increase the size of events from sixty to ninety-nine people has been communicated by several groups of function planners interested in contracting the services of the hotel. They find the limit of sixty people impractical and restrictive for many types of events. The combined facilities of the Courtyard and the Living Room will more than adequately accommodate parties of ninety-nine or greater (the occupancy of the first level is 204). Some groups intend to book all the hotel guest rooms for their events; with the possibility of two guests staying in each of the sixteen "Spa Suites", three in the sixteen "Deluxe Spa Suites", and four occupying the five "Penthouses", this would create parties with the potential attendance approaching the requested capacity. The sixty person restriction was conservatively established prior to the final design of the hotel and the occupancy calculation. In practical terms, the increase from sixty to ninety-nine persons will have a minimal impact on the resources and operations of the hotel, and should have no effect on the city or neighboring businesses.

The city approved the hotel to serve as a facility for "weddings, parties and other special event services as a secondary use". Shade Hotel needs a less restrictive limit on its event capacity to be a serious contender as a wedding and banquet venue and to compete more fairly with the Belamar Hotel, the Marriott, and Veranda.

Conclusion

Shade Hotel needs the help and support of the city to be successful in the community. In order to survive and succeed as a small, boutique hotel enterprise, Shade Hotel must attempt to maximize all potential sources of revenue – which is true for all operators throughout this segment of the industry. The original hotel operator withdrew from the deal for economic reasons related to the small size of the hotel. The developer of the Metlox project had a difficult time finding another operator to take over the hotel because of the risks, undetermined costs, and many unknown factors associated with building a hotel on the city's underground parking structure.

The Metlox developer approached the operators of the Manhattan Inn Operating Company, LLC (Shade Hotel), which agreed to assume the ground lease for the project. The operators of Shade Hotel concluded they had to step up the project to a four-star hotel in order to create a viable business operation and to justify the enormous capital investment (the original simple two-star inn could not merit charging high enough room rates to earn a satisfactory profit and return). They believed that a four-star establishment could better meet the needs of the community since no comparable facility existed in the downtown area and Manhattan Beach is an affluent community made up of residents and visitors possessing discriminating tastes and needs.

Coping with the many unforeseen challenges caused by the parking garage and constructing a much improved four-star hotel has pushed the budget to exceed the original costs estimated by the Metlox developer by thirty-three percent. This fact has substantially increased the risks of taking on the project.

Amending the 'use permit' as requested in this application will make Shade Hotel a better all-around hospitality facility with improved services for guests and event planners, and will improve the economic sustainability of the business for its owners. The operators of Shade Hotel understand and agree with the intent of the existing 'use permit' and commit to continue honoring that intent with the amended uses.

As opening day is quickly approaching, time is of the essence. Shade Hotel needs the requested changes in order to open on time and to be given the opportunity to succeed. Thank you for your time and consideration.

WRITTEN DESCRIPTION

Purpose of Application

Shade Hotel (owned and operated by Manhattan Inn Operating Company, LLC) is located at 1221 North Valley Drive, Manhattan Beach and is part of the new Metlox development. The approved 'use permit' for the commercial development states, "The Inn may provide beer and wine service for its guests only, and may also provide full liquor self-service in room 'mini-bars'." An issue has arisen because the Department of Alcohol Beverage Control does not offer an alcohol license or set of licenses to permit the combination of alcohol service circumscribed by the 'use permit' approved by the city. The licenses required by the A.B.C. to permit these combined services are a Type 66 Controlled Access Cabinet Permit (which permits in-room 'mini-bars') and a Type 47 On-Sale General for Bonafide Eating Place (which permits the sale of liquor).

Shade Hotel purchased a Type 47 license in 2004 and submitted the licensing application to the A.B.C. During the approval process the A.B.C. determined that a Type 47 cannot be limited in the manner specified by the city: "beer and wine service for its guests only". For a business establishment to possess a Type 47, it must: (1) be a bonafide eating place, (2) permit the general public access to the public service areas (the very definition of a general on-sale license), and (3) serve liquor at the licensed service areas. The Type 66 is not a stand alone license and must be issued in conjunction with another on-sale general license such as the Type 47.

Therefore, in order to comply with A.B.C. regulations, it is necessary for Shade Hotel to seek an amendment to the 'use permit' for the Metlox site to permit full liquor in all service areas of the hotel including the room 'mini-bars'. The other service areas include the Courtyard, the Living Room (comprised of part of the Lobby and the Wine Bar), the Meeting Rooms, and the Sun Deck. The 'use permit' must also be amended to allow the general public access to the alcohol services areas at the hotel.

Secondly, the city approved the hotel to serve as a facility for "weddings, parties and other special events as a secondary use". The initial interest from the community has been encouraging, however many party planners have expressed that the limit of sixty people is impractical and restrictive for many types of events. Shade Hotel proposes to increase the size of events from sixty to ninety-nine people to better accommodate the demands of function planners.

Legal Description

Lot 2, Block 97, Manhattan Beach Division #2.

General Plan Designation

Downtown Commercial

L.C.P., L.U.P. Designation

Downtown Commercial

Zoning

CD, Downtown Commercial

Neighboring Land Uses

North	CD, Police/ Fire Stations
South	CD, Restaurant/ Commercial
East	CD, Valley/ Ardmere Blvds.
West	CD, Commercial, Public Areas

Alcohol License

Current: Type 47 – On-Sale General for Bonafide Eating Place
Type 66 – Controlled Access Cabinet Permit
Type 68 – Portable Bar

(The current ‘use permit’ places restrictions on the alcohol licenses: Beer and wine service for its guests only.)

Proposed: Type 47 – On-Sale General for Bonafide Eating Place
Type 66 – Controlled Access Cabinet Permit
Type 68 – Portable Bar

(Full alcohol service available to the general public in all service areas as required by the Department of Alcohol Beverage Control.)

Occupancy

Total hotel occupancy: Approximately 334 persons.

Parking

Public parking provided at the Metlox site. Changes to the existing “use permit” will have no impact on the available parking.

Hours of Operation

Sunday – Thursday	6:00 a.m. – 11:00 p.m.
Friday and Saturday	6:00 a.m. – 12:00 a.m. (midnight)

(These are the original hours approved by the current ‘use permit’.)

Breakfast Service

Monday – Friday	6:00 a.m. – 10:00 a.m.
Saturday – Sunday	6:00 a.m. – 11:00 a.m.

Environmental Impact

None.

DESCRIPTION OF HOW FINDINGS WILL BE MET

1. The proposed amendments to the 'use permit' of Shade Hotel, located at 1221 North Valley Drive, Manhattan Beach, is consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses.
2. The proposed amended 'use permit' of this business property is consistent with the General Plan for the Commercial Downtown designation, because it is merely the granting of additional privileges to an already approved use that will result in no fundamental change of that use. Amending the 'use permit' to comply with A.B.C. regulations and the approval of larger special events will have no environmental impact whatsoever and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the boutique hotel. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city.
3. The proposed amended 'use permit' for the boutique hotel is consistent with the already approved primary and secondary uses of the facility. The new uses will comply with the provisions and conditions of this title.
4. Because the proposed amended 'use permit' will not alter the fundamental use, purpose or character of the boutique hotel, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

THROUGH: Richard Thompson, Director of Community Development

FROM: Laurie B. Jester, Senior Planner

DATE: May 25, 2005

SUBJECT: Consideration of a Master Use Permit Amendment for Modifications to the Previously Approved Alcohol Sales and Special Events 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 A RESOLUTION** (Exhibit A) approving the amendments.

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, which 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, was approved by the City Council in July 2002. The commercial development includes a 38-room Inn, the Shade Hotel.

The proposed project is a modification of the previously approved alcohol sales for the Shade Hotel to provide high quality service to their customers consistent with the business plan for the four-star hotel, as well as to provide consistency with the State Alcoholic Beverage Control (ABC) regulations. The previous approval (Condition No. 38- City Council Resolution No. 5770- Exhibit C) allows full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The State Alcoholic Beverage Control (ABC) regulations require a full liquor license throughout the Hotel facility that is open to the general public and includes the service of food in order to allow the in-room mini-bar license. There is no ABC license, or series of licenses that would allow beer and wine only for guests, and full liquor for the mini-bars. A portable bar with full liquor, for special events, is also proposed. Full liquor is proposed throughout the Hotel including the Courtyard, the Living Room which

includes the Lobby and Wine Bar, the Meeting Room and the rooftop Sun Deck. Alcohol is only allowed to be consumed on the site, it may not be taken off-site for consumption. The previous approval of full liquor sales for the two restaurants will not be modified with this Amendment.

The previous approval (Condition No.28- City Council Resolution No. 5770- Exhibit C) also limits special events (weddings, parties, etc.) to 60 people, and the modification requests a maximum of 99 people. No amendments to any other conditions of approval are proposed.

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

BACKGROUND

The Metlox project is the culmination of many years of community participation and input through workshops and meetings. The following is a summary of some of the key milestones for the Metlox site:

- 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
- 1997/98- The City purchased the Metlox property to control development and Master Plan the site
- 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
- December 1998- The City selected the Tolkin Group as a development partner
- April 2001- The City Council certified the EIR.
- April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
- July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
- November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
- February 2003- Groundbreaking for the Metlox parking structure
- January 2004- Grand opening of public parking structure with 460 parking spaces
- April 2004- Shade Hotel construction commenced
- September 2004- Construction of the Metlox commercial buildings started

The project before the Planning Commission is an amendment to the Master Use Permit and related entitlements for the Shade Hotel. The Coastal Development Permit for the Master Use

Permit was issued by the California Coastal Commission and therefore they will review the project and make a determine if an amendment to the Permit will be required to be processed.

PROJECT DESCRIPTION

Overview

The Shade Hotel requests that three changes be made to the existing Master Use Permit:

1. That full liquor service be permitted at all public service areas of the hotel as required by the Alcoholic Beverage Control Type 47 license. The service areas include the in-room ‘mini-bars’, the Courtyard, the Wine Bar (called “Zinc”), the Living Room (defined as the Wine Bar and a certain area of the Lobby that can be partitioned and closed to the public), the Meeting Room, and the Sun Deck located on the roof.
2. That the hotel be permitted to sell alcoholic beverages to the general public as opposed to only hotel guests as stated in the Master Use Permit, in order to provide a high quality of service to their customers and to comply with the ABC regulations.
3. That the size of events be increased from a maximum of sixty to ninety-nine people. The approved occupancies of the event spaces can comfortably accommodate the change. The occupancy of the public spaces on the first level, as per the approved plans, is over 200 people.

Alcohol

The reason for seeking these changes is to improve the services offered at the hotel and to comply with the requirements of the State Department of Alcoholic Beverage Control (ABC). The applicant states the following in their application: The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. The changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. In booking functions, Shade Hotel’s first concern will always be given to the hotel’s guests, so the hours and size of events will be restricted by how they impact the entire hotel operation. Although the general public cannot be denied access to alcohol service in the public areas, as regulated by the ABC, Shade Hotel makes the commitment to the city that all its advertising, marketing and promotions will be focused on potential hotel guests and not the general public. The hotel will be a four-star facility, an upgrade from the original Inn operator, and it will attract a mature, up-scale, affluent clientele. Historically it is not alcohol that potentially may cause issues for a community, but rather it is the type of establishment offering the alcohol that may lead to problems. Many restaurants in the downtown area serve liquor, and the full service hotels in town also serve liquor and they generate no problems for the community. Shade Hotel is situated away from the other nightlife in Manhattan Beach, and the business concept of operating as a hotel does not attract trendy “party-goers”.

The applicant goes on to indicate that as part of the ABC license application process in February they mailed public notices to the neighbors located within a 500 yard radius of the property, posted the application sign on the exterior of the property for thirty days, and advertised the

application publicly in the newspaper three times. The result achieved was that not one neighbor or citizen protested the application. Margo Hoffman, the ABC investigator assigned to this case, verbally indicated that it is uncommon when an application does not elicit some minimal protest, and her letter indicates that no protests were received (Exhibit D). Four-star hotels and wedding venues typically hold Type 47 licenses – including Belamar Hotel, the Marriott, and Veranda (wedding and special event venue) in Manhattan Beach.

Potential noise concerns will be addressed through the review of the annual Entertainment Permit as well as a retractable partition in the Living Room will be installed which is capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events as the room will have a STC (Sound Transmission Code) rating of 50, which will more than sufficiently mute the noise. The hotel designers specifically planned the Sun Deck to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east (Ardmore Blvd.) and six feet in all others directions (facing commercial uses).

The applicant is offering the following conditions of approval to alleviate any potential concerns and self-regulate the business operations of the hotel:

1. All hotel marketing, advertising, and promotions must be limited to attracting potential hotel guests and event planners. The Wine Bar (now called “Zinc”) and Sun Deck will not be marketed to the general public as separate hospitality attractions. (The brochure included in this application demonstrates the intent of Shade Hotel.)
2. The Wine Bar will limit its food menu to appetizers or “small plates” (or “tapas”), to qualify as a “bonafide eating place” as required by the ABC Type 47 license. The Wine Bar will provide food service but will not operate as a full scale “restaurant”. (Breakfast will be served daily in the Living Room or Courtyard depending upon weather conditions.)
3. Shade Hotel will not post any drink or food menus, or any drink or food signage outside of the hotel.
4. The Sun Deck will stop regular alcohol service no later than 9:00 p.m. daily.
5. Alcohol service at events and functions will stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday – Thursday; 11:30 p.m., Friday and Saturday.

The applicant also states that the operators of Shade Hotel have a long history in Manhattan Beach as hands-on owners and managers of two reputable restaurants located downtown. Both restaurants – Manhattan Beach Brewing Company (15 years) and Rock’N Fish (4 ½ years) – offer liquor beverages to its customers, and both espouse a “good citizen” philosophy emphasizing conservative alcohol service and professional operational practices consistent with the community’s standards.

The Master Use Permit, Condition No. 40, regulates entertainment on the site by requiring an annual Entertainment Permit for any entertainment other than non-amplified background-type

music, with a maximum of 2 entertainers.. The Entertainment Permit is required to be submitted to the Director of Community Development for review and approval, with input from the Police and Fire Departments. Appropriate conditions are placed on the Permit to minimize potential negative impacts including, but not be limited to, hours, size and location of performance or dance area, size of band and number of performers, numbers of performance days per week, type and location of amplification, speakers and soundproofing, and volume of amplification. The Permit is reviewed annually to determine if it is appropriate to renew the permit, deny the permit, or modify the conditions of approval. Since issues may arise with the combination of the alcohol and entertainment, this condition provides the tools to assure that any potential issues are addressed.

The ABC has identified the Downtown area of Manhattan Beach as having an "undue concentration" of alcohol licenses, which is typical for South Bay Cities. The criteria that the ABC uses in their calculations and determination of "undue concentration" takes into account all of Los Angeles County, including areas with very little population. This tends to create areas of "undue concentration" of alcohol licenses in areas where there is concentration of people and businesses, such as Downtown and other commercial areas. The City Council has reviewed alcohol licenses in the past and has supported alcohol in conjunction with food service and hotel uses. Staff believes that the conditions of approval will address any potential impacts and the proposed modification to the previously approved alcohol use would be consistent with other food service uses in the Downtown as described in the attached chart (Exhibit E).

Event Size

The applicant states in their application that the need to increase the size of events from sixty to ninety-nine people has been communicated by several groups of function planners interested in contracting the services of the hotel. They find the limit of sixty people impractical and restrictive for many types of events. The combined facilities of the Courtyard and the Living Room will more than adequately accommodate parties of ninety-nine or greater as the Building Code allowed occupancy of the area is over 200 people. Some groups intend to book all the hotel guest rooms for their events which would create parties with the potential attendance approaching the requested capacity. The sixty person restriction was conservatively established prior to the final design of the hotel and the occupancy calculation. The City approved the hotel to serve as a facility for "weddings, parties and other special event services as a secondary use". The applicant further states that the Shade Hotel needs a less restrictive limit on its event capacity to be a serious contender as a wedding and banquet venue and to compete more fairly with the Belamar Hotel, the Marriott, and Veranda.

Master Use Permit Findings

The applicant addressed the required Use Permit findings in their application. The attached Resolution (Exhibit A) also details the required findings.

Noticing and comments

Notices of the public hearing were provided to all property owners within a 500 foot radius of the project site and published in the Beach Reporter. No public comments were received. The application was also circulated to other Departments for review and comments. The Police Department verbally indicated that they had no concerns with the proposal and that any issues had

been adequately addressed. Building and Safety verbally indicated that review by the Los Angeles County Health Department and the Fire Department will be required. No other comments were received from other Departments. Letters of support from the Chamber of Commerce and the Downtown Business and Professional Association are attached as Exhibit D.

Environmental Review

An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.

CONCLUSION

The project before the Planning Commission is an Amendment to the Master Use Permit for the Shade Hotel alcohol sales and special event size. Staff recommends that the Planning Commission open the public hearing, discuss the project, and adopt a Resolution approving the project.

ATTACHMENTS

- Exhibit A: Draft Planning Commission Resolution No. 05-XX
- Exhibit B: Application with Project Description and Findings (Portions not available electronically)
- Exhibit C: City Council Resolution No. 5770- Master Use Permit- Metlox
- Exhibit D: Letters from ABC, Chamber of Commerce, and Downtown Business and Professional Association (Not available electronically)
- Exhibit E: Restaurants with alcohol licenses in Downtown
- Exhibit F: Plans (1/2 Size)- (Not available electronically)

- c: Mike Zislis- Shade Hotel
- Jon Tolkin- Tolkin Group
- Glenn Loucks- Tolkin Group

G:\Planning\Temporary (file sharing)\Bobby\Metlox\MUP Amendment Shade Hotel alcohol-events\PC report Shade alcohol-5-25-05.doc

The draft resolution submitted to the 2005 PC did not mention the terrace, known then as the "Porch"

RESOLUTION NO. PC 05-XX

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED ALCOHOL SALES AND SPECIAL EVENTS AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATION COMPANY, LLC-MICHAEL A. ZISLIS, PRESIDENT)

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Manhattan Beach, California, hereby makes the following findings:

- A. Manhattan Inn Operation Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previously approved alcohol sales and special events at the Shade Hotel, Metlox site, 1221 north Valley Drive in the City of Manhattan Beach.
- B. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission and therefore they will review the project and make a determine if an amendment to the Permit will be required to be processed.
- D. The applicant is Manhattan Inn Operation Company, LLC and the property owner is the City of Manhattan Beach.
- E. The following is a summary of some of the key milestones for the Metlox site:
 - 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner
 - April 2001- The City Council certified the EIR
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
 - November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
 - February 2003- Groundbreaking for the Metlox parking structure
 - January 2004- Grand opening of public parking structure with 460 parking spaces
 - April 2004- Shade Hotel construction commenced
 - September 2004- Construction of the Metlox commercial buildings started
- F. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meeting of May 25, 2005.

The public hearing was advertised pursuant to applicable law and testimony was invited and received.

- G. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.
- H. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space.
- I. The General Plan designation for the property is Downtown Commercial.
- J. The proposed project is a modification of the previously approved alcohol sales for the Shade Hotel to provide high quality service to their customers consistent with the business plan for the four-star hotel, as well as to provide consistency with the State Alcoholic Beverage Control (ABC) regulations. The previous approval (Condition No. 38- City Council Resolution No. 5770) allows full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The State Alcoholic Beverage Control (ABC) regulations require a full liquor license throughout the Hotel facility (Type 47 license) that is open to the general public and includes the service of food in order to allow the in-room mini-bar license (Type 66 license). There is no ABC license, or series of licenses that would allow beer and wine only for guests, and full liquor for the mini-bars. A portable bar with full liquor (Type 68 license), for special events, is also proposed. Full liquor is proposed throughout the Hotel including the Courtyard, the Living Room which includes the Lobby and Wine Bar, the Meeting Room and the rooftop Sun Deck. Alcohol is only allowed to be consumed on the site, it may not be taken off-site for consumption.
- K. The previous approval (Condition No. 28- City Council Resolution No. 5770) also limits special events (weddings, parties, etc.) to 60 people, and the modification requests a maximum of 99 people.
- L. No changes to the previously approved hours of operation are proposed for either the alcohol sales or the special events. Breakfast Service in the Living Room and/or Courtyard is proposed from 6:00 AM to 10:00 PM Monday-Friday and 6:00 AM-11:00 PM Saturday and Sunday. The "Wine Bar" is proposed to operate in the evenings from 5:00 PM to 11:00 PM daily, although flexibility for earlier hours based on the needs of the customer is desired. Although the emphasis of the "Wine Bar" will be on providing a wide selection of premium wines, full liquor will be available. Additionally, the Wine Bar will provide a variety of appetizers in order to qualify as an eating establishment as required by the ABC. Mid-day, lunch, food service will not be provided, except for room service.
- M. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. The

changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. All advertising, marketing and promotions will be focused on potential hotel guests and not the general public.

- N. As part of the ABC license application process completed in February 2005 public notices were mailed to the neighbors located within a 500 yard radius of the property, the application sign was posted on the exterior of the property for thirty days, and the application was advertised publicly in the newspaper three times. Not one neighbor or citizen protested the application.
- O. Potential noise concerns will be addressed through the review of the annual Entertainment Permit as well as a retractable partition in the Living Room will be installed which is capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events as the room will have a STC (Sound Transmission Code) rating of 50. The Sun Deck is designed to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east and six feet in all others directions.
- P. The ABC has identified the Downtown area of Manhattan Beach as having an "undue concentration" of alcohol licenses, which is typical for South Bay Cities. The criteria that the ABC uses in their calculations and determination of "undue concentration" takes into account all of Los Angeles County, including areas with very little population. This tends to create areas of "undue concentration" of alcohol licenses in areas where there is concentration of people and businesses, such as Downtown and other commercial areas. The Planning Commission makes the findings of public convenience and necessity for the alcohol license as the license for the hotel use is compatible with similar uses that have alcohol licenses, and other Downtown uses and the City Council has reviewed alcohol licenses in the past and has supported alcohol in conjunction with food service and hotel uses.
- Q. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- R. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution only amends Conditions No's 28 and 38 of Resolution No. 5770, all other conditions remain effective and in full force.
- S. Based upon State law, and MBLCP Section A.84.050, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
 1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the 'use permit' of Shade Hotel are consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the city's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts.
 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or

working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the proposed amended 'use permit' of this business property is consistent with the General Plan for the Commercial Downtown designation, because it is merely the granting of additional privileges to an already approved use that will result in no fundamental change of that use. Amending the 'use permit' to comply with ABC regulations and the approval of larger special events will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the boutique hotel. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city. Additionally, the project is consistent with the following General Plan Goals and Policies:

GOALS AND POLICIES: LAND USE

Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

Policy LU-6.1: Support and encourage small businesses throughout the City.

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the issuance of a certificate of occupancy. The proposed amended 'use permit' for the boutique hotel is consistent with the already approved primary and secondary uses of the facility. The new uses will comply with the provisions and conditions of this title.
4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the boutique hotel, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.

SECTION 2. The Planning Commission of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment subject to the following conditions.

General Conditions

1. The proposed project shall be in substantial conformance with the plans submitted and the project description, as approved by the Planning Commission on May 25, 2005, subject to any special conditions set forth below. The layout of the Lobby area, including the sound insulation, and roof deck is subject to further review and approval by the Director of Community Development. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.

Land Use

2. (This condition replaces Condition No. 28- City Council Resolution No. 5770) The Inn may provide wedding, party, and other special event services in their Courtyard, Meeting Room, and Living Room, as a secondary service to the primary Inn use. These types of events are limited to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday. Events are limited to a maximum of 99 people, or whatever the maximum occupancy is as determined by the Building or Fire Code limits, whichever is less. The Director of Community Development may approve Temporary Use Permits for events which exceed 99 people, not to exceed the maximum occupancy as allowed by the Building or Fire Code limits. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. The availability of the Inn for special events shall not be marketed as the primary use.

Alcohol

3. (This condition replaces Condition No. 38- City Council Resolution No. 5770) The two restaurants may provide full liquor service, which is incidental to, and in conjunction with, the service of food. Service of alcohol at the restaurants shall be in conjunction with the service of food at all times during all hours of operation. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.

New conditions

4. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Wine Bar (now called "Zinc") and Sun Deck will not be marketed to the general public as separate hospitality attractions.
5. The Wine Bar shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room and/or Courtyard.
6. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
7. The Sun Deck shall stop regular alcohol service no later than 9:00 p.m. daily.
8. Alcohol service at events and functions shall stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday – Thursday; 11:30 p.m., Friday and Saturday.

Procedural

9. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.
10. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.
11. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.
12. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.
13. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
14. Review. All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after occupancy 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.
15. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
16. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.
17. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of **May 25, 2005**, and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RICHARD THOMPSON
Secretary to the Planning Commission

Sarah Boeschen
Recording Secretary

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.

Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

In first entertainment permit for Shade, staff increased terrace hours to 11 PM, from 10 AM weekdays and 11 AM weekends.

See Pg 3.

Police Department:

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

Fire Department:

1. Required occupancy loads shall not be exceeded and exits shall remain unobstructed.

Community Development Department:

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

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.
Location: 1221 N Valley- Shade Hotel- Metlox

5. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
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, 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 such as Lot 3.
7. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
8. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
9. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.
 Location: 1221 N Valley- Shade Hotel- Metlox

and to minimize noise and disturbance.

11. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel 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 close. The doorman or other employee shall ensure that patrons do not leave the premises with alcoholic beverages. (See Use Permit conditions below for hours)
12. If the Director of Community Development deems it necessary for noise attenuation, glass panels shall be installed on the north side of the Zinc Terrace to fill in the void between the hotel and the existing glass panels on the east side of the Zinc Terrace.
13. A renewal application shall be submitted prior to March 1, 2007.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
2. All events are limited to a maximum of 99 people unless prior written approval through a Temporary Use Permit is provided by the Director of Community Development. Event size may not exceed the maximum occupancy as allowed by the Building or Fire Code limits.
3. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.
4. Noise mitigation strategies shall be implemented including: wall and ceiling treatments as required within the Lounge and Zinc Terrace area in order to mitigate noise. Zinc Lounge shall demonstrate that the insulation has an STC (Sound Transmission Code) rating of 50 to the noise.
 of operation for the hotel public areas shall be as follows:
Lobby Zinc Bar (including outdoor Zinc Terrace to south of Lounge)- 11:00 PM daily (Alcohol service to stop at 10:30 pm inside the Zinc bar and 10:00 PM outside on the Zinc Terrace)
Interior Outdoor Courtyard (to north of Zinc lounge) and Green Room (2nd floor meeting room) when used for special events and functions- 11:00 pm Sunday -Thursday, 12:00

Zinc Lounge/ lobby sound wall
 Increase terrace hours to 11PM

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midnight Friday and Saturday (Alcohol service to stop at 10:30 pm Sunday -Thursday, 11:30 pm

Skydeck (Rooftop Deck)- 10:00 pm daily (Alcohol service to stop at 9:00 P.M.)

6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.
7. The availability of the Inn for special events shall not be marketed as the primary use.
8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees do not litter adjacent public property, including

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but not limited to the sidewalk, street, Metlox Town Square and all other public areas at Metlox. The hotel operators shall police and promptly clean up all areas with any litter and spills after all events. Public Works shall bill applicant for any event related clean-up costs.

Risk Manager:

1. The applicant shall comply with all required Insurance and Indemnity requirements of the City of Manhattan Beach as detailed below.

INSURANCE AND INDEMNITY

1.1 Commencement of Work

SHADE HOTEL shall not commence work under this Agreement until it has obtained Owner approved insurance. Before beginning work hereunder, during the entire period of this Agreement, or any extensions hereto, and for periods after the end of this Agreement as indicated below, SHADE HOTEL must have and maintain in place, all of the insurance coverages required in this Article 1. SHADE HOTELS insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Article 1 and SHADE HOTEL shall be responsible to obtain evidence of insurance from each subcontractor and provide it to the Owner before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A:-VII unless otherwise approved by CITY.

1.2 Coverages, Limits and Policy Requirements

SHADE HOTEL shall maintain the types of coverages and limits indicated below:

(1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, or the equivalent thereof with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. Owner, its employees,

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officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) COMMERCIAL AUTO LIABILITY INSURANCE - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93 or the equivalent thereof including Symbol 1 (any auto) with no special limitations affecting the Owner. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by the Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim.

(4) PROFESSIONAL ERRORS & OMISSIONS - a policy with minimum limits of one million dollars (\$1,000,000) per claim and aggregate. This policy shall be issued by an insurance

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company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to the Owner.

1.3 Additional Requirements

The procuring of such required policies of insurance shall not be construed to limit SHADE HOTEL's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against the Owner for payment of premiums or other amounts with respect thereto.

The Owner shall notify SHADE HOTEL in writing of changes in the insurance requirements. If SHADE HOTEL does not deposit copies of acceptable insurance policies with the Owner incorporating such changes within sixty (60) days of receipt of such notice, SHADE HOTEL shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by the Owner. Any deductible exceeding \$100,000 shall be subject to the following changes:

(1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to the Owner and its officials, employees and agents (with additional premium, if any, to be paid by SHADE HOTEL) ; or

(2) SHADE HOTEL shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

1.4 Verification of Compliance

SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work

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commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

1.5 Indemnification

- 1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.
- 1.5.2 The Owner shall cause the Contractor to indemnify and hold harmless SHADE HOTEL from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, expenses and fees that are asserted against the SHADE HOTEL and that arise out of or result from wrongful acts or omissions by the Contractor in performing the Work.

EXHIBIT 10. POLICE CALLS FOR SHADE HOTEL, 2005-2009
RESIDENTS' INPUT ON SHADE HOTEL APPLICATION

Planning Commission Hearing, October 28, 2009
Nate Hubbard, 1300 N Ardmore Ave, natehubz@mac.com

See Pg 2 for cites of calls MBPD regarding Shade disturbances

Dear Commissioners,

I am Nate Hubbard, 1300 N Ardmore Ave, and act as the neighborhood representative to coordinate residents' response to the Shade Hotel application. A small group of us, Teresa Cho, Steve Wibel, Jeff Dooley, Aksi Kikut, Stephanie Hubbard and me, have worked two months, since the July 22 hearing, to arrive at a consensus. Don McPherson joined our group, because none of us have experience in the city approval process, although we are learning fast.

As seen from the distribution list of the covering email, we keep a large number of residents informed of our actions. This week, we mailed to 150 residents and property owners in the neighborhood a flyer, with an opinion form for them to send to the city. To date, as result of our communication efforts, we have received no comments contrary to our consensus.

This letter outlining our position on the Shade application provides:

- A summary of the conditions we require in the use permit (Exhibit R-A)
- A detailed analysis of violations by Shade during the past four years, which have seriously disturbed the peace and quiet of our neighborhood (Exhibit R-B)
- Methods that possibly will mitigate the noise impacting the neighborhood (Exhibit R-C).

Having just received the city acoustic engineering report two days ago, we make a few observations, but will add an analysis of the report to our input, on Monday, October 26.

Our Consensus Regarding Items in the Shade Application.

Regarding the changes requested by Mr. Zislis, we support the folding door across the entry to the courtyard, although of sound-absorbing material, not glass. Lunch also receives our support. Despite Mr. Zislis's claim that Shade complies with the alcohol-food ratio condition in the ABC licenses, we believe compliance highly questionable. Consequently, legalizing the current violation of lunch service makes sense, to facilitate attaining compliance.

We oppose increasing special event attendance from 99, without requiring a temporary use permit. Until two weeks ago, in violation of the use permit, Shade never informed the city of special events over 99. Because the hotel disturbs the neighborhood, the city should retain the authority to limit special event attendance, in order to reduce intensity of the nightclub scene.

We also oppose any extension of hours, either in morning or evening, until Mr. Zislis stops the violations of noise regulations in the municipal code and conditions in the use and entertainment permits that cause the disturbances in our neighborhood.

Recognizing that the city might extend hours for the Zinc bar to midnight on Fridays and Saturdays, we stipulate a set of conditions, under which the commissioners might conceivably make a legitimate finding that an extended closing time would not impact the neighborhood.

Our Consensus Regarding Use Permit Conditions (Exhibit R-A).

Although hotel management routinely and blatantly violates municipal code and permit requirements, lax enforcement by the city constitutes the root cause of the disturbances that wrack our neighborhood weekly. We believe the city role as property owner and landlord contributes significantly to their turning a blind eye to Shade violations, these past four years.

The use and entertainment permits, as currently approved, provide adequate means for the city to require that Mr. Zislis operate Shade as a hotel, rather than a nightclub. For example, Finding O in PC Resolution 05-08 requires a sound wall between the Zinc bar and the lobby. Mr. Zislis did not install that noise-reducing wall, nor has the city enforced the requirement.

EXHIBIT 10. POLICE CALLS FOR SHADE HOTEL, 2005-2009
RESIDENTS' INPUT ON SHADE HOTEL APPLICATION

Planning Commission Hearing, October 28, 2009
Nate Hubbard, 1300 N Ardmore Ave, natehubz@mac.com

Exhibit R-A, first page, illustrates the soundproofing required for the Zinc bar by Finding O in Resolution 05-08, as quoted at the top of the page. For the underlying drawing of the Zinc-lobby-terrace area, we have used Figure 2-23 in the city acoustic report, in which staff has oddly proposed running a wall through the lobby as a sound barrier. The staff-proposed wall also blocks access to the hotel reception desk by guests entering from the front door.

Suggesting deletion of staff's sound wall in the lobby, we show in Exhibit R-A, first page, the retractable partition that separates Zinc from reception, as required by the use permit. Finding O requires Zinc soundproofing to a sound transmission coefficient STC-50, a -50 dB noise reduction, or a factor of 100,000. Furthermore, the entertainment permit requires Shade to demonstrate compliance with STC-50, as shown at the bottom of Exhibit R-A, first page.

If the city had enforced the requirement to soundproof the Zinc bar, that would have spared our neighborhood from four years of nonstop noise and music disturbances. The use permit also stipulates closing times for the skydeck, terrace, Zinc bar and special events, which the city has not enforced, as evidenced by the violations analysis in Exhibit R-B. The entertainment permit also prohibits valet service at the hotel entrance after 10 PM Friday and Saturdays, another requirement violated by Shade and not enforced by the city.

The second page of Exhibit R-A summarizes the use permit conditions we require, most of them already included in Resolution 05-08 and the entertainment permit. Our summary of conditions clarifies the language, while providing a logical organization for ease of understanding and enforcement. After analyzing the city acoustic engineering report, we will provide a more detailed description of our use permit conditions, Monday, October 26.

Shade Violations Documentation, Nov 2005 - Present (Exhibit R-B).

The Shade violations analysis contains its own summary, as well as 16 exhibits documenting proof for all eight types of violations. Since start of operations, as of September 2009, the police received 97 calls of disturbances at Shade, approximately two a month, while never issuing the hotel a citation. According to the neighbors, they failed to report many of the disturbances. In Exhibit R-B, if nothing else, please read the residents' accounts of the disturbances, starting 2006 and continuing up to incidents one week ago, October 16-17.

You will find residents accounts of disturbances at Exhibits B, C, D, G, I, and J.

Noise Mitigation Methods.

You received a copy of the noise mitigation analysis in late August. Exhibit R-C has updated analysis to include a preliminary critique of the city acoustical engineering report.

Astoundingly, the city did not evaluate the only noise mitigation method required by the current use permit, Resolution 05-08, namely soundproofing the Zinc bar, required by Finding O.

Additionally, the report does not provide commissioners the necessary data to validate the city claim that Shade does not violate the quantitative sound levels stipulated in municipal code, Section 5.48.160 External Noise Standards. To make that validation, commissioners require the dB values at the periphery of the Shade property, adjacent to city right of way.

The city also suppressed showing the dB levels existing inside the Zinc bar and terrace.

Conclusions. The current use and entertainment permits contain most of the requirements necessary to stop Shade from disturbing the neighborhood, if the city enforced the regulations. On Monday October 26, we will update our input with the approach to solve the problems.

Thanks for your consideration of our input, Nate Hubbard



MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT

1221 N Valley Drive Manhattan Beach, CA 90266

Office Use Only
Date Submitted: 4/16/09
Received By: [Signature]
F&G Check Submitted: - *NO*
(need \$)

Project Address

See Attached

Legal Description

Downtown Commercial

CD

General Plan Designation

Zoning Designation

Area District

For projects requiring a Coastal Development Permit, select one of the following determinations¹:

Project located in Appeal Jurisdiction

Project not located in Appeal Jurisdiction

Major Development (Public Hearing required)

Public Hearing Required (due to UP, Var., etc.)

Minor Development (Public Hearing, if requested)

No Public Hearing Required

Submitted Application (check all that apply)

- | | |
|------------------------------------------------------------|--------------------------------------------------------------|
| <input type="checkbox"/> Appeal to PC/PWC/BBA/CC | <input type="checkbox"/> Use Permit (Residential) |
| <input type="checkbox"/> Coastal Development Permit | <input type="checkbox"/> Use Permit (Commercial) |
| <input type="checkbox"/> Environmental Assessment | <input checked="" type="checkbox"/> Use Permit Amendment |
| <input type="checkbox"/> Minor Exception | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Subdivision (Map Deposit) 4300 | <input type="checkbox"/> Public Notification Fee / \$65 |
| <input type="checkbox"/> Subdivision (Tentative Map) | <input type="checkbox"/> Park/Rec Quimby Fee 4425 |
| <input type="checkbox"/> Subdivision (Final) | <input type="checkbox"/> Lot Merger/Adjustment/\$15 rec. fee |
| <input type="checkbox"/> Subdivision (Lot Line Adjustment) | <input type="checkbox"/> Other |

Fee Summary: Account No. 4225 (calculate fees on reverse)

Pre-Application Conference: Yes _____ No Date: _____ Fee: _____

Amount Due: \$ 4730 (less Pre-Application Fee if submitted within past 3 months)

Receipt Number: _____ Date Paid: _____ Cashier: _____

Applicant(s)/Appellant(s) Information

Manhattan Inn Operating Company, LLC

Name

1221 North Valley Drive Manhattan Beach, CA 90266

Mailing Address

Manhattan Inn Operating Company, LLC (Lessee), Michael Zislis (Manager)

Applicant(s)/Appellant(s) Relationship to Property

Michael Zislis, Manager

Katie Kruff

310.704.8507 / zislis@aol.com

Contact Person (include relation to applicant/appellant)

Phone number / e-mail

1221 North Valley Drive Manhattan Beach, CA 90266

Address,

[Signature]

310.704.8507

Applicant(s)/Appellant(s) Signature

Phone number

Complete Project Description- including any demolition (attach additional pages if necessary)

See Attached Pages

EXHIBIT D
PC Mtg. 6/24/09

¹ An Application for a Coastal Development Permit shall be made prior to, or concurrent with, an application for any other permit or approvals required for the project by the City of Manhattan Beach Municipal Code. (Continued on reverse)


RECEIVED
APR 16 2009
Shade Exhibits-064
By _____

6007-11-00
C/001-01241036
FILED

OWNER'S AFFIDAVIT

STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

I/We Michael Zislis being duly sworn, depose and say that I am/we are the owner(s) of the property involved in this application and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of my/our knowledge and belief(s).

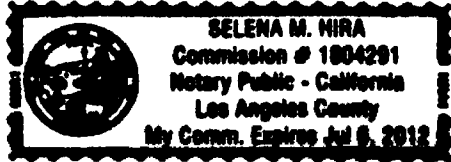
 - For Manhattan Inn Operating Company, LLC
 Signature of Property Owner(s) – (Not Owner in Escrow or Lessee)
 Michael Zislis

Print Name
 1221 North Valley Drive Manhattan Beach, CA 90266

Mailing Address
 310.704.8507

Telephone

Subscribed and sworn to before me, this 15th day of April, 2009 in and for the County of Los Angeles



State of CA
 Notary Public 

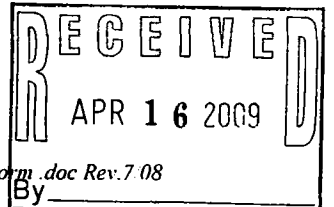
Fee Schedule Summary

Below are the fees typically associated with the corresponding applications. Additional fees not shown on this sheet may apply – refer to current City Fee Resolution (contact the Planning Department for assistance.) Fees are subject to annual adjustment.

Submitted Application (circle applicable fees, apply total to Fee Summary on application)

<i>Coastal Development Permit</i>	
Filing Fee (public hearing – no other discretionary approval required):	\$ 4,275 <input checked="" type="checkbox"/>
Filing Fee (public hearing – other discretionary approvals required):	\$ 815 <input checked="" type="checkbox"/>
Filing Fee (no public hearing required):	\$ 560
<i>Use Permit</i>	
Use Permit Filing Fee:	\$ 5,200 <input checked="" type="checkbox"/>
Master Use Permit Filing Fee:	\$ 8,145 <input checked="" type="checkbox"/>
Amendment Filing Fee:	\$ 4,730 <input checked="" type="checkbox"/>
Master Use Permit Conversion	\$ 4,080 <input checked="" type="checkbox"/>
<i>Variance</i>	
Filing Fee:	\$ 4,925 <input checked="" type="checkbox"/>
<i>Minor Exception</i>	
Filing Fee (with notice):	\$ 1,095 <input checked="" type="checkbox"/>
Filing Fee (without notice):	547.50
<i>Subdivision</i>	
Certificate of Compliance	\$1,505
Final Parcel Map / Final Tract Map	585
Lot Line Adjustment or Merger of Parcels	1,010
Mapping Deposit (paid with Final Map application)	473
Quimby (Parks & Recreation) fee (per unit/lot)	1,817
Tentative Parcel Map (less than 4 lots / units) No Public Hearing	805
Tentative Parcel Map (less than 4 lots / units) Public Hearing	3,180** <input checked="" type="checkbox"/>
Tentative Tract Map (more than 4 lots / units)	3,770** <input checked="" type="checkbox"/>
<i>Environmental Review (contact Planning Division for applicable fee)</i>	
Environmental Assessment:	\$ 215
Environmental Assessment (if Initial Study is prepared):	\$ 2,210
Fish and Game County Clerk Fee ² :	\$ 50
<input checked="" type="checkbox"/> Public Notification Fee applies to all projects with public hearings and covers the city's costs of envelopes, postage and handling the mailing of public notices. Add this to filing fees above, as applicable.	\$ 65

² Make \$50 check payable to LA County Clerk, (DO NOT PUT DATE ON CHECK)



SHADE/MUP AMENDMENT

WRITTEN DESCRIPTION

Purpose of Application:

Background. Shade Hotel has proven itself as a very valuable addition to the City of Manhattan Beach. The Hotel has established itself as a popular four-star hotel destination, while its Zinc Lounge has been a hit with locals. The attractiveness of our community has been enhanced. The Hotel brings substantial revenue to the City, both in direct taxes (occupancy, sales and property) and by attracting an affluent clientele toward other businesses in the area. The Hotel employs approximately 100 people.

During the three years of the Hotel's operations, the Metlox Plaza has evolved. For example, Deli Boys has given way to Sashi, which attracts a more upscale evening crowd. Based on our experience over this time frame, we believe that various terms in the original Master Use Permit (as applying to the Hotel) should be clarified and fine tuned to be consistent with the Hotel's status as a four star destination and as the anchor for the Metlox Plaza. These clarifications relate principally to hours and to ancillary services (such as food, bar and events). The changes will put Shade Hotel on a level playing field not only with other luxury hotels, but also with other hospitality businesses in the City.

Clarification of Hours. Paragraph 29 of the original Master Use Permit for the Metlox Plaza established general hours for operation of the Metlox Project. Those are: 6:00 a.m. to 11:00 p.m. Sunday through Thursday, and 6:00 a.m. to 12:00 a.m. (mid-night) Friday and Saturday (with no specific exception for special occasions such as New Year's Eve).

Paragraph 29 specifically states that those hours apply to the "Town Square and Public Areas" and also to "restaurant, food service, retail and personal services." No specific mention was made of the Hotel. PC Res. 05-08 applied similar hours to the Hotel (at least for special events), but imposed several more restrictive conditions (such as calling for bar service to stop 30 minutes before closing and for the Sky Deck to close at 10:00 p.m. with bar service ending at 9:00 p.m.).

These restrictions are contrary to the general trend of expanding use of the Metlox Plaza. For example, by an amendment to the Master Use Permit, the hours for Petros Restaurant are now extended to 1:00 a.m. on Friday and Saturday nights and 12:00 mid-night on other nights. The restrictions are not consistent with Shade Hotel's importance to the Metlox Plaza and to the City in general.

The principal purpose for the proposed amendment is to establish that the Hotel's hours should be similar to those of other hospitality businesses in the City.

Sound Issues. The staff and owners of Shade Hotel take pride in the Hotel's good relations to the community. Shade has incurred considerable expense in designing and

installing various sound barriers including, for example, two sound barriers on the East Side of the Hotel's Terrace. The Hotel will install additional sound barriers on the East Side of the Sky Deck

Manhattan Inn Operating Co, LLC requests a glass door structure designed to separate the courtyard/guest room area of the hotel from the Zinc Lounge. A permanent door will be installed near room 101 (same as existing door in front of room 116) and a glass "accordion" wall will be installed from room 116 to room 101. This accordion wall will remain open at all times except during certain events and busy nights in Zinc Lounge. The purpose of this wall and door is to prevent lounge patrons from loitering in the courtyard and disrupting hotel guests. Please see attached plans.

The Hotel provides a security team to maintain tight controls and decorum on all evenings when a significant number of guests is expected. The operations of the valets are modified at late hours (at some inconvenience for the Hotel and its guests) in order to limit noises on the East side of the Hotel. As a result of these steps, we believe that Hotel activities are less of a noise and security concern than surrounding areas within and outside the Metlox Plaza.

Such steps cannot completely satisfy every person all the time. However, it is clear that the response of the Community to all of the Hotel's activities has been overwhelmingly positive.

Other Modifications. The Hotel as ultimately approved and built differs in some details from what was contemplated when the Master Use Permit was first adopted (and when PC Resolution 05-08 was approved). Some minor modifications to language will clarify how the MUP applies to Hotel activities in a way that allows the Hotel to maintain its four-star status. For example, the MUP doesn't literally specify that the Hotel may serve lunch on its Terrace.

By preserving the Hotel's stature, changes of this sort will also help to support the Hotel's revenue (and thus the financial benefits to the City) against economic pressures arising from the current economic slowdown.

Proposed Findings.

Based on the foregoing, it is proposed that the Commission find as follows:

1. The proposed location of the use is in accord with the objectives of Title 10 of the Manhattan Beach Municipal Code and the purposes of the district in which the site is located;
2. The proposed location of the use and the purposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of

persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city;

3. The proposed use will comply with the provisions of Title 10 of the Manhattan Beach Municipal Code, including any specific condition required for the proposed use in the district in which it would be located; and
4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to; traffic, parking, noise, vibration, odors, resident security, and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigate.

Group Entertainment Permit. The MUP contemplates that certain events at the Hotel will require a Group Entertainment Permit. The Permit currently applying to the Hotel contains various restrictions that are more restrictive than the MUP seems inconsistent with the Hotel's intended stature. These matters will be addressed when the Group Entertainment permit is renewed.

4/16/2009

Updated

Metlox Plaza and Associated Businesses
Mark Up of Existing Master Use Permit Terms

Land Use

25. The following land uses and maximum square footages, as defined and approved by the DDA/Ground Lease, ~~and shall be allowed~~
- A) Retail Sales and service [etc., no change]
 - B) *“Eating and Drinking Establishment (restaurants), two (2) total maximum, 8,000 square feet total maximum (including 6,400 square feet maximum dining/seating area regardless of whether located indoors or outdoors).*
 - C) *Offices [etc., no change]*
 - D) *“Visitor Accommodations (Boutique Hotel ~~Bed and Breakfast Inn~~), 35 to 40 rooms, 31,000 ~~26,000~~ square feet total maximum.*
28. *The Hotel Inn may provide wedding, party, and other special event services in its ~~their~~Lounge, Courtyard, Terrace, Meeting Room, and rooftop deck ~~Living Room~~, as a secondary service to the primary Inn use in addition to providing hotel rooms for its guests. These types of events are limited to the hours specified in Paragraph 29 below. ~~6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 pm (mid-night) Friday and Saturday.~~ Events are limited to a maximum of 150 ~~99~~ people, or whatever the maximum occupancy is as determined by the Building or Fire Code limits, whichever is less. The Director of Community Development may approve Temporary Use Permits for events which exceed 150 ~~99~~ people, not to exceed the maximum occupancy as allowed by the Building or Fire Code limits. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. ~~The availability of the Inn for special events shall not be marketed as the primary use.~~*

(note: the above terms already reflect an amendment made by PC Res. 05-08)

29. *The hours of operation for the site shall be permitted as follows:*
- * *Restaurant, food service, retail and personal service: Up to 6:00 am to 11:00 p.m Sunday through Thursday, and 6:00am to 12:00am (mid-night) Friday and Saturday.*
 - * *Offices: Up to 24 hours.*
 - * *Town Square and Public Areas: Up to 6:00 am to 11:00 p.m. Sunday*

through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday, seasonal, depending on weather.

** The Hotel Lounge, Terrace, Courtyard and Skydeck: Up to 6:00 a.m. to 12 a.m., Sunday through Thursday and 6:00 a.m. to 1:00 a.m. Friday and Saturday.*

For purposes of this Paragraph, nights before Holidays shall be treated the same as a Friday or Saturday. Closing on New Years Eve shall be 1:00 a.m.

30. *The second floor roof deck with the relaxation pool jacuzzi at the Hotel Inn shall be has been redesigned. The floor level of the roof deck may not exceed 21 feet in height, and the deck area must be properly screened. —The deck area may only be open for use from 6:00 am to 10:00 pm, seven days per week.*

Alcohol

38. *The two restaurants may provide full liquor service, which is incidental to, and in conjunction with, the service of food. Service of alcohol at the restaurants shall be in conjunction with the service of food at all times during all hours of operation. The Hotel may provide full liquor service throughout the Hotel, including self-service in room “mini-bars,” and a portable bar for special events. the service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol shall be consistent with the hours specified in Paragraph 29 the project description. Permitted food service at the Hotel shall, which is generally include breakfast, lunch, evening appetizers and light “small plates.” and Dinner may be served at for special events and as room service. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit*

(the above terms reflect paragraph 38 as previously amended by PR Res. 05-08)

2 *Restaurant uses, including the service of alcoholic beverages, shall be limited in their operation to the hours specified in paragraph 29. between 6:00 a.m. to 11:00 pm, Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday. The rules specified in this Paragraph 39 shall also apply to the Hotel lounge, terrace, and rooftop deck.*

Entertainment

40. *Dancing and amplified live music is prohibited within the business-office and retail establishments. Non-amplified live music or entertainment, limited to background-type music, with a maximum of 2 entertainers is permitted. Any live entertainment proposed in conjunction with any use (with the exception of background music, television and no more than 3 games or amusements per business establishment) shall require a Class 1 annual Entertainment Permit consistent with the provision of Section 4.20.050 of the Manhattan Beach Municipal code. . . . Appropriate*

conditions shall be placed on the Permit to minimize potential negative impacts (consistent with the nature and customary use of the facility involved). These conditions shall include, but not be limited to, hours, size and location of performance or dance area, size of band and number of performers, numbers of performance days per week, type and location of amplification, speakers and soundproofing, and volume of amplification. The Permit will be reviewed annually to determine if it is appropriate to renew the permit, deny the permit, or modify the conditions of approval.

New Conditions as Set Forth Under PC Resolution No. 05-08:

1 *The proposed project shall be in substantial conformance with the plans submitted and the project description, as approved by the Planning Commission on May 25, 2005, subject to any special conditions set forth below. The layout of the Lobby area, including the sound insulation, and the roof deck is subject to further review and approval by the Director of Community Development. Any substantial deviation from the approved plans and project description must be reviewed and approved by the planning commission.*

2 *[See Paragraph 28 above]*

3 *[See Paragraph 38 above]*

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

5 *Except for events and special occasions, ~~the The Zinc Lounge Wine Bar~~ shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a*

3

"bonafide eating place" as required by the ABC Type 47 license. ~~The Lounge and Terrace Wine Bar~~ shall provide food service but shall not operate as a full scale "restaurant." Breakfast and lunch may be served daily in the Lounge, Terrace Living Room, Poreh, Skydeck, and/or Courtyard.

1 *Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.*

2 *The Sun Deck shall stop regular alcohol service no later than 9:00 p.m. daily.*

6 & 8. *Except for events and special occasions, Alcohol service ~~at events and functions~~ shall stop ~~thirty~~ fifteen minutes prior to the applicable closing time. ~~hotel closing hours: 10:30 p.m., Sunday - Thursday; 11:30 p.m., Friday and Saturday.~~*



ENVIRONMENTAL INFORMATION FORM

(to be completed by applicant)

CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT

Date Filed: 4/15/09

APPLICANT INFORMATION

Name: Manhattan Inn Operating Co.

Contact Person: Michael Zislis

Address: 1221 N. Valley Drive

Address: 1221 N. Valiev Drive

Phone number: 310.546.4995

Phone number: 310.704.8507

Relationship to property: Tenant

Association to applicant: Manager

PROJECT LOCATION AND LAND USE

Project Address: 1221 North Valley Drive Manhattan Beach, CA 90266

Assessor's Parcel Number: 8940-211-011

Legal Description: See Attached

Area District, Zoning, General Plan Designation: Commercial Downtown

Surrounding Land Uses:

North Public

West Downtown Commercial

South Downtown Commercial

East Open Space

Existing Land Use: Commercial Hotel.

PROJECT DESCRIPTION

Type of Project: Commercial Residential Other

If Residential, indicate type of development (i.e.; single family, apartment, condominium, etc.) and number of units: N/A

If Commercial, indicate orientation (neighborhood, citywide, or regional), type of use anticipated, hours of operation, number of employees, number of fixed seats, square footage of kitchen, seating, sales, and storage areas: _____

See Attached Description.

If use is other than above, provide detailed operational characteristics and anticipated intensity of the development: See Attached Description.

Removed/

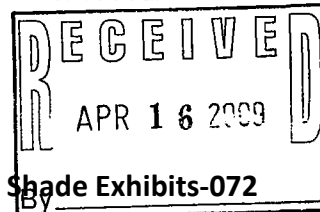


EXHIBIT 11. SHADE APPLICATION FOR 2010 CUP

	<u>Existing</u>	<u>Proposed</u>	<u>Required</u>	<u>Demolished</u>
Project Site Area:	_____	_____	_____	_____
Building Floor Area:	_____	_____	_____	_____
Height of Structure(s)	_____	_____	_____	_____
Number of Floors/Stories:	_____	_____	_____	_____
Percent Lot Coverage:	_____	_____	_____	_____
Off-Street Parking:	_____	_____	_____	_____
Vehicle Loading Space:	_____	_____	_____	_____
Open Space/Landscaping:	_____	_____	_____	_____

Proposed Grading:
 Cut _____ Fill _____ Balance _____ Imported _____ Exported _____

Will the proposed project result in the following (*check all that apply*):

- | <u>Yes</u> | <u>No</u> | |
|------------|--------------|------------------------------------------------------------------------------------------------------------------------------|
| _____ | <u> X </u> | Changes in existing features or any bays, tidelands, beaches, lakes, or hills, or substantial alteration of ground contours? |
| _____ | <u> X </u> | Changes to a scenic vista or scenic highway? |
| _____ | <u> X </u> | A change in pattern, scale or character of a general area? |
| _____ | <u> X </u> | A generation of significant amount of solid waste or litter? |
| _____ | <u> X </u> | A violation of air quality regulations/requirements, or the creation of objectionable odors? |
| _____ | <u> X </u> | Water quality impacts (surface or ground), or affect drainage patters? |
| _____ | <u> X </u> | An increase in existing noise levels? |
| _____ | <u> X </u> | A site on filled land, or on a slope of 10% or more? |
| _____ | <u> X </u> | The use of potentially hazardous chemicals? |
| _____ | <u> X </u> | An increased demand for municipal services? |
| _____ | <u> X </u> | An increase in fuel consumption? |
| _____ | <u> X </u> | A relationship to a larger project, or series of projects? |

Explain all "Yes" responses (*attach additional sheets or attachments as necessary*):

CERTIFICATION: I hereby certify that the statements furnished above and in attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Signature: _____ Prepared For: _____

Date Prepared: 4/15/09

Revised 7/97

Behrens and Associates, Inc.*Acoustics, Noise and Vibration Consultants*

October 21, 2009

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

Attention: Laurie Jester, Planning Manager

Subject: Shade Hotel Noise Impact and Mitigation Evaluation Report

Dear Ms. Jester,

We have completed the noise impact and mitigation evaluation and City Code compliance evaluation for the Shade Hotel, located at 1221 N Valley Drive, Manhattan Beach, California. This report provides an assessment of the current noise impacts generated from the Shade Hotel and provides an analysis of various noise mitigation options, along with an assessment of the noise levels measured relative the City's Municipal Code objective noise standards. The subjective "reasonable person" standard is not evaluated in this report.

Executive Summary

Sound level measurements taken between September 5 and 19, 2009 indicate that the noise generated from the Shade Hotel does not exceed the objective noise standards in the City's Municipal Code. Although our measurements have shown the hotel noise levels to be in compliance with the City's objective noise standards, there is potential for the noise standards to be exceeded during the early morning hours if the hotel's closing time is extended if additional sound mitigation systems are not employed. The relative contributions of different sources to the total noise level vary at different locations within the residential community. At locations north of 13th Street, the greatest contribution comes from the rooftop deck noise. At locations between 12th Street and 13th Street, the relative contributions of the noise from the east entrance and south terrace increase. At the houses south of 12th Street, the south terrace noise is the dominant source. The noise propagating from the north windows of the Zinc lounge (within the hotel's inner courtyard) contributes relatively little to the overall noise level at any location within the adjacent residential community. A three-dimensional noise impact model was developed to assess the performance of various mitigation measures proposed for reducing the noise from the Shade Hotel. The proposed east entrance vestibule to the hotel is of limited benefit and an alternative solution involving the construction of a wall in the entrance lobby has been proposed. The open terrace and Zinc lounge south entrance noise, including the customer queue area could be reduced significantly by installing an acoustically rated barrier across the corridor between the Shade Hotel and Petros. The relocation of the customer queue will have little effect on the noise levels at the residences but may be a mitigation measure to consider in the future if the terrace is enclosed. The rooftop deck was modeled with a roof enclosing the area. Other than restricting the hours of use of the rooftop deck, enclosing this area is the most effective way to reduce the noise generated from this source.

Behrens and Associates, Inc.*Acoustics, Noise and Vibration Consultants*

City of Manhattan Beach

October 21, 2009

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1. Assessment of the Shade Hotel Noise Relative to the City of Manhattan Beach Municipal Code

1.1 City of Manhattan Beach Municipal Code Noise Standards

The City of Manhattan Beach Municipal Code contains exterior noise standards for residential properties. Three types of standard are provided in the Code, these are:

1. A 'tiered' standard, which allows different noise levels to be produced for different cumulative periods during an hour. These limits are provided in Table 1-1.
2. An average noise level standard. These limits are provided in Table 1-2.
3. A subjective standard, which prohibits loud, unnecessary and unusual noises that disturb the peace and quiet of any neighborhood, or which cause discomfort or annoyance to any reasonable person of normal sensitiveness. This standard is enforced by the City's Police Department and is not considered in this report.

Table 1-1. City of Manhattan Beach Exterior Residential Tiered Noise Level Limits

Cumulative duration	Noise level that may not be exceeded (dBA)	
	Daytime (7 am to 10 pm)	Nighttime (10 pm to 7 am)
30 minutes in an hour	50.0	45.0
15 minutes in an hour	55.0	50.0
5 minutes in an hour	60.0	55.0
1 minute in an hour	65.0	60.0
Maximum level	70.0	65.0

Table 1-2. City of Manhattan Beach Exterior Residential Average Noise Level Limits

	Noise level that may not be exceeded (dBA)	
	Daytime (7 am to 10 pm)	Nighttime (10 pm to 7 am)
Average Noise Level	55.0	50.0

When the measurement location is on a boundary between two different land use classifications, the noise level limits applicable to the more restrictive land use classification plus

Behrens and Associates, Inc.*Acoustics, Noise and Vibration Consultants*

City of Manhattan Beach

October 21, 2009

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five dB shall apply. This correction applies to all the limits in Tables 1-1 and 1-2 for the houses near the Shade Hotel. The resulting noise limits that apply are provided in Table 1-3.

Table 1-3. City of Manhattan Beach Exterior Noise Level Limits with Land Use Correction

Cumulative duration	Noise level that may not be exceeded (dBA)	
	Daytime (7 am to 10 pm)	Nighttime (10 pm to 7 am)
30 minutes in an hour	55.0	50.0
15 minutes in an hour	60.0	55.0
5 minutes in an hour	65.0	60.0
1 minute in an hour	70.0	65.0
Maximum level	75.0	70.0
Average Noise Level	60.0	55.0

1.2 Noise Measurement Procedure

Noise measurements were made on the evening of Saturday September 12, 2009 at four locations along Ardmore Avenue between 9 pm and 11 pm. During these measurements a party was taking place on the Shade's rooftop deck.

Additional measurements were made at the same four locations at the same time of day on Monday September 14 in order to document the noise levels on a night during which no music was being played and there were relatively few people in the Zinc lounge. The noise measurement locations for the assessment of the Shade noise relative to the City Municipal Code are provided in Table 1-4 and Figure 1-1.

Table 1-4. Noise Measurement Locations for Assessment of Impact Relative to the City of Manhattan Beach Municipal Code

Location No.	Description	Time of measurement
1	Third Floor Deck at Front of 1300 Ardmore Ave	9 pm - 11 pm
2	Front yard of 1212 Ardmore Ave	9 pm - 10 pm
3	Rear yard of 1212 Ardmore Ave	10 pm - 11 pm
4	Third Floor Deck at Front of 1148 Ardmore Ave	9 pm - 11 pm

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City of Manhattan Beach

October 21, 2009

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Figure 1-1. Noise Measurement Locations for Assessment of Impact Relative to the City of Manhattan Beach Municipal Code



Table 1-5 provides the measured noise levels at each of the measurement locations for the Saturday evening measurements. The Monday evening measurements are provided in Table 1-6.

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City of Manhattan Beach

October 21, 2009

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Table 1-5. Saturday Evening Measurements on Ardmore Avenue

Cumulative duration	Noise levels exceeded (dBA)			
	Location 1. 1300 Ardmore Avenue	Location 2. Front of 1212 Ardmore Avenue	Location 3. Rear of 1212 Ardmore Avenue	Location 4. 1148 Ardmore Avenue
30 minutes in an hour	55.4	53.3	46.6	58.9
15 minutes in an hour	58.2	55.4	47.7	60.8
5 minutes in an hour	63.5	61.4	49.6	63.8
1 minute in an hour	66.9	66.3	52.5	67.7
Maximum level	76.9	74.2	62.6	79.3
Average Noise Level	58.9	57.2	47.7	61.0

Table 1-6. Monday Evening Measurements on Ardmore Avenue

Cumulative duration	Noise levels exceeded (dBA)			
	Location 1. 1300 Ardmore Avenue	Location 2. Front of 1212 Ardmore Avenue	Location 3. Rear of 1212 Ardmore Avenue	Location 4. 1148 Ardmore Avenue
30 minutes in an hour	53.9	51.7	43.9	58.0
15 minutes in an hour	57.1	53.7	45.2	60.2
5 minutes in an hour	62.1	59.2	47.5	63.6
1 minute in an hour	65.9	65.8	50.2	66.8
Maximum level	70.9	72.9	55.6	75.4
Average Noise Level	57.4	55.6	45.0	60.2

The noise sources at the Shade Hotel that are experienced at the houses on the east side of Ardmore Avenue on a Saturday night are:

- Music and shouting at the outdoor terrace on the south side of the hotel, including noise produced by patrons waiting to enter the Zinc lounge.
- Music and shouting from events held on the rooftop deck of the hotel.
- Music and shouting from inside the Zinc lounge, which propagates out through the east and south entrances, as well as into the courtyard area.

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City of Manhattan Beach

October 21, 2009

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Other noise sources associated with hotel patrons include:

- Noises from customers arriving and leaving the hotel, including talking and noises associated with taxis dropping off and picking up customers.
- People talking while walking along Valley Drive and Ardmore Avenue.
- Activities in the parking lot between Ardmore Avenue and Valley Drive.

Ambient sources of noise include:

- Traffic on Ardmore Avenue, Valley Drive and Manhattan Beach Boulevard.
- Mechanical equipment noise, primarily from the equipment above Petros.
- Additional talking and shouting on Ardmore Avenue and Valley Drive.
- Sprinkler systems in the landscaped area between Ardmore Avenue and Valley Drive.
- Additional activities in the parking lot between Ardmore Avenue and Valley Drive from people not associated with the hotel.
- Barking dogs.
- Aircraft.

1.3 Comparison of Measured Noise Levels with Municipal Code Standards

The measured noise levels in Tables 1-5 and 1-6 indicate that the noise from the Shade Hotel does not exceed the objective noise standards in the City's Municipal Code at any of the four measurement positions. While the measured noise levels on the Saturday night are generally above the noise standards, these levels are primarily due to ambient traffic noise and not noise from the Shade Hotel. The general increase in noise levels seen on a Saturday night compared to a Monday night may be due, in part, to noise from the hotel and also to increased traffic volumes. However, the small increase seen on a Saturday night indicates that the noise from the hotel is below the ambient level. This is confirmed by our observations during the measurements.

Although our measurements have shown the hotel noise levels to be in compliance with the City's noise standards, there is potential for the noise standards to be exceeded during the early morning hours if the hotel's closing time is extended. This is due to decreased traffic volumes, and therefore decreased ambient noise levels, during those hours. Further discussion of the ambient noise level is provided in Section 1.4.

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1.4 Continuous Noise Monitoring

In addition to the measurements used to assess the hotel noise relative to the City's Municipal Code limits, continuous noise measurements were made during a weekend at three locations. These were at the third floor deck of 1148 Ardmore Avenue (Location 4 in Figure 1-1), above the roof of the bar at the Shade's rooftop deck area and adjacent to the hotel's south terrace in the corridor between the Shade and Petros.

Graphs of the hourly average noise levels measured at the three locations are provided in Figure 1-2. The graphs show that during busy periods and special events, the noise levels at the rooftop deck and terrace increased relative to periods when the two areas saw little use. Increased levels due to noise from events held on the rooftop deck can be seen in the data measured at this area between 9 pm and 11 pm on the Saturday and between 5 pm and 8 pm on the Sunday during the weekend of measurements. The data from the measurement adjacent to the terrace area shows increased levels from approximately 7 pm to 12 am on the Friday and Saturday and from 2 pm to 5 pm on the Sunday. However, corresponding increases in noise levels are not shown in the data measured at 1148 Ardmore Avenue, further indicating that the noise from the Shade, while clearly audible at the property, does not significantly increase the noise level there. The daily fluctuations in noise levels measured at 1148 Ardmore Avenue are typical of those produced by urban traffic noise and do not reflect noise from the hotel.

The source of the increased noise levels at the terrace measurement location seen between 6 am and 8 am on the Monday morning is unknown, but is probably due to a source of noise local to this location such as landscape or other maintenance activity in the area.

As mentioned in the previous section, the Shade is currently in compliance with the City's objective noise limits during the existing hours of operation. However, the noise level data measured on Monday night and early Tuesday morning at 1148 Ardmore Avenue shows that the average ambient hourly noise level decreases from 57 dBA between 11 pm and 12 am to 53 dBA between 1 am and 2 am at this location. Analysis of the measured hotel noise levels used for the three-dimensional modeling presented in the following section indicates that this decrease in the ambient level could lead to exceedances of the City's noise limits by the hotel.

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2. Three-Dimensional Modeling of Shade Hotel Noise

2.1 Noise Modeling Method

A three-dimensional noise model was constructed in order to assess the performance of various mitigation measures proposed for reducing the noise from the Shade Hotel. Measurements at the four positions shown in Figure 1-1 were used to calibrate the noise model, in addition to other measurements made within and around the hotel. Measurements were made both during a busy Saturday evening when a party was taking place on the rooftop deck and during an afternoon when a wedding was taking place in the courtyard. Further measurements were made on 12th Street and 13th Street; however it was not possible to use these measurements to calibrate the noise model as the ambient noise levels at these locations were too high relative to the noise from the Shade.

The noise model was constructed using SoundPLAN version 6.5. This noise model predicts noise levels based on the locations, noise levels and frequency spectra of the noise sources, and the geometry and reflective properties of the local terrain, buildings and barriers.

The noise from the Shade Hotel can be categorized into three types of noise. These are:

1. Continuous 'steady-state' noise such as music, talking and shouting in the Zinc lounge, rooftop deck and terrace area. The level of this noise stays relatively constant during the evening.
2. Occasional short-duration, high-level noises. These include shouts and screams from the rooftop deck and terrace, and noise leaking out from the Zinc lounge whenever the doors are opened.
3. Noises generated on Ardmore Avenue and Valley Drive, which may be associated with Shade customers but do not originate from the hotel itself. These noises are also short-duration, high-level noises and include noise from activities in the parking lot between Ardmore Avenue and Valley Drive, people walking along the sidewalks and taxis dropping off and picking up customers in front of the hotel.

Source Categories 2 and 3 do not contribute significantly to the average noise levels but may disturb the residents. Only source Categories 1 and 2 have been modeled in our analysis.

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The sound mitigation measures that were analyzed included:

- The addition of a vestibule to the east entrance of the hotel.
- The addition of a 12-foot-high moveable acoustically rated barrier across the corridor between Shade and Petros
- Enclosing the outdoor terrace to the south (an alternative to the moveable barrier across the Shade/Petros corridor) and relocating the customer queue to the rear of the hotel.
- The addition of an enclosed roof on the rooftop deck area.
- The addition of a wall at the south corridor of the hotel's inner courtyard area.

2.2 Noise from Petros and Sashi

In addition to noise from the Shade, noise is also generated by the adjacent restaurants, Petros and Sashi. The primary source of noise at these restaurants is customers' speech at the outdoor seating areas. It was observed that the noise from these restaurants gradually decreases after 9 pm. After 10 pm, the noise from these restaurants does not significantly contribute to the overall noise experienced at the residential area. Any human noise heard from within the Metlox area after 10 pm is almost exclusively produced by Shade customers. Therefore, no recommendations are provided to reduce noise from customers dining at Petros or Sashi. These customers may, however, be partially responsible for producing Category 3 noises within the parking lot between Ardmore Avenue and Valley Drive, and along the sidewalks of the roads.

In addition to the noise from customers, noise from the mechanical equipment above Petros can be clearly heard at the houses on Ardmore Avenue and 12th Street. This equipment produces higher noise levels than the equipment on the roof of the Shade.

2.3 Noise Modeling Results

The results of the noise modeling are presented in the form of noise contour maps. These maps are provided in order to allow the assessment of the average noise (from Category 1 sources) and the maximum noise (from Category 2 sources) produced by the various individual sources at the hotel both before and after installation of the proposed mitigation measures. Noise maps are also provided for the combined average noise levels for multiple sources at the hotel.

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Noise maps modeled at first floor locations are provided for all cases. Additional maps modeled at third floor locations are provided for cases where the rooftop deck noise is included since this source is of primary concern at upper levels.

The conditions modeled for each of the noise maps are provided in Table 2-1.

Table 2-1. List of Noise Maps

Figure No.	Noise Map Type	Sources Modeled	Elevation modeled	Mitigation
2-1	Average Level	All Saturday evening sources (rooftop deck, south terrace, customer queue, Zinc lounge entrances)	1 st Floor	None
2-2	Average Level	All Saturday evening sources (rooftop deck, south terrace, customer queue, Zinc lounge entrances)	3 rd Floor	None
2-3	Average Level	Front entrance (doors closed)	1 st Floor	None
2-4	Average Level	Rooftop deck (general speech/music)	1 st Floor	None
2-5	Average Level	Rooftop deck (general speech/music)	3 rd Floor	None
2-6	Average Level	South terrace and customer queue	1 st Floor	None
2-7	Average Level	South terrace and customer queue	3 rd Floor	None
2-8	Average Level	North Zinc lounge windows	1 st Floor	None
2-9	Maximum Level	Cheer from wedding event in courtyard	1 st Floor	None
2-10	Maximum Level	Front entrance (doors open)	1 st Floor	None
2-11	Maximum Level	Rooftop deck (high level shouting/screaming)	1 st Floor	None
2-12	Maximum Level	Rooftop deck (high level shouting/screaming)	3 rd Floor	None
2-13	Average Level	All Saturday evening sources (rooftop deck, south terrace, customer queue, Zinc lounge entrances)	1 st Floor	Entrance vestibule, enclosed terrace area, relocated queue, wall enclosing courtyard corridor, enclosed rooftop deck
2-14	Average Level	All Saturday evening sources (rooftop deck, south terrace, customer queue, Zinc lounge entrances)	3 rd Floor	Entrance vestibule, enclosed terrace area, relocated queue, wall enclosing courtyard corridor, enclosed rooftop deck

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Table 2-1. List of Noise Maps (cont'd.)

Figure No.	Noise Map Type	Sources Modeled	Elevation modeled	Mitigation
2-15	Average Level	Front entrance (doors closed)	1 st Floor	Entrance vestibule
2-16	Average Level	Rooftop deck (general speech/music)	1 st Floor	Enclosed rooftop deck
2-17	Average Level	Rooftop deck (general speech/music)	3 rd Floor	Enclosed rooftop deck
2-18	Average Level	South terrace and customer queue	1 st Floor	Customer queue moved to rear of hotel, 12' wall across Shade/Petros corridor
2-19	Average Level	South terrace and customer queue	3 rd Floor	Customer queue moved to rear of hotel, 12' wall across Shade/Petros corridor
2-20	Average Level	South terrace and customer queue	1 st Floor	Enclosed terrace area
2-21	Average Level	North Zinc lounge windows and customers exiting through inner corridor	1 st Floor	Wall at edge of courtyard to enclose inner corridor
2-22	Maximum Level	Front entrance (doors open)	1 st Floor	Entrance vestibule

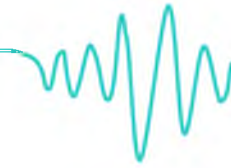
2.4 Analysis of Results**2.4.1 Unmitigated Noise Maps**

Figures 2-1 through 2-12 show noise maps for the existing unmitigated noise produced by the hotel. These maps were calibrated using our measurements on Ardmore Avenue and within the Shade Hotel. From these figures, it is observed that the relative contributions of different sources to the total noise level vary at different locations within the residential community. At locations north of 13th Street, the greatest contribution comes from the rooftop deck noise. On moving south along Ardmore Avenue, the relative contributions of the noise from the east entrance and south terrace increase. At the houses south of 12th Street, the south terrace noise is the dominant source. Figure 2-8 shows that the noise propagating from the north windows of the Zinc lounge (within the hotel's inner courtyard) contributes relatively little to the overall noise level at any location within the residential community.

Figures 2-1 and 2-2 indicate that the overall noise levels are higher with increased elevation above ground level. The relative contribution of noise from the different sources also varies depending on the height above ground level, with the rooftop deck becoming a more

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dominant noise source at higher levels. The noise level of the rooftop deck noise at the first and third floor levels is shown in Figures 2-4 and 2-5.

2.4.2 Entrance Vestibule

From Figures 2-3 and 2-15 it can be seen that the proposed east entrance vestibule will reduce the entrance noise by up to approximately 3 dB at the houses on Ardmore Avenue when the doors are closed. Figures 2-10 and 2-22 show that the reduction in maximum level noise seen when the doors are opened will be up to approximately 8 dB at the houses. While these reductions are large enough to be noticeable for this particular source at some residential locations, they are unlikely to justify the cost of the vestibule. The noise maps show that the vestibule will make little difference to the front entrance noise experienced at most houses on Ardmore Avenue. As a general rule, a mitigation solution must reduce noise by approximately 5 dB to be considered 'effective'.

2.4.3 South Terrace and Customer Queue

Figures 2-18 and 2-19 show noise maps of the south terrace and south Zinc lounge entrance noise with the customer queue relocated to the rear of the building and a 12-foot-high barrier across the corridor between the Shade and Petros. These mitigation measures reduce the noise from these sources by up to approximately 10 dB at first floor locations and 5 dB at second floor locations at the residences.

The reduction in noise levels is primarily due to the effects of the barrier on the terrace noise. The model indicates that the relocation of the customer queue will have little effect on the noise levels at the residences. This is because the major noise source at the south end of the hotel is patrons within the terrace area rather than those waiting outside.

2.4.4 North Zinc Lounge Windows and Customer Exit

Figure 2-21 shows the noise levels produced by customers exiting the premises when the exit has been relocated to the rear of the hotel and the inner corridor leading to the exit has been enclosed with a wall. The changed exit location increases the noise level to the rear of the hotel, although the noise produced by exiting customers is not as high as for the customers waiting to enter seen in Figure 2-18. An increase in the amount of noise propagating into the courtyard area is seen compared to the existing situation; however this is not a major source of noise during Friday and Saturday evenings.

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2.4.5 Courtyard Events

During the wedding noise measurements, noise from the guests was generally barely audible at the measurement location in front of 1212 Ardmore Avenue. The only measurable event was a single cheer, which produced a noise level of 55 dBA. Occasional cheers and applause were audible but below the ambient noise level. A noise map showing the one measurable event is provided in Figure 2-9. Music playing in the Zinc lounge and speeches made during the event using the amplifier system in the courtyard were, at times, just audible at the measurement location.

2.5 Proposed Alternative Mitigation Measures

2.5.1 Front Entrance

As mentioned in the previous section, the proposed vestibule is fairly ineffective at reducing noise from the front entrance of the hotel. An alternative and more effective mitigation measure is to build an interior wall within the hotel lobby. This wall would stretch from the stairs by the east entrance to the south wall of the hotel as shown in Figure 2-23. For this wall to be effective, any doors within it would have to remain closed whenever possible. If this option is chosen, it is recommended that only hotel guests be able to operate the door and that a doorman be posted in the lobby area to welcome new guests. If designed and used appropriately, it is estimated that this wall could reduce the front entrance noise by approximately 15 dB. This option has not been modeled in our analysis.

2.5.2 Rooftop Deck

Although not a previously proposed mitigation measure, the rooftop deck was modeled with a roof enclosing the area. Other than restricting the hours of use of the rooftop deck, enclosing this area is the most effective way to reduce the noise produced. As seen when comparing Figure 2-4 with Figure 2-16 and Figure 2-5 with Figure 2-17, this mitigation measure has the potential be very effective at reducing the noise, with reductions of approximately 15 dB seen at the houses on Ardmore Avenue.

In assessing whether the enclosure of the rooftop area is a viable mitigation solution, consideration should be given to how enclosing the space will affect its use. In the noise model, it has been assumed that the noise produced in this area will remain the same as the existing conditions. However, it is possible that enclosing the space may encourage the music to be turned up. In addition, higher indoor temperatures in this space may result in it seeing more use during the colder months of the year. These effects combined may result in the enclosure being less effective than has been predicted in our model.

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2.5.3 South Terrace

An alternative mitigation measure to the proposed barrier across the corridor between Shade Hotel and Petros is to enclose the terrace area. A noise map of the terrace and south entrance noise with this solution, as well as the relocated customer queue, is provided in Figure 2-20. This mitigation measure provides a noise reduction of between approximately 5 and 20 dB at the residences. For this solution to be effective, any doors in the structure would need to remain closed whenever possible, and all gaps in the existing glass walls at the terrace area will require sealing.

If the terrace is enclosed, the noise propagating out from the enclosed area becomes comparable in level to the noise produced from the customer queue. Moving the queue to the rear of the hotel may, in this case, make a noticeable difference to the noise produced in this area.

As for the rooftop deck, consideration should be given to how the use of the terrace area will change if it is enclosed.

2.5.4 Taxi Drop-Off and Pickup

Staff at the hotel currently attempt to reduce noise associated with customers arriving at the front of the hotel by sending taxis to the rear of the building. This policy can be effective in reducing much of the noise associated with taxis. However, during our measurements, many taxi drivers either did not see, or ignored the hotel's signs instructing them to drive to the rear and much of the valets' time was spent dealing with taxi drivers stopping in front of the hotel. Official City signs may be helpful in encouraging taxi drivers to drop off and collect customers in the designated area.

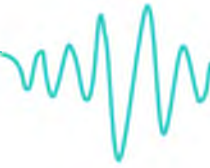
2.6 Selection of Mitigation Measures

In assessing the mitigation measures that will be most effective in reducing the overall noise levels, it should be noted that a dramatic decrease in levels may only be achieved at all residential locations if all three major sources associated with the hotel (front entrance, rooftop deck and south terrace) are mitigated.

Additionally, some combinations of mitigation measures will be more effective than others. For example, Figure 2-20 indicates that a significant reduction in terrace noise is achieved if this area is enclosed. However, the unmitigated noise maps show that a significant contribution of noise experienced at the residential properties at the south end of Ardmore

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Avenue originates from the front entrance of the hotel. Therefore, in this case, two noise sources must be mitigated for a difference in noise level to be observed.

Please contact the undersigned with any questions or comments.

Very truly yours,

Don Behrens
President
Behrens And Associates, Inc.

Attachments



Figure 2-1. Unmitigated Average Noise Level Impact at 1st Floor Elevation - All Saturday Evening Sources

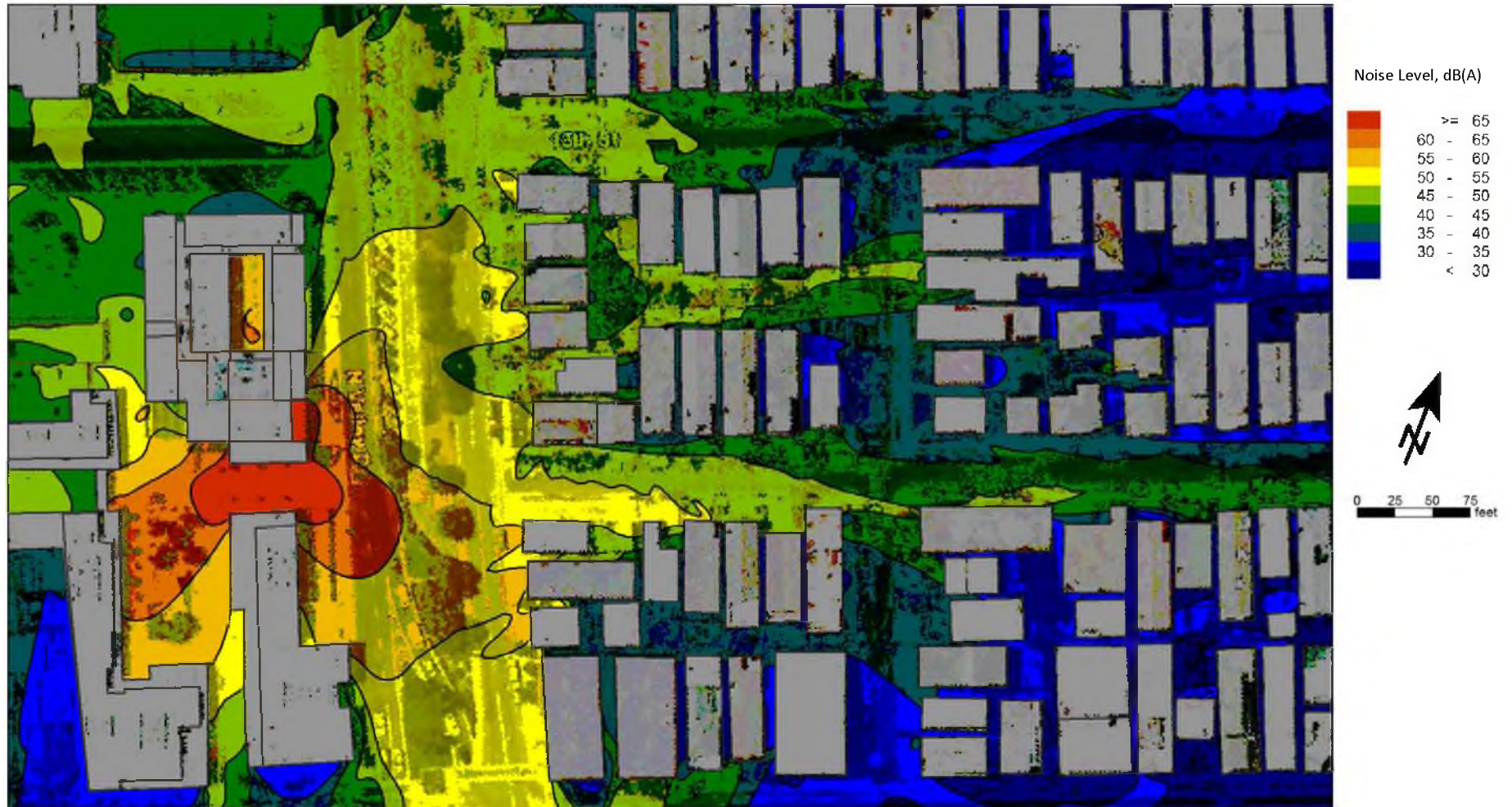




Figure 2-2. Unmitigated Average Noise Level at 3rd Floor Elevation - All Saturday Evening Sources

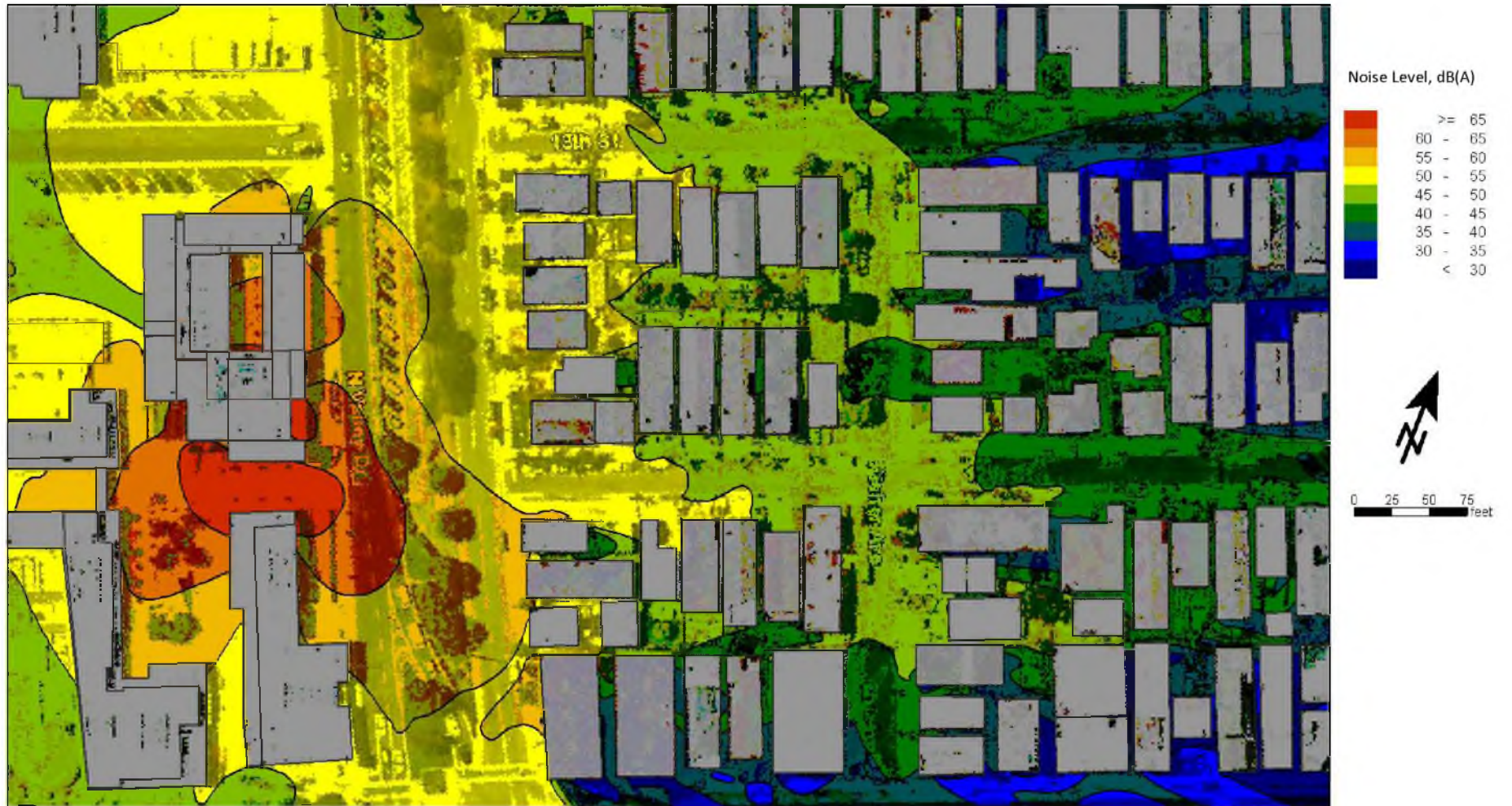
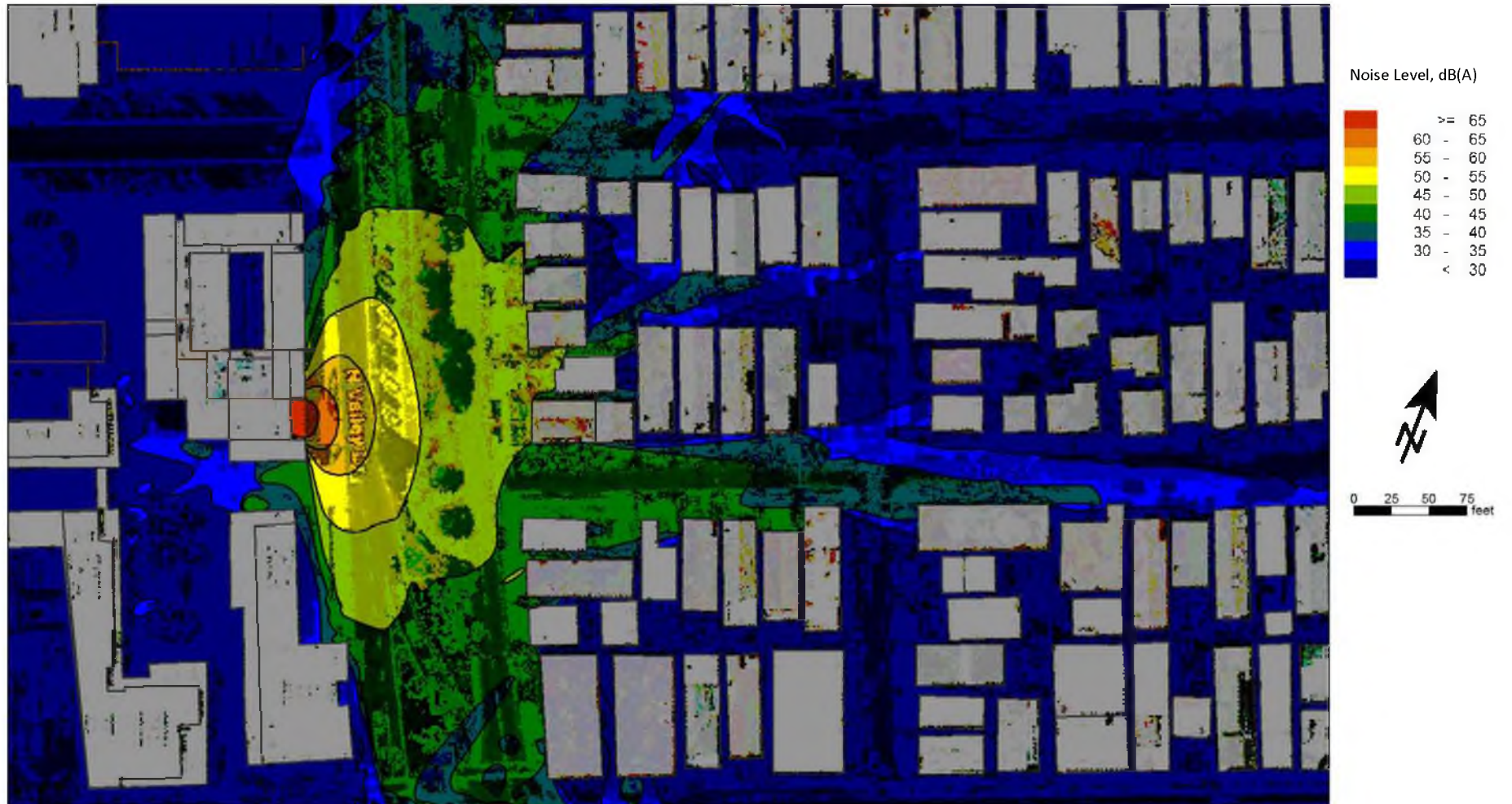




Figure 2-3. Unmitigated Average Noise Level at 1st Floor Elevation - Front Entrance Only
FRONT DOOR CLOSED; SEE 2.4.2, PAGE 13



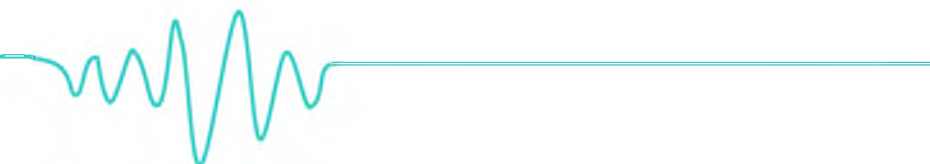
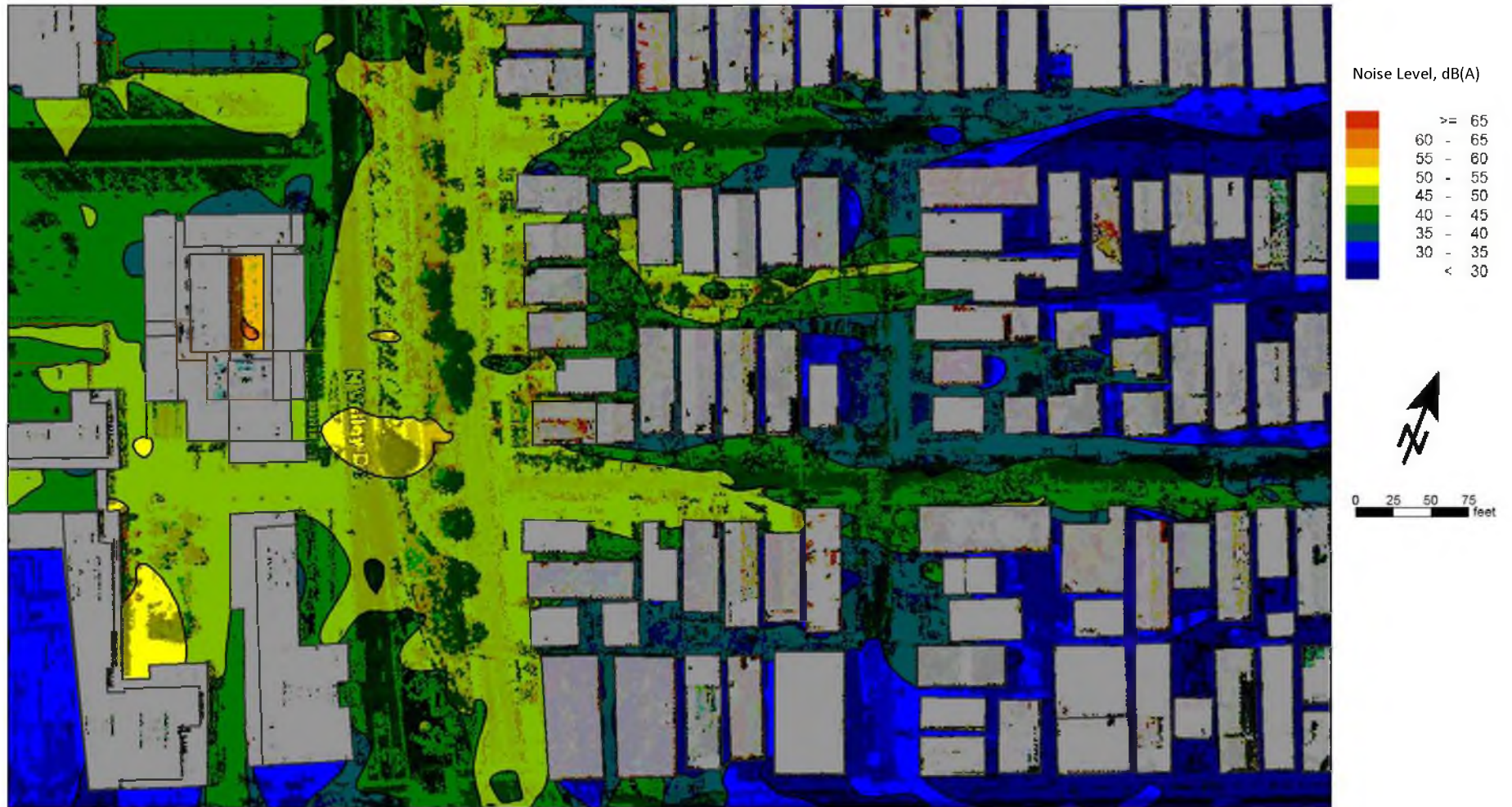


Figure 2-4. Unmitigated Average Noise Level at 1st Floor Elevation - Rooftop Deck Only



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Figure 2-5. Unmitigated Average Noise Level at 3rd Floor Elevation - Rooftop Deck Only

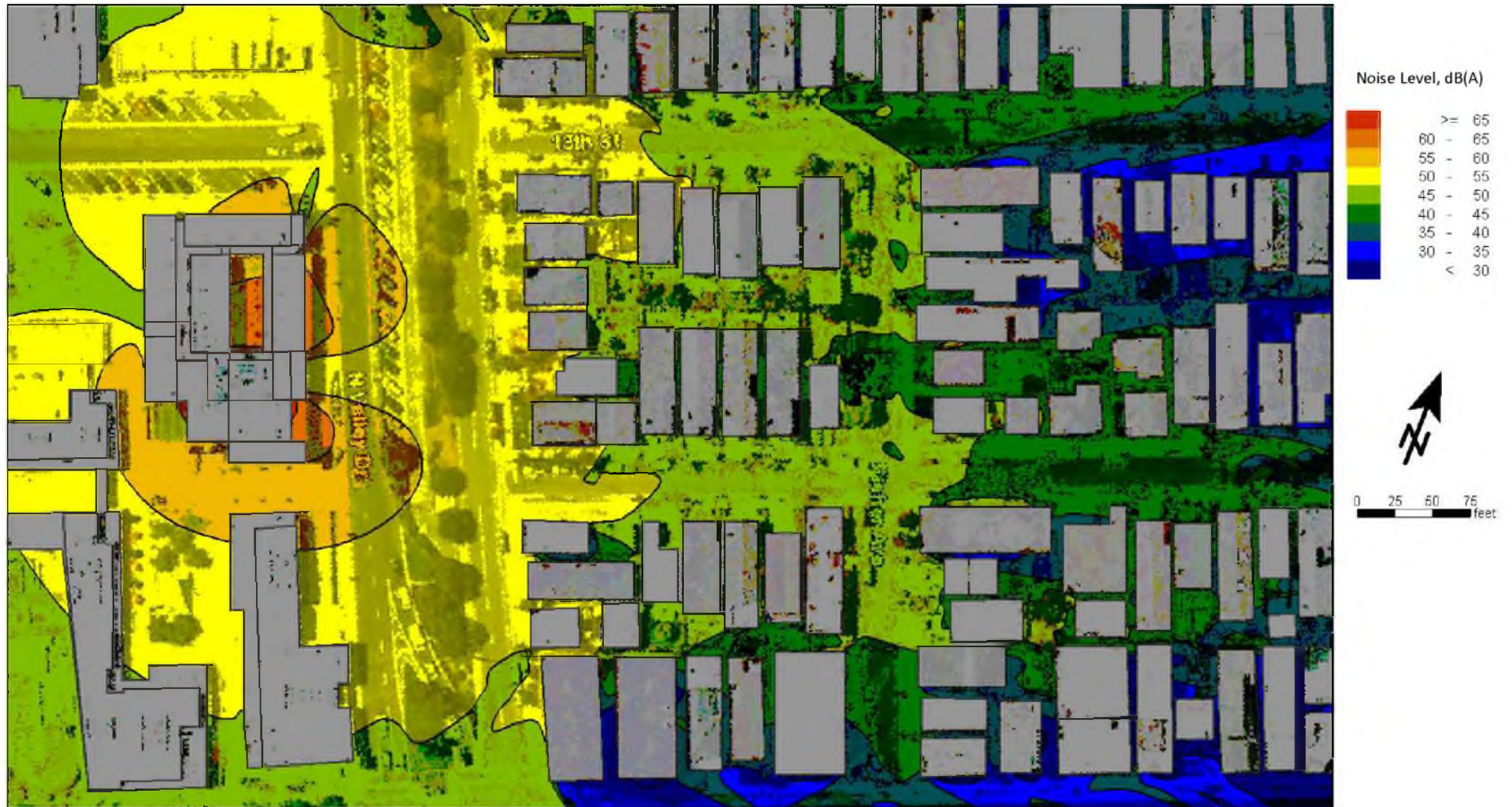




Figure 2-6. Unmitigated Average Noise Level at 1st Floor Elevation - South Terrace Only

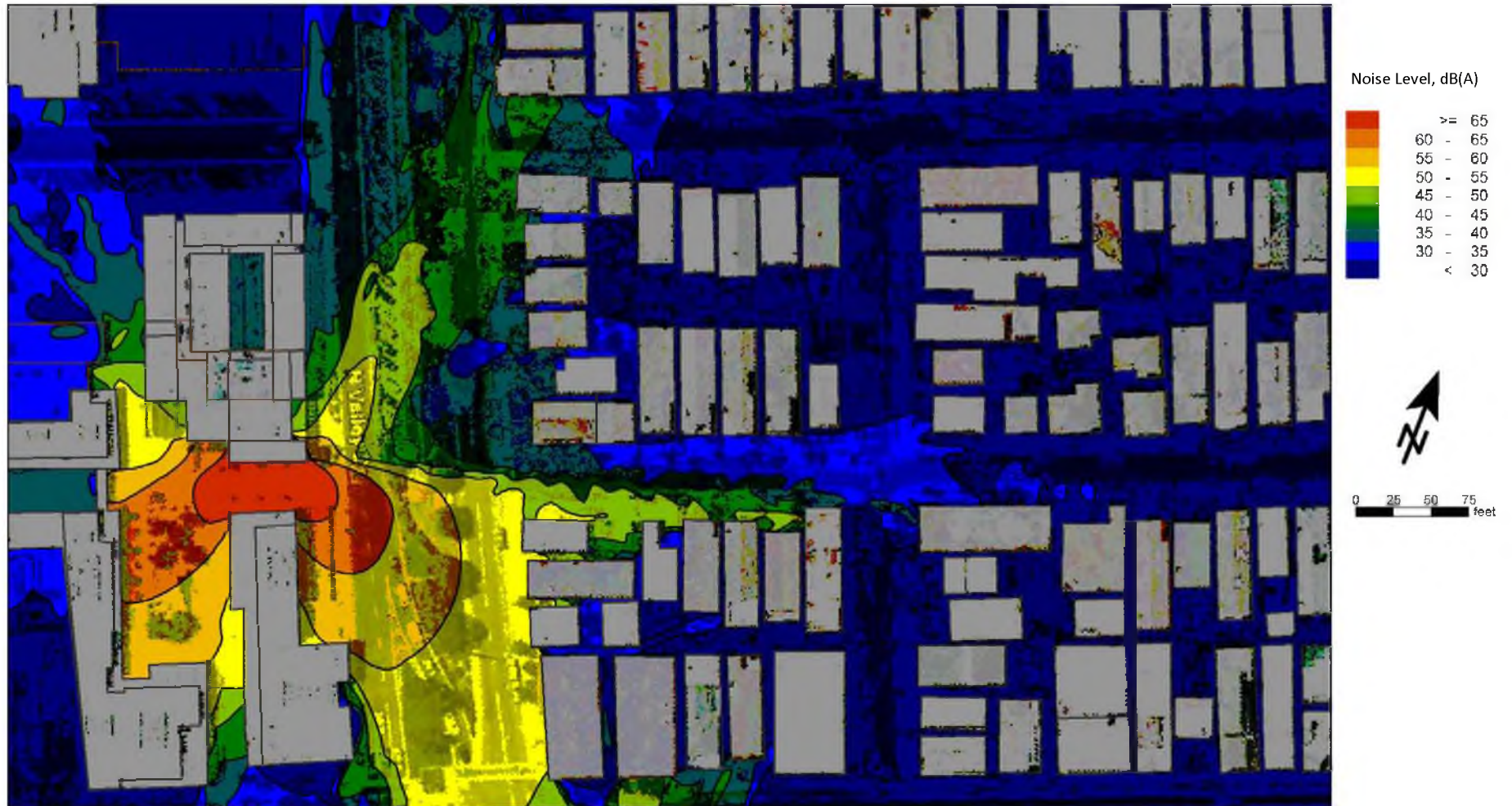




Figure 2-7. Unmitigated Average Noise Level at 3rd Floor Elevation - South Terrace Only

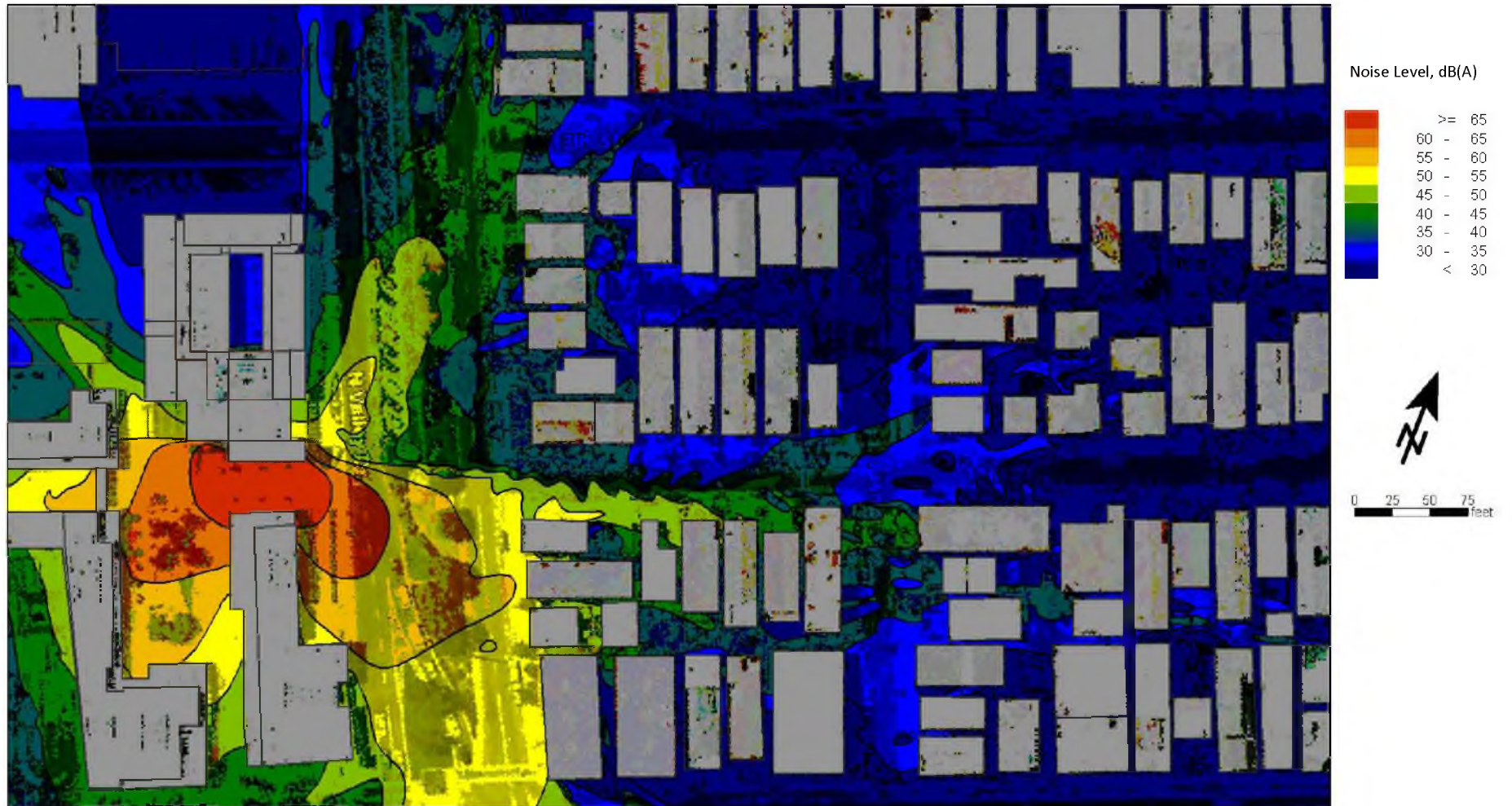




Figure 2-8. Unmitigated Average Noise Level at 1st Floor Elevation - North Zinc Lounge Windows Only

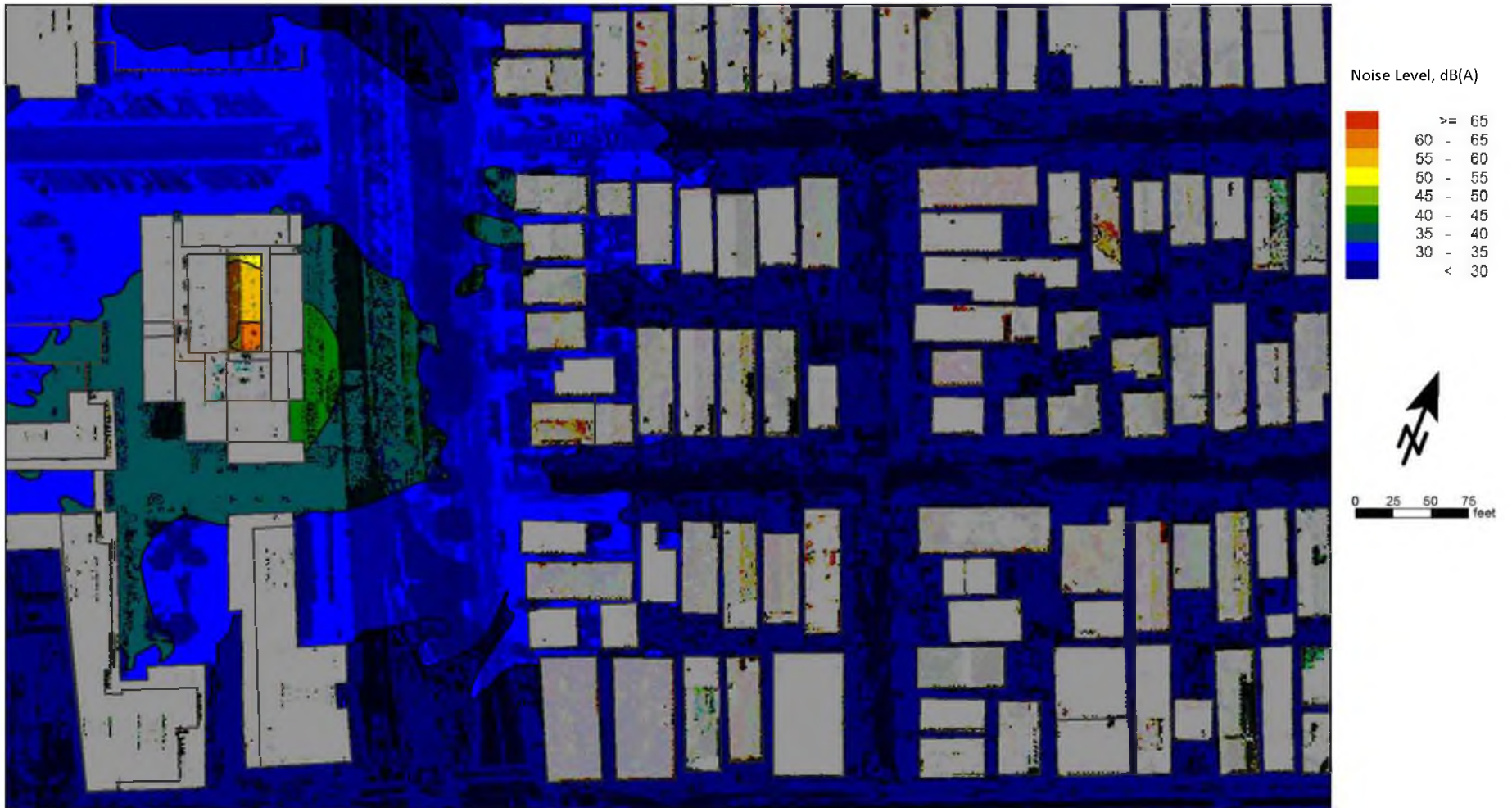




Figure 2-9. Unmitigated Maximum Noise Level at 1st Floor Elevation - Cheer from Wedding Event in Courtyard

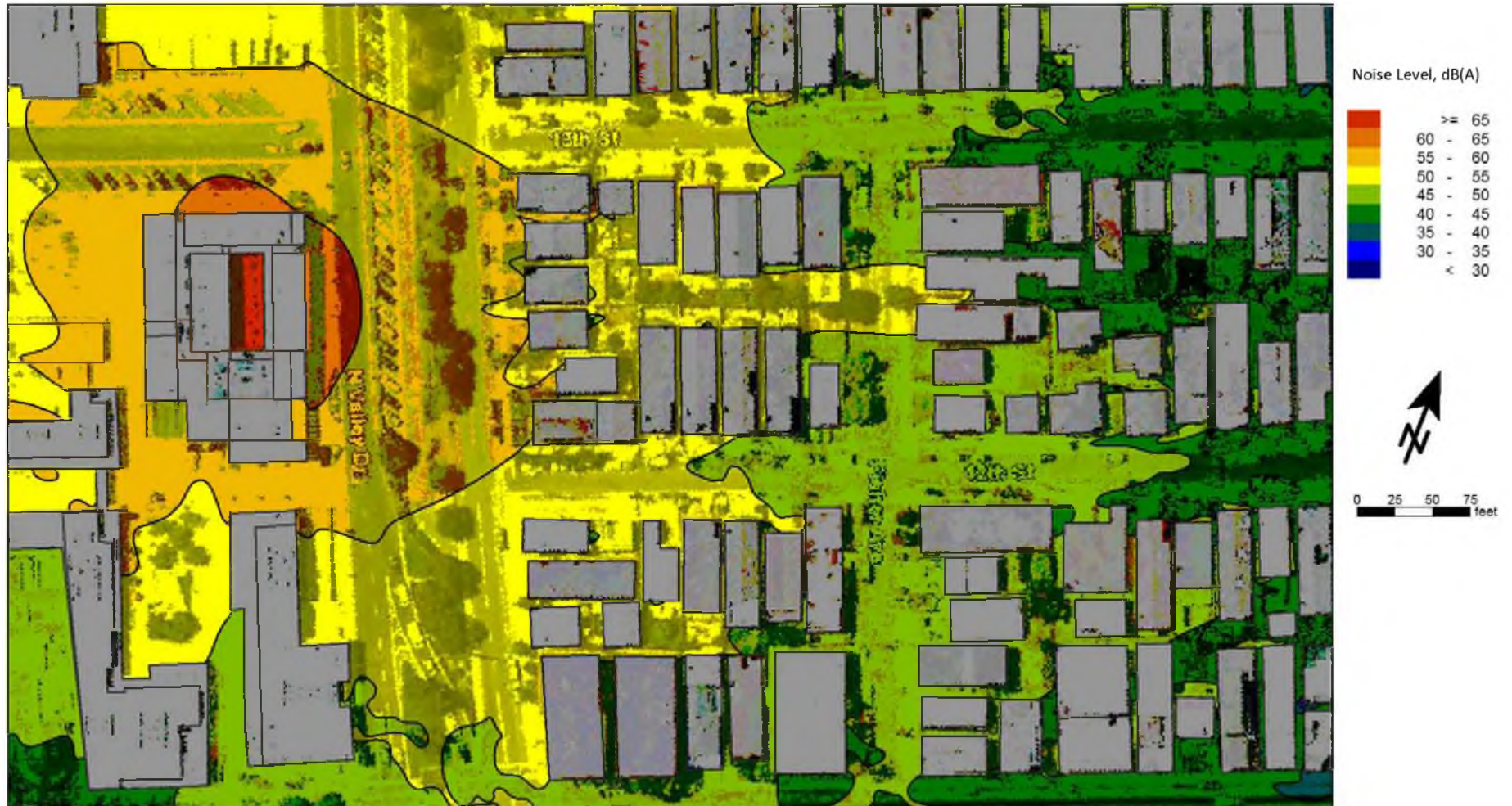
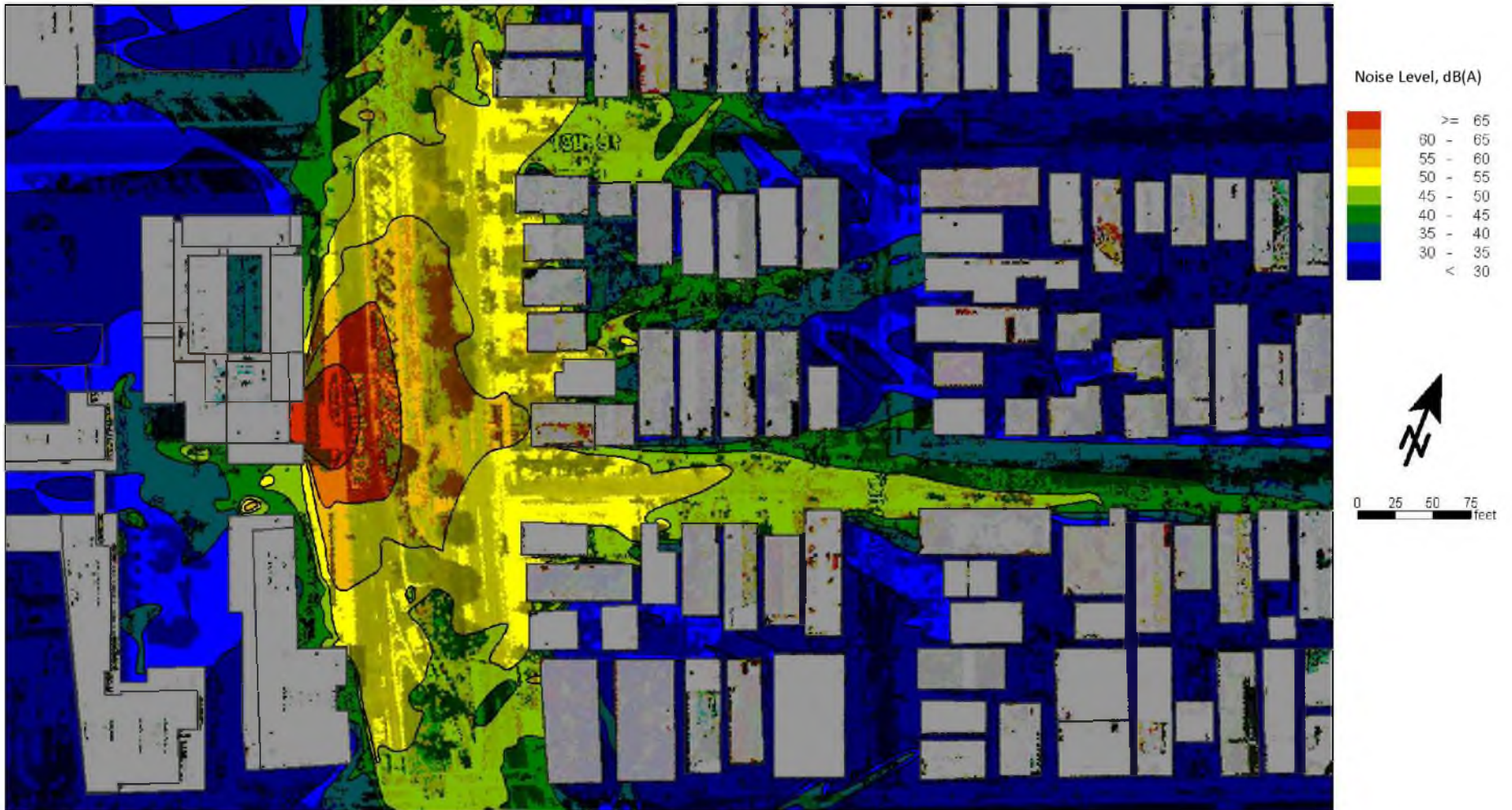




Figure 2-10. Unmitigated Maximum Noise Level at 1st Floor Elevation - Front Entrance Door Opened



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Figure 2-11. Unmitigated Maximum Noise Level at 1st Floor Elevation - Shouting/Screaming on Rooftop Deck

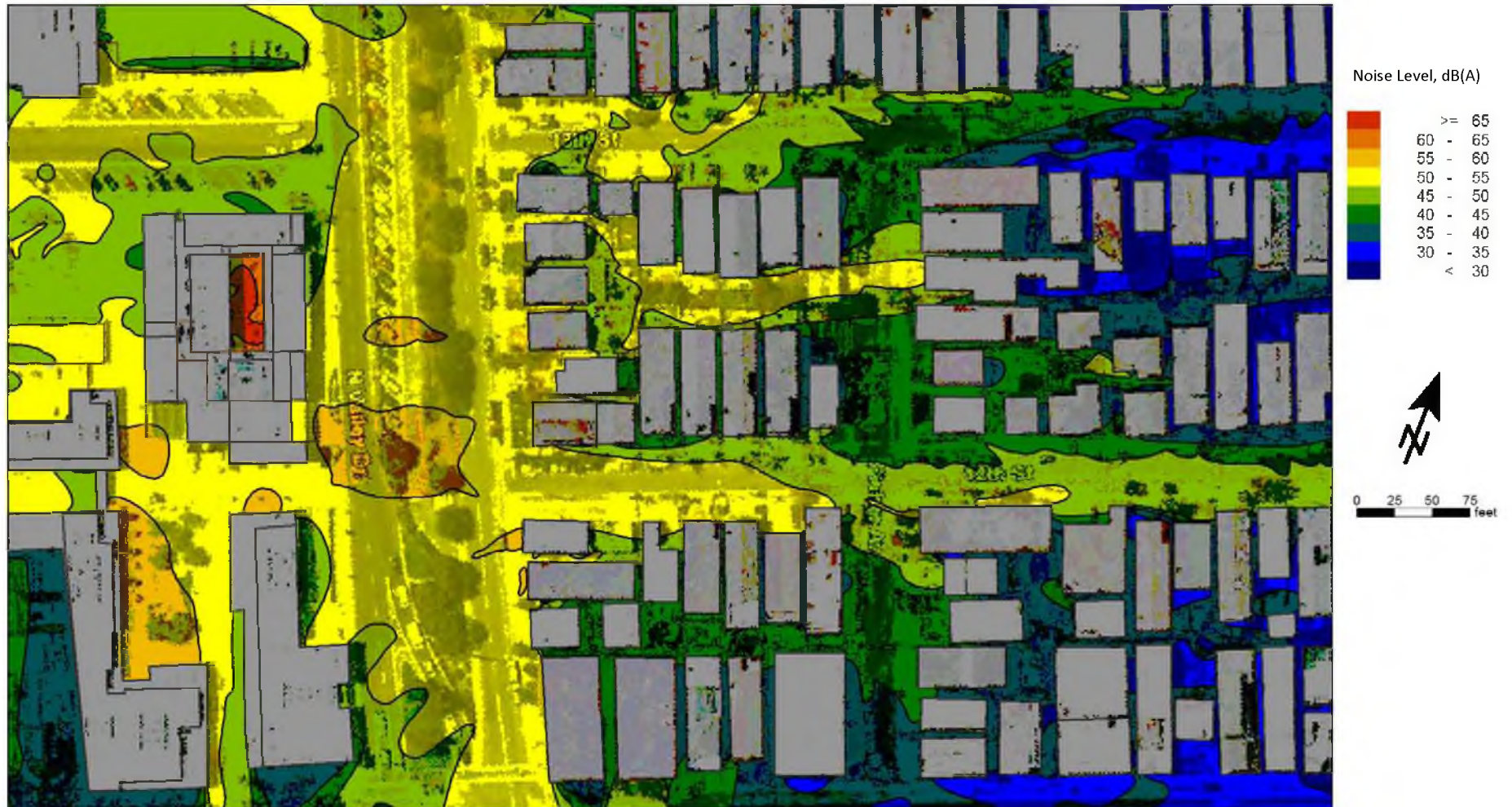




Figure 2-12. Unmitigated Maximum Noise Level at 3rd Floor Elevation - Shouting/Screaming on Rooftop Deck

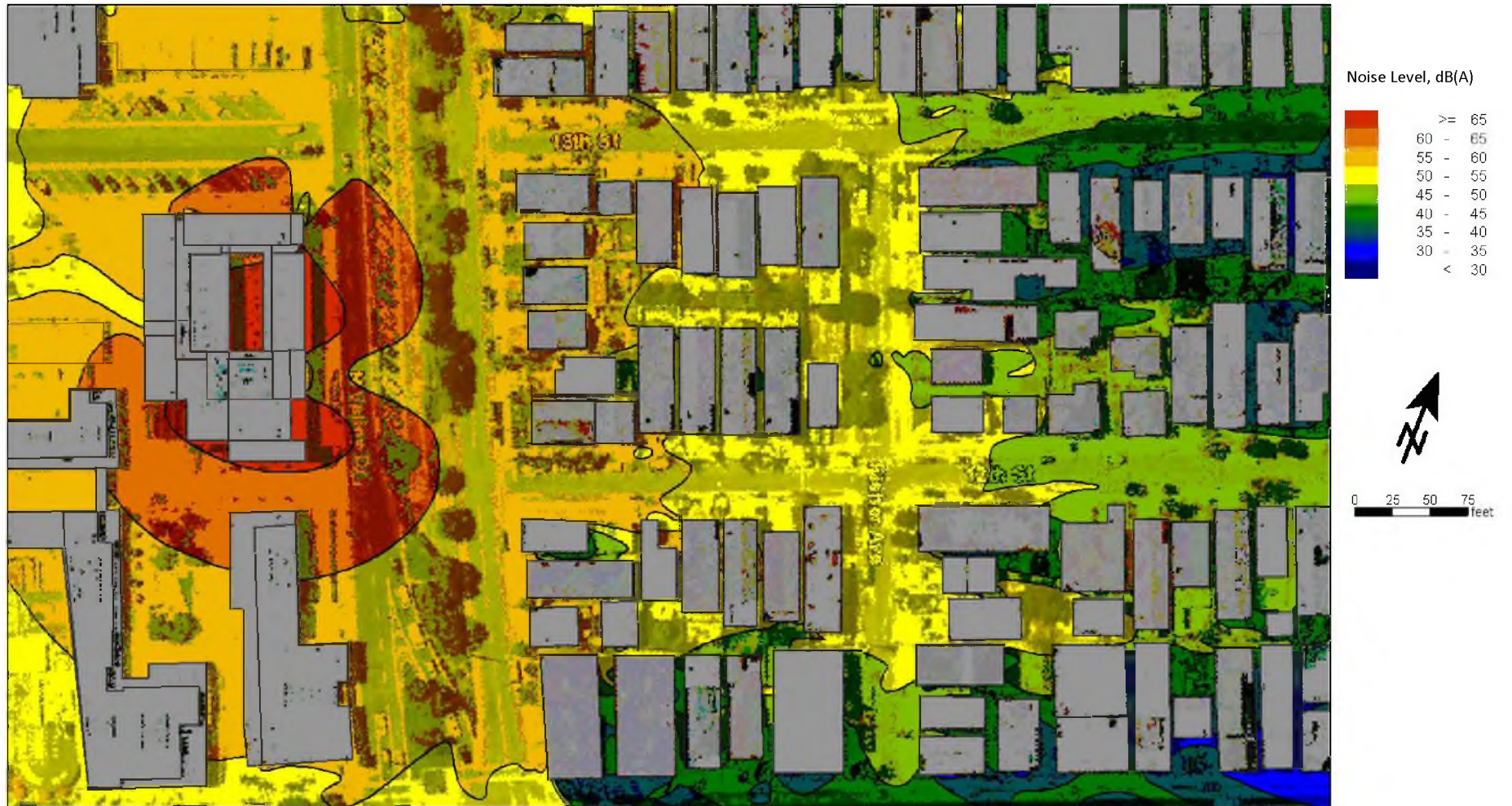
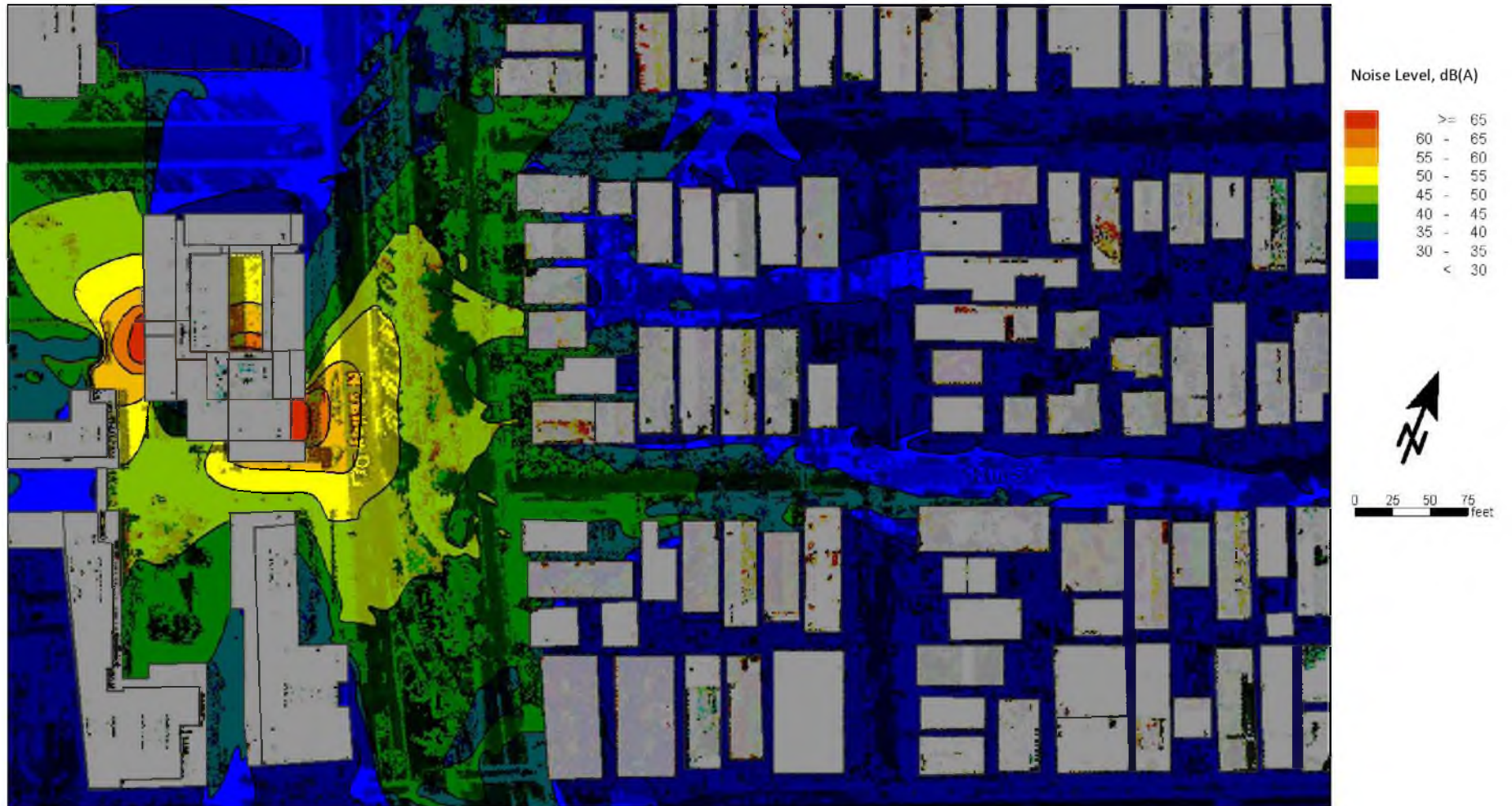




Figure 2-13. Mitigated Average Noise Level at 1st Floor Elevation - All Saturday Evening Sources



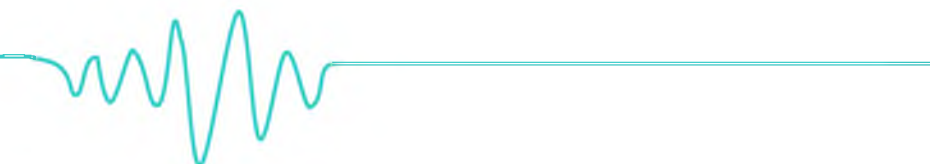


Figure 2-14. Mitigated Average Noise Level at 3rd Floor Elevation - All Saturday Evening Sources

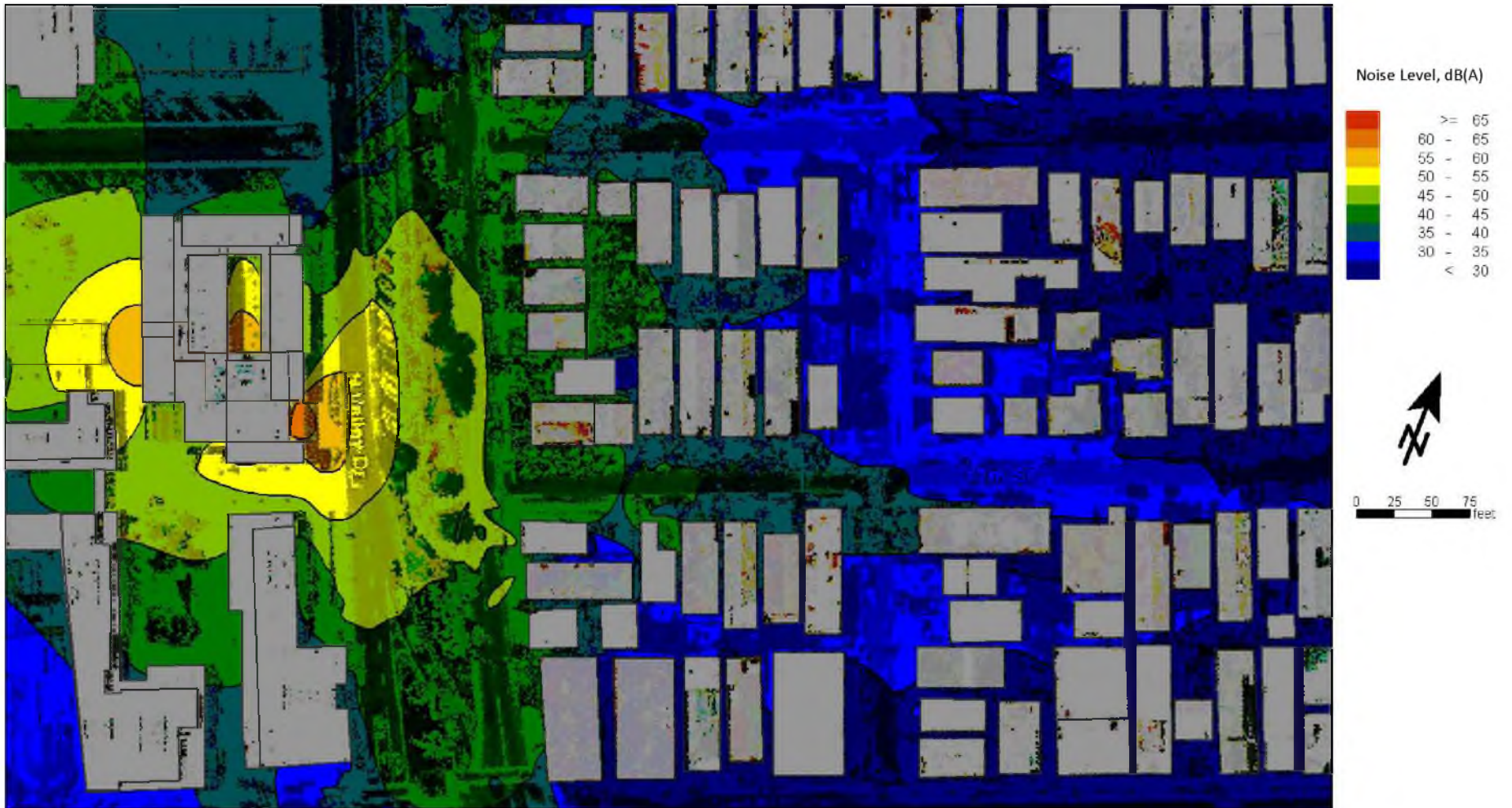




Figure 2-15. Mitigated Average Noise Level at 1st Floor Elevation - Front Entrance with Vestibule

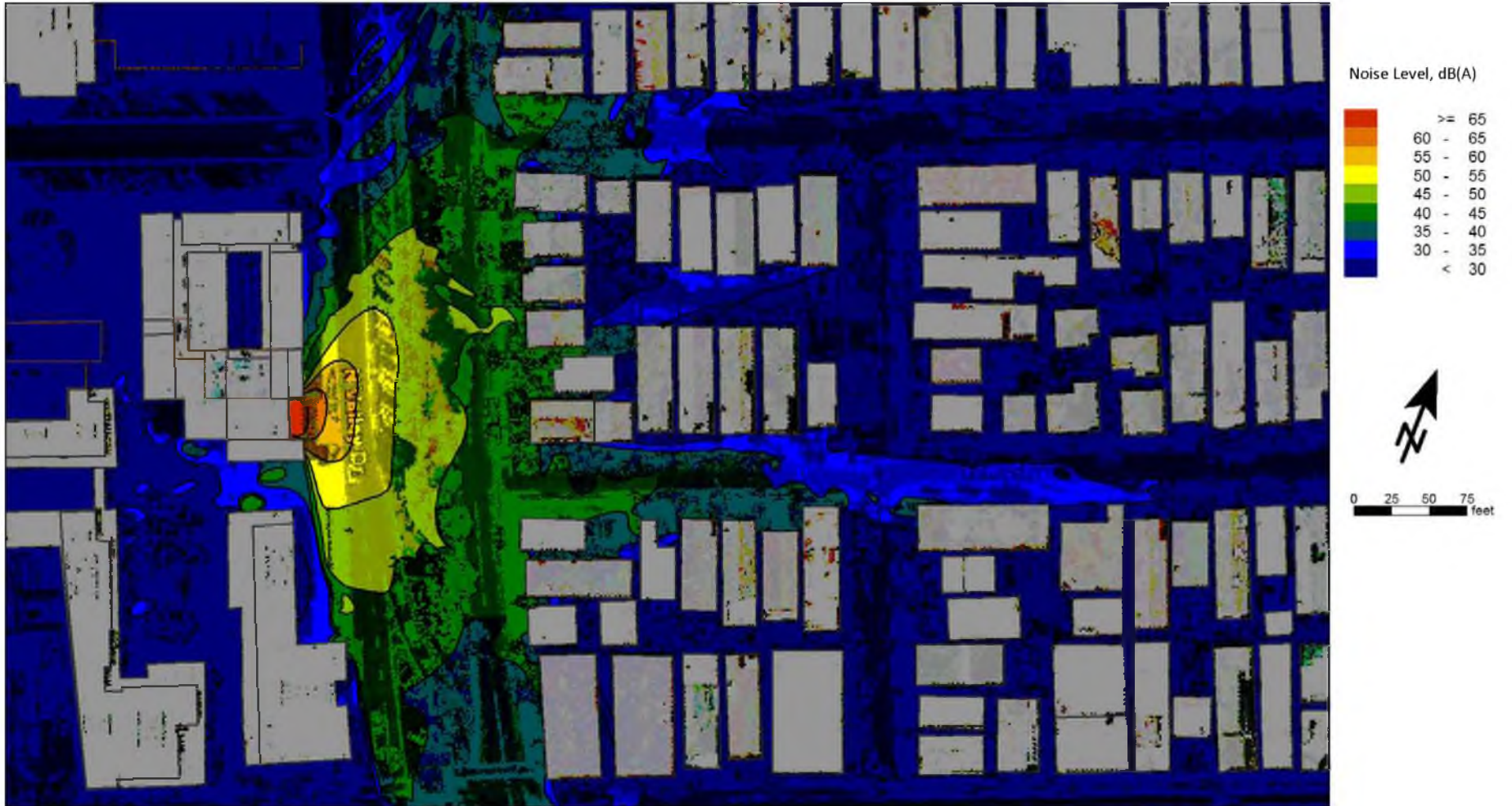




Figure 2-16. Mitigated Average Noise Level at 1st Floor Elevation - Rooftop Deck

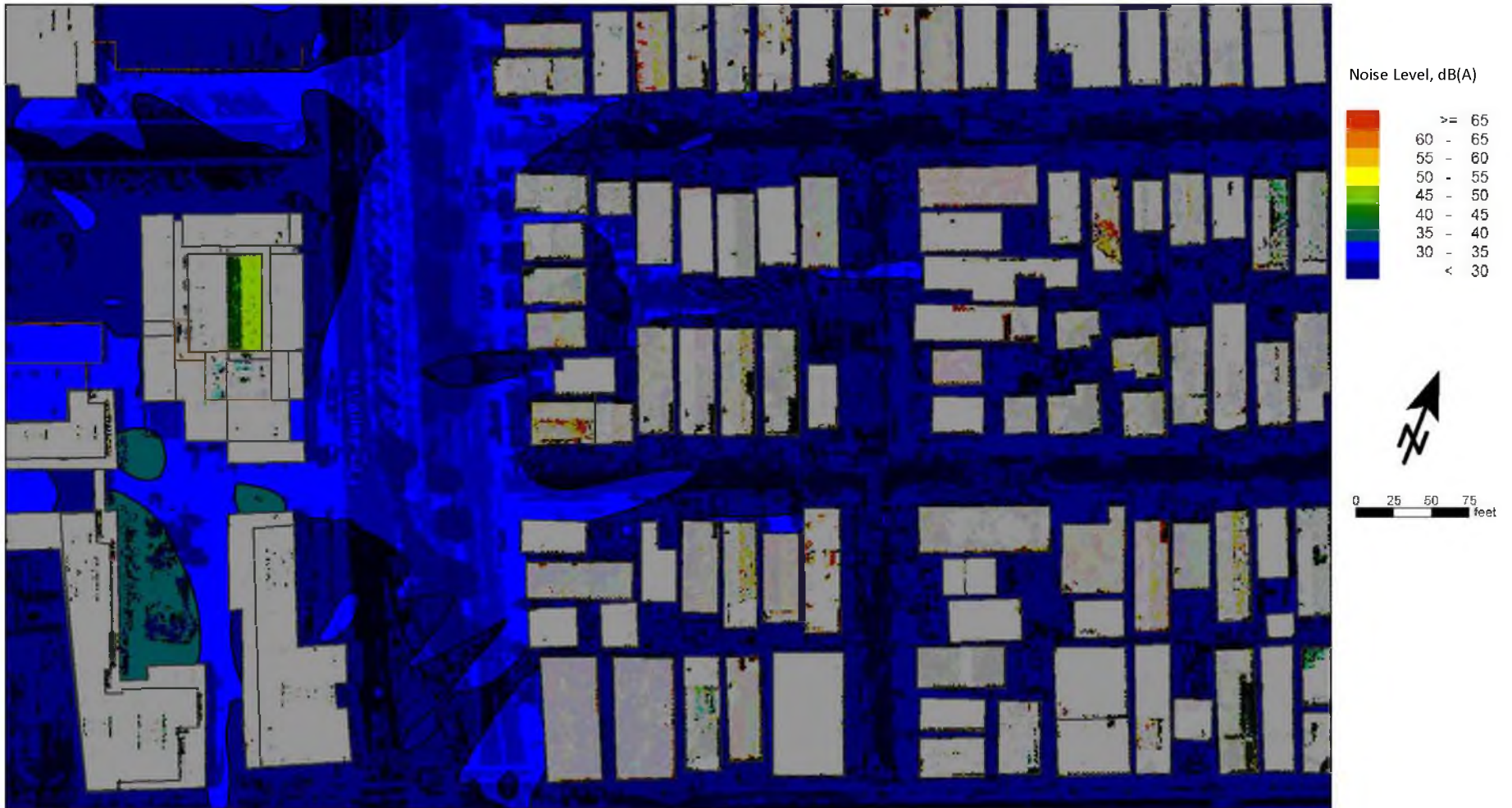
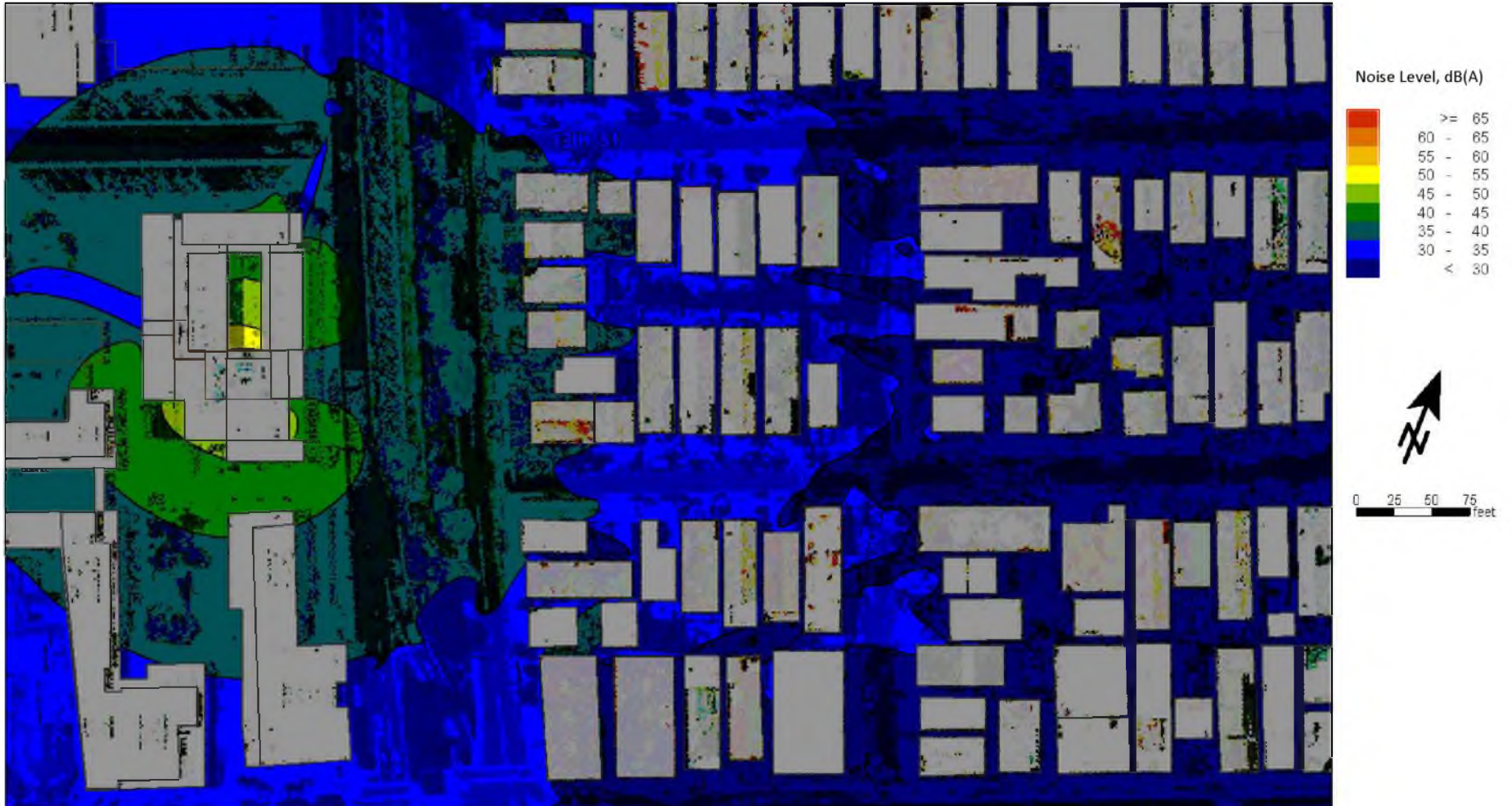




Figure 2-17. Mitigated Average Noise Level at 3rd Floor Elevation - Rooftop Deck



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Figure 2-18. Mitigated Average Noise Level at 1st Floor Elevation - South Terrace and Relocated Customer Queue with 12' Barrier across Shade/Petros Corridor

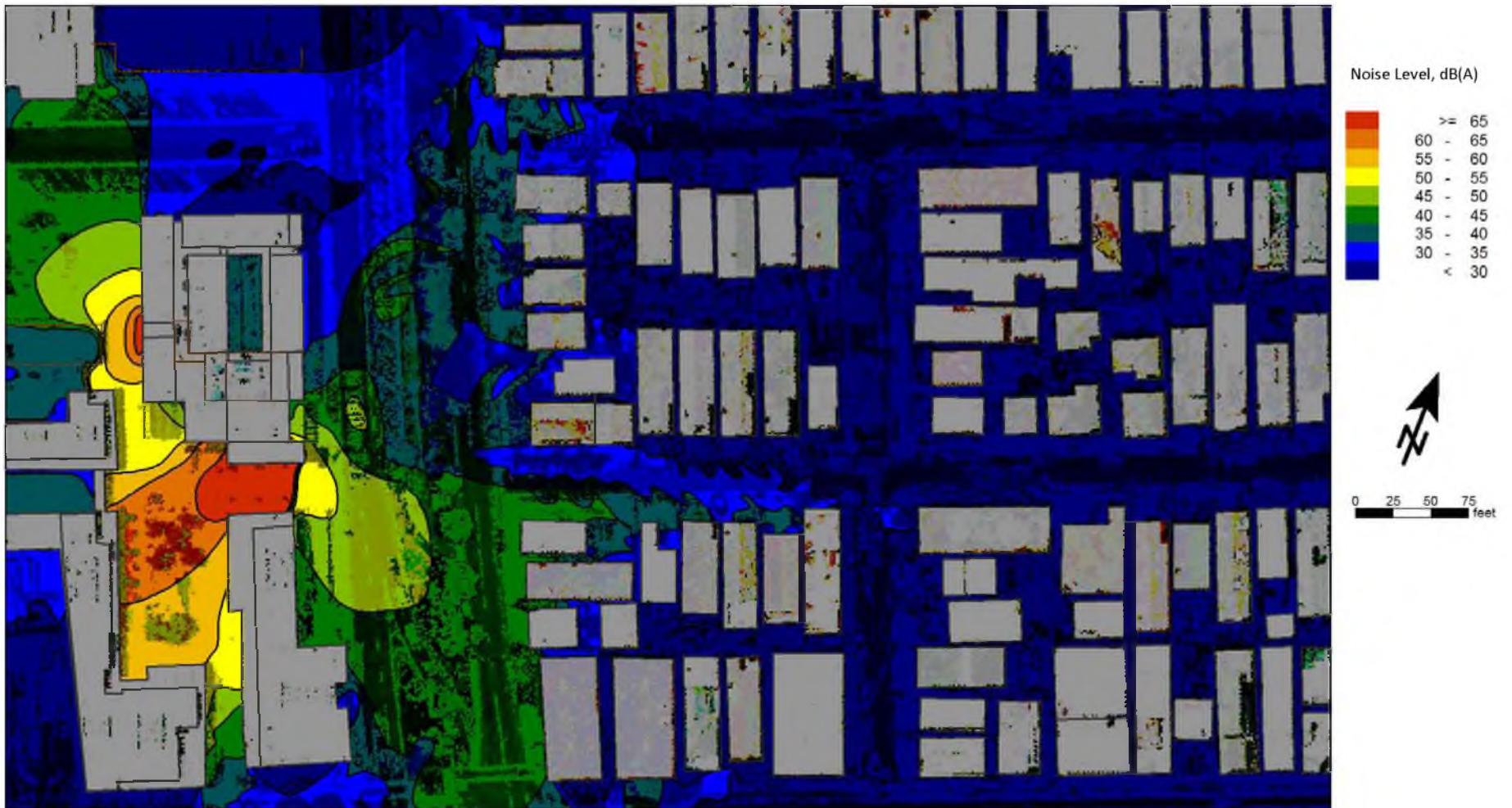
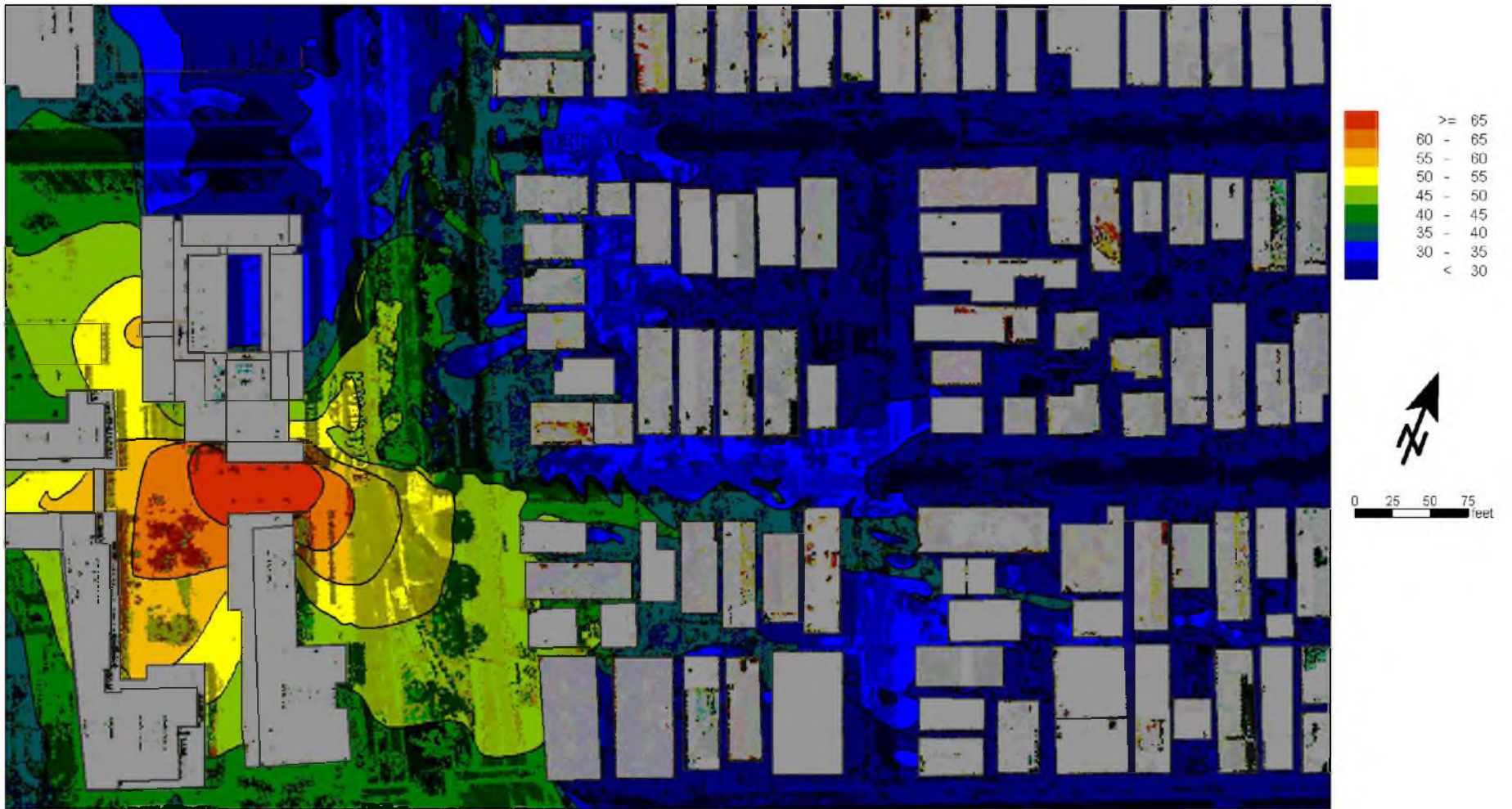




Figure 2-19. Mitigated Average Noise Level at 3rd Floor Elevation - South Terrace and Relocated Customer Queue with 12' Barrier across Shade/Petros Corridor



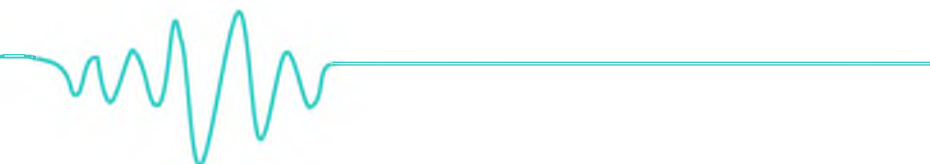
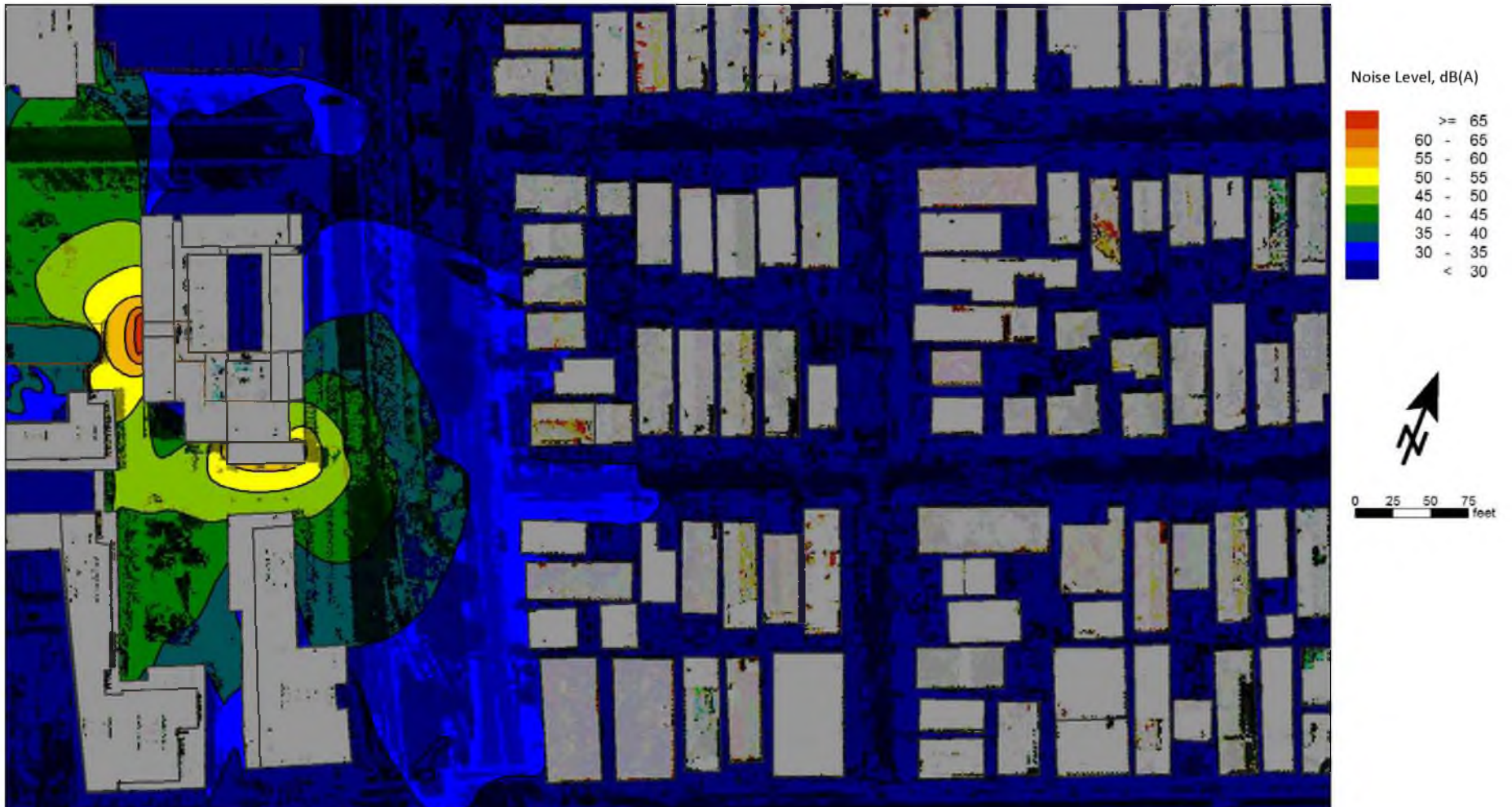


Figure 2-20. Mitigated Average Noise Level at 1st Floor Elevation - Enclosed South Terrace and Relocated Customer Queue



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Figure 2-21. Mitigated Average Noise Level at 1st Floor Elevation - North Zinc Lounge Windows and Customers Exiting through Enclosed Courtyard Corridor

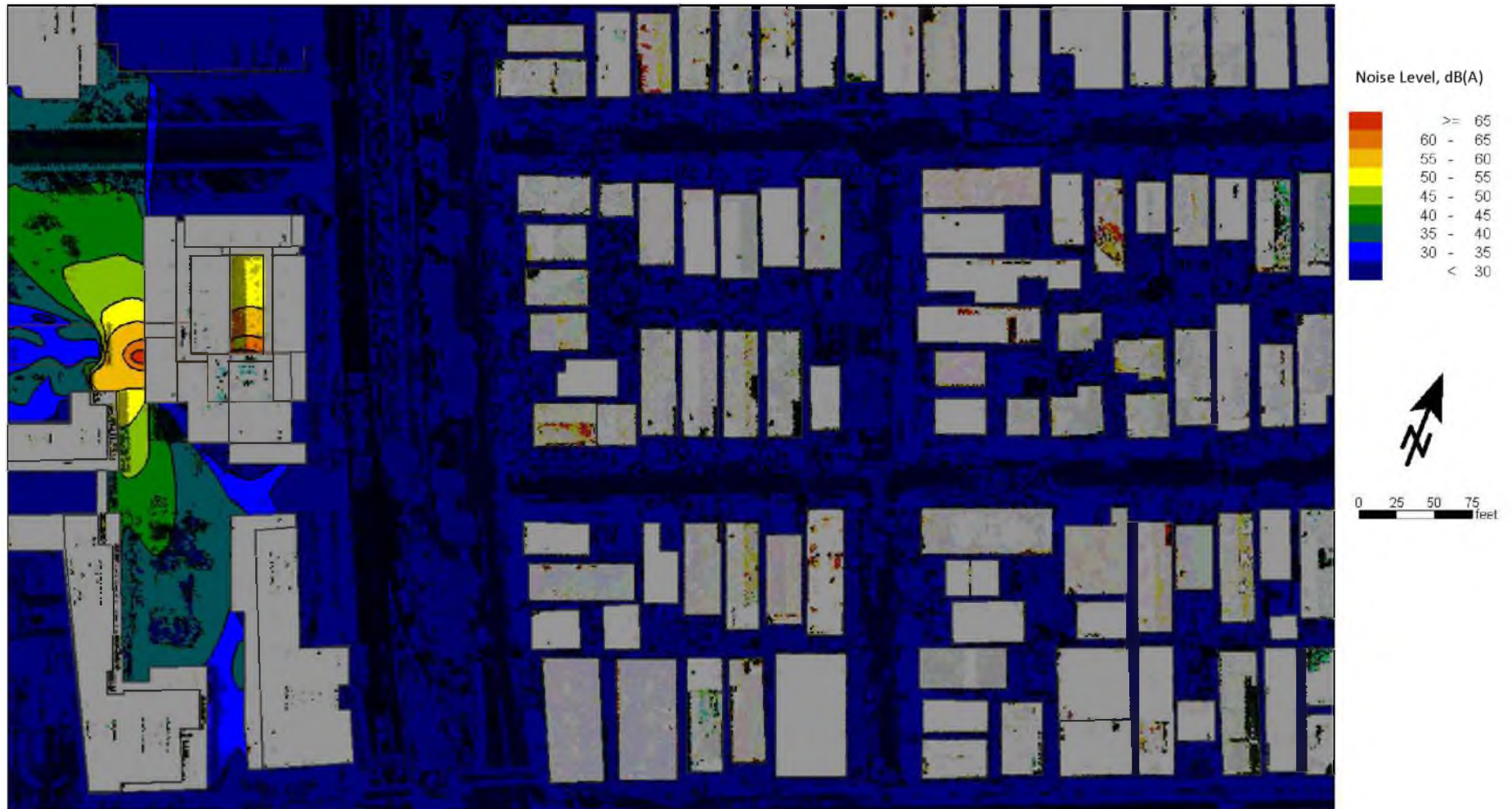
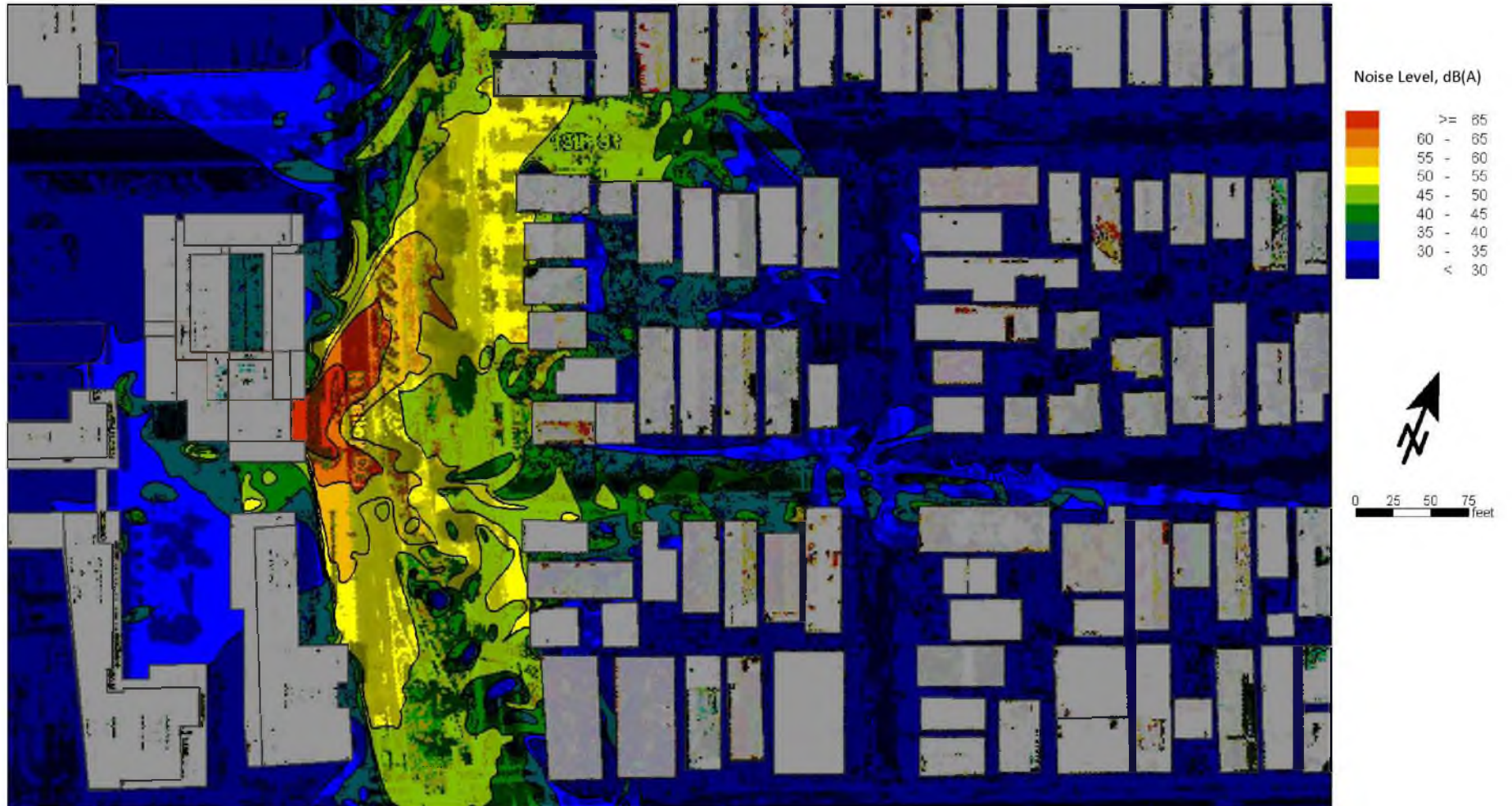




Figure 2-22. Mitigated Maximum Noise Level at 1st Floor Elevation - Front Entrance with Vestibule

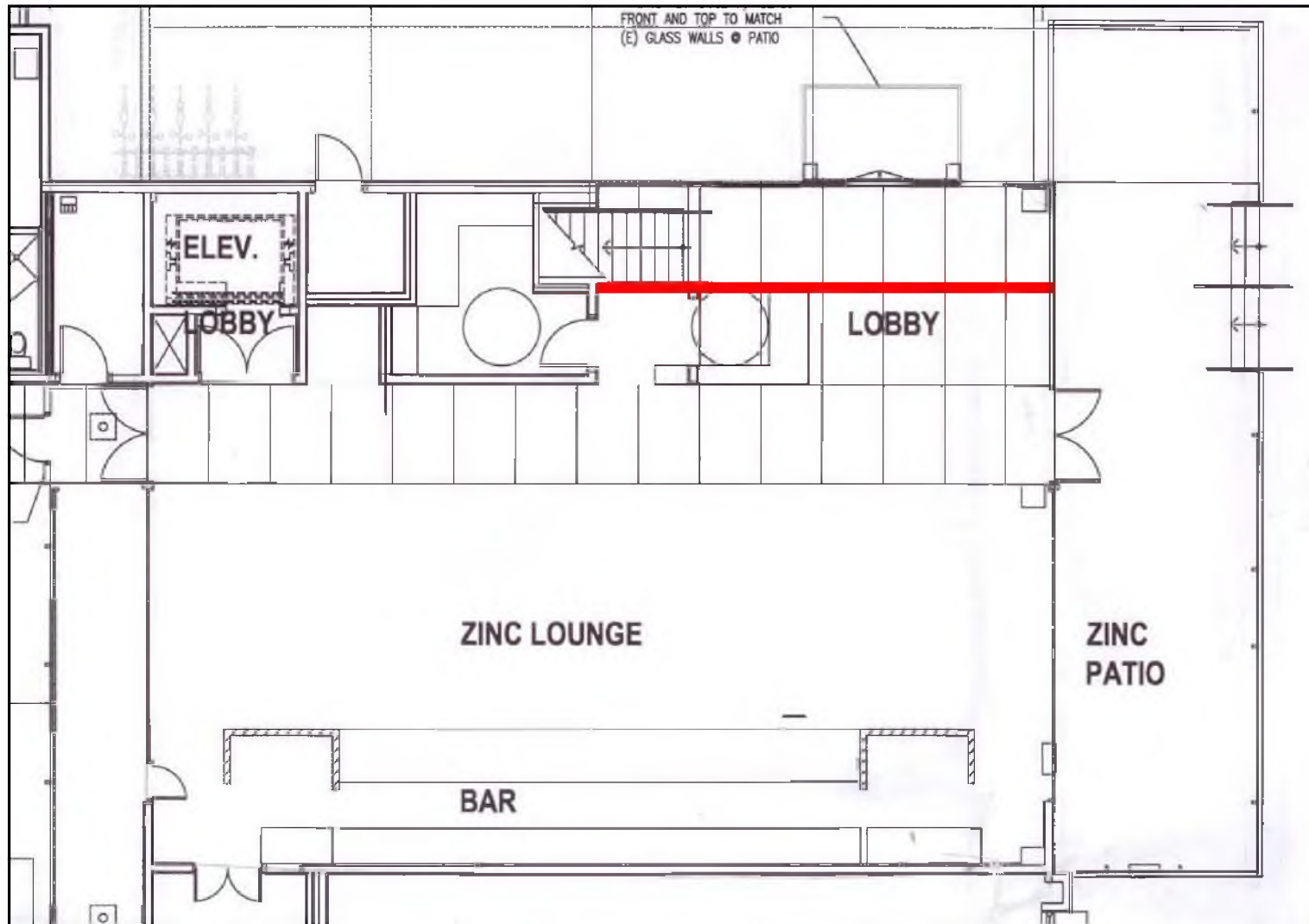



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Figure 2-23. Location of Interior Lobby Wall for Alternative Front Entrance Mitigation Measure



 Location of wall

NEIGHBORHOOD DRAFT USE PERMIT TERMS AND CONDITIONS

FINDINGS.

RF-1. Based on testimony from many residents in the neighborhood, the Shade Hotel makes noise that discomforts and irritates reasonable persons of normal sensitiveness. The police have responded to numerous calls regarding Shade disturbances, and for several of these incidents, have booked as evidence, reports and recordings of noise from Shade.

Narrative. Since June 24, 2009, in three public hearings, the planning commission has heard testimony from many residents living near Shade. They unanimously opposed extending hours, because of the noise that Shade makes, thus providing evidence that the hotel violates the subjective standards in the municipal code, §5.48.140 Noise Disturbances.

RF-2. The hotel has violated several requirements in PC Resolution 05-08, an amendment to the Metlox Master Use Permit, Resolution 5770. Additionally, the hotel has violated requirements in its annual entertainment permit. Violations having the most impact on the neighborhood include failure to soundproof the Zinc bar (as required by Resolution 05-08), operation past closing times, and amplification of entertainment, so that it disturbs the peace and quiet of the neighborhood.

RF-3. If a retractable partition separates the Zinc bar and lounge from the lobby, as required by PC Resolution 05-08, those alcohol-service areas will provide adequate room and capacity to provide registered hotel guests and their guests a place to relax and socialize.

Narrative. Mr. Zislis has testified that registered guests expect the bar to operate until midnight. The Zinc bar, separated from the lobby by a retractable partition, will meet that requirement.

RF-4. The governing use permits, Resolution 5770 and amendment PC Resolution 05-08, express the intent for Shade operate as a first-class hotel, with the primary purposes to attract visitors downtown for support of existing businesses, as well as providing residents with a special place for celebrations. The Zinc bar/lounge, terrace and skydeck, as well as public functions, shall not be publicized.

RF-5. Community Development has conducted an acoustic engineering analysis to evaluate possible measures to mitigate Shade noise. Some noise sources, such as disturbances on the public right of way at the entrance to the hotel, require administrative means to mitigate. Although conditions below mandate physical and administrative mitigation measures, they alone cannot guarantee abatement of disturbances in the residential neighborhood. Furthermore, effectiveness of the conditional mitigation measures cannot be fully demonstrated, until tested throughout a summer. As result, Community Development shall use the annual entertainment permit as a supplemental tool to provide the necessary flexibility to require compliance with Chapter 5.48, Noise Regulations, of the Manhattan Beach municipal code, by imposing new conditions, or by modifying existing conditions, regardless of whether those conditions or modifications relate to entertainment per se. Community Development can administratively tighten restrictions, but cannot loosen them.

CONDITIONS.

RC-1. Definitions.

RC1-1. Closed or closing-time. Area vacated by all customers and alcohol sales ended, including room service and in-room service.

Narrative. To enforce this definition of closing, the Zinc bar/lounge must have the retractable partition for physical separation from the lobby, which remains open all night.

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. Special events may not use the terrace or skydeck. Attendees at special events must have an invitation from the host client. The general public may not join nor participate in special events. Individual special events may not be marketed or nor promoted.

Narrative. Special events require a detailed definition, to prevent Shade from using them as a cover for the public to use the courtyard, conference rooms or penthouses. Reso05-08 Condition 2 limits special events to the Zinc bar/lounge, courtyard and conference rooms (Green Rooms.)

RC1-3. Function. An event held in the courtyard for the public, including, but not limited to, Oktoberfest, Halloween, New Years, Valentines, St Patrick's Day and AVP. The entertainment permit shall authorize the number of functions permitted annually.

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

RC1-5. 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 public and the Shade website.

RC-2. Entertainment and Noise Regulations

RC2-1. (From Resolution 08-05 Finding O and Condition 1, and entertainment permit UP-4; *modifications italicized.*) The Zinc bar and lounge shall be soundproofed, including door, wall, and ceiling treatments, with a retractable partition between the lobby and the bar area, to a sound transmission coefficient of STC-50. *The retractable partition shall be deployed whenever entertainment provided, or no later than 5 PM each day, until close. The STC-50 sound transmission coefficient shall be demonstrated in accordance with the appropriate ASTM International standard for sound transmission between rooms, in all directions, including up, but not westerly.*

Narrative. Without this condition, as per their comments, the police cannot enforce the closing time on the Zinc bar, because of co-use by the lobby, open 24-hours a day. See Exhibit C for drawings of the retractable wall, which shows no impact on the size of the Zinc bar and lounge. According to the Event Space Layout in the entertainment permit, Shade must keep clear a 6.5-ft wide corridor, to allow access to the lobby desk, elevator and hotel fire passage. The retractable wall physically creates and maintains that corridor, when the bar heavily patronized.

RC2-2. The terrace shall have drapes of sound-absorbing material, having spectral absorption coefficients equal to or better than Acousti-Curtain™ and being hung inside windscreens. The west glass windscreen shall continue around the south side, with a south-entrance closable entry, which meets fire-exit standards. Sound absorbing panels shall enclose the open upper tier above the drapes. The ceiling shall have sound-absorbing material applied. After 9 PM every day, the drapes shall entirely enclose the terrace. They shall be pulled open at closing hour to enable enforcement.

Narrative. We do not have a documented description of sound control for the terrace. We postulate acoustic measures based on enclosing the terrace, as modeled in the Behrens report.

RC2-3. The courtyard shall have acoustic treatments by replacing the drapes with the same sound-absorbing material as used for the terrace. Where possible, areas on the north wall shall have sound-absorbing material applied. A sound-absorbing retractable wall shall close off the courtyard from the east-west corridor, north of the Zinc bar wall. Because the courtyard will remain open at the top, the hotel shall maintain sound volumes, including non-amplified voice, not to exceed noise levels specified in this amendment.

Narrative. The Behrens report concluded the courtyard not a sound source, whereas we demonstrated otherwise at the Oct 28 hearing, with the recordings of the Sep 27 Oktoberfest. We postulate acoustic measures based general principles, subject to further acoustic analysis.

RC2-4. For the skydeck, other than enclosure, no physical mitigation measures appear feasible. Because the skydeck will remain open, the hotel shall maintain sound volumes, including non-amplified voice, not to exceed noise levels specified in this amendment.

RC2-5. When the penthouses used for special events, hotel staff shall close and lock balcony doors after 10 PM.

Narrative. An Internet review states that Shade continues to serve alcohol to the public in the penthouses, after the Zinc bar closes.

RC2-6. (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, the noise may not dominate the intrusive background noise in the residential neighborhood, as defined in municipal code noise regulations, nor disturb surrounding tenants. After cessation of alcohol service in any venue or for any event, only low-volume "background" type of music is allowed.*

Narrative. We have modified this condition from the annual entertainment permit into a form that the police can enforce. In the entertainment permit, Condition CD-5 cites "...disturbs the neighbors..." as a violation. We have changed that to municipal code language, which states that the police may determine "the total noise level...shall be considered to be the alleged intrusive noise if in the opinion of the officer the alleged noise is the dominant noise sources." Consequently, police recordings of the noise will constitute evidence of violation.

- RC2-7. 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. Special events and functions cannot exceed fire department capacities for the various venues or spaces.
- RC2-8. From entertainment permit CD-2; *modification italicized*) Entertainment or amplified sound is prohibited on the Zinc Terrace (*south patio.*)
- RC2-9. (From entertainment permit CD-3, *as italicized*) *Dancing is limited to the Zinc bar/lounge.*
- RC2-10. 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.

RC-3. Event Space Layouts and Building Plans.

- RC3-1. (From Event Space Layout plan in the entertainment permit) Except for special events, at all other times, the 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.

Narrative. A resident has observed that Shade removed all the tables and chairs from the terrace, as well as moving the sofas in the Zinc lounge along the walls of the terrace, thus creating a large open space for patrons to stand shoulder-to-shoulder on big bar nights. This configuration violates the Event Space Layout in the entertainment permit.

- RC3-2. For special events in the courtyard and the Zinc bar/lounge, the applicant shall provide event space layouts representative of typical serving table and seating arrangements, for which the fire department will determine maximum occupancies. Arrangements shall expedite food consumption and resemble the layouts shown in the annual entertainment permit dated December 19, 2008.

- RC3-3. The skydeck and terrace shall at all times maintain the same seating and table arrangements as for daily hotel operations.

Narrative. Reso 05-08 Condition 2 limits special events to the Zinc bar/lounge, courtyard and conference rooms, but does not authorize special events to use the skydeck or terrace.

- RC3-4. *Under no circumstances shall the lobby area east of the Zinc retractable wall be used for general public or event alcohol consumption.*

- RC3-5. (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, as approved by the Planning Commission on (approval date), subject to any special conditions set forth *in this amendment*. The layout of sound mitigation measures is subject to further review and approval by the Director of Community Development. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.

RC-4. 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</i>	<i>Midnight¹ (see Note 1 below)</i>	30
Zinc bar and lounge, Sun-Thu	11 PM ¹	30
Terrace, no special events	11 PM ¹	30
Conference (Green) Room(s)	Special events only; no public ¹	Same as special events
<i>Penthouses, two</i>	<i>Special events only ; no public¹</i>	Same as special events
Skydeck	10 PM; no exceptions (see Note 2)	60
Courtyard, special events	Special events only; no public ¹	Same as special events
Courtyard, functions	Same as special events ¹	30
Special Events	11 PM Sun-Thu ¹ ; midnight ¹ Fri-Sat	30
<i>Room Service, Alcohol</i>	<i>Same as Zinc</i>	<i>0 (Zinc closing time)</i>

Note 1. *New Years Eve closing and public use, as permitted by ordinance.*

Note 2. Skydeck closes at 10 PM; no exceptions, including special events and New Years Eve.

Narrative. In exchange for conditions that will stop Shade from disturbing the neighborhood, we agree to increasing the Zinc bar and lounge closing hour from 11 PM to midnight, Friday and Saturday. The table also lists other closing times stipulated in several sections of the Reso 5770 and Reso 05-08 use permits, as detailed in Exhibit B. We use italicized emphasis for items changed or not covered in the existing use permits.

RC-5. Ingress-Egress Control

RC5-1. The general Metlox Plaza valet service shall move from the Shade entrance

Narrative. It appears that Morningside Drive can accommodate Metlox valet parking.

RC5-2. (From entertainment permit CD-9, *modifications italicized*) *Except for registered guests, after 10:00 PM on Thursday, Friday and Saturday, on holidays, and after all special events at the hotel during any day of the week, the pick-up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. Pickup by the valet shall also not be permitted at the hotel entrance off Valley Drive at these times. The valet shall keep all driving lanes, parking back-up areas, and all vehicular and pedestrian access ways free and accessible to the general public, subject to approval of the Director of Community Development. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight. 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.*

- RC5-3. The city shall prohibit taxi pickups and drop-offs on Valley Dr after 10 PM. Hotel employees shall discourage the public from using taxis on Valley Dr after 10 PM. Taxi pickups and drop-offs at the Shade entrance shall be prohibited after 10 PM. Hotel staff may call for a taxi to pickup registered guests at the entrance after 10 PM.
- RC5-4. The Zinc queue shall move to the west-side Shade door, to prevent noise from escaping the terrace south-side entrance. The hotel shall obtain an encroachment permit to align the queue on the Metlox Plaza, along the hotel west wall. Registered guests and their guests shall continue to have direct access, without waiting, into the bar and terrace areas.

Narrative. At the Oct 28 hearing, the Behrens analyst testified that the south entrance of the terrace must close to obtain sound mitigation, which would require the queue to move to the west entrance of the hotel. Registered guests currently have direct access to the bar and terrace, without having to wait in line.

- RC5-5. (From entertainment permit CD-10, *modification italicized*) After 10:00 PM on *Thursday, Friday and Saturday, on holidays, and after all special events at the hotel during any day of the week, non-registered* guests at the hotel facilities shall use the *rear door (west)*, opening on to the Metlox Plaza, to exit the hotel, and not the front entry door that exits onto Valley Drive. The employees shall close and monitor the front entry door as required to ensure patrons exit out the *west door* while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of 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.

Narrative. We have changed this entertainment permit condition, to require bar patrons after 10 PM to enter and exit the hotel from the west door, rather than the south terrace entrance, which will temporarily close after 9 PM.

- RC5-6. (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, 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 such as Lot 3.
- RC5-7. (From entertainment permit CD-8) Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
- RC5-8. (From Reso 5770 Condition 28 and Reso 05-08 Condition 2) Events 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*) *In addition to room service, which includes the penthouses, breakfast and lunch may be served in the Zinc bar, lounge, terrace, conference room(s) and skydeck. Except for special events and functions, food will not be served in the courtyard. Small plates may be served in all venues, when authorized for alcohol service. The hotel shall not operate a full-scale restaurant.*

Narrative. This condition combines several requirements regarding food service in PC Resolution 05-08, as well as legitimizing the lunch service that Shade currently provides.

RC-7. Promotion and Advertising.

RC7-1. (From Reso 5770 Condition 28, Reso 05-08 Condition 2 and entertainment permit UP-7; *modifications italicized*) The availability of the Inn for special events 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.

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.

Behrens and Associates, Inc.*Acoustics, Noise and Vibration Consultants*

March 10, 2010

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

Attention: Laurie Jester, Planning Manager

Subject: Shade Hotel Noise Mitigation Evaluation Report

Dear Ms. Jester,

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

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

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

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

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

Front Entrance Noise (Figures 1 to 3)

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

South Terrace Noise (Figures 4 to 12)

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

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

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

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

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

Rooftop Deck Noise (Figures 13 to 15)

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

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

Combined Noise Levels (Figures 16 to 20)

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

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

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

Noise Control Recommendations

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

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

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

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

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References

1. *MBSshade2009-A-3.0_A-3.1-Elev.dwg*. Shade Hotel Architectural Drawings. Louis Skelton & Associates. Received January 3, 2010.
2. *MBSshade2009_sound study_1stFP-Rev010510.pdf*. Shade Hotel Architectural Drawings. Louis Skelton & Associates. Received January 6, 2010.

Please contact the undersigned with any questions or comments.

Very truly yours,

Don Behrens
President

Attachments



Figure 1. Unmitigated Average Noise Level at 1st Floor - Front Entrance

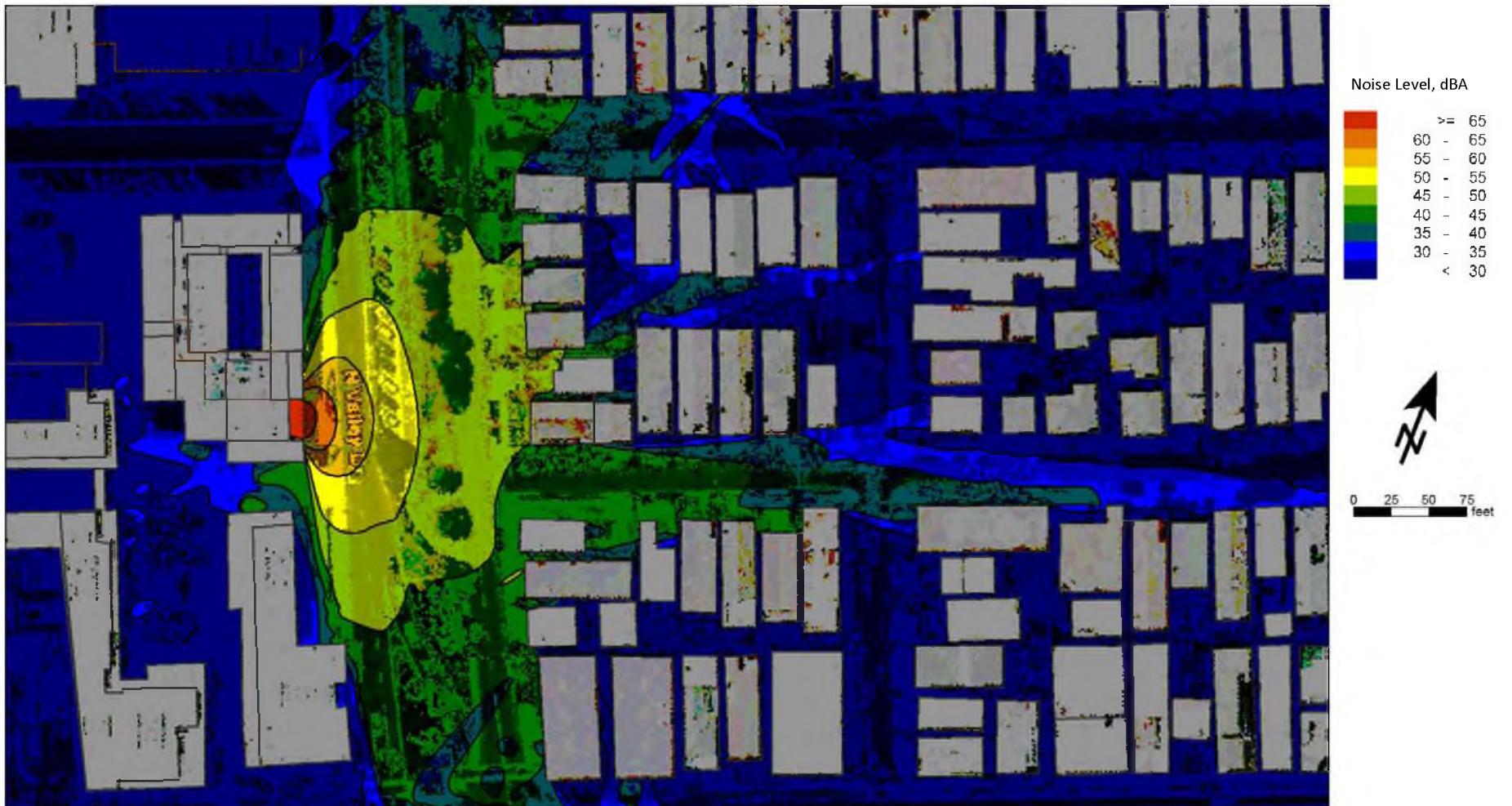
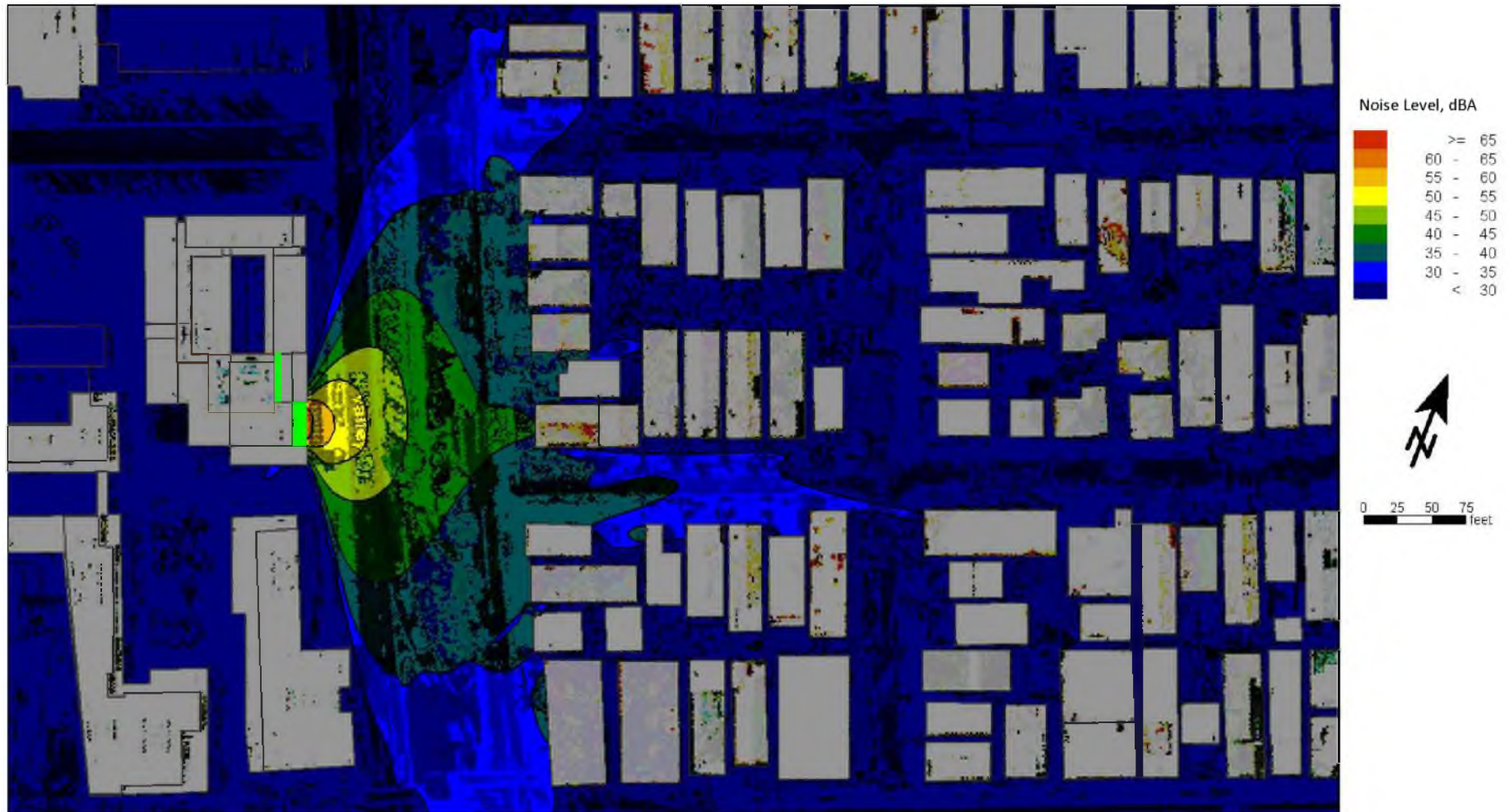




Figure 2. Mitigated Average Noise Level at 1st Floor - Front Entrance Only



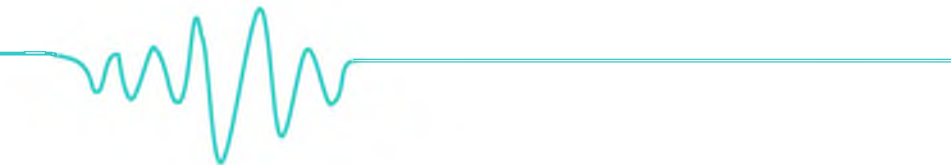


Figure 3. Noise Difference Map - Mitigation of Front Entrance Noise at 1st Floor

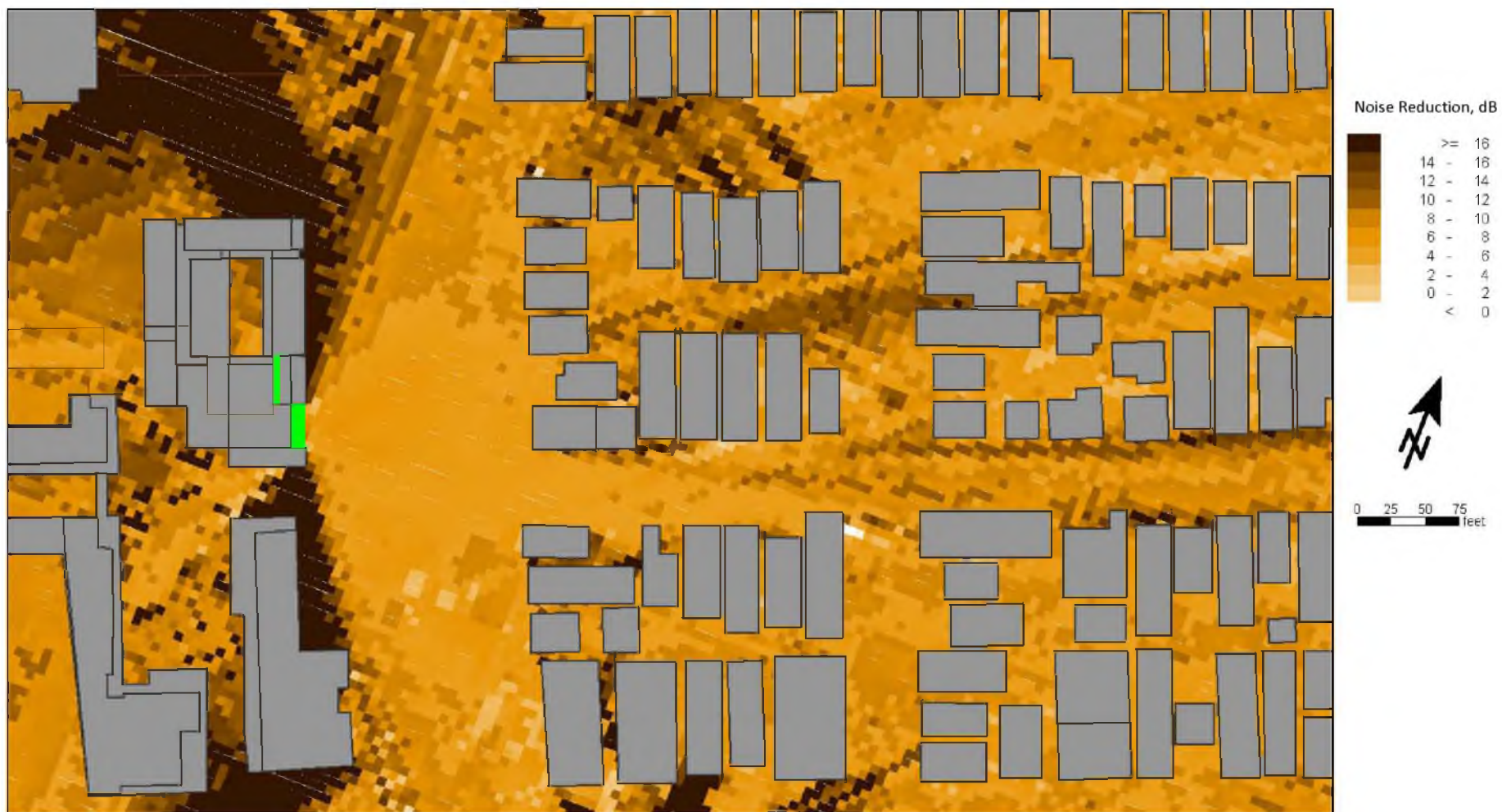




Figure 4. Unmitigated Average Noise Level at 1st Floor - South Terrace Only

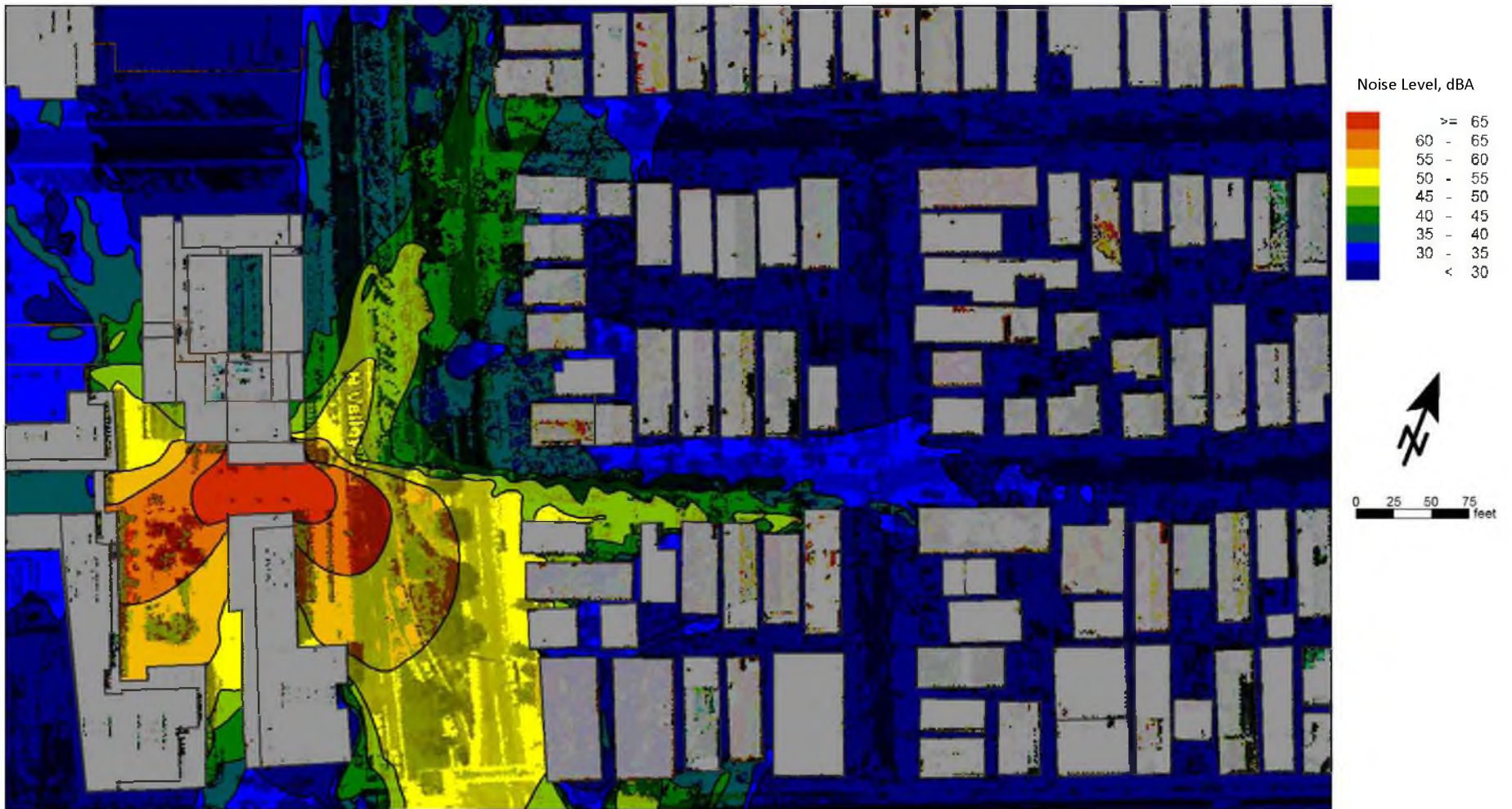




Figure 5. Mitigated Average Noise Level at 1st Floor - Partially Enclosed South Terrace Only

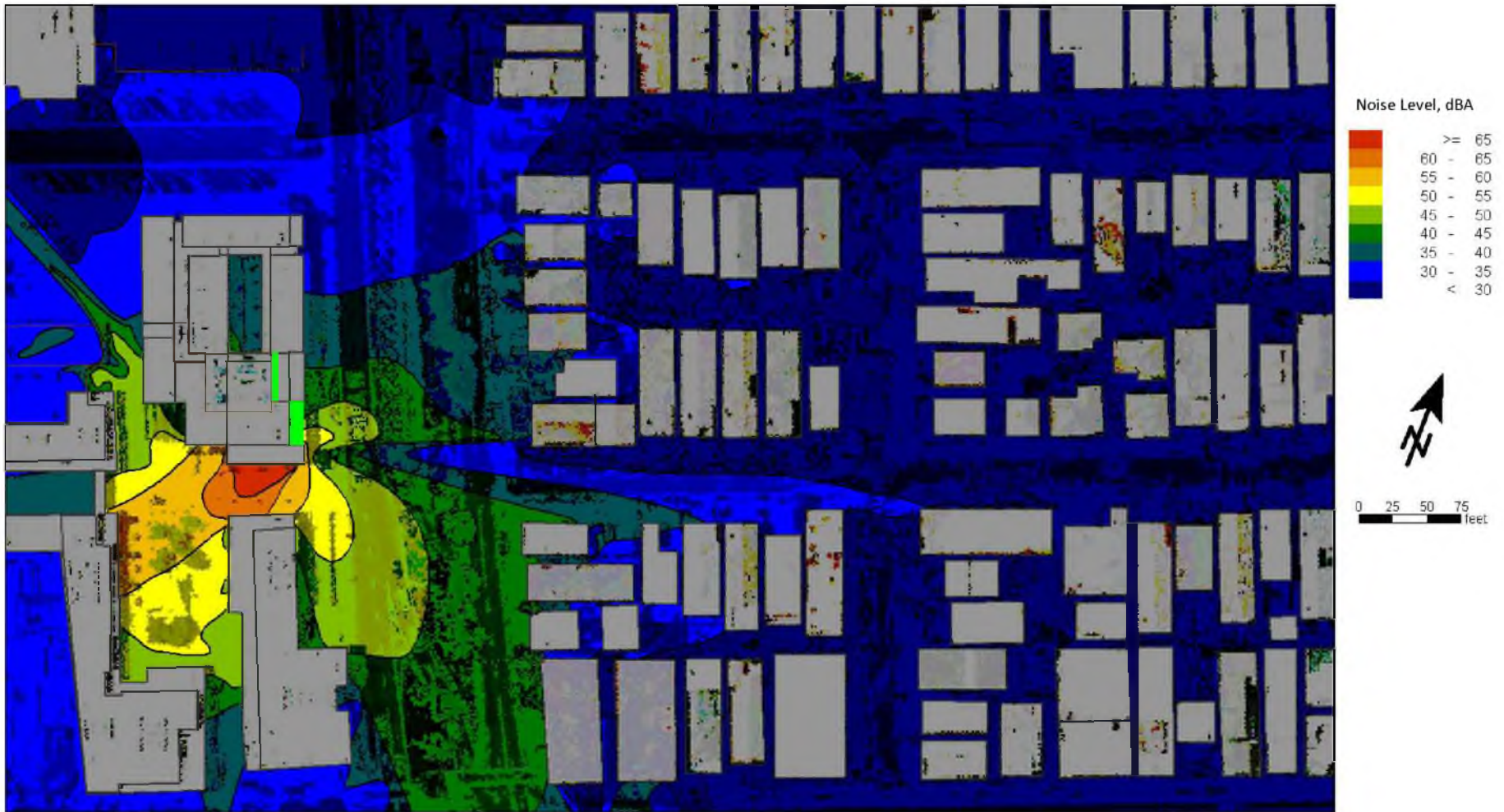




Figure 6. Noise Difference Map - 1st Floor Noise Reduction with Partially Enclosed South Terrace

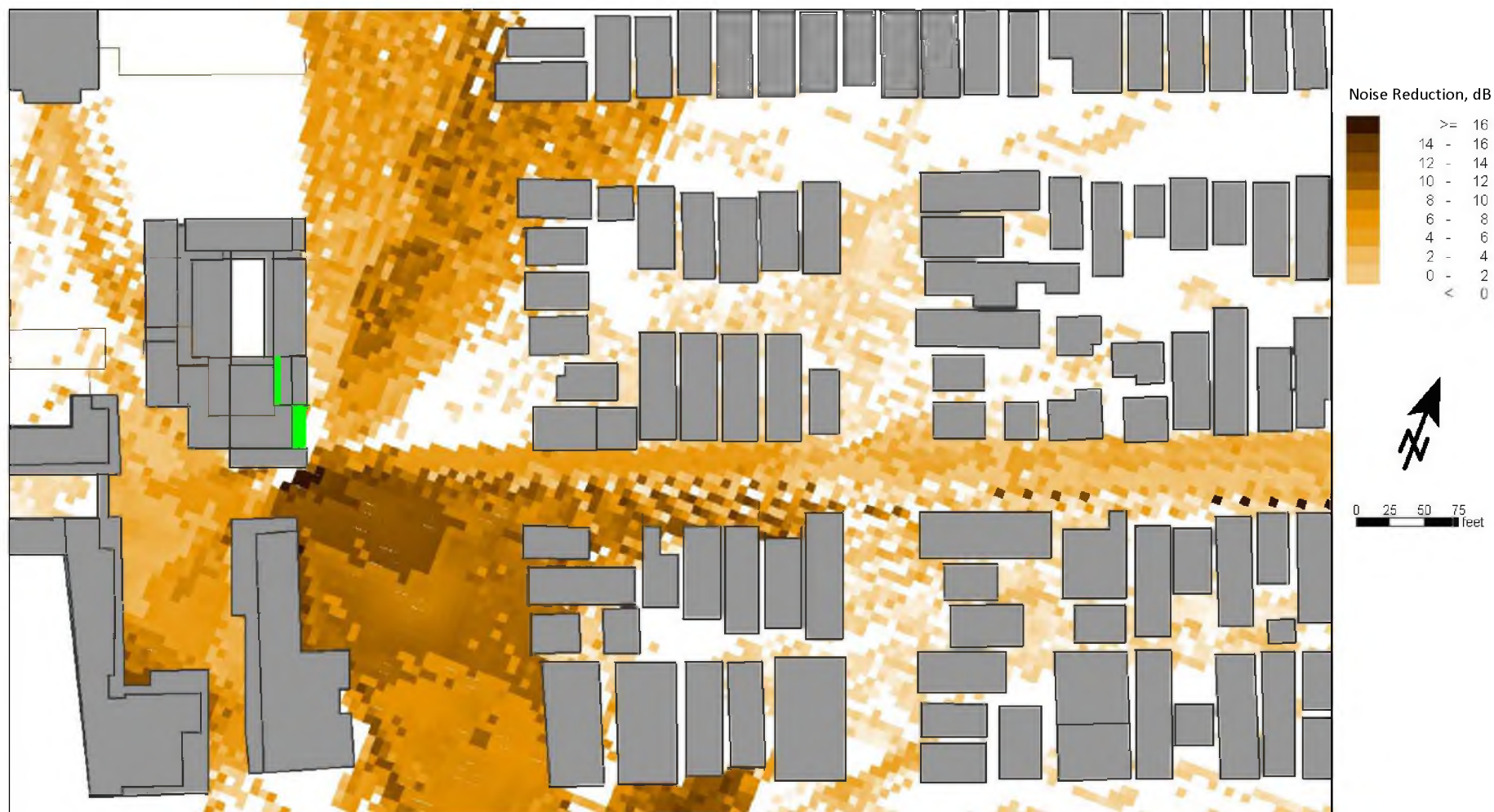
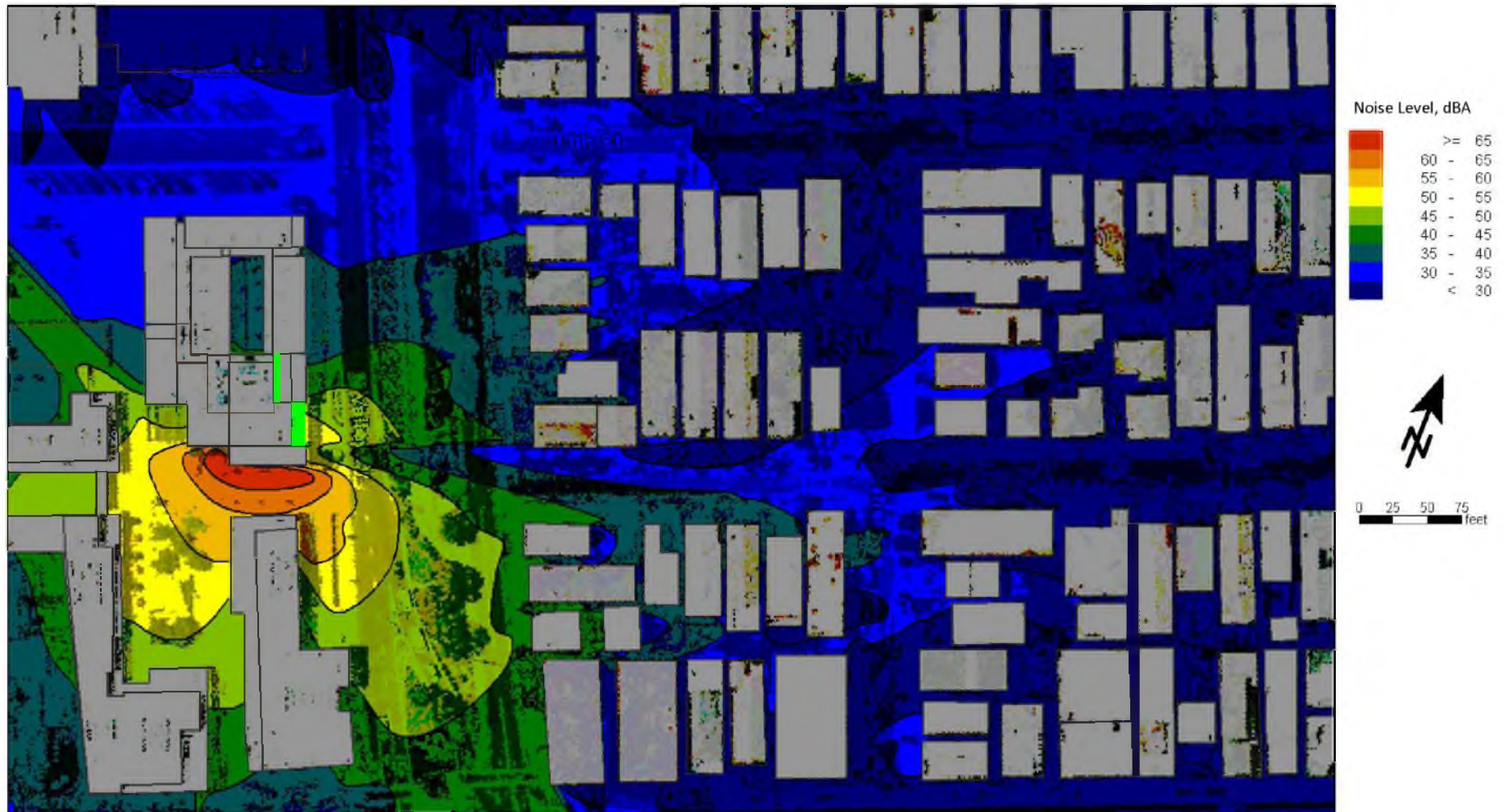




Figure 7. Mitigated Average Noise Level at 3rd Floor - Partially Enclosed South Terrace



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Figure 8. Noise Difference Map - 3rd Floor Noise Reduction with Partially Enclosed South Terrace

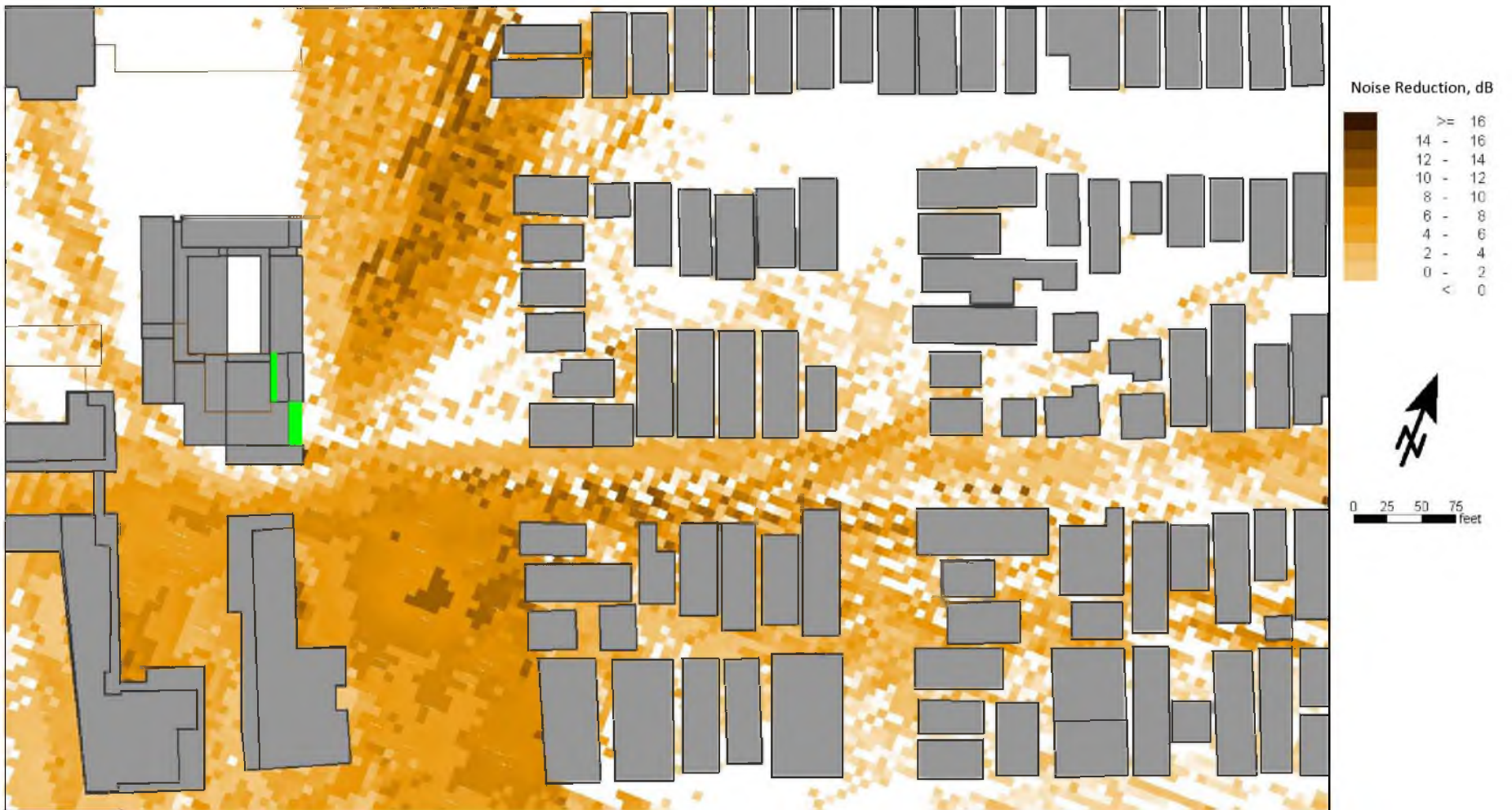




Figure 9. Mitigated Average Noise Level at 1st Floor - Enclosed South Terrace

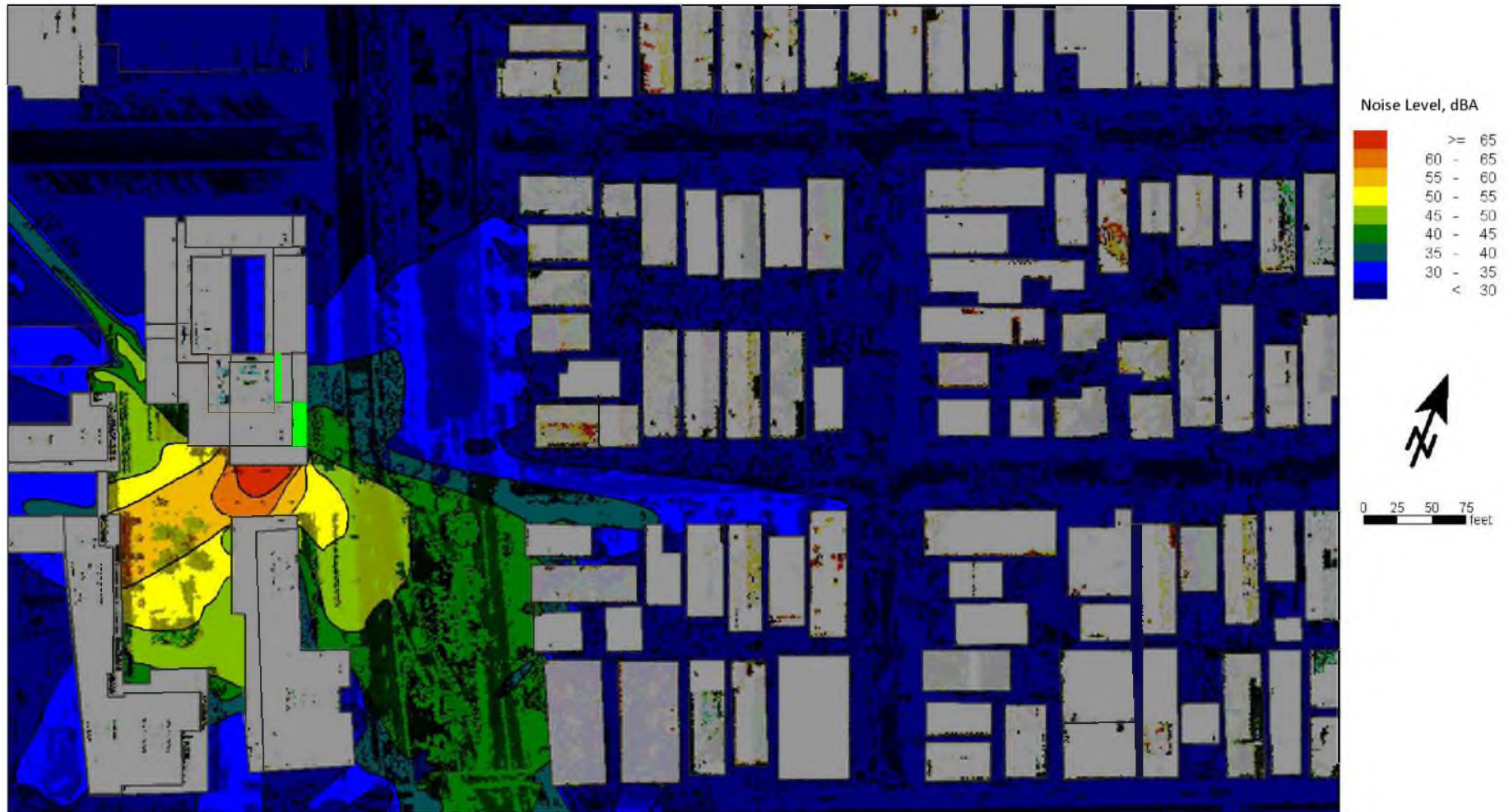




Figure 10. Noise Difference Map - 1st Floor Noise Reduction with Enclosed South Terrace

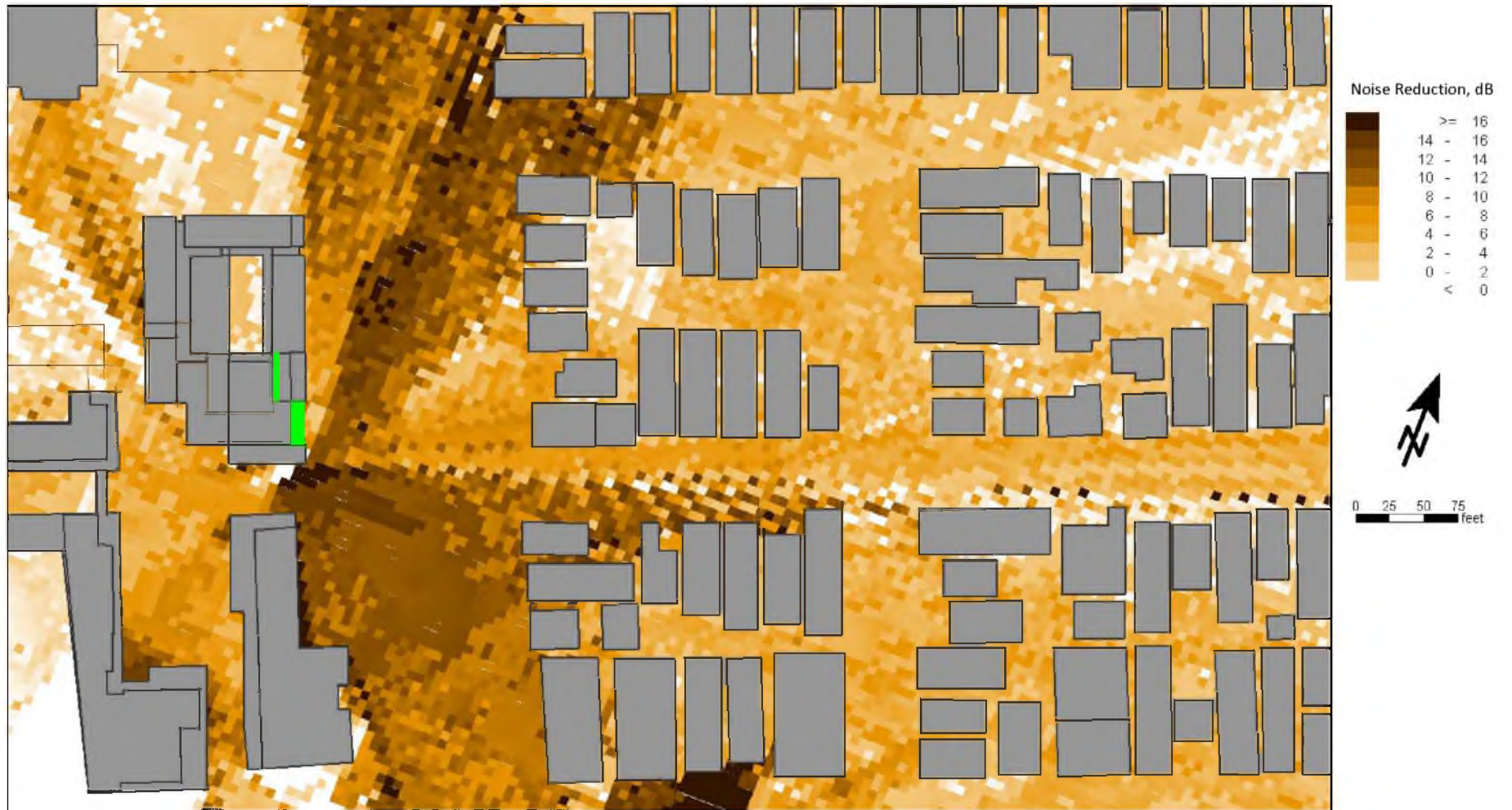




Figure 11. Mitigated Average Noise Level at 3rd Floor - Enclosed South Terrace

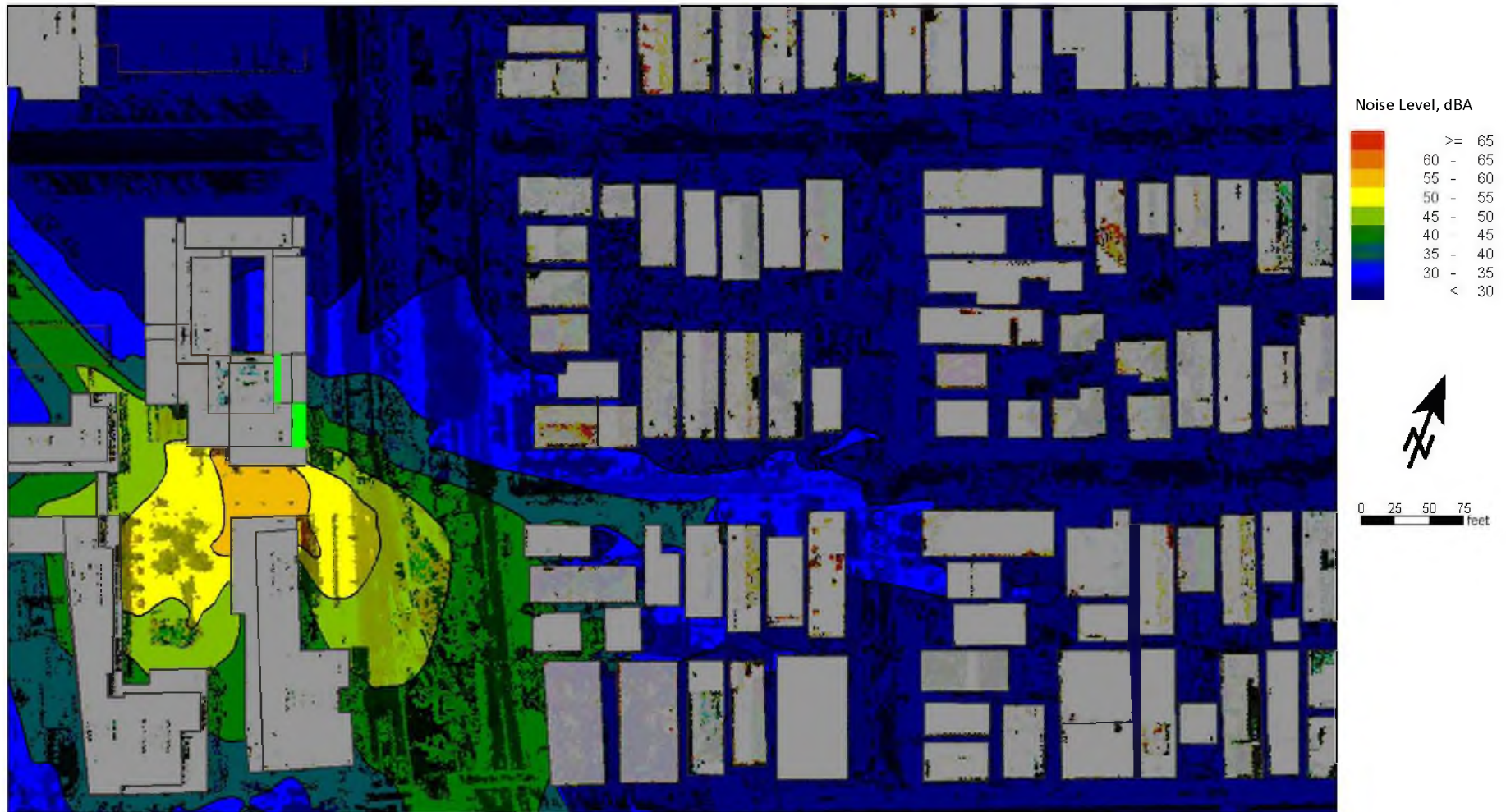




Figure 12. Noise Difference Map - 3rd Floor Noise Reduction with Enclosed South Terrace

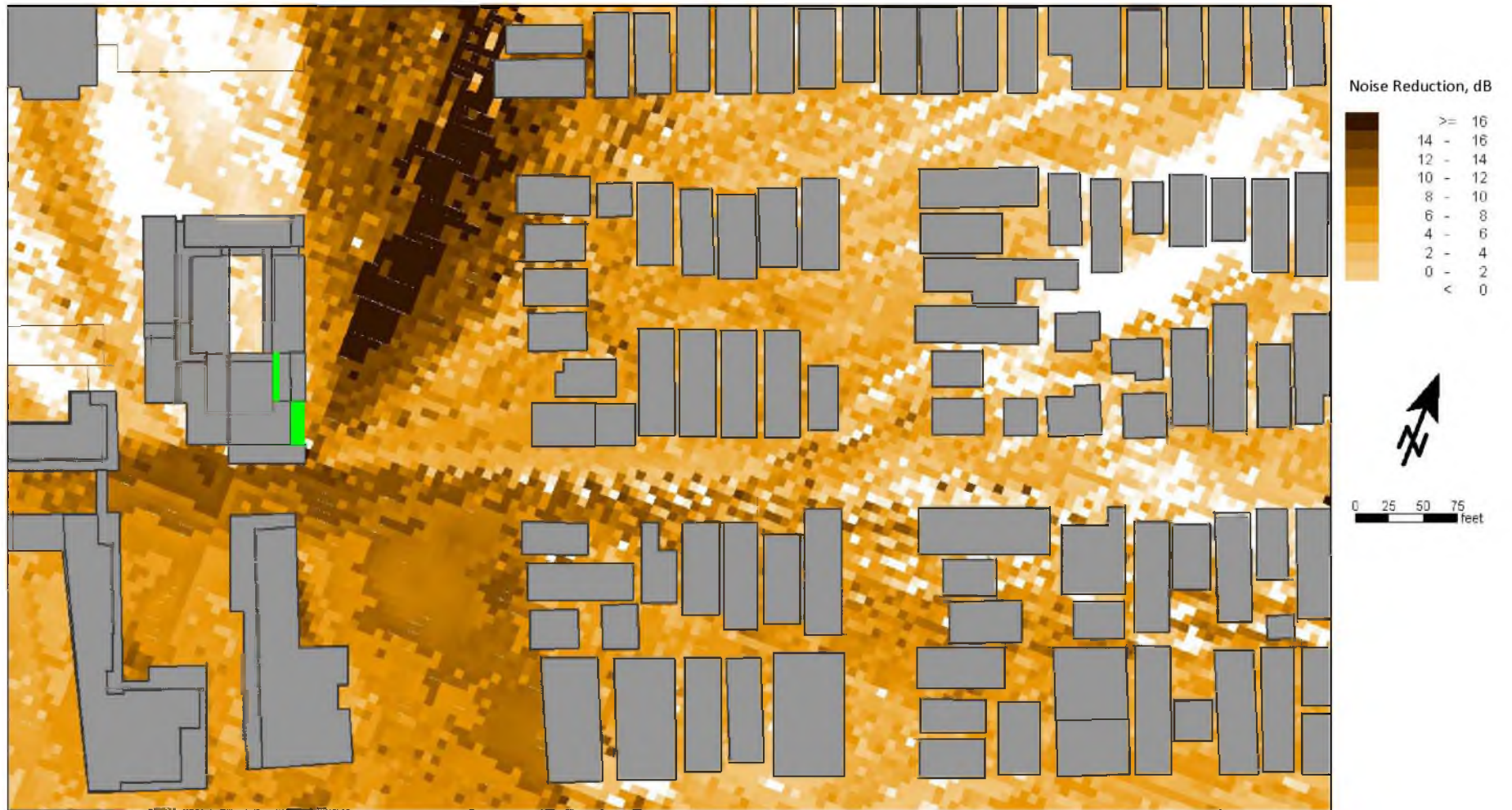
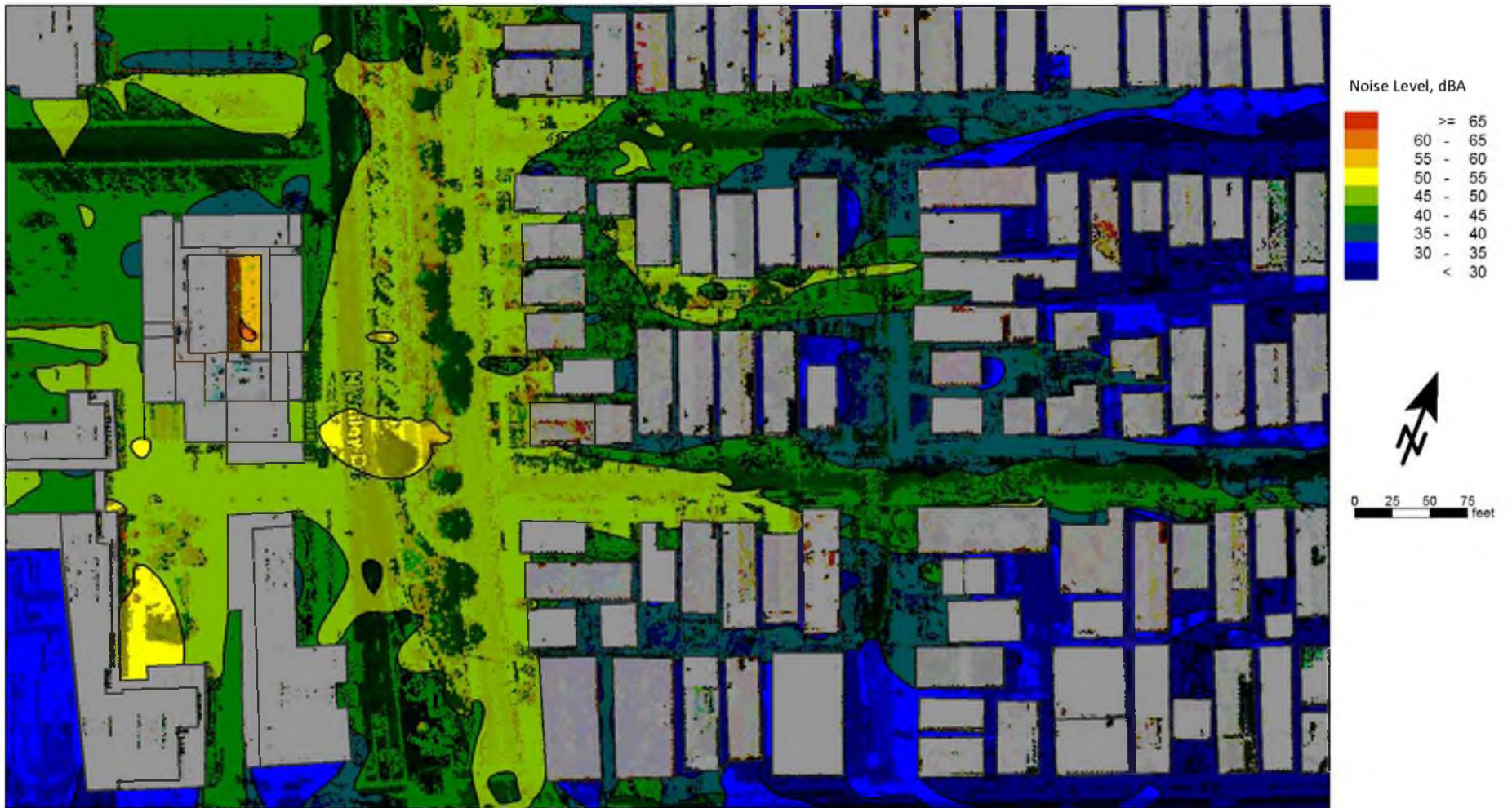




Figure 13. Unmitigated Average Noise Level at 1st Floor - Rooftop Deck Only



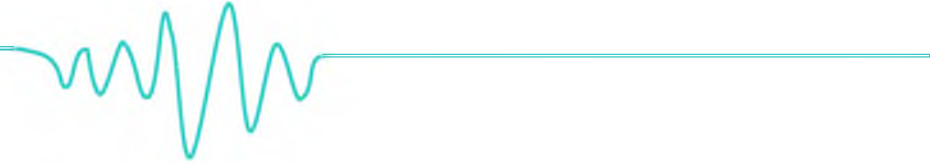


Figure 14. Rooftop Deck Modeling Locations



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

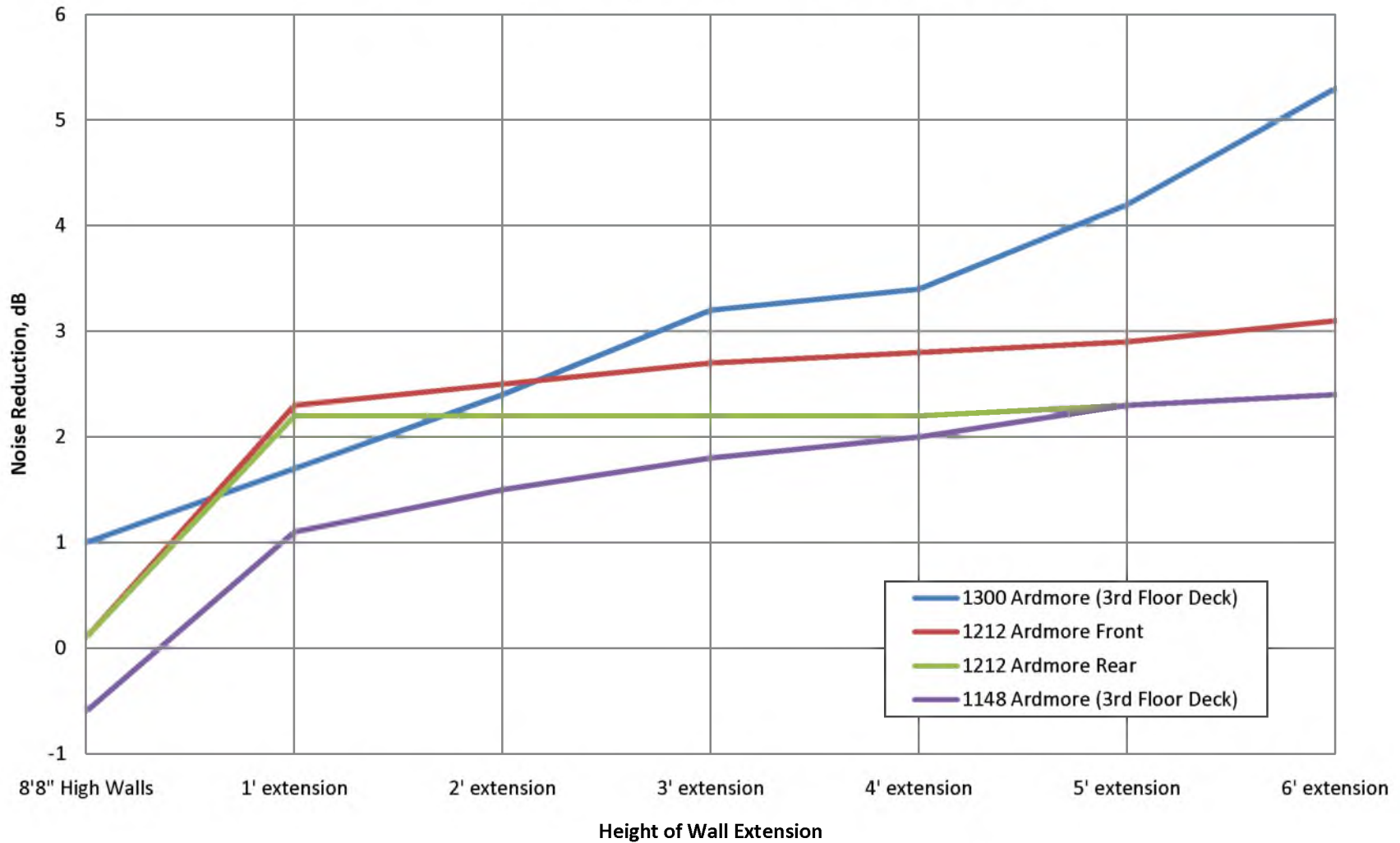
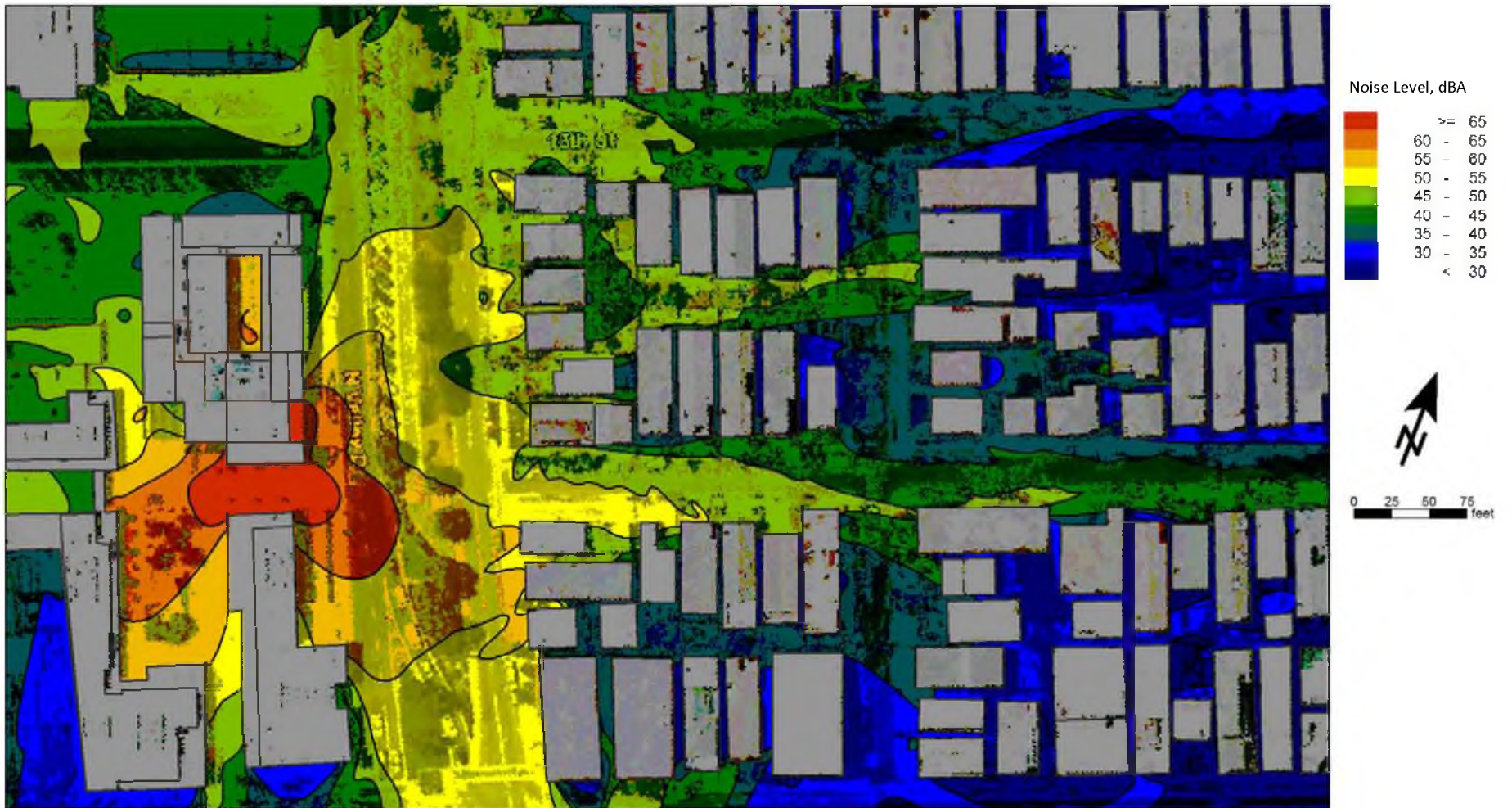




Figure 16. Unmitigated Average Noise Level at 1st Floor - All Sources



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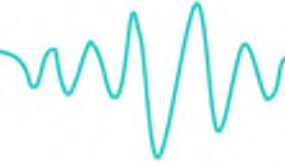
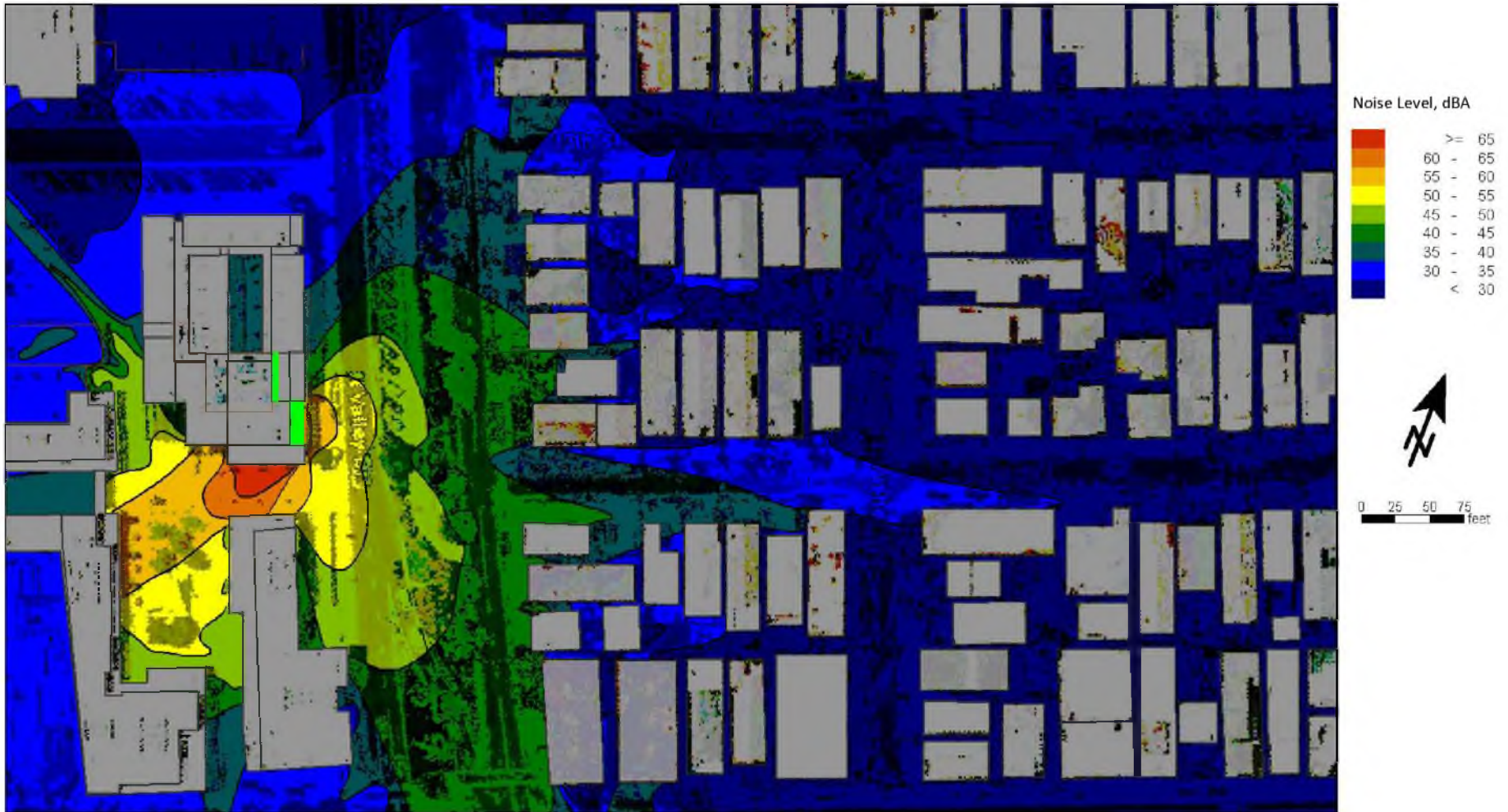


Figure 17. Mitigated Average Noise Level at 1st Floor - Partially Enclosed South Terrace, Front Entrance Vestibule and No Rooftop Deck Activity



Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants

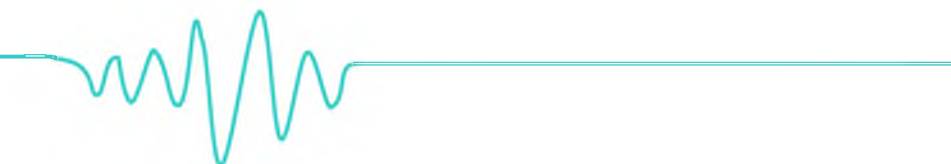
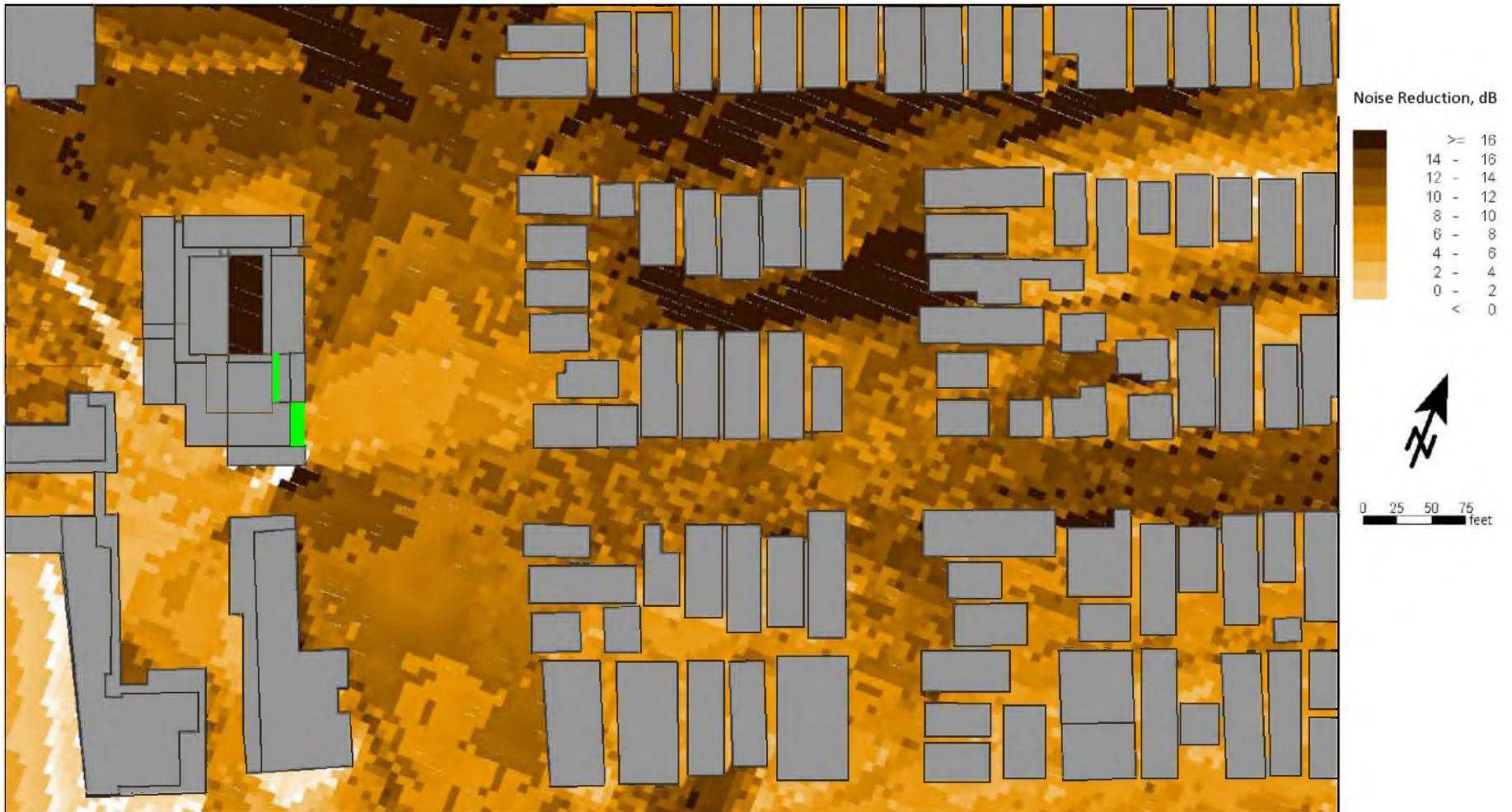


Figure 18. Noise Difference Map - 1st Floor Noise Reduction with Partially Enclosed South Terrace, Front Entrance Vestibule and No Rooftop Deck Activity

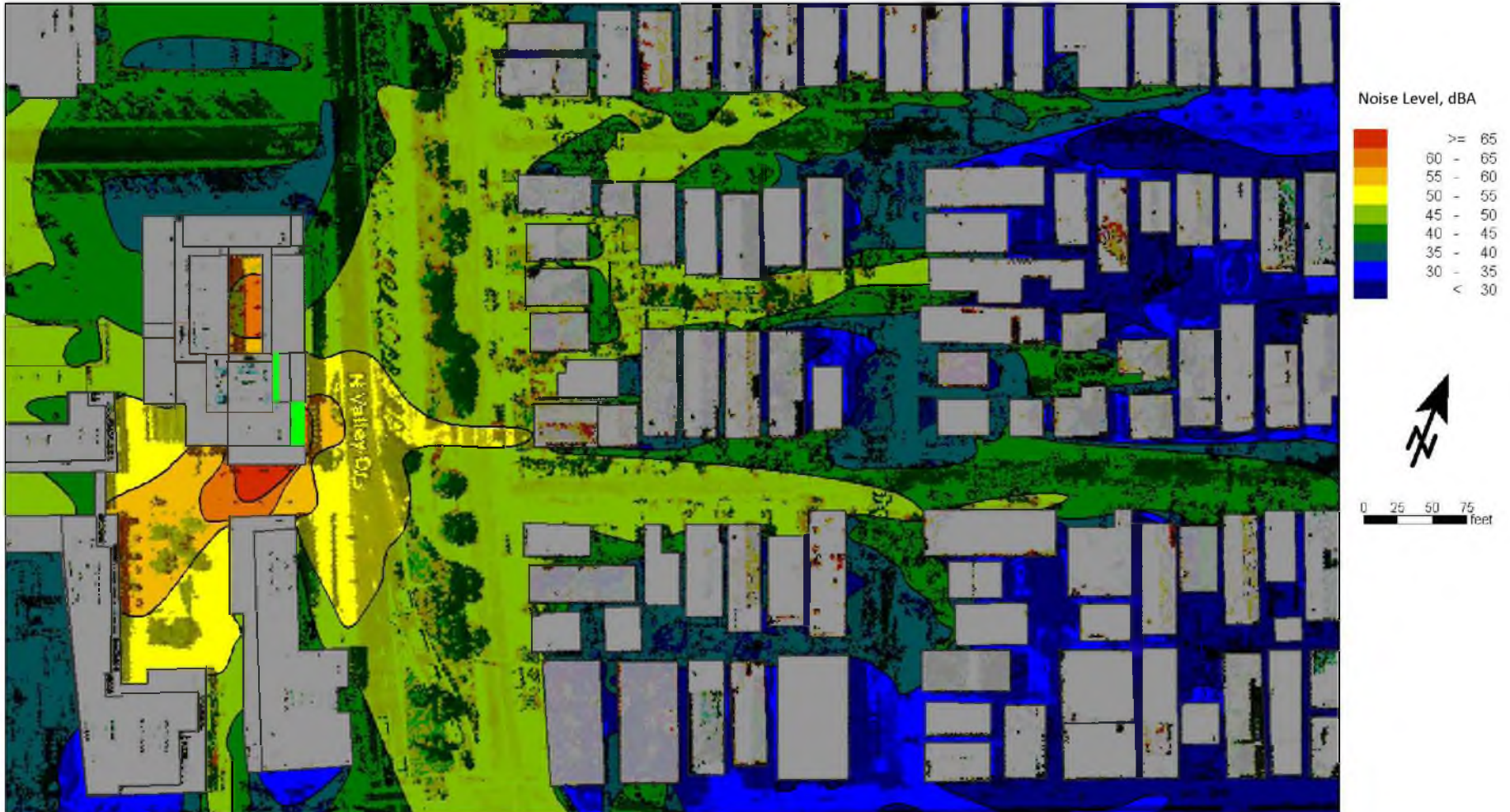


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Figure 19. Mitigated Average Noise Level at 1st Floor - Partially Enclosed South Terrace, Front Entrance Vestibule with Rooftop Deck Activity



Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants

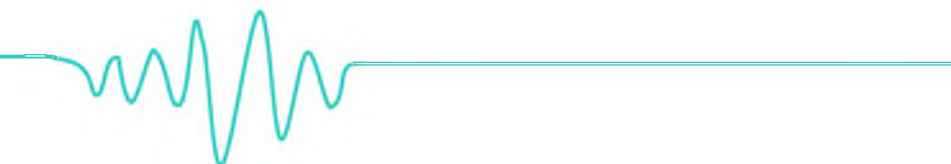


Figure 20. Noise Difference Map - 1st Floor Noise Reduction with Partially Enclosed South Terrace, Front Entrance Vestibule with Rooftop Deck Activity



CRITIQUE: CITY ACOUSTICS STUDY REPORT FAVORS SHADE**SUMMARY.**

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

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

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

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

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

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

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

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

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

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

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

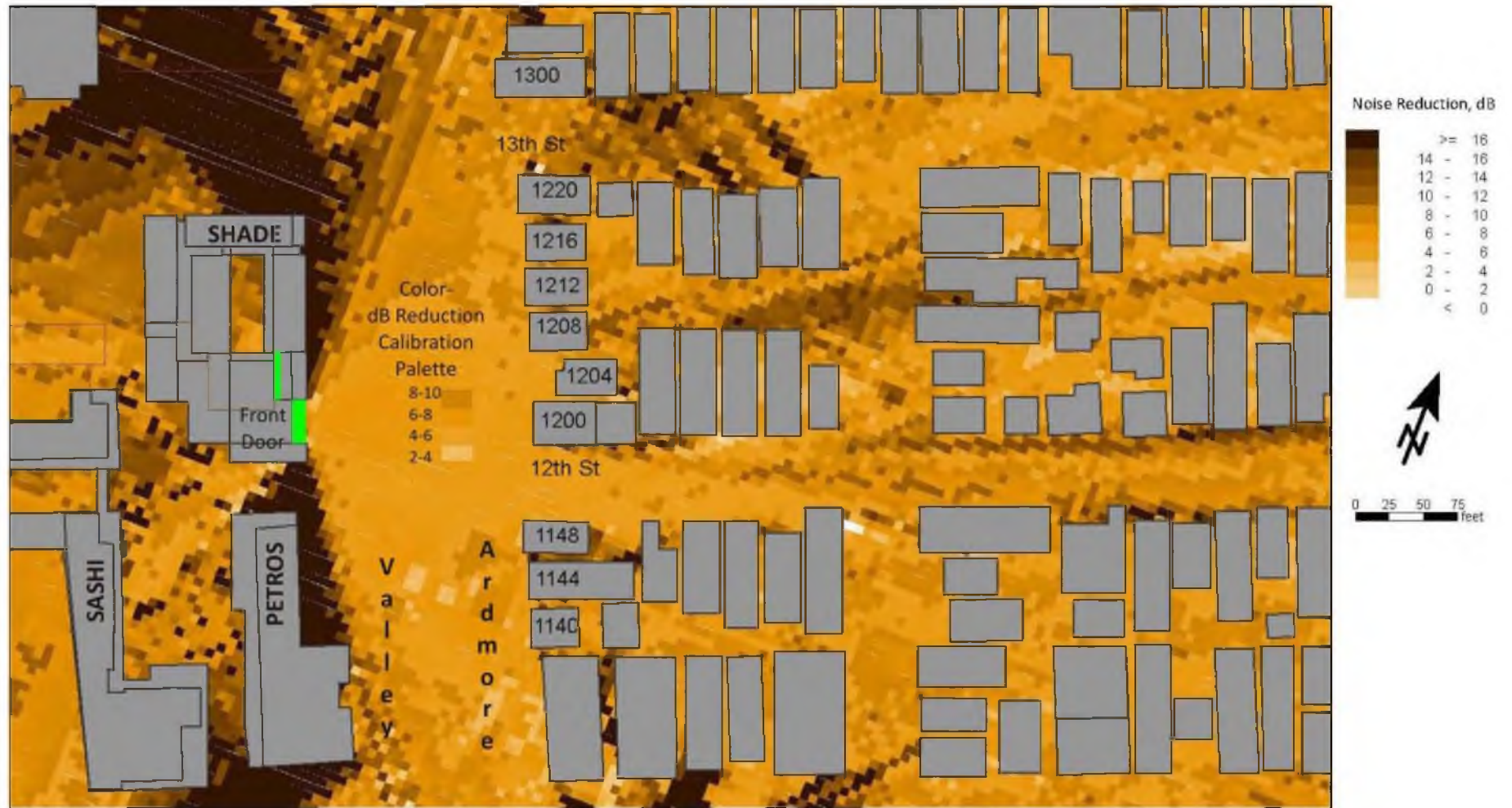
Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



ANNOTATED FIGURE 3 IN BEHRENS 10 MARCH 2010 REPORT

Figure 3. Noise Difference Map - Mitigation of Front Entrance Noise at 1st Floor



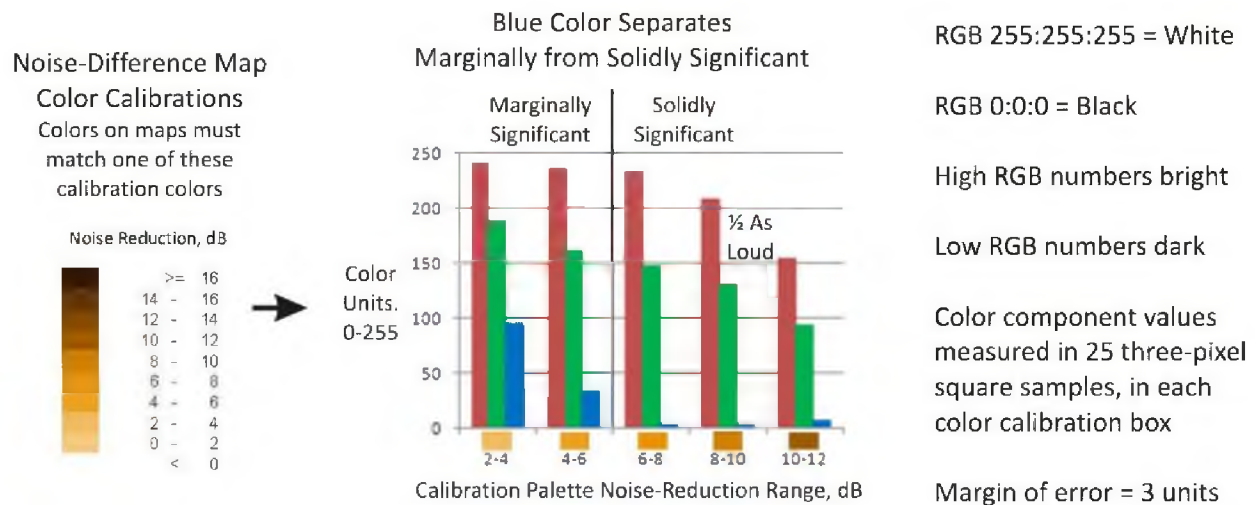
CRITIQUE: CITY ACOUSTICS STUDY REPORT FAVORS SHADE

DISCUSSION.

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

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

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



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

Front-Door Vestibule.

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

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

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

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

CRITIQUE: CITY ACOUSTICS STUDY REPORT FAVORS SHADE

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

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

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

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

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

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

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

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

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

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

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

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

CRITIQUE: CITY ACOUSTICS STUDY REPORT FAVORS SHADE**South Terrace.**

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

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

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

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

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

Skydeck and Courtyard.

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

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

CONCLUSION.

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

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

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

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

Changes from residents' draft CUP yellow-highlighted

RESOLUTION NO. PC 10-04

Later changed to PC 10-05

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED HOURS OF OPERATION, NOTIFICATION FOR EVENTS, ALLOWING EXPANDED FOOD SERVICE OPERATIONS, APPROVING VARIOUS NOISE MITIGATION MEASURES AND DENYING A HEIGHT VARIANCE FOR A 6-FOOT HIGH ROOFDECK NOISE BARRIER AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATION COMPANY, LLC- MICHAEL A. ZISLIS, PRESIDENT)

At the 24 June 2010 hearing, staff added a clause to Condition 23, on Pg 8, that substantially changed its meaning.

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Manhattan Beach, California, hereby makes the following findings:

- A. Manhattan Inn Operation Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previously approval. The three changes include: 1- Extension of hours of operation to midnight on Friday, Saturday and Holidays, except for the skydeck and other minor exceptions, 2- An increase to 125 people for special events (weddings, parties, etc.) without administrative approval, and 3- Expanded public food service (breakfast, lunch and evening "small plates"). Additionally, a Variance for six-foot high noise barriers around the north, south and east sides of the roofdeck is requested. 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.
- B. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission. An amendment to the Coastal Permit will not be required to be processed as there are no relevant coastal issues related to the subject application.
- D. An amendment to the Disposition and Development Agreement (DDA) may be required, and that action will be determined by the City Council.
- E. The applicant is Manhattan Inn Operation Company, LLC and the property owner is the City of Manhattan Beach.
- F. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program

in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.

- G. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space, with single Family Residential and High Density Residential to the east past Valley and Ardmore Drives.
- H. The General Plan designation for the property is Downtown Commercial.
- I. The following is a summary of some of the key milestones for the Metlox site:
 - 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner
 - April 2001- The City Council certified the EIR
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
 - November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
 - February 2003- Groundbreaking for the Metlox parking structure
 - January 2004- Grand opening of public parking structure with 460 parking spaces
 - April 2004- Shade Hotel construction commenced
 - September 2004- Construction of the Metlox commercial buildings started
 - May 2005- Planning Commission approved first Shade Amendment Resolution No. PC 05-08
- J. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the first Amendment to the Master Use Permit for the Shade related to alcohol sales and special events at their regular scheduled meeting of May 25, 2005. The public hearing was advertised pursuant to applicable law and testimony was invited and received. The Planning Commission approved the Amendment for the Shade Hotel, and adopted Resolution No. PC 05-08. The facts and findings for that approval are included in the public records for that application.
- K. The original approval (Condition No. 38- City Council Resolution No. 5770) allowed full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The original approval (Condition No. 28- City Council Resolution No. 5770) also limited special events (weddings, parties, etc.) to 60 people.
- L. Resolution No. PC 05-08 allowed a Type 47 ABC license for the site, allowing full liquor open to the general public and including the service of food in order to allow the in-room mini-bars (Type 66 license), as well as the portable bar with full liquor (Type 66 license), all for on-site consumption of alcohol only, as well as events up to 99 people without approval of a Temporary Use Permit.
- M. Portions of Resolution No. PC 05-08 have been subject to interpretation as the hotel is a 24-hour operation while the support services of the bar, food service and events are limited. Additionally, there are no definitions of special events, guests,

closing, and other regulatory terms in the Resolution. One of the goals of this Amendment is to clarify definitions and language in the Resolution.

- N. The Planning Commission of the City of Manhattan Beach conducted public hearings regarding the second Amendment to the Master Use Permit related to the Shade Hotel on June 24, 2009, July 22, 2009, October 28, 2009, May 12, 2010 and June 23, 2010. The public hearings were advertised pursuant to applicable law and testimony was invited and received. The Planning Commission approved the Amendment for the Shade Hotel, and adopted Resolution No. PC 10-04 on June 23, 2010.
- O. Testimony from many neighboring residents at the Planning Commission public hearings indicates Shade Hotel makes noise that discomforts and irritates "reasonable persons of normal sensitiveness," as defined by the subjective standard in Chapter 5.48 of the MBMC. The Manhattan Beach Police Department has responded to numerous calls regarding Shade disturbances, and for several of these incidents, has reports and recordings of noise from Shade.
- P. Neighbors indicate that taxi pickup and drop-off on Valley Drive create disturbances. The City established a taxi stand on Morningside Drive at 13th Street in 2009 to address this issue and has notified the taxi franchises of the requirements.
- Q. Two independent acoustics analysis, dated October 21, 2009 and March 10, 2010, were conducted by Don Behrens & Associates under the direction of the Community Development Department. The reports indicate that noise from the Shade Hotel does not exceed the objective noise standards in the MBMC; the subjective standard was not evaluated in the reports. Actual noise measurements and continuous noise monitoring was conducted during large events on the skydeck, courtyard, lounge and terrace. A three-dimensional modeling of noise to assess various mitigation was also constructed. The reports proposed a variety of mitigation options including a front (east) entry vestibule, terrace enclosure, roofdeck extensions, west entry/exit/queue and taxi stand. Mitigation is incorporated into the conditions based on these recommendations, public hearing comments and Planning Commission discussion and direction.
- R. Due to the open design, the terrace has minimal soundproofing and constitutes a major noise source, particularly for residents south of 12th Street. Additionally, the front (east) entry door has noise leakage that impacts residents, largely between 12th and 13th Streets. The rooftop deck generates noise that largely impacts residents north of 13th Street.
- S. The primary use and purpose of Shade Hotel, is and will continue to be, to serve the community as a hotel offering first-class accommodations to visitors. The hotel may also offer event, function, food, and other similar support functions as secondary uses. Marketing and promotion of the hotel shall be consistent with these uses as provided in the conditions.
- T. Potential noise and other neighborhood impacts from Entertainment, as defined and regulated in Chapter 4.20 of the MBMC, will be addressed through the administrative review of the annual Entertainment Permit. The Entertainment Permit is a separate administrative permit, and is regulated independently from the land use entitlement of the Master Use Permit and Master Use Permit Amendment.
- U. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- V. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution supersedes Resolution No. PC 05-08. It also amends only Conditions No's 28 and 38 of Resolution No. 5770,

all other conditions in that Resolution (unless amended by other separate Resolutions for other Metlox tenants) remain effective and in full force.

- W. Based upon State law, and MBMC Section 10.84.060, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the use permit for Shade Hotel is consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the City's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts through the conditions of approval which require physical noise mitigation and operational revisions.
 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the proposed amended use permit is consistent with the General Plan for the Commercial Downtown designation, because it is granting additional privileges to already approved uses that will result in minimal fundamental change of those uses. Amending the use permit will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the hotel facility. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city, due to the conditions. Additionally, the project is consistent with the following General Plan Goals and Policies:

GOALS AND POLICIES: LAND USE

Policy LU-5.2: Work with all commercial property owners bordering residential areas to mitigate impacts and use appropriate landscaping and buffering of residential neighborhoods.

Policy LU-5.4: Discourage the outdoor commercial and industrial use of property adjacent to residential use.

Policies LU-5.7, 6.4 and 7.6: Recognize the unique qualities of mixed-use areas, and balance the needs of both the residential and commercial uses.

Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

Policy LU-7.1: Encourage the upgrading and growth of businesses in the Downtown area to serve as a center for the community and to meet the needs of local residents and visitors.

GOALS AND POLICIES: NOISE

Goal N-2: Incorporate noise considerations into land use planning decisions.

Policy N-2.2: Ensure acceptable noise levels near residences, schools, medical facilities, and other noise-sensitive areas.

Policy N-2.5: Require that the potential for noise be considered when approving new development to reduce the possibility of adverse effects related to noise generated by new development, as well as impacts from surrounding noise generators on the new development.

Policy N-3.4: Recognize in the Noise Ordinance that nighttime noise levels create a greater sensitivity than do daytime noise levels.

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the implementation of the new conditions. The proposed amended use permit is consistent with the already approved primary and secondary uses of the facility.
 4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the hotel facility, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.
- X. Based upon State law, and MBMC Section 10.84.060, relating to the Variance application for the proposed project, the following findings CAN NOT be made:
1. Because of special circumstances or conditions applicable to the subject property—including narrowness and hollowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions—strict application of the requirements of this title would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;
 2. The relief may be granted without substantial detriment to the public good; without substantial impairment of affected natural resources; and not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and
 3. Granting the application is consistent with the purposes of this title and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district and area district.

SECTION 2. The Planning Commission of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment, subject to the following conditions, and DENIES the subject Variance.

Definitions.

1. (PREVIOUSLY 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."
2. (PREVIOUSLY 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.
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.
4. (PREVIOUSLY 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.
5. Invitee. Invited guests of a registered guest.
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.
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.
8. Public Areas. Any public area or space where sales, service and consumption of alcoholic beverages is permitted.

Entertainment and Noise

9. (PREVIOUSLY 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.
10. (PREVIOUSLY 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;
 - A. The Courtyard may have one annual event, Oktoberfest, with live amplified entertainment , from 4 to 8 PM.
 - B. 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;

- C. 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.

11. 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.

12. 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.

13. (PREVIOUSLY 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.

14. (PREVIOUSLY 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.

15. 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.

DELETED RC2-8- Penthouse restrictions- 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.

16. 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.

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

18. (PREVIOUSLY 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-

19. 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.

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

21. 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.

22. -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.

23. NEW---Noise Compliance Verification- The privileges within this Use Permit for extension of hours of operation, an increase to 125 people for special events and functions without administrative approval, and a full public food service, shall only be granted after the installation of the mitigation measures, implementation of the improvements and modifications to the operations of the facility. After completion of these measures, the Community Development Director, in cooperation with the Noise consultant, shall determine if the measures are effective and meeting the objective noise criteria and mitigation standards described in the previously submitted Noise reports. The neighbor representative may have input on the location, days and hours of the monitoring for any follow-up noise studies. If the measures are not effective at meeting the objective noise criteria established in the prior reports, the Director of Community Development may require additional mitigation, such as physical improvements, or operational changes, to ensure compliance.

See Exhibit 17 for clause that staff during the hearing,
which substantially changed the meaning of Condition 23
(later renumbered as Condition 22 in the final 2010 CUP

24. **(PREVIOUSLY 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

General Conditions.

25. 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.

26. **(PREVIOUSLY 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

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

28. 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.

Ingress-Egress Control

29. 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.

30. (PREVIOUSLY 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.

31. 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 .

32. (PREVIOUSLY 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.

33. 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.

34. 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.

35. 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.

36. 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.

Food service.

37. 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.

Promotion and Advertising.

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

38. 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.

39. 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.

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.

40. 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.

41. 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.

Procedural

42. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.

43. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.

44. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090

45. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.

46. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.

47. Review. All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after occupancy 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.

48. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.

49. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.

50. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of **June 23, 2010**, and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

LAURIE B. JESTER
Acting Secretary to the Planning Commission

Sarah Boeschen
Recording Secretary

tona

Resolution No. PC 10-04

surrounding residents. After cessation of alcohol service in any venue or for any event or function, only background music is permitted.

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

Entertainment Permit

18. (PREVIOUSLY 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.

Deleted

19. 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.

20. Resident notification- The hotel shall e-mail to residents who sign-up, the schedule of special events and functions sent to the City, *exclusion applicant identification*

21. 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.

22. 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.

23. NEW---Noise Compliance Verification- ~~The privileges within this Use Permit for extension of hours of operation, an increase to 125 people for special events and functions without administrative approval, and a full public food service, shall only be granted after the installation of the mitigation measures, implementation of the improvements and modifications to the operations of the facility. After completion of these measures, the Community Development Director, in cooperation with the Noise consultant, shall determine if the measures are effective and meeting the objective noise criteria and mitigation standards described in the previously submitted Noise reports. The neighbor representative may have input on the location, days and hours of the monitoring for any follow-up noise studies. The privileges and rights within this Use Permit shall not be effective unless the objective noise criteria and dBA reductions, as described in the previously submitted Noise reports, are achieved. If the measures are not effective at meeting the objective noise criteria established in the prior reports, the Director of Community Development may require additional mitigation, such as physical improvements, or operational changes, to ensure compliance.~~

Law Offices of John A. Strain

A Professional Corporation

*Certified Specialist Taxation Law

California Board of Legal Specialization

John A. Strain, Esq.*
321 12th Street, Suite 101
Manhattan Beach, CA 90266
T: 310-802-1300/F: 310-802-1344
jstrain@ustaxlawyer.com

Amber M. Ziegler, Esq.
332 W. Verano Way
Mountain House, CA 95391
T: 209-832-8663
aziegler@ustaxlawyer.com

www.ustaxlawyer.com

July 28, 2010

8867.022

By email

Ms. Laurie B. Jester
Community Development Acting Director
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

Re: *Shade Hotel*
Planning Commission Meeting for July 28

Dear Ms. Jester:

Tonight, the Planning Commission will be considering adoption of PC Resolution 10-05 in response to Shade Hotel's request for amendments to the Metlox Plaza Master Use Permit as applying to the Hotel. Shade Hotel again commends the Planning Department staff and the Commissioners for their diligent efforts on this matter over the last 18 months.

We expect the Commissioners to adopt this Resolution tonight without significant changes. We have carefully evaluated these final terms to determine whether it will be necessary to appeal this matter to the City Council. We have determined that an appeal is necessary and would like to briefly explain why this is so. This involves four particular matters:

A. The "closing" definition imposes a unique and unrealistic restriction on Shade Hotel. The draft Resolution narrowly defines "closed" to require all lounge customers to have exited the facility and all glasses to have been picked up. These are restrictions that do not apply to any other restaurant or bar in the City. When such a restaurant or bar "closes," staff does not push customers out the door or whisk away glasses. Customers would find this to be rude. Rather, lights are turned up, music is turned off, and staff starts to clean up.

Shade long ago withdrew its request to extend its weekend hours to 1:00 a.m. The hours now being requested are just like those for Metlox Plaza in general: 12:00 midnight on Friday and Saturday and 11:00 p.m. on other nights. As we read the existing Master Use Permit, those hours already apply to Shade. In any event, whether this gives

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Shade a one hour extension on Friday and Saturday or is only a clarification, Shade needs to weigh the pluses and minuses.

The sound study obtained by the City and paid for by Shade established that Shade does not violate the objective and measurable noise standards applying under the Municipal Code. Shade has also indicated a willingness to make structural changes that may cost as much as \$200,000 (as well as accepting extensive restrictions on details of its business operations). In the final analysis, the terms of the proposed Resolution do not justify those costs and restrictions.

B. Thursday night hours might be reconsidered due to other recent Commission policies. While Shade had previously dropped its request to expand Thursday night hours of operation, the issue was brought back into focus as a result of action taken by the Planning Commission at its latest meeting (for which minutes will be approved tonight). That is, on July 14, the Planning Commission approved an extension of Thursday hours (until 12:00 a.m.) for Izaka Ya. The City Council might also consider whether the same policy should apply to Shade's Zinc Lounge.

C. The 9:00 cutoff for Skydeck alcohol service is inconsistent with Shade's long understood role as a facility for special events. Since Shade will not be able to substantially mitigate noise from its Skydeck (absent the height variance we requested), rules for Skydeck activities require a difficult balancing of neighbors' noise concerns against the general public's interest in use of this facility. While we commend the Commission's diligent consideration of this matter, we do not believe the Commission has reached the right balance. The key point here is that the Hotel has always been intended as a place for weddings and other events. The rules applying to it must be appropriate and workable for that purpose. The current rule provides that alcohol service on the Skydeck must end at 9:00 PM (even for weddings and other special events on weekend nights). This restriction is simply unacceptable to most people planning such special events. It therefore severely undercuts Shade's ability to provide an acceptable venue for such events.

Shade is not asking for much on this point. Without extending permitted Skydeck hours beyond the current 10:00 PM limit, Shade merely wishes to modify the current unrealistic rule that alcohol service on the Skydeck must stop a full hour before the approved closing time. We believe that the requested change reflects a reasonable balance between that intended use and concerns expressed by neighbors. To balance the neighbors' expressed concerns, we are suggesting (in paragraph 22) a shortening of Skydeck hours on weeknights.

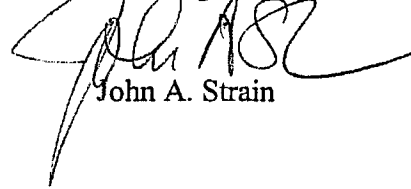
D. Details regarding valet operations need to be reexamined. The requirement that patrons use the Hotel's back door at specified times or circumstances will be hard to implement. That door was designed as, and appears to be, an emergency exit. Everyone is understandably accustomed to entering and leaving hotels through the

Ms. Laurie B. Jester
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drive up entrance designed for that purpose. Shade's guests are likely to find the unusual and shifting entrances to be odd and incompatible with a high quality hotel. Shade will do its best to redirect guest traffic under terms substantially like those in the proposed Resolution. However, we believe the 9:00 PM cutoff is unnecessarily early. Also, there should be some way to adjust these terms once we all see how this works in practice. We are concerned that any efforts to implement these rules may only increase commotion around the Hotel.

We are enclosing a complete list of changes we would like to see made to the text of this proposed resolution. Many of these are minor clarifications or corrections. However, again recognizing the extraordinary work of the Commissioners to date, we recognize that we can raise these matters at the next level. The time has come for the Commission to wrap up its good efforts on this matter.

Best Regards

A handwritten signature in black ink, appearing to read "John A. Strain", with a long, sweeping underline that extends to the right.

John A. Strain

JAS
Encl.

Cc(w/encl): Planning Commission Members (by email)
City Council Members (by email)
Mr. Michael A. Zislis (by email)
Mr. Milo Bacic (by email)
Ms. Katie Krufft (by email)
Mr. Nate Hubbard (by email)

Shade Hotel Comments on draft of PC Res. 10-05

Findings

Finding A: The following changes should be made to more precisely describe the Application:

The correct name of the Applicant is "Manhattan Inn Operating Company, LLC."

Clause 3 should be revised to read simply "expanded public food service" (thus, deleting "breakfast, lunch and evening "small plates").

The last sentence should be replaced with the following three sentences:

The current Use Permit allows events for up to 99 people without separate notification to the City and limited food service. The approved hours under the current Use Permit are until 10:00 p.m. daily for the roofdeck and 11:00 P.M. Thursday-Sunday and 12 midnight Friday-Saturday for special event use only for the Courtyard, meeting room (Greenroom) and lounge. The Applicant believes that the current approved hours for the Hotel's lounge are also 11:00 P.M. Thursday-Sunday and 12 midnight Friday-Saturday. The staff believes that the approved hours are 11:00 P.M. nightly.

Finding E: The correct name is Manhattan Inn Operating Company, LLC

Finding L: Should read as follows to more fully summarize the terms of Res. PC 05-08:

"Resolution No. PC 05-08 allowed a Type 47 license for the site, allowing full liquor for the general public and including the service of food to provide high quality service to their customers consistent with the business plan and in order to allow the in-room mini-bars (Type 66 license), as well s the portable bar with full liquor (Type 66 license), all for on-site consumption of alcohol only, as well as events up to 99 people without approval of a Temporary Use Permit."

Finding O: The last sentence should read as follows to avoid slanting the factual summary:

The Manhattan Beach Police Department has responded to numerous calls regarding alleged disturbances, and for several of these incidents, has reports and recordings of noise from Shade, but no citations have been issued.

Conditions

Condition 1: The definition of “closed” should be deleted. That term (or the phrase “hours of operation” should be interpreted and applied in the same way it is for every other similar business in the City). If the definition is retained, it should be revised as follows:

1. Closed. All sales and service of food and beverage shall previously have stopped as outlined in paragraph 23, music shall be off and lights shall be turned up in all public areas. Members of the general public, including special event and function guests, shall be leaving the Hotel. Within 15 minutes after closing time, the terrace, courtyard, skydeck, Zinc bar and Lobby shall be vacated (except for registered hotel guests and hotel staff) and all glasses, bottles, cans and drinks shall be collected.

Condition 12 shall be modified in the following ways:

The fourth sentence, currently starting “Between 9:00 PM and 6:00 AM on Friday, Saturday,” etc., shall say instead “Between 10:00 PM and 6:00 AM) AM on Friday, Saturday,” etc.

The last part of clause (b) of that Condition shall be changed by adding the following underlined words:

All others shall use the west entrance or, unless there is a queue, the south (Terrace) entrance

Condition 15: The second sentence should be modified to add the following underlined words: Amplified sound is prohibited on the skydeck after 9 PM (9:30 PM on Fridays and Saturdays)\

Condition 22 should begin as follows:



22. Noise Mitigation Verification. Paragraphs 17 and 36 through 39 of this Amendment shall be effective immediately. All other terms of this Amendment shall apply only after the installation of the mitigation measures, etc.

Condition 23. The last line of the table should be replaced with the following

Skydeck	10PM (Fri-Sat)	20
Skydeck	9:30 PM (Sun-Thurs)	20

Condition 28. The first three sentences of this Condition should be modified to read as follows:

The Shade valet service shall relocate away from the Shade east or south entrances after 10:00 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after 10:00 PM for special event and functions any day of the week. At such times, everyone except for registered hotel guests and disabled shall be prohibited from picking up their vehicles from the Shade front (east) entrance (or shall be required to wait inside the Hotel until their vehicle is ready). 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.

Condition 29. The third sentence should start

“Everyone, except for registered hotel guests and disabled, shall be directed, etc.”

Condition 31: The first sentence should be modified to read as follows:

After 10:00 PM on Fridays, Saturdays, and Sundays before Memorial Day and Labor Day, New Years Eve and after 10:00 PM for special events and functions, everyone except registered hotel guests and disable shall use the west door, opening onto the Metlox Plaza, to enter and exit the hotel.

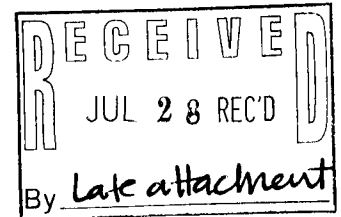
Condition 33. The first sentence should start as follows (so as not to apply, e.g., to a Super Shuttle delivering one or a few guests):

“Any vehicles transporting large groups to or from the Hotel, such as buses, shuttles, or recreational vehicles, etc.”

Angela Soo

From: Angela Soo
Sent: Wednesday, July 28, 2010 4:26 PM
To: Angela Soo
Subject: RE: Neighbors' Comments on Shade PC Resolution 10-05

Angela Soo
Community Development Executive Secretary
P: (310) 802-5503
E: asoo@citymb.info
City of Manhattan Beach, CA



for PC mtg
7-28-2010

-----Original Message-----

From: Nate Hubbard [mailto:natehubz@mac.com]
Sent: Mon 7/26/2010 1:25 PM
To: List - Planning Commission; Laurie B. Jester; Richard Thompson
Cc: Bob & Arleen Neelraeck; RD Cameron; Pete Metro; Julie Woodsen; Don McPherson; Katie Deist; Paul Muenchow; Debbie Taylor; Ralph & Joan Mueller; Aksi Kikut; Richard Haft; Jeff Dooley; Brent Taylor; Scott Murch; Teresa Cho; Don & Edna Murphy; Giabardo Giabardo; Michael Madrinkian; Joseph Taylor; Andrew & Elizabeth Fouch; Stephanie Hubbard; Brion Tyler; Nancy & Dan Giallombardo; Gary Osterhout; DJ Shaeway; Maria Reinhart; Steve Wibel; Lloyd Bell; Lee & Pat Dolley; Heidi Walter; kddrl00@aol.com; Chris Johnson
Subject: Neighbors' Comments on Shade PC Resolution 10-05

Planning Commission
City of Manhattan Beach
Via Email

Subject: Neighbors' Comments on Shade PC Resolution 10-05, Agenda Item 07/28/10-3, 28 July 2010

Commissioners,

We suggest three clarifications to PC Resolution 10-05 and additionally request three procedural items.

Clarifications.

1. To Condition 22, Noise Compliance Verification, we request addition of the following sentence:

"All conditions other than Condition 23, Hours for Alcohol Service, shall become immediately effective upon approval by the city council of PC Resolution 10-05."

We would like to ensure that conditions, such as definition of closing, become effective immediately upon city approval of the resolution, rather than waiting for Shade to obtain certification of noise mitigation measures.

EXHIBIT 19. THREE CHANGES REQUESTED BY MR. HUBBARD AFTER PC APPROVED THE RESOLUTION

2. Condition 28, Valet, needs clarification. Revise "...after special events and functions any day of the week." It should read as follows, "...after 9:00 PM for special events and functions any day of the week."

This change uses the same language as in Condition 31, regarding special events and functions.

3. Conditions 28 and 29 should use the same language as Condition 31 for ".registered hotel guests and disabled."

Procedural.

1. We request only the above three clarifications to the resolution, as approved June 23, but recognize that others may propose more substantive changes. If the commission becomes deadlocked on any proposed change, we request that the item in question reverts to the version approved June 23. Essentially, we request that the commission separately votes on each change, so that no proposed modification can jeopardize approval of the resolution as a whole.

2. Under the presumption that the resolution will not change materially from the version approved June 23, we will not appeal the planning commission decision, unless Mike Zislis does. We request that the commission inquire about Shade's intentions regarding appeal.

3. When staff submits the minutes for the July 28 meeting for approval, we request that they post the minutes and the resolution on the web site.

We greatly appreciate the extraordinary efforts made by the planning commission during the past year, to enable public input on the Shade application.

Thanks, Nate Hubbard

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Pages 3-4 of this transcript provide statements by Commissioner Seville-Jones and Ms. Jester, that Condition 22 in the 2010 CUP had the intent the use permit would take effect immediately upon approval by the city council, except for extension of hours. The latter would not take effect until physical noise mitigation measures implemented.

TRANSCRIPTION OF AUDIO MEDIA TITLED
CITY OF MANHATTAN BEACH PLANNING COMMISSION

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CITY OF MANHATTAN BEACH
PLANNING COMMISSION

JULY 28, 2010

TRANSCRIBED FROM VIDEO FILE BY:
DEBORAH FUQUA, CSR #12948

1 APPEARANCES :

2

3 VICE CHAIRWOMAN KATHLEEN PARALUSZ

4 COUNCIL MEMBER RUSS LESSER

5 COUNCIL MEMBER MARTHA ANDREANI

6 COUNCIL MEMBER SANDRA SEVILLE-JONES

7 (CHAIRMAN JIM FASOLA RECUSED)

8

9 PLANNING STAFF :

10 ACTING DIRECTOR LAURIE JESTER

11 ASSISTANT PLANNER ANGELICA OCHOA

12 RECORDING SECRETARY SARAH BOESCHER

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1 ~~the neighbors' three minor comments.~~

2 VICE CHAIRWOMAN PARALUSZ: ~~Let's do it.~~

3 ~~COMMISSIONER SEVILLE-JONES: Okay.~~

4 ~~COMMISSIONER LESSER: I actually have made some~~
5 ~~notes going through it just in order. But I'm happy to~~
6 ~~do it any way you want.~~

7 ~~COMMISSIONER SEVILLE-JONES: That's fine. We can~~
8 ~~do it that way. I was just trying to get them out of~~
9 ~~the way.~~

10 VICE CHAIRWOMAN PARALUSZ: I actually -- I prefer
11 to start with the neighbors'. So the first one was to
12 Condition 22, that proposed adding a sentence, "All
13 conditions other than Condition 23, hours for alcohol
14 service shall become immediately effective upon
15 approval by the City Council."

16 COMMISSIONER SEVILLE-JONES: I think the staff's
17 draft already says this. And I'd be curious if Laurie
18 thinks that.

19 VICE CHAIRWOMAN PARALUSZ: Okay.

20 ACTING DIRECTOR JESTER: Well, basically what
21 it -- it says, "The privileges within this Use Permit
22 for extension of hours of operation shall only be
23 granted after the installation of the mitigation
24 measures." So --

25 COMMISSIONER SEVILLE-JONES: Everything else is

1 therefore effective when it's adopted, correct?

2 ACTING DIRECTOR JESTER: Right. So I don't think
3 it's necessary.

4 COMMISSIONER SEVILLE-JONES: All right. Okay.

5 ~~VICE CHAIRWOMAN PARALUSZ: Any other -- okay.~~

6 ~~No. 2, Condition No. 28, "Valet" needs~~
7 ~~clarification.~~

8 ~~COMMISSIONER SEVILLE-JONES: This is a typo. It's~~
9 ~~just missing the time. I think also the Shade~~
10 ~~commented on this too.~~

11 ~~VICE CHAIRWOMAN PARALUSZ: I think you're right.~~
12 ~~So that would be an administrative change that will be~~
13 ~~fine to make.~~

14 ~~COMMISSIONER LESSER: Does staff have any comment~~
15 ~~on that?~~

16 ~~ACTING DIRECTOR JESTER: Yeah, that's -- yeah,~~
17 ~~that is just a typo. I mean, I thought that -- yeah,~~
18 ~~that's fine.~~

19 ~~VICE CHAIRWOMAN PARALUSZ: Okay. Then No. 3 is --~~
20 ~~comment that Conditions 28 and 29 should use the same~~
21 ~~language as Condition 31, "for registered hotel guests~~
22 ~~and disabled." And I think the applicant made a~~
23 ~~similar comment as well, so I would consider that~~
24 ~~administrative change.~~

25 ~~Does staff have any comments?~~

Offices of John A.

Strain

A Professional Corporation

*Certified Specialist Taxation Law

California Board of Legal Specialization

John A. Strain, Esq.
321 12th Street, Suite 201
Manhattan Beach, CA 90266
T: 310-802-1300/F: 310-802-1344
jstrain@ustaxlawyer.com
www.ustaxlawyer.com

Amber M. Ziegler, Esq.
332 W. Verano Way
Mountain House, CA 95391
T: 209-832-8663
aziegler@ustaxlawyer.com

August 11, 2010

8867.022

Ms. Laurie B. Jester
Community Development Acting Director
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

Re: *Shade Hotel*
Master Use Permit Amendment

Dear Laurie:

After the Planning Commission met on July 28 and approved its Resolution (PC-05) related to amendments to the Master Use Permit applying to Shade Hotel, the principals considered whether to appeal that Resolution. Everyone's preference was to have this matter fully resolved. However, there were a few details that we felt needed attention.

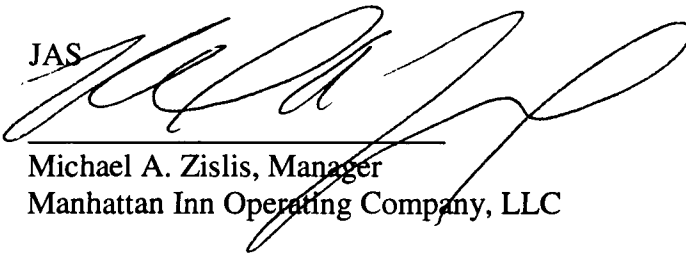
With your assistance and guidance, Michael Zislis (on behalf of Shade Hotel) and Nate Hubbard (continuing his role as the principal representative of neighbors) have met and discussed these details. Together, they have reached a mutually acceptable resolution that merely involves a few minor changes to the Resolution as approved.

It is our understanding that adoption of this Resolution with these changes now requires an appeal to the City Council. Accordingly, the parties are filing that appeal jointly with the expectation and intention that this matter will be dealt with summarily by the City Council. They are both signing this letter to be included with the appeal as evidence of that agreement.

Thank you, Laurie, for your tireless efforts throughout this long process.

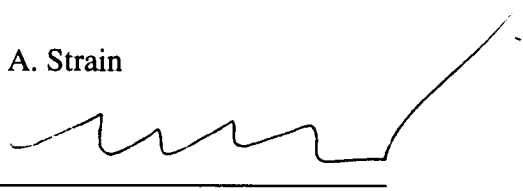
Best Regards

JAS



Michael A. Zislis, Manager
Manhattan Inn Operating Company, LLC

John A. Strain



Nate Hubbard
Neighbors' Representative

RESOLUTION NO. 6275

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH UPHOLDING AN APPEAL OF LIMITED CONDITIONS OF A PLANNING COMMISSION APPROVAL FOR AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED HOURS OF OPERATION, NOTIFICATION FOR EVENTS, ALLOWING EXPANDED FOOD SERVICE OPERATIONS, APPROVING VARIOUS NOISE MITIGATION MEASURES AND DENYING A HEIGHT VARIANCE FOR A 6-FOOT HIGH ROOFDECK NOISE BARRIER AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATING COMPANY, LLC- MICHAEL A. ZISLIS, PRESIDENT)

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach, California, hereby makes the following findings:

- A. The Planning Commission of the City of Manhattan Beach conducted public hearings regarding the second Amendment to the Master Use Permit related to the Shade Hotel on June 24, 2009, July 22, 2009, October 28, 2009, May 12, 2010 and June 23, 2010. The public hearings were advertised pursuant to applicable law and testimony was invited and received, and on June 23, 2010, the public hearing was closed. The Planning Commission directed staff to bring back a final Resolution on July 28, 2010. The Planning Commission approved the Amendment for the Shade Hotel, and adopted Resolution No. PC 10-05 on July 28, 2010.
- B. On August 11, 2010, the applicant, Shade Hotel, and the neighborhood representative, Nate Hubbard, filed a joint appeal of limited conditions of the Planning Commission approval. The Shade and neighbors have agreed to minor revisions to conditions 12, 23, 28 and 31. The conditions relate to the valet service and skydeck.
- C. The City Council of the City of Manhattan Beach conducted a public hearing on September 7, 2010 to consider the appeal. Said hearing was advertised pursuant to applicable law, and testimony was invited and received.
- D. At the City Council hearing the City Council upheld the appeal and upheld the Planning Commission approval of the project with minor modifications to conditions 12, 23, 28 and 31.
- E. Manhattan Inn Operating Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previous approval. The three changes include: 1- Extension of hours of operation to midnight on Fridays, Saturdays and Holidays, except for the skydeck and other minor exceptions, 2- An increase to 125 people for special events (weddings, parties, etc.) without administrative approval, and 3- Expanded public food service (breakfast, lunch and evening "small plates"). Additionally, a Variance for six-foot high noise barriers around the north, south and east sides of the roofdeck is requested. 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 Thursdays-Sundays and 12 midnight Fridays-Saturdays for special event use only for the Courtyard, 99 people for special events without notification, and limited food service for guests.
- F. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- G. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission. An amendment to the Coastal Permit will not be required to be processed as there are no relevant coastal issues related to the subject application.



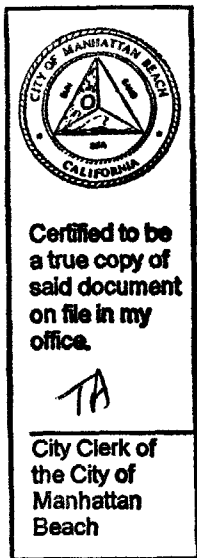
Certified to be a true copy of said document on file in my office.

TA

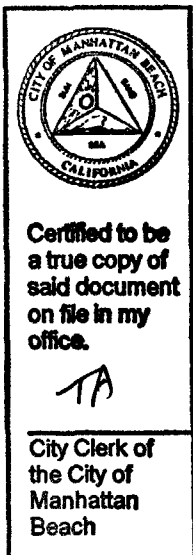
City Clerk of the City of Manhattan Beach

Res. 6275

- H. An amendment to the Disposition and Development Agreement (DDA) may be required, and that action will be determined by the City Council.
- I. The applicant is Manhattan Inn Operating Company, LLC and the property owner is the City of Manhattan Beach.
- J. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.
- K. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space, with Single Family Residential and High Density Residential to the east past Valley and Ardmore Drives.
- L. The General Plan designation for the property is Downtown Commercial.
- M. The following is a summary of some of the key milestones for the Metlox site:
 - 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner
 - April 2001- The City Council certified the EIR
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
 - November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
 - February 2003- Groundbreaking for the Metlox parking structure
 - January 2004- Grand opening of public parking structure with 460 parking spaces
 - April 2004- Shade Hotel construction commenced
 - September 2004- Construction of the Metlox commercial buildings started
 - May 2005- Planning Commission approved first Shade Amendment Resolution No. PC 05-08
- N. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the first Amendment to the Master Use Permit for the Shade related to alcohol sales and special events at their regular scheduled meeting of May 25, 2005. The public hearing was advertised pursuant to applicable law and testimony was invited and received. The Planning Commission approved the Amendment for the Shade Hotel, and adopted Resolution No. PC 05-08. The facts and findings for that approval are included in the public records for that application.



- 1 O. The original approval (Condition No. 38- City Council Resolution No. 5770) allowed full liquor in
- 2 self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only.
- 3 The original approval (Condition No. 28- City Council Resolution No. 5770) also limited special
- 4 events (weddings, parties, etc.) to 60 people.
- 5
- 6 P. Resolution No. PC 05-08 allowed a Type 47 ABC license for the site, allowing full liquor open to
- 7 the general public and including the service of food in order to allow the in-room mini-bars (Type
- 8 66 license), as well as the portable bar with full liquor (Type 66 license), all for on-site
- 9 consumption of alcohol only, as well as events up to 99 people without approval of a Temporary
- 10 Use Permit.
- 11
- 12 Q. Portions of Resolution No. PC 05-08 have been subject to interpretation as the hotel is a 24-
- 13 hour operation while the support services of the bar, food service and events are limited.
- 14 Additionally, there are no definitions of special events, guests, closing, and other regulatory
- 15 terms in the Resolution. One of the goals of this Amendment is to clarify definitions and
- 16 language in the Resolution.
- 17
- 18 R. Many neighboring residents at the Planning Commission public hearings have testified that
- 19 Shade Hotel makes noise that discomforts and irritates "reasonable persons of normal
- 20 sensitiveness," as defined by the subjective standard in Chapter 5.48 of the MBMC. The
- 21 Manhattan Beach Police Department has responded to numerous calls regarding Shade
- 22 disturbances, and for several of these incidents, has reports and recordings of noise from
- 23 Shade.
- 24
- 25 S. Neighbors indicate that taxi pickup and drop-off on Valley Drive create disturbances. The City
- 26 established a taxi stand on Morningside Drive at 13th Street in 2009 to address this issue and
- 27 has notified the taxi franchises of the requirements.
- 28
- 29 T. Two independent acoustics analysis, dated October 21, 2009 and March 10, 2010, were
- 30 conducted by Don Behrens & Associates under the direction of the Community Development
- 31 Department. The reports indicate that noise from the Shade Hotel does not exceed the objective
- 32 noise standards in the MBMC; the subjective standard was not evaluated in the reports. Actual
- noise measurements and continuous noise monitoring was conducted during large events on
- the skydeck, courtyard, lounge and terrace. A three-dimensional modeling of noise to assess
- various mitigation was also constructed. The reports proposed a variety of mitigation options
- including a front (east) entry vestibule, terrace enclosure, roofdeck extensions, west
- entry/exit/queue and taxi stand. Mitigation is incorporated into the conditions based on these
- recommendations, public hearing comments and Planning Commission discussion and
- direction.
- U. Due to the open design, the terrace has minimal soundproofing and constitutes a major noise
- source, particularly for residents south of 12th Street. Additionally, the front (east) entry door has
- noise leakage that impacts residents, largely between 12th and 13th Streets. The rooftop deck
- generates noise that largely impacts residents north of 13th Street.
- V. The primary use and purpose of Shade Hotel, is and will continue to be, to serve the community
- as a hotel offering first-class accommodations to visitors. The hotel may also offer event,
- function, food, and other similar support functions as secondary uses. Marketing and promotion
- of the hotel shall be consistent with these uses as provided in the conditions.
- W. Potential noise and other neighborhood impacts from Entertainment, as defined and regulated
- in Chapter 4.20 of the MBMC, will be addressed through the administrative review of the annual
- Entertainment Permit. The Entertainment Permit is a separate administrative permit, and is
- regulated independently from the land use entitlement of the Master Use Permit and Master
- Use Permit Amendment.
- X. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as
- defined in Section 711.2 of the Fish and Game Code.



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- Y. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution supersedes Resolution No. PC 05-08 and Resolution No. PC 10-05. It also amends only Conditions No's 28 and 38 of Resolution No. 5770, all other conditions in that Resolution (unless amended by other separate Resolutions for other Metlox tenants) remain effective and in full force.
- Z. Based upon State law, and MBMC Section 10.84.060, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
 - 1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the use permit for Shade Hotel is consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the City's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts through the conditions of approval which require physical noise mitigation and operational revisions.
 - 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the proposed amended use permit is consistent with the General Plan for the Commercial Downtown designation, because it is granting additional privileges to already approved uses that will result in minimal fundamental change of those uses. Amending the use permit will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the hotel facility. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city, due to the conditions. Additionally, the project is consistent with the following General Plan Goals and Policies:

GOALS AND POLICIES: LAND USE

Policy LU-5.2: Work with all commercial property owners bordering residential areas to mitigate impacts and use appropriate landscaping and buffering of residential neighborhoods.

Policy LU-5.4: Discourage the outdoor commercial and industrial use of property adjacent to residential use.

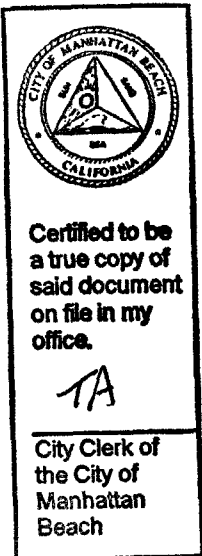
Policies LU-5.7, 6.4 and 7.6: Recognize the unique qualities of mixed-use areas, and balance the needs of both the residential and commercial uses.

Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

Policy LU-7.1: Encourage the upgrading and growth of businesses in the Downtown area to serve as a center for the community and to meet the needs of local residents and visitors.



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GOALS AND POLICIES: NOISE

Goal N-2: Incorporate noise considerations into land use planning decisions.

Policy N-2.2: Ensure acceptable noise levels near residences, schools, medical facilities, and other noise-sensitive areas.

Policy N-2.5: Require that the potential for noise be considered when approving new development to reduce the possibility of adverse effects related to noise generated by new development, as well as impacts from surrounding noise generators on the new development.

Policy N-3.4: Recognize in the Noise Ordinance that nighttime noise levels create a greater sensitivity than do daytime noise levels.

- 3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the implementation of the new conditions. The proposed amended use permit is consistent with the already approved primary and secondary uses of the facility.
- 4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the hotel facility, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.

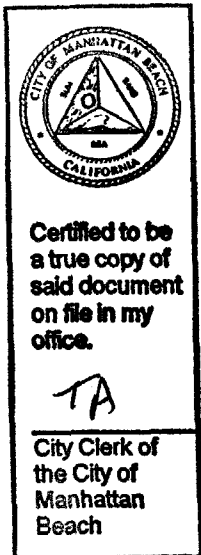
A.A. Based upon State law, and MBMC Section 10.84.060, relating to the Variance application for the proposed project, the following findings CAN NOT be made:

- 1. Because of special circumstances or conditions applicable to the subject property—including narrowness and hollowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions—strict application of the requirements of this title would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;
- 2. The relief may be granted without substantial detriment to the public good; without substantial impairment of affected natural resources; and not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and
- 3. Granting the application is consistent with the purposes of this title and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district and area district.

SECTION 2. The City Council of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment, subject to the following conditions, and DENIES the subject Variance.

Definitions

- 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



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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 glasses, bottles, cans, and drinks, including from registered guests, to comply with the ABC definition of closed, as "no sale, service, or consumption of alcoholic beverages."

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

3. Function. A "themed" function held periodically for the general public, up to twelve (12) per year, 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.

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

5. Invitee. Invited guests of a registered guest.

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.

7. Background music. Sound intensity anywhere in a room or venue not greater than 65 dBa.

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

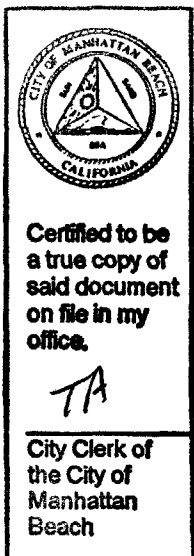
Entertainment and Noise

9. 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.

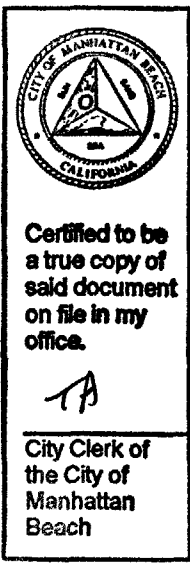
10. Entertainment and amplified sound. All amplified music and sound shall use the house system only and shall be limited to background music with the following exceptions;

- A. The Courtyard may have one annual function, for example, Oktoberfest, with live amplified entertainment, from 4 to 8 PM.
- B. 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;
- C. 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.

11. 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 for the fully enclosed terrace. 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 enclose the area, they may only be closed during special events and when raining, or for shade.



- 1 12. Front (East) Entry Vestibule- A permanent front entrance vestibule, bonded and sealed to the
- 2 building, shall be constructed to enclose the front doors. The vestibule shall be acoustically sealed,
- 3 designed and constructed to meet the City Noise consultants' acoustical standards consistent with their
- 4 noise studies. The vestibule shall also meet all Building Safety and other City requirements, including
- 5 but not limited to emergency egress and disabled access. Between 9:00 PM and 6:00 AM on Fridays,
- 6 Saturdays, New Years Eve and Sundays before Memorial Day and Labor Day, the following conditions
- 7 shall apply: a) the front entrance doors shall be closed and only operable through the interlock/double
- 8 door vestibule; b) the hotel clerk or other hotel employee shall only allow passage for disabled,
- 9 registered hotel guests and valet patrons as permitted in Condition #28, and all others shall use the
- 10 west entrance; c) the vestibule may also be operable with a hotel room key, and; d) only one set of
- 11 doors may be opened at any time.
- 12 13. Courtyard- Only special events and functions may use the courtyard. No general public gatherings
- 13 permitted in the courtyard, and no "spillover" from the Zinc bar and lobby or other public areas.
- 14 14. Courtyard-bar corridor wall- A new acoustic moveable wall shall be installed to separate the interior
- 15 courtyard from the corridor north of the lobby bar. After 9 PM Friday, Saturday, New Years Eve, and
- 16 Sundays before Memorial and Labor Day, and any day if the entry/exit queue is greater than 5 people
- 17 for more than 15 minutes, both corridor walls (adjacent to the courtyard and the lobby bar) shall remain
- 18 closed for the rest of the night, unless there is a special event or function using both the Courtyard and
- 19 Zinc bar/ lobby. Whenever the Zinc bar and lounge has amplified sound, other than background music,
- 20 after 9 PM the north acoustic wall shall remain closed. There shall be no sale, service or consumption
- 21 of alcohol in the corridor when one or both moveable walls are closed.
- 22 15. Skydeck- All amplified music and sound, including DJ's for weddings only, shall use the house
- 23 system only. No live amplified music is permitted. Amplified sound is prohibited on the skydeck after 9
- 24 PM, except for background music. The hotel shall relocate house speakers nearer to floor-level, not
- 25 atop glass windscreen posts. The location and number of the speakers shall be based on the
- 26 recommendations from an audio specialist in cooperation with the City's noise consultant, and shall be
- 27 designed to mitigate off-site noise impacts and maximize efficiency on-site.
- 28 16. Sound audibility- The volume of music, entertainment, group singing, or voice, whether or not
- 29 amplified, may not be audible outside of the hotel facilities to the following extent. For any length of
- 30 time, except for the one function referenced in Condition No. 10 A., the noise may not dominate the
- 31 background ambient noise, nor disturb surrounding residents, as defined in the MBMC noise
- 32 regulations. After cessation of alcohol service in any venue or for any event or function, only
- background music is permitted.
- 17. Temporary Use Permit- Special events and functions of more than 125 attendees require City notice
- and a temporary use permit.
- 18. 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.
- 19. Resident notification- The hotel shall e-mail to residents who sign-up, the schedule of special events
- and functions sent to the City, excluding client information.
- 20. 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.
- 21. Exterior Doors- All exterior doors to the public areas of the hotel facility shall be closed after 9:00 PM
- on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and daily for all
- special events and functions.
- 22. Noise Compliance Verification- The privileges within this Use Permit for extension of hours of
- operation shall only be granted after the installation of the mitigation measures, implementation of the
- improvements and modifications to the operations of the facility. After completion of these measures,
- the Community Development Director, in cooperation with the Noise consultant, shall determine if the
- measures are effective and meeting the objective noise criteria and mitigation standards described in



Res. 6275

the previously submitted Noise reports. The neighbor representative may have input on the location, days and hours of the monitoring for any follow-up noise studies. The privileges and rights within this Use Permit shall not be effective unless the objective noise criteria and dBA reductions, as described in the previously submitted Noise reports, are achieved.

23. Hours for alcohol service

Alcohol service restricted to venues below; not permitted in any other public areas.		
Venue/Event/Services	Venue Closing Time (Closed); Open 6 AM- per Cond. 39, Reso. 5770	End of Alcohol Service, (Before Closed in, Minutes)
Zinc bar and lounge, Fridays-Saturdays and Sundays before Memorial Day and Labor Day	Midnight	20
Zinc bar and lounge, Sundays-Thursdays	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	20

Note 1. New Years Eve closed for all venues as regulated by MBMC- currently 1:00 AM, except the skydeck shall close at 10:00 PM.

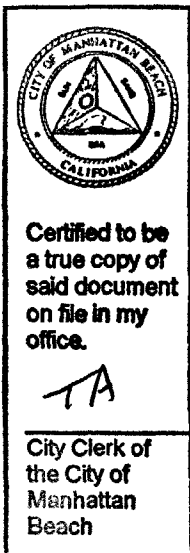
General Conditions

24. 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.

25. 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

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



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27. 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.

Ingress-Egress Control

28. Valet- The Shade valet service shall relocate away from the Shade east or south entrances after 10:00 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after 10:00 PM for special events and functions any day of the week. Everyone, except for registered hotel guests and disabled, shall be prohibited from picking up their vehicles from the Shade front (east) entrance. 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.

29. Taxis- Hotel employees shall discourage the public from using taxis on Valley Drive 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 and disabled, 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 and disabled at the entrance at any time.

30. Entry-Exit Queue- The hotel shall locate the entry and exit queue at the west side of the building as required in Condition 31, but the queue shall not extend past the south or north sides of the building.

31. West entry-exit- After 9:00 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after 9:00 PM 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, disabled and valet patrons as permitted in Condition #28, may use the front east door.

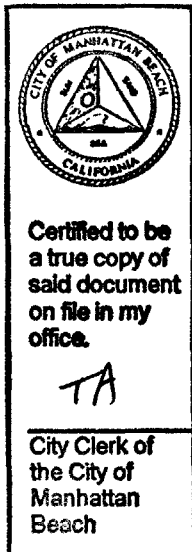
On Sundays through Thursdays, if more than five patrons are waiting for more than 15 minutes to enter, staff shall establish the queue at the west side of the building for the rest of the night. Employees shall close and monitor the front (east) entry door as required to ensure access only by registered 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.

32. Staff parking- The hotel shall instruct their employees, contract employees, contractors servicing events, and all others providing services to the Hotel to 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.

33. 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.

34. 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.



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35. 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.

Food service

36. 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.

Marketing

37. Marketing-General- 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.

38. Marketing-Bar and Functions- 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. The Zinc bar/lounge, terrace, and Skydeck will not be exclusively marketed to the general public as separate hospitality attractions.

39. Menu Posting- 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.

Procedural

40. 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.

41. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.

42. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.

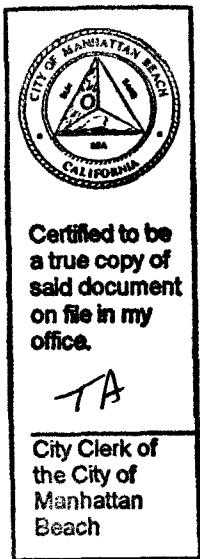
43. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.

44. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.

45. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.

46. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.

47. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.



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48. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution. The City Clerk shall send a certified copy of the resolution to the applicant, and if any, the appellant at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by Code of Civil Procedure Section 1094.6.

SECTION 4. The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.

SECTION 5. This resolution shall take effect immediately.


SECTION 6. The City Clerk shall certify to the adoption of this Resolution and thenceforth and thereafter the same shall be in full force and effect

PASSED, APPROVED, and ADOPTED this 7th day of September, 2010.

Ayes: Tell, Powell, Cohen, Montgomery and Mayor Ward.
Noes: None.
Abstain: None.
Absent: None.


Mayor, City of Manhattan Beach, California


ATTEST:



City Clerk



Certified to be a true copy of the original of said document on file in my office.



Sr. Deputy City Clerk of the City of Manhattan Beach, California

Metlox

Allowed Hours, Alcohol Service and Entertainment

9-10 September 2010

[CC Resolution No. 5770, and PC Resolution No's. 05-08 (Shade), 06-20 (Petros), 08-08 (Le Pain), and CC Resolution No. 6275 (Shade- replaces PC Resolution No. 05-08)]

NOTE:

Shade has not yet implemented the approval granted in CC Resolution No. 6275 from 9/7/10 and therefore they are still subject to the approvals in Resolution No.'s 05-08 and 5770, as shown below.

Shade Inn-Hours

Lobby Zinc Bar and Zinc Terrace (outdoor south side)- 11:00 PM daily

Interior Courtyard- Only to be used for special events and functions -11:00 pm Sunday –Thursday, 12:00 midnight Friday and Saturday. (Alcohol service to stop ½ hour prior)

Rooftop Deck- 10:00 pm daily (Alcohol service to stop 1 hour prior)

Town Square and Sashi Sushi Restaurant -Hours

11:00 pm Sunday –Thursday, 12:00 midnight Friday and Saturday (Alcohol service at restaurant to stop at 10:30 pm Sunday –Thursday, 11:30 pm Friday and Saturday)

Petro's Restaurant -Hours

12:00 am (midnight) Sunday –Thursday, 1:00 am Friday and Saturday (Alcohol service at restaurant to stop at 11:30 pm Sunday –Thursday, 12:30 am Friday and Saturday)

Le Pain Quotidien Bakery- Hours

7:00 am to 7:30 pm seven days a week. Service of limited beer and wine with food 10:00 am to 7:30 pm, seven days a week.

All tenants-Entertainment

Background music, non-amplified limited to 2 entertainers allowed without a permit.

Dancing, amplified live music, or more than 2 entertainers requires an Entertainment Permit.

Shade has an Entertainment Permit, no other tenants do. Any events require a 7 day prior notice and the Permit has a number of other conditions.

G:\PLANNING DIVISION\Temporary (file sharing)\Bobby\Metlox\Metlox hours, entertainment and alcohol-09-10.doc

From: Eve R. Irvine
Sent: Wednesday, November 09, 2011 2:21 PM
To: 'Nate Hubbard'; David N. Carmany; Richard Thompson; Nan Rados; Andrew Harrod
Cc: Eve R. Irvine
Subject: RE: Shade employees deceived MBPD about their bar hours

Hi Mr. Hubbard,

First of all, you are certainly not bothering me with regard to this matter. I didn't immediately get back to you because I was still gathering information on the problem at hand. This problem does not have an easy fix as many factors were taken into consideration when coming up with a game plan to effectively address the issue and any violations of the CUP.

Today was the last of numerous meetings to brief me on the history of the issue, the current and old CUP, and how to come to an appropriate resolution. Today's meeting included the City Manager, the Community Development Director, myself and several high ranking police officials.

We discussed a game plan to effectively address violations of the current CUP. Let me clarify that the "current CUP" which is enforceable is not the one adopted in 2010, but the original CUP passed in 2005. Since Mr. Zislis did not complete the requirements set forth in the 2010 CUP, he has defaulted to the provisions set forth in the 2005 CUP.

Now that the PD has been briefed on which CUP rules and regulations can be enforced; the information will be briefed to the officers so that everyone is on the same page. Therefore, effective immediately, there will be zero tolerance enforcement on violations contained within the 2005 CUP. This includes more restrictive hours of operation:

- Zinc Bar shall be closed at 11pm,
- The rooftop deck shall be closed at 10pm daily with alcohol service to stop at 9pm,
- The interior courtyard to be closed at 11pm Sunday through Thursday and 12midnight Friday and Saturday with alcohol service to stop at 30 minutes prior to closing time).

Since law enforcement is very fluid, we cannot guarantee to have a police officer present at each of these closing times every night. Therefore, it is imperative that you and your neighbors call when violations (as described above) do occur. Available units will respond to your calls for service, notwithstanding prior emergent calls for service.

Also, to fully address this matter, a meeting will be set up with Mr. Zislis, local neighbors, and city officials to mediate this matter. I will attend the mediation meeting as well. Please expect a call from Community Development for further on the date and times of this meeting.

It is our hope to come up with an amenable resolution to this matter. Thank you for your patience.

Sincerely,

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Ms. Jesters testimony at the 19 Feb 2013 council meeting
regarding Shade Hotel on Pages 35-40

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TRANSCRIPTION OF AUDIO MEDIA TITLED
CITY OF MANHATTAN BEACH
CITY COUNCIL MEETING - FEBRUARY 19, 2013

--o0o--

TRANSCRIBED FROM AUDIO FILE BY:

DEBORAH FUQUA, CSR #12948

1 APPEARANCES:

2

3 MANHATTAN BEACH CITY COUNCIL:

4 Mayor Wayne Powell

5 Mayor Pro Tem David Lesser

6 Council Member Amy Howorth

7 Council Member Richard Montgomery

8 Council Member Nicholas Tell

9

10 CITY CLERK: Liza Tamura

11

12 PLANNING DEPARTMENT STAFF:

13 Planning Manger Laurie Jester

14

15

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20 CORY MENDELSON..... 7

21 STEPHANIE HUBBARD..... 11

22 BILL VICTOR..... 12

23 GEORGE BUTTS..... 15

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STEVE WIBLE..... 29
JON CHAYKOWSKI..... 30

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P R O C E E D I N G S

MAYOR POWELL: The next agenda item, which is audience participation, this is for items that are not, I repeat, not on the agenda, three-minute time limit.

And we'll start with Mr. McPherson.

DON McPHERSON: Good evening. Don McPherson, 1014 First Street.

In September 2010, the City Council approved the new Use Permit for Shade Hotel to abate noise and disturbances. The Zislis Group did not comply with the new conditions, so in November 2011, the City dumped the 2010 permit, returned to the previous 2005 version.

This violated the Municipal Code, which requires a public hearing to modify a use permit. We learned of this when, in an e-mail, Police Chief Irvine to a resident, this is quote, "Let me clarify, the current CUP which is enforceable is not the one adopted in 2010 but the original CUP passed in 2005. Since Mr. Zislis did not complete the requirements set forth in the 2010 CUP, he has defaulted to the provisions set forth in the 2005 CUP," end quote.

The City justifies the switch of use permits entirely on the argument that the 2010 permit never became effective, so it never superseded the 2005

1 permit. That's patently wrong. Condition 45 in the
2 2010 permit states it became effective immediately when
3 approved. At that time, the 2010 permit voided the
4 2005 version. Perhaps the City will make their point
5 tonight, but it's wrong.

6 The 2010 permit became effective in September
7 of 2010, when the Council approved it.

8 Perhaps the City will claim the
9 [unintelligible] and safety issues prevented the 2010
10 permit from becoming effective. If such an issue
11 exists, the Community Development Director should have
12 scheduled a public hearing to address whatever
13 modification's needed. Presumably this has something
14 to do with enclosure of the south patio a couple hours
15 at night, Condition 11. The public should have had the
16 right to determine whether there really was a safety
17 issue there.

18 Perhaps the City officials will tell us that
19 the 2010 CUP lapsed. Condition 43 states that the
20 permit cannot lapse for three years, not until
21 September 2013. So all of these arguments that the
22 City has are null anyway.

23 I think the Council should -- needs to
24 investigate this Code violation and tell the public how
25 this group got their old 2005 permit back because it's

1 void. They can't bring it back without a public
2 hearing.

3 And thank you.

4 MAYOR POWELL: Thank you, Don.

5 Next speaker.

6 ~~ESTHER BESBRIS: Good evening. And first, in~~
7 ~~anticipation of the change of seats, good luck and~~
8 ~~every best wish.~~

9 ~~Just two quick things. Number one, the~~
10 ~~residents of the City really deserve the assurance that~~
11 ~~any CUP or recommendations made and voted on are what~~
12 ~~they're going to get, and they don't have to be to~~
13 ~~watching it constantly.~~

14 ~~And the other thing I wanted to mention that~~
15 ~~something we've asked time and time again. And that is~~
16 ~~the very things that are brought up during this segment~~
17 ~~of the meeting, all right, are not just swept aside.~~
18 ~~In fact, at one time, I think in July, you, still Mayor~~
19 ~~Powell, had said that you would be taking notes of~~
20 ~~items brought before Council and respond later with a~~
21 ~~follow through, your quote.~~

22 ~~Well, nothing like that has happened since.~~
23 ~~When people get up here -- and they don't really enjoy~~
24 ~~that process -- they do it so that they have an issue~~
25 ~~that they want you to address. The Brown Act prevents~~

1 ~~you from saying anything, but that doesn't mean that,~~
2 ~~at the end of the meeting, during time of the Council~~
3 ~~discussion, open discussion, you could bring that up or~~
4 ~~have somebody take note and that, at future meetings,~~
5 ~~you agendize some of these things. Residents deserve~~
6 ~~that kind of recognition and assurance. Thank you very~~
7 ~~much.~~

8 MAYOR POWELL: Thank you Esther. And by the way,
9 Esther, for significant items, I always have staff.
10 And I did take a note. And it says, "Laurie Jester to
11 talk about Shade CUP." So when we close audience
12 participation, I'm going to have Laurie Jester --

13 ~~ESTHER BESBRIS: That would be a welcome first,~~
14 ~~then, Mayor Powell, because we have been really -- as~~
15 ~~you know, we have been pushing for this for months.~~
16 ~~Don't let us just stand here and talk endlessly and~~
17 ~~needlessly.~~

18 ~~MAYOR POWELL: Thank you. And it's not the first.~~

19 ~~CORY MENDELSON: I don't know this woman, but I~~
20 ~~have a lot in common with her.~~

21 ~~My name is Cory Mendelson, and I'm a resident~~
22 ~~of Manhattan Beach. I purchased my residence at~~
23 ~~228 - 33rd Street last year from somebody that did not~~
24 ~~disclosed a monumental problem to which they had~~
25 ~~already been to mediation for, paid by the City. This~~

1 ~~problem is Level 10 Fitness, a gymnasium that opened up~~
2 ~~five years ago at 3219 Highland Avenue.~~

3 ~~Almost a year ago, in July of 2012, I stood~~
4 ~~here in this very same spot, and I begged everyone in~~
5 ~~this room for help. I crammed all the information I~~
6 ~~could into the three-minute allotted time period, at~~
7 ~~which point Mayor Powell referred me to City Manager~~
8 ~~David Carmany to, quote, "Look into the matter~~
9 ~~personally and agendize it if necessary," end quote.~~

10 ~~The next day, I met with Mr. Carmany in his~~
11 ~~office where he told me he could do nothing to help and~~
12 ~~that I should move. When I asked if he would put the~~
13 ~~issue on the City agenda, he looked at me with a blank~~
14 ~~expression and said, "No."~~

15 ~~Shame on David Carmany, shame on Mayor Powell,~~
16 ~~and shame on every single City Council Member to ignore~~
17 ~~my pleas for help on a matter that should have been~~
18 ~~prevented and/or rectified by the City long ago.~~

19 ~~The zoning in Manhattan Beach is inherently~~
20 ~~flawed in that it sets no parameters for gymnasiums at~~
21 ~~all whatsoever. A gym of any size can open at any~~
22 ~~location in any building and operate however it pleases~~
23 ~~during literally any hours of the day or night.~~

24 ~~As common sense would suggest, this is a~~
25 ~~disaster waiting to happen. It happened. It~~

1 ~~definitely did.~~ A business owner with no oversight has
2 been allowed to run her overly disruptive business
3 rampant, taking complete control over the intersection
4 of 33rd and Highland and ruining the lives of many
5 neighboring residents and businesses, two of which have
6 already gone through City-paid mediation and moved
7 away. I, unlike my unfortunate predecessors, refuse to
8 move simply because my rights are not being protected.

9 Someone running for City Council in this
10 upcoming election recently told me something very
11 simple and wise. He said, and I quote, amongst his
12 many responsibilities, our City is here first and
13 foremost to protect its residents.

14 After being thrown into a truly horrific
15 situation by no fault of my own, I took every step
16 possible to bring awareness of the problem to those who
17 are obligated to help. And then our proud City has sat
18 by idle for nearly an entire year, refusing to even
19 acknowledge the problem, let alone rectify it.

20 Let me remind everyone in this room that, for
21 the last year, I have been woken up at 6:00 a.m. every
22 single day due to Level 10's ongoing, unabated
23 disruptive business. Every single day, my house shakes
24 from the heavy weights being thrown around and dropped
25 in a structure that was in no way built to house a

1 ~~gymnasium.~~

2 ~~Day after day, I'm being punished for the~~
3 ~~building's improper conversion. And for the last five~~
4 ~~years, the residents on my street have had to endure~~
5 ~~Level 10's loud outdoor training regime as part of~~
6 ~~their everyday life.~~

7 ~~Hordes of clients, up to 30 at time, are~~
8 ~~routinely instructed to use the already overcrowded~~
9 ~~public sidewalks and streets to train, often imposing~~
10 ~~dangerous and hazardous conditions on residents,~~
11 ~~drivers, pedestrians and the clients themselves.~~

12 ~~When I was in second grade at Pinecrest~~
13 ~~Elementary, my teacher, Mr. Lundy, taught us, quote,~~
14 ~~"Everyone makes mistakes. The key to success is~~
15 ~~admitting your mistake, taking responsibility for it,~~
16 ~~and making it right." Perhaps our Mayor, City Manager,~~
17 ~~and a few others could use a trip to Mr. Lundy's class~~
18 ~~for a refresher course.~~

19 ~~And if any of you are {unintelligible}, I beg~~
20 ~~of you once again to listen to your residents and not~~
21 ~~only those that are strong enough to speak at meetings~~
22 ~~and hire lawyers, but those that suffer quietly like my~~
23 ~~neighbors. We are your residents. We inevitably have~~
24 ~~concerns and issues that arise. And we deserve your~~
25 ~~protection and respect.~~

1 ~~Thank you for these three minutes, and I'm~~
2 ~~sorry this issue isn't worthy of being placed on your~~
3 ~~agenda.~~

4 ~~MAYOR POWELL: Thank you, Mr. Mendelson.~~

5 STEPHANIE HUBBARD: Hi. I'm Stephanie Hubbard. I
6 live at 1300 Ardmore.

7 I just want to speak to the Shade CUP issue.
8 When a child wants something extra special, parents
9 often set certain conditions that must be met in order
10 to earn the new privilege, activity, or item. If a
11 child doesn't meet the agreed-upon conditions, the
12 parents withhold what is desired.

13 Mr. Zislis wants to keep his doors open later
14 on Fridays and Saturdays. The agreement he made with
15 us was that, in return for these later hours, he had to
16 agree to a hard closing time, all bottles and cans
17 picked up, and he would make certain sound mitigations,
18 which I believe are closing up the patio with what at
19 the time was described as a garage-style window that
20 would be lowered, moving the queue to the west side of
21 the property, and making a modification to the front
22 door so sound could not escape.

23 I'm the resident that received the letter --
24 my husband received it from Chief Irvine explaining
25 that the 2010 CUP had lapsed because Mr. Zislis did not

1 meet the conditions that he was supposed to put in
2 place so that he could have the hard closing -- or to
3 have the later hours.

4 And I want to point out that by allowing all
5 of these lapses to result in going back to the 2005
6 CUP -- which I agree with Mr. McPherson that that is
7 illegal -- that they do -- now they're actually
8 rewarding him. That would be like saying to my
9 daughter, "You know what? You didn't get good grades,
10 and so you're not going to earn that midnight curfew.
11 Instead, you're going to go back to the time when you
12 had no curfew and come home whatever you want."

13 So I don't really understand the logic or
14 anything that's going on. All I want to say is I hope
15 I don't have to come here anymore. I've been coming
16 here since, like, 1993 maybe. It's 2013. Like, could
17 we make some progress, and could we agree, when we make
18 an agreement could we stick to it so I don't have to
19 come back?

20 Thank you so much.

21 ~~MAYOR POWELL: Thank you, Stephanie.~~

22 ~~If I could ask the proponents of this matter~~
23 ~~to please be respectful to everyone and hold your~~
24 ~~applause and laughter. Thank you.~~

25 ~~WILLIAM VICTOR: I'll try not to laugh.~~

1 MAYOR POWELL: ~~Seriously, Bill.~~

2 WILLIAM VICTOR: ~~I'm restraining myself the best I~~
3 ~~can.~~

4 MAYOR POWELL: ~~Seriously, Bill.~~

5 WILLIAM VICTOR: ~~No. I think if you're going to~~
6 ~~be serious -- I've learned a lot about love as a family~~
7 ~~lawyer. And there's love and there's love.~~

8 MAYOR POWELL: ~~First of all, can you identify~~
9 ~~yourself?~~

10 WILLIAM VICTOR: ~~My name is William Victor. I'm a~~
11 ~~property owner in Manhattan Beach.~~

12 ~~I'm disgusted with the leadership of this~~
13 ~~Council in ignoring the requests of many, many people,~~
14 ~~many, many people who have come here, begged, prayed~~
15 ~~and asked for help, just like that gentleman, just like~~
16 ~~Ms. Hubbard and many others. And I think you should~~
17 ~~either lead, follow, or get out of the way.~~

18 ~~And I think that anyone who votes for an~~
19 ~~incumbent in the next election deserves what they get.~~
20 ~~Okay? There's no love for the residents at all. They~~
21 ~~get a pin. Meanwhile, there's a man I know here who~~
22 ~~lives across from the Shady Hotel, and he cannot sleep.~~
23 ~~He's had four or more operations that are~~
24 ~~life-threatening illness. And when he or his family~~
25 ~~want to bring an action against the City, I will give~~

1 my family rate to help them, or I will find the best
2 attorney I can for them because I think it's
3 outrageous, your ignoring.

4 Esther Besbris has come up and asked for a
5 review of the recovery charges. Phoney baloney.
6 You're charging things in two things. You're charging
7 them on the landscaping and also in the recovery
8 charge -- all kinds of dances that are deceitful and
9 not open government.

10 And I'm surprised at David Lesser, who I
11 thought was dedicated for open government. This
12 example of the Shady Hotel is an example of the
13 opposite of open government. And I think maybe it's
14 because the Sketchers and the other people who own the
15 Shady Hotel are very important for the finances of the
16 City. But the City's okay. Now we should be fair to
17 the people and stop kicking them under the bus.

18 I think it's outrageous. I think you ought to
19 leave the Council, either voluntarily, be voted out, or
20 be recalled because I think it's really outrageous.

21 And maybe the Shady Hotel should have a new
22 location near the courthouse because they're going to
23 have a lot of people going back and forth to the
24 courthouse; it might as well be convenient for their
25 lawyers.

1 ~~I think it's outrageous. I don't think~~
2 ~~there's any excuse for it. I read the cockamamy~~
3 ~~arguments you made today and every other day about 2010~~
4 ~~thing not being -- being replaced by the one that~~
5 ~~expired. That's outrageous. You should be ashamed of~~
6 ~~yourselves. There's two lawyers here.~~

7 ~~And your 27,000 a year or whatever you get,~~
8 ~~except for Mr. Tell, who I respect, gives it to the~~
9 ~~City or the schools, I think it's -- and maybe David~~
10 ~~Lesser donates part of it -- I think it's outrageous.~~
11 ~~All the free meals and photo opportunities, get them~~
12 ~~somewhere else. Don't ruin a beautiful city like~~
13 ~~Manhattan Beach and kick the residents under bus like~~
14 ~~you doing next to the Shady Hotel.~~

15 ~~And I have already discussed it with~~
16 ~~[inaudible] California, and they think so to.~~

17 ~~MAYOR POWELL: Thank you, Bill.~~

18 ~~Just a couple of corrections. Sketchers has~~
19 ~~no economic interest in the Shade Hotel. Regarding the~~
20 ~~CRC charges, we had four public hearings in these very~~
21 ~~council chambers.~~

22 ~~WILLIAM VICTOR: That is not true.~~

23 ~~MAYOR POWELL: That is absolutely true.~~

24 ~~George?~~

25 ~~GEORGE BUTTS: Good evening, Mayor and Council.~~

1 My name is ~~George Butts~~, a ~~resident~~. And I am pleased
2 that I am up here to ~~speak in front of you tonight~~.

3 I am ~~the president of your Manhattan Beach~~
4 ~~Community Emergency Response Team~~. And I want to
5 announce some ~~training opportunities for our residents~~.

6 First off on March ~~8, 9, and 10~~ we are having
7 our next ~~CERT class~~. It is a ~~one-weekend opportunity~~.
8 And I know that ~~Council Member Tell had mentioned that,~~
9 as soon as he was off of ~~Council~~, he was going to take
10 the ~~class~~.

11 I'm just -- not calling you out.

12 COUNCIL MEMBER TELL: Not as soon as I was off.

13 GEORGE BUTTS: Now I'm going to call you on the
14 carpet.

15 But ~~Manhattan Beach~~, our ~~CERT organization~~,
16 our ~~website is MBCERTA.org~~. And on the ~~left-hand~~
17 ~~column~~, there are places to ~~sign up for it~~, or you can
18 always just send me an e-mail at ~~info@MBCERTA.org~~.
19 I'll get it, and I'll answer any questions.

20 Also ~~for our residents now~~, we have ~~scheduled~~
21 and we have been ~~training CPR and AED classes~~. We've
22 received the equipment from ~~Beach Cities Health~~
23 ~~District~~. And we can do up to 20 people at a time.

24 On ~~March 30th~~, in the ~~a.m.~~, we are ~~teaching a~~
25 ~~CPR AED training class with two-year certificates~~, up

1 to 20 people.

2 On April 27th, we have an a.m. and a p.m.
3 class.

4 And on June 22nd, an a.m. from 8:00 to 12:00
5 and a p.m. class from 1:00 to 4:00.

6 And this is open to all residents of the city.
7 There is a \$45 fee for this, but it includes the
8 two-year certificate. And if anybody has any
9 questions, you may reach me at info at MBCERTA.org.

10 And I applaud the other four of you that have
11 been CERT members that continue to take part. And we
12 look forward to Council Member Tell taking it.

13 COUNCIL MEMBER TELL: I look forward to it as
14 well.

15 GEORGE BUTTS: And any of the other new Council
16 Members that join up -- actually, a number have already
17 signed up for the next class.

18 Thank you very much, and have a great evening.

19 MAYOR POWELL: Thank you George. And thank you
20 for what CERT does in our community.

21 CHERYL LYNN: Good evening, Council. Thank you
22 for this forum. It's my first time. I can hear my
23 voice shake. I don't know if you can.

24 My name is Cheryl Lynn. I'm a resident on
25 Ardmore Avenue, 1140 1/2. I've been there since 2010

1 but had the fortunate experience of being there for 14
2 years prior, from '89 to '03.

3 11:30, 12:00 midnight, 12:30 at night, many
4 times over the past three years that I've been back,
5 and especially during the summer, holidays, and warm
6 winter evenings I cannot get to sleep because of the
7 noise emanating from Shade -- wafts up the hill through
8 my closed bedroom. I am part of the silent majority.

9 And I apologize because I didn't think this
10 was going to happen. And I truly apologize to
11 everybody in this room.

12 Good thing I have three minutes.

13 I either wear ear plugs -- and yet the
14 thumping of the bass will get through along with the
15 howls from customers from within.

16 I see this not only as a noncompliance issue
17 of the currently and what I understand to be the
18 legally adopted 2010 CUP, I also see it as a real
19 health issue. I just can't get to sleep after a long
20 day in the middle of the week.

21 I respectfully ask that the City of Manhattan
22 Beach and whoever their leaders are and may be to
23 please uphold and enforce the 2010 CUP.

24 Thank you.

25 MAYOR POWELL: Thank you Cheryl.

1 ~~CAROL WAHLBERG: Before I speak about what I'm~~
2 ~~here to speak about, I want to say how sorry I was to~~
3 ~~learn that Richard Gill is retiring. I think he's been~~
4 ~~a great employee of the City, and I had the pleasure of~~
5 ~~working with him on a number of occasions. And I~~
6 ~~always found him to be very professional and very~~
7 ~~helpful. And I was deeply saddened to learn he was~~
8 ~~leaving.~~

9 ~~Anyway, I'm also here regarding the CUP issue.~~
10 ~~I just became the wear of the fact that there were a~~
11 ~~few people that were going to address it tonight. And~~
12 ~~I don't live up the hill from Shade, as most of you~~
13 ~~know, but I am deeply concerned about what's going on~~
14 ~~in the City. And I agree that nothing is being~~
15 ~~addressed. It's getting gradually worse and worse and~~
16 ~~worse.~~

17 ~~And I don't hold -- like some of the people~~
18 ~~who have spoken, I don't hold any individuals~~
19 ~~responsible. I think mistakes are made. I think it is~~
20 ~~true that the silent majority or the silent group kind~~
21 ~~of falls through the cracks.~~

22 ~~One new candidate for City Council mentioned~~
23 ~~at the MBRA presentation that he felt that anyone that~~
24 ~~lived near downtown should have expected this. Yet, I~~
25 ~~think for most of us that have lived here for a number~~

1 of years, the Council and anyone involved kept selling
2 Manhattan Beach as a small-town, family-oriented
3 community.

4 Huh. I mean, this is a joke. We all know
5 that now. I think everyone's starting to recognize it.
6 But let's be serious here. No one living near the
7 downtown, even three, four blocks away, could have
8 anticipated, when you have an ocean blocking part of
9 your city, you have no major arteries, the City would
10 become a destination spot.

11 And I think the Shade -- this whole thing of
12 not following -- and did I come to almost every
13 presentation on the Shade Hotel, I believe. And I did
14 not ever hear the CUP being re-addressed. So I
15 don't -- maybe I misunderstood you, Mayor Powell.

16 But I do think that the residents deserve this
17 coming back before the Council. And I do think this
18 whole issue is part of a bigger disease or a bigger
19 issue in this city. And I hope that all of you and the
20 council that comes in will take this as a number one
21 priority to start getting the trust of the residents
22 back.

23 Thank you.

24 MAYOR POWELL: Thank you, Carol.

25 JOAN MUELLER: Hello. I'm Joan Mueller. I live

1 at 1220 Ardmore. I'm right -- I'm directly across from
2 the Shade.

3 I'm here to -- just to ask for help. You
4 know, we get a little complacent. You know, it's
5 wintertime. our windows are closed and all that. But,
6 you know what? My one guest room where my
7 grandchildren sleep and our guests come is what faces
8 the Shade. It's -- when the windows are open, it's
9 wild.

10 But I'm just here to ask for help. I guess I
11 used to take the Pollyanna approach. I used to call
12 Mike and Milo and talk to them and let them know when
13 noise was going on and things like that. And they were
14 polite and descent, but nothing ever changed. So I'm
15 just here, you know, again, to ask for help. And, you
16 know, we just -- we have to take care of this matter.
17 It's upsetting.

18 I love where I live. I love Manhattan Beach,
19 and I just want it fixed. So thank you.

20 ~~MAYOR POWELL: Thank you, Joan.~~

21 ~~ROBERT BUSCH: I'm Robert Busch, U.S. Army~~
22 ~~Infantry veteran and aerospace engineer. Why would an~~
23 ~~elegant, articulate, educated gentleman come to a City~~
24 ~~Council meeting and criticize the City Council, school~~
25 ~~board, California legislature, and President Barack~~

1 ~~Hussein Obama's liberal social distribution of wealth~~
2 ~~policies?~~

3 ~~I received a letter from Manhattan Beach~~
4 ~~Residents Association stating that I was under -- in~~
5 ~~the utility underground District 9, and it would cost~~
6 ~~me \$50,000.~~

7 ~~Edison Electric Institute says undergrounding~~
8 ~~and costs outweigh benefits. Underground wires are not~~
9 ~~very reliable. Repairing overhead lines is easy and~~
10 ~~can be sometimes done by one worker. The costs of~~
11 ~~undergrounding are prohibitive.~~

12 ~~There are four City Council Members that are~~
13 ~~responsible for the utility underground. They are well~~
14 ~~educated, articulate, hard working but also very~~
15 ~~stubborn and very arrogant and fail to listen to those~~
16 ~~of us that state their views at meetings or letters to~~
17 ~~the editor, Beach Reporter, and Easy Reader.~~

18 ~~James Aldinger stated, "We, the City Council,~~
19 ~~can do anything we want." I was so enraged that I~~
20 ~~taped the statement and played it back to him at the~~
21 ~~next meeting. Didn't do any good.~~

22 ~~Judge Joyce [unintelligible]. Richard~~
23 ~~Montgomery, anyone that disagrees with him is a gadfly.~~
24 ~~I'm a glad fly, not a gadfly.~~

25 ~~William -- Nick William Tell, I know the real~~

1 ~~William Tell, and, sir, you are not no William Tell. I~~
2 ~~don't trust you to shoot an apple off of my head.~~

3 ~~Districts 1 through 6 were already~~
4 ~~undergrounded. Districts 7 to 14, a survey will be~~
5 ~~sent out to the residents to ask if we approve or~~
6 ~~disapprove of the utility undergrounding. Districts 7,~~
7 ~~9, 10, 11 voted against undergrounding and were~~
8 ~~dissolved.~~

9 ~~Mayor Mitch Ward is the fifth Council Member,~~
10 ~~and said the other four districts should be dissolved.~~
11 ~~They didn't do it. The four Council Members who~~
12 ~~proceeded to manipulate the voting procedure accepted a~~
13 ~~bribe in one district and gerrymandered in other~~
14 ~~districts.~~

15 ~~Residents that did not want or need the~~
16 ~~utility underground were forced to pay for it.~~
17 ~~Southern California Edison was a partner with Manhattan~~
18 ~~Beach and doubled the assessment costs on two districts~~
19 ~~because they had made an error in measurement. City~~
20 ~~Council never questioned these ridiculous increase in~~
21 ~~assessment costs.~~

22 ~~Edison is also criticized by former State~~
23 ~~Assembly Member Ted Lieu for frequent outages and~~
24 ~~claimed it was a [unintelligible] electric clients was~~
25 ~~ridiculous.~~

1 Edison had a program that rewarded them for
2 good service but manipulated results by changing the
3 bad reviews and having employees and relatives write
4 good reviews. They were charged with fraudulent
5 activity and fined \$30 million and forced to refund \$81
6 million to customers.

7 Edison warned Santa Onofre nuclear station,
8 disciplined employees that reported problems with the
9 plant. Of course, these problems were real and the
10 plant was shut down.

11 Why does Manhattan Beach continue a
12 partnership for utility undergrounding with the
13 fraudulent Edison? Why?

14 MAYOR POWELL: Thank you, Mr. Busch.

15 ROBERT BUSCH: I thank you. And I've come a few
16 times, and I spoke on different things. And I
17 appreciate your help. William Tell, Richard
18 Montgomery, I appreciate your persistence. If you
19 weren't here, I wouldn't be here. I'd be sitting home
20 watching TV. I come here, my wife says, "What the hell
21 are you doing? Let someone else do it."

22 MAYOR POWELL: Thank you, Mr. Busch.

23 ROBERT BUSCH: In all of this, I wanted to thank
24 Mitch Ward for his persistence in helping on
25 undergrounding.

1 MAYOR POWELL: Thank you, Mr. Busch.

2 VIET NGO: Good evening, Viet Ngo, candidate for
3 City Council, March 5th, 2013. Anti-corruption of
4 City -- City Council ethic, ethic activities. First of
5 all, for integrity of election and also interest of
6 [unintelligible]. And I hereby ask the Candidate Mitch
7 Ward, he help -- he let eligible for drumming election.
8 This is conspiracy work among city officer, include all
9 of them, City Attorney, City Manager, Liza Tamura, put
10 into office with your help, with your condone, with
11 your permit, to subsidizing this election.

12 And he falsify all his nominate paper, commit
13 perjury, violates election court and all the
14 other -- the penal court. That matter have been in the
15 head upper department.

16 And I sincerely ask you to reconsider because
17 you have been falsified, commit the perjury, this
18 felony. And consider to do honor thing, that to let --
19 have this a very clear election. Look in your
20 conscience and obey the law. Substantial evidence will
21 be against you. And you intentionally end up
22 [unintelligible] for City election.

23 Secondly, when power, there is substantial
24 evidence that you have been commit the campaign using
25 public City fund, City employee and to -- for this

1 ~~election. Well document, use public's~~
2 ~~[unintelligible], include City employee for your~~
3 ~~election, political campaign and to reward City Manager~~
4 ~~in the future and the City Attorney for their contract.~~

5 ~~It's a conflict of interest. And turn~~
6 ~~yourself in. Your evidence already submit to Chief of~~
7 ~~Police Eva Irvine. I ask her, ask the [unintelligible]~~
8 ~~department to protect integrity of the department. And~~
9 ~~you did undermine the police authority because you~~
10 ~~activity --~~

11 ~~MAYOR POWELL: Thank you, Mr. Ngo.~~

12 ~~VIET NGO: Turn yourself in.~~

13 ~~MAYOR POWELL: Thank you, Mr. Ngo. Please sit~~
14 ~~down.~~

15 ~~VIET NGO: Yes, sir.~~

16 ~~MAYOR POWELL: And just for the record, I've at no~~
17 ~~time ever used any City employees or any public funds~~
18 ~~for my re-election campaign. The charges are~~
19 ~~absolutely false.~~

20 ~~Hi, Patrick.~~

21 ~~PATRICK McBRIDE: Patrick McBride, Fifth and Peck.~~

22 ~~I was just wondering -- I didn't come up here~~
23 ~~with anything to say, but I was wondering if you can do~~
24 ~~something about Mr. Ngo. He is just utterly rude.~~

25 ~~And people come up here to talk and he pushes~~

1 ~~them ahead of him, and he waits for the very end. And~~
2 ~~he brings a pall over the whole meeting with these~~
3 ~~things which you can't even understand.~~

4 ~~People are being accused of vision crimes.~~
5 ~~There must be something you can do about that without~~
6 ~~having laws that would restrict everybody. I mean,~~
7 ~~there must be something on the books that would just~~
8 ~~have some propriety in this chamber.~~

9 ~~Jim Aldinger walked him out of here one time.~~
10 ~~Just walk him out. Thank you.~~

11 MAYOR POWELL: ~~Thank you, Patrick.~~

12 ED CAPRIELIAN: ~~Good evening, members of the City~~
13 ~~Council. My name is Eric Caprielian. I'm a resident~~
14 ~~of Manhattan Beach.~~

15 ~~I'm here in support of Don McPherson and~~
16 ~~others who are supporting the same -- this 2010 CUP. I~~
17 ~~did some extensive research over the last several days,~~
18 ~~and we can come to the conclusion that there appears to~~
19 ~~be a political shell game going on, being manipulated~~
20 ~~by alcohol interests in our community that really~~
21 ~~promote the expansion of alcohol outlets.~~

22 ~~Last year, the Planning Commission, who~~
23 ~~include the best and brightest of many of our best and~~
24 ~~brightest, including Martha Andreani and~~
25 ~~Sandra Seville-Jones, asked the Council to look at the~~

1 expansion and look for guidance at the expansion of
2 alcohol outlets based on the extensive data that was
3 available.

4 After eight months, eight months, the
5 Community Development Director came with a staff
6 report. And the Council, with the exception of
7 Mayor Lesser, gave short shrift to that concern by the
8 Planning Commission.

9 Given evidence that we had an expansion of
10 DUIs, an expansion of alcohol-related vehicle
11 accidents, expansion of sale of alcohol to minors, and
12 the Beach Cities Health District report that our
13 South Bay adolescents drink alcohol 2.5 times more than
14 the national average.

15 So you completely discarded the evidence and
16 are basically for the support of this expansion of
17 alcohol outlets. And it shows in this revision of the
18 2010 CUP.

19 Mayor Lesser, I want to again congratulate you
20 about putting together the "Give Meaning to the Past,
21 Vision to the Future" [sic] go around last December.

22 It was an excellent involvement of our
23 stakeholders. And one of the recommendations that came
24 forward was to make downtown more family oriented, to
25 kind of create the businesses that would attract our

1 ~~residents in addition to people that we consider our~~
2 ~~guests. So I've got to applaud you, and I hope you~~
3 ~~take some further efforts in making that a reality.~~

4 ~~So again, I hope that the City Council would~~
5 ~~do some extensive investigation on this 2010 CUP and~~
6 ~~really find out who's manipulating this shell game, who~~
7 ~~is preventing supporting the public interest here.~~

8 ~~We've seen some really -- some emotional~~
9 ~~statements here tonight which dramatically impact that~~
10 ~~there's a real concern in our community. Thank you.~~

11 ~~MAYOR POWELL: Thank you, Ed.~~

12 ~~Next speaker, please?~~

13 STEVE WIBLE: Council Members, my name is Steve
14 Wible, 1200 block of Ardmore, been here since 1947, not
15 necessarily in this residence but on the Strand.
16 Retired building inspector for the City, retired
17 carpenter for the City. Live across the street from
18 the Shade Hotel.

19 We spent a lot of money, a lot of time working
20 on these things to get the Shade Hotel under control.
21 And when Don came to us and said it looks like
22 everything was tossed out, it's kind of hard to
23 believe. I've got better things to do than to have
24 somebody throw something in my face because I'm not
25 used to that. I'm used to enforcing these things.

1 That's not happening. Instead, it almost
2 appears that there's a conflict of interest between the
3 City and the Metlox development. I don't understand
4 it. There's -- the urbanization, Mr. Zislis's
5 urbanization seems to be getting awards for things that
6 he's doing against us.

7 All we want to do is have the guy quiet down a
8 little bit and conform to some of the rules that
9 somebody may want to enforce. But we see very few of
10 the rules being enforced. I don't know how many
11 businesses around the City are going to get away with
12 these same things.

13 Is it just because it's the Metlox property,
14 or is it particularly the Shade Hotel? It's hard to
15 say. But things are put in writing, and a lot of us
16 expect them to be enforced. But they aren't being
17 enforced.

18 So we need to get a better understanding of
19 how they're going to control this particular piece of
20 property and come up with something a little more
21 substantial because we're just taking a back seat on
22 this thing now. Thank you.

23 ~~MAYOR POWELL: Thank you, Steve.~~

24 ~~JON CHAYKOWSKI: Good evening, City Council. My~~
25 ~~name is John Chaykowski. I did not plan to speak on~~

1 ~~this, but I heard some interesting things that I'd like~~
2 ~~to pool things together and maybe see if we can get~~
3 ~~somewhere on the -- the concerns they have on the Shade~~
4 ~~Hotel.~~

5 ~~I've heard about the fact that maybe there's~~
6 ~~one or more people saying that, "Oh, that's just a fact~~
7 ~~of nature. Things are going to get louder, noisier,~~
8 ~~bigger. And that's just growth. Okay?"~~

9 ~~I heard someone mention that Mr. Lesser had~~
10 ~~some plans to make this such a family oriented -- I'm~~
11 ~~hearing things. I may be misquoting, but I'm hearing~~
12 ~~the fact that people are very concerned about how~~
13 ~~things have changed.~~

14 ~~I've been in this city now for approximately~~
15 ~~going on 40 years now. I love this city. I've been~~
16 ~~involved in this city. I've been active in a number of~~
17 ~~things for this city.~~

18 ~~And I want to take exception to any kind of~~
19 ~~mind-set that any of you on the Council or any~~
20 ~~candidates coming forward, any kind of mind-set that~~
21 ~~says, "Hey, it it's just a fact of nature that things~~
22 ~~are going to get bigger, louder and worse."~~

23 ~~We don't have to accept that. I love~~
24 ~~Manhattan Beach. I'm one of the older people in~~
25 ~~Manhattan Beach that you praised as a group. We want~~

1 to stay in this town. And we don't need it to get
2 louder, bigger noisier. That is not necessarily the
3 way a town must go when the Council has control on
4 making it a family-oriented city like it has been for
5 most of the 40 years I've been here.

6 And I think you guys owe it, you guys and
7 gals, general Council, you owe it. It's one of your
8 fiduciary responsibilities to make sure that this is
9 the city that the people enjoy. And please listen,
10 take heed to what these people have said and do not
11 accept it must get louder noisier, bigger, brighter.
12 That's not necessarily bigger. Thank you.

13 MAYOR POWELL: Thank you, Jon.

14 And by the way, we all have an interest in
15 keeping this a community, family-oriented city. And we
16 all don't want things getting bigger, louder, noisier,
17 and the rest of those.

18 Sir, please be quiet. We'll address your
19 Level 10 fitness in a minute.

20 Okay. Anyone else like to speak?

21 COUNCIL MEMBER MONTGOMERY: I've got one.

22 MAYOR POWELL: Well, first we'll give the audience
23 chance.

24 COUNCIL MEMBER MONTGOMERY: Anybody else in the
25 audience?

1 ~~(No response)~~

2 MAYOR POWELL: No one in the audience? We'll
3 ~~close audience participation.~~

4 ~~Council Member Montgomery?~~

5 COUNCIL MEMBER MONTGOMERY: Two things. One, our
6 sincere condolences to Manhattan Beach resident Jeanie
7 Buss on the passing of her father. Most of you don't
8 know, realize that the Lakers, for years, organization,
9 have donated many times to our schools and to the City.
10 They don't actually require any kind of "thank you"
11 letters from the Council. They did it all quietly.

12 I think especially this week is a good time
13 to, if you Jeanie walking around, express your own
14 condolences and "thank you" for what they've done for
15 the City and schools on a go-forward basis.

16 Secondarily, Mr. Busch, I agree with you. I
17 think that that was -- you took part of my comments
18 away about the right to vote, the earned right to vote,
19 especially when 80 percent of our residents eligible to
20 vote do not vote in this city.

21 I think he's right. I've been talking about
22 it for years. Trying to get the number to change. I
23 hope this election it will change that.

24 So I only ask two things. I think you've
25 heard it best about the cost to the City, pension, and

1 ~~everything else you heard us talk about. These are~~
2 ~~serious times; we need serious people to get us through~~
3 ~~them.~~

4 ~~I hope you vote for a candidate that will~~
5 ~~represent the entire city, whether it's vocal~~
6 ~~minority -- I hope that's not the way it works, but the~~
7 ~~entire city. I think you asked -- I hope you asked~~
8 ~~your friends to vote after you vote yourselves, your~~
9 ~~neighbors to vote.~~

10 ~~It doesn't have the same electricity when you~~
11 ~~have five candidates running versus 11 or 13. It's~~
12 ~~important upon all of you that showed up tonight, took~~
13 ~~the time out of your day, chose to be here, let~~
14 ~~everybody know by e-mail to show up and vote because~~
15 ~~they're the guys who are going to run this City for the~~
16 ~~next four years. So you want to see something get~~
17 ~~done, they're the ones who will get it done.~~

18 ~~So please vote on March 5th.~~

19 MAYOR POWELL: I think we're all in agreement. A
20 number of people are fighting overseas to protect our
21 freedoms and the right to vote. And I believe we owe
22 it to them to all go out to the polls.

23 Now, what I'm going to do is there's two
24 issues that I would like to have staff address, as I
25 always do. First is the Shade conditional use permit,

1 otherwise known as the CUP. And then the other one is
2 Level Fitness, which apparently is in private
3 litigation between two parties. And there's mediation
4 between the two parties.

5 So first, if I could ask Laurie Jester the
6 City's planning manager, to come down and address two
7 items, maybe your City attorney as well.

8 Number one, what is the status with the
9 conditional use permit and then, also, enforcement
10 actions.

11 PLANNING MANAGER JESTER: Sure. Thank you.
12 Mr. Mayor.

13 When anyone applies for a use permit, they
14 have a certain time period in order to implement that
15 use permit. And they are not required to implement it.
16 It's their choice.

17 So the Shade Hotel had an approval in 2005 for
18 a use permit. They came in for an amendment in 2010.
19 Then, when they were going through the building permit
20 process, they realized that some of the conditions were
21 not working for them. They were not able to enclose
22 the patio, therefore, they weren't able to meet certain
23 conditions, required conditions of approval.

24 So they have not implemented that use permit
25 approval from 2010. We don't require people to

1 implement it. It just gives them the right to. And so
2 because of -- they don't have the increased hours that
3 that approval allowed. They are not implementing the
4 increased food service. They are not implementing the
5 provisions that allow them to have larger parties
6 without directors' approval.

7 So they basically have their existing permit
8 from 2005, and that's what they're operating under.

9 MAYOR POWELL: So if they voluntarily applied for
10 an amendment to their use permit, hence the 2010
11 amendment, and it's granted, there's no obligation for
12 them to grant it, and the City has no authority to
13 impose it upon them?

14 PLANNING MANAGER JESTER: The City has no
15 authority to require them to operate under that use
16 permit. If they choose not to implement it, they don't
17 have to.

18 MAYOR POWELL: Okay. The other question is when
19 there's noise emanating from any business.

20 PLANNING MANAGER JESTER: Yes?

21 MAYOR POWELL: And particularly this business,
22 what enforcement actions are available, and what
23 enforcement actions have been imposed in this specific
24 condition, this case?

25 PLANNING MANAGER JESTER: Sure. Whenever there's

1 a noise complaint, usually noise complaints happen in
2 off hours. So people will call the watch commander.
3 The watch commander will send an officer out to
4 investigate.

5 And we do have noise regulations in our
6 Municipal Code. Whether you have a use permit or not,
7 everyone is under same standards. They will
8 investigate, see if there is unreasonable noise, see if
9 they are within the conditions as far as hours of
10 operation and such for -- under their use permit and
11 follow through and require whatever is necessary to
12 comply with the Code and the use permit.

13 MAYOR POWELL: Has there been any enforcement
14 actions against this particular business to the extent
15 you can disclose that?

16 PLANNING MANAGER JESTER: Well, I spoke with the
17 police department today, and they said there have been
18 about eight complaints in the past year for that
19 particular property. A handful of them related to
20 noise issues.

21 MAYOR POWELL: Okay. Thank you.

22 You can ask a question.

23 COUNCILMEMBER TELL: This was when it was
24 adopted in September of 2010. I remember it very
25 clearly in that there was a lot of neighbor involvement

1 in this, and there's a big negotiation with Mike
2 Zislis. And we really applauded both the neighbors as
3 well as Mike for getting together and developing
4 something and got a consensus on a very difficult
5 issue.

6 What I'm surprised at is this is the first
7 I've heard that this CUP amendment was not implemented.
8 I understand sort of the technical aspects to it. But
9 when were we informed that they were not going to move
10 forward?

11 It sounds like the neighbors were not then
12 subsequently informed to let them know until finally
13 they were looking for an enforcement action.

14 Is that what happened here? Because it just
15 seems like we could have, at least, thought about this
16 and let us know something of this importance wasn't
17 implemented and then also the neighbors.

18 Maybe there's not a lot we can do about it
19 technically, but at least from just the sake of letting
20 them know that this was not -- after they put up so
21 much time and effort, it seems like there's been a real
22 breakdown here.

23 PLANNING MANAGER JESTER: Right. There's no
24 provisions in the Code that require us to notify
25 neighbors.

1 I know that Mr. Hubbard's been aware of it
2 since September, when he asked about it. And it was --
3 I don't think it was much before that, that Mr. Zislis
4 had determined that it just wasn't working with the
5 Building Code issues because he worked with our
6 building staff, his architect did, for many, many
7 months trying to work through those issues.

8 And obviously, since there was construction
9 involved, people would have seen, you know, the
10 construction of the vestibule, the construction of the
11 enclosure. And obviously that was not happening.

12 So they couldn't actually implement the
13 extended hours or any of the privileges that are
14 allowed under the 2010 use permit until those actual
15 physical improvements were completed. And there had
16 been no physical improvements. So...

17 MAYOR POWELL: So right now, they're not doing the
18 extended hours per what they requested?

19 PLANNING MANAGER JESTER: No, no.

20 MAYOR POWELL: What is the status of the 2010 CUP?
21 Is it -- I'm sorry, please.

22 (Inaudible)

23 MAYOR POWELL: No, we closed public participation.
24 So what is the -- to what extent, then, is the
25 2010 CUP? Is that expired or is it still viable?

1 PLANNING MANAGER JESTER: I thought it had expired
2 because the Code gives it two years. But actually
3 there, the Code also gives the ability to have a little
4 longer use permit. And this one was approved for three
5 years.

6 So technically it has not expired. So if he
7 chose, if somehow he figured out a way to make the
8 enclosures work, he still does have a valid approval.

9 MAYOR POWELL: So the bottom line is, if they were
10 creating noise beyond what is permissible in the Code,
11 presumably a noise ordinance, what's going to be done?
12 What City staff or Code Enforcement do so that
13 neighbors can enjoy peace and quiet as they are
14 entitled?

15 PLANNING MANAGER JESTER: Sure. Just like with
16 any other business in town, if we have a complaint
17 during the daytime, it's followed up by our Code
18 enforcement staff.

19 If it's after hours, it goes to the police
20 watch commander. And as I mentioned, they will send
21 staff out to investigate, an officer, and follow up,
22 just like with any other business in town.

23 MAYOR POWELL: Okay. Thank you.

24 PLANNING MANAGER JESTER: You're welcome.

25 MAYOR POWELL: Okay.

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(End recorded audio media)

1 STATE OF CALIFORNIA)
2 COUNTY OF MARIN) ss.

3 I, DEBORAH FUQUA, a Certified Shorthand
4 Reporter of the State of California, duly authorized to
5 administer oaths pursuant to Section 8211 of the
6 California Code of Civil Procedure, do hereby certify
7 that the foregoing proceedings were reported by me, a
8 disinterested person, and thereafter transcribed under
9 my direction into typewriting and is a true and correct
10 transcription of said proceedings.

11 I further certify that I am not of counsel or
12 attorney for either or any of the parties in the
13 foregoing proceeding and caption named, nor in any way
14 interested in the outcome of the cause named in said
15 caption.

16 Dated the 9th day of April, 2013.

17
18
19 DEBORAH FUQUA

20 CSR NO. 12948
21
22
23
24
25

Don McPherson1014 1st St

Manhattan Beach CA 90266

Tel: 310.372.2774

Cell: 310.487.0383

Fax: 310.372.2539

Email: dmcphersonla@mail.com

28 May 2013

City Council
 City of Manhattan Beach
 Via Email

Subject: Privileges from the 2010 CUP Used by Shade Hotel

City staff allows Shade Hotel to benefit from many 2010 CUP privileges, all of which the 2005 CUP would prohibit. Community Development turns a blind eye, however, to enforcing the disturbance mitigation required by the 2010 CUP. Staff also claims the 2005 CUP remains in effect, but they fail to enforce many requirements in that permit as well.

The most brazen of the 2010 CUP uses, formerly prohibited by the 2005 CUP, include:

- Special events on the outside terrace, the area south of the Zinc Bar, fronting on 12th St;
- Removal of requirement for acoustic barrier between the hotel lobby and Zinc Bar;
- Occupancy of 80 on the Skydeck (45 permitted by the 2005 CUP)
- A full-scale restaurant serving all day (the 2005 CUP prohibits lunch); and,
- The Zinc Bar and Skydeck advertised as separate attractions for general public use.

Previously, you received from my attorneys their legal opinion regarding the Shade CUP. They argue that if Shade employs privileges in the 2010 CUP, then the usage establishes that permit as being in effect. Consequently, Community Development must enforce the 2010 CUP, not the 2005 version, which they have repeatedly and publically claimed as valid.

The city council must resolve this indecisive confusion, so the Manhattan Beach Police Department can properly enforce the 2010 conditions intended to mitigate disturbances.

This letter presents the incontrovertible evidence that Shade Hotel employs substantial benefits from the 2010 CUP, primarily discovered on their website and in the City administrative record. With this evidence, councilmembers can easily verify that staff lets Shade enjoy many privileges in the 2010 CUP, without complying with either the physical or operational measures incorporated into the use permit for disturbance mitigation.

EVIDENCE OF 2010 PROVISIONS EXPLOITED BY SHADE HOTEL.

The table on the next page presents the evidence that Shade uses many privileges found in the 2010 CUP. Each row references the 2010 CUP sections that grant the named benefit, as well as identifying the provisions in the 2005 CUP that prohibit such uses.

To delve deeper into the evidence, click Internet links in the table and narrative below, which will access the documented evidence, as well as pertinent YouTube clips from city videos of public meetings.

The table does not include violations of the noise ordinance or end of alcohol service times. Those violations merely portray lack of enforcement by staff, an endemic failure by Community Development during the past seven-plus years, since the Zinc nightclub began operation in late 2005.

STAFF CONDONES 2010 CUP PRIVILEGES THAT WOULD VIOLATE THE 2005 CUP

(Use permit Internet links provided below)

Benefit to Shade	2010 CUP Item ¹	2005 CUP Item ¹	Evidence of Shade's 2010 CUP Privileges
1. 2010 CUP: Lunch service and full-scale restaurant	Conditions 23 & 36.	Finding L and Conditions 3 & 5. No lunch or full-scale restaurant.	Website menus. E1. Full-Scale Restaurant E2. Zinc Dinner Menu
2. Special events permitted on terrace. ²	Condition 11.	Condition 2. Special events limited to courtyard, meeting room and living room.	Shade's website advertises the terrace to the public for special events, such as standalone cocktail parties. E3. Terrace Special Events
3. Expanded terrace food service hours by 12 to 13 hours daily.	Condition 23.	Finding L. Close at 10 AM Mon-Fri and 11 AM Sat & Sun.	See E1 and E3 above. Advertising for 10 PM Sun-Wed/11 PM Thu-Sat closing. Regular daily lunch hours until 5 PM.
4. Increased terrace occupancy.	Condition 25. 47 person limit.	Applicant testified to 22 person limit in 2005 hearing.	See E3. Advertising 80 person cocktail parties (exceeds nearly twice the 2010 CUP limit)
5. Increased Skydeck occupancy.	Condition 24. 92 person limit.	Condition 1. Requires conformance with description.	2005 CUP application states occupation 45, Pgs. 2-3. E4. Shade 2005 Application
6. Removal of lobby-Zinc Bar acoustic partition requirement	Conditions 12 & 14. Replaces 2005 CUP conditions.	Finding O & Condition 1. Partition required.	Director Thompson stated he saw no need for the lobby-Zinc Bar wall required by 2005 CUP, Finding O. YouTube1-Thompson-ZincWall
7. Removal of restriction on promoting Zinc and Skydeck as separate hospitality attractions.	Conditions 37 & 38. Zinc and Skydeck promotion permitted.	Condition 4. Zinc and Skydeck promotion prohibited.	Shade website promotion of Zinc and the Skydeck to the general public, with hotel stays not required. E5. Zinc Bar Promo E6. Skydeck Promo
8. Menu posting outside of hotel.	Condition 39. Menus permitted.	Condition 6. Menus prohibited.	Menus posted daily outside of hotel. E7. Outside Menu

1. Use-Permit Internet Links: [2010 CUP](#) [2005 CUP](#) [2002 Metlox CUP](#) (Note: bookmarks available, if saved to computer as pdf.)
2. Terrace lies outside the Zinc Bar, fronting on 12th St; called the 'Porch' in 2005 CUP documentation.

Staff has also modified interpretations expressed by the 2005 planning commission for certain provisions that the commissioners had addressed, to ensure live entertainment would not disturb residents or hotel guests. Staff's version of these provisions permitted the creation of the Shade nightclub, comprising the Zinc Bar, the hotel lobby and the terrace as a single contiguous area, unenclosed on the south-side, which directly exposes residents to rock bands.

The 2005 CUP prohibited use of the lobby and terrace as an extension of the Zinc Bar at night, whereas the 2010 CUP allows it, although requiring total acoustic enclosure at 9 PM. Community Development continues to allow public use of the lobby and terrace as part of the nightclub, these being privileges in the 2010 CUP, but would violate the 2005 CUP. Staff does not require, however, the 2010 CUP mitigation measures, such as enclosing the area at night.

The following two subsections summarize the evidence that the 2005 planning commission intended their use permit to close off the Zinc Bar as small area, separated from the lobby by an acoustic wall and shut-off from the unused outside terrace at night. After approval of the 2005 CUP, however, staff unilaterally reversed those intentions.

Terrace Use as Nightclub Venue. The 2002 Metlox Master Use Permit did not include the terrace as a venue for food and alcohol service, or for special events. When the 2005 CUP hearing started, the commissioners had no information before them regarding food and alcohol service on the terrace; not in the Shade application, not in the staff report, nor in the draft use permit. ([E4. Shade 2005 CUP Application](#) & [E8. 2005 CUP Staff Report](#)) When Commissioner Simon queried staff about the terraces, Planning Manager Jester stated, "There wouldn't be services of food or alcohol in that area [the terrace]." ([E9. Terrace](#) & [YouTube2. Terrace](#))

When commissioners questioned Mr. Zislis, he contradicted Ms. Jester's statement, testifying the area would close at 10 AM Monday through Friday and 11 AM Saturday-Sunday serving 22 patrons for breakfast only. ([E9. Terrace](#) & [YouTube2. Terrace](#))

At the end of the public hearing, staff revised the 2005 CUP at Findings J and L, as well as Condition 5, to permit alcohol and breakfast service on the 'Porch' [terrace]. ([E9. Terrace](#) & [YouTube2. Terrace](#))

In the 2005 CUP, Finding L prohibits lunch service in any public area of the hotel, whereas, Condition 2 does not include the terrace for special events.

The sum total of all information in the administrative record, prior to the 2010 CUP, limits the terrace to breakfast, with seating for approximately two dozen patrons. No other documented or video evidence exists in the record to interpret the terrace use differently.

The Shade website advertises the terrace to the public, for breakfast, lunch and special events, such as cocktail-parties with 80 patrons. ([E3. Terrace Special Events](#)) This publicity resulted in the 2010 planning commission to determine, at 2010 CUP, Finding U, "Due to the open design, the terrace has minimal soundproofing and constitutes a major noise source..."

Would the 2005 planning commission have approved the terrace as a nightclub venue with live music open to the residential area, had they known that staff would permit the use as such? If you believe the 2005 commissioners would not have approved, then you should agree that according to the record, the intent of the 2005 CUP limited the terrace to breakfast only, with seating for a couple dozen. That would have eliminated the 'major noise source', with which in 2009-2010, the planning commission grappled during six public hearings.

Lobby-Zinc Bar Partition. The missing acoustic barrier between the lobby and Zinc Bar required by Finding O in the 2005 CUP constitutes the most visible and blatant violation of that use permit, which staff swears they now enforce with zero tolerance. The 2005 CUP shielded the lobby and front entry from Zinc Bar noise, by a retractable folding wall. The use permit also limited the terrace to breakfast only, as described in the previous subsection. The combination of these two features would have eliminated much of the noise problem, by reducing both noise outside the hotel and the number of patrons in the Zinc nightclub.

At the 2005 CUP hearing, Mr. Zislis testified they designed the acoustic wall to isolate the lobby from the Zinc Bar, “Because if you do have a wedding, you’re going to have a band playing in the dance floor. And you don’t want it to interfere with your [hotel] guests.” ([E10. 2005CUP-Zislis-ZincWall](#) & [YouTube3-2005CUP-Zislis-ZincWall](#))

During the 2010 CUP hearing in October 2009, Director Thompson stated to the planning commission that the Zinc nightclub just ‘evolved’ without implementing the partition, although the lobby-bar ceiling still has the track for the folding wall. ([E11. Thompson-Partition](#))

Exhibit 12 provides a security-camera photograph taken from behind the reception desk, illustrating that elimination of the Zinc Bar partition incorporated the lobby and front entry area into the nightclub. ([E12. Lobby-ZincBar-Nightclub](#)) To accomplish that, staff ignored the intent of the 2005 CUP to acoustically shield the lobby and front entry from the Zinc Bar. According to Condition 1 in the 2005 CUP, deleting the partition required approval by the Planning Commission, rather than being surreptitiously ‘evolved’ into extinction by staff.

The 2010 CUP deleted the lobby-Zinc Bar partition, which benefits Shade by increasing its nightclub area. By granting that privilege to Shade, along with the other privileges in the table above, staff has patched together a crazy-quilt use permit from the 2005 and 2010 CUPs.

CONCLUSION.

Community Development condones Shade’s use of many privileges in the 2010 CUP. By law, this makes the 2010 CUP effective. Staff claims, however, that they enforce the 2005 CUP with zero tolerance. **RESULT?** The police do not know what to enforce.

The city council should schedule a business item during the next few months and confirm that the 2010 CUP is and has been effective since September 2010.

If the Building Department determines that enclosure of the terrace would violate code, the city must then conduct a public hearing to resolve that issue. In that highly unlikely case, straightforward options do exist to protect the community from disturbances.

Don McPherson

Attachments: Download all at: [2010 CUP Privileges-Exhibits, Videos, Use Permits](#)

Distribution: City Manager, Community Development Director, City Attorney,
MBPD Chief, City Clerk, residents



City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795
Telephone (310) 802-5000 FAX (310) 802-5001 TDD (310) 546-3501

City has no records regarding fire-code issues that prevented implementation of the 2010 CUP

March 4, 2013

Don McPherson
1014 1st Street
Manhattan Beach, California 90266
dmcphersonla@gmail.com

Re: Public Records Act Request – Received February 22, 2013

Dear Mr. McPherson:

The City of Manhattan Beach (“City”) has received your Public Records Act (“Act”) request via e-mail dated February 22, 2013 regarding the Shade Hotel 2010 CUP. In your request, you specifically asked for the following:

1. Any written or electronic communications during 14 through 19 February 2013 between staff and councilmembers regarding the general topic described above, including memoranda to council sent by staff;
2. All written and electronic communications and materials discussed by staff and Shade Hotel representatives regarding safety issues and building code requirements, both state and city, related to implementation of physical noise abatement specified in Resolution 6275;
3. Citations to the municipal code, Local Coastal Program and Resolution 6275 sections invoked by the Community Development Director in the decision that Resolution 6275 had defaulted to Resolution No. PC-05-08; and,
4. Any written or electronic records pertaining to the meeting on 9 November 2011 between City officials and the Police Department regarding default of Resolution 6275 to Resolution No. PC-05-08.

In accordance with Government Code Section 6253, this letter serves as the City’s written response to your request. The City has documents responsive to Items No. 1, 3, and 4 of this request. The City does not have documents responsive to Item No. 2.

As you are aware, the Public Records Act permits a local agency to withhold from disclosure certain exempt records, or portions of such records that are covered by an exemption. Gov. Code §§ 6250 *et seq.* Privileged communications between the City and its legal counsel are exempt from disclosure pursuant to California Government Code Section 6254(k) because those communications are privileged attorney-client communications protected by Section 954 of the California Evidence Code. The City has redacted certain attorney-client privileged information from the responsive documents under this exemption.

The responsive documents will be available for your review on Friday, March 8, 2013. Should you have any questions, please feel free to contact me at (310) 802-5056.

Very truly yours,



Liza Tamura
City Clerk

cc: David N. Carmany, City Manager
Quinn M. Barrow, City Attorney

EXHIBIT 28. STAFF REPORT FOR SHADE BUSINESS ITEM, 3 SEPTEMBER 2013

See Pg 2 for statement that a use permit cannot become effective, until all conditions satisfied

Legislation Calendar Elected Officials Archives

[Sign In](#)



Details Reports

File #: 13-0449 Version: 1

Type: Gen. Bus. - Staff Report

Agenda Ready

In control:

City Council

On agenda: 9/3/2013

Final action:

Title: Status Report Regarding Shade Hotel Use Permit, 1221 N. Valley Drive. DISCUSS AND PROVIDE DIRECTION

Attachments: 1. [Metlox Use Permit-Resolution No. 5770-July 16, 2002](#), 2. [Use Permit Amendment PC Resolution No. 05-08- May 25, 2005](#), 3. [Use Permit Amendment-Resolution No. 6275- September 7, 2010](#), 4. [Letter from Don McPherson-May 28, 2013](#)

History (0) Text

TO:

Honorable Mayor and Members of the City Council

THROUGH:

David N. Carmany, City Manager

FROM:

Richard Thompson, Director of Community Development

Laurie B. Jester, Planning Manager

SUBJECT:Title

Status Report Regarding Shade Hotel Use Permit, 1221 N. Valley Drive.

DISCUSS AND PROVIDE DIRECTION**Line****Recommended Action****RECOMMENDATION:**

Staff recommends that the City Council discuss and provide direction.

Body**FISCAL IMPLICATIONS:**

There are no fiscal impacts associated with this action.

BACKGROUND:

Some residents living near the Shade Hotel have attended City Council meetings this year to express concerns that they have, primarily with noise from the hotel. Staff and the City Prosecutor have met with the neighbors and the Shade owner a number of times to resolve those issues. The City Prosecutor has been taking the lead on working with the Shade owner (Owner) as well as the neighbors. At the August 20, 2013 City Council meeting, the public again spoke about concerns with the Shade Hotel Use Permit. At the August 20th meeting the City Council requested that staff schedule a discussion of the item on September 3rd. The last update Staff provided to the City Council was in March 2013.

EXHIBIT 28. STAFF REPORT FOR SHADE BUSINESS ITEM, 3 SEPTEMBER 2013**DISCUSSION:****DISCUSSION:***Use Permit*

The Shade Hotel is operating under the original Metlox Use Permit, Resolution No. 5770, that was approved by the City Council July 16, 2002 (Attachment A) and the Amendment, PC Resolution No. 05-08, that was approved by the Planning Commission May 25, 2005 (Attachment B). On September 7, 2010 the City Council approved another Amendment to the Use Permit (2010 Amendment, Attachment C), Resolution No. 6275. The Owner did not fully satisfy the conditions of the 2010 Amendment and thus cannot exercise the privileges of the 2010 Amendment. As a result, the Shade is entitled to operate only under the original Use Permit, as amended in 2005. If Shade is unable to satisfy the 2010 Amendment conditions by September 7, 2013 (condition #43), it will lose the opportunity to exercise any rights and privileges conferred by the 2010 Amendment, and will not be able to exercise those rights and privileges without seeking a new amendment.

If the Owner had satisfied the conditions of the 2010 Amendment, the Shade could have extended hours of operation, larger special events, and expanded food service. However, the conditions attached to the 2010 Amendment require specific noise mitigation measures to be installed including an entry vestibule, south Terrace enclosure, and a courtyard-bar corridor wall, as well as valet and entry-exit queue requirements. While working with Building Safety staff on the design of the south Terrace enclosure, Code issues arose and the owner determined that construction of the enclosure would be unrealistic, due to Building Safety and Fire exiting issues and the expense. Conceptual plans for the improvements were reviewed and discussed at meetings with the Shade architect and staff, but no formal drawings were submitted to plan check and the concept plans were not submitted to staff either.

None of the improvements required by the 2010 Amendment have been installed and thus the owner cannot exercise any of the privileges granted by the Use Permit. Staff has discussed this issue with the City Attorney and he has confirmed that under California law, use permits are not operative until such time that all the conditions are satisfied. Thus, the 2010 Amendment is not in effect. Staff informed the neighborhood liaison, Nate Hubbard, in September 2012 that the 2010 Amendment is not in effect and the Shade is allowed to continue to operate under the 2002 and 2005 approvals.


Neighbor and Shade owner meetings

Starting summer 2012 staff met with the Shade owner, Mr. Zislis, and the City Prosecutor regarding neighbor complaints. Mr. Zislis has also met with the City Prosecutor and agreed to install an enclosed front door entryway (vestibule) adjacent to Valley Drive which will mitigate some of the noise impacting the neighbors. This will act as a sound buffer by providing a double door at the front drop off area that is directly in line with the residents to the east. The new vestibule has been submitted to plan check, and the Owner is working on corrections.

In response to neighbor concerns expressed at the February 19, 2013 Council meeting, Police, Community Development, the City Prosecutor and Mr. Zislis met to discuss the issues as a first step in preventing any future noise impacts. It was again confirmed that the Police Department will take appropriate action including citing and prosecuting any future violations. Staff contacted Mr. Hubbard offering to schedule a neighborhood meeting, and a

EXHIBIT 28. STAFF REPORT FOR SHADE BUSINESS ITEM, 3 SEPTEMBER 2013

meeting was held June 10, 2013. In addition, the City Prosecutor has had a number of telephone conversations with the neighbors over the past several months. Staff responded to questions and encouraged the neighbors to contact the Police Department if there are any noise disturbances. Mr. Hubbard has been out of the state and it has been challenging to schedule summer meetings, but the City Prosecutor has another meeting scheduled on September 13th with the neighbors. A letter dated May 28, 2013 (Attachment D) provides a complete summary of the neighbors' concerns.

At the June 2013 meeting, the neighbors also presented a proposal for curtains made from acoustic fabric for the south Terrace to absorb sound instead of a solid enclosure as required by the 2010 Amendment. The Fire Department and Building Safety Division have major concerns with the concept for any enclosure as it could impact required emergency egress for the three hotel rooms with windows facing south, located over the south Terrace. These options have been conceptually discussed with the Shade owner and his architect but there have been no submittal of any plans to the City. Until plans are submitted to the Building Safety Division for formal plan check a final determination on the feasibility of any enclosure or curtains cannot be made. 

Police enforcement

Starting summer 2012 staff met with the Shade owner, Mr. Zislis, and the City Prosecutor regarding neighbor complaints. During that time, the Police responded to four complaints and the last complaint received was in September of 2012. Since September 2012 staff is only aware of one other complaint, in August 2013 the weekend of the 6-man volleyball event, which the Police was not able to substantiate. Officers responding to each of the calls and one resulted in a violation of our noise ordinance. In September 2012, the swing shift Watch Commander met with Shade Hotel management to discuss Police Department protocol and our zero tolerance position regarding verified noise complaints.

Police staff has also been proactive by patrolling the neighborhood occasionally during evening hours, particularly on Thursday through Friday. Staff is committed to working with the neighbors and the Shade Hotel to resolve these issues, and in the meantime the Police will continue to maintain a no tolerance policy responding to any neighbor complaints in a timely manner.

Neighbor questions

The public asked several questions at the August 2013 Council meetings regarding the Use Permit. First they asked if the Community Development Director will extend or renew the 2010 Amendment. Extensions are governed by Section 10.84.090 E of the MBMC. The Community Development Department has not received a request from the Owner for an extension so there is nothing for the Director to review and take action on. The Director does not initiate renewals or extensions.

Second, the public asked why the 2005 Use Permit governs the site and not the 2010 Amendment. The 2010 Amendment was never implemented, in accordance with Section 10.84.090 A. and therefore the 2002 and 2005 Use Permits are still in effect.

And last, the public asked what was the objective of the meeting that the City Prosecutor requested most recently with the neighbors. She relayed to the neighbors that she wanted to meet to listen to, discuss and address their concerns presented at the last Council

EXHIBIT 28. STAFF REPORT FOR SHADE BUSINESS ITEM, 3 SEPTEMBER 2013

meeting and to provide them with an update. Mr. Hubbard has been out of state and not able to attend a meeting so the City Prosecutor has rescheduled for mid-September. One neighbor also indicated that they wanted the meeting objectives to be more defined before they met.

The City Prosecutor has been meeting with the owner of the Shade Hotel as well as the neighbors. Attached as Attachment D is a letter dated May 28, 2013 from Don McPherson asserting that the Shade Hotel is violating the 2005 Use Permit in a number of ways listed on page 2. Upon consultation with the City Prosecutor, it appears that Shade has been providing lunch service, posting outside menus and promoting the lounge and Skydeck as separate venues. The City Prosecutor has had discussions with the Owner to obtain compliance.

CONCLUSION:

Staff will continue to work with the neighbors and the Shade owner to resolve any noise issues, violations or other concerns. The City Prosecutor will continue enforcing compliance with the Code and the Use Permit. Staff recommends that the City Council discuss and provide direction as appropriate.

Attachments:

- A. Metlox Use Permit- Resolution No. 5770-July 16, 2002
- B. Use Permit Amendment- PC Resolution No. 05-08- May 25, 2005
- C. Use Permit Amendment- Resolution No. 6275- September 7, 2010
- D. Letter from Don McPherson- May 28, 2013

Don McPherson testimony for the Shade Hotel
business item, at the 3 Sep 2013 city council meeting

Staff has frequently asserted the 2010 CUP cannot take effect, until all conditions met. We have provided the evidence that proves the effectiveness of the 2010 CUP does not depend on the extension of hours, in exchange for physical noise mitigation.

Last night I realized that staff materially misapplies to the 2005 CUP, their legal theory that the 2010 CUP cannot take effect, until all requirements met. Similarly with the 2010 CUP, the 2005 CUP has a noise-mitigation requirement never implemented. Finding O and Condition 1 in the 2005 CUP require a retractable sound wall between the Zinc Bar and the reception lobby, to shield hotel guests from nightclub noise. The 2010 vestibule does not do that.

How can staff justify that their legal theory applies to the 2010 CUP, but not to the 2005 CUP? They cannot explain this contradiction. This leads to the following logical conclusion. Just as staff claims the 2010 CUP defaulted to the 2005 CUP, then theoretically, the latter must default to the Metlox Master Use Permit approved in 2002. That permit limits Shade to serving beer and wine only, to hotel guests and not to the public.

The sound-wall requirement in the 2005 CUP has a remarkable pedigree. According to the 2005 proceedings, staff dictated the sound-wall requirement, presumably to maintain the operation as a small, boutique B&B. The 2005 Shade application and the staff report echo that the need to shield the lobby from noise, as does the give-and-take exchange between former commissioner Savikas and Mr. Zislis. All entertainment permits from 2006 to 2013 reiterate the requirement for the Zinc sound wall.

Condition 1 of the 2005 CUP requires planning-commission approval for substantial deviation from requirements. At the October 2009 meeting on the 2010 CUP, Director Thompson explained that Shade somehow evolved, without the Zinc-Bar sound wall. Clearly, that does not explain how the 2005 CUP took effect without meeting the sound wall requirement. The wall is not optional, as is Condition 22 in the 2010 CUP.

I have a question.. How does staff justify exempting the 2005 CUP from their legal theory that a CUP cannot take effect until all conditions met? No valid

answer to this question exists. That alone should lead to implementation and enforcement of the 2010 CUP.

September 30, 2013

City Council
City of Manhattan Beach
Via Email

Subject: Omission of Shade CUP Item From Agenda for 1 Oct 2013 Meeting

Mayor Lesser and Councilmembers,

Staff has failed to agendize for the October 1 meeting, a continuation of the Shade CUP business item from September 3. We request the council to schedule this matter for either the October 15 or November 19 regular meetings.

At the Shade CUP item on September 3, the council directed staff to continue the matter to October 1, for a status report on meetings conducted by City Prosecutor Joan Jenkins with residents and Mr. Zislis. Additionally, the council requested a legal analysis from the city attorney regarding staff's decision to not implement and enforce the 2010 CUP.

During the Council Business item on September 17, councilmembers raised the issue that the forecasted agenda for October 1 did not include the subject Shade CUP item. City Manager Carmany did not respond to Mayor Lesser's question on this matter. Councilmembers Burton and Powell further enquired regarding the legal analysis of the CUP status. Responding to Mayor Lesser's query, the city attorney committed to a report on October 1.

The agenda for October 1 does not include the Shade CUP item, neither the report on Ms. Jenkins's meeting, nor the legal analysis by the city attorney.

Perhaps the city attorney, city prosecutor and city manager will present their material during the latter's report. This approach will deny review and comment by the public, as well as preventing any discussion or direction by the city council on the matter.

Staff asserts that a fire-code issue nullified the 2010 CUP.

Staff invalidly claims the 2010 CUP never took effect. They base their unsubstantiated and undocumented decision solely on one argument, namely, that the Fire Department has determined fire-code regulations do not permit enclosure of the terrace. The record unequivocally proves the Fire Department never made such a determination.

Responding to Mayor Lesser's questions on September 3, why the 2010 CUP never took effect, staff did not disclose that they considered only a roll-up garage-door design for the terrace south exit. Such a door is guaranteed to fail muster for emergency egress. They then extrapolated their 'finding' to the absurd conclusion that it impossible to construct a code-compliant design for the south terrace exit. What about the standard manually push open doors?

Staff attributes the determination to the Fire Department that no means exist for a terrace south-exit to comply with fire-code. No such determination by the Fire Department exists. In their report and testimony for the September 3 discussion on the Shade CUP, however, staff misleadingly claimed the MBFD came to that conclusion. Staff cannot provide any documented evidence, only hearsay.

Agenda item required for council to consider terrace fire-code issue.

We demand that the city agendize the Shade CUP matter, for the city council to consider the validity of staff's determination that it is impossible to implement a south-terrace exit complying with fire-code regulations.

If the council decides that the Fire Department made no such determination, then the Community Development Director [CDD] had no basis for deciding the 2010 CUP did not take effect. We challenge the legality that the CDD has the authority to make such a decision, which properly belongs to the planning commission, and thereby, to the city council.

Furthermore, Sections 5 and 6 in the 2010 CUP required it to take effect when approved by the city council. Additionally, the transcript from the 28 July 2010 planning commission hearing proves the commissioners had the intent the 2010 CUP would take effect, when approved by the council.

If the 2010 CUP took effect in September 2010, as the record clearly shows, then the lapse of approval in Condition 43 never occurred. Municipal code MBMC 10.84.090(A)(2) & (3) exclude the use permit from lapse of approval, because Shade Hotel has a certificate of occupancy and an established use, respectively.

Requirements for Shade CUP business item.

The council must get at the truth regarding staff's claim that it impossible to implement a terrace south-exit to comply with fire-code. To do so, councilmembers should question officials from the Fire Department and the Building Division. We have faith in their veracity.

Furthermore, we request that the council questions MBPD officials regarding their ability for measuring sound levels outside the Shade Hotel footprint, in order to use the maximum-permitted decibel levels in the objective noise standards, MBMC 5.48.160, as a means for controlling noise disturbances. We also have faith in the integrity of the MBPD.

We request the council to agendize the Shade CUP item for either the regular meeting on October 15 or November 19. Don McPherson travels out of the country during the November 5 meeting. We rely on the city council to prevent staff from scheduling the Shade matter on November 5, to deny him the opportunity for participation.

Nate Hubbard
1300 N Ardmore Ave

Wayne Partridge
3520 The Strand

Don McPherson
1014 1st St

Joan Stein Jenkins, City Prosecutor (SBN 97242)
CITY OF MANHATTAN BEACH
1400 Highland Avenue
Manhattan Beach, CA 90266
Tel: (310) 802-5061; Fax: (310) 802-5251

Count 1 charges that Zislis violated the use permit and 2011-2012 entertainment permit, but does not cite how. The violations are: 1) Condition 7 in the 2002 Melox Master Use Permit, Reso 5770, which requires compliance with the noise ordinance, MBMC 5.48; and, 2) MBMC Condition 2 in the entertainment permit, ditto compliance with 5.48.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, SOUTHWEST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

MICHAEL ZISLIS AND JOLISE VOUGHT,)

Defendants.)

CASE NO. 35408147

COMPLAINT - MISDEMEANOR

COUNT 1:

The undersigned, upon information and belief, complains and states that on or about **November 14, 2013**, in the City of Manhattan Beach (the "City"), which is located in the above named Judicial District, in the County of Los Angeles, State of California, a misdemeanor was committed by **MICHAEL ZISLIS, OWNER OF SHADE HOTEL**, ("Defendant"), who willfully and unlawfully violated the Manhattan Beach Municipal Code, to wit, **Violation of the Provisions of the Conditional Use Permit, Resolution No. PC 05-08 and existing Entertainment permit**, at 1221 N. Valley Drive, Manhattan Beach, California 90266, in violation of Manhattan Beach Municipal Code section **10.104.040**.

COUNT 2:

Counts 2 and 3 charge Zislis and Vought, respectively, with violating the subjective standards in the noise ordinance, MBMC 5.48.140

The undersigned, upon information and belief, complains and states that on or about **November 14, 2013**, in the City of Manhattan Beach (the "City"), which is located in the above named Judicial District, in the County of Los Angeles, State of California, a misdemeanor was committed by **MICHAEL ZISLIS, OWNER OF SHADE HOTEL**, ("Defendant"), who willfully and unlawfully violated the Manhattan Beach Municipal Code, to wit, **Noise Disturbance**, at 1221 N. Valley Drive, Manhattan Beach, California 90266, in violation of Manhattan Beach Municipal Code section **5.48.140**.

COUNT 3:

The undersigned, upon information and belief, complains and states that on or about **November 14, 2013**, in the City of Manhattan Beach (the "City"), which is located in the above named Judicial District, in the County of Los Angeles, State of California, a misdemeanor was committed by **JOLISE VOUGHT**, ("Defendant"), who willfully and unlawfully violated the Manhattan Beach Municipal Code, to wit, **Noise Disturbance**, at 1221 N. Valley Drive, Manhattan Beach, California 90266, in violation of Manhattan Beach Municipal Code section **5.48.140**.

INVESTIGATING AGENCY: CITY OF MANHATTAN BEACH POLICE DEPARTMENT
This Verified Complaint incorporates by reference citation DR No. 13-3553

MISDEMEANOR COMPLAINT

Complainant by this complaint and declaration prays that a warrant may be issued for the arrest of said Defendant and that Defendant may be dealt with according to the law.

I declare under penalty of perjury, upon information and belief, that the foregoing is true and correct and that this complaint consists of three (3) counts.

Executed on November 27, 2013, in the County of Los Angeles, State of California.



JOAN STEIN JENKINS
CITY PROSECUTOR
CITY OF MANHATTAN BEACH

TO THE ABOVE-NAMED DEFENDANT AND ATTORNEY FOR DEFENDANT: PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA, HEREBY REQUEST DISCOVERY AND DISCLOSURE PURSUANT TO PENAL CODE SECTIONS 1054.3 AND 1054.5 WITHIN 15 DAYS OF THIS REQUEST.

INVESTIGATING AGENCY: CITY OF MANHATTAN BEACH POLICE DEPARTMENT
This Verified Complaint incorporates by reference citation DR No. 13-3553

MISDEMEANOR COMPLAINT

Shade Exhibits-247

10.104.040 - Prosecution of violations.

Unless otherwise provided, any person, firm or corporation violating any provision of this title shall be guilty of a misdemeanor; provided, however, that any violation of this chapter may be charged as an infraction at the discretion of the City Prosecutor. Each day or portion thereof that such violation continues or reoccurs shall be a new and separate violation. For purposes of this title, both the owner of record of a specific property and any tenant in possession shall be liable for compliance with all of the provisions of this title. Nothing in this section shall preclude the City from bringing a civil action to enforce the provisions of this title.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91; § 2, Ord. 1951, eff. July 4, 1996; § 2, Ord. 2052, eff. February 19, 2004)

INVESTIGATING AGENCY: CITY OF MANHATTAN BEACH POLICE DEPARTMENT
This Verified Complaint incorporates by reference citation DR No. 13-3553

MISDEMEANOR COMPLAINT

Shade Exhibits-248

5.48.140 - Noise disturbances.

A.

Notwithstanding any other provisions of this chapter and in addition thereto, it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness. The standard which may be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following:

1. The level of the noise;
2. Whether the nature of the noise is usual or unusual;
3. Whether the origin of the noise is natural or unnatural;
4. The level and intensity of the background noise if any;
5. The proximity of the noise to residential sleeping facilities;
6. The nature and zoning of the area within which the noise emanates;
7. The density of the inhabitation of the area within which the noise emanates;
8. The time of the day and night the noise occurs;
9. The duration of the noise;
10. Whether the noise is recurrent, intermittent or constant;
11. Whether the noise is produced by a commercial or noncommercial entity;
12. Whether the noise occurs on a weekday, weekend, or holiday.

B.

The City may issue a citation against the person, persons, or entity responsible for the noise including, but not limited to, the property owner or business operator on whose premises the noise originates.

(§ 6, Ord. 1957, eff. December 5, 1996)

INVESTIGATING AGENCY: CITY OF MANHATTAN BEACH POLICE DEPARTMENT
This Verified Complaint incorporates by reference citation DR No. 13-3553

MISDEMEANOR COMPLAINT

Shade Exhibits-249

INFORMATION REPORT
Manhattan Beach Police Dept

13-3553

Supplement No
ORIG



420 15TH STREET

Reported Date
 11/14/2013

MANHATTAN BEACH, CA 90266
 Crime/Incident
 5.48.140

Business: (310) 802-5100

Officer
OLIVARES, CARLOS

(310) 802-5140

(310) 802-5107

Administrative Information									
Agency Manhattan Beach Police Dept		Report No 13-3553		Supplement No ORIG		Reported Date 11/14/2013		Reported Time 20:19	CAD Call No 133180839
Status REPORT	Crime/Incident MBMC NOISE DISTURBANCES			Location 1221 N VALLEY DR					
City MANHATTAN BEACH		ZIP Code 90266		Rep Dist M12	Area 2	Beat M3	From Date 11/14/2013		From Time 19:30
Officer 20323/OLIVARES, CARLOS				Assignment PATROL OFFICER		Entered By 20323		Assignment PATROL OFFICER	
NMB Transfer Successful	Prop Trans Stat Successful		Report Title INFORMATION REPORT			Approving Officer 20295			
Approval Date 11/15/2013			Approval Time 19:54:33						

Person Summary							
Inv#	Inv# No	Type	Name	MNI	Race	Sex	DOB
INV	1	B	SHADE HOTEL	2029841			
INV	2	I	VOUGHT, JOLISE	2337970	W	F	07/19/1977
INV	3	I	WIBLE, STEVE	899132	W	M	04/04/1947

Summary Narrative

Loud noise from Shade Hotel

(JOAN JENKINS)

Report Officer 20323/OLIVARES, CARLOS	Printed At 11/18/2013 09:35	Page 1 of 3
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INFORMATION REPORT

Manhattan Beach Police Dept

13-3553

Supplement No
ORIG**INVOLVED PARTY 1: SHADE HOTEL**

Involvement	Invl No	Type	Name	MR#
INVOLVED PARTY	1	Business	SHADE HOTEL	2029841
PRN#	2115578			
Type	Address	City		
WORK/BUSINESS	1221 N VALLEY DR	MANHATTAN BEACH		
State	ZIP Code	Date		
CALIFORNIA	90266	11/14/2013		
Phone Type	Phone No	Date		
BUSINESS	(310) 546-4995	11/14/2013		

INVOLVED PARTY 2: VOUGHT, JOLISE

Involvement	Invl No	Type	Name	MR#
INVOLVED PARTY	2	Individual	VOUGHT, JOLISE	2337970
Race	Sex	DOB	Age	Juvenile?
WHITE LiveScan OK	FEMALE	07/19/1977	36	No
PRN#	2115579			
Type	Address	City		
WORK/BUSINESS	1221 N VALLEY DR	MANHATTAN BEACH		
State	ZIP Code	Date		
CALIFORNIA	90266	11/14/2013		
Phone Type	Phone No	Date		
CELL	(310) 922-0591	11/14/2013		

INVOLVED PARTY 3: WIBLE STEVE

Involvement	Invl No	Type	Name	MR#
INVOLVED PARTY	3	Individual	WIBLE, STEVE	899132
Race	Sex	DOB	Age	Juvenile?
WHITE LiveScan OK	MALE	04/04/1947	66	No
PRN#	2115580			

Narrative**SOURCE:**

On 11/14/13 at approximately 2020 hours, I (Officer C. Olivares #323) was detailed to Shade Hotel (1221 N. Valley Drive), regarding a complaint of loud music and loud yelling coming from the location.

Upon arrival I parked my vehicle on Valley Drive, south of the main entrance. When I exited my vehicle I did not hear any music which seemed to be excessive on the south side of the location. I was able to hear people talking and laughing who were sitting on the Zinc Terrace. Standing on the Zinc Terrace, I was able to hear music and noise from inside of the location. There were several persons gathered in the outdoor courtyard. I could hear several females cheering and yelling loudly while I was inside the location.

Sgt. Sabosky (#295) arrived and informed me that while standing outside in the employee lot of the police department (420 15th Street), he could hear loud screaming and yelling coming from Shade. The distance between Shade and the southernmost portion of the lot is approximately 100 yards. I walked around the perimeter of Shade and stood on 13th Street west of Valley Dr. I could hear several female voices screaming and cheering coming from the courtyard section of Shade. The noise in this area (north side) was loud and more significant than on the south side of the location.

Sgt. Sabosky and I entered the location. I contacted the director of events, Jolise Vought and took her statement. Sgt. Sabosky entered the courtyard and observed people standing and cheering around a modeling catwalk that was located in the courtyard area of the hotel. Sgt. Sabosky advised me he also observed a DJ/MC in the courtyard.

STATEMENTS:

I contacted the director of events, Jolise Vought who provided the following statement in essence:

Vought stated a charity auction was being held at the location for Families Uniting Families Charity Event- South Bay Fashion Show. She stated roughly about 240 people were attending the event. She stated the women were cheering and yelling about the men walking on the stage in the courtyard. She stated she did not believe it would be as loud as it was. She said she had turned down the music prior to our arrival. Jolise informed me that city employees were informed of the event in advance via email. She provided me a copy of the email and event spreadsheet (see attached).

Report Officer	Printed At	Page
20323/OLIVARES, CARLOS	11/18/2013 09:35	2 of 3

**INFORMATION REPORT
Manhattan Beach Police Dept****13-3553**Supplement No
ORIG**Narrative**

I contacted the reporting party, Steve Wibel. Wibel in essence stated the following:

Wibel resides at 1212 Ardmore Ave. He stated there has been an ongoing problem with the loud noise and disruption caused by Shade. On 11/14/13 at approximately 1930 hours, he began hearing loud screaming coming from Shade. He described it as several females screaming and cheering with loud voices. At approximately 2010 hours, he began hearing amplified sound emitting from Shade. Wibel began hearing a female's voice talking over a public address system which lasted until approximately 2025 hours. Wibel stated the noise from Shade often carries over and disturbs him even while he is in his bedroom.

AMMENDED GROUP ENTERTAINMENT PERMIT:

A review of Shade Hotel's Group Entertainment Permit (Conditions of Approval, Community Development, section 6) states: "The volume of the music, entertainment, or amplification, may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants"

ADDITIONAL:

The violation of 5.48.140 MBMC (Noise disturbances) may be applicable for this situation since the noise emitting from Shade Hotel disturbs the quiet and causes discomfort to the neighbor (Wibel).

Jolise Vought

From: katie kruff-richardson <katie@zsisgroup.com>
Sent: Thursday, October 31, 2013 3:13 PM
To: fjester@citymb.info; dabe@citymb.info; Tim Hageman; Ryan Small; natehubz@mac.com; Stephanie Hubbard (stefhubz@gmail.com)
Cc: Jolise Vought; shaunna mckelvey; Lauren Melton
Subject: Shade Events Listing
Attachments: Events Spreadsheet 2013 - Jo-11.xls; ATT00001.htm

Date	Day of the We	Event	Attendance	Time
11.05.13	Tuesday	Yelp Panel Discussion	100	11:30am-1:30pm
11.07.13	Thursday	McLaughlin-Mori Wedding	25	5-10pm
11.12.13	Tuesday	Reception	40	6-9pm
11.14.13	Thursday	Families Uniting Families Charity Event- South Bay Fashion Show	200	6:30pm-9:30pm
11.17.13	Sunday	Holiday Party	50	6-10pm
11.20.13	Wednesday	Manhattan Beach Holiday Open House	ins-outs	5-10pm
11.20.13	Wednesday	Holiday Open House Investor Event	50	6-10pm

Comments

Courtyard
Courtyard ceremony- Skydeck dinner
Celebratory Dinner Reception in the Courtyard
Courtyard and Zinc Lounge
Skydeck
ing guests in and out of the zinc lounge and courtyard for MB holiday open house
Holiday event for shade investors- Skydeck



CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
1400 HIGHLAND AVENUE 310802-8600

Ap. - For your records.

Thanks,
Etc

Address: 1221 N. Valley Dr.

CITY USE ONLY
Date Received M.K.
Received by
A 345 - - Fee
Receipt No.
Trans. Code # 4110
2/25/11

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

Class I Permit: Group entertainment, either incidental with the business being conducted there, or to conduct group entertainment for which admission is charged. Limited to legally operated businesses which are open continuously such as restaurants, hotels, cafeterias, bars, and fast food establishments. Permits shall be valid for a period of one year, or until March 1, and renewable annually on March 1.

The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name Michael Eisler on behalf of Shade Hotel

Applicant Address 1221 N. Valley Dr.

Phone # 310-546-4995 Driver Lic. # V1146027 Birthdate 10/13/05

Applicant(s) Employed By Shade Hotel

Business Address 1221 N. Valley Dr. Phone 310-546-4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity Events; i.e. Weddings, conferences, birthday & holiday parties ect.

Date(s) of Activity Throughout the year Time & Duration per use permit & attached conditions

Describe Type of Music & Amplification

Expected Maximum Attendance 20 Alcohol Served? Yes No

Will Persons Under 21 Years of Age be Present? Yes No

Alcohol Sold? Yes No If Yes, ABC License # 47418408

Activity Supervisor(s) Jolise Vaught Address 1221 N. Valley Dr. Phone # 310-698-5557

02-25-30
A/001-0127923
PAI

* Based on occupancy

LOCATION OF ACTIVITY

Address of Activity: 1221 N Valley Dr.

Type of Business: Hotel

Occupant Capacity of Building: Dancing _____ Dining _____

Gross Floor Area _____ Floor Area For Dancing _____ Dining See Chart

Parking: Number of On-Site Parking Spaces 50 Valet

Nearby Parking Facility Metrox Number of Spaces 460

Other _____

Description of Neighborhood: _____ Commercial _____ Residential
 Mixed Commercial & Residential Uses Nearby
_____ Other _____

APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes _____ No

Have you ever obtained or sought to obtain an Entertainment Permit in the past? Yes No _____ If yes, was the issued Permit ever denied or revoked? Yes _____ No

I, the applicant(s) for this Permit shall be responsible for the monitoring of this activity and agree to conduct the activity subject to the conditions listed below and, further, understand that violation of any condition, State Laws or City Ordinances will result in immediate termination of this Permit, upon due process.

I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE [Signature] DATE 2/25/11

APPROVED BY AUTHORIZED SIGNATURES BELOW. SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement: [Signature] Date: 11-14-11
Planning Division: [Signature] Date: 11/15/11
Director of Community Development: [Signature] Date: 11-16-11

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

Police Department:

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

Fire Department:

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

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

Community Development Department:

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

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

- amplified sound is incorporated. Entertainment that would result in dancing which exceeds the capacity of the 15' by 20' dance floor shall be prohibited. Entertainment and dancing shall conform to the attached floor plan. All doors leading to the outside shall remain closed at all times.
6. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
 7. 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, 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 such as Lot 3.
 8. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
 9. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
 10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
 11. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors and to minimize noise and disturbance.

12. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel 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 close. The doorman or other employes shall ensure that patrons do not leave the premises with alcoholic beverages. (See Use Permit conditions below for hours)
13. A renewal application shall be submitted prior to March 1st.
14. A sign stating "Hotel Guests only after 11:00 pm shall be placed outside the main entry to the hotel off of Valley Drive.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
2. All events are limited to a maximum of 99 people unless prior written approval through a Temporary Use Permit is provided by the Director of Community Development. Event size may not exceed the maximum occupancy as allowed by the Building or Fire Code limits.
3. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.
4. Noise mitigation strategies shall be implemented including; door, wall and ceiling treatments, as required within the Zinc Lounge and Zinc Terrace area in order to mitigate noise. The Zinc Lounge shall demonstrate that the insulation achieves an STC (Sound Transmission Code) rating of 50 to mute the noise.
5. Hours of operation for the hotel public areas shall be as follows:
Lobby Zinc Bar (including outdoor Zinc Terrace to south of Lounge)- 11:00 PM daily
Interior Outdoor Courtyard (to north of Zinc lounge) and Green Room (2nd floor meeting room) when used for special events and functions- 11:00 pm Sunday-Thursday, 12:00 midnight Friday and Saturday (alcohol service to stop half-hour prior).

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

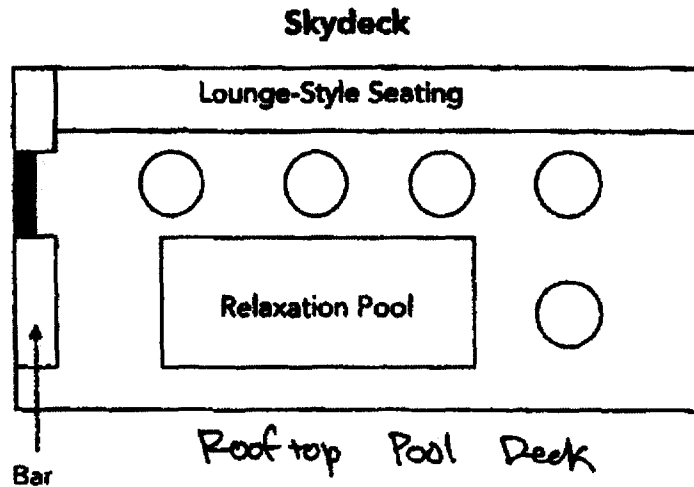
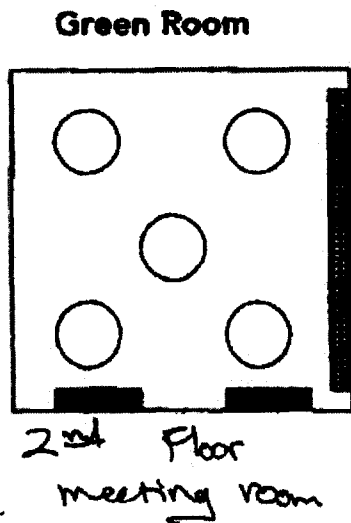
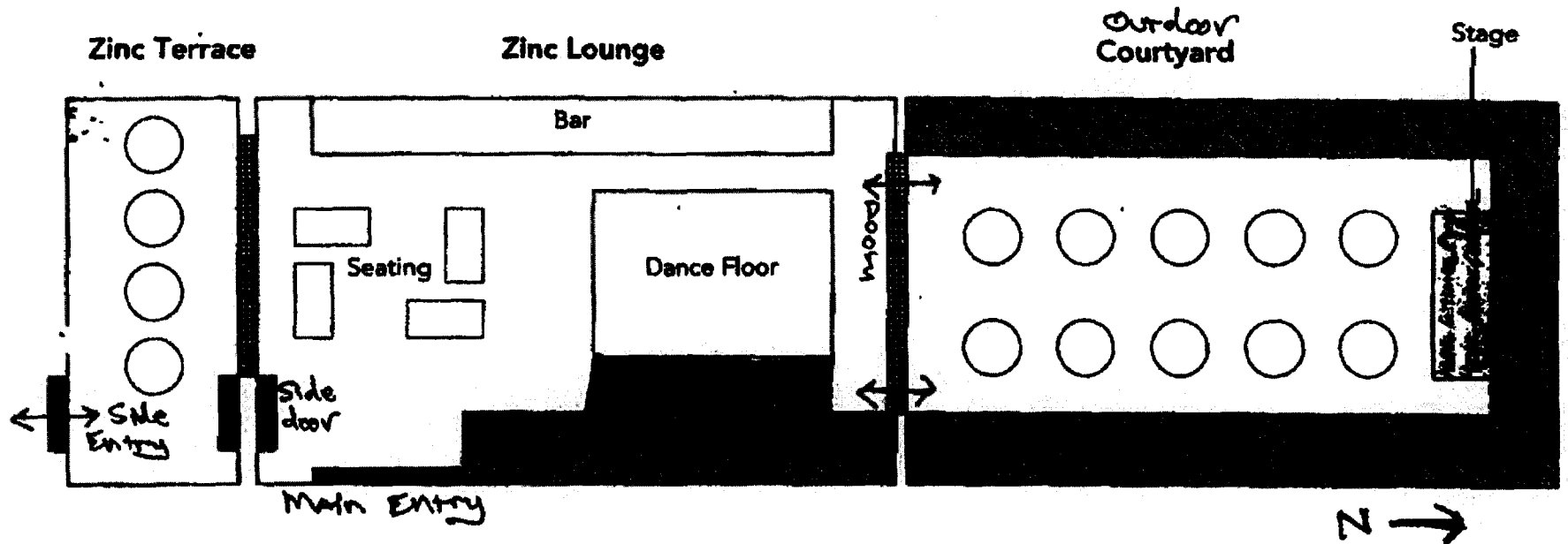
Skydeck (Rooftop Deck)- 10:00 pm daily (Alcohol service to stop at 9:00 P.M.)

6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.
7. The availability of the Inn for special events shall not be marketed as the primary use.
8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees 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 operators shall police and promptly clean up all areas with any litter

Event Space Layout



LEGEND

- = 12 foot rounds
- = Doorways
- ▨ = Walkways
- ▩ = Sliding Glass Doors

This is not to scale

RECEIVED
MAY 09 2006
By _____

Don McPherson testimony during Public
Comment, at the 3 Dec 2013 council meeting

As per Wayne's testimony, the council can take control of the Shade Hotel use permit, by using a procedural tactic in the code, at 10.104.030, *Duties of the Community Development Director, the planning commission and the city council*. This statute empowers the council to determine whether grounds exist for a possible finding that Shade might violate conditions in the 2005 use permit.

If evidence of possible violations does exist, then you can schedule a public hearing for the planning commission to revoke or revise the 2005 CUP. To take that action, however, the commissioners must first make the actual finding that Shade does violate terms and conditions in the 2005 CUP.

You have a far lower standard to meet. Since last February, we have submitted copious evidence of use permit violations. Do those facts constitute grounds that Shade might violate its use permit? If so, 10.104.030(A) authorizes you to set a planning commission hearing, so they can make the actual finding of use permit violations. Let the commissioners do the heavy lifting for you.

We request that you consider whether these grounds exist, in a business item at the January 7 meeting. To make the agenda item brief, we will primarily address only the two major use permit violations that cause most of the adverse impacts on residents. First, Shade failed to install the STC-50 sound wall required by the 2005 CUP, to isolate the hotel and the terrace from Zinc nightclub noise. Secondly, Shade operates the terrace to 11 PM, rather than the closing hours of 10 AM weekdays and 11 AM weekends specified in the 2005 CUP.

Bear in mind, your deliberations on whether grounds exist for possible 2005 CUP violations will not involve the current Shade application, the 2010 CUP, noise mitigation measures, nor even the adverse impacts on residents.

At the January 7 meeting, we will simply provide you with facts from the 2005 CUP hearing and the documented evidence that Shade currently violates terms and conditions in that use permit. If you conclude the evidence constitutes grounds for potential determination of possible violations, then pursuant to code, you can remand the matter to the planning commission, where it belongs.

Don McPherson testimony during Public
Comment, at the 10 Dec 2013 council meeting

During the one year of hearings on the 2010 CUP, we did not know the existence of MBMC 10.104.030, which authorizes the city to revise the use permit, based on violations of the 2005 CUP. If the planning commission had formulated the 2010 CUP in compliance with 10.104.030, would the outcome be different? Would Shade operate now under the 2010 CUP, rather than the 2005 CUP? Nobody can answer those questions.

To ensure a different outcome than what befell the 2010 CUP, the city council should take an action to conduct the forthcoming public hearing under the auspices of 10.104.030. This approach corresponds to Mr. Barrow's 3rd rail.

I did some research on the 2010 CUP proceedings, to determine what the commissioners thought they could do. In the October 2009 hearing, both Commissioner Seville-Jones and commissioner-at-the-time Mayor Lesser expressed opinions regarding their authority. They both stated that in considering Mr. Zislis's application, they could only impose conditions as a quid-pro-quo exchange, for granting new privileges to Shade.

The most important noise-mitigation conditions in the 2010 CUP constitute 1) Enclosure of the terrace at night; 2) A requirement that after 9 PM, Zinc nightclub patrons exit at the west door into Metlox Plaza; and 3) A definition for closed of all glasses, bottles, cans and drinks picked-up, which the MBPD can enforce. Currently, the Zinc nightclub operates an hour or more after the 11 PM close, as they have for eight years, seven days a week.

Mr. Zislis's new application fails to enclose the terrace. It addresses neither an enforceable closing time, nor bar patrons exiting to the west.

If the city conducts the new public hearing under the same rules as the 2010 CUP, what authority will you have to impose conditions that Mr. Zislis opposes? We can answer that question. None. In negotiations, the city will hold the short-end of the stick.

For the revised CUP to succeed, please change the paradigm. Take control and conduct the forthcoming Shade hearing under auspices of 10.104.030, to correct the violations of the 2005 CUP. That will solve the noise problems.



Bookmarks, second icon down

**SHADE HOTEL USE PERMIT
CHRONOLOGY
MEETING MINUTES
29 JANUARY 2014**

THE MINUTES MISREPRESENT TESTIMONY REGARDING THE TERRACE AND THE ZINC-LOBBY SOUND WALL. COMPARE PAGES 2-4 BELOW WITH THE VIDEO TRANSCRIPT IN EXHIBIT 4.

**CITY OF MANHATTAN BEACH
MINUTES OF THE REGULAR MEETING OF THE PLANNING COMMISSION
MAY 25, 2005**

1 A regular meeting of the Planning Commission of the City of Manhattan Beach was held on
2 Wednesday, May 25, 2005, at 6:40 p.m. in the City Council Chambers, City Hall, 1400 Highland
3 Avenue.

4
5 **ROLL CALL**

6
7 Chairman O'Connor called the meeting to order.

8
9 Members Present: Kuch, Savikas, Simon, Chairman O'Connor
10 Members Absent: None
11 Staff: Richard Thompson, Director of Community Development
12 Laurie Jester, Senior Planner
13 Sarah Boesch, Recording Secretary
14

15 ~~**APPROVAL OF MINUTES** April 27, 2005~~

16
17 ~~A motion was MADE and SECONDED (Simon/Savikas) to APPROVE the minutes of April 27,~~
18 ~~2005.~~

19
20 ~~AYES: Kuch, Savikas, Simon, Chairman O'Connor~~
21 ~~NOES: None~~
22 ~~ABSENT: None~~
23 ~~ABSTAIN: None~~
24

25 ~~**AUDIENCE PARTICIPATION**~~

26
27 ~~Hanon Sinay, a resident of the 2800 block of Laurel Avenue, submitted a letter to the~~
28 ~~Commissioners regarding lot mergers that he has previously presented to the City Council at~~
29 ~~their meeting of May 17, 2005. He thanked the Commissioners for their hard work regarding the~~
30 ~~issue.~~

31
32 ~~In response to a question from Chairman O'Connor, Director Thompson said that the Planning~~
33 ~~Commission may be addressing the issue of lot mergers again in the future. He stated that the~~
34 ~~issue will be presented at the City Council Work Plan meeting currently being scheduled for next~~
35 ~~month in order for the Council to provide further direction.~~

36
37 ~~**BUSINESS ITEMS**~~

38
39 ~~**PUBLIC HEARINGS**~~

40
41 **05/052505.1 Consideration of a MASTER USE PERMIT AMENDMENT for**
42 **Modifications to Previously Approved Alcohol Sales and Special Events at**

THE MINUTES MISREPRESENT TESTIMONY REGARDING THE TERRACE AND THE ZINC-LOBBY SOUND WALL. COMPARE PAGES 2-3 BELOW WITH VIDEO TESTIMONY IN EXHIBIT 4.

ABC Type 70 hotel license permits room mini-bars and full-alcohol service to guests and their guests, in compliance with original Metlox Master Use Permit, Reso 5770.

PLANNING COMMISSION MINUTES

May 25, 2005

Page 2

the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operation Company LLC)

Senior Planner Jester summarized the staff report. She stated that the current entitlement permits beer and wine service throughout the hotel and full liquor service in mini-bars within the hotel rooms. She stated that the Department of Alcoholic Beverage Control (ABC) allows full liquor in mini-bars only if full alcohol service is permitted to the public throughout the site in conjunction with food service. She indicated that the proposal is to modify the previously approved Master Use Permit to allow full liquor service throughout the hotel in conjunction with food service, as well as permitting full alcohol service for special events. She commented that the second proposal is to change the permitted capacity for special events from 60 as previously approved to 99 without the need for obtaining a Temporary Use Permit. She commented that special events would occur within the interior courtyard of the hotel surrounded by the structure, and the building occupancy of the area is over 200 people. She said that the goals of the proposed amendments are to improve the hotel services; provide a better, more attractive facility; to provide services similar to other hotels in the surrounding area; and to comply with ABC regulations. She indicated that notice was provided to all properties within a 500 foot radius; posted on the City's web site, and advertised in the Daily Breeze. She commented that the Police Department verbally indicated that they were supportive of the application and that their concerns have been addressed with the conditions. She stated that the Chamber of Commerce and Downtown Business and Professional Association have submitted letters in support of the proposed amendment. She indicated that staff did not receive any public comments.

Senior Planner Jester indicated that staff is proposing specific conditions that alcohol be served with food; that advertising for the wine bar be limited to attracting hotel guests; that the wine bar have limited food service and only be open during evening hours; that menu signs not be placed outside the hotel; that no alcohol service occur after 9:00 p.m. on the outdoor deck; that alcohol service stop 30 minutes before the end of special events; and that the public food and alcohol service be limited to breakfast, evening appetizers, and special events. She stated that the layout of the lobby and roof deck would be subject to the Director's approval; special events would be limited to 99 people without the need for a Temporary Use Permit; and the entertainment permit would require annual review and approval by the Director. She commented that currently entertainment is limited to two acoustic performers, and any request above that requires a permit that is circulated to the Police and Fire Departments and subject to conditions on hours, types of instrument, number of musicians, hours, and location. She stated that staff is recommending approval of the proposed amendment.

In response to a comment from Commissioner Savikas, Senior Planner Jester indicated that it is a requirement of the ABC that alcohol be served with food, and it is included as a condition.

Commissioner Savikas suggested that the fourth sentence of Condition 3 on page 5 of the

PLANNING COMMISSION MINUTES

May 25, 2005

Page 3

1 proposed Resolution be revised to state that service of alcohol at the hotel shall only be in
2 conjunction with food.

3
4 Senior Planner Jester commented that her understanding of the ABC regulation is that food must
5 be offered but not necessarily that it must be served with alcohol.

6
7 In response to a question from Commissioner Savikas, Senior Planner Jester stated that the
8 emphasis of the wine bar would be serving wine, but full alcohol service would also be available.

9
10 In response to a question from Commissioner Savikas, Senior Planner Jester said that
11 Entertainment Permits require approval by the Community Development Director and typically
12 can have restrictions including conditions on hours, size of the performance area, location, type
13 of instruments, number of musicians, type of amplification, number of times per week, and
14 soundproofing.

15
16 In response to a comment from Chairman O'Connor, Senior Planner Jester indicated that there
17 are no changes to the original conditions regarding entertainment permits with the proposed new
18 amendments.

19
20 In response to a comment from Chairman O'Connor, Senior Planner Jester indicated that the
21 amendment would apply to the hotel use only, and there is a condition prohibiting any
22 consumption of alcohol from the hotel within the remainder of the Metlox development.

23
24 Chairman O'Connor opened the public hearing

The minutes omit the exchange between
Commissioner Simon and Ms. Jester, in which she
testified no food or alcohol service on the terrace

25
26 **Michael Zislis**, the applicant, indicated that the purpose of the request is to change the alcohol
27 use to comply with State ABC regulations and to increase the threshold for City notification of
28 event capacity from 60 to 99 people. He pointed out that they are not proposing to change the
29 event space capacity which is regulated by the Fire Department but rather to change the capacity
30 by which the City must be notified for issuance of a Temporary Use Permit. He said that there is
31 no license granted by the ABC to allow full alcohol service only for mini-bars. He commented
32 that a type 47 license requires that food service be provided along with alcohol service. He
33 indicated that they are proposing food service with banquets, breakfast, room service, and
34 appetizers in the lounge area. He stated that notice was provided to properties within a 500 foot
35 radius of the site, and there was a notice posted on Valley Drive. He said that no protests have
36 been received at the Department of Alcoholic Beverage Control. He indicated that the City has
37 control over the use with approval of the Entertainment Permit. He commented that the lobby is
38 directly under the hotel rooms, and it would be essential for their business to mitigate any noise
39 impacts resulting from the wine bar. He indicated that alcohol service would be limited to 10:00
40 p.m. He said that the current Use Permit process allows events from 60 to 200 with a temporary
41 use permit. He indicated that requiring a Temporary Use Permit for any event with over 60

The minutes also omit the exchange between Commissioner Savikas and Mr. Zislis, regarding the purpose of the sound wall between the Zinc Lounge and the lobby, namely, to acoustically isolate the hotel reception area from the Zinc nightclub. See Exhibit 4.

PLANNING COMMISSION MINUTES

May 25, 2005

Page 4

Incorrect. Per the video, Commissioner Simon asked Mr. Zislis for hours of food service, who replied breakfast only. See Exhibit 4.

1 people is very restrictive and impractical, and they are requesting to be permitted to have events
2 up to 99 people without the need for a special permit.

3
4 In response to a question from Commissioner Simon, Mr. Zislis indicated that the hours for
5 breakfast service on the terrace would be 7:00 a.m. to 10:00 a.m. Monday through Friday and
6 8:00 a.m. to 11:00 a.m. on Saturday and Sunday.

7
8 **Carol Rowe**, representing the Downtown Business and Professional Association, said that they
9 are in support of the application and are looking forward to the opening of the hotel. She
10 indicated that they are frequently asked where to stay and what facilities that are available for
11 weddings within the City. She commented that the applicants want to be a full service facility
12 for their guests and for events, and limiting them would make it more difficult for their business
13 to be successful. She stated that the applicants are good members of the business community
14 and are active in their association. She said that the hotel will bring guests to the downtown area
15 in a pedestrian friendly environment.

16
17 **Viet Ngo**, stated that he believes Chairman O'Connor has no jurisdiction to vote on the issue
18 because the City Council has appointed two new Commissioners, and any decision made tonight
19 will be nullified under Government Code Section 655009.

20
21 Chairman O'Connor pointed out that the new Commissioners are not seated on the Commission
22 until after June 1, 2005.

23
24 **Mr. Ngo** stated that a formal complaint has been filed with the United States Department of
25 Justice regarding the ongoing joint activity with the City Council, Metlox LLC and Jonathan
26 Tolkin and the matter has been referred to the FBI. He stated that the Commissioners are all
27 listed in his complaint, along with Director Thompson and Senior Planner Jester. He said that he
28 believes Jonathan Tolkin and Metlox LLC is a racketeering enterprise. He stated that the use of
29 the public property for the private Metlox development project is circumventing the public
30 contract code in violation of Title 18 of the U.S. Code Section 666. He stated that the City has
31 received more than \$10,000.00 in Federal Community Development Block Grant funds.. He
32 indicated that the use of public property for private use is a Federal offense and extortion, as
33 indicated by the United States v. Bynum, United States v. Mirikitani and the United States v.
34 Cabrera. He stated that the Commission should not approve the permit illegally, and the U.S.
35 attorney of Indiana made a conviction of the city controller for the use of public money for
36 private use.

37
38 **Jay Letterman**, a resident of the 3600 block of The Strand, said that he would like to have his
39 daughter's wedding at the Shade Hotel. He said that they would like for the license to be
40 approved to allow them to have full service with dining, dancing and alcohol service. He
41 indicated that it is difficult to plan an event with such strict limitations as currently exist without

PLANNING COMMISSION MINUTES

May 25, 2005

Page 5

1 approval of the proposed amendments, and they are hoping that the proposal will be approved.

2
3 **Ron Miranda**, a resident of the 700 block of Manhattan Beach Boulevard, indicated that the
4 applicant runs his existing business very professionally. He commented that most hotels have
5 full alcohol service, and it is necessary for being successful. He said that he would support the
6 proposed amendment, and the downtown business owners are looking forward to the hotel
7 coming into the area.

8
9 **Bill Victor**, said that his residence is within 500 feet of the subject site, and he was not mailed
10 notice of the hearing. He stated that the Commissioners should consider the process by which
11 the hotel was approved before they make a decision regarding the proposed amendments. He
12 pointed out that the approval of a maximum of 60 people for special events without requiring a
13 Temporary Use Permit was reached after a great deal of consideration. He stated that members
14 of the community do not come to meetings because they feel it has become futile to express their
15 opinions. He commented that the traffic has not decreased in the City since the proposal was
16 originally improved. He said that the bias of the Chamber of Commerce should be noted and
17 questioned as to representing the interests of the community. He commented that the indication
18 of the need for special events and hotel services in the City has been exaggerated regarding the
19 subject establishment. He said that the hotel should succeed within the limitations that were
20 originally approved and not be granted greater entitlements that would allow it to impact the
21 peace and tranquility of the residents further. He commented that there would be more guests for
22 special events than who stay at the hotel, and there has not been planning for the parking. He
23 also commented that he believes that there currently are enough liquor licenses in the downtown
24 area, and liquor service in the hotel is not a community need. He commented that the hotel
25 should operate in the capacity currently permitted before their use is expanded. He stated that he
26 objects to granting the proposed amendment.

27
28 Chairman O'Connor closed the public hearing.

29
30 In response to a question from Commissioner Savikas, Director Thompson commented that two
31 restaurants have applied for full liquor licenses within the Metlox development that were
32 approved under the Master Use Permit for the development. He indicated that the hotel was
33 always intended to have some type of liquor service.

34
35 Commissioner Simon indicated that he viewed the property. He indicated that he was originally
36 concerned with alcohol service for the establishment. He commented that he now has a better
37 understanding of the areas where alcohol would be served after touring the property. He
38 indicated that his concern is the neighbors; however, he is impressed that there has been no
39 protest regarding the application. He said that he does not believe that residents have given up
40 on the system but rather that they do not have large concerns with the operation of the hotel. He
41 pointed out that there was a great deal of public participation in the discussion regarding lot

PLANNING COMMISSION MINUTES

May 25, 2005

Page 6

1 mergers at a recent meeting, and the Commission did respond to their concerns. He said that he
2 suspects that there are not great concerns within the community because they feel the
3 establishment would not have a direct effect on them. He commented that he does not have a
4 concern with parking to accommodate the proposed increased usage because of the new parking
5 structure. He said that he was impressed that the Police Department expressed support for the
6 application. He indicated that allowing full alcohol service only in mini-bars to see any impacts
7 that result is not an option because it is prohibited by the ABC, and the only options are to either
8 expand or deny the original entitlement. He said that the usage would be restricted to the usage
9 within the hotel, and he is not concerned with it becoming a bar type of use. He said that
10 because there is a permitted capacity for events of 200 people, he does not feel allowing 99
11 people for special events without a Temporary Use Permit is a significant change. He stated that
12 he would support the proposal.

13
14 Commissioner Kuch said that he is pleased that a local and proven business owner has taken
15 over the operation of the hotel. He commented that the occupancy of the hotel is quite
16 conservative. He said that the request to allow 99 people for events is reasonable, and he would
17 not object to the request for full service of alcohol.

18
19 Commissioner Savikas stated that she feels the parking structure should be able to accommodate
20 99 people for special events that is being proposed. She said that she has a concern with noise
21 from a party on the deck patio area around the Jacuzzi spilling over to adjacent residences. She
22 said that if she were to approve the proposal, she would like for conditions to be placed on the
23 upper deck.

24
25 Director Thompson said that the original entitlement allowed for wine to be served on the top
26 deck, and staff determined that 9:00 p.m. was an appropriate time to limit such service. He said
27 that the change with the current proposal for the top deck would be to allow the service of full
28 liquor in addition to wine. He pointed out that no entertainment would be permitted on the deck
29 area. He indicated that problems related to alcohol service typically occur after 10:00 p.m.

30
31 Senior Planner Jester said that there is a condition that the deck be closed at 10:00 p.m.

32
33 Chairman O'Connor indicated that his original concerns were largely addressed by the original
34 staff report, and the concerns he had about the subject proposal have also been adequately
35 addressed. He pointed out that the area under consideration is only the courtyard within the
36 hotel quarters, and the Metlox plaza is not included. He said that the addition of a further level
37 of underground parking beyond the requirements of the hotel and commercial uses provides
38 additional parking. He also commented that the underground lot is the closest and most
39 available parking for users of the hotel. He pointed out that the new Commissioners are seated at
40 the first meeting in June, and the current Commission is operating under its full authority in
41 considering the issue. He pointed out that **Ms. Rowe** represents the Downtown Business and

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1 Professional Association and not the Chamber of Commerce as indicated by **Mr. Victor**. He
2 commented that both the Downtown Business and Professional Association and the Chamber of
3 Commerce have submitted letters in support of the proposal. He stated that the original
4 conditions imposed on the project were meant to protect the community and were reached after
5 much public participation. He said that the current proposal is for modifications that he finds to
6 be reasonable. He commented that it is a unique situation because limited service of full alcohol
7 only for mini-bars is not permitted by the ABC, and a decision needs to be made whether to
8 allow full alcohol service for the establishment. He said that he does not share the concern of
9 Commissioner Savikas with the rooftop deck because of the specific limitation on hours. He
10 said that he is confident that any issues would be addressed by the accountability of the hotel
11 owner and by the review of the Community Development Director. He said that he is
12 comfortable with the proposal and is in support.

13
14 Commissioner Savikas said that her concerns have been addressed by staff.

15
16 Senior Planner Jester clarified that the porch or terrace would be included with the other areas
17 where alcohol consumption would be allowed on page 2, item I of the proposed Resolution. She
18 stated that item K would be modified to indicate that 99 people would be permitted for special
19 events without a Temporary Use Permit. She said that item L would be modified to include that
20 breakfast service would occur in the living room, courtyard and/or the porch from 6:00 a.m. to
21 10:00 a.m. Monday through Friday and 6:00 a.m. to 11:00 a.m. Saturday and Sunday. She
22 stated that condition 5 on page 5 would also be changed to indicate that breakfast may be served
23 daily in the living room, courtyard, and/or porch.

24
25 A motion was MADE and SECONDED (Kuch/Savikas) to **APPROVE** a Master Use Permit
26 Amendment for Modifications to the previously approved alcohol sales and special events at the
27 Shade Hotel, Metlox Site, 1221 North Valley Drive with the clarifications as indicated by staff.

28
29 AYES: Kuch, Savikas, Simon, Chairman O'Connor

30 NOES: None

31 ABSENT: None

32 ABSTAIN: None

33
34 Director Thompson explained the 15 day appeal period and stated that the item will be placed on
35 the City Council's Consent Calendar for their meeting on June 21, 2005.

36
37 ~~**DIRECTOR'S ITEMS**~~ None

38
39 ~~**PLANNING COMMISSION ITEMS**~~

40
41 ~~**A. Commendation Presentation to Commissioners Kuch and O'Connor**~~

• ~~Gerry O'Connor, No Address Provided~~

~~In response to Mr. O'Connor's comments, Mayor Fahey stated that Council learned at a conference, that it is fairly common in other cities to develop a set of "norms" or guidelines for new Councilmembers that come on board, to see what the past practices have been, including commission appointments and other issues; and that this may be a discussion at the Work Plan Meeting.~~

~~Indicating that a sub-committee had been formed with Mayor Fahey and Councilmember Aldinger, City Manager Geoff Dolan stated that his assignment was to write down existing "norms", look at other cities guidelines and provide them as a starting point for the sub-committee by the end of the summer.~~

~~Council held a brief discussion about whether or not the sub-committee had been formed.~~

~~In response to Mayor Fahey, City Attorney Robert Wadden clarified that the forming of a sub-committee does not have to be agendaized because it is an organizational matter.~~

~~**MOTION:** Councilmember Tell moved to approve forming a sub-committee with Mayor Fahey and Councilmember Aldinger to review implementing a set of "norms". The motion was seconded by Councilmember Montgomery and passed by the following unanimous roll call vote:~~

~~Ayes: Tell, Aldinger, Montgomery, Ward and Mayor Fahey.~~

~~Noes: None.~~

~~Absent: None.~~

~~Abstain: None. Councilmembers asked questions about changes. Staff failed to disclose the major change, that the 2005 permitted alcohol sales to the public.~~

~~05/0621.15 Consideration of a Planning Commission Decision to Approve a Master Use Permit Amendment for Modifications to the Previously Approved Alcohol Sales and Special Events at the Shade Hotel, Metlox Site, 1221 North Valley Drive~~

Councilmember Aldinger stated that he pulled this item because of his concern regarding parking, noting that events could be increased from 60 to 99 people; and a smaller concern about the "portable cart" causing a more robust party, due to full service liquor, rather than the original plan for wine and beer only.

Mayor Pro Tem Ward echoed some of Councilmember Aldinger's comments, explaining that the number of people was somewhat of a concern, but that the "flexibility of hours" for the Wine Bar in the lobby needed some clarification for him. He further added that it was his impression that it is an "unwritten rule" that an entity "try out" for a period of several years before it would be given a full service liquor license.

Councilmember Aldinger added that he thought a full liquor license was necessary to be able to provide in-room liquor, but questioned having the "portable carts" and how can they be regulated.

City Attorney Robert Wadden clarified that Council can either approve the Planning Commission decision or appeal this matter and schedule a Public Hearing where modifications would have to be introduced.

In response to Councilmember Montgomery's question, Councilmember Aldinger replied that portable carts are the same as a portable bar.

Community Development Director Richard Thompson explained that nothing in the amendment changes the size of events; it only changes when Temporary Use Permits, which are approved administratively, are required for events, and that it will not have an impact on the parking. He added that the other control measure that the City has is the Annual Entertainment Permit and that evaluations of what have transpired in the past allow for restrictions to be placed on an event-by-event basis. He further explained that, in terms of hours of operation, the permit is even more restrictive than the rest of the downtown.

Mayor Fahey emphasized that the flexibility of hours for the Wine Bar would possibly be for an afternoon wedding and the ability to serve liquor for the event.

Responding to Councilmember Aldinger's questions about the original approval, Community Development Director Thompson stated that the original approval was for beer and wine in the hotel and liquor in the mini bars in the rooms.

Councilmember Montgomery and Councilmember Tell added that the flexibility being requested in the Wine Bar was for earlier hours based on the desires of the customers.

Senior Planner Laurie Jester explained that the original approval was for beer and wine, for guests only, with no restrictions on hours. She clarified that the concept of the "evening only Wine Bar" in the lobby is that it would be for the general public; that flexibility would come in if there was a demand from the guests to open the bar at 4:00 p.m. rather than 5:00 p.m.; and that weddings and events would be serviced by the portable bars. She further clarified that the original services approved were not matched to the Alcoholic Beverage Control (ABC) licenses that are available.

In response to Councils' questions, **Mike Zislis**, owner of the Shade Hotel, emphasized that a full liquor license was necessary in order to have mini bars in the rooms; that he was successful in winning a license in the state lottery; that the liquor carts have to be licensed by the ABC; and that there is an extra fee for the cart. He explained that the cart is only for events in the courtyard or meeting rooms; that in fourteen years of business in Manhattan Beach, he has never had a "happy hour"; that the wine bar will only be open from 5:00 -10:00 p.m. on weekdays and 5:00 - 11:00 p.m. on weekends (hours set by him); that a liquor license is necessary as a normal function of a hotel; that it is necessary to book events such as weddings or class reunions; and that in conclusion, in fourteen years of business, he has never violated an ABC law and has proven that he is a responsible business owner.

Councilmember Tell asked for clarification regarding if full liquor service is available at the wine bar, not just on the portable liquor carts to which **Mr. Zislis** responded that liquor is available at the wine bar.

Council held a brief discussion on the "flexibility of hours" for the Wine Bar and concurred that it reflected the ability to have liquor earlier in the day than 5:00 p.m.

The following individuals spoke on this item:

- **Gerry O'Connor, No Address Provided**
- **Esther Besbris, No Address Provided**
- **Viet Ngo, No Address Provided**
- **Karol Wahlberg, No Address Provided**
- **Jackie May, No Address Provided**

Responding to Councilmember Aldinger's question, Community Development Director Thompson stated that there is a roof top spa and that a third story was denied by the Coastal Commission.

City Manager Dolan also replied that the spa is shielded from the residents to the east.

Mayor Fahey emphasized that nothing has changed about this project and the roof deck.

Councilmember Aldinger reiterated that the real reason for pulling this item was the parking and the increase from 60 to 99 participants at events.

Community Development Director Thompson responded that he couldn't imagine having a parking problem for an event with 99 participants and that these were the numbers (the maximum number of people using the hotel) that were used for the Environmental Impact Report. He added that the number "60" came from the group originally planning to become the owners; that raising the number only changes the threshold for needing a Temporary Use Permit; that the City would be looking at two evaluations (the Entertainment Permit and Temporary Use Permits), and that this would allow Staff to prevent negative impacts to the City including parking and noise.

Councilmember Tell voiced his concerns regarding the change from wine and beer to a full liquor license.

Community Development Director Thompson reported that reviews are generally complaint driven; that from a regulatory point of view, he feels confident that they have the measures necessary to prevent a negative impact; and that regulating and monitoring the Entertainment Permit is an important element to prevent impacts.

Councilmember Aldinger emphasized that he felt confident, previously, because the license was only beer and wine.

Mayor Fahey stressed that people should be able to have a drink at a nice hotel and that she doesn't see a problem with it.

City Manager Dolan confirmed that the previous request was for beer and wine and that it was not a case of asking for full service liquor and being turned down.

In response to Councilmember Tell, City Attorney Wadden confirmed that another Public Hearing would notice the same people and that the only difference is that it would be held by the City Council rather than the Planning Commission.

Council held a brief discussion concurring that the only change in the events is that the maximum number of people attending an event, without a Temporary Use Permit, would be 99.

Mayor Fahey asked if there was a motion to set this item for appeal and a Public Hearing. Hearing none, she asked for a motion to receive and file the report.

MOTION: Mayor Pro Tem Ward moved to receive and file the subject report. The motion was seconded by Councilmember Tell and passed by the following unanimous roll call vote:

Ayes: Tell, Aldinger, Montgomery, Ward and Mayor Fahey.
Noes: None.
Absent: None.
Abstain: None.

~~appellants the privacy that they are seeking, and the structure is smaller than would be permitted with new construction. He pointed out that a new structure built on the subject property would be required to have a 12 foot rear setback, but it is more likely that the windows on the rear of such a structure would be larger and would have a greater view onto the neighbors' property.~~

~~Commissioner Lesser commented that he feels there was a rational basis for the Director's decision and a thorough examination of the elements of the Code that are applied for allowing minor exceptions.~~

~~Commissioner Fasola commented that he feels the applicants are taking advantage of being able to save their front yard at the expense of their neighbors, which he does not feel is fair.~~

~~A motion was MADE and SECONDED (Lesser/Andreani) to **APPROVE** the draft Resolution **DENYING** an Appeal of an administrative decision to approve a Minor Exception for 612 11th Street~~

~~**Action**~~

~~AYES: Andreani, Lesser, Paralusz, Chairperson Seville Jones
 NOES: Fasola
 ABSENT: None.
 ABSTAIN: None.~~

~~Director Thompson explained the 15 day appeal period and stated that the item will be placed on the City Council's Consent Calendar on July 21, 2009.~~

E. PUBIC HEARINGS

06/24/09-3 Consideration of a Master Use Permit Amendment for Modifications to the Existing Approvals for Hours of Operation, Size of Special Events, Dancing, Food Service, and Installation of a Glass Wall Between the Lobby Bar and Hotel rooms at the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operation Company, LLC)

Commissioner Fasola commented that he was contacted by the applicant regarding work on a separate project. He stated that he does not plan to do business with the applicant, and he does not feel there is a conflict of an interest with him considering the subject proposal.

Planning Manager Jester indicated that the Commissioners have been presented with some additional information including sketches of a new entry for the hotel as proposed by the applicant; four letters from neighbors in opposition to the proposal with concerns regarding noise and activity on the site; and City Council and Commission minutes for the last revision to the Master Use Permit that was done in 2005. She stated that the applicant is proposing to expand the hours for the site to operate until midnight Sunday through Thursday and 1:00 a.m. on Friday, Saturday and holidays; to allow special events up to a maximum of 150 people; to allow dancing throughout the facility for the public rather than being limited to special events; to allow full food service for the public; and to construct a glass wall to separate the lobby bar area from the hotel. She stated that the first amendment to the Shade Master Use Permit was done in May of 2005 in order to provide consistency with the state Alcoholic Beverage Commission license provisions and to increase the number of people permitted for special events from 60 to 99. She indicated that construction of the hotel was completed in December of 2005.

Planning Manager Jester stated that the bar and outside terrace currently are permitted to operate until 11:00 p.m. and the rooftop deck is permitted to operate until 10:00 p.m. She said that alcohol service on the rooftop deck is required to end at 9:00 p.m. She indicated that activity within the interior courtyard for special events can extend until 11:00 on weeknights and midnight on Fridays and Saturdays. She stated that the request is to allow all areas of the hotel to operate until midnight on weeknights and 1:00 a.m. on Fridays, Saturdays, nights before holidays, and New Years Eve. She indicated that the current approval for special events was for a maximum of 99 people, and the subject proposal is to allow a maximum of 150 people. She commented that dancing currently is limited to guests at special events, and the subject proposal is to include dancing at all areas throughout the facility during operating hours. She stated that full food service is limited to hotel guests and special events currently. She indicated that the subject proposal is to allow full food service to the general public up to midnight Sunday through Thursday and 1:00 a.m. Fridays, Saturdays and holidays. She commented that staff felt they could not administratively approve installing the glass wall between the interior courtyard and the lobby bar because had concerns that it would expand the area of the lobby bar.

Planning Manager Jester commented that the applicant's goals are to clarify and fine tune the hotel's status as a four star destination and anchor for the Metlox development; place them on a level planning field with other luxury hotels; and help to support hotel revenues with the current economic downturn. She indicated that notice of the hearing was sent to residences within a 500 foot radius and notice was also published in the Beach Reporter. She said that staff received a number of public comments which were provided to the Commissioners with the staff report. She stated that the Public Works Department had concerns with increase trash with the proposed increase in food service and the grease interceptor, which can be addressed during the plan check process. She indicated that the Building Safety and Fire had concerns with an increase in occupancy which can also be addressed during plan check. She indicated that the Police Department received 20 disturbance calls regarding the Shade Hotel during the past year. She indicated that half of the calls came from hotel employees regarding noise or unruly customers; and the other half of the calls came from neighbors. She stated that the Police do patrol the site regularly.

Commissioner Fasola indicated that he has decided it would be appropriate for him to recuse himself from consideration of the issue and left the room.

In response to a question from Commissioner Lesser, Planning Manager Jester said that the original operator of the site intended for it to be a bed and breakfast style hotel with the same number of rooms and layout as the current operation. She indicated that the operator dropped out of the project and a new applicant expressed interest in operating the facility. She said that the City Council through the DDA reviewed the project and determined that it was consistent with the original approval. She said that there was no change in the permitted hours with the proposal from the new operators.

In response to a question from Commissioner Lesser, Planning Manger Jester commented that the majority of complaints are related to the noise of patrons leaving the facility. She indicated that there have also been complaints regarding the noise from the rooftop deck area.

In response to a question from Commissioner Lesser, Planning Manager Jester indicated that staff felt they could not administratively approve the glass wall between the lobby bar and courtyard area as proposed because they felt that it would change the dynamics of the site. She indicated that having no separation from the hotel rooms and lobby bar helps to self-regulate

the noise levels, as the hotel operators would not want the noise level from the bar area to disturb the guests in the rooms.

In response to a question from Commissioner Lesser, Planning Manager Jester stated that the Downtown Business Association has requested an amendment to the Code to allow an exception to the operating hours for businesses on New Year's Eve and other holidays. She commented that the request will come before the City Council as a separate application in July.

In response to a question from Commissioner Lesser, Planning Manager Jester said that the Commission may request that the applicant provide a noise study if they feel it is appropriate.

Commissioner Paralusz indicated that she has had lunch at the hotel. She pointed out that the hotel does provide lunch service, which is contrary to section 2, subparagraph 3 of Resolution PC05-08 which states that the hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events.

Chairperson Seville-Jones asked regarding the number of permit applications for special events for 99 people and further information regarding the necessity of extending the number to 150.

In response to a question from Chairperson Seville-Jones, Planning Manager Jester indicated that the request is to allow alcohol service during the operating hours throughout the facility.

Lieutenant John Dye stated that the Police Department receives a variety of complaints regarding disturbances. He indicated that there have been instances of employees that call the Police regarding guests and of complaints regarding taxi drivers having disputes. He said that the Police have received calls from neighbors on Ardmore and to the east of the subject site regarding noise issues.

In response to a question from Commissioner Paralusz, Lieutenant Dye said that other areas in town where there have been noise complaints is by the pier and in the North End. He said that noise has also been an issue in the past regarding patrons at Sashi restaurant which is located near the Shade.

In response to a question from Commissioner Lesser, Lieutenant Dye commented that he does not know if the presence of additional employees would help control noise levels from people leaving an establishment.

In response to a question from Chairperson Seville-Jones, Lieutenant Dye said that there have been noise complaints after the hours which alcohol service is permitted at the hotel.

Michael Zislis, the applicant, pointed out that special events at the hotel can be larger than 99 people; however, 99 is the level at which the City is notified. He commented that most weddings have 125 people, which is the reason that they are requesting to change the threshold to 150. He clarified that there is only dancing for special events, and they do not want to modify the proposal to allow dancing within the other areas of the hotel. He indicated that they must have food available at all times in order for an establishment to be a four star hotel. He stated that they have been asked by the City to not advertise lunch service; however, it is offered to guests.

Commissioner Paralusz pointed out that lunch service is advertised on the website for the hotel, and she also received an e-mail advertising their lunch service.

In response to a question from **Mr. Zislis**, Lieutenant Dye said that the noise complaints were mainly from approximately four people.

Mr. Zislis stated that it was known by the City Council that they planned to provide full alcohol service. He commented that full liquor service is included with all four star hotels, and the Council voted unanimously in support. He commented that the hotel was key to the Metlox development. He said that their intent with the proposal is to be consistent and competitive with other hotels and restaurants by remaining open until midnight on weekdays and 1:00 a.m. on weekends. He stated that their business peaks at 10:00 p.m., and everyone currently is required to leave shortly after at 11:00 p.m. He commented that the noise would be diminished if people left at different times over a longer duration rather than all having to leave at 11:00 p.m. He stated that he has met with neighbor groups several times. He indicated that he installed the glass wall along the front entrance in response to a request from a neighbor. He commented that there is a sign asking patrons to respect the neighbors by being quiet. He said that they have also moved the valet service and taxi stand to Morningside Drive. He also commented that they have a condition in their contracts that any buses must drop off groups off of Morningside. He indicated that there is a glass wall being installed on the sky deck to help mitigate noise. He commented that they also require bands to play below a certain decibel level. He commented that installing a new glass wall between the bar and the interior courtyard would allow for patrons to use this as a hallway and exit out toward Morningside Drive. He pointed out that he is accessible to the neighbors, which would not be the case with an operator who is not local.

In response to a question from Commissioner Lesser, **Mr. Zislis** said that he is making the subject request in order to be able to operate past 11:00 p.m. for his customers. He commented that he is also able to book more hotel rooms if events extend past 11:00 p.m. He pointed out that they should be allowed to operate until the same hour as Petros.

In response to a question from Commissioner Lesser, **Mr. Zislis** said that some of the noise issues are from people leaving the hotel; however, there is also an issue with people who visit other establishments in the downtown area and return to the nearby free parking lot that closes at 3:00 a.m. He suggested that the parking lot be closed at 11:00 p.m. in order to help mitigate noise issues.

John Strain, representing the applicant, requested that the Commission distinguish between the concerns related to the Shade from other noise concerns related to the downtown area. He said that many of the concerns expressed appear to be the result of loud and boisterous people on the street that may have been visiting the Shade as well as other area establishments. He stated that the applicant has done a great deal to mitigate the noise from the hotel from impacting the neighbors; however, it is difficult to stop hotel guests from making noise on the street as they leave. He requested that the Commission be careful in differentiating concerns with Shade with those of the downtown in general. He indicated that the concerns of the residents must be balanced with the interests of the community and downtown commercial district. He pointed out that the hotel results in a large amount of tax revenue for the City. He stated that if they are not allowed to operate as other hotels and businesses, they would not be able to generate as much tax revenue. He stated that they also feel the image and quality of the hotel substantially enhances the downtown area. He stated that the hotel provides rooms, a lounge, and a place for meetings and gatherings.

Chairperson Seville-Jones opened the public hearing.

Robert Lytle, a resident of the 500 block of 13th Street, stated that people consume more alcohol during later hours. He stated that putting in the glass partition around the patio area

would result in the noise raising up and back toward the residences. He said that such a wall only increase the noise impacts. He commented that he can currently hear the noise of patrons and bands playing at the hotel from his home.

Teresa Cho, a resident of the 500 block of 12th Street, said that she can hear noise from the hotel and bar in her children's bedrooms. She requested that there be a four week continuance of the hearing to allow the residents more time to review the report. She commented that the use was originally envisioned as an inn and is now basically a singles bar with a hotel. She stated that the proposal is contrary to maintaining the small town family oriented environment that was envisioned in the General Plan.

Nancy Gilombardo, a resident of the 1100 block of North Ardmore, stated that she and her husband have made several calls to the hotel and the police to ask that the noise level be reduced. She said that the noise level from the hotel continues after 11:00 p.m. as the patrons linger, and the issue would become worse if the hours are extended. She indicated that their patio doors must be kept shut because of the noise, which is difficult during the summer. She stated that she is an emergency room nurse as well as a nursing instructor and needs to be well rested for her jobs. She commented that the hotel was originally proposed as a quaint boutique hotel and instead has become a night club. She indicated that she does not want the hours to be extended.

Stephanie Hubbard, a resident of the 1300 block of North Ardmore, indicated that the original intent was not for the establishment to become a destination hotel and draw large numbers of people. She commented that she can hear conversations at the hotel from her bedroom. She said that the establishment is not only a hotel but also a bar. She suggested that people be directed to exit out of the west side rather than toward Valley.

Shaiko Wisner, a resident of the 500 block of 13th Street, said that her bedroom window is across the street from the hotel, and she has a hard time sleeping because of the music, laughter, conversation and noise coming from the hotel. She said that she would not want for the hours of operation to be extended. She indicated that the additional noise from the extended hours would have a negative impact on the neighbors.

Mike Welsh, a resident of the 600 block of 13th Street, stated that he can hear conversations taking place at the hotel from his living room, and he is greatly concerned with the same noise being generated until midnight or 1:00 a.m. He stated that the hotel was originally intended to be a boutique hotel and has instead become a four star destination. He stated that extending the hours of drinking and music will not mitigate the existing conditions.

Jeff Dooley, a resident of the 1100 block of North Ardmore, indicated that although the applicant has taken measures to mitigate the noise concerns, there are still many residents at this hearing who are complaining about the noise. He said that although there is a great deal of soundproofing, there still is noise after the hours of operation permitted for the hotel. He said that he would not want the hours to be extended.

Joan Mueller, a resident of the 1200 block of Ardmore, stated that she used to contact the hotel and the police regarding the noise from the hotel but had little results. She indicated that they shut their windows and use a loud fan in order to contain the noise. She said that the panels that were installed for the patio have helped to reduce the noise. She indicated, however, that the noise from people leaving the hotel cannot be contained. She commented that they are concerned with having more noise that extends to even later hours. She stated that they have 75 signatures in opposition to the proposal. She stated that they are opposed to longer operating hours for the hotel.

Brent Taylor, a resident of the 500 block of 12th Street, said that they are able to hear music from the hotel in their living room. He asked that the Commission use foresight and not approve the extended hours.

Alan Summer, a resident of the 1100 block of The Strand, stated that he knew when he bought a home in the downtown area that there would be noise. He said that he understands that there is an issue regarding noise from the hotel, however, he feels the complaints which have been expressed by the neighbors are overstated. He stated that the main concern regarding the noise from the hotel is with the location of the exit rather than with the operating hours. He suggested that decibel readings be taken to monitor the noise level. He commented that the town is vibrant but not reckless. He indicated that the managing of security at the Shade is very efficient, and they have been thoughtful and careful in managing the concerns.

Joe Taylor, a resident of the 500 block of 12th Street, said that across Valley there is a hedge behind a wall with brick columns and iron railing separating the hotel from the residences, and the wall and hedge ends at a lawn area. He indicated that people will not use the crosswalk at Manhattan Beach Boulevard but rather cross the street at 12th and Ardmore and continue across directly onto Valley across the lawn area. He indicated that the City needs to continue the existing fence further in order to prevent people from cutting across and going into the neighborhood. He said that the other restaurants in the area do not have roof decks. He said that the issue of noise from the deck area of the hotel does need to be mitigated.

Clarence Carter said that the owners of the hotel are very interested in doing the right thing and responding to concerns of the community. He said that on weekends they ask people to exit toward the center of the Metlox complex rather than toward Valley. He commented that there are groups of residents who want to have a place to gather as well as groups of residents who would prefer to enjoy Fridays and Saturday evenings quietly at home. He commented that the Commission must determine what is best for the community as a whole rather than for one particular group. He pointed out that if **Mr. Zislis** leaves, the same issues would still exist with another operator. He said that they do not want the neighbors to be upset. He stated that issues regarding noise from special events at the hotel are being addressed, and they will continue to work to contain the noise. He commented that there will be an issue of noise regardless of the operator because the Metlox complex is an outside facility.

Jonathan Tolkin, the owner of the Metlox project, said that the operators of the hotel have attempted to respond to the noise concerns of the neighbors, but the site is located in the central business district. He commented that in developing the Metlox project, they attempted to arrive at a balanced mix of uses that would benefit the community. He commented that the issue is not regarding the hours of operation. He indicated that exiting patrons of the hotel to the west rather than the east may help to mitigate noise concerns. He commented that he would encourage the Commission to reach a solution with the hotel operator to allow the operation to continue to be vibrant and offer services to the community while minimizing the impact to the residents. He commented that they have lost tenants in the Metlox development with the current economy and they are considering additional uses to enhance the development.

Chairman Seville-Jones closed the public hearing.

Commissioner Andreani indicated the original approval for a hotel was not granted easily. She indicated that it was originally intended to be a bed and breakfast to draw overnight guests to the downtown who would visit other businesses for dinner and shopping. She indicated that in approving limited bar and food service, the City Council did not want the hotel to be in competition with the downtown businesses but rather to benefit them. She said that the City

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Council also did not want to create disturbances for the nearby residences. She indicated that based on comments she has heard over the last several years, the hotel has become a bar with a hotel rather than a hotel with a bar. She said that the request for extended hours and size of special events and extended food service is contrary to the original intent for the hotel and the Metlox development. She said that mixed use is part of the charm of the downtown area. She commented that her understanding is that it has been the position of the City to not permit dancing at establishments in the downtown area. She said that she does not remember dancing being discussed as part of the special events, and she asked for further information regarding how the Noise Ordinance applies to dancing at the hotel. She stated that Exhibit G to the staff report shows that the downtown area does not lack late night alcohol service, and she does not feel that the hotel providing alcohol service during later hours is providing an additional benefit to the downtown area. She said that the Metlox was intended to be family friendly. She indicated that although the operator is intending to mitigate the issue of noise, it is not possible. She said the business was not intended to be a four star hotel. She indicated that the glass partition intended to help to channel people out to the west exit may be a good idea. She commented that the requests for extended hours, the size of special events, and the extended food service are not in keeping with the intended use of the property.

PARALUSZ

Commissioner Paralusz indicated that she bases her opinions and analysis regarding issues on public comments, and she thanked the members of the community for their participation. She also commended **Mr. Zislis** on his participation and work in the community. She commented that the hotel has become a successful operation, which is the reason for the noise concerns. She stated that the hotel has taken several measures to mitigate noise concerns including the glass wall at the patio. She stated that she is reluctant to approve the request to increase the operating hours due to the large number of complaints from the neighboring residents. She said that she is not convinced that the sound can be mitigated with the extended operating hours to the extent the neighbors would not be impacted. She commented that she is persuaded that extending the hours would aggravate the problem further. She indicated that she would support allowing more people at special events and allowing dancing at special events. She indicated that people want to dance at weddings, and she does not feel it would be a problem. She commented that she is in support of allowing the hotel to extend their food service. She said that she would support the glass wall in the lobby area and the glass wall that would front on Valley. She said that a great deal of the noise appears to be emanating from the front of the hotel on Valley. She commented that having a wall along Valley and exiting people toward Morningside would help to mitigate some of the noise concerns. She commented that she agrees with **Mr. Taylor** that there is a concern with people crossing the street from the hotel to the lawn area rather than using the crosswalk, and she would also support the possibility of extending the fence along Valley.

LESSER

Commissioner Lesser stated that he has sympathy for the residents who live near the Shade. He stated that the site could have been developed further if it had been permitted by the City Council, but the residents who lived there did not have an expectation that the site would be developed as it has. He commented, however, that the hotel has become an important part of the downtown community. He commented that he appreciates the measures the applicant has taken to attempt to mitigate noise concerns. He stated, however, that he is looking for a more comprehensive proposal regarding additional noise mitigation measures that can be incorporated in some of the applicant's proposals. He suggested possibly including additional acoustic studies. He commented that he would support patrons of the hotel exiting to the west rather than towards Valley, and he would like additional information regarding how that can be achieved. He commented that many of the neighbors may be more receptive if there were a more comprehensive proposal to address the concern with the extended hours of hotel guests loitering after leaving the site.

SEVILLE-
JONES

Chairperson Seville-Jones stated that she is not closed to the idea of the proposal, although she is leaning against allowing the extended hours. She commented that it is not clear whether the proposals for sound mitigation measures that have been suggested are part of the discussion regarding extending the operating hours. She stated that she does not support allowing the extended hours because it means that the adjacent residents would be subjected to noise from patrons from the hotel exiting onto the street for a longer period of time. She said that she might be willing to consider possibly relaxing the requirement that alcohol service must end a half hour before closing if the orientation of people exiting the hotel were changed toward Morningside. She said that it appears reasonable to allow lunch to be served. She suggested allowing alcohol service from 11:00 a.m. She commented that she is not supportive of allowing alcohol service from 6:00 a.m. She said that Mr. Zislis has done his best job he can to mitigate the conditions that have arisen from the alcohol license being granted. She commented that she would like staff to give more consideration to the applicant's suggestion to eliminate the restrictions on advertising for the lounge and bar. She said that she would defer to staff regarding whether the notification requirement for special events should be at 99 or 150 people. She stated that she also would like further information regarding noise issues. She stated that many neighbors have expressed concerns regarding the noise, and she does not feel there has been sufficient information in the proposal to support allowing an extension of the operating hours.

Chairperson Seville-Jones reopened the public hearing.

Mr. Zislis stated that suggested that a committee be formed with three of the adjacent residents to work with him on mitigating the noise. He stated that he does not want to upset the neighbors and wants to work with them. He suggested constructing a wall to mitigate noise to along Valley where the iron railing on top of the wall in Veterans parkway is now, similar to the one at Manhattan Village. He pointed out that they do not serve alcohol until 8:00 or 9:00 a.m., and it is the language of the State alcohol license that provides for alcohol service between 6:00 a.m. and 2:00 a.m. He stated that his main concern is being required to close at 11:00 p.m. on Friday and Saturday nights, and it is important for his business to be allowed to operate until midnight on weekends. He indicated that he has worked to be a good neighbor on his own and without pressure from the City.

A motion was MADE and SECONDED (Andreani/Paralusz) to CONTINUE the hearing to July 22, 2009

AYES: Andreani, Lesser, Paralusz, Chairperson Seville-Jones
 NOES: None
 ABSTAIN: Fasola

~~F. DIRECTORS ITEMS~~

~~G. PLANNING COMMISSION ITEMS~~

~~H. TENTATIVE AGENDA~~

~~I. ADJOURNMENT~~

~~The meeting was adjourned at 10:20 p.m. to Wednesday, July 22, 2009, in the City Council Chambers, City Hall, 1400 Highland Avenue.~~

~~SARAH BOESCHEN~~

~~industry will help to define the City in the future as does the AVP. She said that having the banners to advertise the importance of the studio in the community could be important in the future. She said however, that such signage does not fit within a narrow sign exception. She stated that she has difficulty in reaching the finding that denying the proposal would unreasonably deprive the applicant of the use or enjoyment of the property. She indicated that the studios have been quite successful without the signs, and she would guess that there are other large studios that do not have such large signs. She also commented that the intent of the Sign Code is for signage to only provide business identification and not for the City to identify itself to the community. She commented that she would like for the City to include an entertainment district to identify the site as special and unique. She stated that she cannot support the proposal given the criteria of the Sign Code and Sign Exception.~~

~~Commissioner Paralusz indicated that she would be in favor of the suggestion from Commissioner Andreani that limited signage be allowed on the north side of the building.~~

~~Commissioner Andreani indicated that she would support allowing small lettering on the west side of the building to identify the studio rather than a large banner sign. She indicated that she would also support one or two signs on the north side along Rosecrans Avenue that are smaller in scale than the proposal.~~

~~Commissioner Lesser stated that the signs as proposed along Rosecrans Avenue appear very large.~~

~~Mr. Taylor said that they would prefer to have an opportunity to continue the hearing to allow them to work further to address the comments of the Commission.~~

~~Chairperson Seville-Jones also suggested that the applicant work with the staff to better define who would have the ability to advertise on the signs and whether the signs would be illuminated.~~

~~Director Thompson commented that it is not necessary for the item to be rescheduled to a date certain, as it is a business item rather than a public hearing.~~

~~At 8:05, a 10 minute recess was taken.~~

E. PUBLIC HEARINGS

07/22/09-3 Consideration of a Master Use Permit Amendment for Modifications to the Existing Approvals for Hours of Operation, Size of Special Events, Dancing, Food Service, and Installation of a Glass Wall Between the Lobby Bar and Hotel Rooms at the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operation Company, LLC)

Commissioner Fasola indicated that he has recused himself from consideration of the issue.

Commissioner Lesser said that he and his wife toured the Metlox facility and perimeter of the hotel at about 11:00 p.m. and 11:45 p.m. on Saturday, July 18.

Commissioner Andreani stated that she also visited the area around the hotel on Friday, July 17 and Sunday, July 19 at 10:00 p.m.

Chairperson Seville-Jones commented that she has also visited the site on three recent evenings including the weekend of July 18.

Commissioner Paralusz indicated that she did not visit the hotel over the July 18 weekend but has visited the area on several evenings including weeknights and weekends.

Planning Manager Jester summarized the staff report. She stated that letters and e-mails have been provided to the Commissioners which were received after the staff report was written with concerns regarding the increase of noise that would result from the proposed expansion of hours. She stated that two letters were also received in support of the proposal for expanded hours. She pointed out that the proposal to allow dancing throughout the facility has been withdrawn, and it would continue to be limited to special events. She commented that a maximum of 99 people are currently allowed for special events at the hotel without prior notice to the City being required, and the proposal is to allow a maximum of 150 people for events without prior notice being required. She stated that food service is currently limited to hotel guests with breakfast, room service, and evening appetizers. She stated that full food service is available for special events. She indicated that the proposal is to provide lunch service to the general public.

Planning Manager Jester said that the proposal is to install open accordion glass doors that would create a hallway to separate the lobby bar and the courtyard. She stated that the bar and terrace are currently allowed to operate until 11:00 p.m., and the proposal is for operating hours of 11:00 Sunday through Wednesday; 11:30 on Thursday; and midnight on Friday and Saturday nights and nights before holidays. She stated that special events are currently permitted until midnight on Friday and Saturday nights in the interior courtyard, which would not change with the proposal. She said that the sky deck currently is permitted to operate until 10:00 p.m. daily, and the proposal is to allow operation of the deck until 10:00 p.m. Sunday through Thursday and 11:00 p.m. on Fridays, Saturdays and holidays. She commented that alcohol service currently must end one hour before closing on the rooftop deck and a half hour before closing in the interior courtyard, and the proposal is to allow service up to 15 minutes before closing. She stated that the hearing was noticed within a 500 foot radius and notice was placed in the Beach Reporter.

Commissioner Lesser asked whether staff has a recommendation for requiring further measures to address noise concerns such as an acoustical study; directing patrons to exit toward the west of the hotel after a certain hour; or requiring additional staff of the hotel to monitor patrons beyond the doors of the hotel.

Planning Manager Jester said that it would be appropriate to direct the applicant to further investigate any of the measures suggested by Commissioner Lesser if it is the wish of the Commission.

In response to a comment from Commissioner Paralusz, Planning Manager Jester indicated that Master Use Permit currently does not provide for lunch service at the hotel.

In response to a question from Commissioner Andreani, Planning Manager Jester indicated that the hotel could be considered to be in violation of the conditions of the existing Master Use Permit by serving breakfast and lunch to people that are not guests staying at the hotel. She pointed out that special events with more than 99 people currently can be approved by the Community Development Director, and the proposal is to allow events with a maximum of 150 people without prior approval.

In response to a question from Chairperson Seville-Jones, Planning Manager Jester said that the alcohol license is issued to the hotel operators by the Department of Alcoholic Beverage Control (ABC). She stated that the City does not have the authority to enforce ABC

regulations. She indicated that if a complaint is received, a hearing will be held by the ABC if they feel it is appropriate. She said that there is no indication from the ABC that the applicant is in violation of their alcohol license.

In response to a question from Chairperson Seville-Jones, Planning Manager Jester said that staff would not have an objection to removing the restrictions for advertising food service if the Commission were to approve the request for food service to the public.

Michael Zislis, the applicant, said that he is submitting a petition that includes over 500 signatures in support of extending the hours as proposed. He pointed out that they must contact the City to receive approval for special events over 99 people, and their request is to be able to hold events with a maximum of 150 people before being required to contact the City. He stated that his request is to operate until midnight on weekends. He commented that he originally did not request lunch service and originally requested to operate only until 11:00 p.m. because he was not aware of exactly what would be necessary for the business to be successful. He indicated that he would like the ability to operate until the same hour as the adjacent restaurants. He pointed out that he is only asking to operate until midnight on Friday and Saturday nights rather than until 1:00 a.m. as previously requested. He commented that the hotel brings a large amount of tax revenue to the City. He said that he met with several of the neighbors after the last meeting to discuss additional noise mitigation measures. He pointed out that the site is located in a commercial zone, and there is a great deal of noise in the downtown area. He said that people return to the public parking lot across Valley at late hours from the bars downtown, and he suggested that the lot be closed at midnight. He said that he would be willing to eliminate the valet service for the Metlox site which currently operates from the hotel.

Mr. Zislis suggested that there be a one year review if the proposal is approved. He commented that there are limiters on the speakers to reduce the noise level. He stated that they have placed a glass wall along the southeast side of the sky deck to reduce noise. He said that moving the valet service to Morningside Drive may be difficult and may not be the best option. He commented that they have experimented with using a radio to call the valet service while customers wait inside the hotel for their car to be retrieved, which appears to be quite successful. He indicated that a similar option could be utilized for calling cabs for customers so that taxis do not cue in front of the hotel. He stated that they have closed the curtains on the southeast side of the terrace to help limit the noise. He indicated that they have eliminated the bass speakers. He commented that they want to be equal with the other operations in the Metlox development. He said that they have agreed to limit events from 11:00 p.m. to 10:00 p.m. during the week.

Commissioner Paralusz asked about the possibility of limiting egress to the west side of the hotel after 10:00 p.m.

Mr. Zislis said that he would be willing to work with the Commission and the neighbors regarding noise issues of customers leaving the hotel. He commented that he has a concern with exiting patrons on the west side of the building because customers are inconvenienced by having to walk around from Morningside Drive to retrieve their car at the front of the site. He commented that he feels a better option would be to radio between the hotel and the valet operator and have customers wait in the building while their car is being retrieved. He stated that he would be willing to direct guests to exit to the west if other noise mitigation measures are not satisfactory to the neighbors. He pointed out that the east exit (main hotel entrance) is closed after 10:00 p.m., and customers are directed to exit through the terrace to the south and then to the escalators.

In response to a question from Commissioner Andreani, **Mr. Zislis** said that he would be willing to lower the maximum number of people permitted at special events before being required to contact the City to 125 rather than 150.

In response to a question from Commissioner Andreani, **Mr. Zislis** said that the noise level permitted by the City for exterior noise is 45 decibels, and the measurement of noise from the hotel from across the street is 30 decibels on a busy night. He indicated that the maximum for sound in the interior of the building is 85 decibels.

In response to a question from Chairperson Seville-Jones, **Mr. Zislis** indicated that he is in complete compliance with their alcohol license. He said that 70 percent of the revenue of the business is generated from rooms at the hotel and 30 percent from alcohol and food sales. He said that the marketing is not a large issue; however, it is difficult for him to maintain 50 percent of food sales in relation to alcohol sales if they are not permitted to advertise for food service. He commented that he would be agreeable to restricting any advertising to food service only and not alcohol service.

John Strain, representing the applicant, stated that the hotel was always planned to be the major component of the Metlox development. He indicated that the hotel was reduced to have a maximum 35 to 40 rooms, which is not commercially viable in an area such as Manhattan Beach. He stated that the hotel is a viable because it includes a lounge area and a venue for special events. He indicated that the applicant is willing to work with the neighbors as much as possible regarding eliminating noise while still allowing for the operation to be viable.

Chairperson Seville-Jones opened the public hearing.

Public Input

Kurt Schlichter stated that he is a customer at the hotel as well as the other establishments owned by **Mr. Zislis**. He indicated that the hotel has added a great deal to the community in creating a large number of jobs and providing a number of services. He indicated that the hotel is becoming a destination location and should be supported. He stated that the applicant has spent a great deal of money and has done everything that can be expected to compromise with the residents. He commented that the people in the neighborhood moved into a commercial zone, and it is not realistic to expect that the site would remain as a vacant lot. He indicated that the applicant has met with staff and the community. He said that he hopes a compromise can be reached between **Mr. Zislis** and the neighbors.

Nick Arquette, stated that his non profit organization has been able to grow because of **Mr. Zislis**. He commented that the requirement for events to end by 11:00 p.m. is very restrictive, as most events do not begin before 8:00 p.m. or 9:00 p.m. He indicated that it is difficult to ask people to give a large amount of money for an event that is shut down early. He stated that needing to leave at 11:00 is highly restrictive, and the request for an additional hour is reasonable. He commented that security at the hotel is outstanding, and **Mr. Zislis** abides by every policy of the City. He said that he is concerned that the hotel is being blamed for problems for which they are not responsible. He indicated that the hotel is an important part of the community.

Theresa Cho, a resident of 12th Street, stated that she is a member of a group of residents in opposition to the proposal. She stated that their concerns are that there have been repeated noise disturbances to the adjacent residents resulting from the hotel site and potential violations of the Code; that the Shade has become a destination bar with customers from out of the area rather than the primary use of the site remaining as a hotel; that there has been a loss of

residential property value of the adjacent homes as a result of the disturbance from the hotel; and that there has been a potential violation by the applicant of the alcohol license for the hotel. She stated that the Commission must have additional facts before any resolution can be prepared and approved.

Jeff Dooley, a resident of the 1100 block of North Ardmore, said that there has been evidence from the testimony at the previous hearing that noise from the Shade is disturbing the adjacent neighbors, and they are in violation of Code Section 548140. He commented that they would like to see maximum permitted decibel levels from the lounge (bar), courtyard, terrace, and sky deck areas at all hours correspond to the acceptable noise levels in a residential area determined by an independent certified sound expert. He said that they would also like for analysis from certified experts to identify a systemic set of mechanical and procedural noise reduction techniques. He indicated that they would also like for further information regarding the use of the annual entertainment permit by the hotel. He pointed out that the permit can be modified by the City. He indicated that the Master Use Permit only allows the hotel the right to have two non-amplified entertainers, and any additional entertainment for special events requires a permit. He said that they did meet with the applicant. He indicated that he has difficulty understanding the logic of addressing existing noise issues after the expansion of the use is granted. He commented that tax revenue from the hotel is generated without extending the hours.

Brent Taylor, a resident of the 500 block of 12th Street, said that they originally anticipated that the hotel would be a boutique bed and breakfast rather than a four star destination hotel. He said that the Use Permit in 2002 restricted alcohol sales to the mini bars in the hotel rooms and to a wine bar serving only to hotel guests. He indicated that an amendment was passed in 2005 which allowed full alcohol service to the public and increase attendance at special events to 99. He stated that by increasing the hours and increasing special events will only aggravate an existing issue. He commented that the Amendment included that the project would not result in any negative impacts to the adjacent properties, which is not the case. He indicated that increasing the hours of operation for the hotel and the number of attendees at special events would only aggravate an existing problem.

Steve Weibel, a resident of the 1200 block of Ardmore, commented that the adjacent neighbors have signed a petition in opposition to the proposal. He stated that he has sent e-mails to the City Council, Planning Department and police regarding the noise level. He stated that the police have been unable to resolve the noise issues, and their response has been that the Noise Ordinance is difficult to enforce. He indicated that the noise level will need to be disclosed when the adjacent property owners sell their properties. He commented that he would want enforcement of the original permit before the entitlements are increased.

Garth Casper, a resident of 16th Street, said that the request for additional hours is completely reasonable, and the request is necessary in order for the applicant to remain competitive. He said that he supports the proposal.

Don McPherson, a resident of the 1000 block of 1st Street, said that there is a possibility that the hotel is in violation of the requirement of the ABC that food sales must be greater than alcohol sales. He commented that the Shade was originally intended to be a small boutique hotel in order to control its intensity. He indicated that food service was also intended to be limited to be breakfast for hotel guests and appetizers in the evening. He said that the limited food service makes it more difficult for the hotel to meet the requirement for greater food sales than alcohol sales. He said that the Commission must ensure that the hotel complies with the ABC regulations before they can make a decision on extending the hours. He indicated that it is more likely that the ABC requirement would not be met if the hours are extended, as people

tend to drink more and eat less during later hours. He commented that the Commission does not have sufficient facts at this time to grant the approval. He also suggested that staff modify the annual entertainment permit for the hotel in order to reduce the impacts. He indicated that the permit is not a property right and can be modified by staff administratively. He stated that the Metlox Master Use Permit limits the hotel to two non-amplified entertainers, and any additional entertainment must receive prior approval. He asked that the issues with the current operation be addressed before the hours are extended.

Helen Duncan, representing the Manhattan Beach Chamber of Commerce, indicated that they support the proposal. She stated that **Mr. Zislis** has hosted many events and has sponsored many charities. She said that the hotel should be encouraged at a time when other businesses are closing in the City. She said that it is very important for business to be encouraged.

Nathan Smith said that he supports the hotel. He commented that he has stayed extensively at the hotel for his job, and he would not have chosen the hotel if there were an issue with noise that made it difficult to sleep. He commented that his company often hosts executives of large retail chains at the Shade, which brings revenue to the City.

Esther Besbris, a resident of 2nd Street, stated that the Manhattan Beach Residents Association has been involved regarding the issue of the hotel. She commented that the Manhattan Beach Residents Association monitored the project since it was first proposed as a bed and breakfast hotel. She said that they are appreciative of the efforts **Mr. Zislis** has made in responding to the concerns of the neighbors; however, there is still a problem with noise. She said that the third level deck was originally planned to feature a Jacuzzi with screening from an elevator, stairs, and a storage room to create a solid sound barrier, which did not occur. She commented that there originally were not plans to include a kitchen, and the plans were later modified to include a kitchen which would provide breakfast to the guests and food service for catered events. She indicated that special events were originally limited to 60 people unless approval was given by the Community Development Director to exceed the limit; however the occupancy could not exceed the limit of the Building and Fire Code. She stated that they are not certain whether the current request to allow a maximum of 150 people without prior approval exceeds the Building and Fire Code limit. She commented that she does not agree with the argument that the residents should expect noise, as they purchased properties that are located adjacent to a commercial area. She commented that the applicant should have taken into account that the site was next to residents when they considered opening the hotel.

Jay Letterman stated that the hotel has enhanced the City greatly. He indicated that the proposal for extended hours is well within reason. He commented that the other restaurants in the area are open until 1:00 a.m. He indicated that **Mr. Zislis** is doing everything he can to mitigate the concerns of the residents. He indicated that he supports the additional hour of operation for the hotel.

Barrett Patel, representing the Manhattan Beach Lodging Association, stated that they support the proposal. He indicated that the hotel business is very competitive. He commented that he originally was not certain that the Shade could be successful because of the restrictions that were placed on its operation. He indicated that **Mr. Zislis** has done an excellent job in making the hotel successful. He stated that noise in the downtown area is generated from many sources. He commented that the mitigation measures the applicant has taken to accommodate the neighbors are beyond what should be expected from an operator.

John Mascow, a resident of Ardmore Avenue, said that the hotel brings a high quality of clientele to the downtown area. He said that the request is completely reasonable.

Dan Pardlow indicated that he supports the proposal. He indicated that **Mr. Zislis** is offering a great number of concessions in order to remain open for two additional hours per week. He commented that **Mr. Zislis** has agreed to all of the conditions that the Commission is requesting and has had meetings with the neighbors. He indicated that **Mr. Zislis** is always the first to support community groups, and he is a very good community advocate. He commented that the reason housing values increase in the City is because of good business operators such as **Mr. Zislis**.

Greg Tirateli, a resident of Redondo Beach, said that it is important to have members of the community who continue to bring value and stability as change occurs. He indicated that **Mr. Zislis** has brought value to the community with the hotel and his other businesses. He indicated that the South Bay has a great amount of traffic and noise because of the tremendous amount of growth. He indicated that people spend a great deal of money in Manhattan Beach because of operations like the Shade. He pointed out that property values did not lower because the commercial area has grown. He stated that businesses bring jobs and value to the community. He indicated that he supports the proposal.

Karol Wahlberg commented that she agrees that **Mr. Zislis** has contributed to the community. She indicated, however, that businesses should be supported without additional impact to the residents. She commented that the issue is not regarding the overall property values of homes in the area but rather regarding the values of the homes that are directly impacted by the noise generated from the hotel. She commented that homeowners whose property values are lowered as a result of the noise impacts have little ability to move to other areas of the City where there is not the same impact. She commented that the businesses that the City should attract are those that support the people who live in the community.

Mary Ann Varni, a Manhattan Beach resident, commented that properties are developed very close to each other in the Beach Area, and there are going to be issues with noise. She stated that the Metlox development has added greatly to the downtown area. She said that the hotel has not attracted conventions and large groups of people. She said that she appreciates the contribution of the hotel to the community.

Rich Walker, a Manhattan Beach resident, said that he is proud to have the hotel in the community, and the hotel treats their guests very well. He indicated that **Mr. Zislis** operates a great business, and he supports the proposal.

Andre Gonzales, a Manhattan Beach resident, said that he supports the hotel and the proposed request for additional hours and food service. He said that the people he has brought to the hotel have great comments. He commented that he feels the applicant is overly restricted and should have the opportunity to maximize the potential of the hotel.

Wendy Connely, a Manhattan Beach resident, said that the issue is not regarding the character of the owners, and the hotel will still remain if the operator changes. She pointed out that her understanding is that the petition provided by the applicant was generated over the previous weekend from customers at the bar. She said that she is not certain as to whether all of the people who signed the petition are Manhattan Beach residents and whether that is a consideration for the validity of the petition.

Chairperson Seville-Jones commented that the petition does indicate whether the people who have signed are residents of the City.

Jackie Coweiser, a resident of the 500 block of 13th Street, said that she can hear every conversation at the hotel from her home. She commented that she is a teacher and needs to

have sufficient sleep during the week in order to wake up early for work. She suggested that the operating hours be reduced on Sunday through Thursday to 10:00 p.m. in exchange for allowing extended hours to midnight on Friday and Saturday nights. She also commented that there is a vacuum that makes a great deal of noise after the hotel closes.

Kelly Finnerty, a Manhattan Beach resident, commented that she questions whether the noise disturbances that occur after the hotel has closed are a result of the hotel or other downtown establishments. She stated that she is an employee of the hotel and has never felt more a part of the community. She indicated that she feels the character of the employees of the Shade is very relevant, as it shows that they are willing to work with the community.

Milo Bacic, a resident of 10th Place, said that there are many sources of noise in the downtown area. He lives next to Vons and the deliveries late at night and early in the morning are disruptive. He commented that there is a great deal of noise from cars and trucks speeding along Valley, people returning to their cars from the downtown bars, and the Fire and Police vehicles. He indicated that many people park for free at night in the City parking lot on Valley. He said that the hotel is asking to extend their hours to better match the hours of the other restaurants in the Metlox development. He commented that the hotel has been forced to lay off employees, and seven nearby businesses have recently closed in the area.

Mr. Zislis said that the police have come to the hotel to check on noise complaints and have found no disturbances. He indicated that there is a solid barrier to block noise from the rooftop deck. He pointed out that he did not hide anything from the City in his original plans for the hotel. He indicated that the number of people at special events never exceeds the maximum occupancy as required by Code. He stated that the value of residential properties adjacent to the downtown area is higher because people want to be located near the shops and restaurants. He commented that the petition that he submitted was gathered over the previous weekend, and they tried to qualify the people who signed as Manhattan Beach residents. He indicated that noise after the hotel closes is an issue of people returning to the City parking lot in Veterans parkway from other downtown businesses and not from the hotel. He said that they do not run a vacuum after they close as mentioned by **Ms. Coweiser**. He commented that he would not be opposed to closing earlier on Sunday evenings, as there usually are not more than 20 people in the lounge area.

Chairperson Seville-Jones said that although **Mr. Zislis** has been very innovative in arriving at ideas for mitigating noise, there continues to be an impact to the neighbors resulting from patrons leaving the establishment which would be increased if the hours are extended.

Mr. Zislis said that a great deal of the noise from people on the street late at night would be reduced if the City parking lot off of Valley were closed at midnight.

Chairperson Seville-Jones closed the public hearing.

Discussion

Commissioner Lesser said that he observed during his visit to the area that a good deal of noise was coming from the use of the common Metlox patio and by other businesses. He indicated that a good deal of noise was emanating through the curtains on the outside patio area to the south. He said that his recollection is that staff has been reluctant to allow an accordion type of barrier on the exterior of the hotel because it would interrupt the overall flow of patrons through the common Metlox plaza area. He asked about the potential for an additional sound barrier for the south patio if it is found to be a significant source of the noise that is disturbing the neighbors.

Planning Manager Jester said that the intent is to maintain the patio areas as outdoor space.

Director Thompson said that any type of option for creating an additional sound barrier can be considered. He commented that the Commission may first want to discuss whether they would be willing to allow an extension of hours under any condition.

PARALUSZ Commissioner Paralusz commended all of the members of the public who have provided their input and express their views. She commented that a great deal of the problem with the noise level is because the hotel has become very successful, which is a credit to the applicant. She said that she would be willing to consider extending the hours on Friday and Saturday nights until midnight with restrictions in other areas. She indicated that she would support considering the possibility of reducing the hours during the week. She suggested considering the possibility of directing patrons to exit out of the west side after 10:00 p.m. She indicated that she also does not feel that the noise level after 10:00 p.m. or 11:00 p.m. is only from the hotel but also from other businesses in the downtown area. She said that people who visit the bars in the downtown area may be congregating at the parking lot on Valley late at night. She indicated that the residents also have the right to the enjoyment of their property at a certain point. She stated that she hopes that a compromise can be reached between the applicant and the residents. She indicated that the businesses and residents need each other in order for the City to function, as the businesses bring in tax revenue which provides services to the residents.

ANDREANI Commissioner Andreani said that she observed during her visit to the site that noise was being generated from the patios at Sashi and Petros as well as the outside terrace at the Shade. She indicated that the noise level increased when the doors were open to the Zinc lounge. She commented that the current noise issues need to be addressed before the subject proposal is considered. She indicated that the original intent of the hotel was to draw people to the downtown area who would patronize the nearby shops and restaurants. She said that she feels there is some level of competition in the applicant wishing to operate to the same hours as the other restaurants in the Metlox development. She indicated that she feels that a noise report needs to be obtained from an independent certified noise expert before an extension of the hours can be considered. She said that she would also like further information regarding the ratio of food to alcohol sales to demonstrate compliance with the ABC requirement. She commented that her understanding is that the alcohol license is attached to the property or the business on the property, and she feels that the City is involved as the owner of the subject site. She stated that she also would like to consider possibly limiting the hours for the valet lot and the public parking lot on Valley. She said that she would also suggest the possibility of encouraging patrons to exit from the west side of the hotel, although some may still walk around to the east side. She commented that she appreciates that Mr. Zislis has been a successful business operator within the City; however, the issue of mitigating noise impacts is a separate issue. She indicated that she would suggest that the new Resolution be very clear as to such details as defining hotel guests and walk-in guests. She indicated that she needs further information before considering a change in the hours of operation, and she would only possibly

consider increasing the hours on Friday and Saturday evenings. She said that she would not support a sound wall along Valley similar to the sound wall behind Manhattan Village.

LESSER

Commissioner Lesser said that he could potentially support an extension of the hours of operation for the hotel with further information. He indicated that he would like more comprehensive information to address the noise concerns of the residents with the current operation. He suggested that an acoustic study be done to help establish the source of the noise concerns. He said that the applicant has been proactive in attempting to address the noise; however, he would like for a more substantive plan for noise mitigation measures to be provided. He said that he also would like for the possibility to be considered of directing patrons to exit on the west side of the property after a certain hour, although the current exit may need further improvements. He also suggested the possibility of allocating additional hotel staff to monitor the area on evenings where there is noise. He commented, however, that it may not be fair for the extra expense to be imposed on the applicant, as the noise also is generated from other businesses. He commented that it also may be difficult for hotel staff to tell patrons to reduce their noise level, as no laws are being violated if the permitted decibel level is not being exceeded. He said that he wants to support the applicant and respects that **Mr. Zislis** has created a very successful operation; however, he is looking for further information in order to mitigate the impact of noise to the adjacent residents. He commented that although the adjacent residents did buy property next to a commercial area, they did not expect such a large development with the Metlox project.

Commissioner Paralusz pointed out that the vacuum referenced by **Ms. Coweiser** may actually be street sweeping. She asked whether staff could investigate whether the street cleaners operate during later hours.

SEVILLE-JONES

Chairperson Seville-Jones stated that it is hard to argue with the other Commissioners who would like further information on sound mitigating measures to accommodate the applicant who has been a model business owner in the City. She indicated that the ideas presented by **Mr. Zislis** for mitigating noise are remarkable, and it is not disputed that the applicant is an exceptional operator and a good neighbor. She indicated that she is not convinced that objective solutions are going to be found for her to support allowing the extension of hours. She pointed out that all of the mitigation measures that are currently in place have not solved the noise impacts to the nearby residents. She said that she will have difficulty in reaching a conclusion that the extension of the hours will not have a further impact to the neighbors until the noise issues with the current operation are fully addressed.

Chairperson Seville-Jones indicated that the entrance of the hotel does face Valley and the adjacent residences. She said that noise emanates from the patio and roof of the hotel as well as from the Zinc lounge when the doors are opened. She commented that the hotel is not as shielded from the adjacent residents as Petros and Sashi. She indicated that she would like to be able to grant the applicant the request for two additional hours of operation each week; however, she is very concerned that the noise is disturbing the sleep of the neighbors. She said that she agrees that the hotel is not responsible for the entire noise problem. She commented, however, that she cannot conclude that extending the hours for the hotel will help the issue. She pointed out that the residents originally thought that the hotel would be a different type of operation than it has become. She stated that **Mr. Zislis** did originally agree to the current hours, and the residents have indicated that they do not want the hours increased from the original agreement. She commented that she does not agree that the City should investigate whether there is a violation of the alcohol license for the hotel, as there is a procedure that is regulated by the ABC. She said that she does not believe that the hotel is in violation of the Conditional Use Permit.

Director Thompson indicated that after listening to the discussion, it appears that it may be possible to reach a compromise with possibly of extending the hours on Friday and Saturday nights with proper noise mitigation measures.

Commissioner Paralusz said that she needs more information regarding additional mitigation measures before she can make a decision regarding extending the hours.

Director Thompson indicated that staff will provide the Commissioners with a list of further measures that can be taken to help mitigate the noise including the possibility of exiting patrons to the west side of the property.

Chairperson Seville-Jones suggested that the applicant provide a list of items that they will do to mitigate the noise in order to be granted an extension of an additional hour on Friday and Saturday nights. She commented that there needs to be more of a consensus from the neighbors before consideration is given to extending the hours.

Mr. Zislis suggested that the hearing be continued for two months in order to allow sufficient time to gather additional information from an acoustical engineer. He stated that he very much wants the extension of hours until midnight on Friday and Saturday nights and is willing to work to reach an agreement with the neighbors. He indicated that they are willing to return to the Commission with a solid plan. He also suggested that there be a one year review of any approval.

Action

A motion was MADE and SECONDED (Lesser/Paralusz) to **TABLE** the public hearing regarding Master Use Permit Amendment for modifications to the existing approvals for hours of operation, size of special events, dancing, food service, and installation of a glass wall between the lobby bar and hotel rooms at the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operation Company, LLC)

AYES: Andreani, Lesser, Paralusz, Chairperson Seville-Jones
NOES: None
ABSTAIN: Fasola

F. ~~DIRECTORS ITEMS~~

G. ~~PLANNING COMMISSION ITEMS~~

H. ~~TENTATIVE AGENDA~~

**CITY OF MANHATTAN BEACH
PLANNING COMMISSION
MINUTES OF REGULAR MEETING
OCTOBER 28, 2009**

The Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, ~~was held on the 28th day of October, 2009, at the hour of 6:35 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.~~

~~A. ROLL CALL~~

~~Present: Andreani, Fasola, Lesser, Paralusz, Chairperson Seville Jones
Absent: None
Staff Present: Richard Thompson, Director Community Development
Laurie Jester, Planning Manager
Recording Secretary: Sarah Boeschen~~

~~B. APPROVAL OF MINUTES - October 14, 2009~~

~~A motion was MADE and SECONDED (Fasola/Lesser) to APPROVE the minutes of October 14, 2009.~~

~~AYES: Fasola, Lesser, and Chairperson Seville Jones
NOES: None
ABSENT: None
ABSTAIN: Andreani, Paralusz~~

~~C. AUDIENCE PARTICIPATION~~

~~Viet Ngo, a United States citizen and Manhattan Beach resident, said that he is a victim of public corruption from Michael Zislis and Jonathan Tolkin. He stated that a complaint has been filed with the United States Department of Justice, and the matter has been referred to the FBI. He indicated that the matter involves ongoing activity that is prohibited by federal statute. He indicated that the Commissioners have been informed and are aware of the ongoing activity. He requested that the Commissioners and staff disclose any financial interest they have in Metlox LLC or Manhattan Inn Operation Company LLC. He requested that the Chief of Police refer the matter to the FBI to protect public rights and money.~~

~~D. PUBIC HEARINGS~~

10/28/09-2 Consideration of a Master Use Permit Amendment for Modifications to the Existing Approvals for Hours of Operation, Size of Special Events, Food Service, and Installation of a Glass Wall Between the Lobby Bar and Hotel Rooms at the Shade Hotel, Metlox Site, 1221 North Valley Drive

Commissioner Fasola stated that he is recusing himself from consideration of the item.

Planning Manager Jester summarized the staff report. She commented that the Commissioners were provided with correspondence that was received after the staff report was written. She indicated that the Commissioners have been provided with several e-mails that were received from Nate Hubbard; an addendum to the noise impact study from the noise consultant; and a series of surveys that were received by staff. She commented that the proposal is for an amendment to the existing Use Permit for the Metlox site to allow for the Shade hotel to have

special events of up to 125 people rather than 99 people without providing prior notification to the City; to increase food service to allow breakfast, lunch and dinner service; to install a wall partition between the interior courtyard and the Zinc Lounge; and to extend the hours of operation. She said that staff is requesting that the discussion of the Commission focus on mitigation of the noise impacts and whether they would support extending the hours. She commented that staff's understanding from the last hearing is that there was a general consensus of the Commission supporting the increase for the maximum number of people at special events without prior notification; supporting the increase in food service; and supporting the wall partition. She stated that there were concerns raised regarding extending the hours of operation, and the Commission requested further information from a noise consultant.

Planning Manager Jester indicated that increasing the capacity for special events up to 125 people without prior notification would not increase occupancy but rather would only change the limits for the requirement of notification to the City. She commented that the food service is currently limited to breakfast, 24 hour room service, evening appetizers and full food service only for special events. She said that the proposal is to allow full food service for the general public. She stated that there is currently an open walkway between the bar and the interior courtyard of the hotel. She indicated that the proposal is to create an enclosed walkway with an accordion glass wall similar to walls that separate other areas within the hotel. She stated that currently the hours of operation are limited to 11:00 p.m. for the hotel bar and terrace; 10:00 p.m. for the sky deck; and midnight on Friday and Saturday nights only for special events in the interior courtyard. She indicated that the proposal is to operate until 11:00 p.m. Sunday through Wednesday evenings, 11:30 p.m. on Thursday evenings; and midnight on Friday and Saturday evenings and on holidays. She stated that the sky deck is proposed to have hours of operation to 10:00 p.m. Sunday through Thursday evenings and 11:00 p.m. on Friday and Saturday evenings and holidays.

She indicated that objective standards regarding noise are specific DBA levels which staff uses as a reference in making land use decisions, and subjective standards are the impact of noise to a reasonable person based on public input. She commented that the police use the subjective standard in enforcing the Noise Ordinance. She indicated that the City Attorney has advised that the Commission and City Council should consider both the subjective and objective noise standards when making a land use decision along with the Use Permit and General Plan findings.

Planning Manager Jester commented that staff has concerns with enclosing the rooftop deck, as it is already at the height limit. She indicated that staff feels keeping the existing limit on the hours for the rooftop deck is appropriate for mitigating noise. She commented that staff feels enclosing the terrace and relocating the customer queue to the west side of the site would be beneficial. She stated that staff is also recommending that a wall be installed to separate the lobby bar from the interior courtyard. She said that staff feels it may be appropriate to extend the hours of operation to midnight on Friday and Saturday evenings and 1:00 a.m. on New Years Eve if the noise is mitigated by enclosing the terrace, relocating the customer queue, installing a wall between the lobby bar and the interior courtyard, and limiting the hours on the rooftop deck. She indicated that staff would not recommend any changes to the existing hours of operation for the rooftop deck.

She commented that the hearing was noticed to the properties within 500 feet of the site and advertised in the Beach Reporter. She indicated that staff did receive a number of public comments. She pointed out that the Use Permit requires compliance with the STC 50 (sound transmission control) noise standards as indicated by one of the adjacent residents. She indicated that the applicant was able to reach the STC 50 standards with the use of certain

construction materials rather than building a wall. She commented that the hotel does not completely close down after designated hours, as there are hotel guests at the facility 24 hours. She introduced the noise consultant, Don Behrens.

Don Behrens, Behrens and Associates, said that the Shade was in compliance with the objective portion of the Noise Ordinance during the period of September in which they performed their study. He said that they were asked to provide an assessment of the effects on noise level of various noise control solutions by means of three-dimensional modeling. He indicated that the study does not consider the subjective impacts of noise and does not recommend specific sound mitigation solutions.

Tom Corbisley, Behrens and Associates, summarized the findings of the noise study that was conducted for the subject site relative to the Manhattan Beach noise standards. He stated that they did not consider interior noise limit standards. He played an audio recording of the noise level from 1300 Ardmore Avenue that was recorded on a Saturday evening at approximately 10:00 p.m. He indicated that measurements were taken on a Saturday evening when there was a lot of noise from the hotel and on a Monday evening when the hotel was quiet. He said that the Shade hotel is in compliance with the City's Municipal Code objective noise standard limits. He stated, however, that there is potential for the noise limit to be exceeded if the hours for the hotel are extended due to lower ambient noise levels during later hours. He commented that there is not an increase of noise levels at the neighboring residential properties when the noise levels at the hotel are increased, and the noise from the hotel on average is below the ambient level of the noise in the adjacent area.

In response to a question from Commissioner Lesser, **Mr. Behrens** said that their study looked at the objective standards for noise levels, which is the standard used by the City in evaluating the impact that a certain property has on the environment.

Planning Manager Jester pointed out that the objective standard includes the measurement of DBA levels. She indicated that the subjective standard is the standard at which a reasonable person would be impacted by noise levels as determined through public testimony and input. She indicated that the Commission needs to consider both the objective and subjective noise standards in making a land use decision. She said that the subjective standard is used by the police in enforcing the Noise Ordinance.

In response to a question from Commissioner Lesser, **Mr. Behrens** stated that the ambient noise level in the adjacent neighborhood drops significantly after midnight because the level of traffic on Valley/Ardmore and Manhattan Beach Boulevard drops significantly. He said that decrease in traffic noise can increase the impact of other sources of noise. He commented that there are no low frequency sound levels or pure tones emanating from the hotel.

Mr. Corbisley said that the three major sources of noise from the hotel are the rooftop deck, the front entrance and the south terrace. He stated that the contribution of the impact from each source changes with the location within the residential community and height above ground level. He said that in modeling different noise mitigation measures, their conclusions are that an interior wall inside the lobby would be more effective in reducing the noise level than a vestibule at the front entrance; relocation of the customer queue may be effective in reducing noise levels if the terrace is enclosed; the wall in the Shade/Petros corridor would be effective in reducing noise but not as effective as enclosing the terrace; and noise from the rooftop deck would be mitigated effectively if it were enclosed. He said that noise control solutions should be applied at all three major noise sources. He stated that enclosing areas of the hotel may have an effect on the noise generated within that area.

Lieutenant John Dye indicated that the Police Department responded to 124 calls related to the Shade during the 15 months between July of 2008 and October 25 of this year. He stated that 37 of the calls were related to noise from music or a party, with an average of 2 or 3 calls per month. He commented that the other calls were related to issues such as credit card fraud or traffic stops in front of the hotel. He commented that the responding officer will take into account the subjective criteria established in the code such as the level of the noise; whether the nature of the noise is typical; whether the origin of the noise is natural or unnatural; the level and intensity of the background noise; the proximity of the noise to residential bedrooms; the nature and the zoning area at the location of the noise; the density of the area within which the noise emanates; the time of day and duration of the noise; whether the noise is recurrent, intermittent, or constant; whether the noise is produced by a commercial or non commercial entity; and whether the noise occurs on a weekend, weekday or holiday. He said that the police want to provide fairness to the community as well as to the operators of businesses within the City. He stated that he is not aware of an officer citing the hotel for a noise violation.

In response to a question from Commissioner Lesser, Lieutenant Dye indicated that the majority of noise complaints have occurred primarily later in the evening on Friday and Saturday nights.

Commissioner Andreani pointed out that item 2 under "Special Events" on page 3 of the staff report incorrectly indicates the request for the number of people permitted for special events without prior approval as being 150 rather than 125 as is actually proposed.

John Strain, representing the applicant, said that the hotel consists of three functions; the operation of the lodging business, a venue for special events, and a lounge business. He indicated that all three parts of the operation are important in order for them to operate as a premier facility, to pay their employees, and to pay taxes and rent to the City. He said that the Commission must consider the specific standards as reflected in the Municipal Code and General Plan. He commented that they were confident that the hotel met the noise standards of the Municipal Code and paid \$10,000 for the City to have Behrens and Associates to prepare the sound report. He said that the report indicates that the hotel is in compliance with the objective standards of the Code. He pointed out that page 5 of the report shows that the difference in decibel levels between residences ranges by about 15 decibels. He said, however, that the incremental decibel level between the measurement when the hotel was quiet and the measurement when there was a lot of activity was about 2 decibels. He indicated that the specific location within the adjacent neighborhood from where the noise is being measured makes much more difference in terms of the noise impact than whether there is a lot of activity within the hotel.

Mr. Strain pointed out that many of the complaints submitted to staff by **Mr. Hubbard** date back to the period before the Shade hotel was in operation and are not a result of current operation. He said that part of operating a lodging business is having guests who enter and exit the facility during all hours. He stated that people enter and leave the hotel independent of the lounge operation or special events. He stated that the concept of having a venue for special events at the facility was written into the original Master Use Permit for the Metlox development, and cheering for weddings and similar occasions is part of such events. He pointed out that the hotel has not been cited for violations of the Noise Ordinance. He said that the police officers are professional and make appropriate determinations when responding to complaints. He said that the resolution of the Planning Commission in 2005 indicates that the proposed closing time for the hotel is 11:00 p.m. daily. He said that he believes that no specific operating hours were originally imposed for the proposed wine bar. He stated that all of the approved hours for the Metlox development indicated midnight on Friday and Saturday and

11:00 p.m. during the week. He commented that Resolution 05-08 also includes in the conditions that alcohol service shall stop 30 minutes before the hotel closes, or 11:30 p.m. on weekends and 10:30 p.m. during the week. He said that the language of the condition would indicate that the closing hours of the hotel are midnight on weekends and 11:00 during the week. He indicated that the hotel lobby bar currently closes at 11:00 p.m.; however, their understanding is that they are able to close at midnight on Friday and Saturday nights. He commented that it does not appear necessary to enclose the rooftop deck.

In response to a question from Chairperson Seville-Jones, **Mr. Strain** said that the noise report indicates that the ambient noise level drops after midnight which may result in more noise from the hotel impacting the adjacent neighborhood. He commented that he believes that the noise level from the hotel would be a concern if they were proposing to remain open until 1:00 a.m. rather than midnight as is proposed.

Michael Zislis, the applicant, said that dinner service would consist of small plates. He commented that they need the wall separating the interior courtyard from the lobby bar if they are required to exit people from the rear door. He pointed out that the recording of noise from 1300 Ardmore Avenue demonstrates that the noise of cars driving past is louder than the noise of people at the hotel. He also pointed out that the recording was made on a very busy weekend at the hotel. He stated that they do not allow any use of microphones after 9:00 p.m. He indicated that the sound study indicates that the sound level does not increase in the adjacent neighborhood as sound is increased at the hotel. He said that requiring all of the patrons to leave at one time results in more noise than if patrons leave over a longer period. He indicated that the sound study demonstrates that the hotel is not in violation of the Sound Ordinance, and the City should stand by the findings of the study. He said that the study also indicated that the staff of the hotel works diligently to keep the noise from reaching the adjacent neighborhood.

Mr. Zislis commented that it is not justified to limit the use of the penthouse, limit the use of the conference room, or limit room service as has been suggested by **Mr. McPherson**. He indicated that he does not want to have his rights to do business denied. He commented that enclosing the rooftop deck would be prohibitively expensive. He said that they want to operate for an hour longer on weekends and would not wish to reduce their hours. He indicated that a 4 foot glass rail or noise curtain around the deck would prevent noise from reaching the adjacent neighborhood, as suggested to be studied by the sound engineer. He indicated that he would not want for a wall to be placed in the lobby in the middle of the hotel check-in area. He said that the sound engineer also suggested that a double door system for the front door would eliminate sound from the front of the hotel. He said that he would prefer for a 12 foot barrier to be placed around the Zinc terrace rather than having a movable barrier placed in the corridor between the hotel and Petros. He commented that the best way to help the neighbors is by mitigating the noise issue rather than by limiting his business by restricting the hours.

Chairperson Seville-Jones opened the public hearing.

In response to a question from Chairperson Seville-Jones, **Mr. Behrens** indicated that the ambient noise level from traffic drops dramatically after midnight.

Nate Hubbard showed a recording taken from his home of an Oktoberfest event in the courtyard of the hotel on Sunday, September 27. He indicated that the existing Use Permit and Entertainment Permit contain the requirements necessary to control the use of the hotel. He stated that the hotel does not comply with many of the requirements, and they are not enforced by the City. He commented that the use and entertainment permits require that the Zinc bar be soundproofed, which would solve many of the noise issues. He stated that both permits also

require that the terrace close at 11:00 p.m.; however there often are patrons on the terrace until midnight or later. He said that there has been an indication by the Police Department that they are enforcing the 11:00 p.m. closing time for the terrace. He said that similar enforcement needs to be done for the noise of special events. He indicated that until the City stops the existing noise disturbances to the neighbors, they do not feel the findings can be met that extended hours for the hotel would not create a further impact. He said that they propose to work with staff and **Mr. Zislis** to address the concerns. He indicated that they wish to remain informed and involved with staff in any revisions to the Use Permit.

Theresa Cho, a resident of the 500 block of 12th Street, stated that Municipal Code Section 5.14.140 prohibits noise which causes discomfort or annoyance to any reasonable person of normal sensitiveness and prohibits noise which disturbs the peace and quiet. She said that it is the subjective rather than objective standard of the Noise Ordinance which governs in a court of law. She indicated that there is indisputable evidence that noise from the hotel causes discomfort and annoyance to any person of reasonable sensitivity and disturbs the peace and quiet of the adjacent neighborhood. She pointed out that the Commissioners have heard testimony from numerous residents and received formal complaints. She said that the Police Department has received 94 calls regarding the hotel over the period of time that it has been in operation, and 19 residents have sent in their opposition to the proposed extension of hours. She stated that the graphics included with the noise study demonstrate that the noise of the hotel extends out into the adjacent neighborhood.

Ms. Cho commented that although the hotel is operating within the commercial zone, it was originally intended to be an inn with a lobby bar that catered to guests staying at the facility rather than to the general public. She indicated that the Police Department has been called to the hotel 94 times in the past four years and has not issued a single citation. She indicated that the officers have sided with the hotel on every occasion. She said that the adjacent residents have provided statements that the hotel does not close on time. She stated that there should be clarification so that there is no ambiguity as to the required closing time. She indicated that it is also undisputed that the applicant has not notified the City until recently of special events that exceed the maximum required for notification. She said that the noise from the hotel does cause disturbances in the adjacent neighborhood and results in lowering of property values of the adjacent homes. She commented that the proposed extension of hours should not be approved, as the hotel currently creates a disturbance.

Mike Welsh, a resident of the 600 block of 13th Street, said that the hotel provides a great service to the community and brings much needed revenue to the City. He indicated, however, said that he is unclear of the findings in the sound report. He commented that it is possible to tune out the noise of cars driving down the street; however, it is not possible to tune out loud music and noise and people screaming. He said that he feels the main question is whether it is acceptable for the hotel to make loud noise that disturbs the neighbors. He said that the proposal to extend the hours of operation should only go forward at this time if it is acceptable for the hotel to generate noise that disturbs the neighborhood. He said that otherwise, mitigation measures need to be put in place before consideration is given to extending the hours. He indicated that extending the hours cannot be considered until it is proven that the hotel is in compliance with the Municipal Code. He stated that the residents are simply asking that the Shade comply with the same rules required of all members of the community. He commented that the issue is the close proximity of the site to adjacent residences. He indicated that he does not have an issue with the other uses in the Metlox development staying open until later hours. He suggested that a height Variance be granted for a barrier around the rooftop deck which would help to keep the noise from reaching the adjacent neighbors.

Chairperson Seville-Jones clarified that the issue before the Commission at this hearing is the

extension of hours for the Shade and not whether the hotel is in compliance with the existing Use Permit. She said that the Commission does not have the power to impose additional conditions on the current Use Permit.

Director Thompson said that issues of violations of the Noise Ordinance are addressed on an administrative level with the Police Department and the City's Code Enforcement team. He indicated that it is not the jurisdiction of the Planning Commission to make interpretations regarding the existing Use Permit or to impose additional restrictions unless an Amendment to the Use Permit is approved.

Demira Botic, a resident of the 400 block of 10th Place, stated that the comments have been very long and suggested that the speakers limit their comments, and not be repetitive.

Stephanie Hubbard, 1300 Ardmore Avenue, said that she is confused by the results of the sound study. She stated that she is a reasonable person and has been disturbed from the noise at the hotel. She commented that the subject site is unique in that it is located 170 feet from residences. She stated that the hotel needs to comply with more noise regulations than other businesses in the Metlox development that are not located as close to residential properties. She indicated that she can hear noise from the rooftop deck, the interior corridor, and the front door of the hotel from her home. She commented that special events at the hotel routinely continue past permitted hours. She said that she does not understand the reason for considering longer hours for the bar area when her understanding is that a bar was not originally permitted. She also requested that a Variance be approved for a 4 foot barrier along the rooftop deck which would help to reduce noise to the adjacent neighborhood. She commented that her concern is not with the operation of the hotel but rather with the noise spilling over into the adjacent neighborhood.

John Li, a resident of the 500 block of 15th Street, said that he can hear music from his second story often between 8:00 p.m. and 10:00 p.m., although he cannot confirm whether it is from the hotel. He pointed out that sound does carry, and he would want to be certain that any mitigation measures that are intended to reduce sound to one area do not result in more noise disturbances to other areas. He said that the mitigation measures need to be effective for all properties around the subject site. He stated that he would be opposed to extending the service of alcohol for any additional hours beyond what is currently permitted. He commented that he recently was nearly hit by a car when he was running in the area of the hotel in front of the hotel drop off. He said that there is not a pedestrian walkway along the hotel, and increasing the time for alcohol service increases the chances that someone in the area can be hurt by a drunk driver.

Dan Levin, a resident of the 600 block of 11th Street, said that he enjoys utilizing the hotel. He indicated that people leaving the hotel over a longer period creates less of a noise disturbance than if they are all required to leave at one specific time. He said allowing the hotel to continue in its normal course of business would allow for a more orderly flow of patrons exiting the establishment. He pointed out that the residents on the street did make the decision to live adjacent to a commercial area.

Constantine Diamond, a resident of the 400 block of 10th Place, said that he specifically chose to move to the downtown area because of its charm. He indicated that the hotel is a great place to entertain clients. He said that along with the charm of the downtown area also comes noise. He indicated that there is a great amount of energy downtown, which is the reason he has chosen to live there.

Viet Ngo said that the subject site is on public property, and the Commission has authority over

the use of the land. He commented that the property was acquired in part with federal funds. He indicated that Resolution PC 05-08 and the minutes of the meeting of May 25, 2005, state that the original permit does not allow for a bar and that alcohol service is limited to beer and wine. He said that the hotel does not have a permit to have a bar. He said that there is clear evidence that City staff misused public funds and channeled funds to Metlox LLC and Manhattan Inn Operation Company. He said that the Commission should stop the racketeering enterprise and will be responsible for their actions.

Rod Ragle, a Manhattan Beach resident, said that it is good that there are successful businesses in the downtown area. He stated that forcing patrons of the hotel to leave at 11:00 p.m. results in people congregating in front of the hotel to decide where they will go next. He pointed out that the modernization of the City results in greater noise. He stated that the hotel has taken many steps to mitigate the noise impacts to the neighbors. He said that he would ask whether the adjacent neighbors have taken any measures on their properties to mitigate noise, considering that they have chosen to live across from a very large commercial property.

Peter Gombrect, a resident of 19th Place, said that the residents of Manhattan Beach live in a very dense City. He said that the interests of the residents must be balanced with the interests of the businesses. He commented that there is a limited amount of public space in the City, and there are rules established for the enjoyment of those areas for all of the residents. He indicated that 11:00 p.m. is not a reasonable closing time for such a business in a commercial area and is not equal to the hours permitted for other establishments. He indicated that there are noise ordinances that can be enforced if the hotel is not in compliance. He said that the interests of the residents would be better served by suggesting changes to the existing Noise Ordinance. He stated that the hotel is in compliance with the Noise Ordinance. He commented that some of the adjacent residents would not be happy with any commercial business at the subject site.

Rich Walker, a Manhattan Beach resident, thanked **Mr. Zislis** for providing a location like the Shade within the City. He said that he is proud to have friends and business associates stay at the hotel. He indicated that it is a great asset to the City and should be supported.

Steve Wible, a resident of the 1200 block of North Ardmore Avenue, said that several residents went to speak to **Mr. Zislis** several times, and his response was that it was the City who originally built the hotel. He indicated that residents in the adjacent neighborhood have moved as a result of the noise generated from the hotel. He commented that the noise which reaches his home is from the hotel terrace and the front entrance. He indicated that it would help for the noise to be reduced for the bar area to be soundproofed. He commented that he is opposed to allowing any extension of hours. He said that he would also like for the City to investigate past violations of non compliance with notification to the City of special events.

Tony Doriko, a Manhattan Beach resident, indicated that there has been concern expressed by the residents who are being impacted by the noise from the hotel. He said that he understands that is not up to the Commission to enforce the conditions of the existing Use Permit. He commented that if the residents were in agreement to support the hotel operating two additional hours on weekends, **Mr. Zislis** would implement the additional noise mitigation measures as has been recommended.

Nancy Gilombardo, a resident of the 1100 block of North Ardmore Avenue, said that she is opposed to increasing the operating hours for the hotel, as it would only worsen the existing problems with the noise from the current operation. She said that extending the hours is not a solution to the problem. She stated that she has to close her windows at night and run a fan in order to reduce the level of noise from the hotel, and she has been woken up after 11:00 p.m. when she did leave her window open.

Jeff Dooley, a resident of the 1100 block of North Ardmore Avenue, indicated that placing a partition to separate the bar area would solve a great deal of the noise issues from the patio. He commented that he heard pounding music at his home coming from the hotel at 11:00 p.m. the following night after the previous hearing regarding the subject proposal. He said that he does not feel comfortable with **Mr. Zislis** being responsible for implementing the noise mitigation and would hope that the City would help to solve the issue.

Don McPherson, a resident of the 1000 block of 1st Street, indicated that he stands behind the comments that he has provided to the Commissioners that the methodology used for the sound study is incorrect. He commented that if the noise from the hotel is less than the ambient noise level in the adjacent area as suggested by the noise report, then the noise from the hotel should not be audible from the neighborhood. He indicated that the recording played by **Mr. Hubbard** and the testimony of the residents demonstrate that the hotel noise is audible from the neighborhood. He said that the Use Permit and Entertainment Permit for the hotel contain the requirements that if enforced will control the noise problem. He said that the Use Permit requires a retractable wall between the Zinc bar and the lobby as part of the STC 50 standards. He indicated that the Entertainment Permit indicates that the Zinc bar will have soundproofing treatments on the wall, the partition and the ceiling. He said that no additional hours need to be approved for those requirements to be enforced. He said that there is the possibility of negotiating if the applicant works with staff and the neighbors to resolve the noise issues.

Karol Wahlberg, a Manhattan Beach resident, commented that there is not only an issue with noise from the patrons but also with employees who leave the downtown businesses an hour after closing and generate noise. She indicated that she believes the residents are significantly impacted by the noise from the hotel. She commented that she feels it would set a very bad precedent to consider the request for additional hours for the hotel before addressing the concerns regarding noise.

Daryl Nisnick, a resident of 15th Street, said that although he does not hear noise at his home from the Shade, he hears noise from police and fire vehicles and general traffic. He commented that noise is part of life in a close community. He indicated that the sound engineer has concluded that the hotel is not in violation of the Sound Ordinance. He said that noise in the area cannot be completely eliminated, and it is a fact of life living near a commercial area. He stated that the applicant has offered to provide additional mitigation, but the noise cannot be completely eliminated. He said that there would be blight if the subject site was vacant, and the community would suffer. He said that he enjoys being able to go downtown and visit the Shade. He said that he feels the additional hours should be approved and that a requirement be included that **Mr. Zislis** provide additional mitigation measures as suggested.

Michelle Patterson, a resident of 23rd Place, commented that she does not feel the applicant should be rewarded when they are not able to address existing issues regarding noise. She indicated that several downtown establishments that are open later depend on the overflow of hotel patrons after the Shade closes. She said that the impact to other businesses should be considered in discussing any extension of hours for the hotel.

Chairperson Seville-Jones closed the public hearing.

Mr. Zislis commented that the Oktoberfest party that was recorded by **Mr. Hubbard** only occurs once a year. He indicated that they file a permit with the City for the party, and it ends at 8:00 p.m. He said that the general public is allowed at the Zinc bar. He stated that the hotel is not in violation of the City's objective noise standards. He pointed out that there is generally

noise associated with living next to a commercial zone. He said that he was up front with the City regarding the design of the hotel. He indicated that he is willing to do a barrier to completely surround the rooftop deck; however, the main concern is regarding the noise that emanates towards the neighborhood rather than toward the adjacent commercial area. He pointed out that special events currently are permitted until midnight, inside the hotel.

In response to a question from Commissioner Lesser, **Mr. Zislis** said that it would be much more aesthetically pleasing to put a double vestibule barrier as proposed at the front door rather than in the middle of the lobby.

At 9:15, a 10 minute recess was taken.

Discussion

In response to a question from Commissioner Lesser, Director Thompson said that the Police Chief has indicated that the officers have been instructed to respond immediately and take appropriate action to any complaints that are received regarding the Shade. He indicated that it is the practice of the Police Department to attempt to resolve issues before issuing citations.

Commissioner Andreani indicated that after looking at City Council Resolution No. 5770, Planning Commission Resolution No. 05-08, the Entertainment Permit for the hotel, the noise evaluation study, and the request of the residents for conditions for the Use Permit, it appears to her that the problem of noise emanating from the Shade hotel to nearby residents is primarily a result of the hotel not being in compliance with the original Use Permit and of the City's lack of enforcement. She said that the Metlox development was intended to provide a full range of office, retail and commercial activities while being mindful of being located near a residential neighborhood. She commented that the applicant knew that they would be opening the hotel near a residential area. She stated that the City is primarily a residential community, and the businesses are to be supported in ways that are not detrimental to the local residents. She indicated that extending the hours will exacerbate the noise and diminish the small town atmosphere of the downtown area.

Commissioner Andreani said that PC Resolution 05-08 states that the primary use and purpose of the hotel is to serve the community as a hotel offering first class accommodations to visitors; that all advertising, marketing and promotions will be focused on potential hotel guests and not the general public; and that the inn may provide wedding party and other special events in the courtyard, meeting room and living room as a secondary service to the primary inn use. She indicated that PC Resolution 5770 states that the availability of the inn for special events shall not be marketed as a primary use. She suggested that guests for special events be required to stay overnight and that special events not be marketed as a primary use. She pointed out that PC Resolution 05-08 provides no change of hours of operation for alcohol sales or special events. She said that the Resolution also states that all advertising, marketing and promotions will be focused on hotel guests and not the general public. She stated that there has been advertising for events at the Shade that were not paid for by clients of the hotel. She said that the hotel should not be promoted as a bar. She indicated that it was originally promoted to be a lodging establishment with only limited breakfast service for hotel guests only; however, breakfast has been served to the general public. She indicated that the hotel was not to provide lunch service; however, lunch has been advertised and provided to the public. She indicated that the retractable wall that was originally required for the "living room" area, the Lobby bar, has not been installed, and the noise study indicated that it is one of the areas of concern. She indicated that the operating hours, special events, hotel guests, and closing times all need to be more clearly defined. She said that she could not support additional hours of operation based upon compliance with the current permitted hours of operation.

ANDREANI

LESSER

Commissioner Lesser said that there is no question that the neighbors have been disturbed and annoyed by the noise from the Shade. He said that he toured the hotel at later hours on a busy weekend. He stated that the Commissioners have received numerous e-mails documenting the noise that emanates from the hotel into the adjacent area. He commented that the challenge is that the applicant is under no obligation to implement additional mitigation measures unless the additional hours of operation are approved. He said that the subject site is in a commercial zone located near residents, many of whom were living there before the Metlox development was built. He commented that he would support allowing the applicant to further review specific options to address the issues regarding noise.

PARALUSZ

Commissioner Paralusz thanked the members of the audience who have participated in the issue. She said that the Commission does not have the authority to require enforcement of the existing Use Permit. She commented that she agrees that the hotel may be in compliance with the objective noise standard; however, they may not be in compliance with the subjective standard. She commented that she feels it is reasonable for adjacent residents to be annoyed when they hear music from the hotel at 11:00 p.m. She commented that she wants to help the adjacent residents without hurting the applicant by denying any extension of hours. She said that she would be in favor of allowing the applicant to further consider additional mitigation measures including double doors. She suggested that the sound engineer provide input on measures that would be the most effective. She said that if she could be convinced that mitigation measures would be effective, she would be in favor of requiring that they put in place before she would consider allowing an extension of the hours.

Chairperson Seville-Jones commented that the neighbors have demonstrated that there is a noise issue in the adjacent neighborhood resulting from the hotel. She indicated that there has been testimony from residents at three hearings regarding the issue. She said that the sound report indicates that there is no issue regarding compliance with the objective noise standards. She commented, however, that the subjective standard is not met, as reasonable people living in the adjacent area are being impacted by the noise. She said that the hotel is located in a commercial area; however, it needs to coexist with the adjacent residential area. She said that although the hotel has not been cited, the fact that there have been numerous calls to the police suggests that there is a problem.

SEVILLE-JONES

Chairperson Seville-Jones commented that implementing additional mitigation measures at the same time as extending the hours for the hotel may be a benefit; however it would still be allowing additional hours of operation. She indicated that the residents have indicated that they do not want additional hours of operation for the hotel. She commented that regardless of any additional mitigation measures, there would still be noise emanating from the hotel. She said that given the current complaints, she cannot support any additional hours of operation for the hotel. She commented that she is unlikely to approve the request given that she is applying the subjective noise standard. She also said that she is uncertain that any additional mitigation measures would be effective. She indicated that she would rather vote against the application at this point rather than asking the applicant to continue to spend money to prove further mitigation measures would work. She indicated that she did not hear from the neighbors that they would be willing to support additional hours of operation in exchange for additional mitigation measures.

The commissioners indicated that they agreed that the current permitted operating hours for the sky deck should not be extended.

Commissioner Paralusz said that she is in favor of reducing notification for special events to 125 people; extending food service; and granting the request for the interior accordion wall as

proposed.

Commissioner Andreani said that she is in support of allowing special events of up to 125 people without requiring City notification; allowing full food service with the same hours as the hotel; and requiring installation of the accordion wall between the lobby and interior courtyard. She commented that she is concerned about the material used for the wall, as glass does not absorb noise.

Mr. Zislis commented that the accordion wall would be constructed to mitigate noise. He said that he wants for the rooftop deck to remain open an additional hour, particularly in the summer during wedding season. He said that he would like to work with the neighbors, staff and the sound engineer. He said that he would not want to spend additional money to work further with the sound engineer if the proposal is ultimately going to be denied. He said that they would like to do all of the proposed mitigation measures while being allowed to have two additional hours of operation on weekends. He indicated that there could be a review of the permit in a year at which time the additional hours of operation could be revoked.

Commissioner Andreani said that the applicant has indicated previously that 70 percent of the revenue is generated from the hotel rooms rather than from the Zinc lounge or from special events. She indicated that she fails to see how two additional hours of operation for the sky deck, lounge and terrace on the weekends would significantly increase the hotel's revenue, and it would potentially disrupt the adjacent neighborhood.

Mr. Zislis said that the Commission can require that the operation of the hotel be reviewed after a year and can revoke the two extra hours at that time if it is determined to be an issue. He pointed out that other establishments in the area do not close at 11:00 p.m.

Commissioner Andreani suggested the possibility of allowing the Zinc bar to remain open until midnight on weekends for hotel guests only and that the current hours for the sky deck and terrace not be extended.

Director Thompson suggested that the item be tabled so that it can be readvertised when it is ready to come back before the Commission.

Chairperson Seville-Jones said she would like further clarification of the definition of special events and public advertising.

A motion was MADE and SECONDED (Lesser/Paralusz) to **TABLE** a Consideration of a Master Use Permit Amendment for modifications to the existing approvals for hours of operation, size of special events, food service, and installation of a glass wall between the lobby bar and hotel rooms at the Shade Hotel, Metlox Site, 1221 North Valley Drive.

AYES: Andreani, Lesser, Paralusz, Chairperson Seville-Jones
 NOES: None
 ABSTAIN: Fasola

~~10/28/09-3 Consideration of Code Amendments to Allow All Restaurants, Bars, Hotels, Facilities Within Hotels, and Similar Commercial Businesses to Remain Open Until 1:00 a.m. on New Years~~

~~Planning Manager Jester summarized the staff report. She said that the Downtown Business and Professional Association originally submitted a request to the City Council to extend hours for businesses on specific holidays. She indicated that the Council did amend the Code~~

CITY OF MANHATTAN BEACH
[DRAFT] PLANNING COMMISSION
MINUTES OF REGULAR MEETING
MAY 12, 2010

The Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 12th day of May, 2010, at the hour of 6:35 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

A. ROLL CALL

Present: Andreani, Lesser, Paralusz, Seville-Jones, Chairman Fasola
Absent: None
Staff Present: Laurie Jester, Acting Director of Community Development
Eric Haaland, Associate Planner
Recording Secretary: Sarah Boeschen

~~**B. APPROVAL OF MINUTES** April 28, 2010~~

~~Commissioner Seville Jones requested that the first sentence of paragraph 7 on page 5 of the April 28 minutes be revised to read: "Commissioner Seville Jones indicated that the issue is that only \$300,000 is being received from contributed to the general fund for the year . . ."~~

~~Commissioner Lesser requested that the fourth sentence of paragraph 6 on page 5 of the minutes be revised to read: "He commented that he is able to defer the decision of prioritizing projects to the City Council, given the many conflicting policy considerations and availability of offsetting funds from other sources."~~

~~Commissioner Paralusz requested that the first sentence of paragraph 8 on page 5 of the minutes be revised to read: "Commissioner Paralusz stated that she does not feel that it is within the purview of the Commission to prioritize the projects that are included in the C.I.P."~~

~~A motion was MADE and SECONDED (Seville Jones/Andreani) to **APPROVE** the minutes of April 28, 2010, as amended.~~

~~AYES: Andreani, Lesser, Paralusz, Seville Jones, Chairman Fasola
NOES: None.
ABSENT: None.
ABSTAIN: None.~~

~~**C. AUDIENCE PARTICIPATION**~~

~~Viet Ngo, stated that he is a victim and witness of public corruption from the City. He said that the Commission must comply with the Brown Act. He commented that Michael Zislis has stated that he was paying rent to the City in the amount of \$300,000.00 per year; however, there is no indication in the City record of any rent paid by Mr. Zislis. He said that there is clear evidence that the City Council and City staff have converted the use of public property for private use by Jonathan Tolkin and Michael Zislis. He said that the Commission must honor the law and will be subject to violation of federal statute as stated in Title 18, Section 666 of the U.S. Code.~~

D. PUBLIC HEARINGS

04/28/10-3 Consideration of a Master Use Permit Amendment for Modifications to the Previously Approved Hours of Operation, Notification for Special Events, Restaurant Operations, and a Height Variance for a Six Foot High Noise Barrier at the Roofdeck at the Shade Hotel, Metlox Site, 1221 North Valley Drive

Chairman Fasola indicated that he has previously recused himself from consideration of the issue, and he then left the dais.

Acting Director Jester summarized the staff report. She indicated that the proposal is to increase the number of people permitted for special events at the hotel without prior notification to the City; to expand the food service; and to expand the hours of operation. She commented that a height Variance is also being proposed to allow for a noise barrier to be installed on the rooftop deck. She indicated that there previously was general support by the Commission regarding the increase in number of people permitted for special events without prior City notification and for the expansion of food service. She commented that the Commission also felt that the neighbors' concerns needed to be addressed before the hours of operation could be considered to be increased for the hotel. She indicated that the neighbors and the applicant had a meeting in November to discuss measures for noise mitigation. She indicated that a noise mitigation evaluation report was prepared in March of 2010, which has been provided to the Commissioners. She stated that the recommendations from the report include installation of a front door entry vestibule that would reduce the noise to the east on 12th and 13th Streets and south of 13th Street; installation of roll-down glass acoustic panels to enclose the terrace during nighttime hours which would help to reduce noise levels south of 12th Street; and installation of 6 foot barriers on the north, south and east sides of the rooftop deck which would slightly reduce the noise levels particularly at 1300 Ardmore. She indicated that staff, the applicant and neighbor representatives met to discuss noise mitigation and the proposal which included the noise mitigation measures was rejected by the neighbors.

Acting Director Jester indicated that currently special events with a maximum of 99 people are permitted without prior notification to the City, and the proposal is to allow special events with 125 people without prior notification. She commented that the proposal also is to allow for full food service. She said that currently the Zinc Lounge operates until 11:00 p.m., and the proposal is to operate until 11:30 p.m. on Thursday nights and until midnight on Friday and Saturday nights. She stated that the proposal is for the terrace to be open until 10:30 Sunday through Wednesday nights; 11:00 p.m. on Thursday nights; and midnight on Friday and Saturday nights. She stated that the courtyard is proposed to be permitted to remain open until midnight every day. She indicated that the rooftop deck is currently closed at 10:00 p.m. and proposed to remain open until 11:00 p.m. She commented that the project was noticed to all of the property owners within 500 feet of the site, and notice was also published in the Beach Reporter. She said that staff received a number of comments which were provided to the Commissioners that include concerns regarding noise, enforcement and the ABC (Department of Alcoholic Beverage Control) regulations.

In response to a question from Commissioner Lesser, Acting Director Jester indicated that the Commission can consider whether the impact of the noise being generated from the hotel fits the reasonable person standard. She stated that the objective standard is based on the decibel levels which are generated from the Shade.

Commissioner Lesser commented that his understanding is that the applicant has not been found to be in violation of the objective standards of the Noise Ordinance, although many residents have indicated that they believe the applicant is in violation of the subjective standards of the Ordinance.

Acting Director Jester indicated that the applicant has not been cited for violations of the Noise Ordinance, and the findings of the noise report show that they are in compliance with the objective standards of the Code.

JESTER

In response to a question from Commissioner Lesser, Acting Director Jester commented that a representative of the ABC indicated that the Type 47 license was the appropriate type of permit to fit the proposal and that the Type 70 would not work for the subject application. She commented that the Type 70 license is very restrictive. She indicated that it was clarified before the vote on the proposal was originally made by the Commission in 2005 that alcohol would be served on the terrace. She commented that the occupancy levels for the hotel that were established in 2006 by the Fire Department have always remained the same.

Commissioner Lesser asked whether there is sufficient space to build the vestibule that is proposed given the close proximity of the front door to the driveway.

Acting Manager Jester indicated that it has been determined that there would be sufficient space to allow for the vestibule.

In response to a question from Commissioner Lesser, Acting Director Jester commented that many Use Permits specify different permitted hours of operation for different nights of the week. She commented that Exhibit A included with the staff report has specific recommendations for closing, when the last drinks are to be served, and when the music is to be turned off.

In response to a question from Vice-Chairman Paralusz, Acting Director Jester indicated that it would be difficult to issue a citation for violation of the subjective standard of the Noise Ordinance.

Officer Bryan Klatt stated that the police reports regarding noise complaints from the neighboring residents are referred to the City Attorney's office rather than a citation being issued at the time if there is doubt that the noise is emanating from the hotel.

In response to a question from Commissioner Lesser, Officer Klatt indicated that a wall separating the bar area from the lobby would reduce the noise that emanates from the front door. He indicated that a retractable wall would not make a difference in making a determination as to whether alcohol is being served at the bar after permitted hours.

Vice-Chairman Paralusz opened the public hearing.

Public Testimony

Michael Zislis, the applicant, said that he has worked diligently with the neighbors. He stated that the Commissioners have been provided with a document that specifies and removes ambiguity regarding the proposed closing hours of the different areas of the hotel. He indicated that he has paid for another sound study to be done and has paid for a height Variance to allow for a sound barrier on the sky deck. He said that **Mr. Hubbard** sent a survey to 30 residents in March, and one resident replied. He commented that a shorter second survey was then sent out which did not specify the mitigation measures that are being proposed and only asked whether there was support for the request for extra hours. He indicated that he and staff were not able to see any of the replies for the second survey. He pointed out that the noise study that was conducted by the City's noise consultant states that the noise generated from the hotel does not exceed the objective standard of the Noise Ordinance. He commented that he also does not feel

that the hotel exceeds the subjective noise standard. He stated that they have not received any citations for violating the Noise Ordinance or for violating any liquor laws. He also pointed out that Sashi Sushi operates until midnight and Petros operates until 1:00 a.m. He said that the language of the Master Use Permit allows operating hours of the hotel until midnight. He commented that they have agreed to not provide any live entertainment in the courtyard area. He said that the sound barriers proposed for the skydeck would help to mitigate the noise impacts to Hubbards' home. He pointed out that the complaints regarding noise at the hotel are not a result of noise from the Zinc Lounge but rather from special events. He indicated that they have proposed measures that will help to mitigate the noise. He commented that the original plans showed the hotel with a lobby and a 50 foot bar as it was built.

ZISLIS

In response to a question from Commissioner Andreani, Mr. Zislis indicated that he would prefer not to have a solid wall separating the lounge area and the lobby area. He said that he would not want to change the look of the hotel when there are other methods for mitigating the noise.

John Strain, applicant's Attorney, pointed out that the hotel is in the Metlox Development, which is located in the downtown commercial district. He indicated that the Master Use Permit was approved in 2002 by the City Council. He said that any determination and evaluation of the hotel must consider that the original intent was to have a broad range of businesses and services within the Metlox development. He indicated that providing the services of a four-star hotel includes providing rooms, a lounge area, food service, and facilities for special events.

Mr. Strain said that the noise study has determined that the hotel has not been in violation of the objective standard of the Noise Ordinance. He commented that some of the factors in the Code that are considered regarding whether the subjective standard has been violated include the nature and zoning of the area in which the noise emanates and whether the noise is produced by a commercial or non-commercial entity. He said that the context and the purpose of the establishment where noise is being generated is important in considering violations of the subjective noise standard, as well whether the noise is generated on a weeknight or weekend. He commented that they do not believe that the current Master Use Permit restricts the operating hours for the hotel to 11:00 p.m. on every night of the week. He commented that **Mr. Zislis** had indicated during the 2005 hearing that the intended closing hours were 11:00 p.m. nightly, and condition L of the 2005 permit indicates that the intended operating hours are until 11:00 p.m. nightly. He stated that the 2002 Master Use Permit for the Metlox development established general hours for the plaza of 11:00 p.m. during the week and midnight on Friday and Saturday nights which applied to all of the businesses. He indicated that it was vague as to whether those hours applied to the hotel. He said that he does not feel that the hotel which most strongly serves visitors to the community should be subject to a more restrictive standard.

Mr. Strain pointed out that most of the noise complaints have not been related to the Zinc Lounge. He commented that many of the complaints relate to the operation of taxis and parking in the Veterans Parkway, which are issues of City enforcement. He said that many of the noise complaints from the hotel relate to special events such as weddings, which are a very important part of the services provided by the hotel.

In response to questions from Commissioner Lesser, **Don Behrens**, representing Behrens and Associates, indicated that there was a wedding occurring at the hotel during the period that they were monitoring the noise. He indicated that there are no additional sound mitigation measures proposed for the courtyard area other than limiting the hours. He stated that there was a determination by the Building Department that the sound attenuation objective was being met by the materials that were used to enclose the front of the hotel, which is the reason that the

wall was originally not required to be put in place between the lobby area and the lounge. He said that a dividing wall would still leave a large part of the lobby area and lounge area without any sound mitigation, and there could be an issue of noise escaping when the front door is open. He said that a glass vestibule at the front door would contain the noise from the lobby area as well as from the lounge and the front desk.

In response to a question from Commissioner Seville-Jones, **Mr. Behrens** indicated that the study determined that height of the proposed noise barrier along the skydeck would not be very effective in mitigating noise.

In response to a question from Commissioner Seville-Jones, **Tom Corbishley**, representing Behrens and Associates, stated that there could possibly be more use of the terrace area during evening hours if it were enclosed, which could increase noise levels.

Stephanie Hubbard, a resident of the 1300 block of Ardmore, said that she would not object to an extension of hours if the rules were being enforced and if noise were not coming from the hotel. She indicated that there was concern expressed when the hotel was originally proposed about drawing in visitors from other areas for the sole purpose of visiting the hotel. She showed a surveillance video from the hotel that demonstrates that alcohol is being served after the permitted hours. She said that they want clear standards in place for alcohol service and closing to allow for the police to enforce the rules.

Brent Taylor, a resident of the 500 block of 12th Street, said that he would be in favor of extending the hours provided that the subjective standard of the Noise Ordinance is met. He commented that the Type 70 license is more restrictive than the Type 47 license, which would be more appropriate for the hotel. He said that a 30 minute time span is necessary between the time that the last drinks are served and the time that the bar is closed. He showed a video of the Police Department responding to a noise disturbance call at the hotel after the permitted operating hours.

Debbie Taylor, a resident of the 500 block of 12th Street, said that the hotel violated the noise regulations with their Oktoberfest party. She showed a video of Lieutenant Dye documenting the noise of the Oktoberfest party from 13th Street and Valley at 8:05 p.m. after the event was required to end. She commented that allowing extended hours would result in patrons drinking at the hotel until later hours.

Gary Osterhout, a resident of the 500 block of 31st Street, stated that he was previously a member of the steering Committee of the Residents Against Rezoning (RAR) that helped guide opposition to Measure 2000A on the June 2000 ballot which would have rezoned the subject property as non-commercial. He stated that with the support of City Hall, they assured voters that the purchase of the Metlox property was intended to control development and that any lodging component would be low impact and would provide a unique element to encourage patronage of the other downtown businesses. He said that a group of residents who live adjacent to the Metlox development formed Residents for a Smalltown Downtown which led an earlier effort in 1999 to oppose a large development on the site that included a hotel with meeting and restaurant facilities. He commented that Residents for a Smalltown Downtown eventually joined the RAR in opposing the ballot measure to zone the property as non-commercial because of the assurances that any development would be low impact. He said that his opinion is that there would not be a Metlox Plaza today if the Residents for a Smalltown Downtown had supported the measure. He pointed out that the neighbors could have stopped commercial development entirely if they had voted to pass Measure 2000A but instead decided to trust the City's representations that any development would be low impact.

Mr. Osterhout said that the Metlox Plaza developer continued assurances of a low impact lodging component throughout the subsequent approval phases. He said that the Metlox Plaza developer, the hotel developer, and City Hall all bought off on the business plan economics of a small scale lodging component even without food service or a full liquor license. He commented that the economic advantage of the hotel was to have close proximity to the downtown area, and it was to be supported by the surrounding businesses and liquor licenses. He indicated that the Commission has analyzed the noise study objective standards perhaps too closely to those that apply to a regular commercial enterprise. He stated that there is a clear difference in the standards that apply to the Metlox Plaza and Shade Hotel, as they were developed only after extensive public participation, are built on City-owned land, and were allowed to be developed only after extensive assurances provided to the citizens and residents of the City. He stated that the subjective, qualitative standards would seem to be the most important for the Commission to consider, and it is unarguable that current impacts significantly exceed those that were originally contemplated. He indicated that unless the applicant can prove that the concerns of the neighbors are totally unreasonable in respect to the initial intent for a lodging component, the fact that there are a significant number of residents complaining of noise disturbances from the hotel should be sufficient for the Commissioners to back the requests of the neighbors. He said that the hotel has received incremental concessions from the City beyond the original representations, often because the City is not performing oversight and the neighborhood protections that were expected and promised. He commented that the residents should not suffer as a result of their original trust in the City. He said that consideration should be given regarding the extent that the residents trust the City in allowing any future project.

Don McPherson, a resident of the 1000 block of 1st Street, indicated that the Use Permit requires a wall between the Zinc Lounge and the lobby, and staff's statement is incorrect that the hotel can meet the STC standard without such a wall. He said that there was no discussion in the 2005 meeting regarding approval of serving alcohol on the terrace, and there was a short discussion by staff indicating to the Commission that there would not be alcohol service on the terrace. He said that alcohol service on the terrace was not discussed again until staff put a requirement into the Resolution before the Commissioners voted. He said that the Officer Klatt stated that a wall separating the lounge and lobby areas would not help in issuing citations; however, the staff report indicates that enforcement of closing hours is difficult because of the large common area. He said that a wall separating the lounge area would allow the police to enforce the closing hour for the lounge. He commented that there was also an e-mail in October of 2009 that indicates that the Police Department could not enforce the 11:00 p.m. closing hour because the terrace and the lobby share a common space and the operates 24 hours. He said that **Mr. Zislis** has indicated that enclosing the bar with a wall would not mitigate noise when the front doors are open, which does not make sense.

Mr. McPherson commented that the sound report states that the amplified music from the wedding that was occurring when they were conducting their study was barely audible; however, it has been shown that amplified music from the hotel is clearly audible from the adjacent area. He commented that the only explanation is that the volume of the music was lowered when the measurements were taken. He said that the Commission has the ability to require additional mitigation measures to counter any additional impacts that result from allowing extended hours of operation until midnight on weekends. He said that the acoustical engineer indicated that a vestibule at the front would be more effective in reducing noise than a wall that extends the entire length of the lounge area, which does not seem logical. He commented that the maximum occupancy of the terrace would be the same regardless of whether or not it is enclosed.

Nate Hubbard, a resident of the 1300 block of Ardmore Avenue, indicated that he originally requested that staff act as a mediator in the negotiations between the adjacent residents and the applicant; however, staff determined that the applicant would lead the negotiations. He said that they submitted a draft Use Permit as a starting point for the negotiations in December of 2009, and they testified at the February joint meeting of the City Council and Commission as to having received no comments from staff or the applicant regarding their proposed Use Permit. He said that a meeting was conducted by the applicant in November of 2009 which included discussion of proposed noise mitigation measures, and they submitted their draft Use Permit in December as a response to that meeting. He stated that the applicant conducted a second meeting on March 23, 2010, in which more details were provided regarding the proposed sound mitigation measures; however, the applicant also added a request to allow for 15 registered guests to remain in the bar until 1:00 a.m. every night. He said that he then conducted a poll of the adjacent neighbors and received 16 replies rejecting the applicant's proposal. He stated that he e-mailed the results to the City which listed the major areas of contention including installing a folding wall between the lounge and the lobby, full enclosure of the terrace, noise mitigation for the courtyard, and allowing no entertainment on the skydeck.

HUBBARD

Mr. Hubbard indicated that he has sent the Commission a list of four conditions that the residents would require in exchange for allowing extended hours of the lounge until midnight on Friday and Saturday nights. He indicated that the conditions include installation of a folding sound-absorbing wall between the Zinc Lounge and the lobby; full enclosure of the terrace, including sound absorbing drapes and ceiling fixtures; no live entertainment and no sound system being permitted on the skydeck; and establishing the occupancies that were originally set by the City's Fire Department in 2008. He said that they are requesting that the Resolution include a draft annual entertainment permit that is consistent with their proposed Use Permit as modified by the Commission. He indicated that they have negotiated in good faith but have received no comments regarding their desires and concerns. He commented that they believe they have complied with the direction of the Commission at the October 2009 meeting to work with the applicant.

In response to a question from Commissioner Lesser, **Mr. Hubbard** indicated that they feel it is very important that the applicant install a wall between the Zinc Lounge and the lobby area, which was a requirement when the hotel was first approved.

In response to a question from Commissioner Seville-Jones, **Mr. Hubbard** indicated that the wall would make it easier for the Police Department to determine whether the bar is closed as required. He indicated that staff and the Police Department had previously indicated to him that they are not able to enforce the closing hours because of the difficulty in determining which patrons are registered guests of the hotel and which are only visiting the bar.

Viet Ngo said that he has pursued the matter for ten years and has contacted the FBI, the District Attorney, and Chief of Police Rod Uyeda to resolve the issue. He stated that City Council Resolution 5770 was granted to Jonathan Tolkin and Metlox LLC to receive \$14 million of City money to be used for the Metlox project. He said that Jonathan Tolkin formed Metlox LLC to receive the profits from the City money, and the residents of the City are in debt for the bond for \$13 million. He indicated that the residents of the City will have to continue to pay the bond into future generations in the amount of \$860,000 per year while Jonathan Tolkin continues to make a profit on the lease. He commented that the City Council, Commission and staff are involved in the conspiracy and racketeering enterprise. He indicated that Master Use Permit and the Planning Commission Resolution of May 25, 2005, do not permit the bar at the Shade Hotel. He indicated that there is no agreement of the City Council for Michael Zislis to have the hotel and the Zinc Lounge. He cited United States v. Matthew Iammiello as similar to the case involving the Metlox development. He said that this case will be pursued by the FBI,

and the Commission does not have the authority to allow the ongoing converting of public funds for personal use by Mr. Zislis and Jonathan Tolkin. He stated that anyone who has undergone suffering as a result of noise violations can make a citizens arrest.

William Victor, a Manhattan Beach resident, stated that the original intent was for a bed and breakfast operation as part of the Metlox development. He indicated that the top deck was not intended to be used. He said that he can hear noise and voices from his property on 9th Street and Ocean Drive, and he does not feel extending the hours would be a benefit to the community. He indicated that he feels the noise report is skewed and does not present a balanced view. He commented that he is not aware of any other hotels which have had as negative of an impact on the adjacent neighborhood as the Shade. He said that the applicant must realize that he has to live with the community. He indicated that the adjacent residents purchased their properties before the hotel was built. He said that the community will continue to stay together if the people in it are treated properly. He stated that the sound engineers need to make a fair and unbiased evaluation of the noise generated at the hotel.

Scott Murch, a resident of the 500 block of 12th Street, said that he would like for the hotel to abide by its current permitted hours and for the proposed noise mitigation measures to be implemented before he could support any extension of hours. He said that the project was originally presented as a bed and breakfast and now has moved closer to becoming a full scale nightclub. He commented that a wall between the Zinc lounge and the lobby would reduce noise and would provide for enforcement of the permitted hours of operation. He said that extending the hours without implementing mitigation measures would result in greater impacts to the neighbors. He commented that many of the residents are very busy with their work and families and have not had the opportunity to attend all of the meetings. He said that the bedrooms of his home face onto 12th Street, and the noise coming from the hotel and the Metlox development wakes up his wife and daughter.

Gerry O'Connor, a Manhattan Beach resident, said that Residents Against Rezoning (RAR) was formed in 2000 as a result of the initiative to rezone the Metlox property from commercial. He said that Residents for a Smalltown Downtown was adamant at the time with keeping the property as a park or having very low impact development. He said that the initiative was defeated only with the support of the City and Residents of a Smalltown Downtown. He indicated that he now feels the assurances that he made as a founder and steering committee member are being called into question because of the events that occurred with the development of the Metlox development and the hotel. He stated that the Commission was misled by staff in 2005 regarding the options for the alcohol use permits that were available to the applicant. He said that his understanding now is that there is a Type 70 alcohol permit that met the original intent of the hotel operation. He stated that he believes that the Commission was misled into approving the wrong liquor license. He commented, however, that the hotel now has the entitlement for the Type 47 license.

Mr. O'Connor said that **Mr. Zislis** is a great community supporter and businessman in the City, yet there are questions regarding the hotel serving alcohol after hours and regarding violations of the Noise Ordinance. He commented that the Commission cannot consider adding hours of operation for the hotel without the existing concerns of the neighbors first being resolved. He suggested having a period of enforcement in order to verify that the applicant is meeting all of the conditions and then allowing him to return to the Commission with hard evidence to support his request for the additional hours. He pointed out that there was additional scrutiny for approval of the hotel than for the other businesses in the Metlox development because it has the greatest threat of disrupting the adjacent residential areas.

Milo Bacic, a resident of the 400 block of 10th Place, indicated that they do take extreme measures to be conscious of the adjacent neighbors. He commented that he ensures that the valet service is moved from the entrance of the hotel at 10:00 p.m. He said that their valet service now does not provide parking for patrons of other businesses in the Metlox development. He commented that they direct taxi drivers to move down the block to Morningside Drive. He indicated that patrons are directed to exit from the south side of the hotel after 9:00 p.m. on Friday and Saturday nights. He commented that most of the noise disturbance calls to the Police Department are not a result of the hotel. He said that they are trying to mitigate noise concerns. He pointed out that he lives behind Vons market, which has noise from truck deliveries at 4:00 a.m. He indicated that there are many benefits to living in the downtown area.

Nancy Gilambardo, a resident of the 1100 block of Ardmore Avenue, said that the residents would like for the sound emanating from the hotel to be mitigated. She said that she would not want the hours to be increased considering the problems that currently exist.

Mr. Zislis pointed out that most of the residents near the hotel who spoke support additional hours with mitigation measures. He said that the night on which the video was taken showing patrons in the hotel after hours was during the AVP tournament, which was a very busy weekend in the downtown area. He commented that they thought that they were permitted to operate until midnight, which is how they operated until two years ago. He stated that he is not requesting to be permitted to have 15 guests in the lounge area until 1:00 a.m. He said that the occupancy is the same as when the hotel opened. He commented that the sound wall between the lounge and the lobby was to contain the noise from bands playing for weddings. He said that they have agreed not to have any live entertainment on the skydeck or courtyard areas other than for the Oktoberfest event. He commented that there is no amplified music on the skydeck, and only background music is played. He commented that he is certain that **Mr. Victor** is not able to hear noise emanating from the hotel at his residence on 9th Street and The Strand. He said that the approval of the hours would be conditioned on the mitigation measures being put in place.

Vice Chairperson Paralusz closed the public hearing.

Commission Discussion

Acting Director Jester stated that Behrens and Associates is under contract with the City and is not contracted by the applicant. She indicated that they are very well qualified and well respected acoustical consultants, and have done many studies all over the world. She commented that she has not heard the police indicate that they are unable to enforce the closing hours but rather that it is difficult to enforce the hours because the hotel is a 24-hour operation. She stated that it was indicated by a representative of the ABC that the Type 47 license was appropriate for the applicant's proposal. She commented that it was clear from at the 2005 Planning Commission meeting prior to the Commissions vote that alcohol would be served on the terrace but not in the Metlox Plaza.

Commissioner Andreani commented that the hotel truly has become a bar with a hotel rather than a hotel that includes a bar. She stated that the hotel was approved with the intent of drawing overnight guests to Manhattan Beach to patronize other establishments in the downtown area. She stated that the Metlox Plaza and the hotel were approved to be in keeping with the desire to maintain a small town atmosphere. She commented that the Type 47 alcohol license does contribute to the problem. She commented that the alcohol license being in keeping with the applicants' proposal is different from the license being in keeping with the intent of the City Council and residents. She said that she believes that Behrens and Associates

has done a good job of providing the noise data; however, she is swayed by the recording that was played to the Commissioners and the testimony of the neighbors. She indicated that she would consider some change to the operating hours for the hotel only after mitigation measures have been implemented and tested. She commented that she has concerns with people possibly becoming stuck in the area between the doors of the vestibule when there are large crowds. She indicated that her preference would be for the accordion wall to be installed between the Zinc Lounge and the lobby rather than a vestibule being installed. She said that a wall would reduce noise and help facilitate enforcement.

ANDREANI

Commissioner Andreani stated that she would want ingress and egress for the hotel to be limited to the west entrance after 9:00 p.m. or 10:00 p.m. She said that she feels that partial enclosure of the terrace area seems reasonable. She indicated that the rooftop deck has been marketed by the hotel and has been used much more than was originally envisioned. She said that enclosing the skydeck would seem to defeat the purpose of having an outdoor area. She commented that she would prefer that the skydeck be limited to registered guests. She suggested that alcohol service and music stop at 9:00 and that the deck close at 10:00 p.m. if it is planned to be used for other functions rather than only by registered guests. She commented that although the hotel operates 24-hours, the bar should not be permitted to operate at all hours. She indicated that she would support the proposal for an increase for special events from 99 people to 125 people without prior notification to the City. She said that she does feel that special events need to be clearly defined. She said that clarification should be provided as to whether special events are organized by the hotel or whether they are arranged by an outside party. She pointed out that lunch service is currently offered to guests. She indicated that registered hotel guests should be differentiated from guests who are not staying overnight at the hotel. She indicated that she is in favor of food service. She said that closing should be defined as providing no additional food service, alcohol service, music, or entertainment. She stated that the last call for drinks should occur 30 minutes before the required closing time.

Commissioner Seville-Jones commented that she feels Mr. Zislis is working to meet the concerns of the neighbors. She stated, however, that she has previously expressed doubts as to whether she feels the application can be approved. She indicated that she feels there is a serious risk of additional noise and other collateral consequences from increasing the hours of operation by an additional hour. She indicated that the noise is currently disturbing a fair number of the neighbors, and she feels that the hotel is in violation of the subjective standard of the Noise Ordinance. She commented that she does recognize that noise is also being generated by the other businesses in the Metlox development; however, the hotel is a contributing factor. She said that although the hotel is in a commercial district, it is closest to the adjacent residential neighbors and does not front directly onto the town square. She said that the fact that citations have not been issued does not mean that there is not an issue regarding noise. She commented that the development was originally planned to be limited and to have a low impact. She commented that concern was raised at the City Council meeting regarding allowing full alcohol service rather than just beer and wine. She stated that she feels the neighbors have the right to challenge additional hours that further promote a use that is inconsistent with the original commitment regarding the hotel that was made in 2005.

SEVILLE-
JONES

Commissioner Seville-Jones indicated that the noise study shows that the noise from the skydeck cannot be effectively mitigated using barrier extensions to the walls. She said that she does not feel the findings for a Variance to allow the noise barrier can be met because she does not feel there are special circumstances that justify granting the Variance. She said that she also cannot make the finding that installing the barriers would not result in substantial detriment to the public good. She pointed out that the General Plan specifies a height limit of 30 feet in the downtown commercial area. She stated that she also would like for the deck to have a more limited use. She indicated that she has a concern that enclosing the terrace would

make it a more attractive area for people to gather in the evenings, and the noise study indicated that consideration should be given to how the use of the terrace area would change if it were enclosed. She commented that she is concerned that enclosing the terrace would bring more people and more noise to the neighborhood and would create a greater impact than it would resolve. She indicated that installing a wall between the Zinc Lounge and the lobby seems like it would help with enforcement. She said that having a contained area where alcohol is served would allow for that space to be closed down after a certain hour. She commented that she agrees with the comments of Commissioner Andreani regarding special events, food service and closing being more clearly defined. She said that she does not feel the findings can be made to allow the Variance for the sound barrier on the skydeck. She stated that she also does not like the potential impact of enclosing the terrace. She indicated that she feels more sound mitigation is necessary than simply changing the entrance to the hotel.

Commissioner Lesser that he does feel that Shade provides a valuable service to the community. He indicated that he recognizes that the residents have lost trust in the applicant and in the City with the approval of an establishment that has gone beyond what was originally intended and with the lack of enforcement of the subjective noise standard. He said that the problem is that it is difficult for officers to issue citations under the subjective standard. He indicated that the applicant has vested rights for use of the property. He indicated that the Council voted to approve the hotel, and it is operating within the entitlements that currently exist on the property. He pointed out that the property is also located within a commercial zone, although it does border a residential zone. He stated that the applicant is offering to make improvements to the open south terrace and the east entrance to address the concerns of the neighbors. He commented that the proposed mitigation measures would be expensive for the applicant. He indicated that he is hoping to find ways to encourage the applicant to make the improvements to provide relief to the neighbors. He stated, however, that the neighbors have not expressed support for the mitigation measures that have been presented.

LESSER

Commissioner Lesser indicated that the applicant has rights as to which mitigation measures he is willing to accept or reject. He indicated that he has heard the applicant indicate that he does not want the acoustical wall separating the Zinc Lounge from the lobby based on the current use of the lounge area. He said that the acoustical engineer also has indicated that the vestibule at the front entrance would be as effective in mitigating noise from the neighbors as a wall separating the lounge and lobby areas. He said that he would be receptive to allowing an extension of hours if a vestibule is installed at the front entrance and a retractable wall is installed for the terrace. He said that based on the findings of the sound report, he feels the existing operating hours for the skydeck should be maintained. He indicated that he does support expansion of food service for the hotel and allowing an increase in the number of people permitted for special events to 125 without prior notification to the City. He said that the use of the terrace is a current entitlement and enclosing the terrace would help to mitigate noise to the neighbors.

Vice-Chairperson Paralusz thanked everyone who has sent in comments and attended the meetings for their participation and their patience. She also thanked the other Commissioners for working through the process and being open to hearing the applicant and the neighbors. She indicated that there was an expectation in 2000 on the part of many of the neighbors that the hotel would be a smaller bed and breakfast. She commented, however, that the hotel now has been built, and the current entitlements cannot be taken back. She stated that **Mr. O'Connor's** comments regarding the approval in 2005 still should be considered in determining how to proceed with this current application. She indicated that she must take into consideration the comments of the neighbors that the subjective part of the Noise Ordinance has been violated. She said that the fact that there have been a number of complaints from the neighbors is important to consider. She indicated, however, that the applicant also has rights

for the use of his property under the Use Permit. She indicated that she would support installing the vestibule at the front entrance and installing a retractable wall for the terrace. She commented that the occupancy of the terrace would remain at 47 whether or not it is enclosed. She said that she does feel Commissioner Seville-Jones has a legitimate concern that enclosing the terrace could potentially increase the number of people who utilize it. She indicated, however, that she is swayed by the noise report which indicates that enclosing the terrace would significantly reduce the noise. She said that the Resolution would have to address any potential change in the use of the terrace if it were enclosed.

Vice-Chairperson Paralusz indicated that she would support allowing an increase in the number of people to 125 for special events without prior notification to the City. She stated that she also would support the proposal for expanding food service. She said that she does not feel the issue would be before the Commission if the applicant did have the ability to operate until midnight. She stated that she supports the suggestion of Commissioner Andreani that the additional operating hours only being granted after the mitigation measures have been installed and that there be a period of monitoring.

Commissioner Lesser commented that he is concerned that there is not more agreement by the neighbors for the mitigation measures that have been proposed. He commented that he is concerned that the neighbors would not be satisfied even if the mitigation measures are put in place without the extension of hours.

Commissioner Paralusz said that she would not be in favor of extending the permitted operating hours for the skydeck and would not be in favor of granting the Variance for the sound barrier.

Commissioner Seville-Jones indicated that she is in favor of a wall between the Zinc Lounge and lobby rather than a vestibule because she feels it may be better in reducing noise. She said that she is not convinced that a vestibule would mitigate the noise issues. She commented that increasing the hours the Shade would attract a larger number of people and would result in more potential for noise impacts. She said that she is not in favor of enclosing the patio which would basically create a new room. She said that she is not sure that enclosing the patio would help to mitigate noise if the top portion is left open.

In response to a question from Commissioner Seville-Jones, Commissioner Lesser and Vice-Chair Paralusz said that they would be in support of fully enclosing the terrace with moveable partitions.

Acting Director Jester stated that the terrace is clearly an outside area and not an enclosed indoor space.

Commissioner Seville-Jones indicated that her understanding is that the intent of the Metlox development was to have the central town square where people could sit outside.

Acting Director Jester pointed out that the wall would be retractable so that the patio would remain open during the day and would be enclosed during nighttime hours. She said that a wall surrounding the terrace would help for sound mitigation. She stated, however, that the wall would create more of an enclosed space, than the current open terrace. She said that the wall would be glass and would be open during the day until 9:00 p.m. She indicated that the wall would not result in the patio becoming a conditioned indoor space.

Vice-Chairperson Paralusz pointed out that the terrace is currently closed off with curtains during the nighttime hours. She said that the wall would have the benefit of adding sound mitigation.

Commissioner Seville-Jones commented that she feels closing the patio would set a dangerous precedent for other businesses in the Metlox development.

Commissioner Andreani suggested possibly establishing different operating hours for the terrace since it is defined as a separate space.

Commissioner Lesser commented that his frustration is that there is not more consensus with the neighbors regarding the proposed mitigation measures. He said that he does not want to push for approval of mitigation measures that are not supported by the residents. He indicated that he is looking for methods of decreasing the noise impacts to the neighbors.

PARALUSZ

Commissioner Seville-Jones suggested the possibility of bringing in a mediator to help negotiate the issues between the applicant and the neighbors.

Commissioner Paralusz said that she also is doubtful that further discussions between the applicant and neighbors would be helpful. She said that she does not feel a mediator in this situation would be very successful since there are several residents who may have different views and interests.

Mr. Zislis requested that a five minute break be taken to allow him to consult with Mr. Hubbard.

ZISLIS

At 10:00 a five minute break was taken.

Mr. Zislis said that he has received support from Mr. Hubbard to allow the extended hours as proposed with construction of a vestibule at the east entrance; with full enclosure of the terrace after 9:00 p.m.; with the queue being moved to the rear door on the west side of the hotel on Friday and Saturday nights; with a wall being built between the courtyard and lounge; and with the hours listed in the Exhibit A to the staff report. He said that he would eliminate any extended hours for the skydeck.

Acting Director Jester said that her understanding is that **Mr. Zislis** and **Mr. Hubbard** have agreed to the hours of operation as specified in Exhibit A to the staff report.

Mr. Zislis said that he feels that he and **Mr. Hubbard** can finalize the language of a Resolution with staff.

Mr. Hubbard indicated that he would want to include a condition that the extended hours would not be permitted until the mitigation measures are implemented and shown to be working.

Acting Director Jester said that there would need to be monitoring by the noise consultant.

Mr. Hubbard indicated that they would agree to the standards as specified in Exhibit A. He clarified, however, that the request for up to 15 registered guests to be permitted in the Zinc lounge until 1:00 a.m. has been withdrawn. He said that they would agree to full enclosure of the terrace at 9:00 p.m. on Friday and Saturday nights and installation of the vestibule. He said that they would also want the entrance to be moved to the west side of the hotel after 9:00 p.m. on Friday and Saturday nights.

HUBBARD

Mr. Zislis said that he and **Mr. Hubbard** can meet with staff to finalize the wording of the conditions.

Mr. Hubbard said that he would present the proposal again as has been modified to the neighbors and would like to have the opportunity to review the conditions with staff.

JESTER

Acting Director Jester indicated that her understanding is that there is agreement between **Mr. Hubbard** and **Mr. Zislis** for the current hours of operation for the skydeck to remain in effect; for the terrace be fully enclosed including the upper 8 feet with the moveable walls to enclose the terrace at 9:00 p.m.; for the vestibule as proposed be installed at the front entrance; for the queue to be moved to the rear west side of the hotel on Friday and Saturday nights at 9:00 p.m.; and for a wall to be installed between the courtyard and the Zinc Lounge to create a hallway for the entry/exit queue. She said that her understanding is that there is also agreement that the 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 in cooperation with the noise consultant. She said that her understanding is also that there is agreement to allow the hours as stated in Exhibit A, although Holiday hours will need to be discussed further, with the elimination of the proposal to allow 15 registered hotel guests to remain in the Zinc Lounge until 1:00 a.m. She said that her understanding also is that there is agreement in support for allowing expanded food service and for allowing up to 125 guests for special events without prior notification to the City.

In response to a question from Commissioner Lesser, Commissioner Seville-Jones said that she still does have a concern regarding the implications of enclosing the terrace. She commented, however, that she may be able to come to agreement in supporting the enclosure of the terrace as part of an overall approach in reaching an agreement between the applicant and the residents.

Commissioner Lesser said that he is hopeful that more neighbors will have an opportunity to review the revised proposal so that it will not appear that the issue was decided late at night without full public participation. He said that he is in favor of the applicant and **Mr. Hubbard** working with staff to prepare a Resolution, as the parties appear to be close to an agreement.

Vice-Chairperson Paralusz reopened the public hearing and stated that the item will be continued to June 9, 2010.

See Exhibits 16-19, regarding PC intent that the 2010 CUP would take effect immediately, except for extended hours until physical noise mitigation implemented.

E. DIRECTORS ITEMS

None.

F. PLANNING COMMISSION ITEMS

None.

G. TENTATIVE AGENDA May 26, 2010

H. ADJOURNMENT

The meeting was adjourned at 10:25 p.m. to Wednesday, May 26, 2010, in the City Council Chambers, City Hall, 1400 Highland Avenue

SARAH BOESCHEN

Recording Secretary

ATTEST:

LAURIE JESTER
Acting Community Development Director

SHADE HOTEL EXCERPTS
FROM THE
CITY OF MANHATTAN BEACH
PLANNING COMMISSION
MINUTES OF REGULAR MEETING
JUNE 23, 2010

The Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 23rd day of June, 2010, at the hour of 6:35 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

A. ROLL CALL

Present: Lesser, Paralusz, Seville-Jones, Chairman Fasola
Absent: Andreani
Staff Present: Laurie Jester, Acting Director of Community Development
Angelica Ochoa, Assistant Planner
Recording Secretary, Sarah Boesch

04/28/10-3 Consideration of a Master Use Permit Amendment for Modifications to the Previously Approved Hours of Operation, Notification for Special Events, Restaurant Operations, and a Height Variance for a Six Foot High Noise Barrier at the Roofdeck at the Shade Hotel, Metlox Site, 1221 North Valley Drive

Chairman Fasola indicated that he has previously recused himself from consideration of the issue, and he left the dais.

Acting Director Jester commented that staff feels all of the information that is necessary has been presented in order for the Commission to reach a decision. She indicated that the Commissioners have been provided with a memorandum from the City Attorney that addresses the Entertainment Permit for the hotel; document #1-draft staff resolution; document #2-from the neighbors regarding the conditions in the draft Resolution; and document #3-from the applicant's attorney regarding the conditions in the draft Resolution. The Commission has these three documents labeled 1, 2, and 3, and after the public hearing is closed, staff would like the Commission to focus on these three documents and use these to walk through the Resolution and conditions. She pointed out that a revision has been made to Condition 23 on page 8 of the draft Resolution at the suggestion of the City Attorney. The conditions where there is disagreement with the neighbors are highlighted in yellow and the neighbors condition numbers are cross-referred in staff resolution, document #1.

Acting Director Jester said that she would like to highlight the main areas of disagreement. The applicant and neighbors were not able to agree regarding the definition of special events and functions and non profit and charity events. She pointed out that the existing Use Permit does not provide a definition of special events. She indicated that the neighbors have expressed concern regarding functions being held in the courtyard of the hotel that generate noise, and they would like for limits to be placed on the use of the courtyard for functions. She commented that a concern was also expressed regarding hours of operation on holidays. She stated that the neighbors have concerns with allowing weekend operating hours for the Sundays before Memorial Day and Labor Day. She commented that the neighbors also expressed concerns with allowing events until 1:00 a.m. on New Years Eve, particularly on the skydeck. She indicated that the applicant would like for the hours permitted for alcohol service on the

No record exists that the City Attorney made a change to Cond. 23, which had the intent the 2010 CUP would take effect immediately, except for extension of hours until physical mitigation implemented.

The video of the 23 Jun 2010 meeting does not include this statement attributed to Ms. Jester.

EXHIBIT B

skydeck to be extended, and the neighbors do not want to have any changes to the existing hours. She stated that the neighbors would like for the Entertainment Permit to be incorporated with the Use Permit. She stated that the neighbors would like for staff to come before the Commission for approval of the Entertainment Permit if they are proposing to relax any of the requirements. She pointed out that the City Attorney has given his opinion that the Entertainment Permit is an administrative permit rather than a land use permit. She commented that there was also disagreement between the applicant and the neighbors regarding promotions and advertisement for the hotel, and staff is requesting that the Commissioners provide their opinions.

In response to a question from Commissioner Seville-Jones, Acting Director Jester said that she has only had contact with **Mr. Hubbard** as the representative of the neighbors and has not had discussions with the other neighbors. She stated that she has received e-mails from **Mr. McPherson**, who is not an adjacent neighbor to the hotel.

In response to a question from Commissioner Seville-Jones, Acting Director Jester said that the applicant is limited to background music on the skydeck, which does not provide much opportunity to have dancing. She said that the Entertainment Permit does allow live entertainment, amplified sound and events on the skydeck with a 14-day notice. She indicated that "themed functions" would be permitted under the current permit as special events. She stated that under the proposal, themed functions would be classified differently than special events. She commented that it is typical for hotels to have events for occasions such as Halloween, Mother's Day, and Father's Day which are open to the general public. She indicated that staff would envision the hotel having themed functions maybe two times a month. She indicated that the Commission has the ability to place limits on the hours and on the number of themed functions as they feel appropriate.

In response to a question from Commissioner Lesser, Acting Director Jester said that the meeting was noticed to property owners within 500 feet of the subject site, and published in the paper.

In response to a question from Commissioner Lesser, Acting Director Jester indicated that the Use Permit is a land use regulation that is vested with the property. She said that the Entertainment Permit is an administrative approval that is reviewed annually by the Community Development Director. She said that the Entertainment Permit is reviewed annually in March, and there have been revisions to some of the conditions.

Vice Chairman Paralusz opened the public hearing.

Mike Zislis, the applicant, commented that he has worked very hard on the current draft Resolution along with Acting Director Jester and **Mr. Hubbard**, and he would not want any substantial changes to the current proposal. He commented that the agreement has reduced the rights that he currently has in operating the hotel. He indicated that the only gain he has with the proposal is one additional half hour of operation on Friday and Sunday nights and an additional hour on the Sunday nights before Memorial Day and Labor Day. He said that the role of the Commission is to represent his interests and the interests of the residents to arrive at a solution that will resolve the issues. He commented that advertising for the hotel should not be an issue as long as it is not specifically advertising the Zinc lounge. He pointed out that themed functions on New Years and Halloween do help to sell hotel rooms. He requested to be allowed to have alcohol service end 20 minutes rather than one hour before the closing time of the skydeck. He said that he would propose providing a 2 foot wall on the north side of the skydeck which would help to mitigate the noise from **Mr. Hubbard's** house. He indicated that it is a significant hardship to stop serving alcohol at 9:00 p.m. on the skydeck.

Commissioner Seville-Jones commented that she does not feel the rights of the applicant are being removed for use of the skydeck, and she does not feel that the skydeck was originally intended under Resolution PC 05-08 as a place for people to congregate, dance, and listen to music. She said that she feels the skydeck is one of the significant sources of noise that is impacting the neighbors.

Mr. Zislis requested that the reference to food service and the allowance of 125 people for special events without prior approval be removed from Condition 23. He said that he feels food service and the allowance for 125 people for special events without prior approval should be permitted once the Resolution is passed rather than after the sound mitigation measures are installed. He indicated that his understanding is that the intent was that the extension of hours not be permitted until the sound mitigation measures are installed and that the extension of food service and allowance of up to 125 people for special events without prior approval were not issues. He commented that there have been three calls to the Police Department in the last three months, and none of them were related to the hotel.

In response to a question from Commissioner Seville-Jones, **Mr. Zislis** indicated that they would advertise functions such as a Halloween party by sending e-mails to their e-mail list and advertising in the Beach Reporter. He pointed out that they have listed every function that they intend to have annually. He said that he would not object to a limit of one function per month. He pointed out that his intent is not to have large functions frequently that would generate a great deal of noise and disturb guests staying overnight at the hotel. He commented that the expectation for quiet hours on weekend nights for hotels generally is midnight.

Commissioner Lesser commented that his recollection is that the sound engineer indicated that the skydeck was a significant source of noise particularly as the evening hours progress and there is less ambient noise.

Mr. Zislis pointed out that he is not requesting to increase the hours for the skydeck but rather only to serve alcohol up to 20 minutes rather than an hour before closing. He said that the deck would need to be cleared by 10:00 p.m. with the regulations as proposed. He also commented that live music would also be required to end on the skydeck at 9:30 p.m. with the new requirements rather than at 10:00 p.m. as is the case currently.

Commissioner Seville-Jones pointed out that the March 10, 2010 report from the sound engineer indicates that barriers on the skydeck would make little difference to the noise levels experienced at the residential properties.

Acting Director Jester pointed out that the sound report did indicate that the noise from **Mr. Hubbard's** property to the north would potentially be significantly reduced from a barrier being placed on the skydeck.

In response to a question from Vice-Chairperson Paralusz, **Mr. Zislis** indicated that they obtain e-mail addresses from people who stay overnight at the hotel, from people who sign a guest book at the front desk, and people who request to be on the list from the website or on Face Book and Twitter. He said that people have to specifically sign up to receive e-mails, and they do not buy lists of e-mail addresses for mass advertising.

John Strain, the applicant's attorney, pointed out that the skydeck is open during the summer for general patrons of the lounge. He said, however, that the main use of the deck is for events such as weddings and private parties. He commented that dancing occurs during weddings on the skydeck, as it is a natural part of a wedding reception. Regarding the wording of Condition

23, he pointed out that it was clear from the last meeting that the agreement was that the additional hours would be subject to the sound mitigation measures being installed and that the extension for food service and people for special events was not tied to the installation of the sound mitigation measures. He requested that the Commission consider possibly allowing for some flexibility if the applicant applies all of the mitigation measures and still is not able to quite meet the noise reduction standards that are in the noise report. He said that he has a concern that the applicant may spend a great deal of money on implementing the sound mitigation and still not be able to have the extension of hours if they do not quite meet the objective that was established by the sound engineer.

Mr. Strain requested that the wording of Finding O be revised. He said that he is concerned that the use of the word "indicates" is too strong in the sentence that reads: "Testimony from many neighboring residents at the Planning Commission public hearings indicates Shade Hotel makes noise that discomforts and irritates 'reasonable persons of normal sensitiveness' as defined by the subjective standard in Chapter 5.48 of the MBMC." He commented that he also feels the rest of the language of the finding regarding the Police Department responding to disturbance calls at the hotel would seem to be unnecessary. He stated that he has sent the Commissioners a letter with comments regarding the proposed conditions for their consideration.

In response to a question from Commissioner Lesser, **Mr. Strain** indicated that continuing to require the skydeck have with no further service of alcohol or music after 9:00 p.m. would restrict the deck from being used by members of the community as a venue for events.

In response to a question from Vice-Chairperson Paralusz, **Mr. Strain** indicated that the current request is for the skydeck to continue to close at 10:00 p.m. every evening but allow alcohol service to end 20 minutes before closing, instead of 60 minutes.

Mr. Strain requested that Condition 12 on page 7 of the draft Resolution be revised to clarify that the requirements for use of the front door vestibule would apply after 9:00 p.m. He commented that he has a similar concern regarding the requirements for valet service in Condition 29. He indicated that he would like for the wording of the condition to clarify that the valet service shall relocate away from the east or south entrances of the hotel after 9:00 p.m.

Nate Hubbard, a resident of the 1300 block of Ardmore Avenue, said that he has met with Acting Director Jester and **Mr. Zislis** twice since the last meeting. He said that there are four areas where the neighbors were not able to come to an agreement with **Mr. Zislis**. He indicated that the neighbors have withdrawn their request for a wall to separate the Zinc lounge from the lobby area; they are agreeing to allow special non-profit and charity events on the skydeck; they are agreeing to the applicant having the annual Oktoberfest event in the courtyard with live music; and they are agreeing to allow a full service restaurant and amplified music on the terrace. He said that with the language of the new revised draft Resolution, the number of public patrons would be increased by permitting them to use the courtyard and skydeck; the entertainment would be made as an entitlement rather than subject to the entertainment permit; and the height of the skydeck wind screens would be increased to 7 feet above the permitted height. He stated that their understanding was that all glasses, bottles and drinks were to be required to be picked up at closing time. He commented that the wording was then changed in the revised draft Resolution to only require that all alcoholic drinks be picked up at closing time. He said that the police would not be able to enforce the condition by checking any drinks after closing to determine if they contain alcohol, and the condition would allow people to hold onto their drinks after closing. He commented that there are patrons inside the lobby of the hotel after 11:30 p.m. at night currently. He commented that they would

like to see the final language of the draft Resolution before the final version is approved by the Commission.

In response to a question from Commissioner Lesser, **Mr. Hubbard** said that he sends e-mails to the neighbors regarding the discussions that have taken place. He commented that the only notice that the adjacent neighbors received regarding the current Commission meeting was from his e-mail.

In response to a question from Commissioner Seville-Jones, **Mr. Hubbard** said that they have a concern that the general public would be able to attend functions at the hotel, and the neighbors would not want for functions to expand into the courtyard or skydeck. He said that they are impacted by noise even with the number of functions being limited to one per month. He said that noise spills into the neighborhood from functions and events in the courtyard even without amplified music or sound.

Don McPherson, a resident of the 1000 block of 1st Street, stated that the concern regarding the courtyard is with the folding doors being open while there is a band in the Zinc lounge. He commented that there is a condition included requiring that the doors remain closed. He stated that **Mr. Zislis** had previously indicated that a special event is one in which an outside party is under contract with the hotel. He indicated that the neighbors have classified themed functions as those events that are sponsored by the hotel rather than an outside party. He said that the entertainment permit in December of 2008 limited the number of events that are permitted in the courtyard area to six per year. He indicated that the only reference to dancing that he is aware of is in the Entertainment Permit, and it is strictly limited to the dance floor in the Zinc lounge. He stated that he is not certain whether dancing on the skydeck is an entitlement for the hotel. He said that the Metlox Master Use Permit restricts entertainment to two non-amplified performers and indicates that any additional approvals must be through the Entertainment Permit. He said that the current proposal is to incorporate entertainment into the Use Permit which was not the intent of the City in approving the original Master Use Permit. He commented that they are recommending that everything related to entertainment for the hotel be moved from the Use Permit to the Entertainment Permit. He pointed out that the regulations can be changed regarding events if they are approved as part of the Entertainment Permit, but they become an entitlement if they are included with the Use Permit. He commented that he would also recommend moving the approval for the annual Oktoberfest event to the Entertainment Permit.

Mr. McPherson said that allowing alcohol service up to 9:40 p.m. should not be based upon extending walls on the skydeck which the engineer has indicated would not significantly reduce noise. He commented that he and **Mr. Hubbard** spent a great deal of time reviewing the conditions that were on the draft Resolution that was posted on the internet. He said that they have provided staff with their recommended changes to the wording. He requested that the final language be brought back to the Commission before it is approved. He commented that the wording had been changed from the previous draft which completely changed the meaning of the conditions.

Viet Ngo said that the Commissioners must comply with the requirements of the Brown Act included in U.S. Government Code Section 54950 et seq. He commented that the draft Resolution that was available for review by the public is very different than the revised draft that was provided to the Commission before the hearing. He said that changing the language of the draft Resolution before the meeting without allowing an opportunity for review by the public is in violation of the Brown Act. He requested that the Commission stop their efforts in helping **Mr. Zislis** to steal public money. He indicated that **Mr. Zislis** has created Manhattan Inn Operation Company LLC with Jonathan Tolkin in order to maintain and control a

racketeering enterprise. He commented that the ABC license for the hotel is a fraud. He suggested that the neighbors contact the ABC to request a hearing to revoke the Type 47 alcohol license for the hotel that was obtained fraudulently. He commented that communication between staff and the Commissioners through e-mail without knowledge from the public is not permitted by law.

Katie Kroft, the general manager of the hotel, said that she understands the concern of the neighbors that the operation of the lounge not spill out into the courtyard; however, it has not happened in the past. She said that she has a concern with including wording that the general public may not join nor participate in special events. She indicated that they receive many offers to sign contracts for events in the courtyard which are open to the general public and which result in good public relations for the hotel. She said that she would not have an objection to a condition that the lounge operation not be permitted to spill out into the courtyard, but she would have a concern with the restriction for special events.

Esther Besbris, a resident of 2nd Street, said that while she does not have the same vested interest and concerns as the adjacent neighbors, the hotel operation does have an impact on all of the City's residents. She indicated that she has been following the hearings regarding the hotel. She commented that she feels there needs to be a clear understanding of the meaning of the word "event." She said that the word "closing" also needs to be clearly understood. She commented that the parameters must be clearly set that the operation must be completely shut down rather than in the process of closing at the specified closing time. She commented that she also has a concern with the language of the draft Resolution being decided by only three Commissioners, as the vote and outcome could be different with the input of Commissioner Andreani.

Vice-Chairperson Paralusz pointed out that the issue would come before the City Council regardless of whether it is approved or denied by the vote of the Commissioners.

Ms. Besbris said that the final vote that would result with four rather than three Commissioners present will never be known if action is taken at this hearing, which she feels is important to consider.

Scott Murch, a resident of the 500 block of 12th Street, indicated that the neighbors are not receiving notice of the hearings, and the neighbors were informed of this hearing through **Mr. Hubbard**. He commented that there needs to be a limit on the number of themed functions, and he feels allowing 24 per year is too many. He said that he feels the findings in the draft Resolution should include the reference to the noise reports taken by the Police Department and that the wording should not be omitted as suggested by **Mr. Strain**. He stated that it does not take a sound engineer to recognize the impact that the noise spilling over from people on the skydeck has on the adjacent neighbors. He commented that all of the adjacent neighbors are located uphill from the hotel, and they are all impacted by the noise. He indicated that to the extent that the Commission considers the comments from the applicant's attorney, they should also consider the comments of **Mr. McPherson**. He indicated that eliminating the language that the general public may not join or participate in special events could result in an event turning into a large public party. He commented that the intent is for special events to be classified as weddings or similar events where a limited number of written invitations are sent out to guests.

William Victor, a Manhattan Beach resident, indicated that the original vision of the hotel that was the basis for approving the EIR document for the Metlox project is nothing like the current operation. He pointed out that people's voices raise when they are drinking. He said that allowing alcohol to be served until 9:40 p.m. on the deck as being requested by the applicant

would result in people being louder until later in the evening. He stated that he is opposed to any extension of hours for alcohol being served on the skydeck. He said that the deck was not originally intended to be used for events and to include alcohol service. He commented that the noise from the hotel does reach the residential area down to The Strand, contrary to the assertion of **Mr. Zislis** that the noise does not travel that distance.

Jackie May, a resident of the Downtown area, said that she is concerned with the oversaturation of drinking establishments in the Downtown area. She pointed out that residents are not permitted to have rooftop decks on their homes, and she is not certain of the reason that the hotel is permitted to have such a deck. She commented that she is concerned that the deck sets a precedent for other establishments in the City.

Acting Director Jester commented that the skydeck has always been part of the hotel and meets the height limit and Zoning Code requirements. She indicated that it provides a location for events and does have very limited hours. She pointed out that any property owner can have a roof deck provided that it meets the requirements of the Zoning Code. She indicated that a resident may have a deck on the third level of their home if it is in a zone that allows three story buildings. She commented that many commercial establishments Downtown have large windows or roll-up doors which allow them to incorporate more of the outdoors.

Nancy Gilombardo, a resident of the 1100 block of North Ardmore Avenue, indicated that she also did not receive formal notice of this hearing and only received notice from **Mr. Hubbard**. She commented that she has to close her windows during the summer because of the noise at the hotel. She said that she agrees with the comments of **Mr. Hubbard** and would like for his suggestions to be included in the draft Resolution.

Stephanie Hubbard, a resident of the 1300 block of Ardmore Avenue, said that she felt that the issues were basically resolved at the last hearing. She commented that she is now confused by the changes that have been made to the language of the draft Resolution. She requested that any additional hours for alcohol service to be permitted on the skydeck not be considered. She commented that she does not believe that any wall installed on the roof deck would help to mitigate noise. She pointed out that the intent of the deck was to provide an area with a pool for the hotel guests. She said that she also would not have been informed regarding this meeting if it had not been for her husband being involved.

Mr. Zislis said that his intent is to mitigate sound. He said that he would request that no additional conditions be placed on the skydeck if the permitted use of the deck is to remain as it is currently. He indicated that closing has been clearly defined in the language of the conditions. He indicated that he feels providing consistency with having alcohol service end 20 minutes before closing time on the skydeck as is the case for the other areas of the hotel would allow for easier enforcement. He also indicated that he believes that there are mitigation measures that would help reduce the noise impacts from the skydeck to the neighbors. He stated that the conditions in the proposed draft Resolution would mitigate a lot of the problems for the neighbors. He said that he would request that the Commissioners vote on the draft Resolution at this hearing rather than continue the matter to another meeting.

Vice Chairperson Paralusz closed the public hearing.

At 9:20 p.m., a 10 minute break was taken.

Acting Director Jester commented that notice of this hearing was sent to all of the property owners within a 500 foot radius of the subject site. She stated that she believes staff has

incorporated the conditions that were agreed to in concept at the last meeting into the draft Resolution.

The Commissioners agreed to revise the wording of Finding O on page 3 of the draft Resolution to read: "~~Testimony from many neighboring residents at the Planning Commission public hearings~~ Many neighboring residents at the Planning Commission public hearings have testified that Shade Hotel makes noise that discomforts and irritates 'reasonable persons of normal sensitiveness' as defined by the subjective standard in Chapter 5.48 of the MBMC. The Manhattan Beach Police Department has responded to numerous calls regarding Shade disturbances, and for several of these incidents, has reports and recordings of noise from Shade."

Commissioner Seville-Jones asked about enforcement of the condition that all alcoholic beverages be collected at closing. She said that it is not clear how the condition could be enforced because the police would have difficulty in determining which drinks contain alcohol. She indicated that she is in agreement with the proposed language of the neighbors for Condition 1, as she feels there would be difficulty enforcing closing hours if only alcoholic drinks are collected.

Acting Director Jester commented that there are no other establishments such as the Shade in the City which have a lounge next to a lobby area that is accessible 24 hours.

The Commissioners agreed to revise the language of the third sentence of Condition 1 on page 6 of the draft Resolution to read: ". . . 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~~ glasses, bottles, cans and drinks, including from registered guests, to comply with the ABC definition of closed . . ."

In response to a question from Commissioner Lesser, Acting Director Jester indicated that the types of events referenced by **Ms. Kroft** that are open to the public would be classified and addressed as "functions" rather than special events with the language of the draft Resolution.

Vice-Chairperson Paralusz said that she would support striking the language regarding the general public not being permitted to join or participate in special events if a charity education wine auction is classified as a special event. She indicated that although it may be sponsored by a third party, members of the public may purchase tickets for such an event at the time it is held.

Commissioner Seville-Jones commented that she would support retaining the language regarding the general public not being allowed to join or participate in special events.

The Commissioners agreed to revise the language of Condition 2 to read: "Special event- An event in which an unaffiliated third party under contract has exclusive use of one or more venues or a portion of a venue. Attendees at special events shall have ~~a written~~ an invitation from the host client. The general public may not join nor participate in special events. ~~Special events include other than~~ non-profit or charitable events such as Chamber of Commerce events, Downtown Open House and Charity Education Wine ~~Auction~~ Events."

Commissioner Lesser indicated that he would not support posing a cap on the number of special events, as he would not want to overly regulate the applicant's business.

Commissioner Seville-Jones said that she feels that a limit on the number of functions would be appropriate. She said that she feels consideration should also be given to the area in which the functions are held.

The Commissioners supported placing a limit of 12 functions per year.

Commissioner Seville-Jones and Vice-Chairperson Paralusz indicated that they would support placing the limit on the number of functions in the Use Permit rather than in the Entertainment Permit.

Commissioner Seville-Jones commented that the wording of Condition 4 is open and does not specify a limit on the number of invitees that a guest may extend their privileges.

In response to a question from Commissioner Seville-Jones, Acting Director Jester said that registered guests have the privileges of remaining in the lobby after closing hours for the Zinc lounge and of exiting out of the main entrance after 9:00 p.m.

Commissioner Seville-Jones asked about the method of determining whether a person is an invitee.

Acting Director Jester commented that generally invitees are with a registered guest, and Condition 4 would be self-regulating.

Commissioner Lesser suggested putting faith in the applicant to interpret the condition based on the intent.

Vice-Chairperson Paralusz said that she would not support changing the language of Conditions 4 or 5.

Commissioner Seville-Jones suggested changing the wording of Condition 4 to read: "Registered guest- A guest who occupies a room overnight. Privileges for registered guests extend to a limited number of their invitees only. . . ."

Commissioner Lesser said that he would support the suggested language for Condition 4 as proposed by Commissioner Seville-Jones.

Vice Chairperson Paralusz indicated that she would be concerned that "limited number of invitees" is subjective.

Commissioner Seville-Jones commented that she is concerned that using a large e-mail list and Twitter for advertising is very different than the initial vision for the hotel. She indicated that it was very clear in the original Master Use Permit that advertising would be limited to the hotel and would not be done on a large scale.

Vice Chairperson Paralusz indicated that people who do not wish to receive e-mails can ask to be removed from the e-mail list. She indicated that she is concerned that the applicant's First Amendment rights would be violated if the City were to regulate the method they use in advertising their business. She stated that she would not be in favor of restricting the method by which the applicant is permitted to advertise.

Commissioner Lesser commented that the mediums that business owners use to advertise are constantly changing. He said that he understands the concern raised by Commissioner Seville-

Jones regarding the hotel becoming more than was originally intended. He stated that hotels generally also offer functions as part of their business.

Commissioner Seville-Jones said that she is concerned with changing the means by which the hotel was originally permitted to advertise.

In response to a question from Commissioner Seville-Jones, Acting Director Jester said the original intent for allowing advertising only for hotel "guests" is subject to interpretation, as a guest is not currently defined.

Commissioner Lesser commented that he would give greater consideration to the mitigation measures to limit the number of people at the hotel and reducing the noise levels rather than focusing on the method used by the hotel for advertising.

In response to a question from Vice Chairperson Paralusz, Commissioner Seville-Jones indicated that she has an objection to the concept of Condition 6, as the original intent was for advertising to be limited to attracting potential hotel guests.

Acting Director Jester said that a person who attends a special event or a function would be considered as a guest of the hotel as originally intended; however, currently she would say there is a distinction between an overnight guest and a person who is attending a function or event.

Vice-Chairperson Paralusz said she has a concern that the wording of Condition 7 is very subjective, as the term "normal conversation" can be interpreted differently.

Acting Director Jester commented that she agrees that there would be an issue with enforcing Condition 7. She said that it would be difficult to measure the decibel level of noise in a room, and it would also be difficult to determine the noise level of normal conversation of four people at a range of 3 to 5 feet.

The Commissioners agreed to revise Condition 7 to read: "Background Music. Sound intensity anywhere in a room or venue not greater than 65 dBa. ~~or normal conversation for four people at a range of 3 to 5 feet, whichever is less.~~

The Commission agreed to modify Condition 10 to read: "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: (A) The Courtyard may have one annual event function, for example Oktoberfest, with live amplified entertainment, from 4 to 8 p.m.; (B) The Courtyard may use amplification, other than the house system for background music and microphones, for wedding ceremonies only prior to 9:00 p.m. and not to exceed 30 minutes in length; (C) 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 six performers shall be permitted at any one time. Dancing is limited to a 15' by 20' area.~~

Commissioner Seville-Jones suggested modifying the first sentence of Condition 11 to read: "... glass or similar transparent panels."

In response to a question from Commissioner Lesser, Acting Director Jester said that she is not certain if it matters whether the panels that are used are transparent, as they would basically only be lowered during nighttime hours.

Commissioner Lesser said that he would suggest allowing the applicant some discretion, as they have not yet come up with a design for enclosing the terrace.

Commissioner Seville-Jones commented that her concern is that having panels to enclose the terrace would basically be creating an additional room rather than having the terrace open to the rest of the Metlox plaza.

The Commissioners agreed to keep the wording of the first part of Condition 11 as written. They agreed to revise the last sentence of Condition 11 to read: “. . . If the terrace has drapes or other decorative features to ~~enclosure~~ enclose the area, they may only be closed during special events, when raining, or for shade.”

The Commissioners agreed to add clarification for the last four sentences of Condition 12 would apply after 9:00 p.m.

The Commissioners agreed to revise the second sentence of Condition 14 to read: “After 9:00 p.m. 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 ~~40~~ 15 minutes both corridor walls (adjacent to the courtyard and the lobby bar) shall remain closed for the rest of the night. . .”

Commissioner Paralusz said that she would not support adding the applicant’s requested language for Condition 15 to include DJ’s with amplified sound being used on the house system only on the skydeck, as she feels it would be more appropriate to be addressed in the Entertainment Permit rather than in the Use Permit.

The Commissioners agreed to keep the language of Condition 15 as written.

The Commissioners agreed to delete the condition regarding penthouse restrictions as recommended by staff.

The Commissioners agreed to change the wording of the second sentence of Condition 16 to read: “For any length of time, except for ~~Oktoberfest~~, the one function referenced in Condition 10, the noise may not dominate the background ambient noise, as defined in the MBMC noise regulations . . .”

The Commissioners agreed to delete Condition 18 regarding limiting dancing to the 15’-20’ area in the Zinc lounge and for special events and functions on the skydeck and in the courtyard.

The Commissioners agreed to revise Condition 20 to read: “~~Resident Notification~~- The hotel shall e-mail to residents who sign up, the schedule of special events and functions sent to the City excluding client identification.”

The Commissioners agreed to change the first sentence of staff’s revised wording of Condition 23 to read: “~~Noise Compliance Verification~~- The privileges within this Use Permit for extension of hours of operation, ~~an increase to 125 people for special events and functions without administrative approval, and a full public food service~~, shall only be granted after the installation of the mitigation measures, implementation of the improvements and modifications to the operations of the facility.”

Regarding Condition 24, Commissioner Seville-Jones said that she would not support allowing the skydeck to remain open on New Years Eve. She indicated that she does not support intensification of the use of the skydeck. She commented that the question is whether adding hours on the skydeck on New Years Eve would increase the level of noise that already is occurring downtown.

Vice-Chairperson Paralusz indicated that she has a concern with discriminating against the applicant by not allowing them to have later hours on New Years Eve when other businesses are permitted to apply for Temporary Use Permits to remain open. She pointed out that approval of the Temporary Use Permit still is under the discretion of staff.

Commissioner Seville-Jones said that she agrees with Vice-Chairperson Paralusz that allowing for the Temporary Use Permit for businesses to remain open on New Years Eve is a policy of the City Council that should apply to the applicant as well.

Vice-Chairperson Paralusz commented that she would not object to allowing the service of alcohol to end 20 minutes before closing time for the skydeck to be consistent with closing for the other areas of the hotel. She pointed out that that the hours of operation for the deck would not be increased by allowing alcohol service up to 20 minutes before closing.

Commissioner Seville-Jones pointed out that people are louder when they are drinking. She said that continuing alcohol service on the skydeck up to 20 minutes before closing would prolong the time that people are drinking and making noise on the deck rather than returning into the hotel.

Commissioner Lesser commented that he would like to have consistency by allowing alcohol service up to 20 minutes before closing on the skydeck; however, he is most sensitive regarding the impact that the noise from the skydeck has on the neighbors. He pointed out that the current condition requires alcohol service to end 60 minutes before closing time. He said that he would want the neighbors to feel that they are receiving relief from the existing noise impacts. He said that he would support keeping the requirement that alcohol service end 60 minutes before closing on the skydeck.

Commissioner Seville-Jones suggested editing Note 2 as suggested by the neighbors to read: "Skydeck closes at 10:00 p.m. ~~without exception. No one except staff permitted on the skydeck after 10:00 p.m. including with the only exception being~~ New Years Eve."

Acting Director Jester said that she is not certain that the language is necessary, unless it is added for clarification.

Vice-Chairperson Paralusz said that she would be concerned with specifying New Years Eve as the only exception, as it could discriminate against the applicant if the City Council were to allow extended hours for other holidays with Temporary Permits in the future.

Commissioner Seville-Jones pointed out that the skydeck specifically has an early closing time because it does disturb the neighbors, which is not the case for other venues in town.

Vice-Chairperson Paralusz and Commissioner Lesser commented that they would support not including Note 2.

Commissioner Lesser said that it is a note which repeats language that is already in the draft Resolution and could be possibly overriding the actions of a future City Council.

The Commissioners decided to retain Note 1 to Condition 24 to read: "New Years Eve closed for all venues as ~~permitted~~ regulated by MBMC-currently 1:00 a.m."

The Commissioners decided to not include the language of Note 2 as suggested by the residents for Condition 24.

In response to the concern of the neighbors regarding occupancy limits in Condition 26, Acting Director Jester indicated that the occupancy limits would not be reduced from the numbers included in the draft Resolution. She said that Condition 26 establishes the maximum occupancy limits within the Use Permit which would provide protection for the neighbors.

The Commissioners agreed to keep the language of Condition 26.

The Commissioners agreed to change the language of Condition 29 to read: "Valet- The Shade valet service shall relocate away from the Shade east or south entrances after 9:00 p.m. 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 podium shall be located so that it has no line of sight to residences. . ."

The Commissioners decided to retain the existing language for Condition 30.

The Commissioners agreed to change the wording of Condition 31 to read: "Entry Exit Queue- The hotel shall locate the entry and exit queue at the west side of the building as required in Condition ~~XXX~~ 32, but the queue shall not extend past the south or north sides of the building."

The Commissioners agreed to modify the language of the second paragraph of Condition 32 to read: "On Sunday through Thursday, if more than five patrons are waiting for more than ~~40~~ 15 minutes to enter, staff shall establish the queue at the west side of the building for the rest of the night."

Acting Director Jester commented that staff felt it would be more appropriate for guests of special events to leave out of the west exit, as there typically are a large number of people exiting events at one time. She commented that it is also appropriate for people attending special events to access the drop off area on 13th Street and Morningside Drive.

Commissioner Lesser pointed out, however, that some special events may be so small as to not warrant requiring the guests to exit out of the west side. He said he would not object to having the requirement to exit from the west apply after 9:00 p.m. as suggested by the applicant.

Vice-Chairperson Paralusz commented that she would support leaving the language of the first sentence as written. She indicated that the intent is that people attending larger special events would exit out of the west side.

The Commissioners agreed to leave the language of the first sentence of the first paragraph of Condition 32 as written.

The Commissioners agreed to change the wording of Condition 33 to read: "Staff Parking- The hotel shall ~~ensure~~ instruct that their employees, contract employees, contractors servicing events, and all others providing services to the hotel ~~shall~~ not to 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). . ."

The Commissioners agreed to adopt staff's suggested language for Condition 38 to read: "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."

Commissioner Lesser commented that the suggested language for Condition 39 by the neighbors may go too far in not allowing any advertising of the bar even as a secondary use.

Commissioner Seville- Jones indicated that there is a question as to whether advertising should be permitted for the bar, skydeck or terrace as independent drinking establishments from the hotel use.

Vice-Chairperson Paralusz commented that the different venues are part of the hotel as a single entity. She indicated that she has a concern with the first sentence of Condition 39 as suggested by the neighbors that all hotel marketing, advertising and promotions shall be limited to attracting potential hotel guests and event planners. She asked whether having a page describing the Zinc bar on the hotel's website would be considered as advertising it as a separate attraction, which would be prohibited with the neighbor's suggested language of Condition 39.

Commissioner Seville-Jones indicated that her concern is with the hotel advertising the bar as a separate attraction from the hotel rooms, which is against the intent of the original concept for the hotel. She said that she feels like the original intent is being changed by allowing advertising specifically for the bar.

Commissioner Lesser said that he is concerned with limiting the ability of the hotel to market the features which they offer. He indicated that Condition 39 is also intending to address happy hour. He said, however, that he does understand the concern of Commissioner Seville-Jones that the language of the rest of the draft Resolution does not address advertising for the separate venues.

Acting Director Jester commented that her interpretation from the language suggested by the neighbors for Condition 39 is that it would prohibit an advertisement from being placed in the Daily Breeze to encourage people to hold their weddings on the skydeck.

Vice-Chairperson Paralusz commented that she agrees with Commissioner Lesser that she would not want to further limit the ability of the applicant to advertise when they would already be limited to the other restrictions of the Use Permit.

Acting Director Jester said that she believes the advertising would be self regulating because overnight hotel guests would be driven away if the level of activity at the hotel generates too much noise.

Commissioner Lesser said that he understands the concern expressed by Commissioner Seville-Jones regarding the hotel becoming more of a bar with a hotel attached; however, he is concerned with the applicant being restricted from being able to advertise the features they offer as part of the hotel. He said that he would hope that the general concept of any marketing for the facility would be primarily as a hotel use.

The Commissioners agreed to revise staff's suggested language of Condition 39 to read: "The hotel shall not advertise, market, or promote drink or "happy hour" type of specials. The Zinc Bar/lounge, terrace and skydeck will not be exclusively marketed to the general public as

separate hospitality attractions. Primary advertising and marketing shall be for the hotel, food and special events. Marketing and promotion for the bar and functions shall be secondary.”

The Commissioners agreed to staff’s proposed wording for Condition 40 to read: “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.”

Commissioner Lesser said that he would like for a revised version of the draft Resolution to be brought back to the Commission with the changes that have been discussed.

Commissioner Seville-Jones stated that she would also like to see the language of the final version as has been revised. She indicated that there would be a benefit to people responding back to the Commission at the next hearing regarding the revised language, and she wants to be certain that they have had an opportunity to view the final document. She commented that she is also sensitive to the fact that the findings were not made available to the public until the afternoon before this hearing.

Acting Director Jester said that she feels that the Commission has now heard the input from the neighbors and applicant and has made their decision regarding the language. She said that she would have a concern with bringing the item back for further discussion at another hearing.

Vice-Chairperson Paralusz reopened the public hearing, and asked the applicant and neighbor representative to respond to any concerns they had regarding the Commission’s changes to the Resolution.

Mr. Zislis said that he is concerned with the revised language to Condition 15 that would prohibit a DJ on the skydeck. He suggested that the wording of Condition 15 be revised to state “All amplified music and DJ’s for special events shall use the house system only. No ~~DJ’s or~~ live amplified music is permitted.” He said that he is willing to give up having live entertainment on the skydeck, but prohibiting a DJ would eliminate the ability to have weddings on the deck. He commented that he would like the ability to have alcohol service on the deck up to 20 minutes before closing, which could be reviewable by **Mr. Hubbard** or staff to determine if there is an impact.

Commissioner Seville-Jones said that she would not object to allowing a DJ to use the house sound system on the skydeck until 9:00 p.m.

Vice-Chairperson Paralusz indicated that she also would not object to allowing a DJ to use the house system on the skydeck until 9:00 p.m.

Mr. Zislis commented that he has a concern that the words “nor disturb the neighboring residents” in the second sentence of Condition 16 is very subjective.

The Commissioners agreed to modify the second sentence of Condition 16 to read: “For any length of time, except for the function referenced in Condition 10, the noise may not dominate the background ambient noise ~~as defined in the MBMC noise regulations~~ nor disturb the surrounding residents as defined in the MBMC noise regulations.”

Mr. Zislis suggested incorporating barriers that could be lowered to surround the terrace without enclosing the top portion. He indicated that the top could then be enclosed later if it was necessary.

Commissioner Seville-Jones said that she would support eliminating the requirement that the terrace to be fully enclosed if the applicant can arrive at a design with the top open that would mitigate sound to the same extent as if it were enclosed. The Commission and staff discussed various options for enclosing the terrace and complying with the Behrens noise mitigation study. The consensus was that the enclosure needs to comply with the noise mitigation standards for a fully enclosed terrace, and the top portion of the terrace will not be left open.

Acting Director Jester said that the panels for the terrace could be installed without the top portion of the walls, and it could be fully enclosed later if it is determined that it does not meet the requirements for sound mitigation for a fully enclosed area.

Mr. Hubbard commented that they are requesting that the terrace be fully enclosed. He stated that they would not object to DJ's using the house sound system on the skydeck for weddings only. The Commission agreed with this revision to Condition 15. He said that they are requesting alcohol service end at 9:00 p.m. on the skydeck rather than 20 minutes before closing. He commented that he would request that closing hours for the skydeck be restricted to 10:00 p.m. every night of the year including New Years Eve. He commented that the hotel is unique from other establishments in town that are permitted to apply for a Temporary Use Permit to operate until 1:00 a.m. on New Years Eve because of its impact to the neighbors.

Mr. Zislis indicated that he would agree to fully enclose the terrace.

Acting Director Jester said that the item could be scheduled for the City Council for their meeting of August 3, 2010, when **Mr. Hubbard** has returned from being out of town.

In response to a question from Commissioner Seville-Jones, **Mr. Hubbard** said that he would prefer that the final document come back before the Commission for a vote when there are four Commissioners present.

Mr. Zislis said that he would request that the Commission vote on the issue now and that it be moved forward to the City Council after **Mr. Hubbard** returns to town at the end of July.

Mr. Zislis commented that he believes the intent of Condition 32 is that people exit out of the west side of the building after 9:00 p.m. and requested that the intent also be clarified in the language for special events and functions.

Vice-Chairperson Paralusz suggested changing the wording of the first sentence of Condition 32 to read: "~~West entry-exit~~ After 9:00 p.m. on Friday, Saturday, Sundays before Memorial Day and Labor Day, New Years Eve, and after 9:00 p.m. for special events and functions, everyone except registered hotel guests and disabled shall use the west door . . ."

Vice Chairperson Paralusz closed the public hearing.

Commissioner Lesser indicated that the Commissioners usually have a more complete document before final approval. He said, however, that he is confident that staff can integrate the changes that have been made to the draft Resolution by the Commissioners. He also pointed out that the final document would be available for review by the public before it is considered by the City Council.

Commissioner Seville-Jones said that she feels like the Commission should have the full document with all of the revisions before final approval. She commented that many changes have been made, and the findings were only available the afternoon of the hearing. She said that she would also welcome any additional participation of the public to the extent that they

may not have received notice of the hearing or have had an opportunity to fully review the material. She indicated that she would also welcome the comments of Commissioner Andreani.

Vice-Chairperson Paralusz indicated that she feels the Commission has come to an agreement on the language of the draft Resolution, and she has confidence that staff will make the appropriate changes. She pointed out that the agenda for the meeting was on the City's website. She also stated that any members of the public who want to provide additional input will have the opportunity before the City Council. She commented that she would like for the Council to review the project rather than just approve it on their consent calendar. She indicated that she feels the Commission has completed their review, and she feels the item is ready to move forward.

Acting Director Jester indicated that an option would be for the item to be brought back to the Commission for final review as a business item rather than as a public hearing.

A motion was MADE and SECONDED (Lesser/Seville-Jones) to direct staff to prepare a revised draft Resolution to be brought back to the Commission for review as a business item at the July 28, 2010 meeting.

AYES: Lesser, Paralusz, Seville-Jones,
NOES: None.
ABSENT: Andreani
ABSTAIN: Chairman Fasola

Approval to bring back the resolution as a business item, which precluded any substantive changes at the 28 July 2010 meeting.

E. DIRECTORS ITEMS

F. PLANNING COMMISSION ITEMS

G. TENTATIVE AGENDA July 14, 2010

1. "Green" Code Amendments
2. Izaka-Ya, 1133 Highland Avenue- Use Permit Amendment

H. ADJOURNMENT

The meeting was adjourned at 12:15 a.m. to Wednesday, July 14, 2010, in the City Council Chambers, City Hall, 1400 Highland Avenue

SARAH BOESCHEN
Recording Secretary

ATTEST:

LAURIE JESTER
Acting Community Development Director

The minutes at Pg 7 of 11 misrepresent Commissioner Seville-Jones's statements that Condition 22 had the intent the 2010 CUP would take effect immediately.

AYES: ~~Andreani, Lesser, Paralusz, Seville-Jones, Chairman Fasola~~
NOES: None
ABSENT: None
ABSTAIN: None

~~Acting Director Jester explained the appeal process and indicated that the item will be placed on the City Council's Consent Calendar for their meeting of September 7, 2010.~~

07/28/10-3 Adoption of a Resolution Approving a Master Use Permit Amendment for Modifications to the Hours of Operation, Notification for Special Events, and Restaurant Operations and Denying a Height Variance at the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operating Company LLC)

Chairman Fasola commented that he has previously recused himself from consideration of the issue and will not participate in the discussion.

In response to a comment from Acting Director Jester, Commissioner Andreani said that although she was not present at the last hearing regarding the issue, she has reviewed the minutes and the video from that meeting.

Acting Director Jester stated that her understanding is that the Commission did not specify that functions could only be held in certain areas of the hotel, and such a restriction has not been included in Condition 3 of the draft Resolution. She commented that language was also added to Condition 11 regarding the terrace enclosure to clarify that the enclosure would need to meet the standards of the City noise consultant's noise studies for a fully enclosed terrace.

Commissioner Seville-Jones commented that staff has deleted the word "entirely" from the first sentence of Condition 11. She said that her understanding is that it was agreed the terrace would be entirely enclosed, and she is not sure why the word is being deleted.

Acting Director Jester said that it does not appear that the intention was to strike the word "entirely" from the first sentence of Condition 11, and staff will keep it in the language.

Acting Director Jester said that the words "Happy Hour" was changed to "Bar and Functions" in the heading of Condition 38.

Commissioner Lesser asked about the extent to which the Commissioners can make any additional changes to the draft Resolution without renoting the hearing.

Acting Director Jester indicated that some of the additional comments that have been received by the neighbors and the applicant are substantive and would require renoting in order to be incorporated. She stated, however, that minor changes can be made for clarification without it being necessary to renotice the item. She said that the Commission was very clear on their direction at the last meeting. She indicated that staff feels the Commission should vote on the draft Resolution as presented, and the applicant would have the ability to appeal the decision to the City Council if they desire.

Michael Zislis, the applicant, indicated that they would like for the Commission to vote on the proposed Resolution. He said that it would be appropriate for any additional changes to be addressed before the City Council.

Nate Hubbard said that he would also like for a vote to be taken on the draft Resolution at this hearing.

Commissioner Lesser said that he is eager for the Resolution to move to the City Council. He said that he is not certain of the extent of changes that can be made without renoticing. He indicated that he feels the Commission should help the parties come to closure rather than further complicating any issues.

Commissioner Seville-Jones said that it is important to recognize that the draft Resolution is a package that has developed from a compromise between the parties. She said that continuing to make changes to individual items makes the package less attractive.

Commissioner Andreani said that her understanding from reviewing the last meeting was that an agreement had been reached. She commented that she is not sure if making any changes sends the wrong message to the Council, as a great deal of work has gone into the draft Resolution as written.

Commissioner Seville-Jones commented that she does not believe it is necessary to add the language as suggested by the neighbors to Condition 22 to read: "All conditions other than Condition 23, hours for alcohol service shall become immediately effective upon approval by the City Council of PC Resolution 10-05."

Acting Director Jester indicated that the language suggested by the neighbors to Condition 22 is stating that the privileges given to the applicant as part of the Use Permit for extension of hours of operation shall only be granted after installation of the mitigation measures, which is already included in the draft Resolution. She said she does not feel it is necessary for the language to be included.

Commissioner Seville-Jones indicated that she supports allowing the neighbors' suggested language to Condition 28, as it is an administrative change that clarifies the condition.

The Commissioners agreed to change Condition 28 to read: ". . . after 9:00 p.m. for special events and functions any day of the week."

Vice-Chairperson Paralusz commented that **Mr. Zislis** has also suggested a similar modification as the neighbors regarding changing Conditions 28 and 29.

The Commissioners agreed to allow the neighbors' suggested change to Conditions 28 and 29 to add the same language as in Condition 31 to specify that registered hotel guests and disabled may use the east door after 9:00 p.m.

The Commissioners agreed with the applicant's suggestion to change Finding A in the draft Resolution to change the applicant's name from "Manhattan Inn Operations Company" to "Manhattan Inn Operating Company, LLC."

Commissioner Lesser suggested that the language of the first sentence of Finding A be corrected to read: "Manhattan Inn Operating Company LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previously previous approval.

This language misrepresents Commissioner Seville-Jones's statements that Condition 22 has the intent the 2010 CUP will take effect immediately.

Ms. Jester agreed.

See transcript in Exhibit 20

Commissioner Seville-Jones commented that food service has always been specified as small plates, and deleting the reference to small plates as suggested by the applicant for Finding A would be a substantive change.

The Commissioners agreed to leave the existing language of clause 3 of Finding A.

Commissioner Seville-Jones commented that the applicant's requested language to the last sentence of Finding A specifies their interpretation of the approved operating hours, and she does not believe that it is appropriate to include language regarding the applicant's interpretation.

Vice-Chairperson Paralusz said that she agrees with the comments of Commissioner Seville-Jones.

The Commissioners determined to leave the existing language for the last sentence of Finding A and not replace it with the applicant's suggested language.

The Commissioners agreed to the applicant's request to change the name in Finding E to "Manhattan Inn Operating Company LLC."

Commissioner Andreani said that she feels the applicant's proposed change for Finding L is substantive. She indicated that the high quality of service of the applicant has not been questioned, and the issue is regarding the noise being generated from the establishment rather than regarding service.

Commissioner Seville-Jones said that the applicant's suggested change for Finding L is interpreting what was done in prior Resolutions and is not necessary to be included the findings.

The Commissioners agreed to keep the existing language and not include the applicant's suggested additional language for Finding L.

Acting Director Jester pointed out that the Police Department has responded to calls regarding disturbances to the neighbors, and the disturbances are not alleged. She indicated that she also does not feel it is necessary to specify in Finding O that no citations have been issued as requested by the applicant.

The Commissioners agreed to keep the existing language for Finding O and not to include the applicant's recommended changes.

Commissioner Seville-Jones stated that one of the important points is regarding the unique nature of the property with the lobby being open 24 hours. She said that the definition of closing in Condition 1 as written addresses the issues that have been raised regarding closing hours of the hotel.

The Commissioners agreed that the applicant's suggested change to Condition 1 to delete or modify the definition of "closed" is substantive and that they would not support the applicant's proposed change to the existing language.

The Commissioners agreed that the applicant's suggested language to the fourth sentence of Condition 12 is substantive and that they would not support changing the existing language.

The Commissioners agreed that they would not support changing the wording of the last sentence in Condition 12 as suggested by the applicant.

The Commissioners agreed that the applicant's proposed change to Condition 15 is substantive and that they would not support changing the existing language as suggested by the applicant.

In response to a question from Commissioner Seville-Jones, Acting Director Jester indicated that Condition 18 has been eliminated, as dancing will be regulated by the Entertainment Permit.



The Commissioners agreed not to add language to the beginning of Condition 22 as suggested by the applicant.

The Commissioners agreed that the applicant's suggested revision to the table in Condition 23 regarding operating hours for the sky deck is substantive and that they would not support changing the existing language.

The Commissioners agreed that the applicant's proposed change to Condition 28 is substantive and that they would not support changing the existing language.

Vice-Chairperson Paralusz indicated that the applicant's proposed change to Condition 29 to add the words "and disabled" has already been addressed by the Commissioners with the neighbors' comments.

The Commissioners agreed that the proposed change of the applicant to the first sentence of Condition 31 is substantive and that they would not support changing the existing language.

The Commissioners agreed that the proposed change of the applicant to the first sentence of Condition 33 is substantive and that they would not support changing the existing language.

Commissioner Andreani commented that the language of the draft Resolution currently reads "Friday, Saturday and Sundays" in several places. She indicated that she would like to make the language consistent to read "Fridays, Saturdays and Sundays" throughout the document.

Commissioner Seville-Jones stated that there has been a great deal of compromise between the parties in reaching a conclusion to the draft Resolution. She indicated that the draft Resolution has developed as a result of both the neighbors and applicant keeping open minds. She commended **Mr. Hubbard** and **Mr. McPherson** for their work and participation in the discussions. She also commended **Mr. Zislis** on arriving at ideas to attempt to address the problems of the neighbors regarding noise. She said that she hopes that the City Council will consider that promises that were made to the community when the Metlox Plaza was originally developed. She indicated that where the patrons of the hotel exit during the evening hours is very important in regulating the level of noise to the neighbors. She indicated that the noise of patrons outside of the front entrance of the hotel is a significant source of the noise impact to the neighbors. She stated that she feels it is also very important that the definition of closing is included in the draft Resolution. She commented that the reason why the Commission is not approving additional operating hours on the sky deck is because the report from the sound engineer indicated that the applicant's proposed mitigation measures for the sky deck would not be effective in mitigating noise to the adjacent residents. She stated that she feels the sky deck is one of the most sensitive areas with respect to the application.

Closing and patron noise at front door

Commissioner Lesser stated that he gives the applicant tremendous credit for being receptive to the concerns of the neighbors and arriving at different proposals to address the concerns that were raised. He also commended **Mr. Hubbard** and **Mr. McPherson** in putting in the time to present their proposals and relay information to the residents. He commented that he hopes there will be compromise from both sides during further discussions with the City Council. He said that he hopes the applicant can acknowledge that the neighbors have experienced disturbances from noise. He indicated that he also hopes the neighbors can acknowledge that the applicant has agreed to spend a great deal of money and to have certain limitations placed on the operation of the hotel in order to help mitigate noise. He stated that he hopes the neighbors and applicant can build on the progress that was made at the Commission hearings to arrive at a compromise.

Commissioner Andreani said that she echoes the comments of Commissioners Seville-Jones and Lesser. She stated that a great deal of time, diligence and thoughtfulness has gone into the discussions. She indicated that the Commissioners had thought that they had arrived at a compromise after the June 23 hearing. She pointed out that the 2005 Master Use Permit for the Metlox development granted approval for a boutique hotel with ancillary bar and restaurant operations. She commented that she feels it is important to remember that the City is primarily a residential community. She also pointed out that the applicant opened the hotel knowing the property was located adjacent to a residential neighborhood. She indicated that the neighbors have been impacted by noise since the hotel began operating. She commented that she feels the applicant has given up only things that he wanted and not that were granted to him in the original Use Permit. She indicated that she feels the e-mail that was sent from Mr. Strain on July 28 is bringing back the original request for additional hours for all venues and particularly the sky deck. She stated that the neighbors have indicated that they want no additional entitlements granted for the sky deck. She indicated that she agrees with Commissioner Seville-Jones that mitigating noise by changing the exit location in the evenings is important. She said that she also feels that adding language regarding the definition of closing is important.

Andreani on Closing

Vice Chairperson Paralusz stated that she also commends staff for the enormous amount of time and effort they have dedicated to the application and in helping to mediate many of the issues. She also thanked her fellow Commissioners for their work on considering the application. She thanked **Mr. Zislis** for working with the neighbors. She also thanked the neighbors for their input and for passionately presenting their positions. She said that the hearings have been conducted with a spirit of compromise and cooperation.

A motion was MADE and SECONDED (Seville-Jones/Andreani) to **APPROVE** a Resolution Approving a Master Use Permit Amendment for Modifications to the Hours of Operation, Notification for Special Events, and Restaurant Operations and Denying a Height Variance at the Shade Hotel, Metlox Site, 1221 North Valley Drive, as amended.

AYES: Andreani, Lesser, Seville-Jones, Vice-Chairperson Paralusz
 NOES: None
 ABSENT: None
 ABSTAIN: Chairman Fasola

Acting Director Jester explained the appeal process and indicated that the item will be placed on the City Council's agenda for their meeting of September 7, 2010.

- E. PUBLIC HEARINGS** None
- F. DIRECTORS ITEMS** None.

**CITY OF MANHATTAN BEACH
MINUTES OF THE CITY COUNCIL
REGULAR MEETING
SEPTEMBER 7, 2010**

The Regular Meeting of the City Council of the City of Manhattan Beach, California, was held on the 7th day of September, 2010, at the hour of 6:42 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City. A full video of this City Council meeting can be accessed online at www.citymb.info.

PLEDGE TO FLAG

Public Works Director Jim Arndt led the pledge of allegiance.

ROLL CALL

Ayes: Tell, Powell, Cohen, Montgomery and Mayor Ward.
Absent: None.
Clerk: Tamura.

CEREMONIAL CALENDAR

~~09/07/10-1. Presentation of the "Person of the Month" Award to Beverly Rohr for Her Lifetime Achievement in Local Education~~

~~Mayor Ward, on behalf of the City Council, presented a commendation to Beverly Rohr for extraordinary lifetime efforts in local education.~~

~~09/07/10-2. Presentation of "Person of the Month" Awards to Mark McDonald, Dr. David Austin and Dr. Brad Thue for Their Efforts in Saving a Child on the Beach~~

~~Mayor Ward, on behalf of the City Council, presented a commendation to Mark McDonald, Dr. David Austin and Dr. Brad Thue for saving a child on the beach.~~

~~Mayor Ward introduced Evan Navaro and his mother and recognized Firefighter/Paramedic Michael Murrey for his assistance in the rescue.~~

~~09/07/10-3. Presentation of a Proclamation Declaring the Week of November 4, 2010 as the Manhattan Beach Education Foundation Pledge Day~~

~~Mayor Ward, on behalf of the City Council, presented a proclamation to Manhattan Beach Unified School District Superintendent Dr. Michael Mathews, Manhattan Beach Education Foundation Co-President Maria Zaslansky and Pledge Day Co-Chair Leasa Ireland proclaiming November 4th as Pledge Day.~~

CONSENT CALENDAR

~~Prior to voting on the Consent Calendar, Councilmember Powell asked for, and received, clarification on Item No. 12 (Consideration of Financial Reports).~~

~~The Consent Calendar (Item Nos. 4 through 30), consisting of items under General Consent and Boards and Commissions, was approved by motion of Councilmember Powell, seconded by Councilmember Tell and passed by unanimous roll call vote with the exception of Item Nos. 6, 7, 8, 11, 13, 15, 17 and 18 which were considered later in the meeting under "Items Removed from the Consent Calendar".~~

~~09/07/10-51. Bill Victor Re Manhattan Beach Open~~

~~Bill Victor, No Address Provided, complimented the City Council and Parks and Recreation Director Richard Gill for the successful Manhattan Beach Open.~~

~~09/07/10-52. Bill Victor Re Tennis Courts~~

~~Bill Victor, No Address Provided, asked if the Parks and Recreation Department is going to implement a reservation system for the tennis courts, similar to the Sand Dune Park system. If so, he recommended against it.~~

PUBLIC HEARINGS

09/07/10-31. Consideration of An Appeal of Limited Conditions of a Planning Commission Decision to Approve a Master Use Permit Amendment for Modifications to the Hours of Operation, Notification for Special Events, and Restaurant Operations and Denying a Height Variance at the Shade Hotel, Metlox Site, 1221 North Valley Drive

Mayor Ward introduced the subject item and Acting Community Development Director Laurie Jester provided the staff presentation.

Mayor Ward opened the Public Hearing at 7:34 p.m.

The following individuals spoke on this item:

- **Nate Hubbard, Neighborhood Representative**
- **Viet Ngo, No Address Provided**

Councilmember Cohen stated, for the record, she has never received anything of value or interest from **Mr. Mike Zislis**, his attorney or anyone, for that matter, and that she has never made a decision based on it.

Mayor Ward closed the Public Hearing at 7:41 p.m.

MOTION: Councilmember Cohen moved to uphold the appeal; to uphold the revised limited conditions; and adopt Resolution No. 6275. The motion was seconded by Councilmember Tell and passed by the following unanimous roll call vote:

Ayes: Tell, Powell, Cohen, Montgomery and Ward.
 Noes: None.
 Absent: None.
 Abstain: None.

MOTION: Mayor Ward moved to approve authorizing the City Manager to approve an amendment to the Disposition and Development Agreement (DDA) as necessary. The motion was seconded by Councilmember Cohen and passed by the following unanimous roll call vote:

Ayes: Tell, Powell, Cohen, Montgomery and Ward.
 Noes: None.
 Absent: None.
 Abstain: None.

**CITY OF MANHATTAN BEACH
PLANNING COMMISSION
MINUTES OF REGULAR MEETING
OCTOBER 26, 2011**

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 26th day of October, 2011, at the hour of 6:30 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

1. ROLL CALL

Present: Andreani, Conaway, Gross, Seville-Jones, Chairperson Paralusz
Absent: None
Staff Present: Richard Thompson, Director of Community Development
Eric Haaland, Associate Planner
Recording Secretary, Sarah Boeschen

2. APPROVAL OF MINUTES – October 12, 2011

A motion was MADE and SECONDED (Seville-Jones/Andreani) to **APPROVE** the minutes of September 28, 2011.

AYES: Andreani, Conaway, Gross, Seville-Jones
NOES: None
ABSENT: None
ABSTAIN: Chairperson Paralusz

3. AUDIENCE PARTICIPATION

4. BUSINESS ITEMS

10/26/11-2 Consideration of a Proposed Bank Use Replacing a Retail Use in a Commercial Development on the Property Located at 1130 North Sepulveda Boulevard

Associate Planner Haaland summarized the staff report. He indicated that the proposal does meet Code requirements. He commented that an email from Gary Osterhout in opposition to the proposal was received after the staff report was written and has been distributed to the Commissioners. He stated that the opposition expressed in the e-mail is because the proposal is not for retail use.

In response to a question from Commissioner Andreani, Associate Planner Haaland said that the entry tower as proposed for the bank is lower than the primary tower on the corner of Manhattan Beach Boulevard and Sepulveda Boulevard.

In response to a question from Commissioner Seville-Jones, Associate Planner Haaland indicated that he has no information on the amount of tax revenue that was generated by Blockbuster. He commented that the bank would probably not generate sales tax revenues for the City. He said that he is not certain how the property was marketed to potential tenants.

In response to a question from Commissioner Seville-Jones, Associate Planner Haaland indicated that two ATM machines that are shown in the plans would be located outside of the structure.

~~are part of the shopping center. She commented that food trucks may be welcomed by employees of Northrop Grumman along Aviation Boulevard.~~

~~Chairperson Paralusz indicated that she would want to ensure that the City strictly enforces the Use Permit and County health regulations for food trucks, particularly regarding access to restrooms, disposal of trash and grease, and amplified noise. She said that she would want to require that the County health letter grades be prominently displayed as is required for restaurants in the City. She commented that requiring the letter grade would provide an incentive for the truck owners to remain in compliance with County health standards in order to receive a high mark. She suggested that staff contact the Chamber of Commerce to ask for their input regarding food truck regulations.~~

~~Commissioner Gross indicated that he is particularly concerned with the density of restaurants in the CG zone. He suggested that food trucks be required to park a certain distance from restaurants and that a minimum distance be required between food trucks.~~

~~Commissioner Andreani commented that she would not want to interfere with the rights of private property owners but would want to be sure that the parking requirements for the shopping centers are recognized.~~

~~Director Thompson commented that staff plans to bring more information to the Commission regarding the item at their meeting of December 14, 2011.~~

~~5. DIRECTORS ITEMS~~

~~Director Thompson stated that the Environmental Impact Report is being prepared for the Manhattan Village mall project. He commented that the report has taken a long time to complete because many changes have been made to the project. He said that staff advised the applicant against their request to contact the Planning Commissioners individually to provide briefings regarding the project. He indicated that staff is suggesting that a community forum be held once the applicant is ready to publish the Environmental Impact report.~~

~~6. PLANNING COMMISSION ITEMS~~

Commissioner Seville-Jones commented that the Commissioners received an e-mail from **Nate Hubbard** regarding violations of the operating hours for the Shade Hotel. She asked whether staff has information regarding enforcement that has been taken for any violations.

Director Thompson indicated that the Police Department is aware of the concerns expressed by **Mr. Hubbard** regarding the hotel. He said that staff is working with the Police Department to ensure that the current Use Permit is being enforced. He commented that the Use Permit that was granted last year allows the hotel to remain open until midnight; however, that entitlement is not allowed until the improvements are completed that were agreed to by Mike Zislis. He indicated that the entitlement is not yet permitted, as the improvements have not been completed. He indicated that Mr. Zislis is having problems with providing fire access with enclosing the entry way and balcony areas. He said that the requirement for closing at 11:00 p.m. during the week will be enforced.

THOMPSON

City of Manhattan Beach

1400 Highland Avenue
Manhattan Beach, CA 90266



Meeting Minutes - Final

Tuesday, February 19, 2013

6:00 PM

Regular Meeting

City Council Chambers

City Council

Mayor Wayne Powell

Mayor Pro Tem David J. Lesser

Councilmember Amy Howorth

Councilmember Richard P. Montgomery

Councilmember Nicholas W. Tell, Jr.

H. AUDIENCE PARTICIPATION (Three Minutes Per Person)

Don McPherson requested that the City explain how the Shade Hotel was able to revert back to its 2005 Conditional Use Permit (CUP) when it was voided upon the approval of the 2010 CUP.

Esther Besbris stated that residents deserve the assurance that approved CUPs are going to be enforced and that issues brought up before the City Council will be dealt with and not just swept aside.

Cory Mendelsohn spoke about the issues he has with the gymnasium next door to his home.

Stephanie Hubbard spoke about the Shade CUP.

Bill Victor expressed his frustration over the CUP with the Shade Hotel.

President of the Community Emergency Response Team (CERT) George Butts spoke of upcoming CERT, Cardiopulmonary Resuscitation (CPR) and Automatic External Defibrillator (AED) classes.

Cheryl Lynn urged the City Council to uphold the 2010 Shade Hotel CUP.

Karol Wahlberg expressed her concern over the Shade Hotel CUP adding that she believes that the residents deserve to have this issue brought back before the City Council.

Joan Mueller asked for help in mitigating the noise from the Shade Hotel.

Robert Bush spoke about Utility Undergrounding and Southern California Edison.

Viet Ngo spoke of alleged conspiracy and alleged election fraud.

Patrick McBride inquired whether something could be done about the previous speaker's decorum.

Ed Caprielian spoke about the Shade Hotel CUP and the expansion of alcohol related problems in the city.

Steve Wible spoke about the Shade CUP and the lack of enforcement.

Jon Chaykowski spoke about making Manhattan Beach a more family-oriented city.

Councilmember Montgomery expressed condolences to Jeannie Buss on the passing of her father, Jerry Buss, and agreed with a previous speaker on the right to vote.

Mayor Powell concurred stating that we owe the right to vote to those who are defending our freedoms overseas.

Community Development Planning Manager Jester discussed the status of the Shade Hotel Conditional Use Permit.

City Attorney Barrow explained that mediation between Mr. Mendelsohn and the operator of Level 10 Fitness was not successful and they are now in private litigation. He added that he will provide an update to the City Council on the matter.

City of Manhattan Beach

1400 Highland Avenue
Manhattan Beach, CA 90266



Meeting Minutes

Tuesday, September 3, 2013

6:00 PM

Regular Meeting

City Council Chambers

City Council

Mayor David J. Lesser
Mayor Pro Tem Amy Howorth
Councilmember Wayne Powell
Councilmember Mark Burton
Councilmember Tony D'Errico

~~required to report their activity to the Metropolitan Transportation Authority.~~

~~Councilmember Burton noted that the report is a requirement of the US Department of Transportation and asked if it required specific intersections. Community Development Director Thompson shared that it includes all intersections, highlighting Sepulveda and Rosecrans, as well as other traffic data.~~

~~The Mayor opened the floor for public comments.~~

~~Viet Ngo stated that specific check amounts should be disclosed, in regards to the MTA fund, and that it needs to comply with the law.~~

~~Mayor Lesser closed the public comment period.~~

~~City Attorney Barrow noted that he is not aware of the sale of the funds with regard to MTA funds.~~

~~City Manager Carmany explained that the report, as well as the City, is in compliance.~~

~~A motion was made by Councilmember Powell, seconded by Councilmember Burton, to adopt Resolution No. 13-0054 demonstrating the City's compliance with the program requirements of the 2013 Congestion Management Program for the Los Angeles County Metropolitan Transportation Authority and adopting the local development report. The motion carried by the following vote:~~

~~Aye: 5 Lesser, Howorth, Powell, Burton and D'Errico~~

L. GENERAL BUSINESS (30 MINUTES PER ITEM)

18. Status Report Regarding Shade Hotel Use Permit, 1221 N. Valley Drive.

DISCUSS AND PROVIDE DIRECTION

Attachments: [Metlox Use Permit-Resolution No. 5770-July 16, 2002](#)
[Use Permit Amendment PC Resolution No. 05-08- May 25, 2005](#)
[Use Permit Amendment-Resolution No. 6275- September 7, 2010](#)
[Letter from Don McPherson-May 28, 2013](#)

Planning Manager Laurie Jester noted that two late attachments were sent via email. A number of residents have come to the City Council requesting that this item be placed on an agenda for discussion. The Shade Hotel has a use permit, as approved originally in 2002, with a most recent amendment in 2010, which was never implemented. Because of that, they are currently operating under the 2005 amendment. Neighbors have expressed concerns over noise, meeting regularly with the City Prosecutor and Police Department to record complaints.

Staff concluded that the 2010 CUP is not applicable because it was never implemented, and City staff is currently enforcing the 2005 CUP.

Mayor Lesser asked how sound concerns could be mitigated, separate from the 2010 CUP. It was explained that the hotel owner is considering a double door vestibule, which would alleviate front door noise disrupting neighbors. There has been no request by the applicant to extend the 2010 CUP, however they will work closely with

the staff and owner of the Shade Hotel and the neighbors to look at problems and find solutions.

City Attorney Barrow noted that staff has a scheduled meeting with the City Prosecutor on September 13, 2013, at 10:00 a.m. to meet with the property owner and residents. Because the item is a status report, there is not much City Council can do aside from reviewing material and seeking a solution to mitigate noise concerns.

The Mayor opened the floor for public comments.

Nate Hubbard, speaking as the neighborhood representative, shared a short presentation and was granted six minutes to share. Mr. Hubbard shared that after fourteen months, the City reached an impasse with the property owner of Shade Hotel, as he refused to install a retractable sound wall, a condition that was part of the 2005 CUP and the 2010 Entertainment Permit. In a 2010 meeting in Community Director Thompson's office the owner agreed to full enclosure of the terrace and a double vestibule, however none of it was ever accomplished. Complaints against Shade Hotel have been filed with MBPD and citations have been issued. Mr. Hubbard encouraged City Council to implement and enforce the 2010 CUP.

Don Mcpherson, a resident, asserted that 2010 CUP does not provide for proper noise mitigation. The 2005 CUP has a noise mitigation requirement, a retractable wall, which was never constructed.

Paul Konwiser, resident, expressed concern that the City has been blindsided and betrayed. The Master Use Plan notes conditions that are very different to today's situation. It is not a bed and breakfast, nor does it have limited hours, as it was originally described. It is open late, is noisy, and sells alcohol late into the night.

Esther Besbris has seen the Shade Hotel evolve and while residents continue to express concerns at City Council meetings, nothing is being accomplished, answered, or handled.

Cheryll Lynn, a resident directly across the street from Shade Hotel, shared her exhaustion over the whole issue. The funneling of the noise is out of control, keeping residents up at night, every night. The noise pollution is now affecting residents' quality of life and is the responsibility of the business to mitigate this.

Wayne Partridge said that without notice to City Council or public, the owners of the Shade Hotel have broken every agreement they have promised. It is unacceptable that he is ignoring the CUP and it is an insult to the City Council and to the public.

Viet Ngo referred back to the CUP of 2002 and that the conditions regarding alcohol licensing have been compromised.

Mayor Lesser closed the public comment period.

The Mayor re-opened the floor for public comments.

Michael Zislis, proprietor of Shade Hotel, noted that he is proud of Shade and what it has done for the community. He feels Shade is not a sound issue, as there have only been two complaints in twelve months. The parking lot on his property, which is used for all the Downtown workers, creates noise issues but that it is not a result of Shade Hotel. He wants to work with the neighbors, will pay for the CUP amendment, and mitigate any issues that the neighbors raise.

Mayor Lesser closed the public comment period.

Community Development Director Thompson explained that the 2010 CUP was not implemented due to fire code issues. When it was discovered that it would no longer be implemented, staff could have better notified the public and that they will explore ways to mitigate sound issues. The meeting on September 13, 2013, with the City Prosecutor will work to mitigate noise impacts.

Councilmember Burton shared his concern over City Council not being informed over the 2010 CUP, as there should have been a report to City Council. The failure to communicate is unacceptable and he would like to see a resolution, now that both parties are willing to work together.

Mayor Pro Tem Howorth encouraged greater communication.

Councilmember D'Errico has received piles of emails and documentation about this issue, specifically with regard to the 2005 and 2010 CUPs.

Councilmember Powell wants to see the neighbors and the Shade Hotel get together to solve the sound issues, as neighbors should not have to deal with noise impacts in their homes. He would like a new CUP created that mitigates sound issues.

Mayor Pro Tem Howorth wants a report back and is hopeful that both parties will be able to mitigate these issues.

Mayor Lesser noted that the owner has a desire to solve these problems and while he regrets that there was not further notification about the 2010 CUP, he believes it can now be handled. A report from the September 13, 2013, meeting should be presented at City Council's next meeting on September 17, 2013.

City Manager Carmany explained the process of creating agendas and that it would be better suited to be presented at an October meeting.

~~**M. ITEMS REMOVED FROM THE CONSENT CALENDAR (5 MINUTES PER ITEM)**~~

~~**3. Follow Up Report on Satellite Dishes.
RECEIVE AND FILE**~~

~~*This item was continued to the September 10, 2013, City Council meeting.*~~

~~**5. Ordinance No. 13-0009 Prohibiting Distribution or Sale of Prepared Food in Polystyrene Food Service Ware.
WAIVE FURTHER READING; ADOPT ORDINANCE NO. 13-0009**~~

~~**Attachments:** [Ordinance No. 13-0009 Prohibiting Distribution or Sale of Prepared Food in F](#)~~

~~*This item was continued to the September 10, 2013, City Council meeting.*~~

~~**7. Progress Payment No. 3 in the Net Amount of \$365,494.28 to Asphalt Fabric & Engineering, Inc. for the Marine Avenue Park Synthetic Turf Installation Project
APPROVE, APPROPRIATE FUNDS**~~

Bookmarks third icon down



LEGAL OPINION
VALIDITY OF SHADE HOTEL 2010 CUP
ATTACHMENT 4
29 JANUARY 2014

**LOUNSBERY FERGUSON
ALTONA & PEAK LLP**

ESCONDIDO AND SAN DIEGO

402 W. Broadway, Suite 400
San Diego, CA 92101
Telephone (619) 236-1201
Facsimile (619) 236-0944
www.LFAP.com

SPECIAL COUNSEL
JOHN W. WITT

Felix Tinkov
Partner

Direct: (619) 887-6471
Email: FMT@LFAP.com

Via email to CityCouncil@citymb.info

August 29, 2013

RE: *Shade Hotel 2010 CUP (Reso 6275)*

Dear Mayor Lesser and Honorable City Councilmembers:

In 2010, via Resolution 6275, the City Council approved a conditional use permit (“2010 CUP”) for the Shade Hotel (“Shade”) enumerating operational restrictions intended, amongst other things, to limit the business’s noise impacts upon neighboring residents. City staff has since usurped the Council’s authority by ignoring Resolution 6275 resulting in a *de facto* invalidation of the 2010 CUP. This correspondence provides a summary of the legal precedent demanding enforcement.¹

- Manhattan Beach Municipal Code (“MBMC”) § 10.100.060 provides that, “A decision by the City Council regarding an appeal shall become final on the date of the decision.” On September 7, 2010, the Council made an appellate determination to leave the Planning Commission’s version of the 2010 CUP intact. Consequently, the 2010 CUP took effect immediately, pursuant to Sections 5 and 6 in Resolution 6275.
- Gov’t. Code section 65009(c)(1)(E) prohibits “any person ... [t]o attack, review, set aside, void, or annul any decision... or ...determine the reasonableness, legality, or validity of any condition attached to a ...conditional use permit or any other permit” 90 days after a Council determination is made. Both Shade and staff are thus time-barred from further challenging the 2010 CUP.
- MBMC § 10.84.090(D) provides that a conditional use permit may only be revoked in a noticed public hearing. No such revocation hearing has been noticed or held.
- The 2010 CUP, at Section 2, Paragraph 9, states that staff “shall not reduce restrictions or conditions as set forth in this Amendment, without approval of the Planning Commission, with notice to property owners....” (See also Gov’t Code, § 65905 requiring a public hearing

¹ For your convenience, our correspondence from May 23, 2013 is attached to provide a broader overview of the facts and law relating to this matter.

Mayor Lesser & Manhattan Beach City Council
August 29, 2013
Page 2 of 2

to modify a use permit.) Again, no such hearing has occurred, yet staff nevertheless relaxed the terms of the 2010 CUP to accommodate Shade's desires.

- "A land-owner cannot challenge a condition imposed upon the granting of a permit after acquiescence in the condition by either specifically agreeing to the condition or failing to challenge its validity, and accepting the benefits afforded by the permit." (*City of Santee v. Superior Court of San Diego County* (1991) 228 Cal.App.3d 713, 718.) Shade failed to challenge the permit and exercises the privileges afforded by the 2010 CUP while ignoring the balance of the restrictions and protective requirements.
- MBMC § 10.84.090(A) does not allow a conditional use permit to lapse where the use is already established. Shade is an ongoing concern and thus the permit may not expire as staff has previously intimated.
- The legal principal of promissory estoppel bars Shade from avoiding the conditions of the 2010 CUP because it sought the use permit in the first place. (*Edmonds v. County of Los Angeles* (1953) 40 Cal. 2d 642, 653.)

The City's failure to enforce the 2010 CUP is actionable and our client, Mr. McPherson, will not hesitate to seek the court's assistance in rectifying the situation. It is up to the Council to ensure this is not necessary.

Sincerely,



Felix M. Tinkov, Partner
Lounsbery Ferguson Altona & Peak



Beverly Grossman Palmer
Strumwasser & Woocher

cc: Quinn Barrow (qbarrow@rwglaw.com); Joan Jenkins: jjenkins@citymb.info; Richard Thompson (rthompson@citymb.info); David Carmany (dcarmany@citymb.info); Eve Irvine (eirvine@citymb.info); Liza Tamura (ltamura@citymb.info)

Enc: (1)

STRUMWASSER & WOOCHER LLP

ATTORNEYS AT LAW

10940 WILSHIRE BOULEVARD, SUITE 2000
LOS ANGELES, CALIFORNIA 90024

TELEPHONE: (310) 576-1233
FACSIMILE: (310) 319-0156
WWW.STRUMWOCH.COM

FREDRIC D. WOOCHER
MICHAEL J. STRUMWASSER
GREGORY G. LUKE †‡
BRYCE A. GEE
BEVERLY GROSSMAN PALMER
RACHEL A. DEUTSCH
PATRICIA T. PEI

†Also admitted to practice in New York
‡Also admitted to practice in Massachusetts

May 23, 2013

Mayor Lesser and Honorable City Councilmembers
Manhattan Beach City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266

Via email

RE: Shade Hotel Conditional Use Permit

Dear Mayor Lesser and Honorable City Councilmembers:

This correspondence serves as a follow up to our February 15, 2013 letter regarding the City's failure to enforce the Shade Hotel Conditional Use Permit approved by Resolution 6275 on September 7, 2010 ("2010 CUP"; the 2010 CUP and all other pertinent permits are attached in the "Permit Appendix"). Our client, Don McPherson, has acquired substantive new information dictating the need for this update.

The community's frustration grows daily with Shade's violation of, and the City's continued failure to enforce, the duly approved 2010 CUP. On February 19, 2013, and again on March 6, 2013, the City Council heard comment from the public and information from City staff regarding the 2010 CUP. In an absurd twist of logic, City staff insists that the 2010 CUP was not, and could not be, effective because the applicant has not complied with its conditions. Staff's interpretation of the 2010 CUP is neither supported by the language of the 2010 CUP nor by California jurisprudence. Backroom communications between City staff and the Manhattan Inn Operating Company, LLC ("Operator") are not a substitute for the open and public process that the law requires. The City must demand that the Operator comply with the terms of the 2010 CUP.

Staff Testimony Regarding the 2010 CUP is Incorrect: The 2010 CUP Was Effective Upon Council Approval and Contemporaneously Rescinded the 2005 CUP

Staff members have stated, on the record, that the 2010 CUP is unenforceable. At the February 19, 2013 Council hearing, Planning Manager Laurie Jester stated, "[t]he City has no authority to require [the Shade Hotel] to operate under that use permit. If they choose not to implement it, they don't have to." (*See* Exhibit 1, excerpt of February 19, 2013 Council hearing transcript at page 36, lines 14-17.) Ms. Jester argues the Shade Hotel is subject solely to the conditional use permit approved on May 25, 2005 by Resolution PC 05-08 ("2005 CUP") even though it was rescinded by the Council in connection with the approval of the 2010 CUP. The basis of Ms. Jester's faulty argument is that the Shade Hotel has a right not to comply with the 2010 CUP

because, in the Operator's determination, "some of the conditions were not working for them." (*See* Exhibit 1, at page 35, lines 20-21.) No legal basis was provided for this assertion. Instead, staff quietly put the matter to rest by surreptitiously resurrecting the defunct 2005 CUP when they should have sought direction from the Planning Commission to modify the 2010 CUP. Ignoring a problem rarely makes it better. This case is no exception.

Rather than correcting the problem, at the March 6, 2013 Council hearing, City Manager David Carmany explained that Shade was operating under the 2005 CUP, and elaborated that "[t]he City Attorney has confirmed that under California law, use permits are not operative until all conditions are satisfied." (*See* Exhibit 2, excerpt of the March 6, 2013 Council hearing transcript at page 3, lines 20-22.) Mr. Carmany concluded his remarks by incorrectly declaring that the 2010 CUP "was never in effect." (*Id.*, line 23.) No legal basis was offered to support this statement, and Public Records Act requests by Mr. McPherson to ascertain the unidentified underlying California law resulted in no response. This is so because no such legal precedent exists.

Shortly after the 2010 CUP was authorized, City Planning Department staff took it upon themselves to override the Council's approval, and mislead the Manhattan Beach Police Department, by declaring that Shade is subject solely to the 2005 CUP. (*See* Exhibit 3, Metlox Plaza Allowed Hours, Alcohol Service and Entertainment.) In November 2011, upon direction from Mr. Carmany and Community Development Director Richard Thompson, Police Chief Eve Irvine informed resident Mr. Nate Hubbard that Shade was subject to the 2005 CUP, not the 2010 CUP. [*See* Exhibit 4, Chief Irvine's email response.]

The repetition of misinformation does not make it true. Staff's position regarding the 2010 CUP is contrary to the plain language of the 2010 CUP. Nor does any provision of state or local law require that the City continue to enforce the 2005 CUP – to the contrary, under the governing provisions of the Manhattan Beach Municipal Code ("MBMC"), the 2010 CUP is plainly the operative approval under which the Shade Hotel and its entertainment venues may legally operate.

Contrary to Mr. Carmany's March 6, 2013 statement, no provision of state law requires a permit holder to implement the terms of its CUP to make it effective. Local ordinances, not state law, dictate the conditions under which a CUP may be granted and made effective. (*See*, e.g., 66A Cal. Jur.3d, Zoning and Other Land Use Controls, § 426.) The Manhattan Beach Municipal Code sets forth the criteria under which a CUP may be issued, identifies the circumstances in which approvals may be conditioned, and establishes the effective date of approvals issued by the City. (*See* MBMC §§ 10.84.060; 10.84.070; 10.84.080.) Under Manhattan Beach Municipal Code section 10.84.080, unless a CUP is appealed, "a use permit . . . shall become effective after expiration of the time limits for appeal;" and if a use permit is appealed, under section 10.100.060, "a decision by the City Council regarding an appeal shall become final on the date of the decision." The 2010 CUP was appealed to the Council, jointly by the Operator and Mr. Hubbard. The City Council adopted the final version of the 2010 CUP on September 7, 2010. The 2010 CUP was therefore effective as of the Council's determination on the appeal directly contradicting Mr. Carmany's position.

This interpretation of the Municipal Code is reflected in the language of the 2010 CUP. The 2010 CUP, at Section 5, provides that "[t]his resolution shall take effect immediately." Condition 45 likewise specifies the

“Effective Date” of the 2010 CUP: “Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC section 10.100.030 have expired.”

Condition 22 of the 2010 CUP states that “[t]he privileges within this Use Permit for extension of hours of operation shall only be granted after the installation of the mitigation measures. . . .” This is further evidence that the 2010 CUP became immediately effective, leaving only the privilege of extended hours contingent upon the Shade Hotel implementing sound proofing measures to protect neighboring residents. Such operation was the exact intent of the Planning Commission in adopting the 2010 CUP.¹ Reflecting this intent, Planning Commissioner Sandra Seville-Jones noted, and Ms. Jester confirmed, during the final hearing on the 2010 CUP, that, barring the extension of hours, “[e]verything else is therefore effective when it is adopted.” (See Exhibit 5, July 28, 2010 Planning Commission hearing transcript excerpt at page 17, line 25 to page 18, line 2.)

The City staff’s position is further undercut by the Municipal Code. By submitting a request for new conditions, the Operator’s application for an amendment to the 2005 CUP must “be treated as a new application.” (MBMC, § 10.84.100.A.) The consequence of such an action is that “a new application” necessarily supplants the older permit lest conflicting conditions apply to the same property. The 2010 CUP is unambiguous in this regard. Finding Y states in full: “This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution supersedes Resolution No. PC 05-08 and Resolution No. PC 10-05 [the 2005 CUP]. It also amends only Conditions No’s 28 and 38 of Resolution No. 5770, all other conditions in that Resolution (unless amended by other separate Resolutions for other Metlox tenants) remain effective and in full force.” There can be no question that the 2005 CUP is no longer effective and its terms cannot be enforced by the City nor can its privileges be enjoyed by the Shade Hotel. Moreover, neither City staff nor the Operator have the legal authority to override the express will of the Council in instituting the terms of the 2010 CUP for the health, safety and welfare of the community.

Shade Currently Exercises Privileges Solely Afforded in 2010 CUP and Not Available Under the 2005 CUP

The Operator sought the terms of the 2010 CUP to increase Shade’s hours of operation as well as several privileges not permitted by the 2005 CUP. City staff protestations aside, utilization of the new conditions clearly reflects not only the Operator’s acceptance of the 2010 CUP, but the City’s effective imposition of the terms of the 2010 CUP.

The 2010 CUP substantially changed the conditions governing food service at Shade. Finding E of the 2010 CUP notes that the new application sought “[e]xpanded public food service (breakfast, lunch, and evening “small plates”).” The 2005 CUP, at Finding L and Conditions 3 and 5, prohibited lunch service (except via room service), and limited food service to “appetizers”. Condition 5 of the 2005 CUP provided that the Zinc Bar not operate as a full scale restaurant, and Condition 6 prohibited posting menus outside the hotel. By

¹ The 2010 CUP, at Condition 46, provides that the Planning Commission, not staff, resolve “[a]ny question of intent or interpretation of any condition....”

contrast, the 2010 CUP, at Condition 36, lifts restrictions on food service, stating that Shade “may serve food in all public areas during the hours consistent with the service of alcohol.” Condition 39 of the 2010 CUP permits posting menus outside of the premises. Shade now exercises all of these increased privileges pursuant to the 2010 CUP.

Shade offers lunch, though this is not permitted under the 2005 CUP. (*See* Exhibit 6, excerpt of Zinc Bar menu featuring lunch options; *See also* Exhibit 7, the Zinc Ready – Set – Lunch menu.) The Zinc Bar also offers a wide range of meals, including desserts, much like many other full scale restaurants and in direct contradiction of the rights permitted under the 2005 CUP. (*See* Exhibit 8, Zinc Full Service Dining Menu.) The menus are now posted outside of the Shade Hotel, conflicting with the rights permitted under the 2005 CUP. (*See* Exhibit 9, Photograph of Outdoor Menu Displays.) There can be no question that the Operator has taken advantage of the benefits afforded by the 2010 CUP, including those specifically prohibited under the 2005 CUP, directly undercutting the City staff’s argument that the 2005 CUP is effective.

The 2005 CUP, at Condition 2, also limited the locations of special events to the “Courtyard, Meeting Room, and Living Room,” and prohibited special events in other “Public Open Areas.” The 2010 CUP, at Condition 11, permits the Zinc Terrace to be used for special events. The Operator now markets the terrace to prospective clients. (*See* Exhibit 10, Shade Hotel Website at http://shadehotel.com/celebrate_zincterrace.php; *See also* Exhibit 11, Shade Hotel 2010/2011 Weddings and Events Guide excerpt, at page 3; and Exhibit 12, Shade Wedding Guide excerpt, at page 5.) Again, the Operator clearly enjoys and advertises the benefits of the 2010 CUP, including those rights specifically prohibited under the 2005 CUP.

Finally, the 2010 CUP eliminated a requirement of the 2005 CUP, described at Finding O, to isolate the hotel lobby from the Zinc Bar by installing a fully retractable wall with a sound mitigation rating of STC-50. Although the Operator installed the track for the retractable wall in the ceiling of the lobby/Zinc Bar, the retractable partition was not installed. (*See* Exhibit 13, Shade Hotel Lobby/Zinc Bar security camera photo provided to Manhattan Beach Police Department.) This 2005 CUP requirement, with which Shade had never complied, was eliminated in the 2010 CUP.² Residents agreed to this reduction in mitigation because of the *other* mitigation measures included in the 2010 CUP – measures that it appears the hotel never intended to implement. Thanks to the City’s non-enforcement, it is the residents who are the true victims of a bait and switch here.

The Law Does Not Permit One to Take Advantage of a CUP Without Conforming to Its Conditions

² The City staff, of their own volition, and in direct contradiction to the Planning Commission’s direction found in the 2005 CUP, determined that the Operator need not install the partition wall. At the October 28, 2009 Planning Commission hearing, upon being questioned by Commissioner Seville-Jones why the Operator never installed the partition, Community Development Director Richard Thompson stated, “I just don’t think it would ever provide the mitigation that the residents are looking for.” Yet another example of City staff overstepping their authority for the benefit of the Operator.

Because Shade has been exercising the privileges granted it in the 2010 CUP, it may not disclaim the obligations of the 2010 CUP henceforth. “A land-owner cannot challenge a condition imposed upon the granting of a permit after acquiescence in the condition by either specifically agreeing to the condition or failing to challenge its validity, and accepting the benefits afforded by the permit.” (*City of Santee v. Superior Court of San Diego County* (1991) 228 Cal. App. 3d 713, 718; *see also Tahoe Keys Property Owners’ Association v. State Water Resources Control Board* (1994) 23 Cal. App. 4th 1459, 1484.) The Operator did not challenge the 2010 CUP approved by the City Council on September 7, 2010. Moreover, the Operator has clearly accepted the benefits of the 2010 CUP by (1) augmenting and advertising food service and special events rights, (2) opting to not install the Zinc Bar sound mitigation wall, (3) operating the Zinc Terrace past breakfast hours and increasing occupancy from 22 to 80, (4) separately advertising to the public the Zinc Bar, Sundeck and special events, and (5) increasing Skydeck occupancy from 45 to 80.

Promissory estoppel bars Shade from contending that it no longer is required to abide by the conditions of the 2010 CUP. In *Edmonds v. County of Los Angeles* (1953) 40 Cal. 2d 642, the Supreme Court found that a land owner who requested the right to expand the number of trailers over that already permitted on his property in exchange for the requirement that all trailers be taken offsite within three years could not take the benefit of the bargain but disavow the burden. (*Id.* at p. 653.) The Court found that the property owner enjoyed a right to which he was not otherwise entitled under the existing zoning, absent the permit granted, on condition that the use cease in three years, and that the County relied on that promise in granting the permit. (*Ibid.*) Thus, the County could invoke promissory estoppel to require the property owner to remove all trailers from the property once the three year period had elapsed. (*Ibid.*)

Here, Shade applied for, accepted, and did not contest the terms of the 2010 CUP, in an effort to obtain additional privileges beyond those granted in the 2005 CUP. In fact, the Operator’s representative, Mr. Michael Zislis, confirmed acceptance of the 2010 CUP terms through his attorney, John Strain. (*See Exhibit 14, Strain Letter dated August 11, 2010.*) The approval process for the 2010 CUP revealed that many neighbors were disturbed by noise emanating from Shade’s operations. The City reasonably relied upon Shade’s promise to implement the 2010 CUP in return for the right to increased operations (including privileges other than extension of hours, as set forth above). The City has the authority, notwithstanding Ms. Jester’s contrary claims, to enforce all of the conditions in the 2010 CUP based upon promissory estoppel: the Operator accepted the conditions, benefited from the privileges, and cannot now disclaim its reliance upon the 2010 CUP when faced with the burdens which it agreed to accept.

The 2010 CUP May Not Be Modified or Revoked Without a Public Hearing

State and City law prevent a conditional use permit from being revoked or modified without a publicly noticed hearing. Government Code section 65905 provides that a use permit may only be modified at a public hearing. Similarly, Manhattan Beach Municipal Code is clear that public notice and hearing is required for revocation or modification of a use permit due to non-compliance with the permit’s conditions. Section 10.84.090.D provides that “[a] use permit . . . that is exercised in violation of a condition of approval . . . may be revoked, or modified, as provided in Section 10.104.030.” The referenced provision, section 10.104.030, establishes procedures for the revocation or modification of discretionary permits. The same degree of public

notice required to grant the approval must be afforded prior to a public hearing to revoke or modify a conditional use permit. (MBMC, § 10.104.030.B.) In the case of a use permit, notice must be provided to “all owners of property within five hundred feet (500’) of the boundaries of the site . . .” as well as posted at City Hall and published in a newspaper of general circulation. (MBMC, § 10.84.040.B.) A written decision must issue regarding the revocation or modification of the permit. (*Ibid.*)

In this instance, the 2010 CUP, at Condition 9, also provides that “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.” Although a wider radius of notice is required for outright revocation, public notice and Planning Commission approval are still required for any “reduction” in restrictions or conditions set forth in the 2010 CUP.

Given that notice and public hearing is plainly required for modification or revocation of the 2010 CUP, staff’s insistence that Shade’s unilateral determination not to comply with the 2010 CUP somehow reinstated the 2005 CUP is all the more implausible. Because the 2010 CUP expressly supersedes the 2005 CUP, reinstating the 2005 CUP directly modifies the provisions of the 2010 CUP that differ from the 2005 CUP, as well as those provisions that state that the 2005 CUP is superseded. If staff, through their own efforts, reinstated the 2005 CUP, this would equate to a violation of both state and local law. Such a development requires a public hearing, since it is a CUP modification, and disregards the express requirement in the 2010 CUP that only the Planning Commission may approve any reductions of the restrictions or conditions found in the 2010 CUP. Surely, staff does not admit that they have violated these legal provisions; it therefore must be the case that the 2010 CUP remains in effect unless and until a proper public process modifying that CUP is initiated and completed. In short, neither City staff nor the Operator have the authority to choose which CUP is legally effective – that decision was already made by the City Council when it approved the 2010 CUP.

The City Must Enforce the 2010 CUP or Impose New Conditions Necessary to Protect the Public from the Adverse Consequences of Operations at Shade

The 2010 CUP, at Finding Z.1., reflects the Planning Commission’s and City Council’s conclusions that conditions were necessary to protect neighboring residents from adverse effects from Shade’s operations. In its findings, the City concluded: “The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts through the conditions of approval *which require physical noise mitigation and operational revisions.*” (*Emphasis added.*) Moreover, the 2010 CUP, at Finding T, reflects the Council’s reliance upon two independent acoustical analyses requiring mitigation measures incorporated into the 2010 CUP based on recommendations, public testimony, and Planning Commission direction. These measures include the entry vestibule and terrace enclosures, neither of which has been implemented.

It is therefore objectionable that City Planning staff directed the Police Department to take the position that the “current” CUP is the 2005 CUP. Under Condition 22, the extension of hours is not granted to Shade until it complies with the physical mitigation requirements of the 2010 CUP, but the remainder of its provisions

do apply immediately, regardless whether Shade implements the mitigation measures. The provisions of the 2010 CUP include many operational restrictions beyond the hours of operation, such as closing procedures and regulation of live and amplified musical entertainment. For example, the 2010 CUP, at Condition 1, defines “closed” as “[m]usic off and lights turned up in all public area. Terrace, courtyard, skydeck, Zinc bar and Lobby, and all public area vacated, except for staff throughout, as well as registered guests in the Lobby only.... In the Zinc bar and lobby, terrace, courtyard, skydeck and all public areas, without exception, on or before closing, staff shall collect all glasses, bottles cans, and drinks, including from registered guests, to comply with the ABC definition of closed as ‘no sale, service, or consumption of alcoholic beverages.’” This definition was vital to the community during the process of drafting the 2010 CUP, as community members were concerned that the hotel would argue, as it had in the past, that it could not determine which patrons were registered guests and therefore that patrons could remain on premises, consuming beverages, well past the hour at which beverage sales stopped. In fact, MBPD continues to report that they cannot enforce the closing time, because of the concern about which patrons are guests allowed to remain on premises. And residents continue to complain that the Zinc Bar remains open well past its permitted hours of operation, including those hours that would be afforded if noise mitigation measures were instituted under the 2010 CUP. Thus, the Operator enjoys greater benefits than those granted under the 2010 CUP due to a lack of enforcement. Because the 2010 CUP clarifies that no patron, hotel guest or not, may possess alcoholic beverages after the designated closing hour, the MBPD must be directed to enforce closing times – the Shade Hotel staff has proven time and again that they will not do so of their own accord.

The courts are clear, cities possess broad authority to regulate conditional uses, including those involving the sale of alcohol, to avoid such uses from becoming a nuisance to nearby residents. (See, e.g., *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 389.) Even a permittee with a vested right may have a permit revoked for failure to abide by the permit’s conditions. (*Id.* pp. 391-392, fn. 5; see also *O’Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151, 158-159.) If the Operator believed that the conditions imposed by the Council were too onerous or unnecessary, the proper response was to appeal them to the City and to the courts. Reverting entirely to the conditions of the 2005 CUP allows the Shade Hotel to subvert the City’s and the public’s attempts to address a condition causing a public nuisance by ignoring the measures designed to mitigate the problem. Certainly the City does not intend to allow a permit holder to pick and choose which conditions it will abide when the terms are designed to “protect[] surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts through the conditions of approval which require physical noise mitigation and operational revisions.” (See 2010 CUP at Finding Z.1.) The impacts of Shade Hotel were manifest when it was operating under the 2005 CUP, so it is therefore particularly improper for the City to revert back to those conditions in response to the Operator’s non-compliance with the 2010 CUP.

The City must enforce the 2010 CUP, and if Shade continues to fail to implement the mitigation measures, the City may modify or revoke the 2010 CUP in a noticed public hearing. Manhattan Beach Municipal Code section 10.104.030.D.2 provides that if “the terms or conditions of approval of the permit have been violated . . .” this is a sufficient basis for modifying or revoking a permit. The 2010 CUP, at Condition 24, provides that any substantial deviation from its terms requires the approval of the Planning Commission. This is further evidence that the City intended to supervise the implementation of the 2010 CUP and ensure that

mitigation measures were properly utilized. The City must use its powers pursuant to the Municipal Code to enforce the 2010 CUP and not permit the Operator to evade well thought out restrictions by engineering a reversion to the 2005 CUP (though, as a practical matter, the Operator failed to abide by the 2005 CUP conditions as well, and the City turned a blind eye to enforcing virtually any pertinent conditions). Any other course will only serve to continue the conduct that creates an untenable disturbance to the neighboring community. Failure to proceed in accordance with the law will engender political and legal repercussions wasting precious resources better served enhancing the City of Manhattan Beach and improving the lives of its citizenry.

The City Council should not, and legally can not, permit City staff to pick and choose the duly authorized permits they wish to enforce, or in this case, ignore. The Council must schedule a business item on this matter within the next few months, so that all parties may be heard and a solution can be implemented without further delay or stress on the community.

Sincerely,



Beverly Grossman Palmer
Strumwasser & Woocher

Felix M. Tinkov, Partner
Lounsbery Ferguson Altona & Peak

cc: Quinn Barrow (qbarrow@rwglaw.com)
Richard Thompson (rthompson@citymb.info)
David Carmany (dcarmany@citymb.info)
Eve Irvine (eirvine@citymb.info)
Liza Tamura (ltamura@citymb.info)

Exhibits:

1. February 19, 2013 City Council Hearing Transcript Excerpt
2. March 6, 2013 City Council Hearing – City Manager’s Report Transcript Excerpt
3. September 10, 2010 Staff Prepared Metlox Plaza Allowed Hours, Alcohol Service and Entertainment Sheet
4. November 9, 2011 Email Exchange Between Police Chief Irvine and Nate Hubbard
5. July 28, 2010 Planning Commission Hearing Transcript Excerpt
6. May 8, 2013 Zinc Bar Menu Excerpt Featuring Lunch Options
7. May 8, 2013 Zinc Bar Ready – Set – Lunch Menu
8. May 8, 2013 Zinc Full Service Dining Menu
9. April 22, 2013 Photograph of Shade Hotel Outdoor Menu Display
10. May 8, 2013 Shade Hotel Webpage at http://shadehotel.com/celebrate_zincterrace.php
11. May 8, 2013 Shade Hotel 2010/2011 Weddings and Events Guide excerpt

12. May 8, 2013 Shade Hotel Wedding Guide excerpt
13. January 4, 2008 Shade Hotel Lobby Security Camera Photo
14. August 11, 2010 Attorney Strain Letter Acknowledging Acceptance of 2010 CUP Terms

Appendix:

- A. July 16, 2002 Resolution 5770 (2002 Metlox Master Use Permit)
- B. May 25, 2005 Resolution PC 05-08 (2005 CUP)
- C. September 7, 2010 Resolution 6275 (2010 CUP)

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**TRANSCRIPTION OF AUDIO MEDIA TITLED
CITY OF MANHATTAN BEACH
CITY COUNCIL MEETING - FEBRUARY 19, 2013**

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TRANSCRIBED FROM AUDIO FILE BY:

DEBORAH FUQUA, CSR #12948

Exhibit 1

1 otherwise known as the CUP. And then the other one is
2 Level Fitness, which apparently is in private
3 litigation between two parties. And there's mediation
4 between the two parties.

5 So first, if I could ask Laurie Jester the
6 City's planning manager, to come down and address two
7 items, maybe your City attorney as well.

8 Number one, what is the status with the
9 conditional use permit and then, also, enforcement
10 actions.

11 PLANNING MANAGER JESTER: Sure. Thank you,
12 Mr. Mayor.

13 When anyone applies for a use permit, they
14 have a certain time period in order to implement that
15 use permit. And they are not required to implement it.
16 It's their choice.

17 So the Shade Hotel had an approval in 2005 for
18 a use permit. They came in for an amendment in 2010.
19 Then, when they were going through the building permit
20 process, they realized that some of the conditions were
21 not working for them. They were not able to enclose
22 the patio, therefore, they weren't able to meet certain
23 conditions, required conditions of approval.

24 So they have not implemented that use permit
25 approval from 2010. We don't require people to

1 implement it. It just gives them the right to. And so
2 because of -- they don't have the increased hours that
3 that approval allowed. They are not implementing the
4 increased food service. They are not implementing the
5 provisions that allow them to have larger parties
6 without directors' approval.

7 So they basically have their existing permit
8 from 2005, and that's what they're operating under.

9 MAYOR POWELL: So if they voluntarily applied for
10 an amendment to their use permit, hence the 2010
11 amendment, and it's granted, there's no obligation for
12 them to grant it, and the City has no authority to
13 impose it upon them?

14 PLANNING MANAGER JESTER: The City has no
15 authority to require them to operate under that use
16 permit. If they choose not to implement it, they don't
17 have to.

18 MAYOR POWELL: Okay. The other question is when
19 there's noise emanating from any business.

20 PLANNING MANAGER JESTER: Yes?

21 MAYOR POWELL: And particularly this business,
22 what enforcement actions are available, and what
23 enforcement actions have been imposed in this specific
24 condition, this case?

25 PLANNING MANAGER JESTER: Sure. Whenever there's

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**TRANSCRIPTION OF AUDIO MEDIA TITLED
CITY OF MANHATTAN BEACH
CITY COUNCIL MEETING - MARCH 6, 2013**

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**CITY MANAGER DAVID CARMONY'S REPORT
RE SHADE HOTEL**

TRANSCRIBED FROM AUDIO FILE BY:

DEBORAH FUQUA, CSR #12948

Exhibit 2

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2 P R O C E E D I N G S

3 MAYOR POWELL: On to the City Manager reports.

4 Item M.

5 CITY MANAGER CARMANY: Given the hour, I'm happy
6 to not do this tonight, if that's your pleasure.

7 MAYOR POWELL: I think it would be worth your
8 doing it.

9 CITY MANAGER CARMANY: Here we go.

10 I had four items I wanted share with you.

11 First, tonight, I wanted to speak to the Shade
12 Hotel issue that was raised at the last meeting. I
13 just wanted to give you a status on that publicly

14 As the Council is aware, the Shade is
15 operating under the conditional use permit that was
16 approved in 2005. The 2010 permit approval would have
17 allowed for extended hours of operation, larger special
18 events, expanded food service. It was never
19 implemented.

20 The City Attorney has confirmed that under
21 California law use permits are not operative until all
22 the conditions are satisfied. Point to be made: The
23 2010 permit is better but was never in effect.

24 Communication on this issue wasn't good
25 enough. And we want to make it better. And we've been

Exhibit 3

Metlox

Allowed Hours, Alcohol Service and Entertainment 9-10

[CC Resolution No. 5770, and PC Resolution No's. 05-08 (Shade), 06-20 (Petros), 08-08 (Le Pain), and CC Resolution No. 6275 (Shade- replaces PC Resolution No. 05-08)]

NOTE:

Shade has not yet implemented the approval granted in CC Resolution No. 6275 from 9/7/10 and therefore they are still subject to the approvals in Resolution No.'s 05-08 and 5770, as shown below.

Shade Inn-Hours

Lobby Zinc Bar and Zinc Terrace (outdoor south side)- 11:00 PM daily

Interior Courtyard- Only to be used for special events and functions -11:00 pm Sunday –Thursday, 12:00 midnight Friday and Saturday. (Alcohol service to stop ½ hour prior)

Rooftop Deck- 10:00 pm daily (Alcohol service to stop 1 hour prior)

Town Square and Sashi Sushi Restaurant -Hours

11:00 pm Sunday –Thursday, 12:00 midnight Friday and Saturday (Alcohol service at restaurant to stop at 10:30 pm Sunday –Thursday, 11:30 pm Friday and Saturday)

Petro's Restaurant -Hours

12:00 am (midnight) Sunday –Thursday, 1:00 am Friday and Saturday (Alcohol service at restaurant to stop at 11:30 pm Sunday –Thursday, 12:30 am Friday and Saturday)

Le Pain Quotidien Bakery- Hours

7:00 am to 7:30 pm seven days a week. Service of limited beer and wine with food 10:00 am to 7:30 pm, seven days a week.

All tenants-Entertainment

Background music, non-amplified limited to 2 entertainers allowed without a permit.

Dancing, amplified live music, or more than 2 entertainers requires an Entertainment Permit.

Shade has an Entertainment Permit, no other tenants do. Any events require a 7 day prior notice and the Permit has a number of other conditions.

G:\PLANNING DIVISION\Temporary (file sharing)\Bobby\Metlox\Metlox hours, entertainment and alcohol-09-10.doc

Exhibit 4

From: Eve R. Irvine
Sent: Wednesday, November 09, 2011 2:21 PM
To: 'Nate Hubbard'; David N. Carmany; Richard Thompson; Nan Rados; Andrew Harrod
Cc: Eve R. Irvine
Subject: RE: Shade employees deceived MBPD about their bar hours

Hi Mr. Hubbard,

First of all, you are certainly not bothering me with regard to this matter. I didn't immediately get back to you because I was still gathering information on the problem at hand. This problem does not have an easy fix as many factors were taken into consideration when coming up with a game plan to effectively address the issue and any violations of the CUP.

Today was the last of numerous meetings to brief me on the history of the issue, the current and old CUP, and how to come to an appropriate resolution. Today's meeting included the City Manager, the Community Development Director, myself and several high ranking police officials.

We discussed a game plan to effectively address violations of the current CUP. Let me clarify that the "current CUP" which is enforceable is not the one adopted in 2010, but the original CUP passed in 2005. Since Mr. Zislis did not complete the requirements set forth in the 2010 CUP, he has defaulted to the provisions set forth in the 2005 CUP.

Now that the PD has been briefed on which CUP rules and regulations can be enforced; the information will be briefed to the officers so that everyone is on the same page. Therefore, effective immediately, there will be zero tolerance enforcement on violations contained within the 2005 CUP. This includes more restrictive hours of operation:

- Zinc Bar shall be closed at 11pm,
- The rooftop deck shall be closed at 10pm daily with alcohol service to stop at 9pm,
- The interior courtyard to be closed at 11pm Sunday through Thursday and 12midnight Friday and Saturday with alcohol service to stop at 30 minutes prior to closing time).

Since law enforcement is very fluid, we cannot guarantee to have a police officer present at each of these closing times every night. Therefore, it is imperative that you and your neighbors call when violations (as described above) do occur. Available units will respond to your calls for service, notwithstanding prior emergent calls for service.

Also, to fully address this matter, a meeting will be set up with Mr. Zislis, local neighbors, and city officials to mediate this matter. I will attend the mediation meeting as well. Please expect a call from Community Development for further on the date and times of this meeting.

It is our hope to come up with an amenable resolution to this matter. Thank you for your patience.

Sincerely,

Eve R. Irvine
Police Chief
P: (310) 802-5103
E: eirvine@citymb.info



From: Nate Hubbard [<mailto:natehubz@mac.com>]
Sent: Thursday, November 03, 2011 8:00 PM
To: Eve R. Irvine
Subject: Shade employees deceived MBPD about their bar hours

Chief Irvine,

I wish it unnecessary to continually bother you for help regarding Shade Hotel. Nevertheless, I request a meeting with MBPD regarding violations by Shade of their closing time for alcohol service and consumption.

During the 2009-2010 public hearings to extend Shade hours, Mike Zislis volunteered not to utilize the extended hours, until he implemented the noise mitigation measures required by the new use permit. To motivate Mike, that requirement got included as Condition 22 in the attached Resolution 6275, the September 2010 use permit for Shade.

According to my recent correspondence with staff, Mike has no intention to implement the disturbance mitigation conditions in the use permit, although he currently operates the Shade Zinc nightclub to midnight or longer every day.

To force the issue, on Saturday October 15, I called MBPD, after observing patrons entering the Zinc nightclub well after 11 PM,. The responding officer informed me that Shade personnel claimed they could serve hotel guests until midnight. **That totally conflicts with the definition of 'closed' in the use permit.** As per Don McPherson's email below, the 11 PM closing applies to both the public and registered guests.

Although I would like the Zinc bar to close at 11 PM, as required, I am primarily interested in holding Mike Zislis to Condition 22 in the use permit, that he cannot operate past 11 PM, until he complies with all the conditions in the use permit.

Furthermore, I am outraged that Zislis's employees deceived the MBPD regarding the use-permit definition of 'closed', when the officers have far more important responsibilities, than riding herd on the Shade nightclub.

Consequently, I request a meeting with MBPD, for Don McPherson and me to discuss the closing time issue, as well as to provide background on how the definition of 'closed' got included in the use permit. As Don points out in his email below, Councilmember David Lesser spearheaded the adoption of our definition of closed for the Shade use permit, when he held a seat on the planning commission in 2009-2010.

From: Don McPherson [<mailto:dmcphersonla@gmail.com>]
Sent: 02 November, 2011 14:34
To: 'Nate Hubbard'
Subject: Definition of Closed for Shade Use Permit

Nate:

Both you and I have observed patrons entering the Shade nightclub well after the 11 PM closing time. As per your email below to the city, on Oct 15, you called MBPD with a complaint regarding violation of closing time.

According to your discussion with the responding officer, Shade personnel told him the 11 PM closing applies only to the public, but that they can serve registered guests until midnight. **Nothing can be further from the truth.** Pursuant to use permit Condition 1, the 11 PM closing time **specifically** applies equally to registered guests and the public.

The Shade personnel deliberately misrepresented the use permit definition of 'closed' to the MBPD. As result of this falsification, the responding officer concluded he could not enforce the 11 PM closing, by virtue of being unable to distinguish between registered guests and public patrons.

The definition of 'closed' in the Shade use permit explicitly states that it applies to hotel registered guests, as well as to the public, pursuant to the September 2010 Resolution 6275, Condition 1, as follows:

From Reso 6275 (bolded, italicized, underline emphasis added):

"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 glasses, bottles, cans, and drinks, **including from registered guests**, to comply with the ABC definition of closed, as "no sale, service, or consumption of alcoholic beverages."

I suggest that you schedule a meeting with MBPD, for us to discuss the closing issue, as well as to give them the background on how the definition of 'closed' got approved for Shade.

I have attached the current Resolution 6275, which at Finding E, establishes the 11 PM closing, seven days a week, except for special events, until Shade implements all the requirements of the September 2010 use permit, pursuant to Condition 22. Consequently, pursuant to Condition 1, alcohol sales, service and consumption must stop on or before 11 PM, every day, for both public patrons and **registered guests**. To date, Shade has not implemented any of the requirements in the September 2010 use permit.

Additionally, I have attached the letter from the ABC District Office in Long Beach to me, which describes their definition of 'closed.' Councilmember David Lesser, when a planning commissioner in 2010, led the discussion to adopt our definition of 'closed' for Shade, based on the attached ABC letter.

Recipients:
Shade Neighbors
City Council
Planning Commission
Thompson
Jester
Chief Irvine

Subject- Shade Bar now open till midnight 7 days a week

Remember at the beginning of this year, after all those Planning Commission meetings and all the testimony we had to give? Remember we made a deal with Shade allowing them to be able to stay open an extra hour, from

11-12, on Friday and Saturday nights? And in return, Shade was going to enclose the Zinc Terrace so no sounds from the bar and terrace would escape into the neighborhood. They were going to move the noisy queue back to the area by the west door. They were even going to make their customers enter through the west door, **all** to minimize the noise in the neighborhood. We've even given Shade a break in, good faith, not calling in noise complaints.

So what has Shade done? Shade has done NOTHING. They don't have to because they're already serving the public till midnight EVERY night.

How did I find this out? I took my dog Bailey on a stroll by Shade at 11:20pm last Saturday night (11/15/11) and was astonished to see patrons being carded and let in to the Zinc Terrace and then onto the Zinc Bar!

I called a complaint into MBPD Dispatch and went home to wait for the officers to give me a report. When they came at midnight, they reported that the Zinc Bar was closed at 11pm to non-guests of the hotel but is STILL open till midnight to serve hotel guests.

The officer told me that because MBPD had no way to distinguish guests from non-guests, there was no way to enforce a closing policy at 11pm.

I guess we should never given up on to insisting Shade install the retractable partition between the lobby and the Zinc bar **mandated** in PC Resolution 05-08, an amendment to the Metlox Master Use Permit, Resolution 5770. This would have distinguished the hotel guests from the bar patrons.

N. e Hubbard

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**TRANSCRIPTION OF AUDIO MEDIA TITLED
CITY OF MANHATTAN BEACH PLANNING COMMISSION**

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**CITY OF MANHATTAN BEACH
PLANNING COMMISSION**

JULY 28, 2010

**TRANSCRIBED FROM VIDEO FILE BY:
DEBORAH FUQUA, CSR #12948**

Exhibit 5

1 the neighbors' three minor comments.

2 VICE CHAIRWOMAN PARALUSZ: Let's do it.

3 COMMISSIONER SEVILLE-JONES: Okay.

4 COMMISSIONER LESSER: I actually have made some
5 notes going through it just in order. But I'm happy to
6 do it any way you want.

7 COMMISSIONER SEVILLE-JONES: That's fine. We can
8 do it that way. I was just trying to get them out of
9 the way.

10 VICE CHAIRWOMAN PARALUSZ: I actually -- I prefer
11 to start with the neighbors'. So the first one was to
12 Condition 22, that proposed adding a sentence, "All
13 conditions other than Condition 23, hours for alcohol
14 service shall become immediately effective upon
15 approval by the City Council."

16 COMMISSIONER SEVILLE-JONES: I think the staff's
17 draft already says this. And I'd be curious if Laurie
18 thinks that.

19 VICE CHAIRWOMAN PARALUSZ: Okay.

20 ACTING DIRECTOR JESTER: Well, basically what
21 it -- it says, "The privileges within this Use Permit
22 for extension of hours of operation shall only be
23 granted after the installation of the mitigation
24 measures." So --

25 COMMISSIONER SEVILLE-JONES: Everything else is

1 therefore effective when it's adopted, correct?

2 ACTING DIRECTOR JESTER: Right. So I don't think
3 it's necessary.

4 COMMISSIONER SEVILLE-JONES: All right. Okay.

5 VICE CHAIRWOMAN PARALUSZ: Any other -- okay.

6 No. 2, Condition No. 28, "Valet" needs
7 clarification.

8 COMMISSIONER SEVILLE-JONES: This is a typo. It's
9 just missing the time. I think also the Shade
10 commented on this too.

11 VICE CHAIRWOMAN PARALUSZ: I think you're right.
12 So that would be an administrative change that will be
13 fine to make.

14 COMMISSIONER LESSER: Does staff have any comment
15 on that?

16 ACTING DIRECTOR JESTER: Yeah, that's -- yeah,
17 that is just a typo. I mean, I thought that -- yeah,
18 that's fine.

19 VICE CHAIRWOMAN PARALUSZ: Okay. Then No. 3 is --
20 comment that Conditions 28 and 29 should use the same
21 language as Condition 31, "for registered hotel guests
22 and disabled." And I think the applicant made a
23 similar comment as well, so I would consider that
24 administrative change.

25 Does staff have any comments?

Exhibit 6



LUNCH

STARTERS

Soup Du Jour 5.95
our fresh seasonal soup

House Made Tomato Soup 5.95
garden fresh tomatoes simmered with garlic and herbs served with a grilled crostini and topped with basil oil

Calamari 9.95
fried & seasoned baby squid served with our house made tartar and cocktail sauces with a lemon garnish

Shrimp Cocktail 13.95
jumbo Mexican white shrimp served with cocktail sauce and lemon wedges

Artisan Cheese with Fresh Fruit 14.95
a selection of sliced domestic & imported cheeses served with sliced sourdough bread, Marcona almonds, dried figs and quince paste

SALADS

Mixed Greens Salad 6.95
mixed baby greens, vine-ripened tear drop tomatoes and cucumber tossed in a sherry shallot vinaigrette

Caesar 9.95
teardrop tomatoes, shaved parmesan and croutons tossed with Caesar dressing
with chicken 12.95 with grilled prawns 13.95 with seared rare Ahi 14.95

Veggie Salad 9.95
mixed baby greens and grilled seasonal vegetables, grilled apples and crumbled Chevre goat cheese, tossed in a balsamic-vanilla vinaigrette

PIZZAS

Pepperoni 11.95
house made tomato sauce, mozzarella cheese and pepperoni

Margherita 11.95
house made tomato sauce, fresh mozzarella cheese, sliced vine-ripened tomatoes and fresh basil

BBQ Chicken 13.95
barbecue sauce, smoked Gouda and mozzarella cheeses, BBQ Chicken, sliced red onions and cilantro

EXHIBIT PV3. SHADE USES 2010 CUP PRIVILEGES AND VIOLATES 2005 CUP



LUNCH

SANDWICHES

includes a choice of one side

Ground Sirloin Burger 11.95

all natural hormone free Angus ground beef served with tender lettuce, vine-ripened tomato and caramelized onions with a choice of cheddar, Swiss or blue cheese on a freshly baked bun

Turkey Cobb Wrap 12.95

sliced turkey breast, applewood smoked bacon, tomatoes, red onions and lettuce lightly dressed in our house made ranch dressing wrapped in a whole wheat tortilla with a Maytag blue cheese spread

Soy Glazed Ahi 14.95

vine-ripened tomatoes, tender greens, daikon sprouts, hot house cucumbers and wasabi aioli on a fresh baked bun

Steak Sandwich 14.95

sliced hanger steak, Maytag blue cheese, caramelized onions, baby greens and vine ripened tomatoes served on a baguette with a basil aioli and house made guacamole

ENTREES

Fish Tacos [Blackened or Battered] 13.95

two fish tacos with guacamole, Shade coleslaw and a roasted tomato salsa served with fresh tortilla chips and black beans

Fresh Fish 15.95

fresh seasonal fish, with choice of two sides.

Steak Frites 16.95

grilled hanger steak topped with brown butter, shallot and red wine jus served with fries and a mixed green salad

SIDES 2.95

sweet potato fries
garden salad
french fries
tomato soup
grilled or steamed vegetables



ready - set - lunch

served from 11am to 4pm

4 items. 45 minutes. 15 dollars

choose soup or salad + one entree + one side + one beverage

chefs menu changes every two weeks

SOUPS or SALAD

albondigas soup

mini spanish meatballs, slightly spicy tomato broth and brown rice

house made tomato soup (V)

garden fresh tomatoes simmered with garlic and herbs served with a grilled crostini and topped with basil oil

zinc chopped salad

arugula, Israeli couscous, currants, tomato, pepitas, roasted corn, smoked salmon or salami and asiago cheese with basil buttermilk dressing

greek salad

romain lettuce, nicoise olives, red onion, chickpeas, cucumber and cherry tomatoes in a fresh herb and red wine vinaigrette

ENTREES

zinc burger

our special blend of premium beef, bloody mary aioli, grilled onions, butter lettuce and tomato on a house made bun

turkey cobb wrap

sliced turkey, baby greens, avocado, red onion, tomato, bacon and ranch dressing wrapped in a whole wheat tortilla

bistro steak

grilled angus hanger steak, sliced and served with caramelized shallots, and red wine reduction sauce

blackened fish tacos

blackened Alaskan cod, served with fresh and crispy cabbage slaw, roasted tomato salsa and white corn tortillas

thin crust pepperoni pizza

tomato pizza sauce, mozzarella cheese, parmesan cheese and Poccino pepperoni

manhattan beach cheese steak

thinly sliced steak, gruyere cheese sauce, mushrooms & peppers on a hoagie roll.

ricotta stuffed spinach pasta (V)

ricotta and swiss chard stuffed spinach pasta, tossed in light basil pesto sauce

grilled tilapia

grilled fennel, cilantro and apple relish, fresh lemon

SIDES

crispy french fries

spicy mac n' cheese

sweet potato fries

steamed edamame

sautéed green beans

BEVERAGES

soda, coffee, decaf, iced tea, espresso, cappuccino, latte

Red Hook ESB, Michelob Ultra, Long Board Kona Lager, Widmer Hefeweizen, Firestone Double Barrel Amber, Firestone Pale Ale pinot grigio, sauvignon blanc, chardonnay, rosé, pinot noir or cabernet

DESSERT \$4.95

chocolate torte
please allow 15 minutes

apple bread pudding
real Tahitian vanilla

fresh baked cookies
with vanilla ice cream

Exhibit 8



chit-chat...apps

belgium style hand cut fries | garlic salt - black pepper aioli - honey chipotle ketchup **7.** [V]

smoked baja wings | honey chipotle glaze - pina colada dipping sauce **7.**

rings in the shadow | crispy tempura sweet maui onion rings - ginger garlic aioli - sweet chili soy sauce **8.**

goat cheese fondue | house-made potato chips - artichoke **9.** [V]

south bay skewers | black & bleu satay - blue cheese dipping sauce **10.**

ceviche | tropical bay shrimp scallops - fresh tortilla chips **13.**

bruschetta trifecta **14.**

| thin sliced san danielle prosciutto - goat cheese - fig - frisee

| grilled shrimp - basil pesto - sundried tomatoes - roasted peppers - parmesan

| arugula pesto - campari tomatoes - mozzarella - balsamic - basil - kalamata

lett-uce deliver

shade's strawberry salad | baby field greens -goat cheese - strawberries - light balsamic **11.**

caprese salad | roma tomato cups - basil pesto - distefano fresh mozzarella - aged balsamic pearls - wild arugula salad **13.**

zinc chopped salad | arugula - parmesan - couscous - currant - pepitas - tomato - basil buttermilk dressing - cured salmon or genoa salami **13.** [L]

crab avocado salad | avocado bowl - tropical slaw - pina colada vinaigrette **15.**

sashimi salad | hamachi - ahi - baby herb lettuce - cucumber - avocado purée veggie chips - miso vinaigrette - soy foam **17.** [L]

bitz & pi-zza

margherita | roasted campari tomatoes - fresh mozzarella - basil - garlic oil **11.** [V]

poached pear & brie pizza | riesling poached pears - spinach - nueske bacon - brie cheese blue cheese - spiced pecans **12.**

pizza gregorio | tomato sauce - fresh mozzarella - spicy pepperoni - pineapple jalapeños **12.**

shrimp pesto pizza | basil pesto - fresh mozzarella - grilled pacific shrimp roasted peppers - oven dried tomatoes **14.**

pizzetta bianco | parmesan cream - wild mushrooms - grilled chicken - white truffle - wild arugula **15.**

prosciutto pizza | cambazola cheese - caramelized onions - di stefano prosciutto - dates **16.**

between the slices

- brie & pear grilled cheese** | pear compote - double cream brie - baguette **6.** [V]
- prosciutto & burrata grilled cheese** | san danielle prosciutto - di stefano burrata - baguette **7.**
- short rib sandwiches** | slow braised - white truffle oil - honey - coleslaw - ranch style rolls **14.**
- truffle cheese burger** | fresh angus beef - parmesan truffle aioli - black truffle pecorino - arugula
caramelized onions - sliced portobellos - nueske bacon - brioche bun **16.**

sliders (pick any 3) \$17

- angus petite burger** | maytag blue cheese - gruyere cheeses - lettuce - tomato - garlic aioli
- crab cake** | baby spinach - roasted peppers - roasted tomato remoulade
- chicken burger** | apple relish - goat cheese - wild arugula
- fried green tomatoes** | smoked bacon - cambazola cheese - field greens - spicy aioli

meat & greet

- smoked pork meatballs** | ancho bbq sauce **11.**
- crispy calamari** | sweet chili aioli - baby greens - balsamic reduction **12.**
- duck confit tacos** | fresh corn tortillas - baby spinach - oregon blackberry salsa - crema fresca **14.**
- poke tacos** | ahi - avocado - green onion - sesame - seaweed **15.**
- grilled rosemary lamb lollipops** | balsamic reduction - roasted red pepper vinaigrette **15.**
- classic charcuterie board** | san daniel prosciutto - barolo salami - fra'mani rosemary ham - molinari
coppa salami - tomme de savoie cows milk - st. agur blue cheese - humboldt fog goat milk cheese
pecorino boschetto cow & sheep milk cheese - toasted artisan bread - almonds - crackers **22.**

why wait?

- | | |
|--------------------------------------------------------------------------------|------------|
| ice cream seasonal flavors | 5. |
| sorbet seasonal flavors [L] | 5. |
| triple chocolate flourless cake dulce de leche – warm chocolate sauce | 7. |
| lemon ricotta cheesecake macerated blackberries - crème fraîche | 8. |
| peach cobbler vanilla ice cream – apricot compote – whipped cream | 8. |
| zinc “drunken udder” ice cream 4 seasonal flavors | 12. |

[V] indicates item is vegetarian

[L] indicates item is lite option

Exhibit 9



OUTDOOR MENUS ADVERTISING LUNCH

TIME & DATE 2013.04.22 13:41

Exhibit 10

[HOME](#) [THE SKINNY](#) [AMENITIES](#) [SLEEP](#) [ZINC](#) [PICS](#) [MEETINGS](#) [EVENTS](#) [WEDDINGS](#) [SPONSORS](#) [PRESS](#) [CONTACT](#)

shade

book now

Deals and Packages

shade business
check out our corporate rates

3 minute video hotel tour



[SPACE DESCRIPTIONS](#) | [CAPACITY CHART](#) | [FLOOR PLANS](#) | [THE COURTYARD](#) | [THE GREEN ROOM](#) | [THE SKYDECK](#)
[ZINC](#) | [THE ZINC TERRACE](#) | [MENU OPTIONS](#) | [TESTIMONIALS](#) | [REQUEST PROPOSAL](#)

a breath of fresh air

Extending from the wine bar, this breezy, open-air space is perfect for an intimate party. To insure your privacy, our luxuriously oversized curtains can be drawn, creating an air of stillness and serenity. The terrace is the perfect venue for a casual lunch, baby shower, or even a black tie anniversary party. Whatever the occasion, the Zinc Terrace provides an atmosphere of elegant calm that will be sure to please and impress your guests.

How Big?

16" x 59"
940 square feet

How many?

The Zinc Terrace can accommodate 50 people for a sit down dinner and up to 80 for a cocktail reception.

How much?

An event in the Zinc Lounge requires the following minimum spend:

Monday through Wednesday:	
Daytime (12pm-5pm)	\$2,000
Evening (6pm-10pm)	\$2,500
Thursday and Friday:	
Daytime (12pm-5pm)	\$2,000
Evening (6pm-11pm)	\$7,500
Saturday:	
Daytime (12pm-5pm)	\$2,500
Evening (6pm-11pm)	\$7,500
Sunday	
Daytime (12pm-5pm)	\$2,500

Evening (6pm-10pm)

\$2,500

Prices and minimum spend requirements are exclusive of tax and 20% service charge.

want more? be the first to know about special events and offers...

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reservations: 866.SHADE77 (toll free)



courtyard 1440 sq. ft.
capacity: 180

The heart of the hotel, our signature space is our largest event area with the most flexibility. An abundance of natural light provides a lively yet gentle environment in which to celebrate, impress, work and entertain, day or night. Think wedding, banquet, bar mitzvah, or product launch. Think big.

zinc lounge 1334 sq. ft.
capacity: 150

Cool, hip, comfortable, and inviting, Zinc Lounge offers a large selection of fine wines, delicious small plates and signature drinks. In the event that your guests want to turn the music up and hit the dance floor, furniture can be rearranged to create the ultimate space to cut loose.

zinc terrace 585 sq. ft.
capacity: 80

Extending from the wine bar, this breezy, open-air space is perfect for an intimate party. To ensure your privacy, our luxuriously oversized curtains can be drawn, creating an air of stillness and serenity. The Terrace is accessible through large folding glass doors that can be closed to provide a private atmosphere, or opened to create the feel of a much larger space.

Exhibit 12

shade spaces :: eeny meeny miny moe

Each of our individual spaces is designed with the flexibility to hold a variety of functions. Rooms can be configured in many different ways. You can rely on our equipment to be state-of-the-art. Hardware, software, and even "humanware", is updated regularly. From simple to elaborate, our chef will design a menu specifically for you. At Shade, we pride ourselves on flexibility and service. Our staff's attention to detail means that you can count on us to be organized, proactive and responsive. We work hard, so you don't have to.



The Courtyard

The heart of the hotel, our signature space is our largest event area with the most flexibility. Think wedding, banquet, bar mitzvah, or product launch. Think big.

HOW BIG :: 24' x 60' (1440 square feet)

HOW MANY :: The Courtyard can hold a maximum of 120 for a sit down dinner or luncheon.

The Green Room

This is the place to get serious or entertain. Sequestered above the Courtyard, the Green Room is the perfect place to meet, and in the evening, can be transformed into the perfect space for a fabulous private dining experience. Forget the hassles of the work day and step into this naturally lit, open and elegant space.

HOW BIG :: 24' x 28' (672 square feet)

HOW MANY :: The Green room can accommodate 30 people for meetings classroom style or 60 people theatre style. For entertaining we can seat up to 50 people for dinner, or 60 for cocktails.

The Skydeck

When the movers and shakers need some lunch and fresh air, the rooftop Skydeck offers a sunny retreat. This is also the perfect place for a twilight cocktail gathering or an exclusive dinner party.

HOW BIG :: 42' x 32' (950 square feet)

HOW MANY :: The Sky Deck can hold up to 80 people for cocktails and 50 for a more formal sit down event.

The Zinc Lounge

Cool, hip, comfortable, and inviting, Zinc Lounge offers a large selection of fine wines, delicious Small Plates and Signature Drinks. In the event that your guests want to turn the music up and hit the dance floor, furniture can be rearranged to create the ultimate space to cut loose.

HOW BIG :: 23' x 58' (1334 square feet)

HOW MANY :: The Zinc Lounge accommodates up to 150 people for cocktails and can open up to the Courtyard and Terrace to accommodate a maximum of 300 for cocktails or 160 for a sit down dinner.

The Zinc Terrace

Extending from Zinc Lounge and overlooking the Metlox Plaza and outdoor kiln fireplace, this open-air space is perfect for relaxed and intimate events. The Terrace is accessible through large folding glass doors which can be closed to provide a private atmosphere, or opened to create the feel of a much larger space.

HOW BIG :: 16' x 59' (940 square feet)

HOW MANY :: The Zinc Terrace can accommodate 50 people for a sit down dinner and up to 80 for a cocktail reception.

Exhibit 13

4 January 2008. 11:29 P.M. One hour after 10:30 P.M. end-of-service required by 2005 CUP Cond. 8.



Offices of John A.

rain

A Professional Corporation

*Certified Specialist Taxation Law

California Board of Legal Specialization

John A. Strain, Esq.
321 12th Street, Suite 201
Manhattan Beach, CA 90266
T: 310-802-1300/F: 310-802-1344
jstrain@ustaxlawyer.com
www.ustaxlawyer.com

Amber M. Ziegler, Esq.
332 W. Verano Way
Mountain House, CA 95391
T: 209-832-8663
aziegler@ustaxlawyer.com

August 11, 2010

8867.022

Ms. Laurie B. Jester
Community Development Acting Director
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

Re: *Shade Hotel*
Master Use Permit Amendment

Dear Laurie:

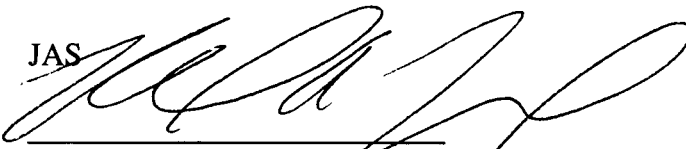
After the Planning Commission met on July 28 and approved its Resolution (PC-05) related to amendments to the Master Use Permit applying to Shade Hotel, the principals considered whether to appeal that Resolution. Everyone's preference was to have this matter fully resolved. However, there were a few details that we felt needed attention.

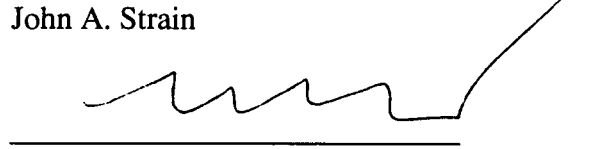
With your assistance and guidance, Michael Zislis (on behalf of Shade Hotel) and Nate Hubbard (continuing his role as the principal representative of neighbors) have met and discussed these details. Together, they have reached a mutually acceptable resolution that merely involves a few minor changes to the Resolution as approved.

It is our understanding that adoption of this Resolution with these changes now requires an appeal to the City Council. Accordingly, the parties are filing that appeal jointly with the expectation and intention that this matter will be dealt with summarily by the City Council. They are both signing this letter to be included with the appeal as evidence of that agreement.

Thank you, Laurie, for your tireless efforts throughout this long process.

Best Regards

JAS

Michael A. Zislis, Manager
Manhattan Inn Operating Company, LLC

John A. Strain

Nate Hubbard
Neighbors' Representative

SHADE HOTEL

PERMIT APPENDIX

2010 CUP

RESOLUTION NO. 6275

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH UPHOLDING AN APPEAL OF LIMITED CONDITIONS OF A PLANNING COMMISSION APPROVAL FOR AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED HOURS OF OPERATION, NOTIFICATION FOR EVENTS, ALLOWING EXPANDED FOOD SERVICE OPERATIONS, APPROVING VARIOUS NOISE MITIGATION MEASURES AND DENYING A HEIGHT VARIANCE FOR A 6-FOOT HIGH ROOFDECK NOISE BARRIER AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATING COMPANY, LLC- MICHAEL A. ZISLIS, PRESIDENT)

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach, California, hereby makes the following findings:

- A. The Planning Commission of the City of Manhattan Beach conducted public hearings regarding the second Amendment to the Master Use Permit related to the Shade Hotel on June 24, 2009, July 22, 2009, October 28, 2009, May 12, 2010 and June 23, 2010. The public hearings were advertised pursuant to applicable law and testimony was invited and received, and on June 23, 2010, the public hearing was closed. The Planning Commission directed staff to bring back a final Resolution on July 28, 2010. The Planning Commission approved the Amendment for the Shade Hotel, and adopted Resolution No. PC 10-05 on July 28, 2010.
- B. On August 11, 2010, the applicant, Shade Hotel, and the neighborhood representative, Nate Hubbard, filed a joint appeal of limited conditions of the Planning Commission approval. The Shade and neighbors have agreed to minor revisions to conditions 12, 23, 28 and 31. The conditions relate to the valet service and skydeck.
- C. The City Council of the City of Manhattan Beach conducted a public hearing on September 7, 2010 to consider the appeal. Said hearing was advertised pursuant to applicable law, and testimony was invited and received.
- D. At the City Council hearing the City Council upheld the appeal and upheld the Planning Commission approval of the project with minor modifications to conditions 12, 23, 28 and 31.
- E. Manhattan Inn Operating Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previous approval. The three changes include: 1- Extension of hours of operation to midnight on Fridays, Saturdays and Holidays, except for the skydeck and other minor exceptions, 2- An increase to 125 people for special events (weddings, parties, etc.) without administrative approval, and 3- Expanded public food service (breakfast, lunch and evening "small plates"). Additionally, a Variance for six-foot high noise barriers around the north, south and east sides of the roofdeck is requested. 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 Thursdays-Sundays and 12 midnight Fridays-Saturdays for special event use only for the Courtyard, 99 people for special events without notification, and limited food service for guests.
- F. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- G. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission. An amendment to the Coastal Permit will not be required to be processed as there are no relevant coastal issues related to the subject application.

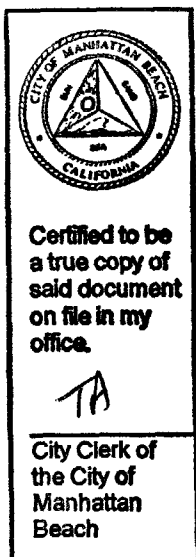


Certified to be
a true copy of
said document
on file in my
office.

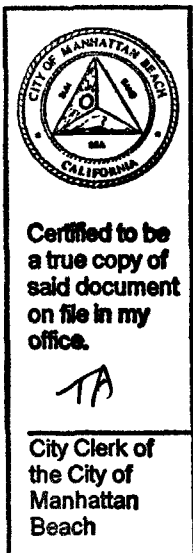
TA

City Clerk of
the City of
Manhattan
Beach

- H. An amendment to the Disposition and Development Agreement (DDA) may be required, and that action will be determined by the City Council.
- I. The applicant is Manhattan Inn Operating Company, LLC and the property owner is the City of Manhattan Beach.
- J. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.
- K. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space, with Single Family Residential and High Density Residential to the east past Valley and Ardmore Drives.
- L. The General Plan designation for the property is Downtown Commercial.
- M. The following is a summary of some of the key milestones for the Metlox site:
 - 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner
 - April 2001- The City Council certified the EIR
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
 - November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
 - February 2003- Groundbreaking for the Metlox parking structure
 - January 2004- Grand opening of public parking structure with 460 parking spaces
 - April 2004- Shade Hotel construction commenced
 - September 2004- Construction of the Metlox commercial buildings started
 - May 2005- Planning Commission approved first Shade Amendment Resolution No. PC 05-08
- N. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the first Amendment to the Master Use Permit for the Shade related to alcohol sales and special events at their regular scheduled meeting of May 25, 2005. The public hearing was advertised pursuant to applicable law and testimony was invited and received. The Planning Commission approved the Amendment for the Shade Hotel, and adopted Resolution No. PC 05-08. The facts and findings for that approval are included in the public records for that application.



- 1 O. The original approval (Condition No. 38- City Council Resolution No. 5770) allowed full liquor in
- 2 self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only.
- 3 The original approval (Condition No. 28- City Council Resolution No. 5770) also limited special
- 4 events (weddings, parties, etc.) to 60 people.
- 5
- 6 P. Resolution No. PC 05-08 allowed a Type 47 ABC license for the site, allowing full liquor open to
- 7 the general public and including the service of food in order to allow the in-room mini-bars (Type
- 8 66 license), as well as the portable bar with full liquor (Type 66 license), all for on-site
- 9 consumption of alcohol only, as well as events up to 99 people without approval of a Temporary
- 10 Use Permit.
- 11
- 12 Q. Portions of Resolution No. PC 05-08 have been subject to interpretation as the hotel is a 24-
- 13 hour operation while the support services of the bar, food service and events are limited.
- 14 Additionally, there are no definitions of special events, guests, closing, and other regulatory
- 15 terms in the Resolution. One of the goals of this Amendment is to clarify definitions and
- 16 language in the Resolution.
- 17
- 18 R. Many neighboring residents at the Planning Commission public hearings have testified that
- 19 Shade Hotel makes noise that discomforts and irritates "reasonable persons of normal
- 20 sensitiveness," as defined by the subjective standard in Chapter 5.48 of the MBMC. The
- 21 Manhattan Beach Police Department has responded to numerous calls regarding Shade
- 22 disturbances, and for several of these incidents, has reports and recordings of noise from
- 23 Shade.
- 24
- 25 S. Neighbors indicate that taxi pickup and drop-off on Valley Drive create disturbances. The City
- 26 established a taxi stand on Morningside Drive at 13th Street in 2009 to address this issue and
- 27 has notified the taxi franchises of the requirements.
- 28
- 29 T. Two independent acoustics analysis, dated October 21, 2009 and March 10, 2010, were
- 30 conducted by Don Behrens & Associates under the direction of the Community Development
- 31 Department. The reports indicate that noise from the Shade Hotel does not exceed the objective
- 32 noise standards in the MBMC; the subjective standard was not evaluated in the reports. Actual
- noise measurements and continuous noise monitoring was conducted during large events on
- the skydeck, courtyard, lounge and terrace. A three-dimensional modeling of noise to assess
- various mitigation was also constructed. The reports proposed a variety of mitigation options
- including a front (east) entry vestibule, terrace enclosure, roofdeck extensions, west
- entry/exit/queue and taxi stand. Mitigation is incorporated into the conditions based on these
- recommendations, public hearing comments and Planning Commission discussion and
- direction.
- U. Due to the open design, the terrace has minimal soundproofing and constitutes a major noise
- source, particularly for residents south of 12th Street. Additionally, the front (east) entry door has
- noise leakage that impacts residents, largely between 12th and 13th Streets. The rooftop deck
- generates noise that largely impacts residents north of 13th Street.
- V. The primary use and purpose of Shade Hotel, is and will continue to be, to serve the community
- as a hotel offering first-class accommodations to visitors. The hotel may also offer event,
- function, food, and other similar support functions as secondary uses. Marketing and promotion
- of the hotel shall be consistent with these uses as provided in the conditions.
- W. Potential noise and other neighborhood impacts from Entertainment, as defined and regulated
- in Chapter 4.20 of the MBMC, will be addressed through the administrative review of the annual
- Entertainment Permit. The Entertainment Permit is a separate administrative permit, and is
- regulated independently from the land use entitlement of the Master Use Permit and Master
- Use Permit Amendment.
- X. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as
- defined in Section 711.2 of the Fish and Game Code.



- Y. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution supersedes Resolution No. PC 05-08 and Resolution No. PC 10-05. It also amends only Conditions No's 28 and 38 of Resolution No. 5770, all other conditions in that Resolution (unless amended by other separate Resolutions for other Metlox tenants) remain effective and in full force.
- Z. Based upon State law, and MBMC Section 10.84.060, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the use permit for Shade Hotel is consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the City's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts through the conditions of approval which require physical noise mitigation and operational revisions.
 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the proposed amended use permit is consistent with the General Plan for the Commercial Downtown designation, because it is granting additional privileges to already approved uses that will result in minimal fundamental change of those uses. Amending the use permit will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the hotel facility. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city, due to the conditions. Additionally, the project is consistent with the following General Plan Goals and Policies:

GOALS AND POLICIES: LAND USE

Policy LU-5.2: Work with all commercial property owners bordering residential areas to mitigate impacts and use appropriate landscaping and buffering of residential neighborhoods.

Policy LU-5.4: Discourage the outdoor commercial and industrial use of property adjacent to residential use.

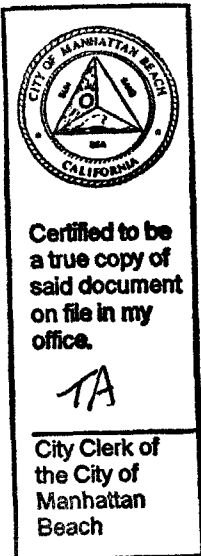
Policies LU-5.7, 6.4 and 7.6: Recognize the unique qualities of mixed-use areas, and balance the needs of both the residential and commercial uses.

Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

Policy LU-7.1: Encourage the upgrading and growth of businesses in the Downtown area to serve as a center for the community and to meet the needs of local residents and visitors.



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GOALS AND POLICIES: NOISE

Goal N-2: Incorporate noise considerations into land use planning decisions.

Policy N-2.2: Ensure acceptable noise levels near residences, schools, medical facilities, and other noise-sensitive areas.

Policy N-2.5: Require that the potential for noise be considered when approving new development to reduce the possibility of adverse effects related to noise generated by new development, as well as impacts from surrounding noise generators on the new development.

Policy N-3.4: Recognize in the Noise Ordinance that nighttime noise levels create a greater sensitivity than do daytime noise levels.

- 3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the implementation of the new conditions. The proposed amended use permit is consistent with the already approved primary and secondary uses of the facility.
- 4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the hotel facility, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.

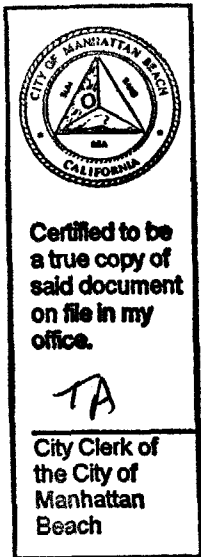
A.A. Based upon State law, and MBMC Section 10.84.060, relating to the Variance application for the proposed project, the following findings CAN NOT be made:

- 1. Because of special circumstances or conditions applicable to the subject property—including narrowness and hollowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions—strict application of the requirements of this title would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;
- 2. The relief may be granted without substantial detriment to the public good; without substantial impairment of affected natural resources; and not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and
- 3. Granting the application is consistent with the purposes of this title and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district and area district.

SECTION 2. The City Council of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment, subject to the following conditions, and DENIES the subject Variance.

Definitions

- 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 glasses, bottles, cans, and drinks, including from registered guests, to comply with the ABC definition of closed, as "no sale, service, or consumption of alcoholic beverages."

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

3. Function. A "themed" function held periodically for the general public, up to twelve (12) per year, 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.

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

5. Invitee. Invited guests of a registered guest.

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.

7. Background music. Sound intensity anywhere in a room or venue not greater than 65 dBa.

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

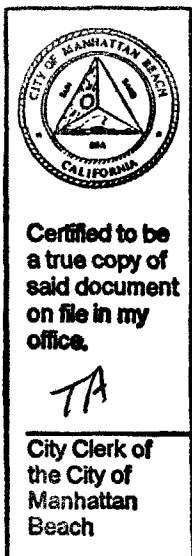
Entertainment and Noise

9. 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.

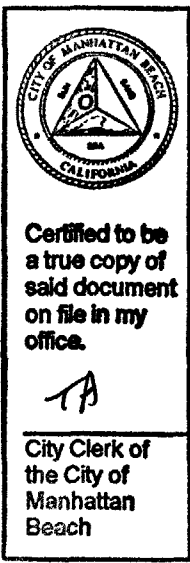
10. Entertainment and amplified sound. All amplified music and sound shall use the house system only and shall be limited to background music with the following exceptions;

- A. The Courtyard may have one annual function, for example, Oktoberfest, with live amplified entertainment, from 4 to 8 PM.
- B. 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;
- C. 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.

11. 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 for the fully enclosed terrace. 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 enclose the area, they may only be closed during special events and when raining, or for shade.



- 1 12. Front (East) Entry Vestibule- A permanent front entrance vestibule, bonded and sealed to the
- 2 building, shall be constructed to enclose the front doors. The vestibule shall be acoustically sealed,
- 3 designed and constructed to meet the City Noise consultants' acoustical standards consistent with their
- 4 noise studies. The vestibule shall also meet all Building Safety and other City requirements, including
- 5 but not limited to emergency egress and disabled access. Between 9:00 PM and 6:00 AM on Fridays,
- 6 Saturdays, New Years Eve and Sundays before Memorial Day and Labor Day, the following conditions
- 7 shall apply: a) the front entrance doors shall be closed and only operable through the interlock/double
- 8 door vestibule; b) the hotel clerk or other hotel employee shall only allow passage for disabled,
- 9 registered hotel guests and valet patrons as permitted in Condition #28, and all others shall use the
- 10 west entrance; c) the vestibule may also be operable with a hotel room key, and; d) only one set of
- 11 doors may be opened at any time.
- 12 13. Courtyard- Only special events and functions may use the courtyard. No general public gatherings
- 13 permitted in the courtyard, and no "spillover" from the Zinc bar and lobby or other public areas.
- 14 14. Courtyard-bar corridor wall- A new acoustic moveable wall shall be installed to separate the interior
- 15 courtyard from the corridor north of the lobby bar. After 9 PM Friday, Saturday, New Years Eve, and
- 16 Sundays before Memorial and Labor Day, and any day if the entry/exit queue is greater than 5 people
- 17 for more than 15 minutes, both corridor walls (adjacent to the courtyard and the lobby bar) shall remain
- 18 closed for the rest of the night, unless there is a special event or function using both the Courtyard and
- 19 Zinc bar/ lobby. Whenever the Zinc bar and lounge has amplified sound, other than background music,
- 20 after 9 PM the north acoustic wall shall remain closed. There shall be no sale, service or consumption
- 21 of alcohol in the corridor when one or both moveable walls are closed.
- 22 15. Skydeck- All amplified music and sound, including DJ's for weddings only, shall use the house
- 23 system only. No live amplified music is permitted. Amplified sound is prohibited on the skydeck after 9
- 24 PM, except for background music. The hotel shall relocate house speakers nearer to floor-level, not
- 25 atop glass windscreen posts. The location and number of the speakers shall be based on the
- 26 recommendations from an audio specialist in cooperation with the City's noise consultant, and shall be
- 27 designed to mitigate off-site noise impacts and maximize efficiency on-site.
- 28 16. Sound audibility- The volume of music, entertainment, group singing, or voice, whether or not
- 29 amplified, may not be audible outside of the hotel facilities to the following extent. For any length of
- 30 time, except for the one function referenced in Condition No. 10 A., the noise may not dominate the
- 31 background ambient noise, nor disturb surrounding residents, as defined in the MBMC noise
- 32 regulations. After cessation of alcohol service in any venue or for any event or function, only
- background music is permitted.
- 17. Temporary Use Permit- Special events and functions of more than 125 attendees require City notice
- and a temporary use permit.
- 18. 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.
- 19. Resident notification- The hotel shall e-mail to residents who sign-up, the schedule of special events
- and functions sent to the City, excluding client information.
- 20. 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.
- 21. Exterior Doors- All exterior doors to the public areas of the hotel facility shall be closed after 9:00 PM
- on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and daily for all
- special events and functions.
- 22. Noise Compliance Verification- The privileges within this Use Permit for extension of hours of
- operation shall only be granted after the installation of the mitigation measures, implementation of the
- improvements and modifications to the operations of the facility. After completion of these measures,
- the Community Development Director, in cooperation with the Noise consultant, shall determine if the
- measures are effective and meeting the objective noise criteria and mitigation standards described in



the previously submitted Noise reports. The neighbor representative may have input on the location, days and hours of the monitoring for any follow-up noise studies. The privileges and rights within this Use Permit shall not be effective unless the objective noise criteria and dBA reductions, as described in the previously submitted Noise reports, are achieved.

23. 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 in, Minutes)</u>
Zinc bar and lounge, Fridays-Saturdays and Sundays before Memorial Day and Labor Day	Midnight	20
Zinc bar and lounge, Sundays-Thursdays	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	20

Note 1. New Years Eve closed for all venues as regulated by MBMC- currently 1:00 AM, except the skydeck shall close at 10:00 PM.

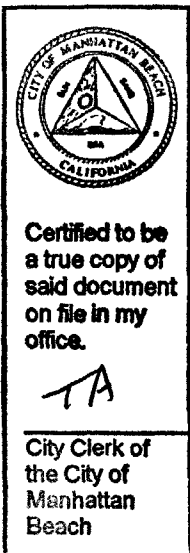
General Conditions

24. 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.

25. 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

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



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27. 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.

Ingress-Egress Control

28. Valet- The Shade valet service shall relocate away from the Shade east or south entrances after 10:00 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after 10:00 PM for special events and functions any day of the week. Everyone, except for registered hotel guests and disabled, shall be prohibited from picking up their vehicles from the Shade front (east) entrance. 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.

29. Taxis- Hotel employees shall discourage the public from using taxis on Valley Drive 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 and disabled, 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 and disabled at the entrance at any time.

30. Entry-Exit Queue- The hotel shall locate the entry and exit queue at the west side of the building as required in Condition 31, but the queue shall not extend past the south or north sides of the building.

31. West entry-exit- After 9:00 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after 9:00 PM 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, disabled and valet patrons as permitted in Condition #28, may use the front east door.

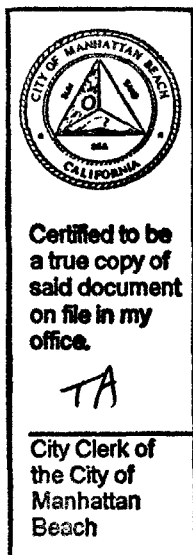
On Sundays through Thursdays, if more than five patrons are waiting for more than 15 minutes to enter, staff shall establish the queue at the west side of the building for the rest of the night. Employees shall close and monitor the front (east) entry door as required to ensure access only by registered 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.

32. Staff parking- The hotel shall instruct their employees, contract employees, contractors servicing events, and all others providing services to the Hotel to 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.

33. 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.

34. 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.



35. 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.

Food service

36. 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.

Marketing

37. Marketing-General- 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.

38. Marketing-Bar and Functions- 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. The Zinc bar/lounge, terrace, and Skydeck will not be exclusively marketed to the general public as separate hospitality attractions.

39. Menu Posting- 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.

Procedural

40. 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.

41. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.

42. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.

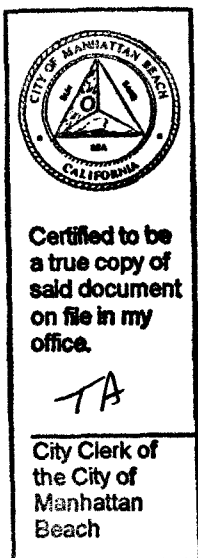
43. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.

44. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.

45. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.

46. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.

47. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.



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48. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution. The City Clerk shall send a certified copy of the resolution to the applicant, and if any, the appellant at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by Code of Civil Procedure Section 1094.6.

SECTION 4. The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.

SECTION 5. This resolution shall take effect immediately.


SECTION 6. The City Clerk shall certify to the adoption of this Resolution and thenceforth and thereafter the same shall be in full force and effect

PASSED, APPROVED, and ADOPTED this 7th day of September, 2010.

Ayes: Tell, Powell, Cohen, Montgomery and Mayor Ward.
Noes: None.
Abstain: None.
Absent: None.


Mayor, City of Manhattan Beach, California


ATTEST:



City Clerk



Certified to be a true copy of the original of said document on file in my office.



Sr. Deputy City Clerk of the City of Manhattan Beach, California

2005 CUP

SHADE HOTEL

RESOLUTION NO. PC 05-08

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED ALCOHOL SALES AND SPECIAL EVENTS AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATION COMPANY, LLC- MICHAEL A. ZISLIS, PRESIDENT)

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS

SECTION 1. The Planning Commission of the City of Manhattan Beach, California, hereby makes the following findings:

- A. Manhattan Inn Operation Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previously approved alcohol sales and special events at the Shade Hotel, Metlox site, 1221 north Valley Drive in the City of Manhattan Beach.
- B. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission and therefore they will review the project and make a determine if an amendment to the Permit will be required to be processed.
- D. The applicant is Manhattan Inn Operation Company, LLC and the property owner is the City of Manhattan Beach.
- E. The following is a summary of some of the key milestones for the Metlox site:
 - 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner
 - April 2001- The City Council certified the EIR
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
 - November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
 - February 2003- Groundbreaking for the Metlox parking structure
 - January 2004- Grand opening of public parking structure with 460 parking spaces
 - April 2004- Shade Hotel construction commenced
 - September 2004- Construction of the Metlox commercial buildings started
- F. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meeting of May 25, 2005. The public hearing was advertised pursuant to applicable law and testimony was invited and received.

- G. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.
- H. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space.
- I. The General Plan designation for the property is Downtown Commercial.
- J. The proposed project is a modification of the previously approved alcohol sales for the Shade Hotel to provide high quality service to their customers consistent with the business plan for the four-star hotel, as well as to provide consistency with the State Alcoholic Beverage Control (ABC) regulations. The previous approval (Condition No. 38- City Council Resolution No. 5770) allows full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The State Alcoholic Beverage Control (ABC) regulations require a full liquor license throughout the Hotel facility (Type 47 license) that is open to the general public and includes the service of food in order to allow the in-room mini-bar license (Type 66 license). There is no ABC license, or series of licenses that would allow beer and wine only for guests, and full liquor for the mini-bars. A portable bar with full liquor (Type 68 license), for special events, is also proposed. Full liquor is proposed throughout the Hotel including the Courtyard, the Living Room which includes the Lobby and Wine Bar, the Porch, the Meeting Room and the rooftop Sun Deck. Alcohol is only allowed to be consumed on the site, it may not be taken off-site for consumption.
- K. The previous approval (Condition No. 28- City Council Resolution No. 5770) also limits special events (weddings, parties, etc.) to 60 people, and the modification requests a maximum of 99 people, without approval of a Temporary Use Permit.
- L. No changes to the previously approved hours of operation are proposed for either the alcohol sales or the special events. Breakfast Service in the Living Room, Porch, and/or Courtyard is proposed from 6:00 AM to 10:00 AM Monday-Friday and 6:00 AM-11:00 AM Saturday and Sunday. The "Wine Bar" is proposed to operate in the evenings from 5:00 PM to 11:00 PM daily, although flexibility for earlier hours based on the needs of the customer is desired. Although the emphasis of the "Wine Bar" will be on providing a wide selection of premium wines, full liquor will be available. Additionally, the Wine Bar will provide a variety of appetizers in order to qualify as an eating establishment as required by the ABC. Mid-day (lunch) food service will not be provided, except for room service.
- M. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. The changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. All

advertising, marketing and promotions will be focused on potential hotel guests and not the general public.

- N. As part of the ABC license application process completed in February 2005 public notices were mailed to the neighbors located within a 500 yard radius of the property, the application sign was posted on the exterior of the property for thirty days, and the application was advertised publicly in the newspaper three times. Not one neighbor or citizen protested the application.
- O. Potential noise concerns will be addressed through the review of the annual Entertainment Permit as well as a retractable partition in the Living Room will be installed which is capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events as the room will have a STC (Sound Transmission Code) rating of 50. The Sun Deck is designed to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east and six feet in all others directions.
- P. The ABC has identified the Downtown area of Manhattan Beach as having an "undue concentration" of alcohol licenses, which is typical for South Bay Cities. The criteria that the ABC uses in their calculations and determination of "undue concentration" takes into account all of Los Angeles County, including areas with very little population. This tends to create areas of "undue concentration" of alcohol licenses in areas where there is concentration of people and businesses, such as Downtown and other commercial areas. The Planning Commission makes the findings of public convenience and necessity for the alcohol license as the license for the hotel use is compatible with similar uses that have alcohol licenses, and other Downtown uses and the City Council has reviewed alcohol licenses in the past and has supported alcohol in conjunction with food service and hotel uses.
- Q. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- R. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution only amends Conditions No's 28 and 38 of Resolution No. 5770, all other conditions remain effective and in full force.
- S. Based upon State law, and MBLCP Section A.84.050, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
 - 1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the 'use permit' of Shade Hotel are consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the city's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts.
 - 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the proposed amended 'use permit' of this

business property is consistent with the General Plan for the Commercial Downtown designation, because it is merely the granting of additional privileges to an already approved use that will result in no fundamental change of that use. Amending the 'use permit' to comply with ABC regulations and the approval of larger special events will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the boutique hotel. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city. Additionally, the project is consistent with the following General Plan Goals and Policies:

GOALS AND POLICIES: LAND USE

Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

Policy LU-6.1: Support and encourage small businesses throughout the City.

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the issuance of a certificate of occupancy. The proposed amended 'use permit' for the boutique hotel is consistent with the already approved primary and secondary uses of the facility. The new uses will comply with the provisions and conditions of this title.
4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the boutique hotel, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.

SECTION 2. The Planning Commission of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment subject to the following conditions.

General Conditions

1. The proposed project shall be in substantial conformance with the plans submitted and the project description, as approved by the Planning Commission on May 25, 2005, subject to any special conditions set forth below. The layout of the Lobby area, including the sound insulation, and roof deck is subject to further review and approval

by the Director of Community Development. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.

Land Use

2. (This condition replaces Condition No. 28- City Council Resolution No. 5770) The Inn may provide wedding, party, and other special event services in their Courtyard, Meeting Room, and Living Room, as a secondary service to the primary Inn use. These types of events are limited to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday. Events are limited to a maximum of 99 people, or whatever the maximum occupancy is as determined by the Building or Fire Code limits, whichever is less. The Director of Community Development may approve Temporary Use Permits for events which exceed 99 people, not to exceed the maximum occupancy as allowed by the Building or Fire Code limits. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. The availability of the Inn for special events shall not be marketed as the primary use.

Alcohol

3. (This condition replaces Condition No. 38- City Council Resolution No. 5770) The two restaurants may provide full liquor service, which is incidental to, and in conjunction with, the service of food. Service of alcohol at the restaurants shall be in conjunction with the service of food at all times during all hours of operation. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.

New conditions

4. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Wine Bar (now called "Zinc") and Sun Deck will not be marketed to the general public as separate hospitality attractions.
5. The Wine Bar shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant" Breakfast may be served daily in the Living Room, Porch, and/or Courtyard.
6. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
7. The Sun Deck shall stop regular alcohol service no later than 9:00 p.m. daily.
8. Alcohol service at events and functions shall stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday – Thursday; 11:30 p.m., Friday and Saturday.

Procedural

9. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.
10. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.
11. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.
12. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.
13. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
14. Review. All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after occupancy 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.
15. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
16. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.
17. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.


I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of **May 25, 2005**, and that said Resolution was adopted by the following vote:

AYES: Chairman O'Connor, Vice-Chair Savikas, Commissioners Kuch and Simon

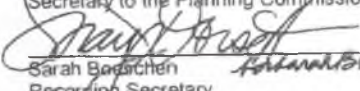
NOES: None

ABSTAIN: None

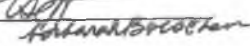
ABSENT: None



RICHARD THOMPSON
Secretary to the Planning Commission



Sarah Beardsley
Recording Secretary



Adam B. Proctor

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2002 Metlox MUP

RESOLUTION NO. 5770

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH APPROVING A MASTER USE PERMIT AND COASTAL DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF A NEW COMMERCIAL DEVELOPMENT, PUBLIC AREAS, AND RELATED IMPROVEMENTS, AT THE METLOX SITE- 1200 MORNINGSIDE DRIVE (Metlox, LLC c/o Tolkin Group)

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach, California, hereby makes the following findings:

- A. Metlox, LLC c/o Tolkin Group is seeking approval of a Master Use Permit and Coastal Development Permit, to allow the construction of a new commercial development, public areas, and related improvements, at the Metlox site- 1200 Morningside Drive in the City of Manhattan Beach.
- B. In accordance with the Manhattan Beach Local Coastal Program (MBLCP) a Use Permit approval is required for the project in the Downtown Commercial Zone.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, in the non-appealable area, and is subject to a Coastal Development Permit.
- D. The applicant is Metlox, LLC c/o Tolkin Group and the property owner is the City of Manhattan Beach.
- E. The following is a summary of some of the key milestones for the Metlox site:
- 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner based on a project consisting of 141,000 square feet - project size reduced several times over the years due to public concern and the project proposed is 63,850 square feet
 - April 2001- The City Council certified the EIR and directed Staff and the Tolkin Group to work together to revise the project to:
 - Reduce the size to 60-65,000 square feet
 - Reduce the height to 26 feet, and
 - Consider reducing the height or eliminating the Lookout Tower
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - May 2002- The City Council approved two levels of public parking on the Metlox site
 - June 2002- Application for a Master Use Permit and Coastal Development Permit for the Metlox site submitted
- F. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meeting of June 26, 2002 and continued the public hearing to July 10, 2002. The public hearings were advertised pursuant to applicable law and testimony was invited and received. At the meeting of July 10, 2002, the Planning Commission adopted Resolution No. PC 02-17 determining compliance with the California Environmental Quality Act (CEQA) and a previously certified Environmental Impact Report which includes Mitigation Measures and a Mitigation Monitoring Program, and adopting a Statement of Overriding Considerations, Resolution No. PC 02-18, approving the Master Use

Permit and Coastal Development Permit for the commercial development and the public areas, and Resolution No. PC 02-19, approving the Master Use Permit and Coastal Development Permit for the subterranean public parking structure. All decisions set forth in those resolutions are based upon substantial evidence received at said public hearings.

- G. The City Council of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meetings of July 16, 2002. The public hearing was advertised pursuant to applicable law and testimony was invited and received. All decisions set forth in this resolution are based upon substantial evidence received at said public hearing.
- H. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, public Library and on the City's website. On June 26 and July 10, 2002 the Planning Commission held public hearings to discuss the proposed project, including the Master Use Permit, Coastal Development Permit, and compliance with the requirements of CEQA. On July 10, 2002 the Planning Commission adopted Resolution No. PC 02-17 determining the project is in compliance with CEQA, and adopting a Statement of Overriding Considerations with regard to unavoidable significant impacts.
- H. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the properties to the north are zoned Downtown Commercial and Public and Semipublic, and the properties to the east are zoned Open Space.
- I. The General Plan designation for the property is Downtown Commercial.
- J. The proposed project will provide a new approximate 63,850 square foot commercial development and approximately 40,000 square feet of public areas. A separate Master Use Permit and Coastal Development Permit for approximately 430 subterranean public parking spaces on the project site is proposed. Street improvements were approved with the Public Safety Facility Use Permit and Coastal Development Permit, including the extension of 13th Street as a two-way street from Morningside Drive east to Valley Drive, conversion of Valley Drive from one-way southbound traffic to two-way traffic between 13th and 15th Streets, and conversion of Morningside Drive to one-way northbound traffic between Manhattan Beach Boulevard and 13th Street.
- K. The existing surface parking lot at 1148 Morningside Drive, approximately 400 square feet in area and located south of the Metlox loading area, may be added to the project site to provide a pedestrian and/or vehicular entryway into the project from Morningside Drive. The City is currently in the process of negotiating the purchase of the parking lot site. This may result in more than three buildings being included in the project however the total approved square footage (63,850 square feet) would not be exceeded. The total parking provided in the subterranean public parking structure would increase by approximately 28 spaces.
- L. Construction of the commercial buildings and public areas are anticipated to take approximately 10 months beginning in October 2003, with completion in August 2004. Prior to construction of the commercial building and the public areas, the subterranean parking structure will be constructed, with construction anticipated from January 2003 through October 2003.
- M. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- N. This Resolution, upon its effectiveness, constitutes the Master Use Permit and Coastal Development Permit for the subject property.
- O. Based upon State law, and MBLCP Section A.84.050, relating to the Master Use Permit application for the proposed project, the following findings are hereby made:

1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed Metlox project is consistent with the Downtown Commercial (CD) Zone purpose in that the appearance and effect of the buildings are harmonious with the character of the area in which they are located. The building materials, scale, roof pitches, and details are compatible with the existing Downtown environment, the Civic Center, and the surrounding commercial and residential uses. The scale and articulation of the façade of the proposed structures is consistent with the surrounding residential and commercial area, which has 1 to 3 story buildings, approximately 30 feet in height. The Metlox project is primarily 2-story, 26 feet in height with limited architectural features up to 30 feet in height, with the possibility of a limited 3rd story for the Inn.

The parking and loading facilities are adequate in that they will expand the existing onsite parking and will exceed the parking demand. The buildings are also pedestrian oriented, providing doors and windows at the sidewalk and Plaza, and maintaining pedestrian links within the site and to the Civic Center and other surrounding sites which then link to parks, open space and the beaches.

The project provides a full range of office, retail commercial, and service commercial uses needed by residents of, and visitors to, the city and region. Metlox will strengthen the city's economic base, but also protect small businesses that serve city residents. The project is intended to create a suitable environment for various types of commercial uses, and protect surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts. Additionally the Metlox project is intended to accommodate a broad range of community businesses and serves beach visitors.

2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the Metlox project is consistent with the following General Plan Goals and Policies. Additionally, since the project is consistent with the Local Coastal Program (LCP), as discussed below, and since the LCP is consistent with the General Plan, the project is also consistent with the General Plan.

GOALS AND POLICIES: LAND USE

GOAL 1: MAINTAIN THE LOW PROFILE DEVELOPMENT AND SMALL TOWN ATMOSPHERE OF MANHATTAN BEACH.

Policy 1.1: Limit the height of new development to three stories where the height limit is 30 feet or to two stories where the height limit is 26 feet, in order to protect the privacy of adjacent properties, reduce shading, protect views of the ocean, and preserve the low profile image of the community.

Policy 1.2: Require the design of all new construction to utilize notches, or balconies, or other architectural details to reduce the size and bulk.

Policy 1.3: Require the use of landscaping and setbacks to reduce the bulk in new buildings and add visual interest to the streetscape.

Policy 2.3: Protect public access to and enjoyment of the beach while respecting the privacy of beach residents.

GOAL 3: ENCOURAGE THE PROVISION AND RETENTION OF PRIVATE LANDSCAPED OPEN SPACE.

Policy 3.1: Develop landscaping standards for the Downtown which serve as a unifying and humanizing theme for the area.

Policy 3.3: Encourage the replacement of mature trees removed by new construction activity throughout the City with specimen trees.

Policy 4.1: Protect all small businesses throughout the City which serve City residents.

Policy 5.1: The City recognizes the need for a variety of commercial development types and has designated areas appropriate for each. The City shall encourage development proposals which meet the intent of these designations.

Policy 5.2: Require the separation or buffering of low-density residential areas from businesses which produce noise, odors, high traffic volumes, light or glare, and parking through the use of landscaping, setbacks, and other techniques.

GOAL 6: CONTINUE TO SUPPORT AND ENCOURAGE THE VIABILITY OF THE "DOWNTOWN" AREA OF MANHATTAN BEACH.

Policy 6.1: Encourage the upgrading and expansion of business in the Downtown area to serve as a center for the community and to meet the needs of beach area residents.

Policy 6.2: Develop and encourage the use of design standards for the Downtown area to improve its visual identification as a unique commercial area.

GOAL 7: PROTECT EXISTING RESIDENTIAL NEIGHBORHOODS FROM THE INTRUSION OF INAPPROPRIATE AND INCOMPATIBLE USES.

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the issuance of a certificate of occupancy.
4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the Metlox commercial development and public areas portion of the EIR will all be complied with. Conditions to conform to applicable Code standards will apply. A temporary construction plan will ensure that construction impacts will be minimized to the extent feasible.

P. Based on the MBLCP Sections A.96.150 the following findings are made:
That the project, as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified Manhattan Beach Local Coastal Program, since the project is consistent with the following applicable policies from Chapter 4 of the Local Coastal Program:

COASTAL ACCESS POLICIES

A. Access Policies

Policy I.A.1: The City shall maintain the existing vertical and horizontal accessways in the Manhattan Beach Coastal Zone.

Policy I.A.3: The City shall preserve pedestrian access systems including the Spider Web park concept (Spider Web park concept: a linear park system linking the Santa Fe railroad right-of-way jogging trail to the beach with a network of walkstreets and public open spaces. See Figure NR-1 of the General Plan).

B. Transit Policies

Policy I.B.3: The City shall encourage pedestrian and bicycle modes as a transportation means to the beach.

II. COASTAL LOCATING AND PLANNING NEW DEVELOPMENT POLICIES

Policy II.1: Control Development within the Manhattan Beach coastal zone.

A. Commercial Development

Policy II.A.2: Preserve the predominant existing commercial building scale of one and two stories, by limiting any future development to a 2-story maximum, with a 30' height limitation as required by Sections A.04.030, A.16.030, and A.60.050 of Chapter 2 of the Implementation Plan.

Policy II.A.3: Encourage the maintenance of commercial area orientation to the pedestrian.

Policy III.3: The City should continue to maintain and enforce the City ordinances that prohibit unlawful discharges of pollutants into the sewer system or into the tidelands and ocean. (Title 5, Chapter 5, Article 2; Chapter 8).

Policy III.14: City Storm Water Pollution Abatement Program: The City of Manhattan Beach has initiated a storm water pollution abatement program that involves not only several of the City departments working together, but also the other cities in the Santa Monica Bay watershed. The initial action plan was to create a new ordinance regarding illegal dumping to catch basins and the storm drain systems. In the process it was found that a number of ordinances already exist on the books that cover most of the original concerns. It was determined that those significant codes contain strong enforcement capabilities and that the present city staff needs to be educated and made aware of those existing codes, some of which date back to the 1920's but are still enforceable. The program is to develop codes and building standards to implement the Good Housekeeping requirement and the Best Management Procedures of the Santa Monica Bay Restoration Project Action Plan, educate staff, eliminate potential loopholes within the existing code sections, and initiate supplemental ordinances regarding storm water pollution abatement giving the County the right to prosecute polluters to the County storm drain system (a requirement of the Santa Monica Bay storm way discharge permit).

The Final EIR for the Civic Center/Metlox project also provides a discussion on consistency with the policies of the LCP.

SECTION 2. The City Council of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit and Coastal Development subject to the following conditions.

General Conditions

1. The proposed project shall be in substantial conformance with the plans submitted and the project description, as approved by the City Council on July 16, 2002, subject to any special conditions set forth below. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.

Site Preparation/Construction

2. A Traffic Management and Construction Plan shall be submitted in conjunction with any construction and other building plans, to be approved by the Police and Public Works Departments prior to issuance of building permits. The plan shall provide for the management of all construction related traffic during all phases of construction, including but not limited to delivery of materials and parking of construction related vehicles.
3. During the demolition and construction phases of development, a daily clean-up program for all areas affected by the project shall occur, including the pickup of all debris (utilizing an approved trash dumpster or other trash control method) at day's end and the sweeping and continued watering down of the site to assist in mitigating the movement of dirt and dust upon adjoining properties.
4. All electrical, telephone, cable television system, and similar service wires and cables shall be installed underground to the appropriate utility connections in compliance with all applicable Building and Electrical Codes, safety regulations, and orders, rules of the Public Utilities Commission, the serving utility company, and specifications of the Public Works Department. Existing utility poles and lines on the project site and immediately adjacent to the project site, not including any across any street, must be placed underground pursuant to the requirements of Public Works.

Operational

5. Operations shall comply with all South Coast Air Quality Management District Regulations and shall not transmit excessive emissions or odors across property lines.
6. Plans shall be submitted to the Director of Community Development for review and approval that shows all proposed rooftop mechanical equipment screened from the public right-of-way in accordance with the requirements of the MBMC. Equipment and screening may be incorporated into the architectural features allowed on the buildings. Equipment shall be installed per the approved plans prior the building permit final.
7. Post construction (operational) noise emanating from the site shall be in compliance with the Manhattan Beach Municipal Code Noise Ordinance, Chapter 5.48.
8. Delivery operations shall be conducted in such a manner so as not to be in violation of the city's noise ordinance. The term "delivery activities" shall include, vehicles or delivery equipment being started or idled, playing of radios, tape players or other devices, loud talking, and unloading of materials. Business delivery doors shall not be opened before hours of permitted deliveries as specified herein. Delivery vehicles shall park in designated commercial loading areas only and shall not obstruct designated fire lanes.

9. Landscaping and maintenance activities (including, but not limited to parking lot cleaning, grounds-keeping, and outdoor equipment cleaning) shall occur in accordance with a Landscape Maintenance Plan to be approved by the Director of Community Development. The Maintenance Plan shall establish permitted hours of operation for specific maintenance activities and areas of site, based on compatibility with nearby land uses, both on and adjacent to the center.
10. All landscaping materials shall be maintained to the satisfaction of the Director of Community Development.
11. Routine trash collection on the entire site shall be consistent with the hours that are specified in the City's trash contract (which is currently after 7:30 a.m. and before 6:00 p.m.), unless other hours are approved by the Public Works Director. Construction material trash collection activities (drop off and pick-up) shall be limited to hours of permitted construction as specified in the City's Noise Ordinance, which is between 7:30 and 6:00 p.m. Mondays through Fridays, and between 9:00 a.m. and 6:00 p.m. on Saturdays.
12. All trash storage areas shall be screened, secured and maintained in a sanitary condition and all tenants/business owners shall take appropriate measures to prevent prohibited or undesirable activities as defined in the Municipal Code (Sec. 5.24.060) including but not limited to, scavenging, excessive accumulation of refuse, and allowing any portion of the property to become a breeding ground for flies, wild rodents or other pests. Trash storage areas shall be designated and bins shall be maintained within the designated areas.
13. The facility operator shall prohibit employees from parking personal vehicles on the surrounding public streets. Employees must park on-site or be transported to the site from other off-street parking facilities subject to Community Development Department approval. The property owner shall include prohibitions against employee parking on local streets in any lease and/or rental agreements.
14. The operators of the facility shall police the property, and all areas immediately adjacent to the businesses, during the hours of operation to keep it free of litter.
15. The operators of the facility shall provide adequate management and supervisory techniques to prevent loitering and other security concerns outside the subject businesses.
16. Public bicycle parking shall be incorporated into the design of the project. Plans shall be submitted to the Director of Community Development for review and approval showing the bicycle parking.
17. Safety and security features shall be incorporated into the design of the project. The Security Plan shall be submitted to the Police Chief and Director of Community Development for review and approval. The Security Plan shall include but not be limited to, security lighting.
18. The applicant shall make every effort to provide shower facilities for use by the office tenants. The facilities shall be shown on the plans and installed prior to the issuance of a Certificate of Occupancy.
19. The applicant is required to eliminate any Congestion Management Plan (CMP) debits created by the project prior to the issuance of a Building Permit for the Commercial buildings.
20. All tenants in the project are encouraged to join the Downtown Business Association.

Public Works

21. The plans shall be checked and stamped for approval by the Public Works Department before the building permit is issued. Project must comply with all Public Works requirements. All Public Works notes and corrections must be printed on the plan and all requirements must be completed per the approved plans prior to the issuance of a building final.
22. The new trash enclosure(s) shall meet all Public Works requirements. Trash must be picked up by a refuse company as often as necessary to ensure that the trash enclosure has adequate space to

accommodate the needs of the entire site. No trash storage/disposal shall be placed in the public right-of-way on Manhattan Beach Boulevard, Morningside Drive, 13th Street or Valley Drive.

23. No outside cleaning of kitchen floor mats or other items will be permitted on the site. All kitchen floor mats and other items shall be cleaned in such a manner that the run-off wastewater drains only to a private sewer drain on the premises.
24. There shall be no discharge of construction wastewater, building materials, debris, or sediment from the site.

Land Use

25. The following land uses and maximum square footages, as defined and approved by the DDA/Ground Lease, and shall allowed:

- A) Retail Sales and services, including food service uses, 20,000 square feet total maximum, including:
 - a) Retail sales;
 - b) Personal Services;
 - c) Retail/specialty food service uses that are non-destination type establishments such as a bakery, tea salon, coffee house, ice cream shop, yogurt, candy, cookies, juices, and other similar limited specialty food items. Each business is limited to a maximum of 300 square feet of outdoor seating area, including table, chairs and benches, within the Town Square and Public Areas-; and,
 - d) Similar uses identified as permitted (by right) in the underlying zoning district (CD) which are not included in this Master Use Permit shall be left to the discretion of the Director of Community Development.
 - B) Eating and Drinking Establishments (restaurants), two (2) total maximum, 8,000 square feet total maximum, (including 6,400 square feet maximum dining/seating area regardless of whether located indoors or outdoors).
 - C) Offices, however no offices shall be permitted on the first floor, and Personal Services, 17,500 square feet total maximum, including:
 - a) Offices, Business and Professional;
 - b) Personal Services; and,
 - c) Similar uses identified as permitted (by right) in the underlying zoning district (CD) which are not included in this Master Use Permit shall be left to the discretion of the Director of Community Development.
 - D) Visitor Accommodations (Bed and Breakfast Inn), 35 to 40 rooms, 26,000 square feet total maximum.
26. Uses identified as conditionally permitted (use permit required) in the underlying zoning district (CD) shall require an amendment to the Master Use Permit at a duly noticed public hearing, unless otherwise permitted in this Resolution.
 27. There shall be no drive-through service allowed in conjunction with any Eating and Drinking Establishment (restaurant) or any other use.
 28. The Inn may provide wedding, party, and other special event services in their Courtyard, Meeting Room, and Living Room, as a secondary service to the primary Inn use. These types of events are limited to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday. Events are limited to a maximum of 60 people, or whatever the maximum occupancy is as determined by the Building or Fire Code limits, whichever is less. The Director of Community Development may approve Temporary Use Permits for events which exceed 60 people, not to exceed the maximum occupancy as allowed by the Building or Fire Code limits. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. The availability of the Inn for special events shall not be marketed as the primary use.



29. The hours of operation for the site shall be permitted as follows:
- Restaurant, food service, retail and personal service: Up to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday.
 - Offices: Up to 24 hours
 - Town Square and Public Areas: Up to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday, seasonal, depending on weather.
30. The second floor roof deck with the jacuzzi at the Inn shall be redesigned. The floor level of the roof deck may not exceed 21 feet in height, and the deck area must be properly screened. The deck area may only be open for use from 6:00 am to 10:00 pm, seven days per week
31. Any outdoor uses in the Town Square and Public Areas shall meet all access and safety requirements of the Uniform Building and Fire Codes and any other similar safety regulations. Retail and food service carts or kiosks may be allowed subject to review and approval of the City Manager. Standard liability insurance naming the City as additionally insured shall be provided and subject to approval of the Director of Community Development. Insurance shall meet approval of the City's Risk Manager and shall be as set forth in the DDA/Ground Lease (currently a minimum \$3 million insurance endorsement). Tenants with said outdoor uses shall be responsible for maintaining the area clean and free of trash and debris.
32. A restroom shall be available to the public at all times when the non-office uses are open to the public. Adequate signage to direct the public to the restroom(s) shall be provided throughout the Town Square and public areas, subject to review and approval of the Director of Community Development. The tenant or building owner, not the City, shall be responsible for maintaining and securing the restroom(s).

Design Review

33. The applicant shall submit plans, material boards, color samples, renderings, and other visual displays for Design Review to the Planning Commission at a noticed public hearing prior to issuance of building permits for the commercial buildings. The general location of the building footprints, as shown on the plans approved by the Planning Commission on July 10, 2002, are approved with this Master Use Permit and Coastal Development Permit and are not subject to Design Review. The plans shall address the following design issues and details:
- Facades/elevations
 - Colors, textures, and materials
 - Landscaping, lighting, signage, and public art
 - Gateway treatment
 - Town Square, 13th Street Garden and Public areas
 - Civic Center linkage, relationship and compatibility
 - Streetscape design- pavement treatment, sidewalks, pedestrian crosswalks, street furniture
 - Pedestrian orientation
 - Incorporation of the Metlox sign
- The plans and details shall address linkage to the Downtown and the Civic Center, pedestrian orientation, the Downtown Design Guidelines, the City's vision for the site, access from Morningside Drive near 12th Street (12th Walk), and other design details of the project. The possibility of limited 3rd story rooms for the Inn will be considered.
34. A sign program in accordance with the requirements of the MBMC shall be submitted for review and approval of the Director of Community Development. Signage shall be consistent with the Downtown Design Guidelines and the conceptual plans submitted for Design Review. Signs shall be installed per the approved plans prior the building permit final.
35. An outdoor lighting program shall be submitted for review and approval of the Director of Community Development. Outdoor lighting shall be shielded and meet all other requirements of the MBMC and shall be consistent with the plans submitted for Design Review. Lighting shall be installed per the approved plans prior the building permit final.

36. A site landscaping plan, utilizing drought tolerant plants to the extent feasible, shall be submitted for review and approval. The landscaping shall be in compliance with the Downtown Design Guidelines and the requirements of the MBMC. All plants shall be identified on the plan by the Latin and common names. The current edition of the Sunset Western Garden Book contains a list and description of drought tolerant plants suitable for this area. This plan shall be reviewed and approved by the Public Works and Community Development Departments. Landscaping shall be installed per the approved plans prior to the building permit final.
37. A low pressure or drip irrigation system shall be installed in landscaped areas. Details of the irrigation system shall be noted on the landscape plans. The type and design shall be subject to the approval of the Public Works and Community Development Departments. Irrigation shall be installed per the approved plans prior to the building permit final.

Alcohol

38. The two restaurants may provide full liquor service, which is incidental to, and in conjunction with, the service of food. Service of alcohol at the restaurants shall be in conjunction with the service of food at all times during all hours of operation. The Inn may provide beer and wine service for its guests only, and may also provide full liquor self-service in room "mini-bars". Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
39. Restaurant uses, including the service of alcoholic beverages, shall be limited in their operation to the hours between 6:00 a.m. to 11:00 pm, Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday.

Entertainment

40. Dancing and amplified live music is prohibited within the business establishments. Non-amplified live music or entertainment, limited to background-type music, with a maximum of 2 entertainers is permitted. Any live entertainment proposed in conjunction with any use (with exception of background music, television and no more than 3 games or amusements per business establishment) shall require a Class I annual Entertainment Permit consistent with the provision of Section 4.20.050 of the Manhattan Beach Municipal Code. The Entertainment Permit shall be submitted to the Director of Community Development for review and approval, with input from the Police and Fire Departments. Appropriate conditions shall be placed on the Permit to minimize potential negative impacts. These conditions shall include, but not be limited to, hours, size and location of performance or dance area, size of band and number of performers, numbers of performance days per week, type and location of amplification, speakers and soundproofing, and volume of amplification. The Permit will be reviewed annually to determine if it is appropriate to renew the permit, deny the permit, or modify the conditions of approval.

Procedural

41. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.
42. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.
43. Lapse of Approval. The Master Use Permit shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.

44. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.
45. Effective Date. Unless appealed to the City Council, the subject Master Use Permit and Coastal Development Permit shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
46. Review. All provisions of the Use Permit are subject to review by the Community Development Department 6 months after occupancy and yearly thereafter. At any time in the future, the Planning Commission or City Council may review the Use Permit for the purposes of revocation or modification. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.
47. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
48. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.
49. Assignment. Pursuant to Section A.96.220 of the City's certified Local Coastal Program (Implementation Program), the Coastal Development Permit may be assigned to any qualified persons subject to submittal of the following information to the Director of Community Development.
50. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

Mitigation Measures (CEQA)

The following Mitigation Measures as identified in the EIR, and as discussed within Resolution No. 5769 adopted July 16, 2002, determining compliance with CEQA, are applicable to the Metlox project.

51. AESTHETICS/VIEWS

The project shall be developed in conformance with the following City of Manhattan Beach Downtown Design Guidelines:

- A. Where feasible, incorporate landscaped areas into new development and existing development. Such landscaped areas could utilize window boxes and similar landscape amenities. Landscaping should be designed to enhance and accentuate the architecture of the development.
- B. Signs should be designed at a scale appropriate to the desired village character of downtown. The size and location of signs should be appropriate to the specific business. Pre-packaged "corporate" signs should be modified to a scale and location appropriate to the desired village character of downtown Manhattan Beach. Signs should not block, or obliterate, design details of the building upon which they are placed. Pedestrian oriented signage is encouraged. Such signs may be located on entry awnings, directly above business entrances, and "hanging signs" located adjacent to entrances.
- C. Low level ambient night lighting shall be incorporated into the site plans to minimize the effects of light and glare on adjacent properties.

52. Air Quality

- A. The construction area and vicinity (500-foot radius) shall be swept and watered at least twice daily.
- B. Site-wetting shall occur often enough to maintain a 10 percent surface soil moisture content throughout all site grading and excavation activity.
- C. All haul trucks shall either be covered or maintained with two feet of free board.
- D. All haul trucks shall have a capacity of no less than 14 cubic yards.
- E. All unpaved parking or staging areas shall be watered at least four times daily.
- F. Site access points shall be swept/washed within thirty minutes of visible dirt deposition.
- G. On-site stockpiles of debris, dirt, or rusty material shall be covered or watered at least twice daily.
- H. Operations on any unpaved surfaces shall be suspended when winds exceed 25 mph.
- I. Car-pooling for construction workers shall be encouraged.

53. PUBLIC SAFETY

Although no significant impacts upon public safety (police services) have been identified, the following mitigation measures shall be implemented to further reduce the risk to public safety.

- A. Prior to the issuance of building permits, project site plans should be subject to review by the Manhattan Beach Police Department and Manhattan Beach Fire Department. All recommendations made by the Manhattan Beach Police Department and Manhattan Beach Fire Department relative to public safety (e.g. emergency access) should be incorporated into the project prior to project completion.
- B. Prior to the approval of the final site plan and issuance of each building permit, plans shall be submitted to the Manhattan Beach Police Department for review and approval for the purpose of incorporating safety measures in the project design, including the concept of crime prevention through environmental design (i.e., building design, circulation, site planning, and lighting of parking structure and parking areas). Design considerations should include an evaluation of electronic surveillance systems, emergency call boxes and lighting systems in addition to architectural elements that allow direct vertical and horizontal views outside of the structure.
- C. The provision of an on-site valet attendant and/or patrol by private security officers during operation of the project shall be considered at peak parking demand times, as needed. This mitigation measure shall be incorporated into the conditions of project approval (i.e., Master Land Use Permit or Development Agreement) at the discretion of the City Council.

54. RISK OF UPSET

Potential impacts associated with the release of potentially hazardous substances during demolition activities can be mitigated to a level of insignificance by the following mitigation measure:

- A. Comprehensive surveys for asbestos containing materials (ACMs), lead based paint, and Poly Chlorinated Biphenyls (PCBs) shall be conducted by a registered environmental assessor for each existing on-site structure to be demolished or renovated under the proposed project. ACMs, lead based paint, or PCBs found in any structures shall be stabilized and/or removed and disposed of in accordance with applicable laws and regulations including, but not limited to, SCAQMD Rule 1403 and Cal OSHA requirements.

- B. If during construction of the project, soil contamination is suspected, construction in the area should stop and appropriate Health and Safety procedures should be implemented. The Department of Toxic Substances Control (DTSC) Voluntary Cleanup Program (VCP) should be contacted at (818) 551-2866 to provide the appropriate regulatory oversight.

55. TRANSPORTATION AND CIRCULATION

REQUIRED MITIGATION MEASURES

The following traffic-related mitigation measures are required to mitigate potentially significant project-related traffic impacts:

- A. Prior to any construction activities, a Construction Plan, which shall include phasing of construction of the project, shall be submitted for review and approval to the City of Manhattan Beach Public Works Department and Community Development Department. Construction Plans shall address parking availability and minimize the loss of parking for existing on-site Civic Center operations that will continue to operate throughout the construction period, as well as provide parking for Civic Center visitors and construction workers. To minimize potential adverse impacts upon the Downtown Commercial District construction workers shall not be permitted to park within in the adjacent public parking structures or street parking spaces. The parking plans shall provide adequate on-site parking areas for construction workers and/or consider providing additional construction parking at off-site parking lot locations and providing bussing or car-pool services to the construction site. The proposed construction plan shall designate appropriate haul routes into and out of the project area. Truck staging areas shall not be permitted on residential roadways or adjacent to any school site.
- B. Manhattan Beach Blvd. & Sepulveda Blvd. -Contribute to the installation of dual left-turn lanes in the northbound and eastbound directions. A fair-share contribution will be required. The City is currently actively pursuing implementation of this Mitigation Measure. These projects are identified in the City's 2004-2005 Capital Improvement Program (CIP). The City is currently in the process of having engineering studies conducted for the design of the dual left-turn lanes. A Grant application will be submitted to the Metropolitan Transportation Authority (MTA) in their Call- for- Projects after completion of the engineering study.
- C. Highland Avenue & 13th Street -Install a two-phase signal at this intersection if warranted based on actual traffic counts taken after the project is developed. The implementation of peak-hour southbound left-turn restrictions at this intersection is another option to mitigate project impacts as this restriction would improve traffic flow through this intersection, as it would reduce northbound through and southbound left-turn conflicts, and allow for the free flow of southbound traffic. In addition, the conversion of 13th Street to a one-way eastbound scheme is another option.
- D. Manhattan Beach Blvd. & Valley Drive/Ardmore Ave. -Install a dual southbound left-turn lane at this intersection at such a time that two left turn lanes are warranted based on actual traffic counts.
- E. The City Traffic Engineer shall conduct secondary "post-project" traffic assessments at the intersections of Highland Avenue & 13th Street, and Manhattan Beach Boulevard & Valley Drive/Ardmore Avenue to determine the actual traffic impacts of the proposed project. Should the results of this assessment verify significant impacts are realized, the mitigation measures recommended in the Draft EIR, or measures of equivalent effectiveness shall be implemented.
- F. An employee parking program shall be required for the Metlox commercial establishments to alleviate the parking demands within the Downtown Commercial District. Potential mitigation

options may include satellite parking programs and/or providing tandem parking stalls designated for employees only.

RECOMMENDED MITIGATION MEASURES

Although the proposed project will meet the shared parking demand anticipated for the planned development, the following parking mitigation measures are recommended to further increase parking availability on the project site, reduce traffic congestion, and to promote shared parking within the Downtown Commercial District:

- G. Valet parking operations should be considered during peak demand times, as needed. Valet parking operations should utilize tandem parking methods within the parking garage(s) to increase parking availability for the project site.

56. HYDROLOGY/WATER QUALITY

The following mitigation measures would ensure water quality impacts would be less than significant:

- A. The project shall comply with the requirements of the National Pollution Discharge Elimination System (NPDES) General Permit for stormwater discharge. Such compliance shall include submittal of a drainage plan to the City of Manhattan Beach Department of Public Works in accordance with the minimum applicable requirements set forth in the Los Angeles County Standard Urban Stormwater Mitigation Plan (SUSMP).
- B. Design criteria for the project should, to the extent feasible, minimize direct runoff to the adjacent streets and alleys by directing runoff from roofs and impervious surfaces to landscaped areas. In addition to reducing runoff volumes, due to infiltration into the soil, landscaped areas may also filter some pollutants from stormwater, such as particulate matter and sediment.
- C. Commercial trash enclosures must be covered so that rainwater cannot enter the enclosure and the trash enclosure must be connected to the sanitary sewer system.

57. NOISE

The following mitigation measures are recommended to reduce noise impacts during the construction phases of the proposed project:

- A. Use noise control devices, such as equipment mufflers, enclosures, and barriers.
- B. Erect a temporary sound barrier of no less than six feet in height around the construction site perimeter before commencement of construction activity. This barrier shall remain in place throughout the construction period.
- C. Stage construction operations as far from noise sensitive uses as possible.
- D. Avoid residential areas when planning haul truck routes.
- E. Maintain all sound-reducing devices and restrictions throughout the construction period.
- F. When feasible, replace noisy equipment with quieter equipment (for example, a vibratory pile driver instead of a conventional pile driver and rubber-tired equipment rather than track equipment).
- G. When feasible, change the timing and/or sequence of the noisiest construction operations to avoid sensitive times of the day.

- H. Adjacent residents shall be given regular notification of major construction activities and their duration.
- I. A sign, legible at a distance of 50 feet, shall be posted on the construction site identifying a telephone number where residents can inquire about the construction process and register complaints.
- J. An annual City permit in accordance with Chapter 4.20 of the MBMC shall be required prior to the installation/setup of any temporary, or permanent, PA or sound system.
- K. The maximum allowable sound level shall be in conformance with Chapter 5.48 of the MBMC.

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

SECTION 4. This resolution shall take effect immediately.

SECTION 5. The City Clerk shall certify to the adoption of this resolution; enter it into the original records of the City and thenceforth and thereafter the same shall be in full force and effect.

SECTION 6. The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.

PASSED, APPROVED AND ADOPTED this 16th day of July 2002.

Ayes:
 Noes:
 Absent:
 Abstain:

 Mayor, City of Manhattan Beach, California

ATTEST:

 City Clerk

Note: Bookmarks, 2nd icon down;
Other hyperlinks **boxed in blue**

**SHADE HOTEL BRIEFING
TO
CITY MANAGER JOHN JALILI**

CITY OF MANHATTAN BEACH

9 DECEMBER 2013

BY

**Nate Hubbard, natehubz@mac.com
Don McPherson, dmcphersonla@gmail.com
Wayne Partridge, wepmako@gte.net**

SHADE 2005 CUP VIOLATIONS = 2010 CUP PRIVILEGES

2005 CUP VIOLATIONS AND 2010 CUP PRIVILEGES

1. No acoustic wall between Zinc bar & lobby
2. Terrace closing time increased by 13 hours from morning breakfast-only to 11 PM (1)
3. Terrace occupancy increased, 22 to 48 (1); 1st floor occupancy increased, 204 to 357 (1); Total occupancy increased, 334 to 493, by 48% (1)
4. Special events conducted on terrace
5. Lunch service and full-scale restaurant
6. Increased Skydeck occupancy, 45 to 92 (1)
7. Advertising Zinc lounge and Skydeck as separate attractions
8. Menu posting outside hotel

2005 CUP TERMS AND CONDITIONS

1. Finding O, Condition 1; Annual entertainment permits, 2006-2013
2. Finding L: Permits only breakfast; 10 AM Mon-Fri and 11 AM Sat-Sun
3. Condition 1. Compliance with Zislis testimony and application, Pgs 1 & 7
4. Not permitted by Condition 2
5. Prohibited by Finding L and Conditions 3 & 5
6. Condition 1. Compliance with project application
7. Condition 4: Advertising Zinc and Skydeck prohibited
8. Condition 6: Outside menus prohibited

NOTE 1: The Community Development Director has improperly exploited the entertainment permit to increase terrace hours and hotel occupancies, in violation of MBMC 4.20.080 & .090.

COMMUNITY DEVELOPMENT HAS DETERMINED SHADE DOES NOT VIOLATE THE 2005 CUP

Community Development has had the evidence before them since 2006, but never set a public hearing to revoke or revise the 2005 CUP, an obligatory action mandated by MBMC 10.104.030

CITY MANAGER JALILI BRIEFING OUTLINE

9 December 2013

1. SHADE HOTEL VIOLATIONS OF THE 2005 CUP [Shade Hotel Plans, **Exhibit 1**]

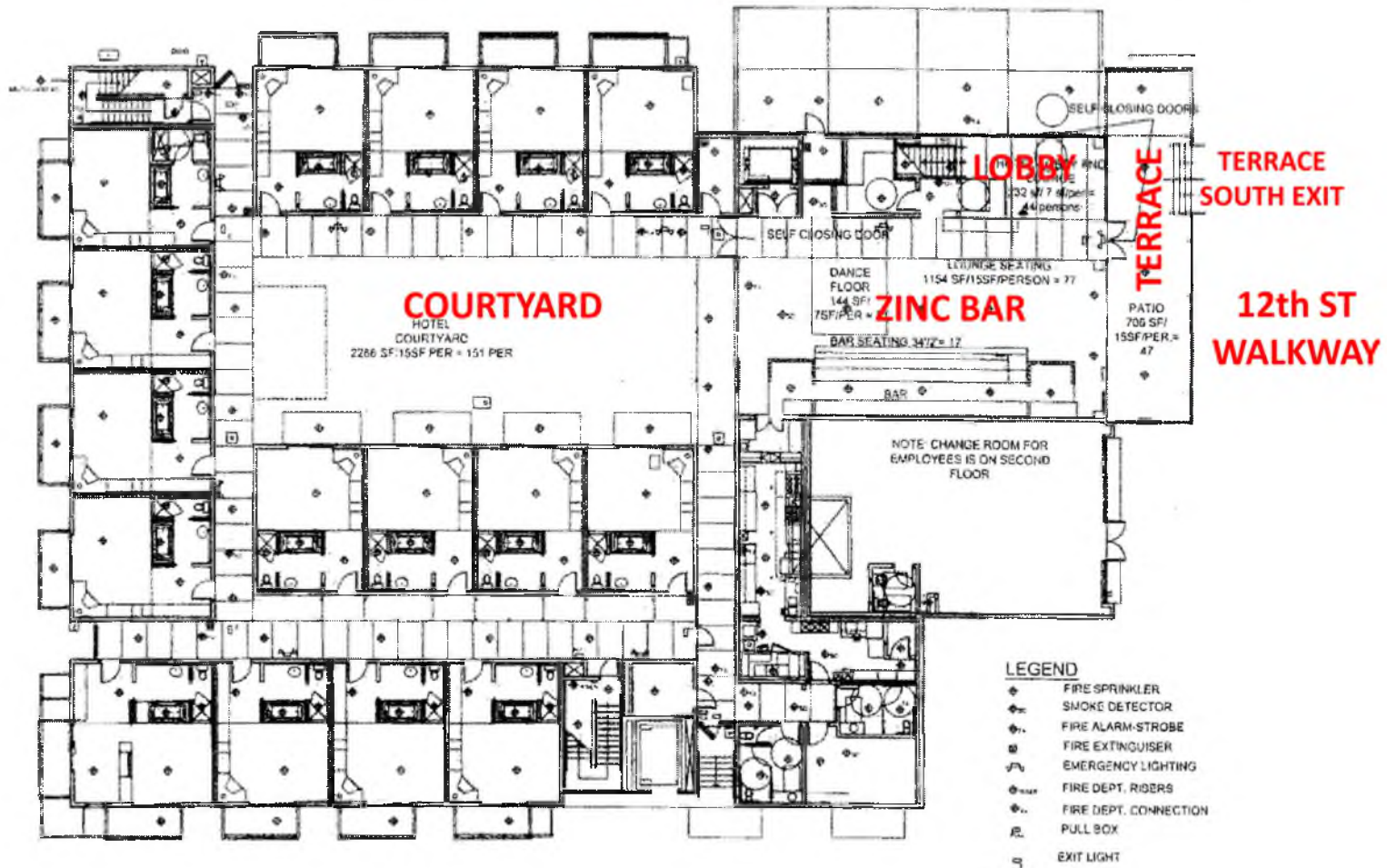
- 1.1. Table of violations. Condition 1 requires substantial compliance with the plans and project description, in addition to 2005 CUP terms and conditions. [**Exhibit 12**]
- 1.2. Zinc-lobby wall
 - 1.2.1. Application: Community development required noise isolation between Zinc and lobby with STC-50 partition [**Exhibit 2**]
 - 1.2.2. Staff report: STC retractable partition between Zinc and lobby [**Exhibit 3**]
 - 1.2.3. Draft resolution [Finding O, ditto above]
 - 1.2.4. Zislis testified to Zinc-lobby wall [25 May 2005 video; **Exhibit 4**].
 - 1.2.5. 2006-2013 Entertainment Permits: CUP Description & Conditions, No. 4 requires demonstration of STC-50 noise muting [**Exhibit 5**]
 - 1.2.6. The sound wall would have reduced noise outside Zinc to 0.01% of noise inside.
 - 1.2.7. Director Thompson overruled plan-check engineer on acoustic wall [28 Oct 2009]
- 1.3. Violations of terrace hours, occupancy and special event use
 - 1.3.1. Terrace (porch) not mentioned in application, staff report, draft resolution
 - 1.3.2. Ms. Jester testified no food or alcohol service on terrace (25 May 2005 video)
 - 1.3.3. Zislis testimony: Only terrace information before the PC (25 May 2005 video)
 - 1.3.3.1. Breakfast only, until 10 AM weekdays and 11 AM weekends [**Exhibit 6**]
 - 1.3.3.2. 22 occupancy [**Exhibit 6**]
 - 1.3.4. Entertainment permit violations regarding terrace and occupancy (2005 CUP O)
 - 1.3.4.1. Increased terrace closing to 11 PM [**Exhibit 5, violates MBMC 4.20.090**]
 - 1.3.4.2. 2008 Permit increased occupancy, 22 to 47;
1st floor occupancy from 204 to 357
Hotel occupancy from 334 to 493, a 48% increase [**Exhibit 5**]
[Entertainment Permit ordinance violation MBMC 4.20.080]
 - 1.3.4.3. Ms. Jester testified no occupancy increases from 2005 CUP
[12 May 2010 video]
 - 1.3.4.4. The 2012-2013 Permit also includes these violations
 - 1.3.5. Condition 2 in 2005 CUP does not permit special events on terrace, which Shade advertises
- 1.4. Above information represents all that placed before the 2005 PC for their decision. Staff has no evidence to the contrary.
 - 1.4.1. No residential impact would occur, if noise reduced 0.01% by Zinc-lobby wall
 - 1.4.2. No residential impact would occur, if terrace limited to morning hours, 22 occupancy and no special events
- 1.5. Community Development has determined that Shade does not violate the 2005 CUP. Otherwise, MBMC 10.104.030 mandates they should have scheduled a public hearing to revoke or revise the use permit.**

SHADE HOTEL FIRST-FLOOR PLAN

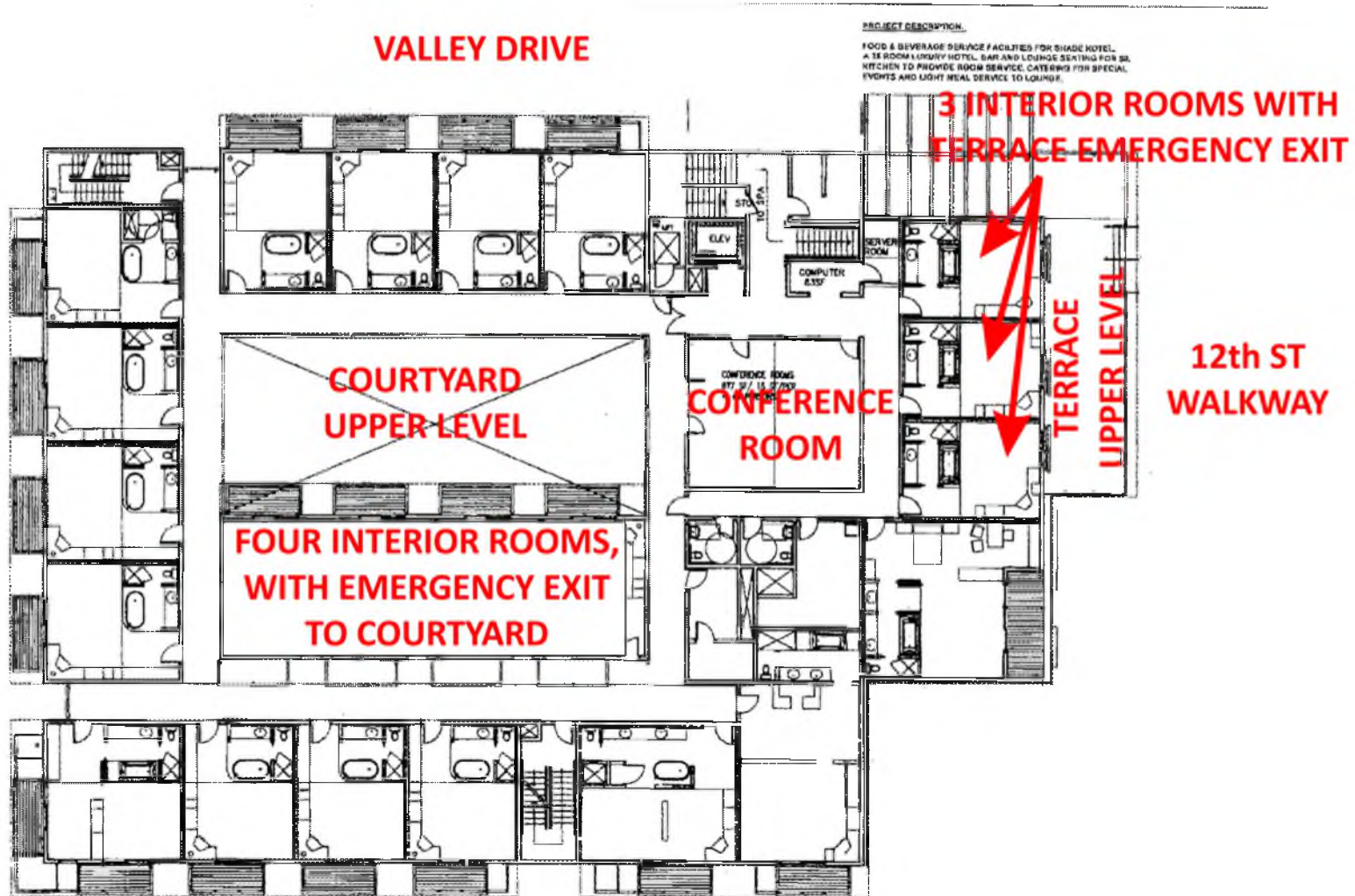
VALLEY DRIVE

PROJECT DESCRIPTION:

FOOD & BEVERAGE SERVICE FACILITIES FOR SHADE HOTEL, A 28 ROOM LUXURY HOTEL. BAR AND LOUNGE SEATING FOR 30. KITCHEN TO PROVIDE ROOM SERVICE, CATERING FOR SPECIAL EVENTS AND LIGHT MEAL SERVICE TO LOUNGE.



2nd-FLOOR ROOMS WITH EMERGENCY EXIT TO COURTYARD AND TERRACE



EXCERPT ON ZINC-LOBBY ACOUSTIC SEPARATION WALL, SHADE APPLICATION FOR 2005 CUP

Alcohol Service

Permitting full liquor at all the alcohol service areas of the hotel should not present a great concern to the city or community. First, because the hotel will be a four-star facility, it will attract a mature, up-scale, affluent clientele. Second, as the city has learned over the years, it is not alcohol, per se, that potentially may cause issues for a community, but rather it is the type of establishment offering the alcohol that may lead to problems. Night clubs and bars tend to draw the wrong crowd and it is these younger, rowdier patrons who may have the propensity to engage in undesirable behavior. Many bonafide restaurants in the downtown area serve liquor – Fonz’s, Café Pierre, Manhattan Beach Brewing Co., Avenue – and generate no problems for the community. Shade Hotel is situated away from the other nightlife in Manhattan Beach, and the business concept of operating as a hotel does not attract trendy “party-goers”.

Shade Hotel has been conferring and meeting regularly with the Alcohol Beverage Control and the Manhattan Beach Community Development Department for the past several months to address and minimize any potential issues and concerns. After the hotel acquired the Type 47 license at the end of 2004, it submitted the alcohol application to the A.B.C. in January, 2005. As part of the A.B.C. alcohol license application an applicant must: (1) mail public notices to the neighbors located within a 500 yard radius of property, (2) post the application sign on the exterior of the property for thirty days, and (3) advertise the application publicly in the newspaper three times. Shade Hotel completed this procedure in February. The result achieved was that **not one neighbor or citizen protested the application.** According to Margo Hoffman, the A.B.C. investigator assigned to this case, it is uncommon when an application does not elicit

.
To address concern by Community Development, the hotel WILL construct a partition to separate the lobby from the Zinc Bar, to insulate the lobby from event noise. The wall will have a Sound Transmission Coefficient of 50 dB (STC-50).
.

To delete the Zinc-lobby sound wall, Condition 1 in the 2005 CUP requires a public hearing by the planning commission, to make such a substantial change
.

One concern expressed by the Community Development Department is the issue of noise generated by events, entertainment, and alcohol consumed in a festive atmosphere. Again, Shade Hotel’s first priority will be the guests staying at the hotel. All events will be planned around the convenience and comfort of the guests. The hotel will construct, as part of its design, a retractable partition in the Living Room capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events ... the room will have a STC (Sound Transmission Code) rating of 50, which will more than sufficiently mute the noise. The hotel designers specifically planned the Sun Deck to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east (Ardmore Blvd.) and six feet in all others directions (facing commercial uses). The size of the Sun Deck is 430 square feet with an occupancy

EXCERPT ON ZINC-LOBBY ACOUSTIC SEPARATION WALL, STAFF REPORT FOR 2005 CUP

application publicly in the newspaper three times. The result achieved was that not one neighbor or citizen protested the application. Margo Hoffman, the ABC investigator assigned to this case, verbally indicated that it is uncommon when an application does not elicit some minimal protest, and her letter indicates that no protests were received (Exhibit D). Four-star hotels and wedding venues typically hold Type 47 licenses – including Belamar Hotel, the Marriott, and Veranda (wedding and special event venue) in Manhattan Beach.

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

The plan-check engineer required Shade to construct a partition to separate the lobby from the Zinc Bar, to insulate the lobby from event noise. The wall must have a Sound Transmission Coefficient of 50 dB (STC-50). To demonstrate the STC-50 standard, this wall must mute noise in the lobby to 0.01% of noise in the bar.

1. All hotel marketing, advertising, and promotions must be limited to attracting potential hotel guests and event planners. The Wine Bar (now called “Zinc”) and Sun Deck will not be marketed to the general public as separate hospitality attractions. (The brochure included in this application demonstrates the intent of Shade Hotel.)
2. The Wine Bar will limit its food menu to appetizers or “small plates” (or “tapas”), to qualify as a “bonafide eating place” as required by the ABC Type 47 license. The Wine Bar will provide food service but will not operate as a full scale “restaurant”. (Breakfast will be served daily in the Living Room or Courtyard depending upon weather conditions.)
3. Shade Hotel will not post any drink or food menus, or any drink or food signage outside of the hotel.
4. The Sun Deck will stop regular alcohol service no later than 9:00 p.m. daily.
5. Alcohol service at events and functions will stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday – Thursday; 11:30 p.m., Friday and Saturday.

The applicant also states that the operators of Shade Hotel have a long history in Manhattan Beach as hands-on owners and managers of two reputable restaurants located downtown. Both restaurants – Manhattan Beach Brewing Company (15 years) and Rock’N Fish (4 ½ years) – offer liquor beverages to its customers, and both espouse a “good citizen” philosophy emphasizing conservative alcohol service and professional operational practices consistent with the community’s standards.

The Master Use Permit, Condition No. 40, regulates entertainment on the site by requiring an annual Entertainment Permit for any entertainment other than non-amplified background-type

MR. ZISLIS TESTIFIES AT 2005 CUP HEARING REGARDING ZINC-LOBBY ACOUSTIC WALL



EXCERPT FROM 2012-2013 SHADE HOTEL ENTERTAINMENT PERMIT

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

Police Department:

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

Total 1st floor occupancy 357 vs application 204;
Total occupancy 493 vs application 334, 48% increase

Fire Department:

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

2005 CUP: 45

Roof Deck - 92

Lobby Bar (Zinc Lounge) - 159

2005 CUP: 22

Patio to south of Zinc Lounge- 47

Courtyard Area - 151

Conference Room - 44

Staff increased Roof Deck (SkyDeck) and terrace occupancies from Project Description values. This violates Condition 1 in 2005 CUP, which requires planning commission approval for substantial changes from the project description.

Community Development Department:

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

EXCERPT FROM 2012-2013 SHADE HOTEL ENTERTAINMENT PERMIT

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amplified sound is incorporated. Entertainment that would result in dancing which exceeds the capacity of the 15' by 20' dance floor shall be prohibited. Entertainment and dancing shall conform to the attached floor plan. All doors leading to the outside shall remain closed at all times.

6. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
7. 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, 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 such as Lot 3.
8. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
9. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
11. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor

EXCERPT FROM 2012-2013 SHADE HOTEL ENTERTAINMENT PERMIT

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

- the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors and to minimize noise and disturbance.
12. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel 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 close. The doorman or other employee shall ensure that patrons do not leave the premises with alcoholic beverages. (See Use Permit conditions below for hours)
 13. A renewal application shall be submitted prior to March 1st.
 14. A sign stating "Hotel Guests only after 11:00 pm shall be placed outside the main entry to the hotel off of Valley Drive.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
2. All events are limited to a maximum of 99 people unless prior written approval through a Temporary Use Permit is provided by the Director of Community Development. Event size may not exceed the maximum occupancy as allowed by the Building or Fire Code limits.
3. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.
4. Noise mitigation strategies shall be implemented including; door, wall and ceiling treatments, as required within the Zinc Lounge and Zinc Terrace area in order to mitigate noise. The Zinc Lounge shall demonstrate that the insulation achieves an STC (Sound Transmission Code) rating of 50 to mute the noise.
5. Hours of operation for the hotel public areas shall be as follows:
Lobby Zinc Bar (including outdoor Zinc Terrace to south of Lounge)- 11:00 PM daily
Interior Outdoor Courtyard (to north of Zinc lounge) and Green Room (2nd floor meeting room) when used for special events and functions- 11:00 pm Sunday-Thursday, 12:00 midnight Friday and Saturday (alcohol service to stop half-hour prior).

**REQUIRES
DEMONSTRATION
OF STC-50 WALL
BETWEEN
ZINC & LOBBY**

EXCERPT FROM 2012-2013 SHADE HOTEL ENTERTAINMENT PERMIT

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

Skydeck (Rooftop Deck)- 10:00 pm daily (Alcohol service to stop at 9:00 P.M.)

6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.
7. The availability of the Inn for special events shall not be marketed as the primary use.
8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

No other food or alcohol service identified for the terrace

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees 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 operators shall police and promptly clean up all areas with any litter

**MR. ZISLIS TESTIFIES AT 2005 CUP HEARING,
TERRACE HOURS MORNING BREAKFAST ONLY, FOR 22 OCCUPANCY**



Terrace use also limited to breakfast only in Entertainment Permit, previous page, Item 10

RISE AND FALL OF THE SHADE HOTEL 2010 CUP

RISE OF THE 2010 CUP

- ◆ Six Planning Commission meetings, June 2009 to July 2010 [Also city council appeal to correct technical issues]
- ◆ Shade Hotel application regarding expansion of general-public use:
 - Increase in hours from 11 PM to midnight weekdays and to 1 AM weekends, including terrace
 - Full-service restaurant breakfast, lunch and dinner, including terrace
 - Dancing throughout hotel, not just Zinc lounge dance floor.
- ◆ Planning commission findings [The findings remain valid, even if the 2010 CUP expired]:
 - Cannot impose conditions without granting privileges [not documented; 28 Oct 2009 video]
 - Shade noise disturbs residents [2010 CUP Finding R]
 - Mitigation conditions required to prevent adverse impact [Required finding, 2010 CUP Finding Z(1)].
- ◆ Principal conditions imposed by PC in 2010 CUP:
 - Enforceable definition of closing time based on ABC standard [Condition 1]
 - West entry-exit for Zinc nightclub patrons [Conditions 28, 29, 30 & 31]
 - Terrace enclosure, in exchange for midnight close Fri-Sat [Conditions 11 & 22].

FALL OF THE 2010 CUP

- ◆ Per staff, the 2010 CUP expired in Sep 2013, because Mr. Zislis did not implement terrace noise mitigation.
- ◆ Per staff, the City cannot force Mr. Zislis to implement a CUP revision, if initiated by his application.
- ◆ The PC intended the 2010 CUP to take effect immediately, with or without noise mitigation. [Condition 22]
- ◆ Staff contravened the PC intent, by adding a nullifying clause, just hours prior to approval of the 2010 CUP.
- ◆ **Just days after 2010 CUP approval by the city council, the Planning Division directed MBPD to NOT enforce it, but use the 2005 CUP instead.**

CITY MANAGER JALILI BRIEFING OUTLINE

9 December 2013

2. RISE AND FALL OF THE SHADE HOTEL 2010 CUP [Exhibit 13]

2.1. Rise of the 2010 CUP

- 2.1.1. Six PC meetings, June 2009-July 2010, plus a Council appeal, September 2010
- 2.1.2. Application for general-public use
 - 2.1.2.1. Increase hours from 11 PM to midnight Sun-Thu and 01:00 AM Fri-Sat
 - 2.1.2.2. Expand dancing from Zinc dance floor to entire hotel
 - 2.1.2.3. Expand food from breakfast, no lunch and small-plates in Zinc Lounge to full-restaurant, including the terrace
- 2.1.3. PC Findings
 - 2.1.3.1. Cannot impose conditions without granting privileges [Seville-Jones and Lesser, 28 Oct 2009 meeting video]
 - 2.1.3.2. Evidence that Shade noise disturbs residents [2010 CUP Finding R]
 - 2.1.3.3. Mitigation conditions required to prevent adverse impact, pursuant to MBMC 10.84.060(A)(4) [2010 CUP Finding Z(1)]
 - 2.1.3.4. These findings remain valid, even if 2010 CUP expired**
(Except Finding E, regarding terrace closing time of 11 PM)
- 2.1.4. Principal conditions imposed by PC in 2010 CUP
 - 2.1.4.1. Enforceable definition of closed based on ABC standard of no “sale, service or consumption of alcohol” [Condition 1, Exhibit 7]
 - 2.1.4.2. West entry-exit for Zinc nightclub patrons [Conditions 28, 29, 30 & 31]
 - 2.1.4.3. Terrace enclosure, in exchange for midnight close Fri-Sat [Conditions 11]

2.2. Fall of the 2010 CUP

- 2.2.1. Mr. Zislis chose not to accept the 2010 CUP, by not implementing terrace enclosure or lobby vestibule [Conditions 11 and 12]
- 2.2.2. City cannot force Mr. Zislis to implement a new or revised CUP, if it initiated by his application [Ms. Jester, 19 Feb 2013 council meeting and 3 Sep 2013 staff report]
- 2.2.3. PC intended that the 2010 CUP take effect on approval by council, with or without terrace and lobby mitigation [Finding Y, Condition 22, Section 5]
- 2.2.4. Nullification of Condition 22 by Community Development [Exhibit 8]
 - 2.2.4.1. Condition 22 had the intent that Shade would not get the optional hours extension, unless implementation of terrace and lobby noise mitigation
 - 2.2.4.2. At the night of the last public hearing, June 2010, Ms. Jester added a sentence that required noise mitigation for 2010 CUP to take effect
 - 2.2.4.3. At the July 2010 PC meeting for final editing, Ms. Jester agreed that Condition 22 had the intent the 2010 CUP would take effect immediately
- 2.2.5. Days after approval of the 2010 CUP by the council, the Planning Division directed the MBPD to enforce the 2005 CUP, not the 2010 CUP [Exhibit 9A]**

TOTAL P.004

ABC DEFINITION OF CLOSING TIME

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.

**2010 CUP CONDITION 1 DEFINITION OF CLOSING BASED ON ABC STANDARD,
"NO SALE, SERVICE OR CONSUMPTION OF ALCOHOL"**

Sincerely,

Vincent E. Cravens
District Administrator

**NEW CONDITION 23 (22) IN DRAFT 2010 CUP,
INTRODUCED AFTERNOON BEFORE PC APPROVAL, JUNE 1010**

surrounding residents. After cessation of alcohol service in any venue or for any event or function, only background music is permitted.

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

18. **(PREVIOUSLY 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-

19. 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.

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

21. 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.

22. 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.

23. **NEW---**Noise Compliance Verification- The privileges within this Use Permit for extension of hours of operation, an increase to 125 people for special events and functions without administrative approval, and a full public food service, shall only be granted after the installation of the mitigation measures, implementation of the improvements and modifications to the operations of the facility. After completion of these measures, the Community Development Director, in cooperation with the Noise consultant, shall determine if the measures are effective and meeting the objective noise criteria and mitigation standards described in the previously submitted Noise reports. The neighbor representative may have input on the location, days and hours of the monitoring for any follow-up noise studies. If the measures are not effective at meeting the objective noise criteria established in the prior reports, the Director of Community Development may require additional mitigation, such as physical improvements, or operational changes, to ensure compliance.

**THIS CONDITION EXPRESSED PC INTENT THAT THE 2010 CUP
WOULD TAKE EFFECT IMMEDIATELY UPON COUNCIL APPROVAL,
EXCEPT THE NEW PRIVILEGES DEPENDED
UPON NOISE MITIGATION IMPLEMENTATION**

**MS. JESTER INTRODUCED A NEW CHANGE TO CONDITION 23 (22),
NIGHT OF THE JUNE 2010 MEETING, WHEN PC APPROVED**

surrounding residents. After cessation of alcohol service in any venue or for any event or function, only background music is permitted.

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

18. **(PREVIOUSLY 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-

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The privileges and rights within this Use Permit shall not be effective unless the objective noise criteria and dBA reductions, as described in the previous in the previously submitted Noise reports, are achieved.

**MS. JESTER'S NEW CLAUSE NULLIFIED THE PC INTENT
THAT THE 2010 CUP WOULD TAKE EFFECT,
IMMEDIATELY UPON COUNCIL APPROVAL,**

**PLANNING DIVISION DIRECTS MBPD TO ENFORCE 2005 CUP,
DAYS AFTER CITY COUNCIL APPROVED 2010 CUP**

Metlox

Allowed Hours, Alcohol Service and Entertainment 9-10

[CC Resolution No. 5770, and PC Resolution No.'s. 05-08 (Shade), 06-20 (Petros), 08-08 (Le Pain), and CC Resolution No. 6275 (Shade- replaces PC Resolution No. 05-08)]

NOTE:

Shade has not yet implemented the approval granted in CC Resolution No. 6275 from 9/7/10 and therefore they are still subject to the approvals in Resolution No.'s 05-08 and 5770, as shown below.

Shade Inn-Hours

Lobby Zinc Bar and Zinc Terrace (outdoor south side)- 11:00 PM daily
Interior Courtyard- Only to be used for special events and functions -11:00 pm Sunday –Thursday, 12:00 midnight Friday and Saturday. (Alcohol service to stop ½ hour prior)
Rooftop Deck- 10:00 pm daily (Alcohol service to stop 1 hour prior)

Town Square and Sashi Sushi Restaurant -Hours

11:00 pm Sunday –Thursday, 12:00 midnight Friday and Saturday (Alcohol service at restaurant to stop at 10:30 pm Sunday –Thursday, 11:30 pm Friday and Saturday)

Petro's Restaurant -Hours

12:00 am (midnight) Sunday –Thursday, 1:00 am Friday and Saturday (Alcohol service at restaurant to stop at 11:30 pm Sunday –Thursday, 12:30 am Friday and Saturday)

Le Pain Quotidien Bakery- Hours

7:00 am to 7:30 pm seven days a week. Service of limited beer and wine with food 10:00 am to 7:30 pm, seven days a week.

All tenants-Entertainment

Background music, non-amplified limited to 2 entertainers allowed without a permit. Dancing, amplified live music, or more than 2 entertainers requires an Entertainment Permit.

Shade has an Entertainment Permit, no other tenants do. Any events require a 7 day prior notice and the Permit has a number of other conditions.

G:\PLANNING DIVISION\Temporary (file sharing)\Bobby\Metlox\Metlox hours, entertainment and alcohol-09-10.doc

HOW TO CORRECT SHADE HOTEL VIOLATIONS OF ITS CUP?

OUR PHILOSOPHY AND THE CITY PROBLEM

- ◆ Eliminate the 2005 CUP conditions that Shade violates and add enforceable noise-mitigation conditions
- ◆ City problem: Mr. Zislis demands the new privileges, but will reject any enforceable regulations

CITY ATTORNEY THREE “RAILS” TO A SOLUTION

- ◆ **Rail 1:** Prosecute CUP violations. **Fails to address 2005 CUP deficiencies, and also resource-consuming.**
- ◆ **Rail 2:** Shade application. Mr. Zislis will reject enforceable conditions. **Same failed outcome as 2010 CUP.**
- ◆ **Rail 3:** Remand the CUP to the PC, based on 2005 CUP violations. **Mr. Zislis must accept, or lose use permit.**

ENFORCEABLE CONDITIONS BASED ON VALIDATED 2010 CUP

- ◆ Enforceable definition of closed, based on ABC standard, “No sale, service, or consumption of alcohol”
- ◆ West entry-exit for Zinc nightclub patrons
- ◆ Enclosure of terrace south wall
- ◆ Application of Strand House standard of no audibility at 75 feet

ANOTHER CITY PROBLEM: STAFF STATES TERRACE ENCLOSURE VIOLATES FIRE CODE

- ◆ The Planning Division Manager and the Community Development Director have testified that building officials and the MBFD determined the state fire-code precludes terrace enclosure
- ◆ Five Public Record Act requests have failed to provide a single document supporting staff’s claim
- ◆ **Staff cannot provide a single documented fact, other than hearsay, to support their claim that the fire-code precludes enclosing the terrace.**

CITY MANAGER JALILI BRIEFING OUTLINE

9 December 2013

3. HOW TO CORRECT SHADE HOTEL VIOLATIONS OF THE 2005 CUP?

3.1. Philosophy and Problem

- 3.1.1. Eliminate the 2005 CUP conditions violated and add enforceable mitigation
- 3.1.2. Problem: Zislis wants former but will oppose latter

3.2. City attorney identified three “rails” [Council meetings Sep 17, Oct 1, Dec 3]

- 3.2.1. **Rail 1:** Prosecute violations. **Fails to address 2005 CUP fundamental deficiencies**
- 3.2.2. **Rail 2.** Zislis’s application. Zislis will reject 2010 CUP enforceable conditions. **Same problem that sank the 2010 CUP**
- 3.2.3. **Rail 3.** Remand the use permit to PC, based on 2005 CUP violations, pursuant to MBMC 10.104.030. **Zislis must accept.**

3.3. Enforceable conditions

- 3.3.1. Definition of closed based on ABC standard, of no “sale, service or consumption of alcohol” [Condition 1] MBMC enforceable. **[Exhibit 9B]**
- 3.3.2. West entry-exit for Zinc nightclub patrons [Conditions 28, 29, 30 & 31]
- 3.3.3. Terrace enclosure, in exchange for midnight close Fri-Sat [Condition 11]
- 3.3.4. Fri-Sat midnight extension required because of enforceable closing time
- 3.3.5. Imposition of the Strand House standard, no-audibility at 75 ft

3.4. Community Development states building officials and MBFD have determined the terrace cannot be enclosed, thereby precluding that noise mitigation measure

- 3.4.1. Ms. Jester testified building officials met with Shade for “many, many months” but could not solve the terrace enclosure issue [Council meeting, 19 Feb 2013]
- 3.4.2. In response to our Public Record Act request, the City Clerk states the city has no record of such meetings: no plans, no memos, not a single document **[Exhibit 10]**
- 3.4.3. Director Thompson testified that MBFD determined fire code issues prevent enclosure of the south side. [Council meeting, 3 Sep 2013]
- 3.4.4. No records exists of the MBFD making such a determination, as determined by our five Public Record Act requests on the matter
- 3.4.5. Shade encloses the terrace completely with heavy drapes, which in June we proposed to replace with acoustic fabric
- 3.4.6. According to staff, building officials and MBFD believe a different drape-fabric will create a fire-code issue with the three rooms overlooking the terrace
- 3.4.7. Eight interior rooms open to the central courtyard, also enclosable with drapes. Staff has not explained how the courtyard rooms comply. These have less exit access, than the three interior terrace rooms, which do not comply. **[Exhibit 11]**

3.5. Staff cannot provide a single fact, other than hearsay, to support their claim that the fire-code precludes enclosing the terrace

**MBPD CHIEF IRVINE QUESTIONS HOW TO ENFORCE
SHADE NIGHTCLUB CLOSING TIME**

Nan Rados

Police Captain

P: (310) 802-5108

E: nrados@citymb.info



From: David N. Carmany

Sent: Monday, November 07, 2011 4:42 PM

To: Eve R. Irvine; Richard Thompson; Nan Rados; Andrew Harrod

Subject: RE: Shade employees deceived MBPD about their bar hours

11:30 works for me

David N. Carmany

City Manager

P: (310) 802-5053

E: dcarmany@citymb.info



From: Eve R. Irvine

Sent: Monday, November 07, 2011 4:37 PM

To: David N. Carmany; Richard Thompson; Nan Rados; Andrew Harrod

Subject: FW: Shade employees deceived MBPD about their bar hours

Mr. Carmany

There is a lot of history with this location, much of which I am unfamiliar with. To that extent, I would like to meet with you, Richard Thompson, Captain Rados, and Lt Harrod to further discuss the fallout.

I'm not sure if either side of this issue is forthcoming with the real CUP restrictions and requirements. I am certainly confused as to what can be done or if this was a one-time issue (the Oct 15 incident) or if now that it has come to the surface, this activity is occurring every night? I'm also not sure how you can restrict or close the business at 11pm for registered guests. Isn't this hotel a 24 hour operation? Regardless, I have been receiving numerous emails on this issue for the last three weeks.

To make matters worse; the PD's interaction with Mr. Zisli's on October 15, was ridiculous. So much so that Mr. Zisli's has profusely apologized (several times in the past two weeks) to PD personnel for his absurd, rude, and vitriolic behavior.

I can meet at 11:30 this Wed if you can all make it?

Thanks Everyone.



City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795
 Telephone (310) 802-5000 FAX (310) 802-5001 TDD (310) 546-3501

**CITY HAS NO RECORDS FOR THE "MANY, MANY MONTHS"
 OF MEETINGS WITH SHADE HOTEL REGARDING TERRACE ENCLOSURE**

March 4, 2013

Don McPherson
 1014 1st Street
 Manhattan Beach, California 90266
dmcphersonla@gmail.com

Re: Public Records Act Request – Received February 22, 2013

Dear Mr. McPherson:

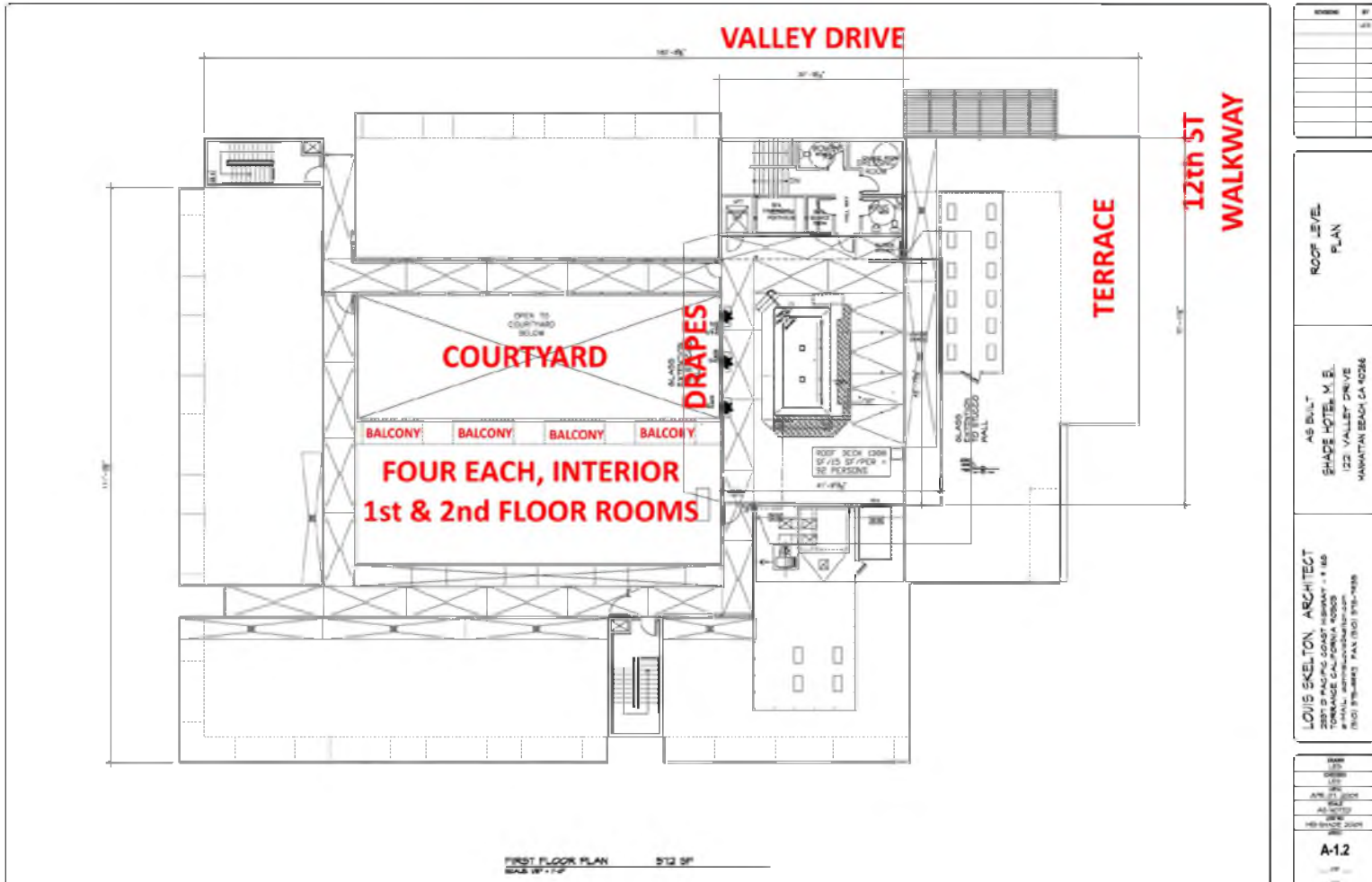
The City of Manhattan Beach (“City”) has received your Public Records Act (“Act”) request via e-mail dated February 22, 2013 regarding the Shade Hotel 2010 CUP. In your request, you specifically asked for the following:

1. Any written or electronic communications during 14 through 19 February 2013 between staff and councilmembers regarding the general topic described above, including memoranda to council sent by staff;
2. All written and electronic communications and materials discussed by staff and Shade Hotel representatives regarding safety issues and building code requirements, both state and city, related to implementation of physical noise abatement specified in Resolution 6275;
3. Citations to the municipal code, Local Coastal Program and Resolution 6275 sections invoked by the Community Development Director in the decision that Resolution 6275 had defaulted to Resolution No. PC-05-08; and,
4. Any written or electronic records pertaining to the meeting on 9 November 2011 between City officials and the Police Department regarding default of Resolution 6275 to Resolution No. PC-05-08.

In accordance with Government Code Section 6253, this letter serves as the City’s written response to your request. The City has documents responsive to Items No. 1, 3, and 4 of this request. The City does not have documents responsive to Item No. 2.

STAFF REPORT, 3 SEPTEMBER 2013

**MBFD HAS CONCERNS OVER USING ACOUSTIC FABRIC
IN EXISTING TERRACE ENCLOSURE DRAPES**



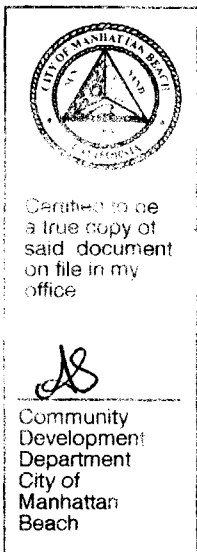
RESOLUTION NO. PC 05-08

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED ALCOHOL SALES AND SPECIAL EVENTS AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATION COMPANY, LLC- MICHAEL A. ZISLIS, PRESIDENT)

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

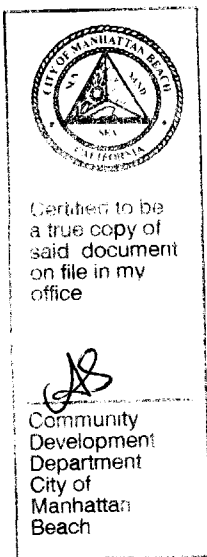
SECTION 1. The Planning Commission of the City of Manhattan Beach, California, hereby makes the following findings:

- A. Manhattan Inn Operation Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previously approved alcohol sales and special events at the Shade Hotel, Metlox site, 1221 north Valley Drive in the City of Manhattan Beach.
- B. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission and therefore they will review the project and make a determine if an amendment to the Permit will be required to be processed.
- D. The applicant is Manhattan Inn Operation Company, LLC and the property owner is the City of Manhattan Beach.
- E. The following is a summary of some of the key milestones for the Metlox site:
- 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner
 - April 2001- The City Council certified the EIR
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
 - November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
 - February 2003- Groundbreaking for the Metlox parking structure
 - January 2004- Grand opening of public parking structure with 460 parking spaces
 - April 2004- Shade Hotel construction commenced
 - September 2004- Construction of the Metlox commercial buildings started
- F. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meeting of May 25, 2005. The public hearing was advertised pursuant to applicable law and testimony was invited and received.



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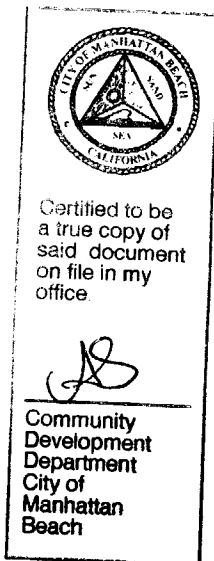
- G. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.
- H. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space.
- I. The General Plan designation for the property is Downtown Commercial.
- J. The proposed project is a modification of the previously approved alcohol sales for the Shade Hotel to provide high quality service to their customers consistent with the business plan for the four-star hotel, as well as to provide consistency with the State Alcoholic Beverage Control (ABC) regulations. The previous approval (Condition No. 38- City Council Resolution No. 5770) allows full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The State Alcoholic Beverage Control (ABC) regulations require a full liquor license throughout the Hotel facility (Type 47 license) that is open to the general public and includes the service of food in order to allow the in-room mini-bar license (Type 66 license). There is no ABC license, or series of licenses that would allow beer and wine only for guests, and full liquor for the mini-bars. A portable bar with full liquor (Type 68 license), for special events, is also proposed. Full liquor is proposed throughout the Hotel including the Courtyard, the Living Room which includes the Lobby and Wine Bar, the Porch, the Meeting Room and the rooftop Sun Deck. Alcohol is only allowed to be consumed on the site, it may not be taken off-site for consumption.
- K. The previous approval (Condition No. 28- City Council Resolution No. 5770) also limits special events (weddings, parties, etc.) to 60 people, and the modification requests a maximum of 99 people, without approval of a Temporary Use Permit.
- L. No changes to the previously approved hours of operation are proposed for either the alcohol sales or the special events. Breakfast Service in the Living Room, Porch, and/or Courtyard is proposed from 6:00 AM to 10:00 AM Monday-Friday and 6:00 AM-11:00 AM Saturday and Sunday. The "Wine Bar" is proposed to operate in the evenings from 5:00 PM to 11:00 PM daily, although flexibility for earlier hours based on the needs of the customer is desired. Although the emphasis of the "Wine Bar" will be on providing a wide selection of premium wines, full liquor will be available. Additionally, the Wine Bar will provide a variety of appetizers in order to qualify as an eating establishment as required by the ABC. Mid-day (lunch) food service will not be provided, except for room service.
- M. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. The changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. All



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advertising, marketing and promotions will be focused on potential hotel guests and not the general public.

- N. As part of the ABC license application process completed in February 2005 public notices were mailed to the neighbors located within a 500 yard radius of the property, the application sign was posted on the exterior of the property for thirty days, and the application was advertised publicly in the newspaper three times. Not one neighbor or citizen protested the application.
- O. Potential noise concerns will be addressed through the review of the annual Entertainment Permit as well as a retractable partition in the Living Room will be installed which is capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events as the room will have a STC (Sound Transmission Code) rating of 50. The Sun Deck is designed to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east and six feet in all others directions.
- P. The ABC has identified the Downtown area of Manhattan Beach as having an "undue concentration" of alcohol licenses, which is typical for South Bay Cities. The criteria that the ABC uses in their calculations and determination of "undue concentration" takes into account all of Los Angeles County, including areas with very little population. This tends to create areas of "undue concentration" of alcohol licenses in areas where there is concentration of people and businesses, such as Downtown and other commercial areas. The Planning Commission makes the findings of public convenience and necessity for the alcohol license as the license for the hotel use is compatible with similar uses that have alcohol licenses, and other Downtown uses and the City Council has reviewed alcohol licenses in the past and has supported alcohol in conjunction with food service and hotel uses.
- Q. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- R. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution only amends Conditions No's 28 and 38 of Resolution No. 5770, all other conditions remain effective and in full force.
- S. Based upon State law, and MBLCP Section A.84.050, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the 'use permit' of Shade Hotel are consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the city's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts.
 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the proposed amended 'use permit' of this



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business property is consistent with the General Plan for the Commercial Downtown designation, because it is merely the granting of additional privileges to an already approved use that will result in no fundamental change of that use. Amending the 'use permit' to comply with ABC regulations and the approval of larger special events will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the boutique hotel. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city. Additionally, the project is consistent with the following General Plan Goals and Policies:

GOALS AND POLICIES: LAND USE

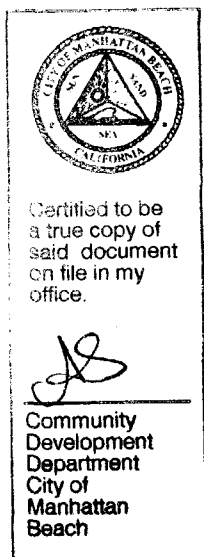
Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

Policy LU-6.1: Support and encourage small businesses throughout the City.

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the issuance of a certificate of occupancy. The proposed amended 'use permit' for the boutique hotel is consistent with the already approved primary and secondary uses of the facility. The new uses will comply with the provisions and conditions of this title.
4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the boutique hotel, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.



SECTION 2. The Planning Commission of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment subject to the following conditions.

General Conditions

1. The proposed project shall be in substantial conformance with the plans submitted and the project description, as approved by the Planning Commission on May 25, 2005, subject to any special conditions set forth below. The layout of the Lobby area, including the sound insulation, and roof deck is subject to further review and approval

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by the Director of Community Development. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.

Land Use

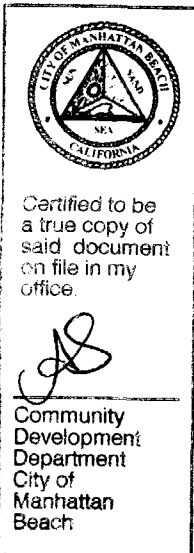
2. (This condition replaces Condition No. 28- City Council Resolution No. 5770) The Inn may provide wedding, party, and other special event services in their Courtyard, Meeting Room, and Living Room, as a secondary service to the primary Inn use. These types of events are limited to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday. Events are limited to a maximum of 99 people, or whatever the maximum occupancy is as determined by the Building or Fire Code limits, whichever is less. The Director of Community Development may approve Temporary Use Permits for events which exceed 99 people, not to exceed the maximum occupancy as allowed by the Building or Fire Code limits. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. The availability of the Inn for special events shall not be marketed as the primary use.

Alcohol

3. (This condition replaces Condition No. 38- City Council Resolution No. 5770) The two restaurants may provide full liquor service, which is incidental to, and in conjunction with, the service of food. Service of alcohol at the restaurants shall be in conjunction with the service of food at all times during all hours of operation. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.

New conditions

4. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Wine Bar (now called "Zinc") and Sun Deck will not be marketed to the general public as separate hospitality attractions.
5. The Wine Bar shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room, Porch, and/or Courtyard.
6. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
7. The Sun Deck shall stop regular alcohol service no later than 9:00 p.m. daily.
8. Alcohol service at events and functions shall stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday - Thursday; 11:30 p.m., Friday and Saturday.



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Procedural

9. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.
10. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.
11. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.
12. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.
13. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
14. Review. All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after occupancy 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.
15. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
16. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.
17. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.



Certified to be
a true copy of
said document
on file in my
office.

AS

Community
Development
Department
City of
Manhattan
Beach

Resolution No. PC 05-08

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.


I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of **May 25, 2005**, and that said Resolution was adopted by the following vote:


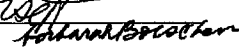
AYES: Chairman O'Connor, Vice-Chair Savikas, Commissioners Kuch and Simon

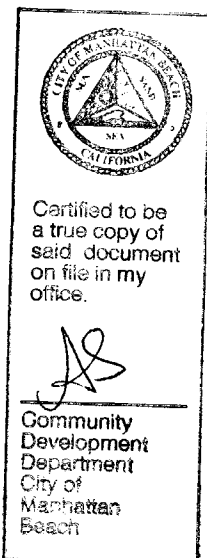
NOES: None

ABSTAIN: None

ABSENT: None



RICHARD THOMPSON
Secretary to the Planning Commission

Sarah Boesch
Recording Secretary




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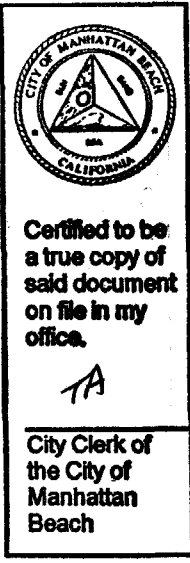
RESOLUTION NO. 6275

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH UPHOLDING AN APPEAL OF LIMITED CONDITIONS OF A PLANNING COMMISSION APPROVAL FOR AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED HOURS OF OPERATION, NOTIFICATION FOR EVENTS, ALLOWING EXPANDED FOOD SERVICE OPERATIONS, APPROVING VARIOUS NOISE MITIGATION MEASURES AND DENYING A HEIGHT VARIANCE FOR A 6-FOOT HIGH ROOFDECK NOISE BARRIER AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATING COMPANY, LLC- MICHAEL A. ZISLIS, PRESIDENT)

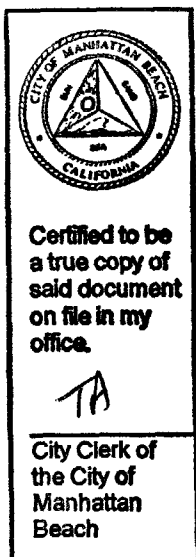
THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach, California, hereby makes the following findings:

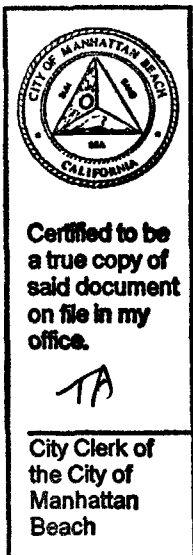
- A. The Planning Commission of the City of Manhattan Beach conducted public hearings regarding the second Amendment to the Master Use Permit related to the Shade Hotel on June 24, 2009, July 22, 2009, October 28, 2009, May 12, 2010 and June 23, 2010. The public hearings were advertised pursuant to applicable law and testimony was invited and received, and on June 23, 2010, the public hearing was closed. The Planning Commission directed staff to bring back a final Resolution on July 28, 2010. The Planning Commission approved the Amendment for the Shade Hotel, and adopted Resolution No. PC 10-05 on July 28, 2010.
- B. On August 11, 2010, the applicant, Shade Hotel, and the neighborhood representative, Nate Hubbard, filed a joint appeal of limited conditions of the Planning Commission approval. The Shade and neighbors have agreed to minor revisions to conditions 12, 23, 28 and 31. The conditions relate to the valet service and skydeck.
- C. The City Council of the City of Manhattan Beach conducted a public hearing on September 7, 2010 to consider the appeal. Said hearing was advertised pursuant to applicable law, and testimony was invited and received.
- D. At the City Council hearing the City Council upheld the appeal and upheld the Planning Commission approval of the project with minor modifications to conditions 12, 23, 28 and 31.
- E. Manhattan Inn Operating Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previous approval. The three changes include: 1- Extension of hours of operation to midnight on Fridays, Saturdays and Holidays, except for the skydeck and other minor exceptions, 2- An increase to 125 people for special events (weddings, parties, etc.) without administrative approval, and 3- Expanded public food service (breakfast, lunch and evening "small plates"). Additionally, a Variance for six-foot high noise barriers around the north, south and east sides of the roofdeck is requested. 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 Thursdays-Sundays and 12 midnight Fridays-Saturdays for special event use only for the Courtyard, 99 people for special events without notification, and limited food service for guests.
- F. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- G. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission. An amendment to the Coastal Permit will not be required to be processed as there are no relevant coastal issues related to the subject application.



- H. An amendment to the Disposition and Development Agreement (DDA) may be required, and that action will be determined by the City Council.
- I. The applicant is Manhattan Inn Operating Company, LLC and the property owner is the City of Manhattan Beach.
- J. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.
- K. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space, with Single Family Residential and High Density Residential to the east past Valley and Ardmore Drives.
- L. The General Plan designation for the property is Downtown Commercial.
- M. The following is a summary of some of the key milestones for the Metlox site:
 - 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner
 - April 2001- The City Council certified the EIR
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
 - November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
 - February 2003- Groundbreaking for the Metlox parking structure
 - January 2004- Grand opening of public parking structure with 460 parking spaces
 - April 2004- Shade Hotel construction commenced
 - September 2004- Construction of the Metlox commercial buildings started
 - May 2005- Planning Commission approved first Shade Amendment Resolution No. PC 05-08
- N. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the first Amendment to the Master Use Permit for the Shade related to alcohol sales and special events at their regular scheduled meeting of May 25, 2005. The public hearing was advertised pursuant to applicable law and testimony was invited and received. The Planning Commission approved the Amendment for the Shade Hotel, and adopted Resolution No. PC 05-08. The facts and findings for that approval are included in the public records for that application.



- 1 O. The original approval (Condition No. 38- City Council Resolution No. 5770) allowed full liquor in
- 2 self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only.
- 3 The original approval (Condition No. 28- City Council Resolution No. 5770) also limited special
- 4 events (weddings, parties, etc.) to 60 people.
- 5
- 6 P. Resolution No. PC 05-08 allowed a Type 47 ABC license for the site, allowing full liquor open to
- 7 the general public and including the service of food in order to allow the in-room mini-bars (Type
- 8 66 license), as well as the portable bar with full liquor (Type 66 license), all for on-site
- 9 consumption of alcohol only, as well as events up to 99 people without approval of a Temporary
- 10 Use Permit.
- 11
- 12 Q. Portions of Resolution No. PC 05-08 have been subject to interpretation as the hotel is a 24-
- 13 hour operation while the support services of the bar, food service and events are limited.
- 14 Additionally, there are no definitions of special events, guests, closing, and other regulatory
- 15 terms in the Resolution. One of the goals of this Amendment is to clarify definitions and
- 16 language in the Resolution.
- 17
- 18 R. Many neighboring residents at the Planning Commission public hearings have testified that
- 19 Shade Hotel makes noise that discomforts and irritates "reasonable persons of normal
- 20 sensitiveness," as defined by the subjective standard in Chapter 5.48 of the MBMC. The
- 21 Manhattan Beach Police Department has responded to numerous calls regarding Shade
- 22 disturbances, and for several of these incidents, has reports and recordings of noise from
- 23 Shade.
- 24
- 25 S. Neighbors indicate that taxi pickup and drop-off on Valley Drive create disturbances. The City
- 26 established a taxi stand on Morningside Drive at 13th Street in 2009 to address this issue and
- 27 has notified the taxi franchises of the requirements.
- 28
- 29 T. Two independent acoustics analysis, dated October 21, 2009 and March 10, 2010, were
- 30 conducted by Don Behrens & Associates under the direction of the Community Development
- 31 Department. The reports indicate that noise from the Shade Hotel does not exceed the objective
- 32 noise standards in the MBMC; the subjective standard was not evaluated in the reports. Actual
- noise measurements and continuous noise monitoring was conducted during large events on
- the skydeck, courtyard, lounge and terrace. A three-dimensional modeling of noise to assess
- various mitigation was also constructed. The reports proposed a variety of mitigation options
- including a front (east) entry vestibule, terrace enclosure, roofdeck extensions, west
- entry/exit/queue and taxi stand. Mitigation is incorporated into the conditions based on these
- recommendations, public hearing comments and Planning Commission discussion and
- direction.
- U. Due to the open design, the terrace has minimal soundproofing and constitutes a major noise
- source, particularly for residents south of 12th Street. Additionally, the front (east) entry door has
- noise leakage that impacts residents, largely between 12th and 13th Streets. The rooftop deck
- generates noise that largely impacts residents north of 13th Street.
- V. The primary use and purpose of Shade Hotel, is and will continue to be, to serve the community
- as a hotel offering first-class accommodations to visitors. The hotel may also offer event,
- function, food, and other similar support functions as secondary uses. Marketing and promotion
- of the hotel shall be consistent with these uses as provided in the conditions.
- W. Potential noise and other neighborhood impacts from Entertainment, as defined and regulated
- in Chapter 4.20 of the MBMC, will be addressed through the administrative review of the annual
- Entertainment Permit. The Entertainment Permit is a separate administrative permit, and is
- regulated independently from the land use entitlement of the Master Use Permit and Master
- Use Permit Amendment.
- X. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as
- defined in Section 711.2 of the Fish and Game Code.



- Y. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution supersedes Resolution No. PC 05-08 and Resolution No. PC 10-05. It also amends only Conditions No's 28 and 38 of Resolution No. 5770, all other conditions in that Resolution (unless amended by other separate Resolutions for other Metlox tenants) remain effective and in full force.
- Z. Based upon State law, and MBMC Section 10.84.060, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
 - 1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the use permit for Shade Hotel is consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the City's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts through the conditions of approval which require physical noise mitigation and operational revisions.
 - 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the proposed amended use permit is consistent with the General Plan for the Commercial Downtown designation, because it is granting additional privileges to already approved uses that will result in minimal fundamental change of those uses. Amending the use permit will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the hotel facility. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city, due to the conditions. Additionally, the project is consistent with the following General Plan Goals and Policies:

GOALS AND POLICIES: LAND USE

Policy LU-5.2: Work with all commercial property owners bordering residential areas to mitigate impacts and use appropriate landscaping and buffering of residential neighborhoods.

Policy LU-5.4: Discourage the outdoor commercial and industrial use of property adjacent to residential use.

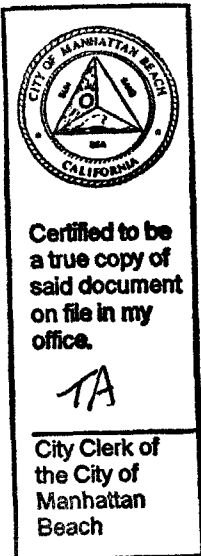
Policies LU-5.7, 6.4 and 7.6: Recognize the unique qualities of mixed-use areas, and balance the needs of both the residential and commercial uses.

Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

Policy LU-7.1: Encourage the upgrading and growth of businesses in the Downtown area to serve as a center for the community and to meet the needs of local residents and visitors.



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GOALS AND POLICIES: NOISE

Goal N-2: Incorporate noise considerations into land use planning decisions.

Policy N-2.2: Ensure acceptable noise levels near residences, schools, medical facilities, and other noise-sensitive areas.

Policy N-2.5: Require that the potential for noise be considered when approving new development to reduce the possibility of adverse effects related to noise generated by new development, as well as impacts from surrounding noise generators on the new development.

Policy N-3.4: Recognize in the Noise Ordinance that nighttime noise levels create a greater sensitivity than do daytime noise levels.

- 3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the implementation of the new conditions. The proposed amended use permit is consistent with the already approved primary and secondary uses of the facility.
- 4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the hotel facility, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.

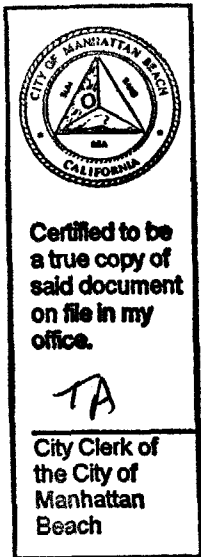
A.A. Based upon State law, and MBMC Section 10.84.060, relating to the Variance application for the proposed project, the following findings CAN NOT be made:

- 1. Because of special circumstances or conditions applicable to the subject property—including narrowness and hollowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions—strict application of the requirements of this title would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;
- 2. The relief may be granted without substantial detriment to the public good; without substantial impairment of affected natural resources; and not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and
- 3. Granting the application is consistent with the purposes of this title and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district and area district.

SECTION 2. The City Council of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment, subject to the following conditions, and DENIES the subject Variance.

Definitions

- 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 glasses, bottles, cans, and drinks, including from registered guests, to comply with the ABC definition of closed, as "no sale, service, or consumption of alcoholic beverages."

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

3. Function. A "themed" function held periodically for the general public, up to twelve (12) per year, 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.

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

5. Invitee. Invited guests of a registered guest.

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.

7. Background music. Sound intensity anywhere in a room or venue not greater than 65 dBa.

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

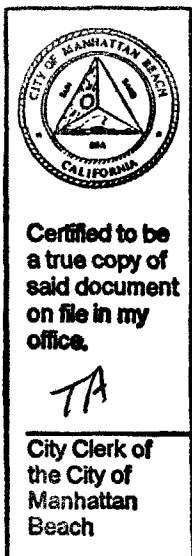
Entertainment and Noise

9. 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.

10. Entertainment and amplified sound- All amplified music and sound shall use the house system only and shall be limited to background music with the following exceptions;

- A. The Courtyard may have one annual function, for example, Oktoberfest, with live amplified entertainment, from 4 to 8 PM.
- B. 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;
- C. 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.

11. 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 for the fully enclosed terrace. 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 enclose the area, they may only be closed during special events and when raining, or for shade.



1 12. Front (East) Entry Vestibule- A permanent front entrance vestibule, bonded and sealed to the
2 building, shall be constructed to enclose the front doors. The vestibule shall be acoustically sealed,
3 designed and constructed to meet the City Noise consultants' acoustical standards consistent with their
4 noise studies. The vestibule shall also meet all Building Safety and other City requirements, including
5 but not limited to emergency egress and disabled access. Between 9:00 PM and 6:00 AM on Fridays,
6 Saturdays, New Years Eve and Sundays before Memorial Day and Labor Day, the following conditions
7 shall apply: a) the front entrance doors shall be closed and only operable through the interlock/double
8 door vestibule; b) the hotel clerk or other hotel employee shall only allow passage for disabled,
9 registered hotel guests and valet patrons as permitted in Condition #28, and all others shall use the
10 west entrance; c) the vestibule may also be operable with a hotel room key, and; d) only one set of
11 doors may be opened at any time.

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

14 14. Courtyard-bar corridor wall- A new acoustic moveable wall shall be installed to separate the interior
15 courtyard from the corridor north of the lobby bar. After 9 PM Friday, Saturday, New Years Eve, and
16 Sundays before Memorial and Labor Day, and any day if the entry/exit queue is greater than 5 people
17 for more than 15 minutes, both corridor walls (adjacent to the courtyard and the lobby bar) shall remain
18 closed for the rest of the night, unless there is a special event or function using both the Courtyard and
19 Zinc bar/ lobby. Whenever the Zinc bar and lounge has amplified sound, other than background music,
20 after 9 PM the north acoustic wall shall remain closed. There shall be no sale, service or consumption
21 of alcohol in the corridor when one or both moveable walls are closed.

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

28 16. Sound audibility- The volume of music, entertainment, group singing, or voice, whether or not
29 amplified, may not be audible outside of the hotel facilities to the following extent. For any length of
30 time, except for the one function referenced in Condition No. 10 A., the noise may not dominate the
31 background ambient noise, nor disturb surrounding residents, as defined in the MBMC noise
32 regulations. After cessation of alcohol service in any venue or for any event or function, only
background music is permitted.

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

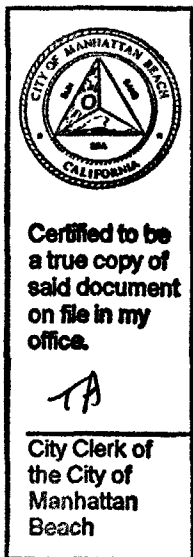
18 Entertainment Permit- Each year, the hotel shall apply for an annual entertainment permit on or
before March 1, in accordance with Condition 40 in Resolution 5770, Metlox Master Use Permit.

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

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

23 Exterior Doors- All exterior doors to the public areas of the hotel facility shall be closed after 9:00 PM
24 on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and daily for all
25 special events and functions.

26 Noise Compliance Verification- The privileges within this Use Permit for extension of hours of
27 operation shall only be granted after the installation of the mitigation measures, implementation of the
28 improvements and modifications to the operations of the facility. After completion of these measures,
29 the Community Development Director, in cooperation with the Noise consultant, shall determine if the
30 measures are effective and meeting the objective noise criteria and mitigation standards described in



the previously submitted Noise reports. The neighbor representative may have input on the location, days and hours of the monitoring for any follow-up noise studies. The privileges and rights within this Use Permit shall not be effective unless the objective noise criteria and dBA reductions, as described in the previously submitted Noise reports, are achieved.

23. 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 in, Minutes)</u>
Zinc bar and lounge, Fridays-Saturdays and Sundays before Memorial Day and Labor Day	Midnight	20
Zinc bar and lounge, Sundays-Thursdays	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	20

Note 1. New Years Eve closed for all venues as regulated by MBMC- currently 1:00 AM, except the skydeck shall close at 10:00 PM.

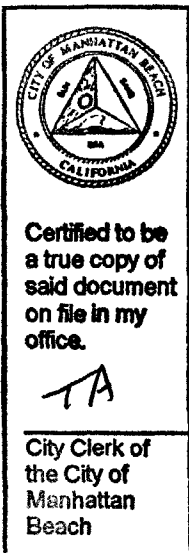
General Conditions

24. 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.

25. 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

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



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27. 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.

Ingress-Egress Control

28. Valet- The Shade valet service shall relocate away from the Shade east or south entrances after 10:00 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after 10:00 PM for special events and functions any day of the week. Everyone, except for registered hotel guests and disabled, shall be prohibited from picking up their vehicles from the Shade front (east) entrance. 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.

29. Taxis- Hotel employees shall discourage the public from using taxis on Valley Drive 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 and disabled, 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 and disabled at the entrance at any time.

30. Entry-Exit Queue- The hotel shall locate the entry and exit queue at the west side of the building as required in Condition 31, but the queue shall not extend past the south or north sides of the building.

31. West entry-exit- After 9:00 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after 9:00 PM 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, disabled and valet patrons as permitted in Condition #28, may use the front east door.

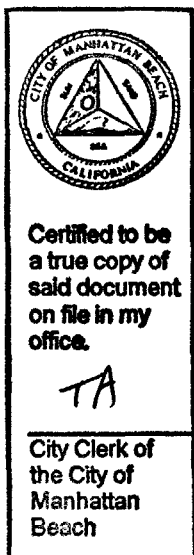
On Sundays through Thursdays, if more than five patrons are waiting for more than 15 minutes to enter, staff shall establish the queue at the west side of the building for the rest of the night. Employees shall close and monitor the front (east) entry door as required to ensure access only by registered 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.

32. Staff parking- The hotel shall instruct their employees, contract employees, contractors servicing events, and all others providing services to the Hotel to 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.

33. 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.

34. 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.



35. 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.

Food service

36. 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.

Marketing

37. Marketing-General- 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.

38. Marketing-Bar and Functions- 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. The Zinc bar/lounge, terrace, and Skydeck will not be exclusively marketed to the general public as separate hospitality attractions.

39. Menu Posting- 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.

Procedural

40. 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.

41. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.

42. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.

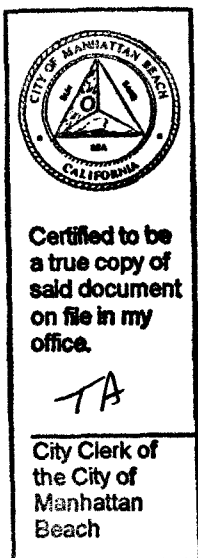
43. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.

44. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.

45. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.

46. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.

47. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.



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48. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution. The City Clerk shall send a certified copy of the resolution to the applicant, and if any, the appellant at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by Code of Civil Procedure Section 1094.6.

SECTION 4. The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.

SECTION 5. This resolution shall take effect immediately.


SECTION 6. The City Clerk shall certify to the adoption of this Resolution and thenceforth and thereafter the same shall be in full force and effect

PASSED, APPROVED, and ADOPTED this 7th day of September, 2010.

Ayes: Tell, Powell, Cohen, Montgomery and Mayor Ward.
Noes: None.
Abstain: None.
Absent: None.


Mayor, City of Manhattan Beach, California


ATTEST:



City Clerk



Certified to be a true copy of the original of said document on file in my office.



Sr. Deputy City Clerk of the City of Manhattan Beach, California

A Little Analogy to Clarify (hopefully) the dB Mystery

The dB measurement of sound may seem unfathomable, but by analogy, we do relate to another mysterious measurement unit that has similar characteristics, namely, the Richter scale for earthquakes.

We recognize that a 2.0 or 3.0 magnitude temblor reminds us we live in earthquake country, but a 5-6 quake scares us silly. With luck, none of us will ever experience a big one, 7-8 magnitude on the Richter scale.

We can measure an inch and wait a minute, so we know what that physically means. Most of us do not know exactly what 3.0 on the Richter scale means, although some of us know that it represents the amount of energy in the quake. Also, a magnitude 8 quake is not just two times more intense than a magnitude 4 shaker; a magnitude 8 quake wreaks devastatingly huge catastrophes.

Bigger magnitude is 'badder' for earthquakes, and higher db is louder for sound. These units are *nonlinear*, as evidenced by the huge difference in intensity of magnitude 4 and 8 earthquakes. According to the OSHA standard, we can endure 90 dB sound for eight hours without damage, whereas at twice that level, 180 dB, the noise *kills* the hearing tissue, for *any duration* exposure.

We feel comfortable in relating to earthquake magnitudes, without really knowing what that number measures. By analogy, we could feel comfortable relating to dB levels for sound, if we had some mental measuring stick calibrated to real sounds, such as normal conversation, street noise, or a rock band.

The attached table of dB levels versus different types of sound may help you to create a mental measuring stick in dB sound units.

Decibel (Loudness) Comparison Chart

Here are some interesting numbers, collected from a variety of sources, that help one to understand the volume levels of various sources and how they can affect our hearing.

Environmental Noise	
Weakest sound heard	0dB
Whisper Quiet Library	30dB
Normal conversation (3-5')	60-70dB
Telephone dial tone	80dB
City Traffic (inside car)	85dB
Train whistle at 500', Truck Traffic	90dB
Subway train at 200'	95dB
<i>Level at which sustained exposure may result in hearing loss</i>	<i>90 - 95dB</i>
Power mower at 3'	107dB
Snowmobile, Motorcycle	100dB
Power saw at 3'	110dB
Sandblasting, Loud Rock Concert	115dB
<i>Pain begins</i>	<i>125dB</i>
Pneumatic riveter at 4'	125dB
<i>Even short term exposure can cause permanent damage - Loudest recommended exposure <u>WITH</u> hearing protection</i>	<i>140dB</i>
Jet engine at 100', Gun Blast	140dB
Death of hearing tissue	180dB
Loudest sound possible	194dB

OSHA Daily Permissible Noise Level Exposure	
Hours per day	Sound level
8	90dB
6	92dB
4	95dB
3	97dB
2	100dB
1.5	102dB
1	105dB
.5	110dB
.25 or less	115dB

Perceptions of Increases in Decibel Level	
Imperceptible Change	1dB
Barely Perceptible Change	3dB
Clearly Noticeable Change	5dB

About Twice as Loud	10dB
About Four Times as Loud	20dB

Sound Levels of Music	
Normal piano practice	60 -70dB
Fortissimo Singer, 3'	70dB
Chamber music, small auditorium	75 - 85dB
Piano Fortissimo	84 - 103dB
Violin	82 - 92dB
Cello	85 -111dB
Oboe	95-112dB
Flute	92 -103dB
Piccolo	90 -106dB
Clarinet	85 - 114dB
French horn	90 - 106dB
Trombone	85 - 114dB
Tympani & bass drum	106dB
Walkman on 5/10	94dB
Symphonic music peak	120 - 137dB
Amplifier rock, 4-6'	120dB
Rock music peak	150dB

NOTES:

- One-third of the total power of a 75-piece orchestra comes from the bass drum.
- High frequency sounds of 2-4,000 Hz are the most damaging. The uppermost octave of the piccolo is 2,048-4,096 Hz.
- Aging causes gradual hearing loss, mostly in the high frequencies.
- Speech reception is not seriously impaired until there is about 30 dB loss; by that time severe damage may have occurred.
- Hypertension and various psychological difficulties can be related to noise exposure.
- The incidence of hearing loss in classical musicians has been estimated at 4-43%, in rock musicians 13-30%.

Statistics for the Decibel (Loudness) Comparison Chart were taken from a study by Marshall Chasin , M.Sc., Aud(C), FAAA, Centre for Human Performance & Health, Ontario, Canada. There were some conflicting readings and, in many cases, authors did not specify at what distance the readings were taken or what the musician was actually playing. In general, when there were several readings, the higher one was chosen.

#2

Angela Soo

From: Laurie B. Jester
Sent: Wednesday, February 12, 2014 10:00 AM
To: List - Planning Commission
Subject: FW: MBMS Shade letter
Attachments: zislis letter.doc

From: katie kruff-richardson [<mailto:katie@zislisgroup.com>]
Sent: Wednesday, February 12, 2014 9:13 AM
To: Laurie B. Jester
Subject: Fwd: letter

Hi Laurie,

Is it possible to submit this?

Katie Kruff Richardson
Executive Vice President
Zislis Group
310-546-7800 ext 229
zislisgroup.com



February 11, 2014

To Whom it may Concern,

It is with great pleasure and gratitude that I write this letter for Michael Zislis. Michael began his relationship with Manhattan Beach Middle School over 15 years ago. What started as a one-time donation grew into an adoptive and supportive relationship. Michael has always gone out of his way to make sure that MBMS had the funds needed to operate its extracurricular programs. As the years passed by, Michael's donations were used for a variety of needs. Not only did these donations fund activities for the students, they funded supplies, school beautification projects, teacher education, and other aspects of the school's educational foundation. Many times donors are particular as to where their money is spent. They only want to fund exotic and sexy programs. Unfortunately schools also have nuts and bolts needs. No one wants to fund mundane items such as ink cartridges, paper, classroom repair, paint on the walls, etc. But these are essential to the running of a successful school. Michael has never been one to worry about where his donations end up. He is happy to let the school site decide where his donations will make the most impact on student learning. This attitude has allowed us to continue our commitment to extracurricular activities, make sure our campus has the basics to run our educational program, and fund cutting edge programs such as our STEM classes, one-to-one iPad program, Writer's Workshop Initiative, and our Friendship Circle Program just to name a few. While Surf PE continues to be a major benefactor of the commitment that Michael has made to MBMS, other areas of support are our performing arts departments, science classes, elective classes, and special after school activities. His funding of Wave Fest, Spring Mania, Sixth-Grade Family Swing Night and Ice Cream Social, MBMS live, and other such educational and fun activities brings another dimension to the educational experience of the families and students of MBMS.

One of the most incredible things is Michael doesn't wait for the school to come to him. He initiates the conversation about how can he support the school. He is the one who calls us to ask what can he do to support the school. He's the one that calls us and asks if we would like to join him in some activity such as his annual Wine Auction. During the past several years the wine auction, which Michael runs to support MBMS programs, has had various degrees of success. During the lean years Michael always puts in his own money to bring the level of support to the highest level. During good years Michael makes sure MBMS gets as much support as they need. I never have to worry whether or not the wine auction is successful, Michael always comes through. Not only does Michael make sure MBMS is financially secure, he helps with our community relations, our teacher morale, and other aspects of our school environment. He graciously supports teacher get-togethers by donating space in his hotel and restaurants and supplying food and refreshment to the teachers as a thank you for their service to the community. He also opens his establishments when we need space for a PTA or community meeting.

Michael has always done his donating in the background. Michael never asks for publicity concerning his donations. I have to beg him to allow us to hang up a banner or mention his name in our newsletter. He even balks when the local press takes our pictures to celebrate his support of the educational community.

Michael is the consummate professional and his events mirror that image. He stages top-notch events and his clientele is always above reproach. I have never been to any of his events that have been too loud or have had a negative affect upon the neighboring community. The clientele he garners and his high level of meticulous planning prevent his events from spiraling out of control.

He prides himself on low-key conservative events. I cannot think of a better representative as to how businesses should interact with local schools and community. Michael is a role model for all businessmen to look up to and follow when looking to donate, interact, or support the community. He is definitely an ambassador for Manhattan Beach. If you would like more information on how Michael has supported Manhattan Beach Middle School and the City of Manhattan Beach, please feel free to contact me and I will continue to preach the accolades of Michael Zislis.

Sincerely,

John Jackson
Principal:Manhattan Beach Middle School

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#3

Angela Soo

From: Richard Thompson
Sent: Tuesday, February 11, 2014 3:00 PM
To: Laurie B. Jester
Cc: Angela Soo
Subject: FW: Zislis Group
Attachments: Zislis Letter for Planning Commission.pdf

Copies for tomorrow's PC meeting

Richard Thompson
Director of Community Development

P: (310) 802-5502

E: rthompson@citymb.info



From: Nancy Bogart [<mailto:nbogart@manhattan.k12.ca.us>]

Sent: Tuesday, February 11, 2014 2:49 PM

To: List - Planning Commission

Subject: Re: Zislis Group

Attached is a letter from the Manhattan Beach Unified School District regarding the Zislis Group.

Nancy R. Bogart
Manhattan Beach Unified School District
Executive Assistant
Superintendent's Office
(310) 318-7345, ext. 5902

Michael D. Matthews, Ed.D.
Superintendent of Schools



Board of Trustees

Jennifer Cochran
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Karen Komatinsky
Ellen Rosenberg
Ida VanderPoorte

Manhattan Beach Unified School District

325 South Peck Avenue • Manhattan Beach • California 90266 • (310) 318-7345 • FAX (310) 303-3822

February 11, 2014

To the City of Manhattan Beach Planning Commission:

It is my understanding that the City Planning Commission is discussing items related to the Zislis Group properties. As MBUSD schools have often benefitted from the use of these properties, I am writing to share some of our information.

Mr. Michael Zislis and the Zislis Group have been incredible supporters of Manhattan Beach Unified School District schools, our School Board, and the Manhattan Beach Education Foundation for many years. Over the past several years we have experienced extremely difficult fiscal times in public education. Our strong community partners, such as the Zislis Group's Shade Hotel, have greatly helped us weather the financial storm.

Some of the examples of support for MBUSD schools and MBEF by the Zislis Group have included:

- Fundraisers held at the Shade Hotel and other Zislis properties
- Meeting facilities provided at the Shade Hotel
- Discounted celebrations at the Shade Hotel and other Zislis Properties
- Ongoing support for the MBEF Wine Auction

Whenever I have reached out to the Zislis Group, the response has been extremely positive and supportive. I thank the Zislis Group for their ongoing strong support of public education through the uses of the Shade Hotel and other Zislis properties.

Sincerely,

A handwritten signature in black ink, appearing to read 'M.D. Matthews'.

Michael D. Matthews, Ed.D.
Superintendent of Schools

Angela Soo

From: Don McPherson <dmcphersonla@gmail.com>
Sent: Monday, February 10, 2014 2:39 PM
To: Christopher Conaway; Martha Andreani; Paul Gross; Steve Ortmann; Kathleen Paralusz
Cc: John Jalili; Richard Thompson; Quinn Barrow; David Biggs; Liza Tamura; Laurie B. Jester; Nate Hubbard; Wayne Partridge
Subject: Apologies Re Neighborhood critique of Staff report & application for Feb 12, 2014 Shade hearing
Attachments: 140209-JointInput-12Feb2014-Hearing-v2.pdf; 140212-JointInput-Exhibits-PC-12Feb2014Hearing-ABY.pdf

Commissioners,

Apologies. In Nate's email to you below, we mistakenly attached the MS Word file of the critique, rather than the Adobe Acrobat file. In case you cannot open a docx file, please use the attached pdf of the critique.

Thanks,

Don McPherson
 1014 1st St, Manhattan Beach CA 90266
 310 487 0383
dmcphersonla@gmail.com

From: Nate Hubbard [<mailto:natehubz@mac.com>]
Sent: 10 February, 2014 13:32
To: Conaway Chris; Andreani Martha Andreani; Gross Paul; Ortmann Steve; Paralusz Kathleen
Cc: jalili John; Thompson Richard; Jester Laurie; Barrow Quinn; Biggs David; Tamura Liza; McPherson Don; Partridge Wayne & Mako
Subject: Neighborhood critique of Staff report & application for Feb 12, 2014 Shade hearing

Planning Commission
 City of Manhattan Beach
 Via Email

Subject: Neighborhood Critique of Staff Report and Application, for February 12 Hearing on Shade Hotel

Commissioners,

The first attachment provides our subject critique that articulates the neighborhood's overall objectives:

- A mandatory directive that staff and Mr. Zislis must implement the new CUP; and,
- Mitigation measures and operational limitations that will stop the noise disturbances.

The four-page critique stands alone. If you wish to review the factual evidence on which we base our critique, you will find that in the second attachment, which provides the evidentiary exhibits.

We appreciate your consideration of our critique.

Nate Hubbard

Wayne Partridge

Don McPherson

natehubz@mac.com

wepmako@gte.net

dmcphersonla@gmail.com

Copies: J. Jalili; R. Thompson; Q. Barrow; D. Biggs; L. Tamura; L. Jester

CRITIQUE OF SHADE HOTEL STAFF REPORT AND SHADE HOTEL APPLICATION

SUMMARY.

According to the staff report at Pg 2, the proposed application has the primary purpose to eliminate the ongoing violations by Shade of its current use permit, by rolling back the limiting regulations, as follows:

- Increase permitted operating hours and occupancies;
- Remove all restrictions on food service and advertising; and,
- Delete the required sound-barrier wall between the Zinc Lounge and lobby.

The next page itemizes the conditions proposed to legitimize the current use permit violations.

In exchange for the privilege of converting violations of its use permit into a significantly more profitable and higher intensity operation, Shade will:

- Replace the Zinc-lobby sound barrier specified to reduce noise by 99.99%, with a revolving front door, which in some parts of the neighborhood might reduce noise by a noticeable amount; and,
- Install terrace mitigation measures that possibly might reduce apparent noise levels in some parts of neighborhood, by less than half.

To verify our assessment, see the Behrens mitigation report at staff report Attachment E, Pg 2.

To obtain these valuable privileges, Shade Hotel proposes to modify the old use permit PC No. 05-08, the "2005 CUP". They do not address the critical issues raised by the planning commission [PC] in 2009-2010, such as patrons exiting to the west at night and defining "closed", so that the police can enforce it. The MBPD has gone on record that they cannot close the Zinc bar, because Shade operates 24/7, so no way exists to differentiate between hotel guests and nightclub patrons. [Exhibit 1]

Furthermore, staff and the city attorney have irrevocably gone on record to establish a policy that they cannot force Mr. Zislis to implement the new use permit that results from his application. No matter how many milestones that staff and the city attorney write into the new use permit, they acknowledge that Mr. Zislis can walk away from it and return to his comfortable 2005 CUP, which Community Development does not enforce, as per next page.

OUR APPROACH.

We believe it paramount at the onset of the public hearing, that the commissioners establish the process they will follow to modify the Shade use permit, in order to achieve two major objectives:

- A mandatory directive that staff and Mr. Zislis must implement the new CUP; and,
- Mitigation measures and operational limitations that will stop the noise disturbances.

A Mandatory New CUP.

As we briefed at your January 22 meeting, Section MBMC 10.104.030 of the municipal code permits the PC to unilaterally modify the use permit, provided that Shade violates its use permit or other regulations. Staff and Mr. Zislis must accept the results of such an action.

Despite your direction, staff did not describe your option to exercise MBMC 10.104.030, in order to impose mandatory conditions on Shade Hotel. Although referencing the statute, they failed to provide it, which we do at Exhibit 2.

CRITIQUE OF SHADE HOTEL STAFF REPORT AND SHADE HOTEL APPLICATION

PROPOSED INTENSITY INCREASES FOR SHADE HOTEL

NOTE: The city lets Shade Hotel violate most of its use-permit requirements listed below. The proposed new use permit has the purpose to make those violations legal.

PROPOSED INTENSITY INCREASES FROM CURRENT USE-PERMIT REQUIREMENTS

- Outdoor 1st-floor terrace occupancy increased from **22 to 90**;
- Terrace closing time increased to **11 PM at night**, from **10 AM Mon-Fri** and **11 AM Sat-Sun**, for breakfast only;
- Special events (standup cocktail parties) permitted on terrace, until **11 PM Sun-Thu** and **midnight Fri-Sun**. Patrons to exit south, directly onto 12th St extension;
- Lunch service and full-scale restaurant. The current permit allows breakfast and tapas at night, but no lunch;
- Increased Skydeck occupancy, from **45 to 92**;
- Advertising Zinc lounge and Skydeck as separate attractions. Advertising currently not permitted; and,
- **Deletion of requirement** for sound-barrier-wall between Zinc bar and the hotel lobby fronting on Valley Drive.

WHAT WILL SHADE PROVIDE, FOR THE CITY TO LEGALIZE THEIR CURRENT VIOLATIONS?

- 1. Instead of sound proofing the Zinc nightclub to reduce noise by 99.99%, as required by the current use permit, Shade will install a revolving door at the Valley Drive front entrance.**
- 2. Instead of fully enclosing the terrace at night, Shade will hang sound absorbers from the ceiling, which primarily will reduce noise in the three hotel rooms that overlook the terrace**

CRITIQUE OF SHADE HOTEL STAFF REPORT AND SHADE HOTEL APPLICATION

The process to invoke MBMC 10.104.030 involves three steps:

1. Determine whether grounds exist that Shade has violated its use permit or other regulations;
2. If making such a finding, it becomes obligatory that the PC sets a public hearing to determine whether Shade has committed said violations; and,
3. If deciding in the public hearing that Shade has committed said violations, then the PC can modify the use permit. Staff and Mr. Zislis must implement the modifications.

We suggest that possibly, the PC can execute Step 1 during the Shade public hearing on February 12 and Step 2 during Planning Commission Items at the end of the agenda. You can then schedule the public hearing after the 900 Club public hearing on the February 26 agenda.

Exhibit 3 provides the evidence that Shade has violated its use permit. The video evidence presented from the 2009 hearings and the 27 November 2013 complaint filed in Superior Court demonstrate that Shade violates the noise ordinance. [Exhibit 4]

Therefore, in a public hearing on February 26, it should not take the PC long to make the finding pursuant to 10.104.030(D)(2), that Shade violates its use permit and other regulations.

The City Attorney Office will attend the Shade Feb 12 hearing, **so ask them what schedule will work**, to execute the above three steps, in order to apply MBMC 10.104.030.

Process for Preparing New Use Permit.

Shade proposes to modify the old 2005 CUP, which requires the planning commission to retrace the steps of 2009-2010 PC, when they prepared the 2010 CUP. That took one year and six hearings.

For efficiency, we propose to modify the 2010 CUP, Resolution 6275, which has already gone through a thorough and extensive vetting. [Staff report Attachment C]

As apparent from our initial draft modification of the 2010 CUP in Exhibit 5, it will not take many changes to correct the language, so that it becomes mandatory for staff and Mr. Zislis to implement it.

In addition to eliminating inappropriate language that enabled dumping the 2010 CUP, we include the following conditions to ensure that Shade stops disturbing the neighborhood:

- No audibility at 75 ft, a condition formulated by MBPD and imposed on Strand House;
- Conditions that require after 9 PM every day, patrons exit to the west, as well as taxi and valet service removed from the hotel entrance on Valley Dr;
- Definition of 'closed', that staff picks up all glasses, cans, bottles and drinks, consistent with the ABC standard for closed, of no alcohol sales, service or consumption;
- Additional lobby and Courtyard noise mitigation treatments; and,
- Enclosure after 9 PM of the terrace, with wall and exterior-exit assemblies having a Sound Transmission Coefficient [STC] of 39 dB, compliant with building codes.

CRITIQUE OF SHADE HOTEL STAFF REPORT AND SHADE HOTEL APPLICATION

OTHER STAFF REPORT AND SHADE HOTEL APPLICATION ISSUES.

What “Code Issues” Prevented Enclosure of the Terrace?

We comment on the vague allegations by staff in their report at Pg 2: Para 2, to wit, that “Code issues arose” regarding enclosure of the terrace. We have tried to determine the answer to the ‘code issue’, with four Public Record Act requests, meetings with staff and the September 3 business item before the city council. Despite one year of effort on our part, staff has yet to articulate what “Code issues arose” to prevent terrace enclosure.

Ms. Jester testified at the 19 Feb 2013 council meeting, that building officials, the Planning Division and Shade’s architect met “many, many months”, wrestling with this as-yet undisclosed problem. Not a single record or document exists to substantiate staff’s claim.

According to staff, it relates to the state requirement for emergency rescue from the three hotel rooms overlooking the terrace. The Shade Courtyard has *eight* rooms overlooking it, subject to the same state statute, with a less direct external exit than the terrace. Why does that work for the eight rooms in the Courtyard, but not for the three rooms on the terrace?

At our September 2013 meeting with City Prosecutor Joan Jenkins and Ms. Jester, she admitted that the code problem related to the terrace not having a code-compliant closable exit on the south side. A terrace external exit with a closable door that complies with code requires only a raised landing outside the door, at most 15-inches above grade, and 44 inches long for sliding doors or 86 inches long for side-hinged doors. So what is the problem?

Entertainment Permits Used to Increase Shade Hotel Intensity.

The staff report at Pg 4 states, “*Appropriate conditions are placed on the Permit to minimize potential negative impacts...*” If that the case, in the first permit approved July 2006, why did staff bump up the terrace closing time to 11 PM, from 10 AM Mon-Fri and 11 AM Sat-Sun, in the 2005 CUP? Why did they increase occupancies by 48% in the two 2008 permits? [Exhibit 6, Bates page numbers, lower right, *Strand Ent Permit*-Pg 7 and Pg 38, respectively]

BOTTOM LINE.

At the forthcoming Shade public hearing on February 12, we request two actions by the planning commission:

- Initiate the process to conduct a public hearing for modification of the Shade use permit, pursuant to MBMC 10.104.030; and,
- Agree to use the 2010 CUP, Resolution 6275, as the starting point for the use permit modification.

We appreciate the effort that the planning commission must exert on the complex issue of modifying the Shade use permit, so that it truly will take effect when approved by the city council and will stop the noise disturbances in the neighborhood.

Nate Hubbard
natehubz@mac.com

Wayne Partridge
wepmako@gte.net

Don McPherson
dmcphersonla@gmail.com

Copy: J. Jalili; R. Thompson; Q. Barrow; D. Biggs; L. Tamura; L. Jester

EXHIBIT 1. EVIDENCE OF MBPD DIFFICULTY TO ENFORCE ZINC NIGHTCLUB CLOSING TIME

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

MBPD Lt. John Dye to Nate Hubbard,
regarding difficulty to enforce closing time .

Nate:

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

The roofdeck and courtyard areas have not changed.

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

Thanks.

Lt. John Dye

Nan Rados
Police Captain
P: (310) 802-5108
E: nrados@citymb.info



From: David N. Carmany
Sent: Monday, November 07, 2011 4:42 PM
To: Eve R. Irvine; Richard Thompson; Nan Rados; Andrew Harrod
Subject: RE: Shade employees deceived MBPD about their bar hours

11:30 works for me

David N. Carmany
City Manager
P: (310) 802-5053
E: dcarmany@citymb.info



SEE BELOW

**Police Chief Eve Irvine to City Manager Carmany:
"I'm also not sure how you can restrict or close the
business at 11 PM for registered guests."**

From: Eve R. Irvine
Sent: Monday, November 07, 2011 4:37 PM
To: David N. Carmany; Richard Thompson; Nan Rados; Andrew Harrod
Subject: FW: Shade employees deceived MBPD about their bar hours

Mr. Carmany

There is a lot of history with this location, much of which I am unfamiliar with. To that extent, I would like to meet with you, Richard Thompson, Captain Rados, and Lt Harrod to further discuss the fallout.

I'm not sure if either side of this issue is forthcoming with the real CUP restrictions and requirements. I am certainly confused as to what can be done or if this was a one-time issue (the Oct 15 incident) or if now that it has come to the surface, this activity is occurring every night? I'm also not sure how you can restrict or close the business at 11pm for registered guests. Isn't this hotel a 24 hour operation? Regardless, I have been receiving numerous emails on this issue for the last three weeks.

To make matters worse; the PD's interaction with Mr. Zislis on October 15, was ridiculous. So much so that Mr. Zislis has profusely apologized (several times in the past two weeks) to PD personnel for his absurd, rude, and vitriolic behavior.

I can meet at 11:30 this Wed if you can all make it?

Thanks Everyone.

Chapter 10.104 - ENFORCEMENT

Sections:

- [10.104.010 - Permits, licenses, certificates, and approvals.](#)
- [10.104.020 - Enforcement responsibilities.](#)
- [10.104.030 - Revocation and modification of discretionary permits.](#)
- [10.104.040 - Prosecution of violations.](#)
- [10.104.050 - Penalties.](#)

10.104.010 - Permits, licenses, certificates, and approvals.

All persons empowered by the City Code to grant permits, licenses, certificates, or other approvals shall comply with the provisions of this title and grant no permit, license, certificate, nor approval in conflict with said provisions. Any permit, license, certificate, or approval granted in conflict with any provision of this title shall be void.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91)

10.104.020 - Enforcement responsibilities.

The Community Development Director shall enforce all provisions of this title related to discretionary permits, zoning permits, building permits, and certificates of occupancy. All other officers of the City shall enforce provisions related to their areas of responsibility.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91; § 2, Ord. 1951, eff. July 14, 1996)

10.104.030 - Revocation and modification of discretionary permits.

A. **Duties of Community Development Director, Planning Commission, and City Council.** Upon determination that there are reasonable grounds for revocation or modification of a use permit, variance, development plan approval, or other discretionary approval authorized by this title, a hearing shall be set by the Community Development Director, Planning Commission, or the City Council.

B. **Notice and Public Hearing.** Notice shall be given in the same required for a public hearing to consider approval. If no notice is required for the permit, none shall be required for the revocation and/or modification hearing, provided that notice shall be mailed to the owner of the use or structure for which the permit was granted at least ten (10) days prior to the hearing. Contents of any notice shall be as prescribed by Section 10.96.040(C).

C. **Hearing.** The person or body conducting the hearing shall hear testimony of City staff and the owner of the use or structure for which the permit was granted, if present. At a public hearing, the testimony of any other interested person shall also be heard. A public hearing may be continued without additional public notice.

D. **Required Findings.** The person or body conducting the hearing shall revoke or modify the

Title 10 - PLANNING AND ZONING
PART V - ADMINISTRATIVE REGULATIONS
Chapter 10.104 - ENFORCEMENT

conditions of permit upon making one or more of the following findings:

1. That the permit was issued on the basis of erroneous or misleading information or misrepresentation;
2. That the terms or conditions of approval of the permit have been violated or that other laws or regulations have been violated;
3. That there has been a discontinuance of the exercise of the entitlement granted by the permit for twelve (12) consecutive months.

E. Decision and Notice. Within ten (10) working days of the conclusion of the hearing, the person or body that conducted the hearing shall render a decision, and shall mail notice of the decision to the owner of the use or structure for which the permit was revoked, or conditions modified, and to any other person who has filed a written request for such notice.

F. Effective Date—Appeals. A decision to revoke, or modify, the conditions of a discretionary permit shall become final ten (10) days after the date of the decision, unless appealed.

G. Right Cumulative. The City's right to revoke, or modify, a discretionary permit, as provided in this section, shall be cumulative to any other remedy allowed by law.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91; § 2, Ord. 1951, eff. July 4, 1996)

10.104.040 - Prosecution of violations.

Unless otherwise provided, any person, firm or corporation violating any provision of this title shall be guilty of a misdemeanor; provided, however, that any violation of this chapter may be charged as an infraction at the discretion of the City Prosecutor. Each day or portion thereof that such violation continues or reoccurs shall be a new and separate violation. For purposes of this title, both the owner of record of a specific property and any tenant in possession shall be liable for compliance with all of the provisions of this title. Nothing in this section shall preclude the City from bringing a civil action to enforce the provisions of this title.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91; § 2, Ord. 1951, eff. July 4, 1996; § 2, Ord. 2052, eff. February 19, 2004)

10.104.050 - Penalties.

Any person who violates any provision of this title and is convicted of an infraction shall be punished by fines as prescribed in Government Code Section 36900. Any person who violates any provision of this title and who is convicted of a misdemeanor shall be punishable by fines as prescribed by Government Code 36900 or six (6) months in jail, or both. Payment of any fine or penalty shall not relieve a person, firm or corporation from the responsibility of correcting the condition consisting of the violation.

(Ord. No. 1838, Renumbered, 07/05/91)

November 19, 2013

City Council
City of Manhattan Beach
Via Email

Subject: Violations of the 2005 CUP by Shade Hotel, 1221 N Valley Drive

This letter shall serve as a formal complaint that Shade Hotel violates many provisions in the 2005 CUP, Resolution PC 05-08, if that use permit remains in effect, as the city staff claims.

The more egregious of the 2005 CUP violations include:

- Special events on the outside terrace, the area south of the Zinc Bar, fronting on 12th St;
- No acoustic barrier between the hotel lobby and Zinc Bar;
- Occupancy of 92 on the Skydeck (45 permitted by the 2005 CUP)
- A full-scale restaurant serving all day; and,
- The Zinc Bar and Skydeck advertised as separate attractions for general-public use.

City staff claims the 2005 CUP remains in effect, because the Zislis Group did not implement provisions in the 2010 CUP. According to that rationale, then the 2005 CUP never took effect. Specifically, the Zislis Group failed to implement the acoustic wall between the Zinc Lounge and the hotel lobby, as required by Finding O and Condition 1 in Resolution PC 05-08.

Therefore, if staff has a correct legal theory that the 2005 CUP cannot take effect without having all conditions satisfied, then the 2002 Metlox Master Use Permit, Resolution 5770, remains in effect. Shade Hotel violates many requirements in that use permit, primarily service of food and alcohol to the general public.

As result of noncompliance with its use permit, Shade Hotel creates noise disturbances in the adjoining residential neighborhood. These violate the municipal code, at Sections MBMC 10.16.010(D) and MBMC 10.84.060(A)(4), related to adverse impacts on nearby properties.

Our complaint presents incontrovertible evidence that Shade Hotel violates many provisions in the 2005 CUP, which constitute grounds for amendment, pursuant to Municipal Code Section MBMC 10.104.030, Revocation and Amendment of Discretionary Permits.

The city attorney has repeatedly stated that violations by Shade Hotel of use permit conditions constitute grounds for the planning commission to review and amend the CUP.

EVIDENCE OF 2005 CUP VIOLATIONS BY SHADE HOTEL.

The table on the next page summarizes the evidence that Shade violates many provisions in the 2005 CUP, as substantiated in attached Exhibits E1-E14. Our complaint does not include Shade's violations of the noise ordinance or end of alcohol service times.

The following two subsections summarize the evidence that the 2005 planning commission intended their use permit, Resolution PC 05-08, to close off the Zinc Bar as small area, separated from the lobby by an acoustic wall and shut-off from the unused outside terrace at night.

EVIDENCE THAT SHADE HOTEL VIOLATES MANY 2005 CUP REQUIREMENTS

(E1, E2 and etc refer to attached Exhibits 1-7)

2005 CUP Violations	Evidence of 2005 CUP Violations	2005 CUP Items (Exhibit 14)
1. Lunch service and full-scale restaurant	Website menus. E1. Full-Scale Restaurant E2. Zinc Dinner Menu	Finding L and Conditions 3 & 5. No lunch or full-scale restaurant.
2. Special events permitted on terrace. ¹	Shade’s website advertises the terrace to the public for special events, such as standalone cocktail parties. E3. Terrace Special Events	Condition 2. Special events limited to courtyard, meeting room and living room.
3. Terrace food and alcohol service hours expanded to 11 PM	See E1 and E3 above. Advertising for 10 PM Sun-Wed/11 PM Thu-Sat closing. Regular daily lunch hours until 5 PM.	Finding L. Close at 10 AM Mon-Fri and 11 AM Sat & Sun.
4. Increased terrace occupancy.	See E3. Advertises 48 patrons. Previously advertised 80 patrons, prior to 13 Sep 2013	Condition 1. Requires compliance with project description. Applicant testified to 22-person limit at the 25 May 2005 hearing. Video minutes constitute project description.
5. Increased Skydeck occupancy.	2005 CUP application states occupation 45, Pgs. 2-3. E4. Shade 2005 Application, E5. Skydeck advertisement on Shade website	Condition 1. Requires conformance with project description. Shade application (E4) constitutes project description.
6. No folding acoustic partition between Zinc Lounge and hotel lobby	At 28 Oct 2009 hearing on 2010 CUP, Director Thompson testified wall not installed. (Video minutes of 28 Oct 2009 Shade public hearing)	Finding O & Condition 1. Partition required. Substantial deviation from plans requires approval by planning commission.
7. Advertisement to the general public of Zinc and Skydeck, as separate hospitality attractions.	Shade website promotion of Zinc and the Skydeck to the general public, with hotel stays not required. E6. Zinc Bar website promotion E5. Skydeck website promotion	Condition 4. Zinc and Skydeck promotion prohibited
8. Menu posting outside of hotel.	Menus posted daily outside of hotel. E7. Outside Menus	Condition 6 Outside menus prohibited

NOTE 1. Terrace lies outside the Zinc Bar, fronting on 12th St; identified as the ‘Porch’ in the 2005 CUP, Exhibit 14.

Terrace Use as Nightclub Venue. The 2002 Metlox Master Use Permit did not include the terrace as a venue for food and alcohol service, or for special events. When the 2005 CUP hearing started, the commissioners had no information before them regarding food and alcohol service on the terrace; not in the Shade application, not in the staff report, nor in the draft use permit. (E4. Shade 2005 CUP Application & E8. 2005 CUP Staff Report) When Commissioner Simon queried staff about the terraces, Planning Manager Jester stated, “There wouldn’t be services of food or alcohol in that area [the terrace].” (E9. Terrace)

When commissioners questioned Mr. Zislis, he contradicted Ms. Jester’s statement, testifying the area would close at 10 AM Monday through Friday and 11 AM Saturday-Sunday serving 22 patrons for breakfast only. (E9. Terrace)

At the end of the May 25, 2005 public hearing, prior to the vote, staff revised the 2005 CUP at Findings J and L, as well as Condition 5, to permit alcohol and breakfast service on the ‘Porch’ [terrace]. (E9. Terrace)

Subsequently in the Entertainment Permit [Exhibit 13], staff unlawfully increased terrace hours of operation to 11 PM daily. This violates the Entertainment Permit ordinance, which at MBMC 4.20.090, prohibits any increase in operating hours stated in the use permit.

Finding L in the 2005 CUP prohibits lunch service in any public area of the hotel, whereas, Condition 2 does not include the terrace for special events.

In the record for the 2005 CUP, the sum total of all information limits the terrace to breakfast, with seating for approximately two dozen patrons. No other documented or video evidence exists in the record to interpret the terrace use differently.

Lobby-Zinc Bar Partition. The missing acoustic barrier between the lobby and Zinc Bar required by Finding O in the 2005 CUP constitutes the most visible and blatant violation of that use permit. The 2005 CUP shielded the lobby and front entry from Zinc Bar noise, by a retractable folding wall. As described in the previous subsection, the use permit also limited the terrace to breakfast only. The combination of these two features would have eliminated much of the noise problem, by reducing both noise outside the hotel and the number of patrons in the Zinc nightclub.

At the 2005 CUP hearing, Mr. Zislis testified they designed the acoustic wall to isolate the lobby from the Zinc Bar, “Because if you do have a wedding, you’re going to have a band playing in the dance floor. And you don’t want it to interfere with your [hotel] guests.” (E10. 2005CUP-Zislis-ZincWall)

During the 2010 CUP hearing in October 2009, Director Thompson stated to the planning commission that the Zinc nightclub just “evolved” without implementing the partition, although the lobby-bar ceiling still has the track for the folding wall. (E11. Thompson-Partition)

Exhibit 12 provides a security-camera photograph taken from behind the reception desk, illustrating that elimination of the Zinc-Bar partition incorporated the lobby and front entry area into the nightclub. (E12. Lobby-Zinc Bar-Nightclub) . According to Condition 1 in the 2005 CUP, deleting the partition required approval by the Planning Commission.

CONCLUSION.

No question exists, but that Shade Hotel commits wholesale violations of the 2005 CUP, which constitute grounds for amendment.

Consequently, the city must conduct a public hearing to amend the use permit, pursuant to Municipal Code Section MBMC 10.104.030, Revocation and Modification of Discretionary Permits.

Nate Hubbard
1300 N Ardmore Ave
natehubz@mac.com

Wayne Partridge
3520 The Strand
wepmako@gte.net

Don McPherson
1014 1st St
dmcphersonla@gmail.com

Attachments: Exhibits 1 through 14

Distribution: City Manager, Community Development Director, City Attorney,
City Prosecutor, MBPD Chief, MBFD Chief, City Clerk



**2005 CUP FINDING L, COND. 3, & COND. 5:
BREAKFAST HOURS - NO LUNCH - NO FULL-SCALE RESTAURANT**

It is no secret that our owner, Michael Zislis, loves to eat and drink. As one of Manhattan Beach's premier restaurateurs, he has traveled the planet to enjoy the world's best restaurants. Shade presents a variety of opportunities to indulge the palate. Zinc's distinctive small plates menu and unique wine preservation system - by which a large selection of fine international wines are offered by the glass - offer a unique dining experience for Manhattan Beach. Fresh Mojitos, Margaritas and Martinis in the rarified atmosphere of the Skydeck as you watch the sun slowly set. In true Shade fashion, you tell us what you want, where and when, and we'll serve it up on a silver platter.

BREAKFAST

served Monday - Friday from 7:00 am to 11:30 am

2005 CUP Finding L.

Breakfast 6-10 AM weekdays and
6-11 AM Sat-Sun

LUNCH

served Monday - Friday from 11:30 am to 5:00 pm

2005 CUP Finding L. Mid-day (lunch)

food service will not be provided,
except for room service.

BRUNCH

served Saturday & Sunday from 9:00 am to 5:00 pm



BREAKFAST

Beach Breakfast 15.
served from 7:00 am to 10:00 am

Yogurt Berry Parfait
Irish Steel-Cut Oatmeal
Fresh Fruit
Bagels & Lox
Assorted Muffins, Croissants, and Danishes
Cereal and Milk [cheerios, honey nut cheerios, total, cinnamon toast crunch, & lucky charms]
Fresh Squeezed Orange Juice & Cranberry Juice
Coffee, Cappuccino, Latte, & Espresso

Irish Steel-Cut Oatmeal 6.95
topped with strawberries and sliced bananas served with a side of brown sugar

Shade Stack 6.95
buttermilk or blueberry pancakes

Yogurt Berry Parfait 7.95
served with vanilla yogurt, fresh berries and toasted granola

Brioche French Toast 8.95
served with vanilla infused syrup

Belgian Waffle 8.95
Belgian waffle with fresh strawberries and sliced bananas topped with Tahitian vanilla whipped cream, pecan butter and served with maple syrup

Pancakes with Pecan Maple Butter 8.95
buttermilk or blueberry pancakes served with two organic eggs cooked any style

Shade Breakfast Sandwich 9.95
scrambled organic eggs, applewood smoked bacon and avocado with melted cheddar cheese on a fresh baked croissant served with country potatoes

**BREAKFAST****Veggie Omelette** 9.95

two organic eggs with swiss cheese, mushrooms, spinach served with country potatoes and a choice of toast

Shade Omelette 9.95

two organic eggs with bacon, cheddar cheese and avocado served with country potatoes and a choice of toast

Bagels and Lox 9.95

fresh toasted bagel [plain or onion], Nova Scotia smoked salmon, capers, sliced Bermuda onions, sliced vine-ripened tomatoes and chive cream cheese served on the side for you to prepare to your liking

Huevos Rancheros 9.95

two organic eggs atop corn tortillas topped with black beans, ranchero sauce, pico de gallo and house made guacamole

Organic Eggs 11.95

two organic eggs cooked any style served with country potatoes, a choice of toast, and a choice of applewood smoked bacon, sausage links or smoked ham

Breakfast Pizza 12.95

spinach, mushrooms, onions, bacon and mozzarella cheese topped with two organic scrambled eggs

Shade Benedict 12.95

an English muffin topped with smoked ham, two poached organic eggs, Benedictine hollandaise sauce and shaved truffles served with fresh asparagus

Beach Omelette 12.95

two organic eggs with fresh Maryland blue crab, asparagus, onions and tomatoes topped with fines herbs and Benedictine hollandaise sauce with a choice of toast

Eggs Manhattan 14.95

a choice of crab cakes or smoked salmon topped with spinach, two poached organic eggs and drizzled with Benedictine hollandaise sauce served with country potatoes



LUNCH

2005 CUP Condition 3. Hours of food service consistent with project description, which is generally breakfast, appetizers and special events.

2005 CUP Condition 5. Zinc Bar shall limit its menu to appetizers and "small plates," but shall not operate as a full scale "restaurant."

STARTERS

Soup Du Jour 5.95
our fresh seasonal soup

House Made Tomato Soup 5.95
garden fresh tomatoes simmered with garlic and herbs served with a grilled crostini and topped with basil oil

Calamari 9.95
fried & seasoned baby squid served with our house made tartar and cocktail sauces with a lemon garnish

Shrimp Cocktail 13.95
jumbo Mexican white shrimp served with cocktail sauce and lemon wedges

Artisan Cheese with Fresh Fruit 14.95
a selection of sliced domestic & imported cheeses served with sliced sourdough bread, Marcona almonds, dried figs and quince paste

SALADS

Mixed Greens Salad 6.95
mixed baby greens, vine-ripened tear drop tomatoes and cucumber tossed in a sherry shallot vinaigrette

Caesar 9.95
teardrop tomatoes, shaved parmesan and croutons tossed with Caesar dressing
with chicken 12.95 with grilled prawns 13.95 with seared rare Ahi 14.95

Veggie Salad 9.95
mixed baby greens and grilled seasonal vegetables, grilled apples and crumbled Chevre goat cheese, tossed in a balsamic-vanilla vinaigrette

PIZZAS

Pepperoni 11.95
house made tomato sauce, mozzarella cheese and pepperoni

Margherita 11.95
house made tomato sauce, fresh mozzarella cheese, sliced vine-ripened tomatoes and fresh basil

BBQ Chicken 13.95
barbecue sauce, smoked Gouda and mozzarella cheeses, BBQ Chicken, sliced red onions and cilantro



LUNCH

SANDWICHES

includes a choice of one side

Ground Sirloin Burger 11.95

all natural hormone free Angus ground beef served with tender lettuce, vine-ripened tomato and caramelized onions with a choice of cheddar, Swiss or blue cheese on a freshly baked bun

Turkey Cobb Wrap 12.95

sliced turkey breast, applewood smoked bacon, tomatoes, red onions and lettuce lightly dressed in our house made ranch dressing wrapped in a whole wheat tortilla with a Maytag blue cheese spread

Soy Glazed Ahi 14.95

vine-ripened tomatoes, tender greens, daikon sprouts, hot house cucumbers and wasabi aioli on a fresh baked bun

Steak Sandwich 14.95

sliced hanger steak, Maytag blue cheese, caramelized onions, baby greens and vine ripened tomatoes served on a baguette with a basil aioli and house made guacamole

ENTREES

Fish Tacos [Blackened or Battered] 13.95

two fish tacos with guacamole, Shade coleslaw and a roasted tomato salsa served with fresh tortilla chips and black beans

Fresh Fish 15.95

fresh seasonal fish, with choice of two sides.

Steak Frites 16.95

grilled hanger steak topped with brown butter, shallot and red wine jus served with fries and a mixed green salad

SIDES 2.95

sweet potato fries
garden salad
french fries
tomato soup
grilled or steamed vegetables

ZINC EVENING MENU + BREAKFAST AND LUNCH = 'FULL-SCALE' RESTAURANT



chit-chat...apps

belgium style hand cut fries | garlic salt - black pepper aioli - honey chipotle ketchup 7. [V]

smoked baja wings | honey chipotle glaze - pina colada dipping sauce 7.

rings in the shadow | crispy tempura sweet maui onion rings - ginger garlic aioli - sweet chili soy sauce 8.

goat cheese fondue | house-made potato chips - artichoke 9. [V]

south bay skewers | black & bleu satay - blue cheese dipping sauce 10.

ceviche | tropical bay shrimp scallops - fresh tortilla chips 13.

bruschetta trifecta 14.

| thin sliced san danielle prosciutto - goat cheese - fig - frisee

| grilled shrimp - basil pesto - sundried tomatoes - roasted peppers - parmesan

| arugula pesto - campari tomatoes - mozzarella - balsamic - basil - kalamata

lett-uce deliver

shade's strawberry salad | baby field greens - goat cheese - strawberries - light balsamic 11.

caprese salad | roma tomato cups - basil pesto - distefano fresh mozzarella - aged balsamic pearls - wild arugula salad 13.

zinc chopped salad | arugula - parmesan - couscous - currant - pepitas - tomato - basil buttermilk dressing - cured salmon or genoa salami 13. [L]

crab avocado salad | avocado bowl - tropical slaw - pina colada vinaigrette 15.

sashimi salad | hamachi - ahi - baby herb lettuce - cucumber - avocado purée veggie chips - miso vinaigrette - soy foam 17. [L]

bitz & pi-zza

margherita | roasted campari tomatoes - fresh mozzarella - basil - garlic oil 11. [V]

poached pear & brie pizza | riesling poached pears - spinach - nueske bacon - brie cheese blue cheese - spiced pecans 12.

pizza gregorio | tomato sauce - fresh mozzarella - spicy pepperoni - pineapple jalapeños 12.

shrimp pesto pizza | basil pesto - fresh mozzarella - grilled pacific shrimp roasted peppers - oven dried tomatoes 14.

pizzetta bianco | parmesan cream - wild mushrooms - grilled chicken - white truffle - wild arugula 15.

prosciutto pizza | cambazola cheese - caramelized onions - di stefano prosciutto - dates 16.



between the slices

- brie & pear grilled cheese** | pear compote - double cream brie - baguette 6. [V]
- prosciutto & burrata grilled cheese** | san danielle prosciutto - di stefano burrata - baguette 7.
- short rib sandwiches** | slow braised - white truffle oil - honey - coleslaw - ranch style rolls 14.
- truffle cheese burger** | fresh angus beef - parmesan truffle aioli - black truffle pecorino - arugula
caramelized onions - sliced portobellos - Nueske bacon - brioche bun 16.

sliders (pick any 3) \$17

- angus petite burger** | maytag blue cheese - gruyere cheeses - lettuce - tomato - garlic aioli
- crab cake** | baby spinach - roasted peppers - roasted tomato remoulade
- chicken burger** | apple relish - goat cheese - wild arugula
- fried green tomatoes** | smoked bacon - cambazola cheese - field greens - spicy aioli

meat & greet

- smoked pork meatballs** | ancho bbq sauce 11.
- crispy calamari** | sweet chili aioli - baby greens - balsamic reduction 12.
- duck confit tacos** | fresh corn tortillas - baby spinach - oregon blackberry salsa - crema fresca 14.
- poke tacos** | ahi - avocado - green onion - sesame - seaweed 15.
- grilled rosemary lamb lollipops** | balsamic reduction - roasted red pepper vinaigrette 15.
- classic charcuterie board** | san daniel prosciutto - barolo salami - fra'mani rosemary ham - molinari
coppa salami - tomme de savoie cows milk - st. agur blue cheese - humboldt fog goat milk cheese
pecorino boschetto cow & sheep milk cheese - toasted artisan bread - almonds - crackers 22.

why wait?

- | | |
|--------------------------------------------------------------------------------|-----|
| ice cream seasonal flavors | 5. |
| sorbet seasonal flavors [L] | 5. |
| triple chocolate flourless cake dulce de leche – warm chocolate sauce | 7. |
| lemon ricotta cheesecake macerated blackberries - crème fraîche | 8. |
| peach cobbler vanilla ice cream – apricot compote – whipped cream | 8. |
| zinc “drunken udder” ice cream 4 seasonal flavors | 12. |

[V] indicates item is vegetarian

[L] indicates item is lite option

EXHIBIT 3. VIOLATIONS OF 2005 CUP
2005 CUP: 22-SEAT TERRACE CLOSED AFTER BREAKFAST
VS

EXHIBIT 3.
VIOLATIONS
OF 2005 CUP

ADVERTISED ON WEB FOR ALL DAY; 48 OCCUPANCY COCKTAIL PARTIES



[SPACE DESCRIPTIONS](#) | [CAPACITY CHART](#) | [FLOOR PLANS](#) | [THE COURTYARD](#) | [THE GREEN ROOM](#) | [THE SKYDECK](#)
[ZINC](#) | [THE ZINC TERRACE](#) | [MENU OPTIONS](#) | [TESTIMONIALS](#) | [REQUEST PROPOSAL](#)

a breath of fresh air

Extending from the wine bar, this breezy, open-air space is perfect for an intimate party. To insure your privacy, our luxuriously oversized curtains can be drawn, creating an air of stillness and serenity. The terrace is the perfect venue for a casual lunch, baby shower, or even a black tie anniversary party. Whatever the occasion, the Zinc Terrace provides an atmosphere of elegant calm that will be sure to please and impress your guests.

How Big?
 16" x 59"
 940 square feet

- Terrace advertised for night-time cocktail parties with 48 occupancy
- Testimony at 2005 CUP hearing stated 22 seats for breakfast
- 2010 CUP Condition 25 limits terrace occupancy to 47

How many?
 The Zinc Terrace can accommodate 50 people for a sit down dinner and up to 80 for a cocktail reception. The Zinc Terrace can hold up to 48 people for cocktails or 48 for a more formal sit down event.

How much?
 An event in the Zinc Lounge requires the following minimum spend:

Monday through Wednesday:	
Daytime (12pm-5pm)	\$2,000
Evening (6pm-10pm)	\$2,500
Thursday and Friday:	
Daytime (12pm-5pm)	\$2,000
Evening (6pm-11pm)	\$7,500
Saturday:	
Daytime (12pm-5pm)	\$2,500
Evening (6pm-11pm)	\$7,500
Sunday	
Daytime (12pm-5pm)	\$2,500
Evening (6pm-10pm)	\$2,500

Terrace advertised for 80 patrons, prior to 13 Sep 2013

EXHIBIT 3.
VIOLATIONS
OF 2005 CUP

**2005 CUP APPLICATION REQUIRES LOBBY-ZINC PARTITION;
DOES NOT INCLUDE 'PORCH' (TERRACE) IN ALCOHOL-FOOD SERVICE;
LIMITS 'SUN DECK' (SKYDECK) TO 45 OCCUPANCY VS 80 ADVERTISED**

SHADE HOTEL
Application for Amendment to Use Permit

Shade Hotel seeks to amend the 'use permit' approved by the city for the new Metlox commercial development as it pertains to the hotel property. Shade Hotel requests that three changes be made to the existing 'use permit':

-Wall identified to separate the lobby from the Zinc Bar.

-'Porch' (terrace) not identified as an alcohol or food serving area.

1. That full liquor service be permitted at all public service areas of the hotel as required by the Type 47 license. The service areas include the in-room 'mini-bars', the Courtyard, the Wine Bar (called "Zinc"), the Living Room (defined as the Wine Bar and a certain area of the Lobby that can be partitioned and closed to the public -- see enclosed cut sheet), the Meeting Rooms, and the Sun Deck located on the roof.
2. That the hotel be permitted to sell alcoholic beverages to the general public as opposed to only hotel guests as stated in the 'use permit', in order to comply with the Alcohol Beverage Control regulations.
3. That the size of events be increased from a maximum of sixty to ninety-nine people. The approved occupancies of the event spaces can comfortably accommodate the change. The occupancy of the first level, as per the approved plans, is 204 people.

The reason for seeking these changes is to comply with the requirements of the Department of Alcohol Beverage Control, as already explained in this application, and to improve the services offered at the hotel. **The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors.** The requested changes to the 'use permit' will not affect the primary use and purpose of the hotel and will have no impact on the community (not on residents, adjacent businesses, city services, or parking). The changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. In booking functions, Shade Hotel's first concern will always be given to the hotel's guests, so the hours and size of events will be restricted by how they impact the entire hotel operation. Although the general public cannot be denied access to alcohol service in the public areas, as regulated by the A.B.C., Shade Hotel makes the commitment to the city that all its advertising, marketing and promotions will be focused on potential hotel guests and not the general public.

Alcohol Service

Permitting full liquor at all the alcohol service areas of the hotel should not present a great concern to the city or community. First, because the hotel will be a four-star facility, it will attract a mature, up-scale, affluent clientele. Second, as the city has learned over the years, it is not alcohol, per se, that potentially may cause issues for a community, but rather it is the type of establishment offering the alcohol that may lead to problems. Night clubs and bars tend to draw the wrong crowd and it is these younger, rowdier patrons who may have the propensity to engage in undesirable behavior. Many bonafide restaurants in the downtown area serve liquor – Fonz’s, Café Pierre, Manhattan Beach Brewing Co., Avenue – and generate no problems for the community. Shade Hotel is situated away from the other nightlife in Manhattan Beach, and the business concept of operating as a hotel does not attract trendy “party-goers”.

Shade Hotel has been conferring and meeting regularly with the Alcohol Beverage Control and the Manhattan Beach Community Development Department for the past several months to address and minimize any potential issues and concerns. After the hotel acquired the Type 47 license at the end of 2004, it submitted the alcohol application to the A.B.C. in January, 2005. As part of the A.B.C. alcohol license application an applicant must: (1) mail public notices to the neighbors located within a 500 yard radius of property, (2) post the application sign on the exterior of the property for thirty days, and (3) advertise the application publicly in the newspaper three times. Shade Hotel completed this procedure in February. The result achieved was that **not one neighbor or citizen protested the application.** According to Margo Hoffman, the A.B.C. investigator assigned to this case, it is uncommon when an application does not elicit some minimal protest. This is a strong indication that the community supports the concept of a small, first-rate hotel located in the downtown area offering a variety of services and uses. Four-star hotels and wedding venues typically hold Type 47 licenses – including Belamar Hotel, the Marriott, and Veranda (wedding venue) in Manhattan Beach – and the community appears to accept this industry standard.

If the city approves the requested amendments to the ‘use permit’, then the A.B.C. is in the position to immediately issue the Type 47 license.

One concern expressed by the Community Development Department is the issue of noise generated by events, entertainment, and alcohol consumed in a festive atmosphere. Again, Shade Hotel’s first priority will be the guests staying at the hotel. All events will be planned around the convenience and comfort of the guests. The hotel will construct as part of its design, a retractable partition in the Living Room capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events ... the room will have a STC (Sound Transmission Code) rating of 50, which will more than sufficiently mute the noise. The hotel designers specifically planned the Sun Deck to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east (Ardmore Blvd.) and six feet in all others directions (facing commercial uses). The size of the Sun Deck is 430 square feet with an occupancy

To address concern by Community Development, the hotel WILL construct a partition to separate the lobby from the Zinc Bar, to insulate the lobby from event noise. The wall will have a Sound Transmission Coefficient of 50 dB (STC-50). Condition 1 in the 2005 CUP requires a public hearing by the planning commission to make this substantial change to the approved plans.

The application, part of the legislative history for the 2005 CUP, identifies a Sun Deck (Skydeck) occupation of 45, compared to the 80 advertised on the Shade website, Exhibit 6)

of 45 people. The intended use of this facility is for hotel guests and their visitors, and for small events or private uses.

To further allay any potential concerns the city or citizens may have by amending the 'use permit', Shade Hotel proposes that certain mitigating conditions can be imposed upon the hotel operation:

1. All hotel marketing, advertising, and promotions must be limited to attracting potential hotel guests and event planners. The Wine Bar (now called "Zinc") and Sun Deck will not be marketed to the general public as separate hospitality attractions. (The brochure included in this application demonstrates the intent of Shade Hotel.)
2. The Wine Bar will limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the Type 47. The Wine Bar will not operate as a restaurant. (Breakfast will be served daily in the Living Room or Courtvard depending upon weather conditions.)
3. Shade Hotel will not post any drink or food menus, or any drink or food signage outside of the hotel.
4. The Sun Deck will stop regular alcohol service prior 9:00 p.m. daily.
5. Alcohol service at events and functions will stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday – Thursday; 11:30 p.m., Friday and Saturday.

No breakfast use proposed for 'Porch' or terrace.

These self-imposed conditions will go a long way to eliminate any potential issues that may arise. The city, of course, possesses the powerful **annual prerogative to approve or restrict the hotel's entertainment permit** made available in the existing 'use permit'. With this overwhelming leverage, the city can influence the conduct of any affected business operator to ensure he or she conforms to the needs and values of the community. Responsible, prudent alcohol service will simply not be an issue at the hotel. The operators of Shade Hotel have a long history in Manhattan Beach as hands-on owners and managers of two reputable restaurants located downtown. Both restaurants – Manhattan Beach Brewing Company (15 years) and Rock'N Fish (4 ½ years) – offer liquor beverages to its customers, and both espouse a "good citizen" philosophy emphasizing conservative alcohol service and professional operational practices consistent with the community's standards.

Event Size

The need to increase the size of events from sixty to ninety-nine people has been communicated by several groups of function planners interested in contracting the services of the hotel. They find the limit of sixty people impractical and restrictive for many types of events. The combined facilities of the Courtyard and the Living Room will more than adequately accommodate parties of ninety-nine or greater (the occupancy of the first level is 204). Some groups intend to book all the hotel guest rooms for their events; with the possibility of two guests staying in each of the sixteen "Spa Suites", three in the sixteen "Deluxe Spa Suites", and four occupying the five "Penthouses", this would create parties with the potential attendance approaching the requested capacity. The sixty person restriction was conservatively established prior to the final design of the hotel and the occupancy calculation. In practical terms, the increase from sixty to ninety-nine persons will have a minimal impact on the resources and operations of the hotel, and should have no effect on the city or neighboring businesses.

The city approved the hotel to serve as a facility for "weddings, parties and other special event services as a secondary use". Shade Hotel needs a less restrictive limit on its event capacity to be a serious contender as a wedding and banquet venue and to compete more fairly with the Belamar Hotel, the Marriott, and Veranda.

Conclusion

Shade Hotel needs the help and support of the city to be successful in the community. In order to survive and succeed as a small, boutique hotel enterprise, Shade Hotel must attempt to maximize all potential sources of revenue – which is true for all operators throughout this segment of the industry. The original hotel operator withdrew from the deal for economic reasons related to the small size of the hotel. The developer of the Metlox project had a difficult time finding another operator to take over the hotel because of the risks, undetermined costs, and many unknown factors associated with building a hotel on the city's underground parking structure.

The Metlox developer approached the operators of the Manhattan Inn Operating Company, LLC (Shade Hotel), which agreed to assume the ground lease for the project. The operators of Shade Hotel concluded they had to step up the project to a four-star hotel in order to create a viable business operation and to justify the enormous capital investment (the original simple two-star inn could not merit charging high enough room rates to earn a satisfactory profit and return). They believed that a four-star establishment could better meet the needs of the community since no comparable facility existed in the downtown area and Manhattan Beach is an affluent community made up of residents and visitors possessing discriminating tastes and needs.

Coping with the many unforeseen challenges caused by the parking garage and constructing a much improved four-star hotel has pushed the budget to exceed the original costs estimated by the Metlox developer by thirty-three percent. This fact has substantially increased the risks of taking on the project.

Amending the 'use permit' as requested in this application will make Shade Hotel a better all-around hospitality facility with improved services for guests and event planners, and will improve the economic sustainability of the business for its owners. The operators of Shade Hotel understand and agree with the intent of the existing 'use permit' and commit to continue honoring that intent with the amended uses.

As opening day is quickly approaching, time is of the essence. Shade Hotel needs the requested changes in order to open on time and to be given the opportunity to succeed. Thank you for your time and consideration.

WRITTEN DESCRIPTION

Purpose of Application

Shade Hotel (owned and operated by Manhattan Inn Operating Company, LLC) is located at 1221 North Valley Drive, Manhattan Beach and is part of the new Metlox development. The approved 'use permit' for the commercial development states, "The Inn may provide beer and wine service for its guests only, and may also provide full liquor self-service in room 'mini-bars'." An issue has arisen because the Department of Alcohol Beverage Control does not offer an alcohol license or set of licenses to permit the combination of alcohol service circumscribed by the 'use permit' approved by the city. The licenses required by the A.B.C. to permit these combined services are a Type 66 Controlled Access Cabinet Permit (which permits in-room 'mini-bars') and a Type 47 On-Sale General for Bonafide Eating Place (which permits the sale of liquor).

Shade Hotel purchased a Type 47 license in 2004 and submitted the licensing application to the A.B.C. During the approval process the A.B.C. determined that a Type 47 cannot be limited in the manner specified by the city: "beer and wine service for its guests only". For a business establishment to possess a Type 47, it must: (1) be a bonafide eating place, (2) permit the general public access to the public service areas (the very definition of a general on-sale license), and (3) serve liquor at the licensed service areas. The Type 66 is not a stand alone license and must be issued in conjunction with another on-sale general license such as the Type 47.

Therefore, in order to comply with A.B.C. regulations, it is necessary for Shade Hotel to seek an amendment to the 'use permit' for the Metlox site to permit full liquor in all service areas of the hotel including the room 'mini-bars'. The other service areas include the Courtyard, the Living Room (comprised of part of the Lobby and the Wine Bar), the Meeting Rooms, and the Sun Deck. The 'use permit' must also be amended to allow the general public access to the alcohol services areas at the hotel.

Secondly, the city approved the hotel to serve as a facility for "weddings, parties and other special events as a secondary use". The initial interest from the community has been encouraging, however many party planners have expressed that the limit of sixty people is impractical and restrictive for many types of events. Shade Hotel proposes to increase the size of events from sixty to ninety-nine people to better accommodate the demands of function planners.

Legal Description

Lot 2, Block 97, Manhattan Beach Division #2.

General Plan Designation

Downtown Commercial

L.C.P., L.U.P. Designation

Downtown Commercial

Zoning

CD, Downtown Commercial

Neighboring Land Uses

North	CD, Police/ Fire Stations
South	CD, Restaurant/ Commercial
East	CD, Valley/ Ardmore Blvds.
West	CD, Commercial, Public Areas

Alcohol License

Current: Type 47 – On-Sale General for Bonafide Eating Place
Type 66 – Controlled Access Cabinet Permit
Type 68 – Portable Bar

(The current ‘use permit’ places restrictions on the alcohol licenses: Beer and wine service for its guests only.)

Proposed: Type 47 – On-Sale General for Bonafide Eating Place
Type 66 – Controlled Access Cabinet Permit
Type 68 – Portable Bar

(Full alcohol service available to the general public in all service areas as required by the Department of Alcohol Beverage Control.)

Occupancy

Total hotel occupancy: Approximately 334 persons.

Parking

Public parking provided at the Metlox site. Changes to the existing “use permit” will have no impact on the available parking.

Hours of Operation

Sunday – Thursday	6:00 a.m. – 11:00 p.m.
Friday and Saturday	6:00 a.m. – 12:00 a.m. (midnight)

(These are the original hours approved by the current ‘use permit’.)

Breakfast Service

Monday – Friday	6:00 a.m. – 10:00 a.m.
Saturday – Sunday	6:00 a.m. – 11:00 a.m.

Environmental Impact

None.

DESCRIPTION OF HOW FINDINGS WILL BE MET

1. The proposed amendments to the 'use permit' of Shade Hotel, located at 1221 North Valley Drive, Manhattan Beach, is consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses.
2. The proposed amended 'use permit' of this business property is consistent with the General Plan for the Commercial Downtown designation, because it is merely the granting of additional privileges to an already approved use that will result in no fundamental change of that use. Amending the 'use permit' to comply with A.B.C. regulations and the approval of larger special events will have no environmental impact whatsoever and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the boutique hotel. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city.
3. The proposed amended 'use permit' for the boutique hotel is consistent with the already approved primary and secondary uses of the facility. The new uses will comply with the provisions and conditions of this title.
4. Because the proposed amended 'use permit' will not alter the fundamental use, purpose or character of the boutique hotel, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.

EXHIBIT 5. VIOLATIONS OF 2005 CUP

EXHIBIT 3.
VIOLATIONS
OF 2005 CUP

2005 CUP COND. 4: SKYDECK NOT MARKETED TO THE PUBLIC
2005 CUP APPLICATION: OCCUPANCY 45 PATRONS
WEBSITE ADVERTISED OCCUPANCY 92, FOR PUBLIC COCKTAIL PARTIES

shade

book now

Deals and Packages

shade business
effect our corporate rates

3 minute video hotel tour



[SPACE DESCRIPTIONS](#) | [CAPACITY CHART](#) | [FLOOR PLANS](#) | [THE COURTYARD](#) | [THE GREEN ROOM](#) | [THE SKYDECK](#)
[ZINC](#) | [THE ZINC TERRACE](#) | [MENU OPTIONS](#) | [TESTIMONIALS](#) | [REQUEST PROPOSAL](#)

up on the roof.

Ascend the stairs and discover 365 days of sunlight at our open air poolside retreat. Our intimate rooftop deck provides guests with a place to soak in the sun, entertain friends, and to appreciate the ocean air and our very own breathtaking Manhattan Beach sunsets. For an unforgettable evening, host a private party. We will serve you and your guests a memorable meal under the stars.

How Big?

42' x 32'
950 square feet

How many?

The Sky Deck can hold up to 92 people for cocktails.
48 for a more formal sit down event.

How much?

An event on the Skydeck requires the following minimum spend:
 Sunday through Wednesday Evening (6pm-10pm) \$2,500
 Thursday (6pm-10pm) \$3,500
 Friday - Saturday Evening (6pm-10pm) \$5,000

We do not accommodate private parties during the daytime on the Skydeck. Prices and minimum spend requirements are exclusive of tax and 20% service charge.

Legislative History

2005 CUP Application specified a 'Sun Deck' (Skydeck) occupancy of 45. Strand website advertises cocktail parties for the public with 92 occupancy.

want more? be the first to know about special events and offers...

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 reservations: 866.SHADE77 (toll free)

EXHIBIT 6. VIOLATIONS OF 2005 CUP

EXHIBIT 3.

2005 CUP COND. 4: NO ZINC MARKETING, UNLESS FOR HOTEL STAY VIOLATIONS OF 2005 CUP

HOME THE SKINNY AMENITIES SLEEP ZINC PICS MEETINGS EVENTS WEDDINGS SPONSORS PRESS CONTACT

shade

book now

Deals and Packages

shade business
check out our corporate rates

3 minute video hotel tour



ZINC | THE SKYDECK | ROOM SERVICE | JUST FOR SHADE KIDS | ZINC READY SET LUNCH | ZINC READY SET BREAKFAST
ZINC BRUNCH MENU SAT - SUN | ZINC BREAKFAST AND LUNCH MENU MON - FRI | ZINC SMALL PLATES AND LIQUIDS MENU

zinc lounge.

A true fusion of coastal living with LA nightlife. We turn the lights down low, mix a sultry Martini, pour a glass of Napa Cab, prepare a spread of small plates. Cool, hip, comfortable, inviting, you'll relax in our neo-modular furniture designed by Christopher Lowell. Zinc has perhaps the longest bar in South Bay. In the lounge or on the terrace, you can enjoy our menu of unusual small plates, both sweet and savory. Through a unique European wine preservation system, we offer a large selection of fine wines by the glass. The food, the drink, the environment, the service. Zinc is an indulgence -- a sensory experience.

Reserve your space in Shade. Table service available. Please call directly to make your reservation: 310.406.6801.

for live help call
866.SHADE77

want more? be the first to know about special events and offers...

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reservations: 866.SHADE77 (toll free)

SHADE 2005 CUP CONDITION 6: NO MENUS POSTED OUTSIDE



EXHIBIT 3.
VIOLATIONS
OF 2005 CUP

**2005 CUP STAFF REPORT REQUIRES LOBBY-ZINC PARTITION;
DOES NOT INCLUDE 'PORCH' (TERRACE) IN ALCOHOL-FOOD SERVICE**

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

THROUGH: Richard Thompson, Director of Community Development

FROM: Laurie B. Jester, Senior Planner

DATE: May 25, 2005

SUBJECT: Consideration of a Master Use Permit Amendment for Modifications to the Previously Approved Alcohol Sales and Special Events 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 A RESOLUTION** (Exhibit A) approving the amendments.

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, which 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, was approved by the City Council in July 2002. The commercial development includes a 38-room Inn, the Shade Hotel.

The proposed project is a modification of the previously approved alcohol sales for the Shade Hotel to provide high quality service to their customers consistent with the business plan for the four-star hotel, as well as to provide consistency with the State Alcoholic Beverage Control (ABC) regulations. The previous approval (Condition No. 38- City Council Resolution No. 5770- Exhibit C) allows full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The State Alcoholic Beverage Control (ABC) regulations require a full liquor license throughout the Hotel facility that is open to the general public and includes the service of food in order to allow the in-room mini-bar license. There is no ABC license, or series of licenses that would allow beer and wine only for guests, and full liquor for the mini-bars. A portable bar with full liquor, for special events, is also proposed. Full liquor is proposed throughout the Hotel including the Courtyard, the Living Room which

includes the Lobby and Wine Bar, the Meeting Room and the rooftop Sun Deck. Alcohol is only allowed to be consumed on the site, it may not be taken off-site for consumption. The previous approval of full liquor sales for the two restaurants will not be modified with this Amendment.

The previous approval (Condition No.28- City Council Resolution No. 5770- Exhibit C) also limits special events (weddings, parties, etc.) to 60 people, and the modification requests a maximum of 99 people. No amendments to any other conditions of approval are proposed.

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

BACKGROUND

The Metlox project is the culmination of many years of community participation and input through workshops and meetings. The following is a summary of some of the key milestones for the Metlox site:

- 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
- 1997/98- The City purchased the Metlox property to control development and Master Plan the site
- 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
- December 1998- The City selected the Tolkin Group as a development partner
- April 2001- The City Council certified the EIR.
- April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
- July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
- November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
- February 2003- Groundbreaking for the Metlox parking structure
- January 2004- Grand opening of public parking structure with 460 parking spaces
- April 2004- Shade Hotel construction commenced
- September 2004- Construction of the Metlox commercial buildings started

The project before the Planning Commission is an amendment to the Master Use Permit and related entitlements for the Shade Hotel. The Coastal Development Permit for the Master Use

Permit was issued by the California Coastal Commission and therefore they will review the project and make a determine if an amendment to the Permit will be required to be processed.

PROJECT DESCRIPTION

Overview

The Shade Hotel requests that three changes be made to the existing Master Use Permit:

-Wall identified to separate the lobby from the Zinc Bar.

-'Porch' (terrace) not identified as an alcohol or food serving area.

1. That full liquor service be permitted at all public service areas of the hotel as required by the Alcoholic Beverage Control Type 47 license. The service areas include the in-room 'mini-bars', the Courtyard, the Wine Bar (called "Zinc"), the Living Room (defined as the Wine Bar and a certain area of the Lobby that can be partitioned and closed to the public), the Meeting Room, and the Sun Deck located on the roof.
2. That the hotel be permitted to sell alcoholic beverages to the general public as opposed to only hotel guests as stated in the Master Use Permit, in order to provide a high quality of service to their customers and to comply with the ABC regulations.
3. That the size of events be increased from a maximum of sixty to ninety-nine people. The approved occupancies of the event spaces can comfortably accommodate the change. The occupancy of the public spaces on the first level, as per the approved plans, is over 200 people.

Alcohol

The reason for seeking these changes is to improve the services offered at the hotel and to comply with the requirements of the State Department of Alcoholic Beverage Control (ABC). The applicant states the following in their application: The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. The changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. In booking functions, Shade Hotel's first concern will always be given to the hotel's guests, so the hours and size of events will be restricted by how they impact the entire hotel operation. Although the general public cannot be denied access to alcohol service in the public areas, as regulated by the ABC, Shade Hotel makes the commitment to the city that all its advertising, marketing and promotions will be focused on potential hotel guests and not the general public. The hotel will be a four-star facility, an upgrade from the original Inn operator, and it will attract a mature, up-scale, affluent clientele. Historically it is not alcohol that potentially may cause issues for a community, but rather it is the type of establishment offering the alcohol that may lead to problems. Many restaurants in the downtown area serve liquor, and the full service hotels in town also serve liquor and they generate no problems for the community. Shade Hotel is situated away from the other nightlife in Manhattan Beach, and the business concept of operating as a hotel does not attract trendy "party-goers".

The applicant goes on to indicate that as part of the ABC license application process in February they mailed public notices to the neighbors located within a 500 yard radius of the property, posted the application sign on the exterior of the property for thirty days, and advertised the

To address concern by Community Development, the hotel WILL construct a partition to separate the lobby from the Zinc Bar, to insulate the lobby from event noise. The wall will have a Sound Transmission Coefficient of 50 dB (STC-50). Condition 1 in the 2005 CUP requires a public hearing by the planning commission to make this substantial change to the approved plans.

EXHIBIT 3.
VIOLATIONS
OF 2005 CUP

application publicly in the newspaper three times. The result achieved was that not one neighbor or citizen protested the application. Margo Hoffman, the ABC investigator assigned to this case, verbally indicated that it is uncommon when an application does not elicit some minimal protest, and her letter indicates that no protests were received (Exhibit D). Four-star hotels and wedding venues typically hold Type 47 licenses – including Belamar Hotel, the Marriott, and Veranda (wedding and special event venue) in Manhattan Beach.

Potential noise concerns will be addressed through the review of the annual Entertainment Permit as well as a retractable partition in the Living Room will be installed which is capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events as the room will have a STC (Sound Transmission Code) rating of 50, which will more than sufficiently mute the noise. The hotel designers specifically planned the Sun Deck to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east (Ardmore Blvd.) and six feet in all others directions (facing commercial uses).

The applicant is offering the following conditions of approval to alleviate any potential concerns and self-regulate the business operations of the hotel:

1. All hotel marketing, advertising, and promotions must be limited to attracting potential hotel guests and event planners. The Wine Bar (now called “Zinc”) and Sun Deck will not be marketed to the general public as separate hospitality attractions. (The brochure included in this application demonstrates the intent of Shade Hotel.)
2. The Wine Bar will limit its food menu to appetizers or “small plates” (or “tapas”), to qualify as a “bonafide eating place” as required by the ABC Type 47 license. The Wine Bar will provide food service but will not operate as a full scale “restaurant”. (Breakfast will be served daily in the Living Room or Courtyard depending upon weather conditions.)
3. Shade Hotel will not post any drink or food menus, or any drink or food signage outside of the hotel.
4. The Sun Deck will stop regular alcohol service no later than 9:00 p.m. daily.
5. Alcohol service at events and functions will stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday – Thursday; 11:30 p.m., Friday and Saturday.

The applicant also states that the operators of Shade Hotel have a long history in Manhattan Beach as hands-on owners and managers of two reputable restaurants located downtown. Both restaurants – Manhattan Beach Brewing Company (15 years) and Rock’N Fish (4 ½ years) – offer liquor beverages to its customers, and both espouse a “good citizen” philosophy emphasizing conservative alcohol service and professional operational practices consistent with the community’s standards.

The Master Use Permit, Condition No. 40, regulates entertainment on the site by requiring an annual Entertainment Permit for any entertainment other than non-amplified background-type

music, with a maximum of 2 entertainers.. The Entertainment Permit is required to be submitted to the Director of Community Development for review and approval, with input from the Police and Fire Departments. Appropriate conditions are placed on the Permit to minimize potential negative impacts including, but not be limited to, hours, size and location of performance or dance area, size of band and number of performers, numbers of performance days per week, type and location of amplification, speakers and soundproofing, and volume of amplification. The Permit is reviewed annually to determine if it is appropriate to renew the permit, deny the permit, or modify the conditions of approval. Since issues may arise with the combination of the alcohol and entertainment, this condition provides the tools to assure that any potential issues are addressed.

The ABC has identified the Downtown area of Manhattan Beach as having an "undue concentration" of alcohol licenses, which is typical for South Bay Cities. The criteria that the ABC uses in their calculations and determination of "undue concentration" takes into account all of Los Angeles County, including areas with very little population. This tends to create areas of "undue concentration" of alcohol licenses in areas where there is concentration of people and businesses, such as Downtown and other commercial areas. The City Council has reviewed alcohol licenses in the past and has supported alcohol in conjunction with food service and hotel uses. Staff believes that the conditions of approval will address any potential impacts and the proposed modification to the previously approved alcohol use would be consistent with other food service uses in the Downtown as described in the attached chart (Exhibit E).

Event Size

The applicant states in their application that the need to increase the size of events from sixty to ninety-nine people has been communicated by several groups of function planners interested in contracting the services of the hotel. They find the limit of sixty people impractical and restrictive for many types of events. The combined facilities of the Courtyard and the Living Room will more than adequately accommodate parties of ninety-nine or greater as the Building Code allowed occupancy of the area is over 200 people. Some groups intend to book all the hotel guest rooms for their events which would create parties with the potential attendance approaching the requested capacity. The sixty person restriction was conservatively established prior to the final design of the hotel and the occupancy calculation. The City approved the hotel to serve as a facility for "weddings, parties and other special event services as a secondary use". The applicant further states that the Shade Hotel needs a less restrictive limit on its event capacity to be a serious contender as a wedding and banquet venue and to compete more fairly with the Belamar Hotel, the Marriott, and Veranda.

Master Use Permit Findings

The applicant addressed the required Use Permit findings in their application. The attached Resolution (Exhibit A) also details the required findings.

Noticing and comments

Notices of the public hearing were provided to all property owners within a 500 foot radius of the project site and published in the Beach Reporter. No public comments were received. The application was also circulated to other Departments for review and comments. The Police Department verbally indicated that they had no concerns with the proposal and that any issues had

been adequately addressed. Building and Safety verbally indicated that review by the Los Angeles County Health Department and the Fire Department will be required. No other comments were received from other Departments. Letters of support from the Chamber of Commerce and the Downtown Business and Professional Association are attached as Exhibit D.

Environmental Review

An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.

CONCLUSION

The project before the Planning Commission is an Amendment to the Master Use Permit for the Shade Hotel alcohol sales and special event size. Staff recommends that the Planning Commission open the public hearing, discuss the project, and adopt a Resolution approving the project.

ATTACHMENTS

- Exhibit A: Draft Planning Commission Resolution No. 05-XX
- Exhibit B: Application with Project Description and Findings (Portions not available electronically)
- Exhibit C: City Council Resolution No. 5770- Master Use Permit- Metlox
- Exhibit D: Letters from ABC, Chamber of Commerce, and Downtown Business and Professional Association (Not available electronically)
- Exhibit E: Restaurants with alcohol licenses in Downtown
- Exhibit F: Plans (1/2 Size)- (Not available electronically)

- c: Mike Zislis- Shade Hotel
- Jon Tolkin- Tolkin Group
- Glenn Loucks- Tolkin Group

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RESOLUTION NO. PC 05-XX

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED ALCOHOL SALES AND SPECIAL EVENTS AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATION COMPANY, LLC-MICHAEL A. ZISLIS, PRESIDENT)

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Manhattan Beach, California, hereby makes the following findings:

- A. Manhattan Inn Operation Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previously approved alcohol sales and special events at the Shade Hotel, Metlox site, 1221 north Valley Drive in the City of Manhattan Beach.
- B. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission and therefore they will review the project and make a determine if an amendment to the Permit will be required to be processed.
- D. The applicant is Manhattan Inn Operation Company, LLC and the property owner is the City of Manhattan Beach.
- E. The following is a summary of some of the key milestones for the Metlox site:
 - 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
 - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
 - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
 - December 1998- The City selected the Tolkin Group as a development partner
 - April 2001- The City Council certified the EIR
 - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
 - July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
 - November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
 - February 2003- Groundbreaking for the Metlox parking structure
 - January 2004- Grand opening of public parking structure with 460 parking spaces
 - April 2004- Shade Hotel construction commenced
 - September 2004- Construction of the Metlox commercial buildings started
- F. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meeting of May 25, 2005.

The public hearing was advertised pursuant to applicable law and testimony was invited and received.

- G. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.
- H. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space.
- I. The General Plan designation for the property is Downtown Commercial.
- J. The proposed project is a modification of the previously approved alcohol sales for the Shade Hotel to provide high quality service to their customers consistent with the business plan for the four-star hotel, as well as to provide consistency with the State Alcoholic Beverage Control (ABC) regulations. The previous approval (Condition No. 38- City Council Resolution No. 5770) allows full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The State Alcoholic Beverage Control (ABC) regulations require a full liquor license throughout the Hotel facility (Type 47 license) that is open to the general public and includes the service of food in order to allow the in-room mini-bar license (Type 66 license). There is no ABC license, or series of licenses that would allow beer and wine only for guests, and full liquor for the mini-bars. A portable bar with full liquor (Type 68 license), for special events, is also proposed. Full liquor is proposed throughout the Hotel including the Courtyard, the Living Room which includes the Lobby and Wine Bar, the Meeting Room and the rooftop Sun Deck. Alcohol is only allowed to be consumed on the site, it may not be taken off-site for consumption.
- K. The previous approval (Condition No. 28- City Council Resolution No. 5770) also limits special events (weddings, parties, etc.) to 60 people, and the modification requests a maximum of 99 people.
- L. No changes to the previously approved hours of operation are proposed for either the alcohol sales or the special events. Breakfast Service in the Living Room and/or Courtyard is proposed from 6:00 AM to 10:00 PM Monday-Friday and 6:00 AM-11:00 PM Saturday and Sunday. The "Wine Bar" is proposed to operate in the evenings from 5:00 PM to 11:00 PM daily, although flexibility for earlier hours based on the needs of the customer is desired. Although the emphasis of the "Wine Bar" will be on providing a wide selection of premium wines, full liquor will be available. Additionally, the Wine Bar will provide a variety of appetizers in order to qualify as an eating establishment as required by the ABC. Mid-day, lunch, food service will not be provided, except for room service.
- M. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. The

Resolution No. PC 05-xx

changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. All advertising, marketing and promotions will be focused on potential hotel guests and not the general public.

- N. As part of the ABC license application process completed in February 2005 public notices were mailed to the neighbors located within a 500 yard radius of the property, the application sign was posted on the exterior of the property for thirty days, and the application was advertised publicly in the newspaper three times. Not one neighbor or citizen protested the application.
- O. Potential noise concerns will be addressed through the review of the annual Entertainment Permit as well as a retractable partition in the Living Room will be installed which is capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events as the room will have a STC (Sound Transmission Code) rating of 50. The Sun Deck is designed to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east and six feet in all others directions.
- P. The ABC has identified the Downtown area of Manhattan Beach as having an "undue concentration" of alcohol licenses, which is typical for South Bay Cities. The criteria that the ABC uses in their calculations and determination of "undue concentration" takes into account all of Los Angeles County, including areas with very little population. This tends to create areas of "undue concentration" of alcohol licenses in areas where there is concentration of people and businesses, such as Downtown and other commercial areas. The Planning Commission makes the findings of public convenience and necessity for the alcohol license as the license for the hotel use is compatible with similar uses that have alcohol licenses, and other Downtown uses and the City Council has reviewed alcohol licenses in the past and has supported alcohol in conjunction with food service and hotel uses.
- Q. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- R. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution only amends Conditions No's 28 and 38 of Resolution No. 5770, all other conditions remain effective and in full force.
- S. Based upon State law, and MBLCP Section A.84.050, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the 'use permit' of Shade Hotel are consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the city's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts.
 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or

working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the proposed amended 'use permit' of this business property is consistent with the General Plan for the Commercial Downtown designation, because it is merely the granting of additional privileges to an already approved use that will result in no fundamental change of that use. Amending the 'use permit' to comply with ABC regulations and the approval of larger special events will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the boutique hotel. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city. Additionally, the project is consistent with the following General Plan Goals and Policies:

GOALS AND POLICIES: LAND USE

Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

Policy LU-6.1: Support and encourage small businesses throughout the City.

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the issuance of a certificate of occupancy. The proposed amended 'use permit' for the boutique hotel is consistent with the already approved primary and secondary uses of the facility. The new uses will comply with the provisions and conditions of this title.
4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the boutique hotel, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.

SECTION 2. The Planning Commission of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment subject to the following conditions.

General Conditions

1. The proposed project shall be in substantial conformance with the plans submitted and the project description, as approved by the Planning Commission on May 25, 2005, subject to any special conditions set forth below. The layout of the Lobby area, including the sound insulation, and roof deck is subject to further review and approval by the Director of Community Development. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.

Land Use

2. (This condition replaces Condition No. 28- City Council Resolution No. 5770) The Inn may provide wedding, party, and other special event services in their Courtyard, Meeting Room, and Living Room, as a secondary service to the primary Inn use. These types of events are limited to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday. Events are limited to a maximum of 99 people, or whatever the maximum occupancy is as determined by the Building or Fire Code limits, whichever is less. The Director of Community Development may approve Temporary Use Permits for events which exceed 99 people, not to exceed the maximum occupancy as allowed by the Building or Fire Code limits. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. The availability of the Inn for special events shall not be marketed as the primary use.

Alcohol

3. (This condition replaces Condition No. 38- City Council Resolution No. 5770) The two restaurants may provide full liquor service, which is incidental to, and in conjunction with, the service of food. Service of alcohol at the restaurants shall be in conjunction with the service of food at all times during all hours of operation. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.

New conditions

4. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Wine Bar (now called "Zinc") and Sun Deck will not be marketed to the general public as separate hospitality attractions.
5. The Wine Bar shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room and/or Courtyard.
6. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
7. The Sun Deck shall stop regular alcohol service no later than 9:00 p.m. daily.
8. Alcohol service at events and functions shall stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday – Thursday; 11:30 p.m., Friday and Saturday.

Procedural

9. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.
10. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.
11. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.
12. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.
13. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
14. Review. All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after occupancy 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.
15. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
16. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.
17. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

Resolution No. PC 05-xx

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of **May 25, 2005**, and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RICHARD THOMPSON
Secretary to the Planning Commission

Sarah Boeschen
Recording Secretary

2005 CUP FINDING L AND CONDITION 5: TERRACE OPEN ONLY FOR BREAKFAST; 22 SEAT OCCUPANCY

STAFF AND APPLICANT TESTIMONY AT 2005 CUP HEARING

(25 May 2005 Planning Commission Meeting)

Video Summary: Testimony and statements in the three short clips below from the city video of the 2005 CUP hearing provide the only information regarding use of the Shade terrace, prior to the 2010 CUP. No other facts regarding use of the terrace exist in the remainder of the entire administrative record for the Metlox Master Use Permit, Resolution 5770 and for the 2005 CUP amendment. Regarding the terrace, the commissioners based their decision on the 2005 CUP solely on the facts provided to them by staff and the applicant below. They had no other information before them.

Staff Statement of No Alcohol or Food Service on Terrace.

Time in city video of 25 May 2005 meeting for 2005 CUP: 00:30:22 hh:mm:ss

First video clip summary: Commissioner David Simon requests hours of operations for the ground-level terrace, which opens off the Zinc Bar, bordering the 12th St walkway, on the south. Staff acts as though she does not know the terrace location. When commissioners guide her to it, she states the terrace would have no alcohol or food service.

Commissioner David Simon: 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?

Planner Laurie Jester: The hours of operation are the same as for the roof deck.

Commissioner Simon: What I just read doesn't say terrace specifically.

Planner Jester: I'm sorry, which page are you looking at?

Commissioner Simon: Page 2, your second full paragraph, second sentence. See, we're talking about breakfast service in the living room.

Planner Jester: There will not be breakfast service on the roof, if that's what you're talking about.

Commissioner Simon: I'm going to the outside terrace on the ground floor

Planner Jester: Oh. Okay. That's why I said living room or courtyard. The living room is the lobby area. The courtyard is the interior courtyard.

Commissioner Simon: What are the hours for the terrace?

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

Commissioner Simon: On your map, the public area outside the lobby.

Planner Jester: We call that the courtyard. You call that the [unintelligible]?

Commissioner Simon: I call the courtyard the courtyard, sorry.

Planner Jester: There's only one courtyard. It's right in the middle, totally surrounded by the building.

Commissioner Simon: So there you have the lobby and the wine bar area, and then you have the outside terrace.

Planner Jester: Correct. Terrace, or courtyard, we're calling it here.

Commissioner Simon: So we have two courtyards, or is the whole thing called a courtyard.

Planner Jester: Let me show you on the plans. (Jester goes to plans behind commissioners.) 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're calling it, if the weather is nice. Special events can take place in these two areas. (Zinc bar/lounge and courtyard.)

Commissioner Simon: Actually, I am talking about going on the other side of the lobby.

Other voices: Porch. It says porch on my drawing. To the right, on 12th Street.

Planner Jester: Oh! Here! Oh! That's a ...no...no. There would not be...no. ***There wouldn't be services of food or alcohol in that area.*** (emphasis added.) At least that's my understanding from the applicant.

Commissioner Muriel Savikas: What's it called?

Planner Jester: You're right, it does say porch there.

Commissioner Simon: Okay.

Planner Jester: At least that's my understanding from the applicant. And maybe they can clarify that.

Director Richard Thompson: He'll clarify all these issues in his presentation.

Planner Jester: This is a covered porch. It's part of the hotel. There's a grade change between... This is a walkway, you can see here, 12th walk. This is a raised covered porch.

Applicant Statement that 22-Seat Terrace Serves Only Breakfast.

Time in city video of 25 May 2005 meeting for 2005 CUP: 00:42:48 hh:mm:ss

Second video clip summary: Commissioner Simon requests from the applicant hours of operations for the porch-terrace. Mr. Michael Zislis states that terrace closing times are 10 AM on Monday through Friday and 11 AM on Saturday-Sunday. Mr. Zislis also noted the staff report had a typo regarding using 'PM' for 'AM.'" Commissioner Savikas asks whether the terrace is enclosed. Mr. Zislis replies it is not enclosed, but open only for breakfast, with 22 seats, so will not cause a disturbance. These facts represent the only information stated for the terrace in the entire 2005 CUP proceedings. Neither the application nor the staff report for the 2005 CUP mentioned the terrace. Both documents list the areas for alcohol service, which do not include the terrace.

Commissioner Simon: We had a discussion on the hours of serving food on the porch-terrace.

Mr. Zislis: Yeah. The hours for the terrace would be I think, 7 AM to 10 AM Monday through Friday and 8 AM to 11 AM on Saturday and Sunday.

Commissioner Simon: 11 AM.

Mr. Zislis: 11 AM. I think there's a typo, if you look at, they put PM there. For the breakfast service, it's AM.

Commissioner Simon: Okay.

Mr. Zislis: So I noticed. So that's the thought.

Commissioner Savikas: Is that terrace walled-in?

Mr. Zislis: No, that terrace is right on the, if you look at the top picture, that's right on the courtyard for the whole Metlox property. So that looks out on to the water feature, and everything. The terrace. It's 22 seats for breakfast. I don't see that as being any louder than...It's right across the street from the terrace for the Mediterranean restaurant. They look at each other. So it's no different use.

Staff Revises 2005 CUP to Include Alcohol and Breakfast Service on Terrace.

Time in city video of 25 May 2005 meeting for 2005 CUP: 01:30:34 hh:mm:ss

Third video clip summary: Staff interrupts voting on the 2005 CUP, to revise Finding J, Finding L and Condition 5 for inclusion of alcohol and breakfast on the terrace.

Chair O'Connor: I think we probably could entertain a motion.

Commissioner Kuch: I'll make a motion. That we approve the resolution as written.

Director Thompson: We do have some suggested clarifications to the resolution and Laurie would like to go over some of those, based on the discussion tonight.

Planner Jester: On Page 2, Item J, which is one of the findings. I'd just like to clarify that the Porch...Do we all know what the Porch is now, or terrace...

Chair O'Connor: Page 2, Page 2 of the resolution.

Planner Jester: J, last sentence.

Commissioner Simon: Let me catch up with you. You're looking at the proposed resolution. Right?

Planner Jester: Proposed resolution.

Commissioner Simon: Let me go through my stack here.

Planner Jester: Page 2.

Commissioner Simon: I'm with you now, okay.

Planner Jester: Item J, last sentence, where it lists where full liquor is allowed, which is throughout all public areas of the hotel, basically.

Chair O'Connor: (Unintelligible) Living Room...

Planner Jester: Living Room, wine bar, meeting room, rooftop Sun Deck, we would like to add on there, the Porch. So that is clarified.

Planner Jester (continued): The next Item K, which is again a finding. We would like to clarify, right after 99 people, put, put 'comma', "without a temporary use permit." Because there can be more people with a temporary use permit.

Under L, first sentence, same thing, "breakfast service in the Living Room, courtyard, and/or Porch."

And then the typo Mr. Zislis pointed out, 'PM' should be 'AM', 6 to 10 AM Monday through Friday, and 6 to 10 AM, I'm sorry, 11 AM Saturday and Sunday. That's breakfast.

Chair O'Connor: Just the 11 gets changed. Right? Right? Not the 10.

Planner Jester: No, the 10.

Chair O'Connor: Pardon me.

Planner Jester: Just the breakfast. Breakfast.

Chair O'Connor: Oh, breakfast. Okay.

Planner Jester: Then on Page 5, Condition Number 5. Same thing with adding the Porch. "Breakfast may be served daily, Living Room, courtyard and/or Porch. And those are the changes we suggest.

Commissioner Kuch: I will make a motion to approve the resolution as clarified by Laurie.

Commissioner Savikas: I'll second.

Chair O'Connor: Sarah, roll call please.

VOTING

2005 CUP FINDING O: LOBBY-ZINC BAR ACOUSTIC PARTITION

APPLICANT TESTIMONY FOR REQUIRED LOBBY-ZINC BAR ACOUSTIC WALL (25 May 2005 Planning Commission Hearing for 2005 CUP)

Time in city video of 25 May 2005 meeting: 00:44:35 hh:mm:ss

Description. At 25 May 2005 hearing on the 2005 CUP, Commissioner Savikas questions applicant whether the area for special events can be closed off from where hotel guests enter to go to their rooms. Mr. Zislis states that an acoustic wall will separate the lobby from the special event area.

Commissioner Savikas: If you were to have an event in the courtyard, you can block off the courtyard, and guests can still get to their rooms on the perimeter?

Mr. Zislis: Absolutely. We designed it that way. And also, in the...in the lobby bar, we have an acoustic wall that runs right down the hall, the whole bar area. So we can shut down that lobby to a private space, so it's acoustically... Because if you do have a wedding, you're going to have a band playing in the dance floor. And you don't want it to interfere with your guests.

2005 CUP FINDING O: LOBBY-ZINC BAR ACOUSTIC WALL

DIRECTOR THOMPSON IDENTIFIES WALL TRACK IN CEILING OF THE LOBBY AND ZINC BAR, BUT NO RETRACTABLE WALL, AS REQUIRED BY 2005 CUP, FINDING O (Testimony, 28 October 2009 Planning Commission Hearing for 2010 CUP)

Time in city video of 28 Oct 2009 meeting: 03:41:15 h:mm:ss

Description. At this hearing on the 2010 CUP, Commissioner Seville-Jones questioned Director Thompson regarding the acoustic partition between the hotel lobby and the Zinc Bar. Mr. Thompson replied that the lobby-Zinc ceiling still has the track for the partition. He stated the partition 'evolved' to extinction, before ever being installed.

Commissioner Seville Jones: That partition though, that, would that partition was to do was to create a room where the 50, whatever it's called, 50...STC. The STC of 50 would be in that room. My assumption from Condition O was that meant that the STC outside of that created room would be much less than 50. Because the room was to contain the noise.

Director Thompson: You know, I cannot interpret that way in one way or another. But I know there was a determination by our plan check engineers in order to satisfy this particular finding, so that finding was made, and in fact, there's a picture that was shown tonight of the Zinc Bar, and you can see the track(s) that are in there, there's still, there is the track, to install that partition that was, you know, built into the ceiling, if and when, when one would be necessary, So there was some thought to install it and create it, and I think over time, it's evolved and again, from a practical point of view, I just don't think it would ever provide the mitigation that the, the residents are looking for.

Note: In 2005 CUP Application (Exhibit 4), Community Development required a retractable partition to isolate the lobby from Zinc Bar noise, as per Community Director's comment above regarding the plan check engineer's requirement. According to 2005 CUP Condition 1, the Planning Commission must approve such a substantial change, not city staff.

2005 CUP FINDING O: REQUIRES ACOUSTIC WALL BETWEEN LOBBY AND ZINC BAR

Shade security camera from hotel lobby desk, showing no wall between lobby and Zinc Bar upper right. Hotel staff and patrons using lobby desk as a bar watch ejection of patron, later arrested by MBPD.

4 January 2008. 11:29 P.M. One hour after 10:30 P.M. end-of-service required by 2005 CUP Cond. 8.



See Page 3, for terrace hours of operation to 11 PM daily, which constitutes a violation of the Entertainment Permit ordinance. The latter prohibits any increase in operating hours, beyond that permitted in the use permit.

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CONDITIONS OF APPROVAL

Police Department:

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

Fire Department:

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

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

Community Development Department:

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

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amplified sound is incorporated. Entertainment that would result in dancing which exceeds the capacity of the 15' by 20' dance floor shall be prohibited. Entertainment and dancing shall conform to the attached floor plan. All doors leading to the outside shall remain closed at all times.

6. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
7. 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, 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 such as Lot 3.
8. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
9. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
11. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor

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the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors and to minimize noise and disturbance.

12. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel 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 close. The doorman or other employee shall ensure that patrons do not leave the premises with alcoholic beverages.(See Use Permit conditions below for hours)
13. A renewal application shall be submitted prior to March 1st.
14. A sign stating "Hotel Guests only after 11:00 pm shall be placed outside the main entry to the hotel off of Valley Drive.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
2. All events are limited to a maximum of 99 people unless prior written approval through a Temporary Use Permit is provided by the Director of Community Development. Event size may not exceed the maximum occupancy as allowed by the Building or Fire Code limits.
3. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.
4. Noise mitigation strategies shall be implemented including; door, wall and ceiling treatments, as required within the Zinc Lounge and Zinc Terrace area in order to mitigate noise. The Zinc Lounge shall demonstrate that the insulation achieves an STC (Sound Transmission Code) rating of 50 to mute the noise.
5. Hours of operation for the hotel public areas shall be as follows:
Lobby Zinc Bar (including outdoor Zinc Terrace to south of Lounge)- 11:00 PM daily
Interior Outdoor Courtyard (to north of Zinc lounge) and Green Room (2nd floor meeting room) when used for special events and functions- 11:00 pm Sunday-Thursday, 12:00 midnight Friday and Saturday (alcohol service to stop half-hour prior).

Entertainment permit increases hours for terrace operation to 11 PM daily, in violation of 2005 CUP Finding L, 7 AM to 10 AM Mon-Fri and 8 AM to 11 AM Sat-Sun. This violates the Entertainment Permit ordinance at MBMC 4.20.090, Hours of Operation, which prohibits increasing hours beyond that allowed in the use permit.

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Skydeck (Rooftop Deck)- 10:00 pm daily (Alcohol service to stop at 9:00 P.M.)

6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.
7. The availability of the Inn for special events shall not be marketed as the primary use.
8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees 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 operators shall police and promptly clean up all areas with any litter

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and spills after all events. Public Works shall bill applicant for any event related clean-up costs.

Risk Manager:

1. The applicant shall comply with all required Insurance and Indemnity requirements of the City of Manhattan Beach as detailed below.

INSURANCE AND INDEMNITY

1.1 Commencement of Work

SHADE HOTEL shall not commence work under this Agreement until it has obtained Owner approved insurance. Before beginning work hereunder, during the entire period of this Agreement, or any extensions hereto, and for periods after the end of this Agreement as indicated below, SHADE HOTEL must have and maintain in place, all of the insurance coverages required in this Article 1. SHADE HOTELS insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Article 1 and SHADE HOTEL shall be responsible to obtain evidence of insurance from each subcontractor and provide it to the Owner before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

1.2 Coverages, Limits and Policy Requirements

SHADE HOTEL shall maintain the types of coverages and limits indicated below:

- (1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, or the equivalent thereof with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) COMMERCIAL AUTO LIABILITY INSURANCE - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93 or the equivalent thereof including Symbol 1 (any auto) with no special limitations affecting the Owner. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by the Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim.

(4) PROFESSIONAL ERRORS & OMISSIONS - a policy with minimum limits of one million dollars (\$1,000,000) per claim and aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

is mailed to the Owner.

1.3 Additional Requirements

The procuring of such required policies of insurance shall not be construed to limit SHADE HOTEL's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against the Owner for payment of premiums or other amounts with respect thereto.

The Owner shall notify SHADE HOTEL in writing of changes in the insurance requirements. If SHADE HOTEL does not deposit copies of acceptable insurance policies with the Owner incorporating such changes within sixty (60) days of receipt of such notice, SHADE HOTEL shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by the Owner. Any deductible exceeding \$100,000 shall be subject to the following changes:

(1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to the Owner and its officials, employees and agents (with additional premium, if any, to be paid by SHADE HOTEL) ; or

(2) SHADE HOTEL shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

1.4 Verification of Compliance

SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

1.5 Indemnification

- 1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.
- 1.5.2 The Owner shall cause the Contractor to indemnify and hold harmless SHADE HOTEL from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, expenses and fees that are asserted against the SHADE HOTEL and that arise out of or result from wrongful acts or omissions by the Contractor in performing the Work.

EXHIBIT 14. VIOLATIONS OF 2005 CUP

EXHIBIT 3.
VIOLATIONS
OF 2005 CUP

RESOLUTION NO. PC 05-08

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED ALCOHOL SALES AND SPECIAL EVENTS AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATION COMPANY, LLC- MICHAEL A. ZISLIS, PRESIDENT)


THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Manhattan Beach, California, hereby makes the following findings:


- A. Manhattan Inn Operation Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previously approved alcohol sales and special events at the Shade Hotel, Metlox site, 1221 north Valley Drive in the City of Manhattan Beach.
- B. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission and therefore they will review the project and make a determine if an amendment to the Permit will be required to be processed.
- D. The applicant is Manhattan Inn Operation Company, LLC and the property owner is the City of Manhattan Beach.
- E. The following is a summary of some of the key milestones for the Metlox site:

- 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
- 1997/98- The City purchased the Metlox property to control development and Master Plan the site
- 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
- December 1998- The City selected the Tolkin Group as a development partner
- April 2001- The City Council certified the EIR
- April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
- July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
- November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
- February 2003- Groundbreaking for the Metlox parking structure
- January 2004- Grand opening of public parking structure with 460 parking spaces
- April 2004- Shade Hotel construction commenced
- September 2004- Construction of the Metlox commercial buildings started

- F. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meeting of May 25, 2005. The public hearing was advertised pursuant to applicable law and testimony was invited and received.

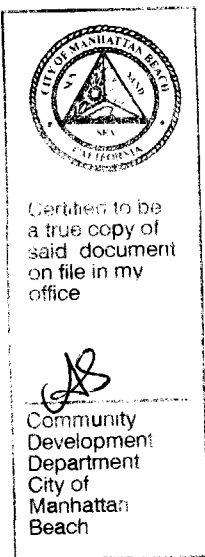


Certified to be a true copy of said document on file in my office



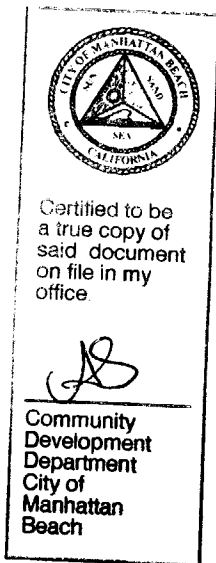
Community Development Department
City of Manhattan Beach

- G. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.
- H. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space.
- I. The General Plan designation for the property is Downtown Commercial.
- J. The proposed project is a modification of the previously approved alcohol sales for the Shade Hotel to provide high quality service to their customers consistent with the business plan for the four-star hotel, as well as to provide consistency with the State Alcoholic Beverage Control (ABC) regulations. The previous approval (Condition No. 38- City Council Resolution No. 5770) allows full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The State Alcoholic Beverage Control (ABC) regulations require a full liquor license throughout the Hotel facility (Type 47 license) that is open to the general public and includes the service of food in order to allow the in-room mini-bar license (Type 66 license). There is no ABC license, or series of licenses that would allow beer and wine only for guests, and full liquor for the mini-bars. A portable bar with full liquor (Type 68 license), for special events, is also proposed. Full liquor is proposed throughout the Hotel including the Courtyard, the Living Room which includes the Lobby and Wine Bar, the Porch, the Meeting Room and the rooftop Sun Deck. Alcohol is only allowed to be consumed on the site, it may not be taken off-site for consumption.
- K. The previous approval (Condition No. 28- City Council Resolution No. 5770) also limits special events (weddings, parties, etc.) to 60 people, and the modification requests a maximum of 99 people, without approval of a Temporary Use Permit.
- L. No changes to the previously approved hours of operation are proposed for either the alcohol sales or the special events. Breakfast Service in the Living Room, Porch, and/or Courtyard is proposed from 6:00 AM to 10:00 AM Monday-Friday and 6:00 AM-11:00 AM Saturday and Sunday. The "Wine Bar" is proposed to operate in the evenings from 5:00 PM to 11:00 PM daily, although flexibility for earlier hours based on the needs of the customer is desired. Although the emphasis of the "Wine Bar" will be on providing a wide selection of premium wines, full liquor will be available. Additionally, the Wine Bar will provide a variety of appetizers in order to qualify as an eating establishment as required by the ABC. Mid-day (lunch) food service will not be provided, except for room service.
- M. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. The changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. All



advertising, marketing and promotions will be focused on potential hotel guests and not the general public.

- N. As part of the ABC license application process completed in February 2005 public notices were mailed to the neighbors located within a 500 yard radius of the property, the application sign was posted on the exterior of the property for thirty days, and the application was advertised publicly in the newspaper three times. Not one neighbor or citizen protested the application.
- O. Potential noise concerns will be addressed through the review of the annual Entertainment Permit as well as a retractable partition in the Living Room will be installed which is capable of separating the Wine Bar/Living Room facility from the reception area. The walls and partition of the Living Room will insulate the sound produced by events as the room will have a STC (Sound Transmission Code) rating of 50. The Sun Deck is designed to minimize noise and maximize privacy. The Sun Deck will be enclosed by decorative walls on all four sides: the walls stand eight feet to the east and six feet in all others directions.
- P. The ABC has identified the Downtown area of Manhattan Beach as having an "undue concentration" of alcohol licenses, which is typical for South Bay Cities. The criteria that the ABC uses in their calculations and determination of "undue concentration" takes into account all of Los Angeles County, including areas with very little population. This tends to create areas of "undue concentration" of alcohol licenses in areas where there is concentration of people and businesses, such as Downtown and other commercial areas. The Planning Commission makes the findings of public convenience and necessity for the alcohol license as the license for the hotel use is compatible with similar uses that have alcohol licenses, and other Downtown uses and the City Council has reviewed alcohol licenses in the past and has supported alcohol in conjunction with food service and hotel uses.
- Q. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- R. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution only amends Conditions No's 28 and 38 of Resolution No. 5770, all other conditions remain effective and in full force.
- S. Based upon State law, and MBLCP Section A.84.050, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
 1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the 'use permit' of Shade Hotel are consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the city's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts.
 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since, the proposed amended 'use permit' of this



business property is consistent with the General Plan for the Commercial Downtown designation, because it is merely the granting of additional privileges to an already approved use that will result in no fundamental change of that use. Amending the 'use permit' to comply with ABC regulations and the approval of larger special events will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the boutique hotel. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city. Additionally, the project is consistent with the following General Plan Goals and Policies:

GOALS AND POLICIES: LAND USE

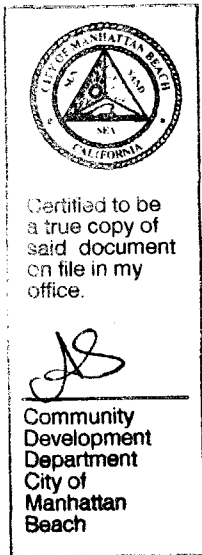
Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

Policy LU-6.1: Support and encourage small businesses throughout the City.

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

- 3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the issuance of a certificate of occupancy. The proposed amended 'use permit' for the boutique hotel is consistent with the already approved primary and secondary uses of the facility. The new uses will comply with the provisions and conditions of this title.
- 4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the boutique hotel, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.



SECTION 2. The Planning Commission of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment subject to the following conditions.

General Conditions

- 1. The proposed project shall be in substantial conformance with the plans submitted and the project description, as approved by the Planning Commission on May 25, 2005, subject to any special conditions set forth below. The layout of the Lobby area, including the sound insulation, and roof deck is subject to further review and approval

by the Director of Community Development. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.

Land Use

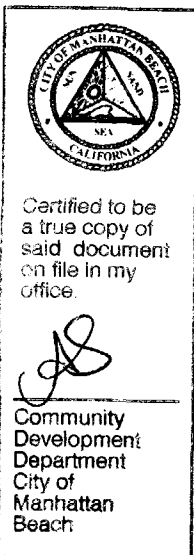
2. (This condition replaces Condition No. 28- City Council Resolution No. 5770) The Inn may provide wedding, party, and other special event services in their Courtyard, Meeting Room, and Living Room, as a secondary service to the primary Inn use. These types of events are limited to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday. Events are limited to a maximum of 99 people, or whatever the maximum occupancy is as determined by the Building or Fire Code limits, whichever is less. The Director of Community Development may approve Temporary Use Permits for events which exceed 99 people, not to exceed the maximum occupancy as allowed by the Building or Fire Code limits. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. The availability of the Inn for special events shall not be marketed as the primary use.

Alcohol

3. (This condition replaces Condition No. 38- City Council Resolution No. 5770) The two restaurants may provide full liquor service, which is incidental to, and in conjunction with, the service of food. Service of alcohol at the restaurants shall be in conjunction with the service of food at all times during all hours of operation. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.


New conditions

4. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Wine Bar (now called "Zinc") and Sun Deck will not be marketed to the general public as separate hospitality attractions.
5. The Wine Bar shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room, Porch, and/or Courtyard.
6. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
7. The Sun Deck shall stop regular alcohol service no later than 9:00 p.m. daily.
8. Alcohol service at events and functions shall stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday - Thursday; 11:30 p.m., Friday and Saturday.



Procedural

- 9. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.
- 10. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.
- 11. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.
- 12. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.
- 13. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
- 14. Review. All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after occupancy 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.
- 15. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
- 16. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.
- 17. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.



Certified to be a true copy of said document on file in my office.

AS

Community Development Department
City of Manhattan Beach

EXHIBIT 14. VIOLATIONS OF 2005 CUP

EXHIBIT 3.
VIOLATIONS
OF 2005 CUP

Resolution No. PC 05-08

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.


I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of **May 25, 2005**, and that said Resolution was adopted by the following vote:

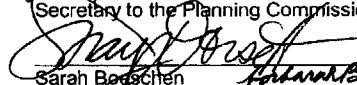

AYES: Chairman O'Connor, Vice-Chair Savikas, Commissioners Kuch and Simon

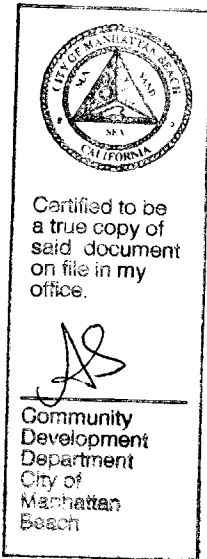
NOES: None

ABSTAIN: None

ABSENT: None



RICHARD THOMPSON
Secretary to the Planning Commission

Sarah Boesch
Recording Secretary




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Joan Stein Jenkins, City Prosecutor (SBN 97242)
CITY OF MANHATTAN BEACH
1400 Highland Avenue
Manhattan Beach, CA 90266
Tel: (310) 802-5061; Fax: (310) 802-5251

Count 1 charges that Mr. Zislis violated the use permit and 2011-2012 entertainment permit, but does not cite how. The violations are: 1) Condition 7 in the 2002 Melox Master Use Permit, Reso 5770, which requires compliance with the noise ordinance, MBMC 5.48; and, 2) MBMC Condition 2 in the entertainment permit, ditto compliance with 5.48.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, SOUTHWEST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

MICHAEL ZISLIS AND JOLISE VOUGHT,)

Defendants.)

CASE NO. 35408147

COMPLAINT - MISDEMEANOR

COUNT 1:

The undersigned, upon information and belief, complains and states that on or about **November 14, 2013**, in the City of Manhattan Beach (the "City"), which is located in the above named Judicial District, in the County of Los Angeles, State of California, a misdemeanor was committed by **MICHAEL ZISLIS, OWNER OF SHADE HOTEL**, ("Defendant"), who willfully and unlawfully violated the Manhattan Beach Municipal Code, to wit, **Violation of the Provisions of the Conditional Use Permit, Resolution No. PC 05-08 and existing Entertainment permit**, at 1221 N. Valley Drive, Manhattan Beach, California 90266, in violation of Manhattan Beach Municipal Code section **10.104.040**.

COUNT 2:

Counts 2 and 3 charge Mr. Zislis and Ms. Vought, respectively, with violating the subjective standards in the noise ordinance, MBMC 5.48.140

The undersigned, upon information and belief, complains and states that on or about **November 14, 2013**, in the City of Manhattan Beach (the "City"), which is located in the above named Judicial District, in the County of Los Angeles, State of California, a misdemeanor was committed by **MICHAEL ZISLIS, OWNER OF SHADE HOTEL**, ("Defendant"), who willfully and unlawfully violated the Manhattan Beach Municipal Code, to wit, **Noise Disturbance**, at 1221 N. Valley Drive, Manhattan Beach, California 90266, in violation of Manhattan Beach Municipal Code section **5.48.140**.

COUNT 3:

The undersigned, upon information and belief, complains and states that on or about **November 14, 2013**, in the City of Manhattan Beach (the "City"), which is located in the above named Judicial District, in the County of Los Angeles, State of California, a misdemeanor was committed by **JOLISE VOUGHT**, ("Defendant"), who willfully and unlawfully violated the Manhattan Beach Municipal Code, to wit, **Noise Disturbance**, at 1221 N. Valley Drive, Manhattan Beach, California 90266, in violation of Manhattan Beach Municipal Code section **5.48.140**.

INVESTIGATING AGENCY: CITY OF MANHATTAN BEACH POLICE DEPARTMENT
This Verified Complaint incorporates by reference citation DR No. 13-3553

Complainant by this complaint and declaration prays that a warrant may be issued for the arrest of said Defendant and that Defendant may be dealt with according to the law.

I declare under penalty of perjury, upon information and belief, that the foregoing is true and correct and that this complaint consists of three (3) counts.

Executed on November 27, 2013, in the County of Los Angeles, State of California.



JOAN STEIN JENKINS
CITY PROSECUTOR
CITY OF MANHATTAN BEACH

TO THE ABOVE-NAMED DEFENDANT AND ATTORNEY FOR DEFENDANT: PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA, HEREBY REQUEST DISCOVERY AND DISCLOSURE PURSUANT TO PENAL CODE SECTIONS 1054.3 AND 1054.5 WITHIN 15 DAYS OF THIS REQUEST.

INVESTIGATING AGENCY: CITY OF MANHATTAN BEACH POLICE DEPARTMENT
This Verified Complaint incorporates by reference citation DR No. 13-3553

MISDEMEANOR COMPLAINT

10.104.040 - Prosecution of violations.

Unless otherwise provided, any person, firm or corporation violating any provision of this title shall be guilty of a misdemeanor; provided, however, that any violation of this chapter may be charged as an infraction at the discretion of the City Prosecutor. Each day or portion thereof that such violation continues or reoccurs shall be a new and separate violation. For purposes of this title, both the owner of record of a specific property and any tenant in possession shall be liable for compliance with all of the provisions of this title. Nothing in this section shall preclude the City from bringing a civil action to enforce the provisions of this title.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91; § 2, Ord. 1951, eff. July 4, 1996; § 2, Ord. 2052, eff. February 19, 2004)

INVESTIGATING AGENCY: CITY OF MANHATTAN BEACH POLICE DEPARTMENT
This Verified Complaint incorporates by reference citation DR No. 13-3553

MISDEMEANOR COMPLAINT

5.48.140 - Noise disturbances.

A.

Notwithstanding any other provisions of this chapter and in addition thereto, it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness. The standard which may be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following:

1. The level of the noise;
2. Whether the nature of the noise is usual or unusual;
3. Whether the origin of the noise is natural or unnatural;
4. The level and intensity of the background noise if any;
5. The proximity of the noise to residential sleeping facilities;
6. The nature and zoning of the area within which the noise emanates;
7. The density of the inhabitation of the area within which the noise emanates;
8. The time of the day and night the noise occurs;
9. The duration of the noise;
10. Whether the noise is recurrent, intermittent or constant;
11. Whether the noise is produced by a commercial or noncommercial entity;
12. Whether the noise occurs on a weekday, weekend, or holiday.

B.

The City may issue a citation against the person, persons, or entity responsible for the noise including, but not limited to, the property owner or business operator on whose premises the noise originates.

(§ 6, Ord. 1957, eff. December 5, 1996)

INVESTIGATING AGENCY: CITY OF MANHATTAN BEACH POLICE DEPARTMENT
This Verified Complaint incorporates by reference citation DR No. 13-3553

MISDEMEANOR COMPLAINT

**INFORMATION REPORT
Manhattan Beach Police Dept**

13-3553

Supplement No
ORIG



**420 15TH STREET
MANHATTAN BEACH, CA 90266
Crime/Incident
5.48.140
Business: (310) 802-5100
(310) 802-5140
(310) 802-5107**

Reported Date
11/14/2013

Officer
OLIVARES, CARLOS

Administrative Information									
Agency Manhattan Beach Police Dept		Report No 13-3553		Supplement No ORIG		Reported Date 11/14/2013		Reported Time 20:19	CAD Call No 133180839
Status REPORT	Crime/Incident MBMC NOISE DISTURBANCES			Location 1221 N VALLEY DR					
City MANHATTAN BEACH		ZIP Code 90266		Rep Dist M12	Area 2	Beat M3	From Date 11/14/2013		From Time 19:30
Officer 20323/OLIVARES, CARLOS				Assignment PATROL OFFICER		Entered By 20323		Assignment PATROL OFFICER	
NMB Transfer Successful	Prop Trans Stat Successful		Report Title INFORMATION REPORT			Approving Officer 20295			
Approval Date 11/15/2013			Approval Time 19:54:33						

Person Summary							
Inv#	Inv# No	Type	Name	MR#	Race	Sex	DOB
INV	1	B	SHADE HOTEL	2029841			
INV	2	I	VOUGHT, JOLISE	2337970	W	F	07/19/1977
INV	3	I	WIBLE, STEVE	899132	W	M	04/04/1947

Summary Narrative
Loud noise from Shade Hotel

(JOAN JENKINS)

INFORMATION REPORT

Manhattan Beach Police Dept

13-3553

Supplement No
ORIG**INVOLVED PARTY 1: SHADE HOTEL**

Involved Party	Invl No	Type	Name	MRN
INVOLVED PARTY	1	Business	SHADE HOTEL	2029841
PRN	2115578			
Type	Address	City		
WORK/BUSINESS	1221 N VALLEY DR	MANHATTAN BEACH		
State	ZIP Code	Date		
CALIFORNIA	90266	11/14/2013		
Phone Type	Phone No	Date		
BUSINESS	(310) 546-4995	11/14/2013		

INVOLVED PARTY 2: VOUGHT, JOLISE

Involved Party	Invl No	Type	Name	MRN
INVOLVED PARTY	2	Individual	VOUGHT, JOLISE	2337970
Race	Sex	DOB	Age	Juvenile?
WHITE LiveScan OK	FEMALE	07/19/1977	36	No
PRN	2115579			
Type	Address	City		
WORK/BUSINESS	1221 N VALLEY DR	MANHATTAN BEACH		
State	ZIP Code	Date		
CALIFORNIA	90266	11/14/2013		
Phone Type	Phone No	Date		
CELL	(310) 922-0591	11/14/2013		

INVOLVED PARTY 3: WIBLE STEVE

Involved Party	Invl No	Type	Name	MRN
INVOLVED PARTY	3	Individual	WIBLE, STEVE	899132
Race	Sex	DOB	Age	Juvenile?
WHITE LiveScan OK	MALE	04/04/1947	66	No
PRN	2115580			

Narrative**SOURCE:**

On 11/14/13 at approximately 2020 hours, I (Officer C. Olivares #323) was detailed to Shade Hotel (1221 N. Valley Drive), regarding a complaint of loud music and loud yelling coming from the location.

Upon arrival I parked my vehicle on Valley Drive, south of the main entrance. When I exited my vehicle I did not hear any music which seemed to be excessive on the south side of the location. I was able to hear people talking and laughing who were sitting on the Zinc Terrace. Standing on the Zinc Terrace, I was able to hear music and noise from inside of the location. There were several persons gathered in the outdoor courtyard. I could hear several females cheering and yelling loudly while I was inside the location.

Sgt. Sabosky (#295) arrived and informed me that while standing outside in the employee lot of the police department (420 15th Street), he could hear loud screaming and yelling coming from Shade. The distance between Shade and the southernmost portion of the lot is approximately 100 yards. I walked around the perimeter of Shade and stood on 13th Street west of Valley Dr. I could hear several female voices screaming and cheering coming from the courtyard section of Shade. The noise in this area (north side) was loud and more significant than on the south side of the location.

Sgt. Sabosky and I entered the location. I contacted the director of events, Jolise Vought and took her statement. Sgt. Sabosky entered the courtyard and observed people standing and cheering around a modeling catwalk that was located in the courtyard area of the hotel. Sgt. Sabosky advised me he also observed a DJ/MC in the courtyard.

STATEMENTS:

I contacted the director of events, Jolise Vought who provided the following statement in essence:

Vought stated a charity auction was being held at the location for Families Uniting Families Charity Event- South Bay Fashion Show. She stated roughly about 240 people were attending the event. She stated the women were cheering and yelling about the men walking on the stage in the courtyard. She stated she did not believe it would be as loud as it was. She said she had turned down the music prior to our arrival. Jolise informed me that city employees were informed of the event in advance via email. She provided me a copy of the email and event spreadsheet (see attached).

Report Officer	Printed At	Page
20323/OLIVARES, CARLOS	11/18/2013 09:35	2 of 3

**INFORMATION REPORT
Manhattan Beach Police Dept****13-3553**Supplement No
ORIG**Narrative**

I contacted the reporting party, Steve Wibel. Wibel in essence stated the following:

Wibel resides at 1212 Ardmore Ave. He stated there has been an ongoing problem with the loud noise and disruption caused by Shade. On 11/14/13 at approximately 1930 hours, he began hearing loud screaming coming from Shade. He described it as several females screaming and cheering with loud voices. At approximately 2010 hours, he began hearing amplified sound emitting from Shade. Wibel began hearing a female's voice talking over a public address system which lasted until approximately 2025 hours. Wibel stated the noise from Shade often carries over and disturbs him even while he is in his bedroom.

AMMENDED GROUP ENTERTAINMENT PERMIT:

A review of Shade Hotel's Group Entertainment Permit (Conditions of Approval, Community Development, section 6) states: "The volume of the music, entertainment, or amplification, may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants"

ADDITIONAL:

The violation of 5.48.140 MBMC (Noise disturbances) may be applicable for this situation since the noise emitting from Shade Hotel disturbs the quiet and causes discomfort to the neighbor (Wibel).

Jolise Vought

From: katie kruff-richardson <katie@zissigroup.com>
Sent: Thursday, October 31, 2013 3:13 PM
To: fjester@citymb.info; dabe@citymb.info; Tim Hageman; Ryan Small; natehubz@mac.com; Stephanie Hubbard (stefhubz@gmail.com)
Cc: Jolise Vought; shaunna mckelvey; Lauren Melton
Subject: Shade Events Listing
Attachments: Events Spreadsheet 2013 - Jo-11.xls; ATT00001.htm

EXHIBIT 4. CITY COMPLAINT FILED IN SUPERIOR COURT OF CUP AND NOISE VIOLATIONS

Date	Day of the We	Event	Attendance	Time
11.05.13	Tuesday	Yelp Panel Discussion	100	11:30am-1:30pm
11.07.13	Thursday	McLaughlin-Mori Wedding	25	5-10pm
11.12.13	Tuesday	Reception	40	6-9pm
11.14.13	Thursday	Families Uniting Families Charity Event- South Bay Fashion Show	200	6:30pm-9:30pm
11.17.13	Sunday	Holiday Party	50	6-10pm
11.20.13	Wednesday	Manhattan Beach Holiday Open House	ins-outs	5-10pm
11.20.13	Wednesday	Holiday Open House Investor Event	50	6-10pm

Comments

Courtyard
Courtyard ceremony- Skydeck dinner
Celebratory Dinner Reception in the Courtyard
Courtyard and Zinc Lounge
Skydeck
ing guests in and out of the zinc lounge and courtyard for MB holiday open house
Holiday event for shade investors- Skydeck



CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
1400 HIGHLAND AVENUE 310982-8600

Ap. - For your records.
Thanks,
Etc

Address: 1221 N. Valley Dr.

CITY USE ONLY
Date Received M.K.
Received by
A 345 - - Fee
Receipt No.
Trans. Code # 4110
2/25/11

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

Class I Permit: Group entertainment, either incidental with the business being conducted there, or to conduct group entertainment for which admission is charged. Limited to legally operated businesses which are open continuously such as restaurants, hotels, cafeterias, bars, and fast food establishments. Permits shall be valid for a period of one year, or until March 1, and renewable annually on March 1.

The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name Michael Zislin on behalf of Shade Hotel

Applicant Address 1221 N. Valley Dr.

Phone # 310-546-4995 Driver Lic.# V1146027 Birthdate 10/13/05

Applicant(s) Employed By Shade Hotel

Business Address 1221 N. Valley Dr. Phone 310-546-4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity Events; i.e. Weddings, conferences, birthday & holiday parties ect.

Date(s) of Activity Throughout the year Time & Duration per use permit & attached conditions

Describe Type of Music & Amplification

Expected Maximum Attendance Alcohol Served? Yes No

Will Persons Under 21 Years of Age be Present? Yes No

Alcohol Sold? Yes No If Yes, ABC License # 47418408

Activity Supervisor(s) Jolise Vaught Address 1221 N. Valley Dr. Phone # 310-698-5557

02-25-30
A/001-0127923
PAI

* Based on occupancy

LOCATION OF ACTIVITY

Address of Activity: 1221 N Valley Dr.

Type of Business: Hotel

Occupant Capacity of Building: Dancing _____ Dining _____

Gross Floor Area _____ Floor Area For Dancing _____ Dining see chart

Parking: Number of On-Site Parking Spaces 50 Valet

Nearby Parking Facility Metrox Number of Spaces 460

Other _____

Description of Neighborhood: _____ Commercial _____ Residential
 Mixed Commercial & Residential Uses Nearby
_____ Other _____

APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes _____ No

Have you ever obtained or sought to obtain an Entertainment Permit in the past? Yes No _____ If yes, was the issued Permit ever denied or revoked? Yes _____ No

I, the applicant(s) for this Permit shall be responsible for the monitoring of this activity and agree to conduct the activity subject to the conditions listed below and, further, understand that violation of any condition, State Laws or City Ordinances will result in immediate termination of this Permit, upon due process.

I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE [Signature] DATE 2/25/11

APPROVED BY AUTHORIZED SIGNATURES BELOW. SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement: [Signature] Date: 11-14-11
Planning Division: [Signature] Date: 11/15/11
Director of Community Development: [Signature] Date: 11-16-11

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

Police Department:

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

Fire Department:

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

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

Community Development Department:

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

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

- amplified sound is incorporated. Entertainment that would result in dancing which exceeds the capacity of the 15' by 20' dance floor shall be prohibited. Entertainment and dancing shall conform to the attached floor plan. All doors leading to the outside shall remain closed at all times.
6. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
 7. 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, 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 such as Lot 3.
 8. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
 9. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
 10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
 11. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors and to minimize noise and disturbance.

12. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel 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 close. The doorman or other employes shall ensure that patrons do not leave the premises with alcoholic beverages. (See Use Permit conditions below for hours)
13. A renewal application shall be submitted prior to March 1st.
14. A sign stating "Hotel Guests only after 11:00 pm shall be placed outside the main entry to the hotel off of Valley Drive.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
2. All events are limited to a maximum of 99 people unless prior written approval through a Temporary Use Permit is provided by the Director of Community Development. Event size may not exceed the maximum occupancy as allowed by the Building or Fire Code limits.
3. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.
4. Noise mitigation strategies shall be implemented including; door, wall and ceiling treatments, as required within the Zinc Lounge and Zinc Terrace area in order to mitigate noise. The Zinc Lounge shall demonstrate that the insulation achieves an STC (Sound Transmission Code) rating of 50 to mute the noise.
5. Hours of operation for the hotel public areas shall be as follows:
Lobby Zinc Bar (including outdoor Zinc Terrace to south of Lounge)- 11:00 PM daily
Interior Outdoor Courtyard (to north of Zinc lounge) and Green Room (2nd floor meeting room) when used for special events and functions- 11:00 pm Sunday-Thursday, 12:00 midnight Friday and Saturday (alcohol service to stop half-hour prior).

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

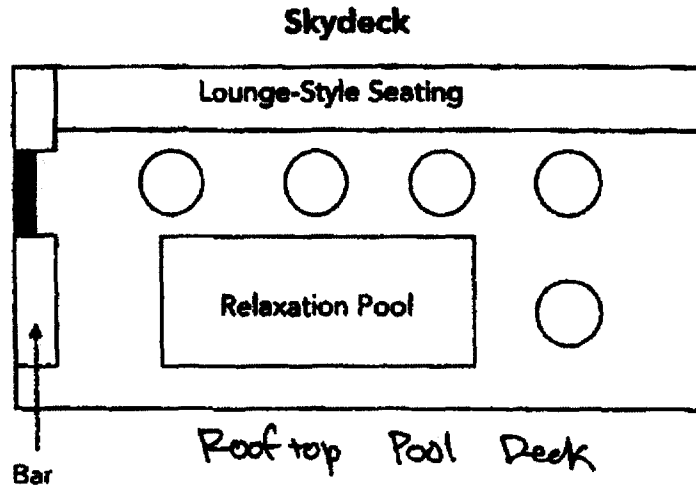
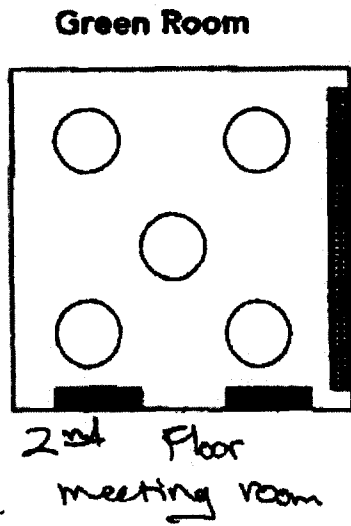
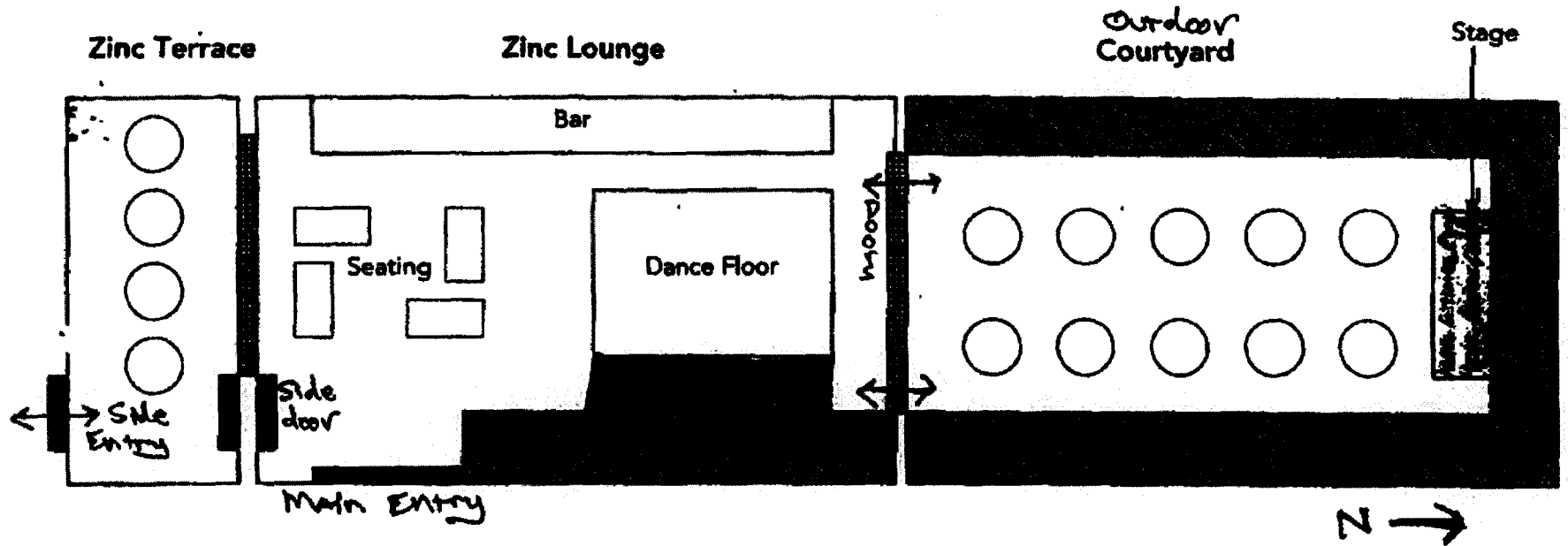
Skydeck (Rooftop Deck)- 10:00 pm daily (Alcohol service to stop at 9:00 P.M.)

6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.
7. The availability of the Inn for special events shall not be marketed as the primary use.
8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees 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 operators shall police and promptly clean up all areas with any litter

Event Space Layout



LEGEND

- = 12 foot rounds
- = Doorways
- ▨ = Walkways
- ▩ = Sliding Glass Doors

This is not to scale

RECEIVED
MAY 09 2006
By _____

1 **REVISED** RESOLUTION NO. 6275 **FOR SHADE 201X CUP NOISE MITIGATION**

2

3 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH
 4 UPHOLDING AN APPEAL OF LIMITED CONDITIONS OF A PLANNING
 5 COMMISSION APPROVAL FOR AN AMENDMENT TO A MASTER USE
 6 PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED HOURS OF
 7 OPERATION, NOTIFICATION FOR EVENTS, ALLOWING EXPANDED FOOD
 8 SERVICE OPERATIONS, APPROVING VARIOUS NOISE MITIGATION
 9 MEASURES AND DENYING A HEIGHT VARIANCE FOR A 6-FOOT HIGH
 10 ROOFDECK NOISE BARRIER AT THE SHADE HOTEL, METLOX SITE, 1221
 11 NORTH VALLEY DRIVE (MANHATTAN INN OPERATING COMPANY, LLC-
 12 MICHAEL A. ZISLIS, PRESIDENT)

13 THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES

14 HEREBY RESOLVE AS FOLLOWS:

15 SECTION 1. The City Council of the City of Manhattan Beach, California, hereby makes the
 16 following findings: **(NOTE: SECTION 1 NEEDS UPDATING; NO CHANGES MADE HEREIN.)**

17 ~~B.~~A. The Planning Commission of the City of Manhattan Beach conducted public hearings
 18 regarding the second Amendment to the Master Use Permit related to the Shade Hotel
 19 on June 24, 2009, July 22, 2009, October 28, 2009, May 12, 2010 and June 23, 2010. The
 20 public hearings were advertised pursuant to applicable law and testimony was invited
 21 and received, and on June 23, 2010, the public hearing was closed. The Planning
 22 Commission directed staff to bring back a final Resolution on July 28, 2010. The Planning
 23 Commission approved the Amendment for the Shade Hotel, and adopted Resolution No.
 24 PC 10-05 on July 28, 2010.

25 ~~C.~~B. On August 11, 2010, the applicant, Shade Hotel, and the neighborhood representative,
 26 Nate Hubbard, filed a joint appeal of limited conditions of the Planning Commission
 27 approval. The Shade and neighbors have agreed to minor revisions to conditions 12, 23,
 28 28 and 31. The conditions relate to the valet service and skydeck.

29 ~~D.~~C. The City Council of the City of Manhattan Beach conducted a public hearing on
 30 September 7, 2010 to consider the appeal. Said hearing was advertised pursuant to
 31 applicable law, and testimony was invited and received.

32 ~~E.~~D. At the City Council hearing the City Council upheld the appeal and upheld the Planning
 33 Commission approval of the project with minor modifications to conditions 12, 23, 28
 34 and 31.

35 ~~F.~~E. Manhattan Inn Operating Company, LLC is seeking approval of an Amendment to a
 36 Master Use Permit, to allow modifications to the previous approval. The three changes
 37 include: 1- Extension of hours of operation to midnight on Fridays, Saturdays and

- 1 Holidays, except for the skydeck and other minor exceptions, 2- An increase to 125
2 people for special events (weddings, parties, etc.) without administrative approval, and
3 3- Expanded public food service (breakfast, lunch and evening “small plates”).
4 Additionally, a Variance for six-foot high noise barriers around the north, south and east
5 sides of the roof deck is requested. The current Use Permit approval allows hours until
6 11:00 PM daily for the lobby bar ~~and outside terrace~~, 10:00 PM daily for the ~~roofdeck~~~~roof~~
7 ~~deck~~, and 11:00 PM Thursdays-Sundays and 12 midnight Fridays-Saturdays for special
8 event use only for the Courtyard, 99 people for special events without notification, and
9 limited food service for guests.
- 10 ~~G.~~F. In accordance with the Master Use Permit approval an Amendment to the existing
11 Master Use Permit approval is required for the project.
- 12 ~~H.~~G. The subject property is located within the City of Manhattan Beach Coastal Zone, and the
13 Coastal Development Permit for the Master Use Permit was issued by the California
14 Coastal Commission. An amendment to the Coastal Permit will not be required to be
15 processed as there are no relevant coastal issues related to the subject application. An
16 amendment to the Disposition and Development Agreement (DDA) may be required, and
17 that action will be determined by the City Council.
- 18 ~~H.~~H. The applicant is Manhattan Inn Operating Company, LLC and the property owner is the
19 City of Manhattan Beach.
- 20 J. An Environmental Impact Report for the Metlox/Civic Center project was certified by the
21 City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No.
22 99121090), which includes the environmental clearance for the Metlox project. There
23 have been no substantial changes to the project, the surrounding area or environment,
24 and the facts associated with the project have not substantially changed from those
25 evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the
26 existing certified EIR is a valid environmental document that adequately evaluates the
27 environmental impacts of the project in accordance with the requirements of CEQA and
28 the project can rely upon this document for conformance with the requirements of
29 CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting
30 Program in accordance with the requirements of CEQA. The Environmental Impact
31 Report is on file and available for public review at the City of Manhattan Beach
32 Community Development Department, City Clerk's office, the public Library, and on the
33 City's website.
- 34 K. The property is located within Area District III and is zoned Downtown Commercial. The
35 properties to the west and south are also zoned Downtown Commercial, the property to
36 the north is zoned Public and Semipublic, and the property to the east is zoned Open
37 Space, with Single Family Residential and High Density Residential to the east past Valley
38 and Ardmore Drives.
- 39 L. The General Plan designation for the property is Downtown Commercial.
- 40



Certified to be a true copy of said document on file to my office.

City Clerk of the City of Manhattan Beach

- 1 M. The following is a summary of some of the key milestones for the Metlox site:
 - 2 1995- 96- The City Council authorized development of the Downtown Strategic Action
 - 3 Plan (DSAP) to provide a comprehensive approach and community vision for the
 - 4 Downtown including the Metlox site
 - 5 1997/98- The City purchased the Metlox property to control development and Master
 - 6 Plan the site
 - 7 1998- 2001 Numerous public meetings and workshops held to solicit public input on the
 - 8 site and Downtown.
 - 9 December 1998- The City selected the Tolkin Group as a development
 - 10 partner April 2001- The City Council certified the EIR
 - 11 April 2002- The City Council approved the Disposition and Development Agreement
 - 12 (DDA)/Ground Lease
 - 13 July 2002- Master Use Permit and Coastal Development Permit for the Metlox project
 - 14 approved by the City Council
 - 15 November 2002- California Coastal Commission denied the appeal of the Coastal
 - 16 Development Permit, and unanimously approved the Permit February 2003-
 - 17 Groundbreaking for the Metlox parking structure January 2004- Grand opening of public
 - 18 parking structure with 460 parking spaces April 2004- Shade Hotel construction
 - 19 commenced September 2004- Construction of the Metlox commercial buildings started
 - 20 May 2005- Planning Commission approved first Shade Amendment Resolution No. PC 05-
 - 21 08
- 22 N. The Planning Commission of the City of Manhattan Beach conducted a public hearing
 - 23 regarding the first Amendment to the Master Use Permit for the Shade related to alcohol
 - 24 sales and special events at their regular scheduled meeting of May 25, 2005. The public
 - 25 hearing was advertised pursuant to applicable law and testimony was invited and
 - 26 received. The Planning Commission approved the Amendment for the Shade Hotel, and
 - 27 adopted Resolution No. PC 05-08. The facts and findings for that approval are included in
 - 28 the public records for that application.
- 29 O. The original approval (Condition No. 38- City Council Resolution No. 5770) allowed full
 - 30 liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility
 - 31 for guests only. The original approval (Condition No. 28- City Council Resolution No.
 - 32 5770) also limited special events (weddings, parties, etc.) to 60 people.
- 33 P. Resolution No. PC 05-08 allowed a Type 47 ABC license for the site, allowing full liquor
 - 34 open to the general public and including the service of food in order to allow the in-room
 - 35 mini-bars (Type 66 license), as well as the portable bar with full liquor (Type 66 license),
 - 36 all for on-site consumption of alcohol only, as well as events up to 99 people without
 - 37 approval of a Temporary Use Permit.
- 38 Q. Portions of Resolution No. PC 05-08 have been subject to interpretation as the hotel is a
 - 39 24- hour operation while the support services of the bar, food service and events are
 - 40 limited. Additionally, there are no definitions of special events, guests, closing, and other

- 1 regulatory terms in the Resolution. One of the goals of this Amendment is to clarify
2 definitions and language in the Resolution.
- 3 R. Many neighboring residents at the Planning Commission public hearings have testified
4 that Shade Hotel makes noise that discomforts and irritates “reasonable persons of
5 normal sensitiveness,” as defined by the subjective standard in Chapter 5.48 of the
6 MBMC. The Manhattan Beach Police Department has responded to numerous calls
7 regarding Shade disturbances, and for several of these incidents, has reports and
8 recordings of noise from Shade.
- 9 S. Neighbors indicate that taxi pickup and drop-off on Valley Drive create disturbances. The
10 City established a taxi stand on Morningside Drive at 13th Street in 2009 to address this
11 issue and has notified the taxi franchises of the requirements.
- 12 T. Two independent acoustics analysis, dated October 21, 2009 and March 10, 2010, were
13 conducted by Don Behrens & Associates under the direction of the Community
14 Development Department. The reports indicate that noise from the Shade Hotel does
15 not exceed the objective noise standards in the MBMC; the subjective standard was not
16 evaluated in the reports. Actual noise measurements and continuous noise monitoring
17 was conducted during large events on the skydeck, courtyard, lounge and terrace. A
18 three-dimensional modeling of noise to assess various mitigation was also constructed.
19 The reports proposed a variety of mitigation options including a front (east) entry
20 vestibule, terrace enclosure, ~~roofdeck~~ roof deck extensions, west entry/exit/queue and
21 taxi stand. Mitigation is incorporated into the conditions based on these
22 recommendations, public hearing comments and Planning Commission discussion and
23 direction.
- 24 U. Due to the open design, the terrace has minimal soundproofing and constitutes a major
25 noise source, particularly for residents south of 12th Street. Additionally, the front (east)
26 entry door has noise leakage that impacts residents, largely between 12th and 13th
27 Streets. The rooftop deck generates noise that largely impacts residents north of 13th
28 Street.
- 29 V. The primary use and purpose of Shade Hotel, is and will continue to be, to serve the
30 community as a hotel offering first-class accommodations to visitors. The hotel may also
31 offer event, function, food, and other similar support functions as secondary uses.
32 Marketing and promotion of the hotel shall be consistent with these uses as provided in
33 the conditions.
- 34 W. Potential noise and other neighborhood impacts from Entertainment, as defined and
35 regulated in Chapter 4.20 of the MBMC, will be addressed through the administrative
36 review of the annual Entertainment Permit. The Entertainment Permit is a separate
37 administrative permit, and is regulated independently from the land use entitlement of
38 the Master Use Permit and Master Use Permit Amendment.
- 39 X. The project will not individually nor cumulatively have an adverse effect on wildlife
40 resources, as defined in Section 711.2 of the Fish and Game Code.
- 41 Y. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use

1 Permit for the subject property. This Resolution supersedes Resolution No. PC 05-08 and
 2 Resolution No. PC 10-05. It also amends only Conditions No's 28 and 38 of Resolution No.
 3 5770. ~~a~~All other conditions in that Resolution (unless amended by other separate
 4 Resolutions for other Metlox tenants) remain effective and in full force.

5 Z. Based upon State law⁷ and MBMC Section 10.84.060, relating to the Amendment to the
 6 Master Use Permit application for the proposed project, the following findings are
 7 hereby made:

- 8 1. The proposed location of the use is in accord with the objectives of this title and the
 9 purposes of the district in which the site is located since, the proposed amendments to
 10 the use permit for Shade Hotel is consistent with the Commercial Downtown
 11 designation. This area is specifically designated for commercial activity and services for
 12 residents and out-of-town visitors. Several other business operations in the area already
 13 engage in similar uses. The project provides a full range of services needed by residents
 14 of, and visitors to, the city and region. The project will strengthen the City's economic
 15 base, but also protect small businesses that serve city residents. The project protects
 16 surrounding residential uses from the potential adverse effects of inharmonious uses by
 17 minimizing the impact of commercial development on adjacent residential districts
 18 through the conditions of approval which require physical noise mitigation and
 19 operational revisions.
- 20 2. The proposed location of the use and the proposed conditions under which it would be
 21 operated or maintained will be consistent with the General Plan; will not be detrimental
 22 to the public health, safety or welfare of persons residing or working on the proposed
 23 project site or in or adjacent to the neighborhood of such use; and will not be
 24 detrimental to properties or improvements in the vicinity or to the general welfare of
 25 the City since, the proposed amended use permit is consistent with the General Plan for
 26 the Commercial Downtown designation, because it is granting additional privileges to
 27 already approved uses that will result in minimal fundamental change of those uses.
 28 Amending the use permit will have no environmental impact and will not be detrimental
 29 to the public health, safety, or welfare of persons residing or working in or adjacent to
 30 the location of the hotel facility. There will be no negative impact on properties or
 31 improvements in the vicinity, or on the general welfare of the city, due to the conditions.
 32 Additionally, the project is consistent with the following General Plan Goals and Policies:

33 GOALS AND POLICIES: LAND USE

34 Policy LU-5.2: Work with all commercial property owners bordering residential areas to
 35 mitigate impacts and use appropriate landscaping and buffering of residential
 36 neighborhoods.

37 Policy LU-5.4: Discourage the outdoor commercial and industrial use of property
 38 adjacent to residential use.

39 Policies LU-5.7, 6.4 and 7.6: Recognize the unique qualities of mixed-use areas, and
 40 balance the needs of both the residential and commercial uses.



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1 **Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.**

2 Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are
3 beneficial to residents, and support the economic needs of the community.

4 **Goal LU-7: Continue to support and encourage the viability of the Downtown area of
5 Manhattan Beach.**

6 Policy LU-7.1: Encourage the upgrading and growth of businesses in the Downtown area
7 to serve as a center for the community and to meet the needs of local residents and
8 visitors.

9 **GOALS AND POLICIES: NOISE**

10 **Goal N-2: Incorporate noise considerations into land use planning decisions.**

11 Policy N-2.2: Ensure acceptable noise levels near residences, schools, medical facilities,
12 and other noise-sensitive areas.

13 Policy N-2.5: Require that the potential for noise be considered when approving new
14 development to reduce the possibility of adverse effects related to noise generated by
15 new development, as well as impacts from surrounding noise generators on the new
16 development.

17 Policy N-3.4: Recognize in the Noise Ordinance that nighttime noise levels create a
18 greater sensitivity than do daytime noise levels.

19 3. The proposed use will comply with the provisions of this title, including any specific
20 condition required for the proposed use in the district in which it would be located since,
21 the required notice and public hearing requirements have been met, all of the required
22 findings have been addressed, and conditions will be required to be met prior to the
23 implementation of the new conditions. The proposed amended use permit is consistent
24 with the already approved primary and secondary uses of the facility.

25 4. The proposed use will not adversely impact nor be adversely impacted by nearby
26 properties. Potential impacts are related but not necessarily limited to: traffic, parking,
27 noise, vibration, odors, resident security and personal safety, and aesthetics, or create
28 demands exceeding the capacity of public services and facilities which cannot be
29 mitigated. All of the potential impacts related to the proposed project were evaluated
30 and addressed in the Certified EIR. The Mitigation Measures applicable to the project will
31 all be complied with. Conditions to conform to applicable Code standards will apply.
32 Because the proposed amended use permit will not alter the fundamental use, purpose
33 or character of the hotel facility, and because there will not be any change in occupancy
34 or intensification of the property, the proposed amended use will not create adverse
35 impacts on traffic or create demands exceeding the capacity of public services and
36 facilities.

37 AA. Based upon State law, and MBMC Section 10.84.060, relating to the Variance application
38 for the proposed project, the following findings CAN NOT be made:

39 1. Because of special circumstances or conditions applicable to the subject property—

1 including narrowness and hollowness or shape, exceptional topography, or the
 2 extraordinary or exceptional situations or conditions—strict application of the
 3 requirements of this title would result in peculiar and exceptional difficulties to, or
 4 exceptional and/or undue hardships upon, the owner of the property;

5 2. The relief may be granted without substantial detriment to the public good; without
 6 substantial impairment of affected natural resources; and not be detrimental or
 7 injurious to property or improvements in the vicinity of the development site, or to the
 8 public health, safety or general welfare; and -

9 3. Granting the application is consistent with the purposes of this title and will not
 10 constitute a grant of special privilege inconsistent with limitations on other properties
 11 in the vicinity and in the same zoning district and area district.

12 SECTION 2. The City Council of the City of Manhattan Beach hereby APPROVES the
 13 subject Master Use Permit Amendment, subject to the following conditions, and DENIES the
 14 subject Variance.

15 Definitions

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

24 2. Special event. An event in which an unaffiliated third party under contract has exclusive use
 25 of one or more venues or a portion of a venue. Attendees at special events shall have an
 26 invitation from the host client. The general public may not join nor participate in special
 27 events other than non-profit or charitable events such as Chamber events, Downtown
 28 Open House and Charity Education Wine Events.

29 3. Function. A “themed” function held periodically for the general public, up to twelve (12) per
 30 year, such as, Oktoberfest, Halloween, New Years, Valentines, St Patrick’s Day, AVP, Surf
 31 Festival, Mothers Day, Fathers Day and Six-Man. Functions shall not include “spillover” of
 32 the general public from day-to-day operations from the Zinc bar and lobby, or any other
 33 area, into the Courtyard.

34 4. Registered Guest. A guest who occupies a room overnight. Privileges for registered guests
 35 extend to a limited number of their invitees only, and not the general public.

36 5. Invitee. Invited guests of a registered guest.

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

- 1 mailing, e-mailing or similar mass notification list.
- 2 7. Background music. Sound intensity anywhere in a room or venue not greater than 65 dBa.
- 3 8. Public Areas. Any public area or space where sales, service and consumption of alcoholic
- 4 beverages is permitted.

5 Entertainment and Noise

- 6 9. General- The Director of Community Development shall not reduce restrictions or
- 7 conditions as set forth in this Amendment, without approval by the Planning Commission,
- 8 with notice to property owners within a 300 foot radius with standard notice procedures.
- 9 10. Entertainment and amplified sound- All amplified music and sound shall use the house
- 10 system only and shall be limited to background music with the following exceptions;
- 11 A. The Courtyard may have one annual function, for example, Oktoberfest, with live
- 12 amplified entertainment, from 4 to 8 PM.
- 13 B. The Courtyard may use amplification, other than the house system for background music
- 14 and microphones, for wedding ceremonies only prior to 9 PM and not to exceed 30
- 15 minutes in length;
- 16 C. The Zinc bar and lobby may have amplified DJ's, live entertainment or music, other than
- 17 background music. All doors leading to the outside shall remain closed, pursuant to
- 18 **Condition 21 Exterior Doors**.
- 19 11. Terrace enclosure noise mitigation- The Zinc bar & lounge and terrace shall not operate to
- 20 midnight for other than special events, pursuant to Condition 23 Hours of Operation, until
- 21 implementation of terrace physical noise mitigation, pursuant to Condition 22 Noise
- 22 Compliance Verification. The terrace walls and ceiling shall have physical noise mitigation
- 23 installed ~~deployable means (glass or similar panels that roll or slide down from the top~~
- 24 ~~portion of the terrace) shall entirely enclose the terrace~~, including a closable south
- 25 entrance that meets Building Safety and other City requirements, ~~as well as full-enclosure~~
- 26 ~~by any means, in compliance with building codes. Assemblies of walls and a closable south~~
- 27 ~~ingress-egress shall have a Sound Transmission Coefficient (STC) of 39 dB. Existing walls~~
- 28 ~~shall have gaps acoustically sealed. The ceiling of the terrace shall have sound-absorbing~~
- 29 ~~fixtures installed. The enclosure and entire terrace area shall be acoustically sealed,~~
- 30 ~~designed and constructed to comply with Condition 16 Sound Audibility. meet the City~~
- 31 ~~Noise consultants' acoustical standards consistent with their noise studies. If the mitigation~~
- 32 ~~measures include movable structures or fabrics, they shall be deployed between 9 PM and~~
- 33 ~~6 AM each day, for special events and functions on the terrace, and at all other times~~
- 34 ~~necessary to comply with Condition 16. for the fully enclosed terrace. The terrace shall~~
- 35 ~~remain open at all times except, between 9 PM and 6 AM each day and when raining.~~
- 36 ~~Shade staff shall be responsible for enclosing and opening the terrace daily. If the terrace~~
- 37 ~~has drapes or other decorative features to enclose the area, they may only be closed~~
- 38 ~~during special events and when raining, or for shade.~~
- 39 12. Front (East) Entry Vestibule- The Zinc bar & lounge and terrace shall not operate to
- 40 midnight for other than special events, pursuant to Condition 23 Hours of Operation, until



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- 1 implementation of a front (east) entry vestibule, pursuant to Condition 22 Noise
 2 Compliance Verification. A permanent front entrance vestibule, bonded and sealed to the
 3 building, shall be constructed to enclose the front doors. The vestibule shall be acoustically
 4 sealed, designed and constructed to comply with Condition 16, Sound Audibility-meet the
 5 City Noise consultants' acoustical standards consistent with their noise studies. The
 6 vestibule shall also meet all Building Safety and other City requirements, including but not
 7 limited to emergency egress and disabled access. Between 9:00 PM and 6:00 AM on
 8 Fridays, Saturdays, New Years Eve and Sundays before Memorial Day and Labor Day, the
 9 following conditions shall apply: a) the front entrance doors shall be closed and only
 10 operable through the interlock/double door vestibule; b) the hotel clerk or other hotel
 11 employee shall only allow passage for disabled, registered hotel guests and valet patrons as
 12 permitted in Condition #28, and all others shall use the west entrance; c) the vestibule may
 13 also be operable with a hotel room key, and; d) only one set of doors may be opened at
 14 any time.
- 15 13. Courtyard- Only special events and functions may use the courtyard. No general public
 16 gatherings permitted in the courtyard, and no "spillover" from the Zinc bar and lobby or
 17 other public areas.
- 18 14. Courtyard-bar corridor wall- The Zinc bar & lounge and terrace shall not operate to
 19 midnight for other than special events, pursuant to Condition 23 Hours of Operation, until
 20 implementation of a courtyard-bar corridor wall, pursuant to Condition 22 Noise
 21 Compliance Verification. A new acoustic moveable wall shall be installed to separate the
 22 interior courtyard from the corridor north of the lobby bar. After 9 PM Friday, Saturday,
 23 New Years Eve, and Sundays before Memorial and Labor Day, and any day if the entry/exit
 24 queue is greater than 5 people for more than 15 minutes, both corridor walls (adjacent to
 25 the courtyard and the lobby bar) shall remain closed for the rest of the night, unless there
 26 is a special event or function using both the Courtyard and Zinc bar/ lobby. Whenever the
 27 Zinc bar and lounge has amplified sound, other than background music, after 9 PM the
 28 north acoustic wall shall remain closed. There shall be no sale, service or consumption of
 29 alcohol in the corridor when one or both moveable walls are closed.
- 30 15. Skydeck- All amplified music and sound, including DJ's for weddings only, shall use the
 31 house system only. No live amplified music is permitted. Amplified sound is prohibited on
 32 the skydeck after 9 PM, except for background music. The hotel shall relocate house
 33 speakers nearer to floor-level, not atop glass windscreen posts. The location and number of
 34 the speakers shall be based on the recommendations from an audio specialist in
 35 cooperation with the City's noise consultant, and shall be designed to mitigate off-site
 36 noise impacts and maximize efficiency on-site.
- 37 16. Sound audibility- Notwithstanding Manhattan Beach Municipal Code Chapter 5.48, Noise
 38 Regulations, the volume of music, entertainment, group singing, or voice, whether or not
 39 amplified, may not be audible outside of the hotel facilities to the following extent. Noise
 40 from the business shall not be audible at or beyond 75 feet from the Shade Hotel premises, at any
 41 height above grade, as determined by the Police Department. For any length of time, except for
 42 the one function referenced in Condition No. 10 A., the noise may not dominate the

- 1 ~~background ambient noise, nor disturb surrounding residents, as defined in the MBMC~~
2 ~~noise regulations.~~ After cessation of alcohol service in any venue or for any event or
3 function, only background music is permitted.
- 4 17. Temporary Use Permit- Special events and functions of more than 125 attendees require
5 City notice and a temporary use permit.
- 6 18. Entertainment Permit- Each year, the hotel shall apply for an annual entertainment permit
7 on or before March 1, in accordance with Condition 40 in Resolution 5770, Metlox Master
8 Use Permit.
- 9 19. Resident notification- The hotel shall e-mail to residents who sign-up, the schedule of
10 special events and functions sent to the City, excluding client information.
- 11 20. Balconies- A permanent notice shall be placed on the doors to the hotel room balconies
12 informing guests to be respectful of the neighbors at all times and to make no noise on the
13 balconies or outside after 10:00 PM.
- 14 21. Exterior Doors- All exterior doors to the public areas of the hotel facility shall be closed
15 after 9:00 PM on ~~Thursdays~~, Fridays, Saturdays, Sundays before Memorial Day and Labor
16 Day, New Years Eve, and daily for all special events and functions. ~~As an exception, if the~~
17 ~~terrace includes physical noise mitigation that complies with Condition 16 Sound Audibility,~~
18 ~~with Zinc lounge and lobby doors open to the terrace, then this condition does not apply to~~
19 ~~those two doors.~~
- 20 22. Noise Compliance Verification- ~~The privilege for the Zinc bar & lounge and the terrace to~~
21 ~~operate until midnight for other than special events, pursuant to Condition 23 Hours of~~
22 ~~Operation, shall not become effective, until installation and verification of the physical~~
23 ~~noise mitigation in Conditions 11, 12 and 14. For verification of said mitigation measures,~~
24 ~~an accredited acoustical expert shall certify compliance with Condition 16 Sound Audibility.~~
25 ~~All other privileges, requirements and conditions in this Use Permit shall immediately~~
26 ~~become effective upon approval by the City Council, pursuant to Conditions 42 and 43 and~~
27 ~~to Sections 5 and 6.~~~~The privileges within this Use Permit for extension of hours of~~
28 ~~operation shall only be granted after the installation of the mitigation measures,~~
29 ~~implementation of the improvements and modifications to the operations of the facility.~~
30 ~~After completion of these measures, the Community Development Director, in cooperation~~
31 ~~with the Noise consultant, shall determine if the measures are effective and meeting the~~
32 ~~objective noise criteria and mitigation standards described in the previously submitted~~
33 ~~Noise reports.~~ The neighbor representative may have input on the location, days and hours
34 of the monitoring for any follow-up noise studies. ~~The privileges and rights within this Use~~
35 ~~Permit shall not be effective unless the objective noise criteria and dBA reductions, as~~
36 ~~described in the previously submitted Noise reports, are achieved.~~
- 37

1 | 23. Hours for alcohol service

Alcohol service restricted to venues below; not permitted in any other public areas.		
Venue/Event/Services	Venue Closing Time (Closed): Open 6 AM- per Cond. 39, Reso. 5770	End of Alcohol Service, (Before Closed in. Minutes)
Zinc bar & lounge and terrace , Fridays-Saturdays and Sundays before Memorial Day and Labor Day	Midnight for special events; 11 PM otherwise, unless physical noise mitigation implemented (Note 1)	20
Zinc bar & lounge and terrace , Sundays-Thursdays	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	20

2 | Note 1: For the Zinc bar & lounge and the terrace, extension of hours from 11 PM to midnight
 3 | on Fridays, Saturdays and Sundays before Memorial Day and Labor Day permitted only
 4 | when physical noise mitigation implemented and verified, pursuant to Conditions 11,
 5 | 12, 14, 16 and 22.

6 | Note 24. New Years Eve closed for all venues as regulated by MBMC- currently 1:00 AM,
 7 | except the skydeck shall close at 10:00 PM.

8 | General Conditions

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

17 | 25. Occupancy Limits- Required occupancy loads shall not be exceeded and required access and
 18 | exits shall remain unobstructed at all times. The exact occupancy numbers stated below
 19 | are required to be posted on the site:

- 20 | Roof Deck - 92
- 21 | Lobby Bar (Zinc Lounge) - 59
- 22 | Patio to south of Zinc Lounge - 47
- 23 | Courtyard Area - 151
- 24 | Conference Room - 44.

25 | 26. Terrace Use- The terrace shall not be a conditioned interior space as defined by the Building
 26 | Code.



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- 1 | 27. Public property clean up- The Shade staff shall monitor the area so that Shade patrons do
 2 | not litter adjacent public property, including but not limited to the sidewalk, street, Metlox
 3 | Town Square and all other public areas at Metlox. The hotel staff shall police and promptly
 4 | clean up all areas with any litter and spills after all special events and functions. Public
 5 | Works may bill Shade for any special event and function related public property clean-up
 6 | costs.
- 7 | Ingress-Egress Control
- 8 | 28. Valet- The Shade valet service shall relocate away from the Shade east or south entrances
 9 | after 10:00 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New
 10 | Years Eve, and after 10:00 PM for special events and functions any day of the week.
 11 | Everyone, except for registered hotel guests and disabled, shall be prohibited from picking
 12 | up their vehicles from the Shade front (east) entrance. The hours and days may be
 13 | modified to be more, but not less, restrictive as determined to be necessary by the Director
 14 | of Community Development. The valet shall keep all driving lanes, parking back up areas,
 15 | and all vehicular and pedestrian ~~accessways~~ **access ways** free and accessible to the general
 16 | public, subject to approval of the Director of Community Development.
- 17 | 29. Taxis- Hotel employees shall discourage the public from using taxis on Valley Drive after 9
 18 | PM. Taxi pickups and drop-offs for the general public at the Shade entrance shall be
 19 | prohibited after 9 PM. Everyone, except for registered hotel guests and disabled, shall be
 20 | directed to the taxi stand on Morningside Drive and 13 Street, after 9 PM on Fridays,
 21 | Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve and after special
 22 | events and functions any day of the week. Hotel staff may call for a taxi to pickup
 23 | registered guests and disabled at the entrance at any time.
- 24 | 30. Entry-Exit Queue- The hotel shall locate the entry and exit queue at the west side of the
 25 | building as required in Condition 31, but the queue shall not extend past the south or north
 26 | sides of the building.
- 27 | 31. West entry-exit- After 9:00 PM on ~~Wednesdays~~ **Thursdays**, Fridays, Saturdays, Sundays before Memorial
 28 | Day and Labor Day, New Years Eve, and after 9:00 PM for special events, and functions,
 29 | everyone except registered hotel guests and disabled shall use the west door, opening on
 30 | to the Metlox Plaza, to enter and exit the hotel. The front east door that opens onto Valley
 31 | Drive, and the south terrace doors shall not be used for entry and exit at these times,
 32 | except registered hotel guests, disabled and valet patrons as permitted in Condition #28,
 33 | may use the front east door.
- 34 | On Sundays through ~~Wednesdays~~ **Thursdays**, if more than five patrons are waiting for more
 35 | than 15 minutes to enter, staff shall establish the queue at the west side of the building for
 36 | the rest of the night. Employees shall close and monitor the front (east) entry door as
 37 | required to ensure access only by registered hotel guests and the disabled, and that
 38 | everyone else uses the west door. Employees shall remind the patrons as they depart to
 39 | respect the neighbors and to minimize noise and disturbance.
- 40 | The hours and days may be administratively modified in the annual entertainment permit to be
 41 | more, but not less, restrictive as determined to be necessary by the Director of Community

1 Development.

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

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

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

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

21 Food service

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

24 Marketing

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

29 | 38. Marketing-Bar and Functions- The hotel shall not advertise, market or promote drink or
30 "happy hour" type of specials. Primary advertising and marketing shall be for the hotel,
31 food and special events. Marketing and promotion for the bar and functions shall be
32 secondary. The Zinc bar/lounge, terrace, and Skydeck will not be exclusively marketed to
33 the general public as separate hospitality attractions.

34 | 39. Menu Posting- The hotel may post drink or food menus or signage outside of the hotel,
35 with the exception of no posting of any drink or "happy hour* type of specials.

36 Procedural

37 | 40. Review. All provisions of the Master Use Permit Amendment are subject to review by the
38 Community Development Department 6 months after completion of improvements and
39 yearly thereafter. At any time in the future, the Planning Commission or City Council may

1 review the Master Use Permit Amendment for the purposes of revocation or modification.
 2 Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts
 3 to adjacent land uses.

4 41. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal
 5 Development Permit shall become effective after expiration of the time limits established
 6 ~~for appeals~~ by Manhattan Beach Municipal Code and Local Coastal Program.

7 42. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game
 8 Code Section 711.4 (c), the project is not operative, vested, or final until the required filing
 9 fees are paid.

10 43. Lapse of Approval. ~~This Use Permit has no lapse of approval, pursuant to Manhattan Beach~~
 11 ~~Municipal Code (MBMC) Sections 10.84.090(A)(2) & (3). The Master Use Permit~~
 12 ~~Amendment shall lapse three (3) years after its date of approval unless implemented or~~
 13 ~~extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.~~

14 44. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it
 15 is the intention of the Director of Community Development and the permittee to bind all
 16 future owners and possessors of the subject property to the terms and conditions. Further,
 17 the applicant shall record the conditions of approval of this Resolution with the Office of
 18 the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be
 19 reviewed and approved by the City Attorney.

20 45. Effective Date. Unless appealed to the City Council, the subject Master Use Permit
 21 Amendment shall become effective when all time limits for appeal as set forth in MBMC
 22 Section 10.100.030 have expired.

23 46. Interpretation. Any questions of intent or interpretation of any condition will be resolved
 24 by the Planning Commission.

25 47. Inspections. The Community Development Department staff shall be allowed to inspect the
 26 site and the development during construction at any time.

27 48. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all
 28 reasonable legal and expert fees and expenses of the City of Manhattan Beach, in
 29 defending any legal action associated with the approval of this project brought against the
 30 City. In the event such a legal action is filed against the project, the City shall estimate its
 31 expenses for the litigation. Applicant shall deposit said amount with the City or enter into
 32 an agreement with the City to pay such expenses as they become due.

33 SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil
 34 Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul
 35 this decision, or concerning any of the proceedings, acts, or determinations taken, done or
 36 made prior to such decision or to determine the reasonableness, legality or validity of any
 37 condition attached to this decision shall not be maintained by any person unless the action or
 38 proceeding is commenced within 90 days of the date of this resolution and the City Council is
 39 served within 120 days of the date of this resolution. The City Clerk shall send a certified copy
 40 of the resolution to the applicant, and if any, the appellant at the address of said person set
 41 forth in the record of the proceedings and such mailing shall constitute the notice required by



Certified to
to a true
copy of said
document on
file in my
office.

-rA

1 Code of Civil Procedure Section 1094.6.

2 SECTION 4. The City Clerk shall make this Resolution reasonably available for public
3 inspection within thirty (30) days of the date this Resolution is adopted.

4 SECTION 5. This resolution shall take effect immediately.

5 SECTION 6. The City Clerk shall certify to the adoption of this Resolution and
6 thenceforth and thereafter the same shall be in full force and effect

7 PASSED, APPROVED, and ADOPTED this 7th day of September, 2010.

8

Ayes: 9 Tell, Powell, Cohen, Montgomery and Mayor Ward.

Noes: 10 None.

Abstain: 11 None.

Absent: 12 None.

13



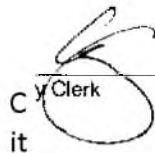
Mayor, City of Manhattan Beach, California

14

15

16

17 ATTEST:


City Clerk
it

18

19

20 Certified to be a true c of the original of said document on file in my office.





1

2 /s/ City Clerk of the City of Manhattan Beach, California

ENTERTAINMENT PERMIT VIOLATIONS, 2006-2013

See Notes Below

REBUTTAL TO 2010 CUP STAFF REPORT

SHADE HOTEL ENTERTAINMENT PERMITS 2006-2013

PRESENTED TO CITY COUNCIL

3 SEPTEMBER 2013

This exhibit includes all eight annual entertainment permits and applications for Shade Hotel, for 2006 through mid 2013. The exhibit does not include the current entertainment permit for 2013-2014, although at Page 90, it does include the April 2013 application for the 2013-2014 entertainment permit.

All entertainment permits through March 2013 require the acoustical wall between the Zinc Bar and the hotel lobby, which staff never required Shade to install.

During 2006-2013, the city made no changes to the entertainment permit, except in 2008, to increase permitted occupancies, from 391 to 493.

Regarding violations of the 2005 CUP, all entertainment permits have the following features:

- Finding O in the 2005 CUP delegates mitigation of potential noise concerns to the entertainment permit, which if violated, thereby violates the use permit;
- **ALL** entertainment permits have Condition 4 in Section "Use Permit Description and Conditions", which requires demonstration that the Zinc Lounge and the Zinc Terrace incorporate soundproofing to the STC-50 standard (Sound Transmission Coefficient). This standard in the International Building Code requires sound levels outside the Zinc Lounge and Terrace not to exceed 0.01% of levels inside the nightclub. (See PDF Pages 7, 18, 29, 40, 50, 64, 81 & 92)
- **ALL** entertainment permits increase operating hours of the terrace to 11 PM, in violation of Finding L in the 2005 CUP, which limits terrace hours to 10 AM Mon-Fri and 11 AM Sat-Sun. (See same PDF pages as immediately above) The entertainment permit shall not increase hours from those specified in the 2005 CUP. (MBMC 4.20.090)
- For the 2008 Entertainment Permit, staff increased the terrace and Roof Deck (Skydeck) occupancies permitted in the 2005 CUP, from 22 to 47 for the terrace and from 45 to 92 for the Skydeck. This raised the total occupancy permitted by the 2005 CUP from 391 to 493, an increase of 26%.



Address: 1221 N. Valley



CITY OF MANHATTAN BEACH
 DEPARTMENT OF COMMUNITY DEVELOPMENT
 1400 HIGHLAND AVENUE 310/802-5500

CITY USE ONLY
 Date Received 5/4/06
 Received by _____
 Fee \$329.00
 Receipt No. _____
 Trans. Code # 4110

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

Class I Permit: Group entertainment, either incidental with the business being conducted there, or to conduct group entertainment for which admission is charged. Limited to legally operated businesses which are open continuously such as restaurants, hotels, cafeterias, bars, and fast food establishments. Permits shall be valid for a period of one year, or until March 1, and renewable annually on March 1.

The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name MICHAEL A. ZISUS ON BEHALF OF SHADE HOTEL
 Applicant Address 1221 NORTH VALLEY DRIVE
 Phone # 310-546-4995 Driver Lic.# U1146027 Birthdate 10/13/1965
 Applicant(s) Employed By SHADE HOTEL
 Business Address 1221 NORTH VALLEY DRIVE Phone 310-546-4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity AMPLIFIED MUSIC FOR PRIVATE EVENTS, USING UP TO FOUR MUSILIANS
 Date(s) of Activity ANNUAL - UP TO FOUR TIMES PER MONTH Time & Duration NOT BEFORE 10 AM OR AFTER TEN PM.
 Describe Type of Music & Amplification WILL VARY DEPENDING ON EVENT.
 Expected Maximum Attendance 200 Alcohol Served? Yes No
 Will Persons Under 21 Years of Age be Present? Yes No
 Alcohol Sold? Yes No If Yes, ABC License # _____

Activity Supervisor(s) JEN PETERSON, EVENTS Address 1221 SHADE HOTEL Phone # 310-698-5555

* LIKELY AT WEDDINGS, LESS LIKELY AT OTHER EVENTS

LOCATION OF ACTIVITY

Address of Activity: 1721 NORTH VALLEY DRIVE

Type of Business: HOTEL

Occupant Capacity of Building: Dancing 75 Dining 200

Gross Floor Area 1800 SQ FT. Floor Area For Dancing 800 SQ FT Dining 1500 SQ FT

Parking: Number of On-Site Parking Spaces 50 VALET SPOTS

Nearby Parking Facility METLOX Number of Spaces 460

Other ADDITIONAL PUBLIC PARKING IN LOTS 8, 7, AND 3.

Description of Neighborhood: Commercial Residential
 Mixed Commercial & Residential Uses Nearby
 Other

APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes No

Have you ever obtained or sought to obtain an Entertainment Permit in the past? Yes No If yes, was the issued Permit ever denied or revoked? Yes No

I, the applicant(s) for this Permit shall be responsible for the monitoring of this activity and agree to conduct the activity subject to the conditions listed below and, further, understand that violation of any condition, State Laws or City Ordinances will result in immediate termination of this Permit, upon due process.

I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE [Signature] DATE 5/11/06

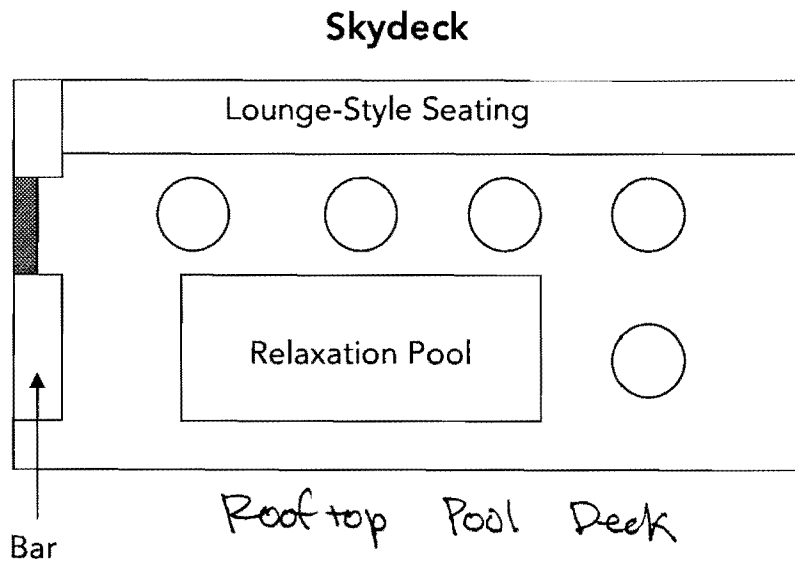
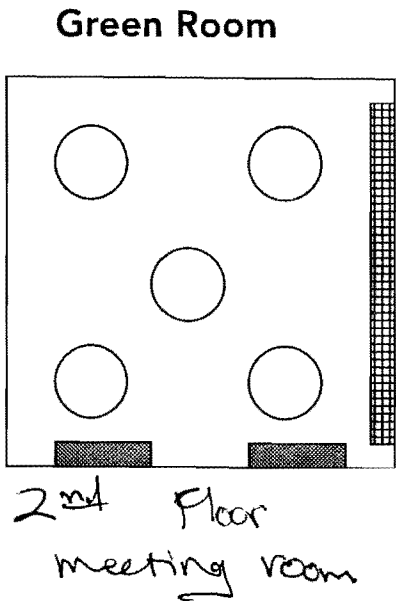
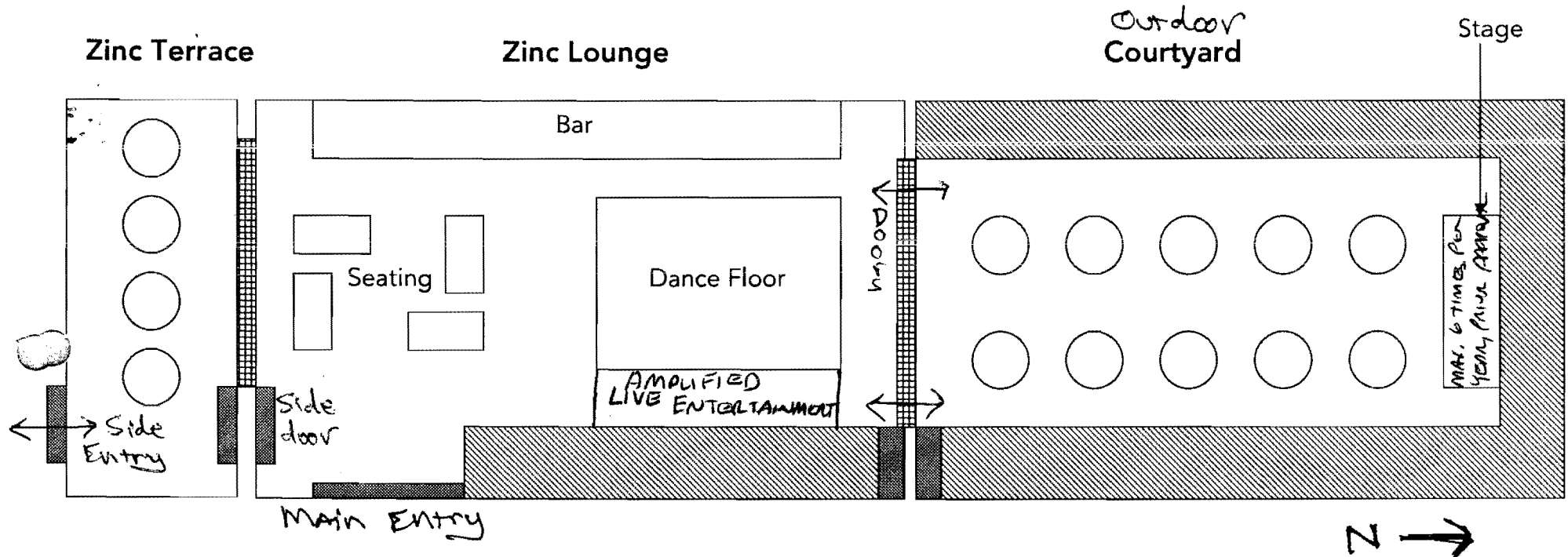
APPROVED BY AUTHORIZED SIGNATURES BELOW, SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement: [Signature] Date: 7-11-06
Planning Division: [Signature] Date: 7/10/06
Director of Community Development: [Signature] Date: 7-11-06

See attached conditions AND Chapter 5.48 - Noise Regulations

g:\planning\forms\... 3/7/01

Event Space Layout



LEGEND

- = 12 foot rounds
- = Doorways
- ▨ = Walkways
- ▩ = Sliding Glass Doors

This is not to scale.

RECEIVED
MAY 30 2006
Shade Ent Permit-004
By _____

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.
Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

Police Department:

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

Fire Department:

1. Required occupancy loads shall not be exceeded and exits shall remain unobstructed.

Community Development Department:

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

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.
Location: 1221 N Valley- Shade Hotel- Metlox

5. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
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, 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 such as Lot 3.
7. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
8. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
9. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.
Location: 1221 N Valley- Shade Hotel- Metlox

and to minimize noise and disturbance.

11. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel 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 close. The doorman or other employee shall ensure that patrons do not leave the premises with alcoholic beverages. (See Use Permit conditions below for hours)
12. If the Director of Community Development deems it necessary for noise attenuation, glass panels shall be installed on the north side of the Zinc Terrace to fill in the void between the hotel and the existing glass panels on the east side of the Zinc Terrace.
13. A renewal application shall be submitted prior to March 1, 2007.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
2. All events are limited to a maximum of 99 people unless prior written approval through a Temporary Use Permit is provided by the Director of Community Development. Event size may not exceed the maximum occupancy as allowed by the Building or Fire Code limits.
3. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.
4. Noise mitigation strategies shall be implemented including; door, wall and ceiling treatments, as required within the Zinc Lounge and Zinc Terrace area in order to mitigate noise. The Zinc Lounge shall demonstrate that the insulation achieves an STC (Sound Transmission Code) rating of 50 to mute the noise.
5. Hours of operation for the hotel public areas shall be as follows:
 - Lobby Zinc Bar (including outdoor Zinc Terrace to south of Lounge)- 11:00 PM daily (Alcohol service to stop at 10:30 pm inside the Zinc bar and 10:00 PM outside on the Zinc Terrace)
 - Interior Outdoor Courtyard (to north of Zinc lounge) and Green Room (2nd floor meeting room) when used for special events and functions- 11:00 pm Sunday -Thursday, 12:00

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.
Location: 1221 N Valley- Shade Hotel- Metlox

midnight Friday and Saturday (Alcohol service to stop at 10:30 pm Sunday -Thursday, 11:30 pm

Skydeck (Rooftop Deck)- 10:00 pm daily (Alcohol service to stop at 9:00 P.M.)

6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.
7. The availability of the Inn for special events shall not be marketed as the primary use.
8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees do not litter adjacent public property, including

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.
Location: 1221 N Valley- Shade Hotel- Metlox

but not limited to the sidewalk, street, Metlox Town Square and all other public areas at Metlox. The hotel operators shall police and promptly clean up all areas with any litter and spills after all events. Public Works shall bill applicant for any event related clean-up costs.

Risk Manager:

1. The applicant shall comply with all required Insurance and Indemnity requirements of the City of Manhattan Beach as detailed below.

INSURANCE AND INDEMNITY

1.1 Commencement of Work

SHADE HOTEL shall not commence work under this Agreement until it has obtained Owner approved insurance. Before beginning work hereunder, during the entire period of this Agreement, or any extensions hereto, and for periods after the end of this Agreement as indicated below, SHADE HOTEL must have and maintain in place, all of the insurance coverages required in this Article 1. SHADE HOTELS insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Article 1 and SHADE HOTEL shall be responsible to obtain evidence of insurance from each subcontractor and provide it to the Owner before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A:-VII unless otherwise approved by CITY.

1.2 Coverages, Limits and Policy Requirements

SHADE HOTEL shall maintain the types of coverages and limits indicated below:

(1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, or the equivalent thereof with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. Owner, its employees,

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.
Location: 1221 N Valley- Shade Hotel- Metlox

officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) COMMERCIAL AUTO LIABILITY INSURANCE - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93 or the equivalent thereof including Symbol 1 (any auto) with no special limitations affecting the Owner. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by the Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim.

(4) PROFESSIONAL ERRORS & OMISSIONS - a policy with minimum limits of one million dollars (\$1,000,000) per claim and aggregate. This policy shall be issued by an insurance

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.
Location: 1221 N Valley- Shade Hotel- Metlox

company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to the Owner.

1.3 Additional Requirements

The procuring of such required policies of insurance shall not be construed to limit SHADE HOTEL's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against the Owner for payment of premiums or other amounts with respect thereto.

The Owner shall notify SHADE HOTEL in writing of changes in the insurance requirements. If SHADE HOTEL does not deposit copies of acceptable insurance policies with the Owner incorporating such changes within sixty (60) days of receipt of such notice, SHADE HOTEL shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by the Owner. Any deductible exceeding \$100,000 shall be subject to the following changes:

(1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to the Owner and its officials, employees and agents (with additional premium, if any, to be paid by SHADE HOTEL) ; or

(2) SHADE HOTEL shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

1.4 Verification of Compliance

SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2007.
Location: 1221 N Valley- Shade Hotel- Metlox

commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

1.5 Indemnification

- 1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.
- 1.5.2 The Owner shall cause the Contractor to indemnify and hold harmless SHADE HOTEL from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, expenses and fees that are asserted against the SHADE HOTEL and that arise out of or result from wrongful acts or omissions by the Contractor in performing the Work.



Address: 1221 Valley

CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
1400 HIGHLAND AVENUE 310/802-5500

CITY USE ONLY
Date Received _____
Received by _____
Fee _____
Receipt No. _____
Trans. Code # 4110

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

Class I Permit: Group entertainment, either incidental with the business being conducted there, or to conduct group entertainment for which admission is charged. Limited to legally operated businesses which are open continuously such as restaurants, hotels, cafeterias, bars, and fast food establishments. Permits shall be valid for a period of one year, or until March 1, and renewable annually on March 1.

The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name Michael A. Ellis on behalf of Shade Hotel
Applicant Address 1221 N. Valley Drive Manhattan Bch, CA 90266
Phone # (310) 546 4995 Driver Lic.# U1146027 Birthdate 10/13/65
Applicant(s) Employed By Shade Hotel
Business Address 1221 N. Valley Dr. Manhattan Beach CA, 90266 Phone (310) 546 4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity Amplified music for private events, using up to four musicians
Annual
Date(s) of Activity up to four times per month Time & Duration not before 10Am or after 10pm
Describe Type of Music & Amplification will vary depending on event
Expected Maximum Attendance 200 Alcohol Served? Yes No
Will Persons Under 21 Years of Age be Present? Yes No
Alcohol Sold? Yes No If Yes, ABC License # 47418408
Activity Supervisor(s) Den Peterson Manager Address 1221 N. Valley Dr (Shade Hotel) Phone # (310) 698-5555

* likely at weddings, less likely at other events

LOCATION OF ACTIVITY

Address of Activity: 1221 N. Valley Dr.

Type of Business: Hotel

Occupant Capacity of Building: Dancing 75 Dining 200

Gross Floor Area 1800^{sq}ft Floor Area For Dancing 800^{sq}ft Dining 1500^{sq}ft

Parking: Number of On-Site Parking Spaces 50 valet spots

Nearby Parking Facility metlox Number of Spaces 460

Other additional public parking in lots 2, 7, and 3

Description of Neighborhood: Commercial Residential
 Mixed Commercial & Residential Uses Nearby
Other _____

APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes ___ No

Have you ever obtained or sought to obtain an Entertainment Permit in the past? Yes ___ No If yes, was the issued Permit ever denied or revoked? Yes ___ No ___

I, the applicant(s) for this Permit shall be responsible for the monitoring of this activity and agree to conduct the activity subject to the conditions listed below and, further, understand that violation of any condition, State Laws or City Ordinances will result in immediate termination of this Permit, upon due process.

I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE * [Signature] DATE 4/9/07

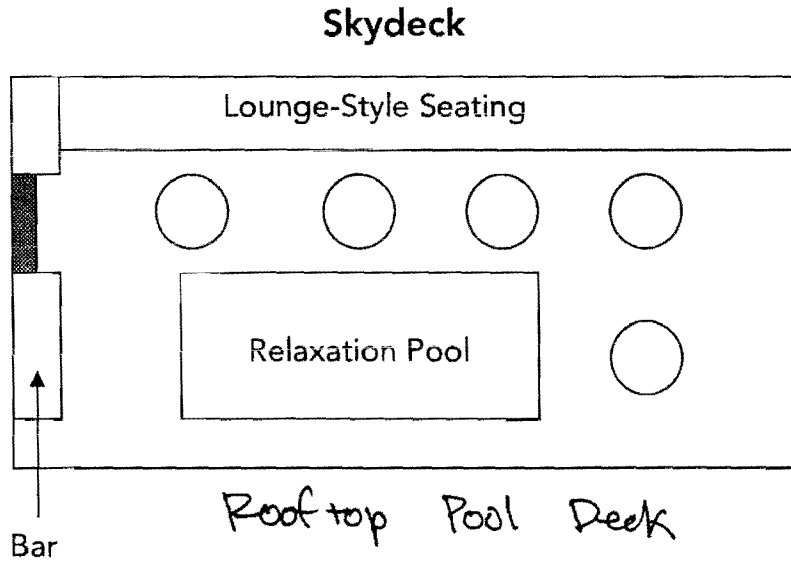
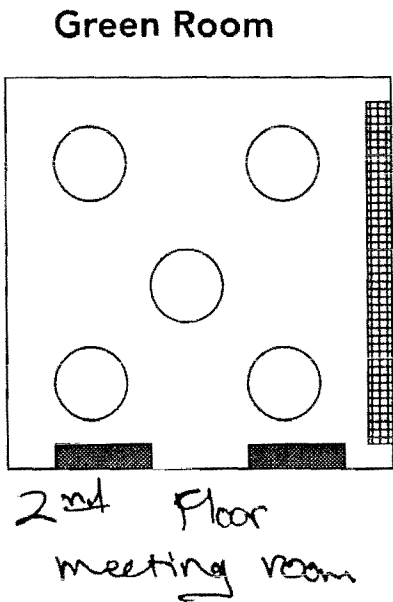
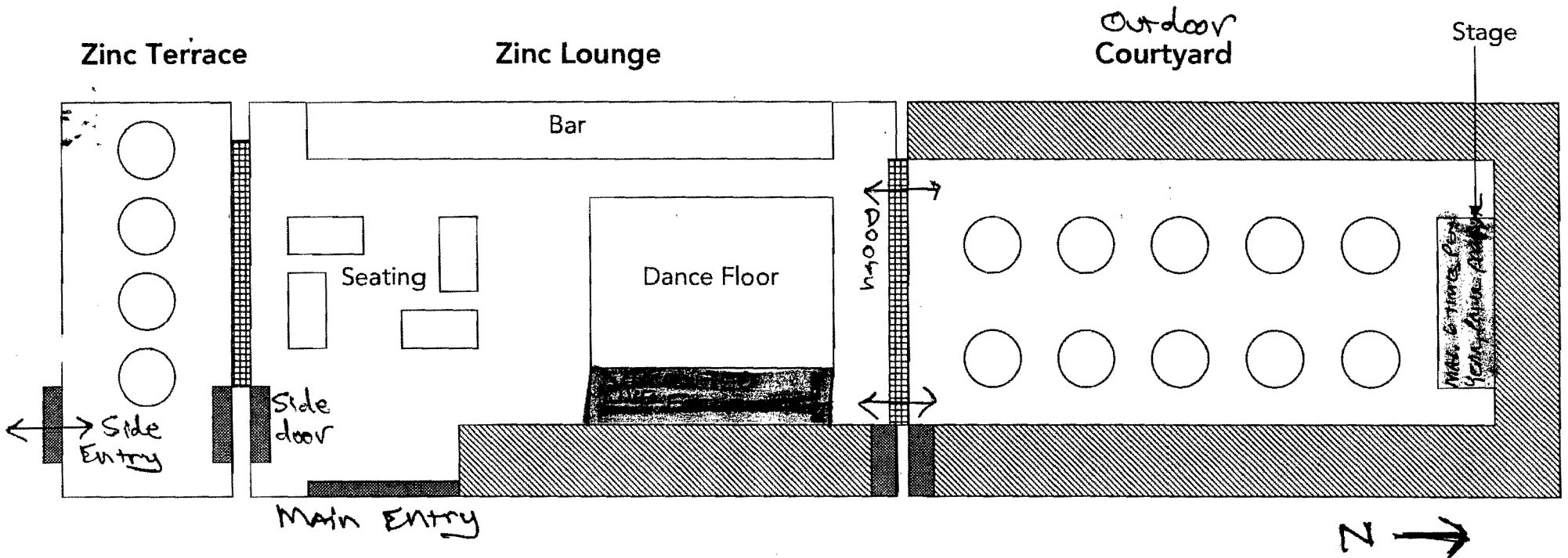
APPROVED BY AUTHORIZED SIGNATURES BELOW, SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement: [Signature] Date: 8-1-97
Planning Division: [Signature] Date: 7/30/07
Director of Community Development: [Signature] Date: 8-2-07

g:\planning\forms\... 3/7/01

* we do have copy of previous conditions and chapter 5.48 noise regulations on file

Event Space Layout



LEGEND

- = 12 foot rounds
- = Doorways
- = Walkways
- = Sliding Glass Doors

This is not to scale.

RECEIVED
MAY 09 2006
Shade Ent Permit-015
By _____

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2008.
Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

Police Department:

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

Fire Department:

1. Required occupancy loads shall not be exceeded and exits shall remain unobstructed.

Community Development Department:

1. Hours for special events with entertainment or amplified sound shall be limited to 10 AM to 10:00 PM daily.
2. Entertainment or amplified sound shall be in conformance with the attached approved floor plan including: the designated amplified live entertainment/performer location adjacent to the east wall of the Zinc Lounge, and a dance floor area approximately 15' by 20' adjacent to the performer area. Entertainment or amplified sound is prohibited on the Zinc Terrace. The outdoor courtyard to the north of the Zinc Lounge and the Skydeck may only be used for live entertainment, amplified sound or events with a 14 day prior notice and approval of the City. A maximum of 6 events per year may take place in this outdoor courtyard and the Skydeck.
3. A maximum of 4 performers shall be permitted at any time. Entertainment that would result in dancing which exceeds the capacity of the 15' by 20' dance floor shall be prohibited. Entertainment and dancing shall conform to the attached floor plan. Amplified sound shall be allowed a maximum of 4 times per month. Entertainment at other times shall be limited to acoustic performances only and limited to a maximum of 2 performers.
4. All doors leading to the outside shall remain closed at all times.
5. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent

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- that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
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, 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 such as Lot 3.
 7. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
 8. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
 9. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
 10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors and to minimize noise and disturbance.
 11. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel facility patrons are not

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gathering in the Town Square and public areas outside of the hotel and disturbing the neighbors after the hotel public areas close. The doorman or other employee shall ensure that patrons do not leave the premises with alcoholic beverages. (See Use Permit conditions below for hours)

12. If the Director of Community Development deems it necessary for noise attenuation, glass panels shall be installed on the north side of the Zinc Terrace to fill in the void between the hotel and the existing glass panels on the east side of the Zinc Terrace.
13. A renewal application shall be submitted prior to March 1st.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
2. All events are limited to a maximum of 99 people unless prior written approval through a Temporary Use Permit is provided by the Director of Community Development. Event size may not exceed the maximum occupancy as allowed by the Building or Fire Code limits.
3. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.
4. Noise mitigation strategies shall be implemented including; door, wall and ceiling treatments, as required within the Zinc Lounge and Zinc Terrace area in order to mitigate noise. The Zinc Lounge shall demonstrate that the insulation achieves an STC (Sound Transmission Code) rating of 50 to mute the noise.
5. Hours of operation for the hotel public areas shall be as follows:
Lobby Zinc Bar (including outdoor Zinc Terrace to south of Lounge)- 11:00 PM daily (Alcohol service to stop at 10:30 pm inside the Zinc bar and 10:00 PM outside on the Zinc Terrace)
Interior Outdoor Courtyard (to north of Zinc lounge) and Green Room (2nd floor meeting room) when used for special events and functions- 11:00 pm Sunday -Thursday, 12:00 midnight Friday and Saturday (Alcohol service to stop at 10:30 pm Sunday -Thursday, 11:30 pm
Skydeck (Rooftop Deck)- 10:00 pm daily (Alcohol service to stop at 9:00 P.M.)
6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering

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first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.

7. The availability of the Inn for special events shall not be marketed as the primary use.
8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees 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 operators shall police and promptly clean up all areas with any litter and spills after all events. Public Works shall bill applicant for any event related clean-up costs.

Risk Manager:

1. The applicant shall comply with all required Insurance and

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Indemnity requirements of the City of Manhattan Beach as detailed below.

INSURANCE AND INDEMNITY

1.1 Commencement of Work

SHADE HOTEL shall not commence work under this Agreement until it has obtained Owner approved insurance. Before beginning work hereunder, during the entire period of this Agreement, or any extensions hereto, and for periods after the end of this Agreement as indicated below, SHADE HOTEL must have and maintain in place, all of the insurance coverages required in this Article 1. SHADE HOTELS insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Article 1 and SHADE HOTEL shall be responsible to obtain evidence of insurance from each subcontractor and provide it to the Owner before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

1.2 Coverages, Limits and Policy Requirements

SHADE HOTEL shall maintain the types of coverages and limits indicated below:

(1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, or the equivalent thereof with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the policy contains such an "other insurance" clause, the policy

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shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) COMMERCIAL AUTO LIABILITY INSURANCE - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93 or the equivalent thereof including Symbol 1 (any auto) with no special limitations affecting the Owner. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by the Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim.

(4) PROFESSIONAL ERRORS & OMISSIONS - a policy with minimum limits of one million dollars (\$1,000,000) per claim and aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to the Owner.

1.3 Additional Requirements

The procuring of such required policies of insurance shall not be construed to limit SHADE HOTEL's liability hereunder, nor to fulfill the indemnification provisions and requirements of

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this Agreement. There shall be no recourse against the Owner for payment of premiums or other amounts with respect thereto.

The Owner shall notify SHADE HOTEL in writing of changes in the insurance requirements. If SHADE HOTEL does not deposit copies of acceptable insurance policies with the Owner incorporating such changes within sixty (60) days of receipt of such notice, SHADE HOTEL shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by the Owner. Any deductible exceeding \$100,000 shall be subject to the following changes:

(1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to the Owner and its officials, employees and agents (with additional premium, if any, to be paid by SHADE HOTEL) ; or

(2) SHADE HOTEL shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

1.4 Verification of Compliance

SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

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1.5 Indemnification

1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.

1.5.2 The Owner shall cause the Contractor to indemnify and hold harmless SHADE HOTEL from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, expenses and fees that are asserted against the SHADE HOTEL and that arise out of or result from wrongful acts or omissions by the Contractor in performing the Work.



CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
1400 HIGHLAND AVENUE 310/802-5500

Address: 1221 N. Valley Drive
M.B. CA 90266
CITY USE ONLY

Date Received _____
Received by _____
Fee _____
Receipt No. _____
Trans. Code # 4110

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

Class I Permit: Group entertainment, either incidental with the business being conducted there, or to conduct group entertainment for which admission is charged. Limited to legally operated businesses which are open continuously such as restaurants, hotels, cafeterias, bars, and fast food establishments. Permits shall be valid for a period of one year, or until March 1, and renewable annually on March 1.

The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name Milo Basic on behalf of Shade Hotel
Applicant Address 1221 N. Valley Dr M.B. CA 90266
Phone # 310 546 4995 Driver Lic.# E0195813 Birthdate 1/26/52
Applicant(s) Employed By Shade Hotel
Business Address 1221 N. Valley Dr. M.B. CA 90266 Phone 310 546 4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity amplified music for private events, using
up to four musicians
Date(s) of Activity Annual up to 4 times per month Time & Duration not before 10AM or after 10pm
Describe Type of Music & Amplification will vary depending on event
Expected Maximum Attendance 200 Alcohol Served? Yes No
Will Persons Under 21 Years of Age be Present? Yes No
Alcohol Sold? Yes No If Yes, ABC License #, 47418408

Activity Supervisor(s) Blise Vought ^{events} _{manager} Address 1221 N. Valley Dr. M.B. CA Phone # 310 698 5557

* lively at weddings, less likely at other events 90266

LOCATION OF ACTIVITY

Address of Activity: 1221 N. Valley Dr

Type of Business: Hotel

Occupant Capacity of Building: Dancing 75 Dining 200

Gross Floor Area 1800 ^{sq} ~~feet~~ Floor Area For Dancing 800 ^{sq} ~~ft~~ Dining 1,500 ^{sq} ~~ft~~

Parking: Number of On-Site Parking Spaces 50 valet spots

Nearby Parking Facility Metlox Number of Spaces 460

Other additional public parking in lots 8, 7, and 3

Description of Neighborhood: Commercial Residential

Mixed Commercial & Residential Uses Nearby

Other

APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes No

Have you ever obtained or sought to obtain an Entertainment Permit in the past? Yes No If yes, was the issued Permit ever denied or revoked? Yes No

I, the applicant(s) for this Permit shall be responsible for the monitoring of this activity and agree to conduct the activity subject to the conditions listed below and, further, understand that violation of any condition, State Laws or City Ordinances will result in immediate termination of this Permit, upon due process.

I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE

DATE

7/14/08

APPROVED BY AUTHORIZED SIGNATURES BELOW, SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement: Ismael Torres Date: 9-3-08

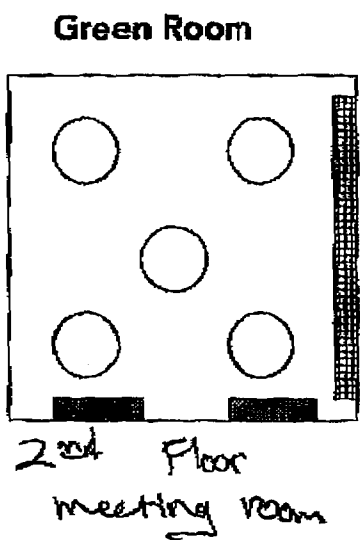
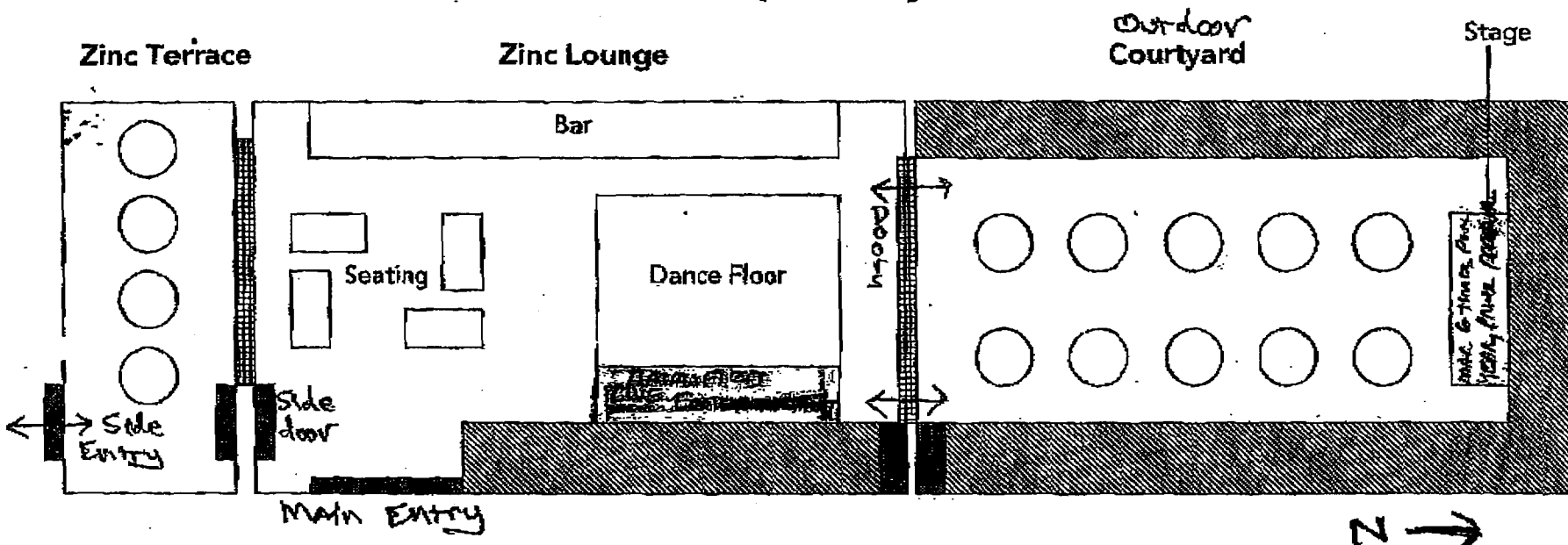
Planning Division: [Signature] Date: 9/2/08

Director of Community Development: Date:

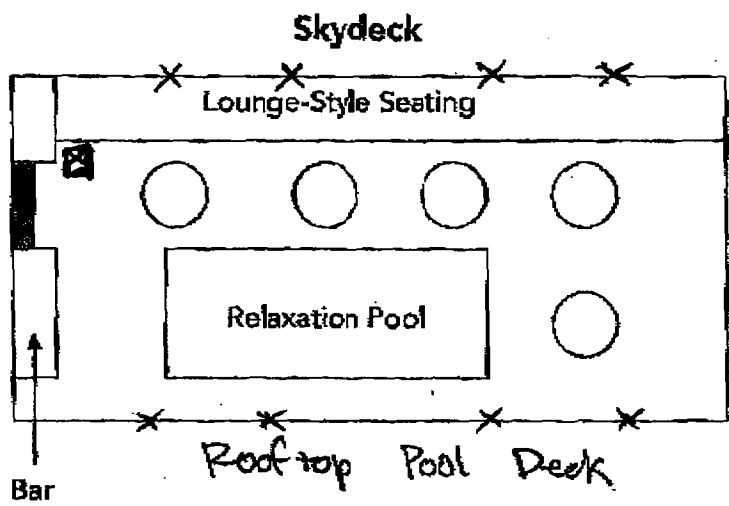
g:\planning\forms\... 3/7/01

* we do have copy of previous conditions and chapter 5.48 noise regulations in file.

Event Space Layout



2nd Floor meeting room



x = SMALL SPEAKERS (LIGHT DAYTIME MUSIC)
 x = ENTERTAINMENT SPEAKER (DOWN GROUND FACING WEST)

LEGEND

- = 12 foot rounds
- = Doorways
- = Walkways
- = Sliding Glass Doors

This is not to scale.

RECEIVED
 MAY 09 2006
 By _____

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CONDITIONS OF APPROVAL

Police Department:

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2. The applicant shall comply with all of the requirements of Chapter 5.48 Noise Regulations, of the City of Manhattan Beach Municipal Code. (See Sections 5.48.140 and 5.48.160 for specific noise standard regulations)

Fire Department:

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

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

2005 CUP: 22

Total 1st floor occupancy 324 vs application 204

In written note, Staff increased terrace occupancy from 22 in applicant's testimony to 47. This violates Condition 1 in 2005 CUP, which requires planning commission approval for substantial changes from the project description.

Community Development Department:

1. Hours for special events with entertainment or amplified sound shall be limited to 10 AM to 10:00 PM daily.
2. Entertainment or amplified sound shall be in conformance with the attached approved floor plan including: the designated amplified live entertainment/performer location adjacent to the east wall of the Zinc Lounge, and a dance floor area approximately 15' by 20' adjacent to the performer area. Entertainment or amplified sound is prohibited on the Zinc Terrace. The outdoor courtyard to the north of the Zinc Lounge and the Skydeck may only be used for live entertainment, amplified sound or events with a 14 day prior notice and approval of the City. A maximum of 6 events per year may take place in this outdoor courtyard and the Skydeck.
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- performers.
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12. If the Director of Community Development deems it necessary for noise attenuation, glass panels shall be installed east side of the Skydeck to fill in the void between the stairwell and the end of the patio.
13. A renewal application shall be submitted prior to March 1st.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
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applicant for any event related clean-up costs.

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1. The applicant shall comply with all required Insurance and Indemnity requirements of the City of Manhattan Beach as detailed below.

INSURANCE AND INDEMNITY

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(1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, or the equivalent thereof with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy

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

excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) **COMMERCIAL AUTO LIABILITY INSURANCE** - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93 or the equivalent thereof including Symbol 1 (any auto) with no special limitations affecting the Owner. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by the Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) **WORKERS' COMPENSATION INSURANCE** - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim.

(4) **PROFESSIONAL ERRORS & OMISSIONS** - a policy with minimum limits of one million dollars (\$1,000,000) per claim and aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to the Owner.

1.3 Additional Requirements

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

The procuring of such required policies of insurance shall not be construed to limit SHADE HOTEL's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against the Owner for payment of premiums or other amounts with respect thereto.

The Owner shall notify SHADE HOTEL in writing of changes in the insurance requirements. If SHADE HOTEL does not deposit copies of acceptable insurance policies with the Owner incorporating such changes within sixty (60) days of receipt of such notice, SHADE HOTEL shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by the Owner. Any deductible exceeding \$100,000 shall be subject to the following changes:

(1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to the Owner and its officials, employees and agents (with additional premium, if any, to be paid by SHADE HOTEL) ; or

(2) SHADE HOTEL shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

1.4 Verification of Compliance

SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

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

1.5 Indemnification

1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.

1.5.2 The Owner shall cause the Contractor to indemnify and hold harmless SHADE HOTEL from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, expenses and fees that are asserted against the SHADE HOTEL and that arise out of or result from wrongful acts or omissions by the Contractor in performing the Work.



Address: 1221 Valley

CITY USE ONLY

Date Received _____
Received by _____
Fee _____
Receipt No. _____
Trans. Code # 4110

**CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
1400 HIGHLAND AVENUE 310/802-5500**

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

Class I Permit: Group entertainment, either incidental with the business being conducted there, or to conduct group entertainment for which admission is charged. Limited to legally operated businesses which are open continuously such as restaurants, hotels, cafeterias, bars, and fast food establishments. Permits shall be valid for a period of one year, or until March 1, and renewable annually on March 1.

The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name Michael ZISLIS of Behalf of Shade Hotel
Applicant Address 1221 North Valley Drive, M.B. CA 90266
Phone # (310) 546-4995 Driver Lic.# 01146027 Birthdate 10/13/65
Applicant(s) Employed By Shade Hotel
Business Address 1221 North Valley Drive Phone 310-546-4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity Events ie: wedding, conferences, birthday holiday parties etc
No Live bands over 6 pieces except Mariachi's.
Date(s) of Activity throughout the year Time & Duration Per use permit + attached conditions

Describe Type of Music & Amplification _____
Expected Maximum Attendance X Alcohol Served? Yes No
Will Persons Under 21 Years of Age be Present? Yes No
Alcohol Sold? Yes No _____ If Yes, ABC License # 47418408

Activity Supervisor(s) Jolyce Bought Address 1221 N. Valley Ave Phone # 310 698-5557

11-25-2007
A/001-01232976
CITY, Based on occupancy

LOCATION OF ACTIVITY

Address of Activity: 1221 N. Valley

Type of Business: Hotel

Occupant Capacity of Building: Dancing 75 Dining 300

Gross Floor Area _____ Floor Area For Dancing _____ Dining see chart

Parking: Number of On-Site Parking Spaces 50 valet

Nearby Parking Facility 460 Metrox Number of Spaces

Other

Description of Neighborhood: _____ Commercial _____ Residential
 Mixed Commercial & Residential Uses Nearby
_____ Other

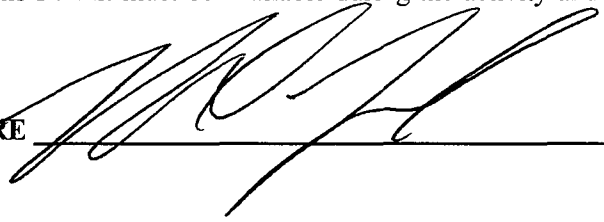
APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes _____ No

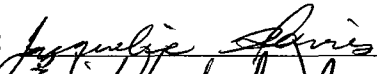
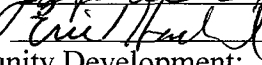
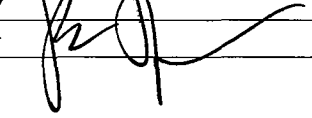
Have you ever obtained or sought to obtain an Entertainment Permit in the past? Yes No If yes, was the issued Permit ever denied or revoked? Yes _____ No

I, the applicant(s) for this Permit shall be responsible for the monitoring of this activity and agree to conduct the activity subject to the conditions listed below and, further, understand that violation of any condition, State Laws or City Ordinances will result in immediate termination of this Permit, upon due process.

I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE  DATE Nov 27, 2008

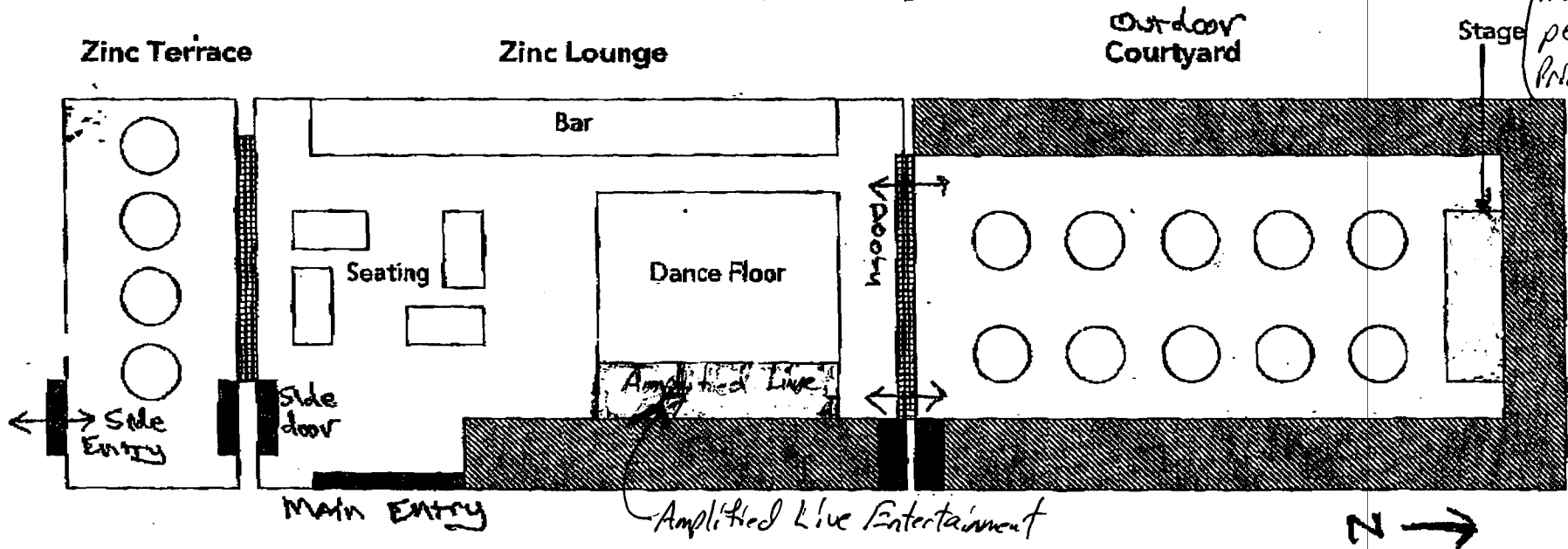
APPROVED BY AUTHORIZED SIGNATURES BELOW, SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement:  Date: 12-19-08
Planning Division:  Date: 12/19/08
Director of Community Development:  Date: 12-19-08

T10/10
PAGE

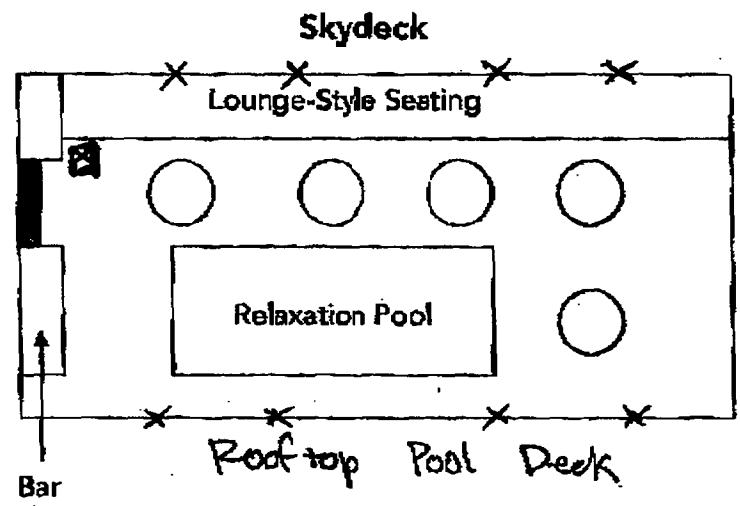
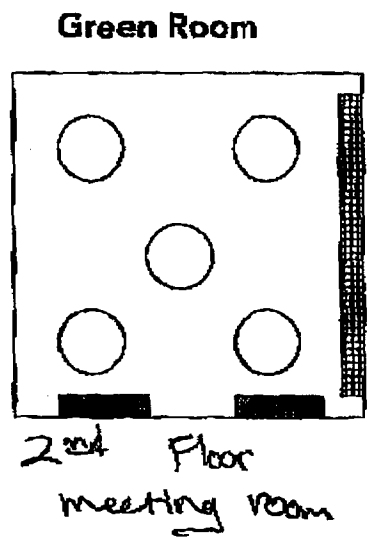
Event Space Layout

(Max. 6 times per year, Prior approval)



MANHATTAN BEACH

09/04/2008 10:10 310-802-5501



LEGEND

- = 12 foot rounds
- = Doorways
- ▨ = Walkways
- ▩ = Sliding Glass Doors

This is not to scale

x = SMALL SPEAKERS (LIGHT DAYTIME MUSIC)
 ⊠ = ENTERTAINMENT SPEAKER (ON GROUND FACING WEST)

RECEIVED
 MAY 09 2006
 By _____

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

Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

Police Department:

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

Total 1st floor occupancy 357 vs application 204;
 Total occupancy 493 vs application 334, 48% increase

Fire Department:

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

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

2005 CUP: 22

Staff increased Roof Deck (SkyDeck) occupancy from 45 in the application to 92. This violates Condition 1 in 2005 CUP, which requires planning commission approval for substantial changes from the project description

Community Development Department:

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

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

Location: 1221 N Valley- Shade Hotel- Metlox

5. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
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, 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 such as Lot 3.
7. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
8. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
9. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors and to minimize noise and disturbance.

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

Location: 1221 N Valley- Shade Hotel- Metlox

11. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel 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 close. The doorman or other employee shall ensure that patrons do not leave the premises with alcoholic beverages. (See Use Permit conditions below for hours)
12. If the Director of Community Development deems it necessary for noise attenuation, glass panels shall be installed east side of the Skydeck to fill in the void between the stairwell and the end of the patio.
13. A renewal application shall be submitted prior to March 1st.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
2. All events are limited to a maximum of 99 people unless prior written approval through a Temporary Use Permit is provided by the Director of Community Development. Event size may not exceed the maximum occupancy as allowed by the Building or Fire Code limits.
3. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.
4. Noise mitigation strategies shall be implemented including; door, wall and ceiling treatments, as required within the Zinc Lounge and Zinc Terrace area in order to mitigate noise. The Zinc Lounge shall demonstrate that the insulation achieves an STC (Sound Transmission Code) rating of 50 to mute the noise.
5. Hours of operation for the hotel public areas shall be as follows:
Lobby Zinc Bar (including outdoor Zinc Terrace to south of Lounge)- 11:00 PM daily
Interior Outdoor Courtyard (to north of Zinc lounge) and Green Room (2nd floor meeting room) when used for special events and functions- 11:00 pm Sunday -Thursday, 12:00 midnight Friday and Saturday
Skydeck (Rooftop Deck)- 10:00 pm daily (Alcohol service to stop at 9:00 P.M.)
6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering

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

Location: 1221 N Valley- Shade Hotel- Metlox

first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.

7. The availability of the Inn for special events shall not be marketed as the primary use.
8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees 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 operators shall police and promptly clean up all areas with any litter and spills after all events. Public Works shall bill applicant for any event related clean-up costs.

Risk Manager:

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

Location: 1221 N Valley- Shade Hotel- Metlox

1. The applicant shall comply with all required Insurance and Indemnity requirements of the City of Manhattan Beach as detailed below.

INSURANCE AND INDEMNITY

1.1 Commencement of Work

SHADE HOTEL shall not commence work under this Agreement until it has obtained Owner approved insurance. Before beginning work hereunder, during the entire period of this Agreement, or any extensions hereto, and for periods after the end of this Agreement as indicated below, SHADE HOTEL must have and maintain in place, all of the insurance coverages required in this Article 1. SHADE HOTELS insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Article 1 and SHADE HOTEL shall be responsible to obtain evidence of insurance from each subcontractor and provide it to the Owner before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

1.2 Coverages, Limits and Policy Requirements

SHADE HOTEL shall maintain the types of coverages and limits indicated below:

(1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, or the equivalent thereof with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the

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

Location: 1221 N Valley- Shade Hotel- Metlox

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

Location: 1221 N Valley- Shade Hotel- Metlox

be construed to limit SHADE HOTEL's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against the Owner for payment of premiums or other amounts with respect thereto.

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SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

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

Location: 1221 N Valley- Shade Hotel- Metlox

1.5 Indemnification

1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.

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Address: 1221 Valley

CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
1400 HIGHLAND AVENUE 310/802-5500

CITY USE ONLY
Date Received _____
Received by _____
Fee _____
Receipt No. _____
Trans. Code # 4110

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

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The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name Michael Zislin on behalf of Shade Hotel

Applicant Address 1221 N Valley Dr.

Phone # 310-546-4995 Driver Lic.# _____ Birthdate _____

Applicant(s) Employed By Shade Hotel

Business Address 1221 N Valley Drive Phone 310 546 4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity Births, weddings, conferences, birthday holiday parties, etc

Date(s) of Activity throughout the year Time & Duration per the permit conditions attached

Describe Type of Music & Amplification _____

Expected Maximum Attendance X Alcohol Served? Yes No

Will Persons Under 21 Years of Age be Present? Yes No

Alcohol Sold? Yes No _____ If Yes, ABC License # 47418100

Activity Supervisor(s) Jolise Vought Address 1221 N Valley Dr Phone # _____

* Based on occupancy

LOCATION OF ACTIVITY

Address of Activity: 1221 N. Valley

Type of Business: Hotel

Occupant Capacity of Building: Dancing 75 Dining 300 (See attached for maximum)

Gross Floor Area _____ Floor Area For Dancing _____ Dining see chart UB of 1/31/10
LAWRENCE JESTER

Parking: Number of On-Site Parking Spaces 50 valet

Nearby Parking Facility 460 MetroX Number of Spaces

Other

Description of Neighborhood: _____ Commercial _____ Residential
 Mixed Commercial & Residential Uses Nearby
_____ Other

APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes _____ No


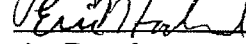
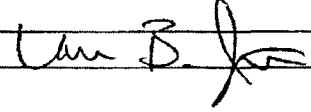
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I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE  DATE 10/19/09

APPROVED BY AUTHORIZED SIGNATURES BELOW, SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement:  Date: 1-26-10
Planning Division:  Date: 1/26/10
Director of Community Development:  Date: 1/31/10

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2010.

Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

Police Department:

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

Total 1st floor occupancy 357 vs application 204;
 Total occupancy 493 vs application 334, 48% increase

Fire Department:

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

2005 CUP: 45

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

2005 CUP: 22

Staff increased Roof Deck (SkyDeck) and terrace occupancies from Project Description values. This violates Condition 1 in 2005 CUP, which requires planning commission approval for substantial changes from the project description.

Community Development Department:

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

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2010.

Location: 1221 N Valley- Shade Hotel- Metlox

5. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
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, 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 such as Lot 3.
7. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
8. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
9. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors and to minimize noise and disturbance.

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2010.

Location: 1221 N Valley- Shade Hotel- Metlox

11. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel 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 close. The doorman or other employee shall ensure that patrons do not leave the premises with alcoholic beverages. (See Use Permit conditions below for hours)
12. A renewal application shall be submitted prior to March 1st.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
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4. Noise mitigation strategies shall be implemented including; door, wall and ceiling treatments, as required within the Zinc Lounge and Zinc Terrace area in order to mitigate noise. The Zinc Lounge shall demonstrate that the insulation achieves an STC (Sound Transmission Code) rating of 50 to mute the noise.
5. Hours of operation for the hotel public areas shall be as follows:
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6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.
7. The availability of the Inn for special events shall not be

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Location: 1221 N Valley- Shade Hotel- Metlox

marketed as the primary use.

8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees 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 operators shall police and promptly clean up all areas with any litter and spills after all events. Public Works shall bill applicant for any event related clean-up costs.

Risk Manager:

1. The applicant shall comply with all required Insurance and Indemnity requirements of the City of Manhattan Beach as detailed below.

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2010.

Location: 1221 N Valley- Shade Hotel- Metlox

INSURANCE AND INDEMNITY

1.1 Commencement of Work

SHADE HOTEL shall not commence work under this Agreement until it has obtained Owner approved insurance. Before beginning work hereunder, during the entire period of this Agreement, or any extensions hereto, and for periods after the end of this Agreement as indicated below, SHADE HOTEL must have and maintain in place, all of the insurance coverages required in this Article 1. SHADE HOTELS insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Article 1 and SHADE HOTEL shall be responsible to obtain evidence of insurance from each subcontractor and provide it to the Owner before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

1.2 Coverages, Limits and Policy Requirements

SHADE HOTEL shall maintain the types of coverages and limits indicated below:

(1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, or the equivalent thereof with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2010.

Location: 1221 N Valley- Shade Hotel- Metlox

Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) COMMERCIAL AUTO LIABILITY INSURANCE - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93 or the equivalent thereof including Symbol 1 (any auto) with no special limitations affecting the Owner. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by the Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim.

(4) PROFESSIONAL ERRORS & OMISSIONS - a policy with minimum limits of one million dollars (\$1,000,000) per claim and aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to the Owner.

1.3 Additional Requirements

The procuring of such required policies of insurance shall not be construed to limit SHADE HOTEL's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against the Owner for payment of premiums or other amounts with respect thereto.

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2010.

Location: 1221 N Valley- Shade Hotel- Metlox

The Owner shall notify SHADE HOTEL in writing of changes in the insurance requirements. If SHADE HOTEL does not deposit copies of acceptable insurance policies with the Owner incorporating such changes within sixty (60) days of receipt of such notice, SHADE HOTEL shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by the Owner. Any deductible exceeding \$100,000 shall be subject to the following changes:

(1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to the Owner and its officials, employees and agents (with additional premium, if any, to be paid by SHADE HOTEL) ; or

(2) SHADE HOTEL shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

1.4 Verification of Compliance

SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

1.5 Indemnification

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2010.

Location: 1221 N Valley- Shade Hotel- Metlox

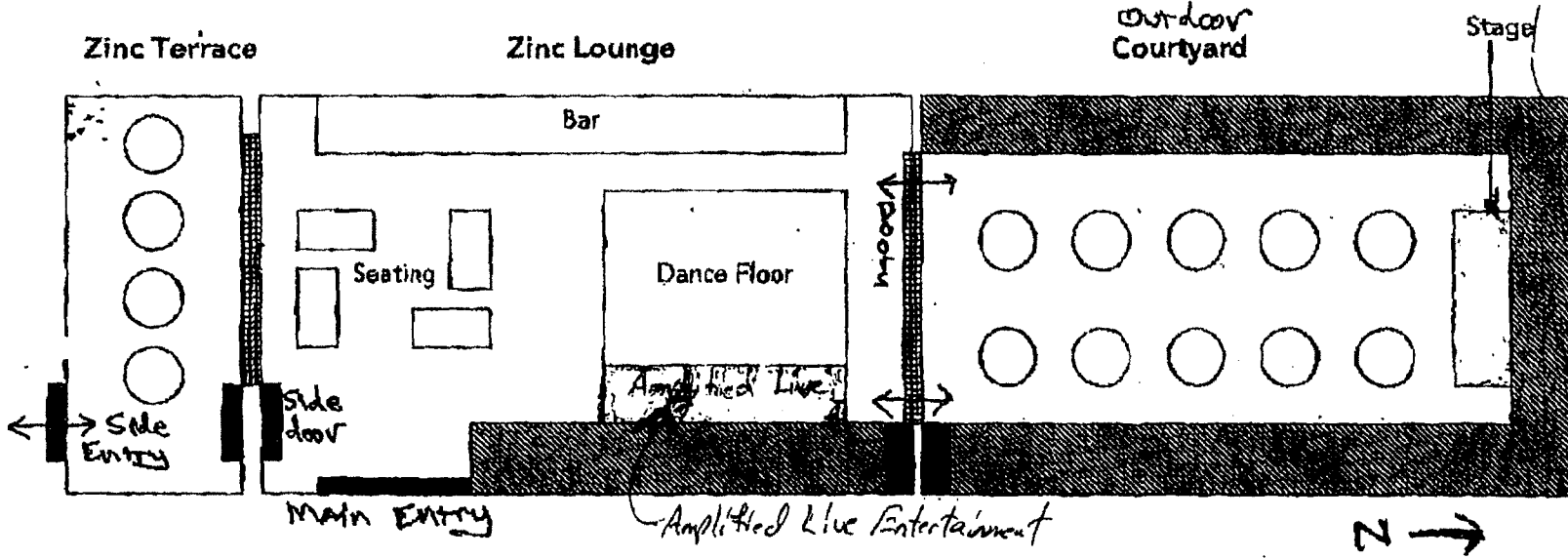
1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.

1.5.2 The Owner shall cause the Contractor to indemnify and hold harmless SHADE HOTEL from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, expenses and fees that are asserted against the SHADE HOTEL and that arise out of or result from wrongful acts or omissions by the Contractor in performing the Work.

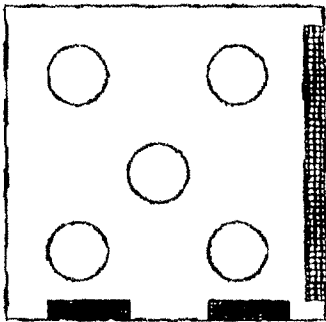
10/10 12:10 PM

MANHATTAN BEACH

Event Space Layout

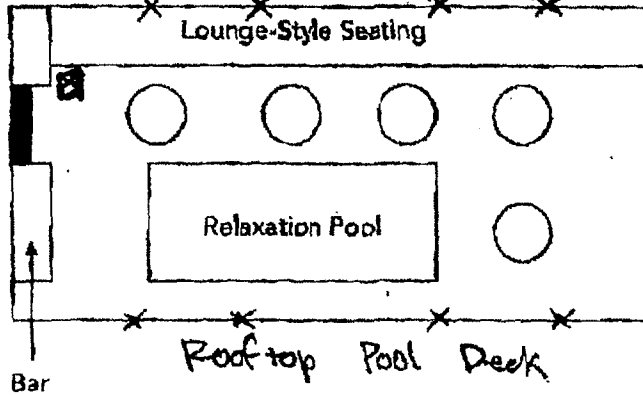


Green Room



2nd Floor meeting room

Skydeck



Roof top Pool Deck

LEGEND

- = 12 foot rounds
- = Doorways
- = Walkways
- = Sliding Glass Doors

This is not to scale

RECEIVED
MAY 09 2006
By _____

- x = SMALL SPEAKERS (LIGHT DAYTIME MUSIC)
- ⊗ = ENTERTAINMENT SPEAKER (ON GROUND FACING WEST)

09/04/2008 12:10 310-862-5501



CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
1400 HIGHLAND AVENUE 310/802-5500

PAID
E/001-01261869
Address: 1221 Valley Drive 310-12-2010

CITY USE ONLY
Date Received _____
Received by _____
Fee _____
Receipt No. _____
Trans. Code # 4110

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

Class I Permit: Group entertainment, either incidental with the business being conducted there, or to conduct group entertainment for which admission is charged. Limited to legally operated businesses which are open continuously such as restaurants, hotels, cafeterias, bars, and fast food establishments. Permits shall be valid for a period of one year, or until March 1, and renewable annually on March 1.

The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name Michael Ziskin on behalf of Shade Hotel
Applicant Address 1221 N. Valley
Phone # 310.546.4995 Driver Lic.# _____ Birthdate _____
Applicant(s) Employed By Shade Hotel
Business Address 1221 N Valley Drive Phone 310 546 4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity Events: i.e weddings, conferences, birthday & holiday parties, etc.
Date(s) of Activity throughout the year Time & Duration per use permit & attached conditions
Describe Type of Music & Amplification _____
Expected Maximum Attendance Alcohol Served? Yes No _____
Will Persons Under 21 Years of Age be Present? Yes No _____
Alcohol Sold? Yes No _____ If Yes, ABC License # 47418408
Activity Supervisor(s) Jolise Vought Address 1221 N Valley Dr Phone # _____

* Based on occupancy

LOCATION OF ACTIVITY

Address of Activity: 1221 N. Valley

Type of Business: Hotel

Occupant Capacity of Building: Dancing 75 Dining 300

Gross Floor Area _____ Floor Area For Dancing _____ Dining _____ see chart

Parking: Number of On-Site Parking Spaces 50 Valet

Nearby Parking Facility Metlox Number of Spaces 400

Other _____

Description of Neighborhood: Commercial Residential
 Mixed Commercial & Residential Uses Nearby
 Other _____

APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes ___ No X

Have you ever obtained or sought to obtain an Entertainment Permit in the past? Yes X No ___ If yes, was the issued Permit ever denied or revoked? Yes ___ No X

I, the applicant(s) for this Permit shall be responsible for the monitoring of this activity and agree to conduct the activity subject to the conditions listed below and, further, understand that violation of any condition, State Laws or City Ordinances will result in immediate termination of this Permit, upon due process.

I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE [Signature] DATE 4/12/10

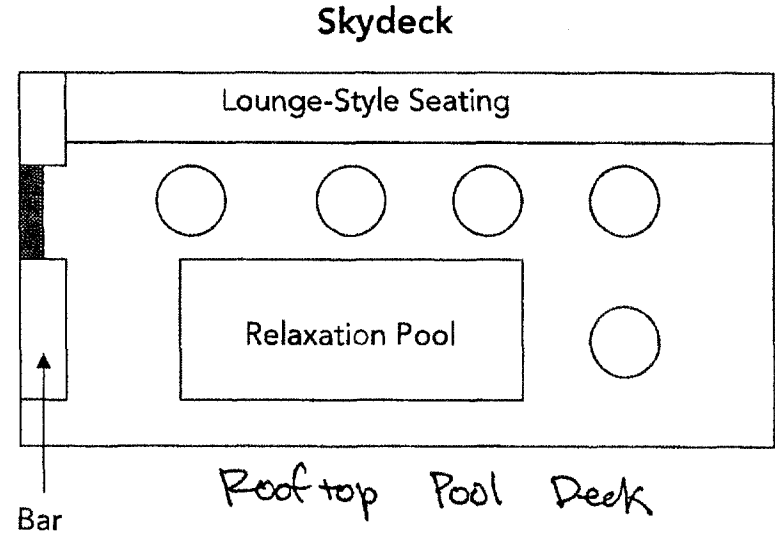
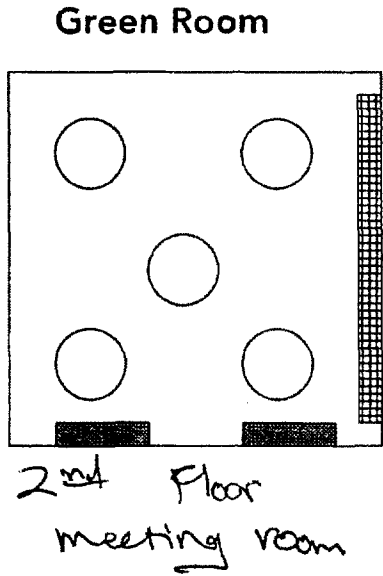
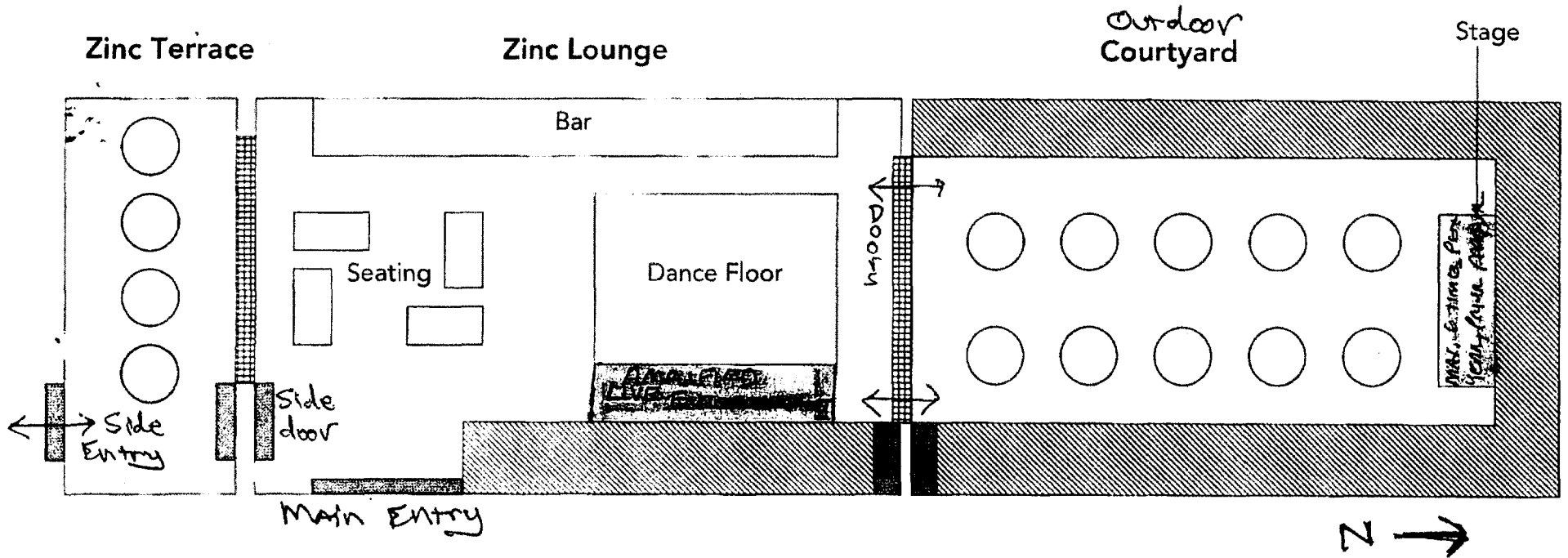
APPROVED BY AUTHORIZED SIGNATURES BELOW, SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement: [Signature] Date: 1/12/11
Planning Division: [Signature] Date: 1/12/11
Director of Community Development: [Signature] Date: 1-12-11

g:\planning\forms\... 3/7/01

Must comply with old conditions until all conditions have been met for new use permit approved in 2010, then a new entertainment permit must be submitted for review.
Shade Ent Permit-058

Event Space Layout



LEGEND

- = 12 foot rounds
- = Doorways
- ▨ = Walkways
- ▩ = Sliding Glass Doors

This is not to scale.

RECEIVED
 MAY 09 2006
 By _____
 Shade Ent Permit-059

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2011.

Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

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Total 1st floor occupancy 357 vs application 204;
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AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2011.

Location: 1221 N Valley- Shade Hotel- Metlox

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Location: 1221 N Valley- Shade Hotel- Metlox

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AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2011.

Location: 1221 N Valley- Shade Hotel- Metlox

INSURANCE AND INDEMNITY

1.1 Commencement of Work

SHADE HOTEL shall not commence work under this Agreement until it has obtained Owner approved insurance. Before beginning work hereunder, during the entire period of this Agreement, or any extensions hereto, and for periods after the end of this Agreement as indicated below, SHADE HOTEL must have and maintain in place, all of the insurance coverages required in this Article 1. SHADE HOTELS insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Article 1 and SHADE HOTEL shall be responsible to obtain evidence of insurance from each subcontractor and provide it to the Owner before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

1.2 Coverages, Limits and Policy Requirements

SHADE HOTEL shall maintain the types of coverages and limits indicated below:

(1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, or the equivalent thereof with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2011.

Location: 1221 N Valley- Shade Hotel- Metlox

Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) COMMERCIAL AUTO LIABILITY INSURANCE - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93 or the equivalent thereof including Symbol 1 (any auto) with no special limitations affecting the Owner. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by the Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim.

(4) PROFESSIONAL ERRORS & OMISSIONS - a policy with minimum limits of one million dollars (\$1,000,000) per claim and aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to the Owner.

1.3 Additional Requirements

The procuring of such required policies of insurance shall not be construed to limit SHADE HOTEL's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against the Owner for payment of premiums or other amounts with respect thereto.

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2011.

Location: 1221 N Valley- Shade Hotel- Metlox

The Owner shall notify SHADE HOTEL in writing of changes in the insurance requirements. If SHADE HOTEL does not deposit copies of acceptable insurance policies with the Owner incorporating such changes within sixty (60) days of receipt of such notice, SHADE HOTEL shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by the Owner. Any deductible exceeding \$100,000 shall be subject to the following changes:

(1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to the Owner and its officials, employees and agents (with additional premium, if any, to be paid by SHADE HOTEL) ; or

(2) SHADE HOTEL shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

1.4 Verification of Compliance

SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

1.5 Indemnification

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2011.

Location: 1221 N Valley- Shade Hotel- Metlox

1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.

1.5.2 The Owner shall cause the Contractor to indemnify and hold harmless SHADE HOTEL from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, expenses and fees that are asserted against the SHADE HOTEL and that arise out of or result from wrongful acts or omissions by the Contractor in performing the Work.



Address: 1221 N. Valley Dr

CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
1400 HIGHLAND AVENUE 310/802-5500

CITY USE ONLY
Date Received 1A.K.
Received by
A 345- - Fee
Receipt No.
Trans. Code # 4110
2/25/11

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

Class I Permit: Group entertainment, either incidental with the business being conducted there, or to conduct group entertainment for which admission is charged. Limited to legally operated businesses which are open continuously such as restaurants, hotels, cafeterias, bars, and fast food establishments. Permits shall be valid for a period of one year, or until March 1, and renewable annually on March 1.

The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name Robert J. ...

Applicant Address ...

Phone # ... Driver Lic.# ... Birthdate ...

Applicant(s) Employed By ...

Business Address 1221 N. Valley Dr Phone 310.500.4415

ACTIVITY INFORMATION

Complete Description of Proposed Activity Events - 10 ...

Date(s) of Activity ... Time & Duration ...

Describe Type of Music & Amplification
Expected Maximum Attendance ... Alcohol Served? Yes No
Will Persons Under 21 Years of Age be Present? Yes No
Alcohol Sold? Yes No If Yes, ABC License # ...

Activity Supervisor(s) ... Address ... Phone # ...

**Based on occupancy*

LOCATION OF ACTIVITY

Address of Activity: 1221 N Valley Dr

Type of Business: Hotel

Occupant Capacity of Building: Dancing _____ Dining _____

Gross Floor Area _____ Floor Area For Dancing _____ Dining 500 sq

Parking: Number of On-Site Parking Spaces 50 valet

Nearby Parking Facility Metro Number of Spaces 400

Other _____

Description of Neighborhood: Commercial Residential

Mixed Commercial & Residential Uses Nearby

Other _____

APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes No

Have you ever obtained or sought to obtain an Entertainment Permit in the past? Yes No If yes, was the issued Permit ever denied or revoked? Yes No

I, the applicant(s) for this Permit shall be responsible for the monitoring of this activity and agree to conduct the activity subject to the conditions listed below and, further, understand that violation of any condition, State Laws or City Ordinances will result in immediate termination of this Permit, upon due process.

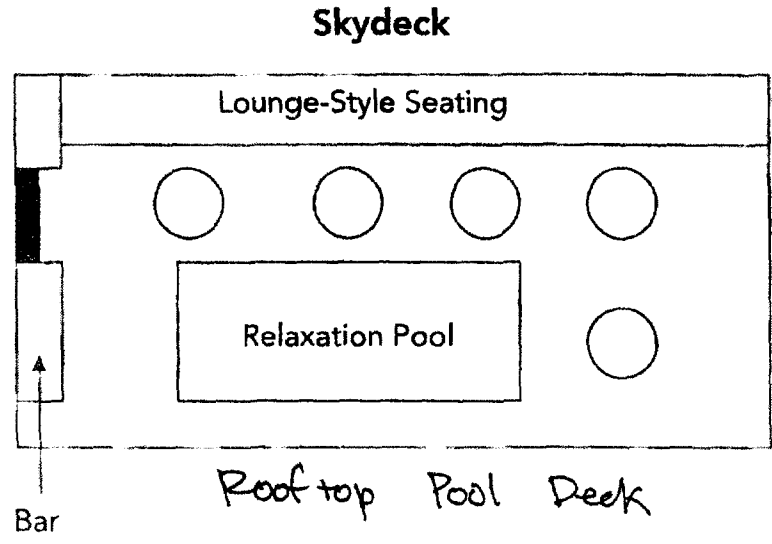
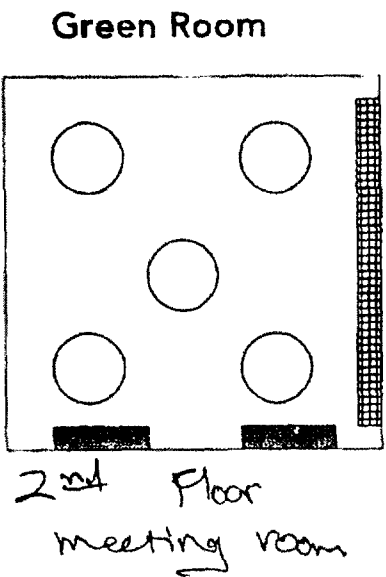
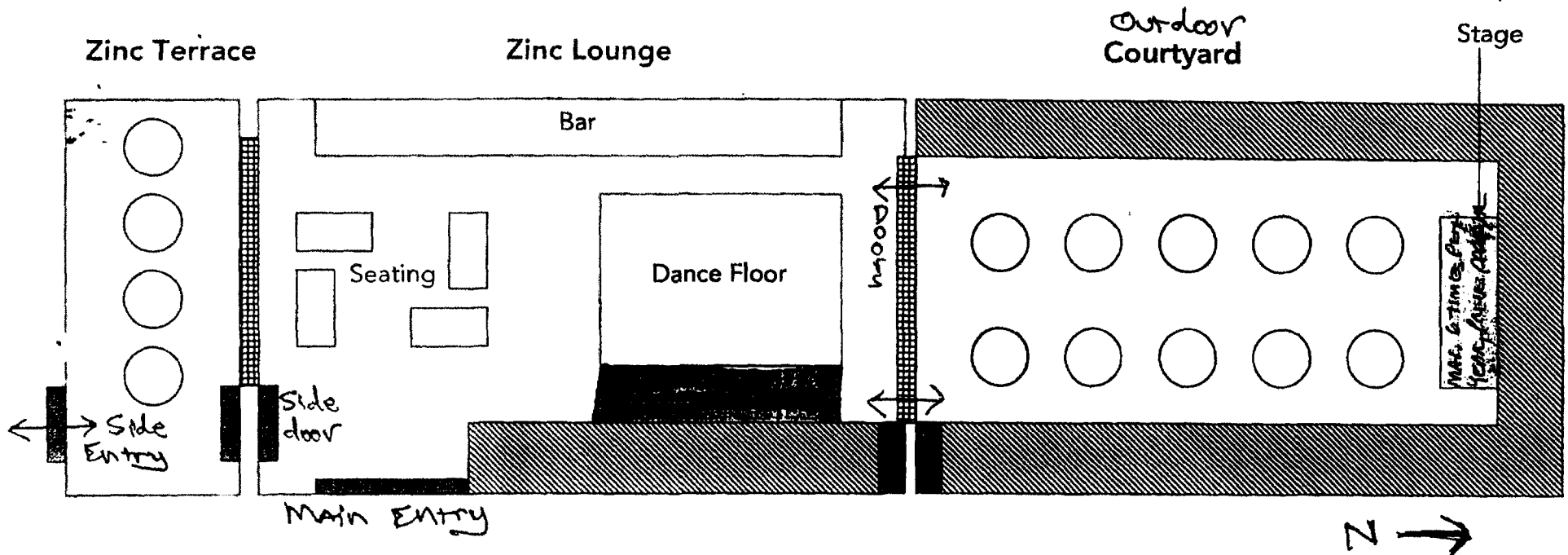
I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE [Signature] DATE 2/25/11

APPROVED BY AUTHORIZED SIGNATURES BELOW, SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement: [Signature] Date: 11-14-11
Planning Division: [Signature] Date: 11/15/11
Director of Community Development: [Signature] Date: 11-16-11

Event Space Layout



LEGEND

- = 12 foot rounds
- = Doorways
- ▨ = Walkways
- ▩ = Sliding Glass Doors

This is not to scale.

RECEIVED
MAY 09 2006
By _____

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

Police Department:

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

Total 1st floor occupancy 357 vs application 204;
Total occupancy 493 vs application 334, 48% increase

Fire Department:

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

2005 CUP: 45

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

2005 CUP: 22

Staff increased Roof Deck (SkyDeck) and terrace occupancies from Project Description values . This violates Condition 1 in 2005 CUP, which requires planning commission approval for substantial changes from the project description.

Community Development Department:

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

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

- amplified sound is incorporated. Entertainment that would result in dancing which exceeds the capacity of the 15' by 20' dance floor shall be prohibited. Entertainment and dancing shall conform to the attached floor plan. All doors leading to the outside shall remain closed at all times.
6. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
 7. 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, 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 such as Lot 3.
 8. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
 9. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
 10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
 11. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors and to minimize noise and disturbance.

12. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel 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 close. The doorman or other employee shall ensure that patrons do not leave the premises with alcoholic beverages. (See Use Permit conditions below for hours)
13. A renewal application shall be submitted prior to March 1st.
14. A sign stating "Hotel Guests only after 11:00 pm shall be placed outside the main entry to the hotel off of Valley Drive.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
2. All events are limited to a maximum of 99 people unless prior written approval through a Temporary Use Permit is provided by the Director of Community Development. Event size may not exceed the maximum occupancy as allowed by the Building or Fire Code limits.
3. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.
4. Noise mitigation strategies shall be implemented including; door, wall and ceiling treatments, as required within the Zinc Lounge and Zinc Terrace area in order to mitigate noise. The Zinc Lounge shall demonstrate that the insulation achieves an STC (Sound Transmission Code) rating of 50 to mute the noise.
5. Hours of operation for the hotel public areas shall be as follows:
Lobby Zinc Bar (including outdoor Zinc Terrace to south of Lounge)- 11:00 PM daily
Interior Outdoor Courtyard (to north of Zinc lounge) and Green Room (2nd floor meeting room) when used for special events and functions- 11:00 pm Sunday-Thursday, 12:00 midnight Friday and Saturday (alcohol service to stop half-hour prior).

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

Skydeck (Rooftop Deck)- 10:00 pm daily (Alcohol service to stop at 9:00 P.M.)

6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.
7. The availability of the Inn for special events shall not be marketed as the primary use.
8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees 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 operators shall police and promptly clean up all areas with any litter

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

and spills after all events. Public Works shall bill applicant for any event related clean-up costs.

Risk Manager:

1. The applicant shall comply with all required Insurance and Indemnity requirements of the City of Manhattan Beach as detailed below.

INSURANCE AND INDEMNITY

1.1 Commencement of Work

SHADE HOTEL shall not commence work under this Agreement until it has obtained Owner approved insurance. Before beginning work hereunder, during the entire period of this Agreement, or any extensions hereto, and for periods after the end of this Agreement as indicated below, SHADE HOTEL must have and maintain in place, all of the insurance coverages required in this Article 1. SHADE HOTELS insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Article 1 and SHADE HOTEL shall be responsible to obtain evidence of insurance from each subcontractor and provide it to the Owner before the subcontractor commences work.

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cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

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AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

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SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2012.

Location: 1221 N Valley- Shade Hotel- Metlox

certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

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1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.

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City Copy



Address: 1221 VALLEY DRIVE

CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
1400 HIGHLAND AVENUE 310/802-5500

CITY USE ONLY
Date Received _____
Received by _____
Fee _____
Receipt No. _____
Trans. Code # 4110

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

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The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name MICHAEL ZISLIS ON BEHALF OF SHADE HOTEL

Applicant Address 1221 N VALLEY DRIVE

Phone # 310 546 4995 Driver Lic.# _____ Birthdate _____

Applicant(s) Employed By SHADE HOTEL

Business Address 1221 N VALLEY DRIVE Phone 310 546 4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity EVENTS: IE. WEDDINGS, CONFERENCES, BIRTHDAY + HOLIDAY PARTIES, ETC

Date(s) of Activity THROUGHOUT THE YEAR Time & Duration PER USE PERMIT + ATTACHED CONDITIONS

Describe Type of Music & Amplification

Expected Maximum Attendance * Alcohol Served? Yes X No

Will Persons Under 21 Years of Age be Present? Yes X No

Alcohol Sold? Yes X No _____ If Yes, ABC License # 47418408

Activity Supervisor(s) JOUSE VOUGHT Address 1221 N VALLEY DR Phone # _____

BASED ON OCCUPANCY

LOCATION OF ACTIVITY

Address of Activity: 1221 N VALLEY DRIVE

Type of Business: HOTEL

Occupant Capacity of Building: Dancing _____ Dining _____

Gross Floor Area _____ Floor Area For Dancing _____ Dining SE: CHART

Parking: Number of On-Site Parking Spaces 50 VALET

Nearby Parking Facility METRO Number of Spaces 450

Other _____

Description of Neighborhood: _____ Commercial _____ Residential
 Mixed Commercial & Residential Uses Nearby
_____ Other _____

APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes _____ No

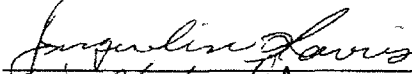


Have you ever obtained or sought to obtain an Entertainment Permit in the past? Yes No _____ If yes, was the issued Permit ever denied or revoked? Yes _____ No

I, the applicant(s) for this Permit shall be responsible for the monitoring of this activity and agree to conduct the activity subject to the conditions listed below and, further, understand that violation of any condition, State Laws or City Ordinances will result in immediate termination of this Permit, upon due process.

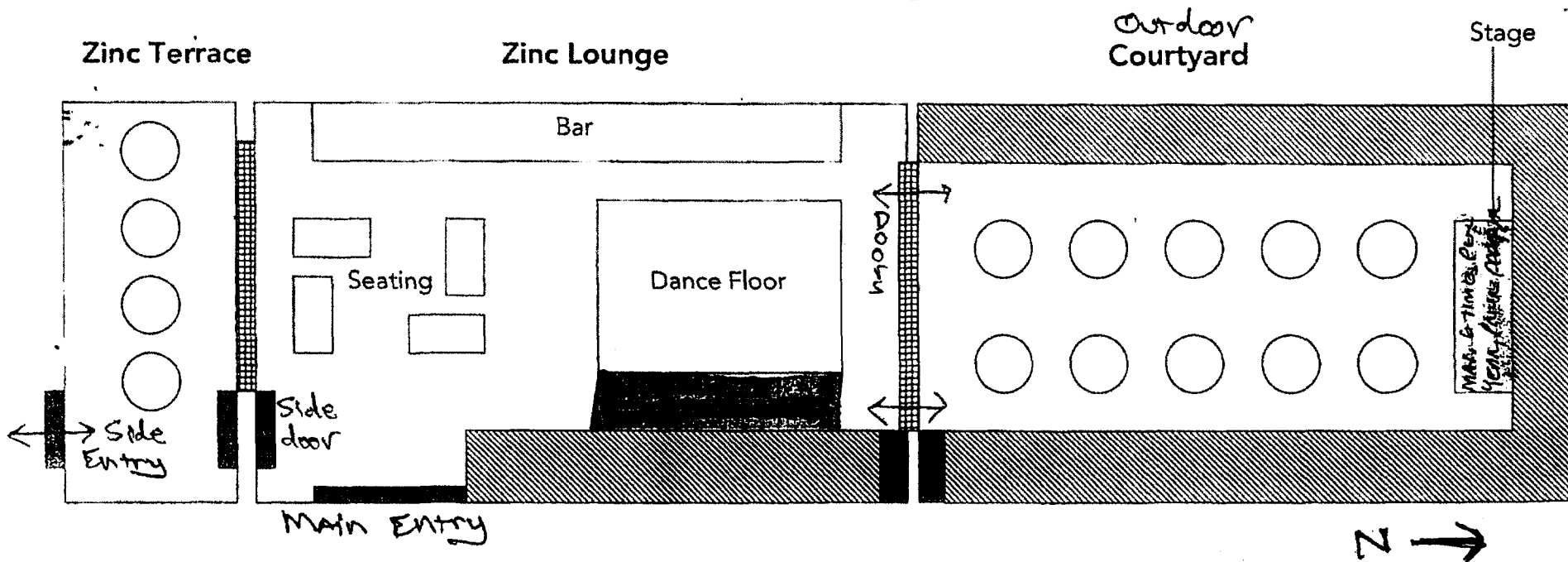
I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE  DATE 3/23/12

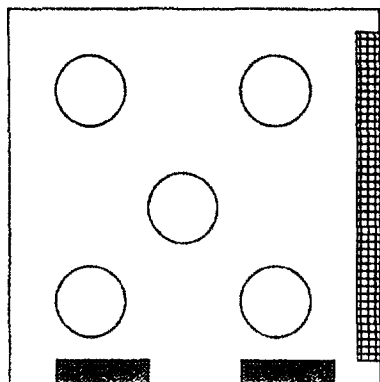
APPROVED BY AUTHORIZED SIGNATURES BELOW, SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement:  Date: 10-8-12
Planning Division:  Date: 10/1/12
Director of Community Development:  Date: 12-12-12

Event Space Layout

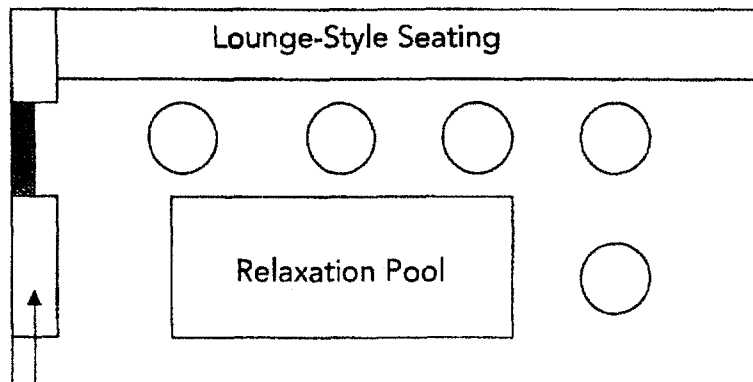


Green Room







2nd Floor meeting room

Skydeck



Roof top Pool Deck

LEGEND

-  = 12 foot rounds
-  = Doorways
-  = Walkways
-  = Sliding Glass Doors

This is not to scale

RECEIVED
MAY 09 2006
Shade Ent Permit-081

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

Police Department:

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

Total 1st floor occupancy 357 vs application 204;
Total occupancy 493 vs application 334, 48% increase

Fire Department:

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

2005 CUP: 45

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

2005 CUP: 22

Staff increased Roof Deck (SkyDeck) and terrace occupancies from Project Description values. This violates Condition 1 in 2005 CUP, which requires planning commission approval for substantial changes from the project description.

Community Development Department:

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

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

amplified sound is incorporated. Entertainment that would result in dancing which exceeds the capacity of the 15' by 20' dance floor shall be prohibited. Entertainment and dancing shall conform to the attached floor plan. All doors leading to the outside shall remain closed at all times.

6. The volume of the music, entertainment, or amplification may not be audible outside of the hotel facilities to the extent that it disturbs the neighbors and surrounding tenants. After 10:00 PM only "background" type of music is allowed.
7. 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, 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 such as Lot 3.
8. The drop off driving lane, in front of the hotel off Valley, including the area at Valley and "12th Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times.
9. Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area, 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.
10. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, the pick up for cars that are parked in the valet area shall be inside of the Metlox parking structure on the P-1, first level, near the escalators to minimize noise and disturbance to the neighbors. 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. Valet pickup shall not be permitted at the hotel entrance off Valley Drive at these times. 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. No permanent signage or structures shall be allowed. Any temporary signage or structures shall only be placed from 9:00 PM to midnight.
11. After 10:00 PM on Friday and Saturday and after all special events at the hotel during any day of the week, guests and patrons at the hotel facilities shall use the side door (south) located off the Zinc Terrace to exit the hotel, and not the front entry door that exits onto Valley Drive. 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 employees shall close and monitor

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

- the front entry door as required to ensure patrons exit out the side door while maintaining required emergency access. Employees shall also remind the patrons as they depart to be respectful of the neighbors and to minimize noise and disturbance.
12. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that hotel 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 close. The doorman or other employee shall ensure that patrons do not leave the premises with alcoholic beverages. (See Use Permit conditions below for hours)
 13. A renewal application shall be submitted prior to March 1st.
 14. A sign stating "Hotel Guests only after 11:00 pm shall be placed outside the main entry to the hotel off of Valley Drive.

Use Permit Description and Conditions:

1. Hotel operations and accessory services to the hotel shall be in conformance with City Council Resolution No. 5770, and PC Resolution No. 05-08, as outlined in the conditions below. Note that condition 34 of PC Resolution No 05-08 allows review annually to determine if it is appropriate to renew the Entertainment Permit, deny the permit, or modify the conditions of approval.
2. All events are limited to a maximum of 99 people unless prior written approval through a Temporary Use Permit is provided by the Director of Community Development. Event size may not exceed the maximum occupancy as allowed by the Building or Fire Code limits.
3. Events may not use the Town Square or other Public Open Areas unless prior approval is granted by the City.
4. Noise mitigation strategies shall be implemented including; door, wall and ceiling treatments, as required within the Zinc Lounge and Zinc Terrace area in order to mitigate noise. The Zinc Lounge shall demonstrate that the insulation achieves an STC (Sound Transmission Code) rating of 50 to mute the noise.
5. Hours of operation for the hotel public areas shall be as follows:
Lobby Zinc Bar (including outdoor Zinc Terrace to south of Lounge)- 11:00 PM daily
Interior Outdoor Courtyard (to north of Zinc lounge) and Green Room (2nd floor meeting room) when used for special events and functions- 11:00 pm Sunday-Thursday, 12:00 midnight Friday and Saturday (alcohol service to stop half-hour prior).

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

Skydeck (Rooftop Deck)- 10:00 pm daily (Alcohol service to stop at 9:00 P.M.)

6. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.
7. The availability of the Inn for special events shall not be marketed as the primary use.
8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

No other food or alcohol service identified for the terrace

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees 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 operators shall police and promptly clean up all areas with any litter

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

and spills after all events. Public Works shall bill applicant for any event related clean-up costs.

Risk Manager:

1. The applicant shall comply with all required Insurance and Indemnity requirements of the City of Manhattan Beach as detailed below.

INSURANCE AND INDEMNITY

1.1 Commencement of Work

SHADE HOTEL shall not commence work under this Agreement until it has obtained Owner approved insurance. Before beginning work hereunder, during the entire period of this Agreement, or any extensions hereto, and for periods after the end of this Agreement as indicated below, SHADE HOTEL must have and maintain in place, all of the insurance coverages required in this Article 1. SHADE HOTELS insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Article 1 and SHADE HOTEL shall be responsible to obtain evidence of insurance from each subcontractor and provide it to the Owner before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

1.2 Coverages, Limits and Policy Requirements

SHADE HOTEL shall maintain the types of coverages and limits indicated below:

- (1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, or the equivalent thereof with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) COMMERCIAL AUTO LIABILITY INSURANCE - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93 or the equivalent thereof including Symbol 1 (any auto) with no special limitations affecting the Owner. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by the Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim.

(4) PROFESSIONAL ERRORS & OMISSIONS - a policy with minimum limits of one million dollars (\$1,000,000) per claim and aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

is mailed to the Owner.

1.3 Additional Requirements

The procuring of such required policies of insurance shall not be construed to limit SHADE HOTEL's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against the Owner for payment of premiums or other amounts with respect thereto.

The Owner shall notify SHADE HOTEL in writing of changes in the insurance requirements. If SHADE HOTEL does not deposit copies of acceptable insurance policies with the Owner incorporating such changes within sixty (60) days of receipt of such notice, SHADE HOTEL shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by the Owner. Any deductible exceeding \$100,000 shall be subject to the following changes:

(1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to the Owner and its officials, employees and agents (with additional premium, if any, to be paid by SHADE HOTEL) ; or

(2) SHADE HOTEL shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

1.4 Verification of Compliance

SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or

AMENDED GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2013.

Location: 1221 N Valley- Shade Hotel- Metlox

certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

1.5 Indemnification

- 1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.
- 1.5.2 The Owner shall cause the Contractor to indemnify and hold harmless SHADE HOTEL from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, expenses and fees that are asserted against the SHADE HOTEL and that arise out of or result from wrongful acts or omissions by the Contractor in performing the Work.

On 10 July 2013, when the City Clerk provided this application for the 2013-2014 Entertainment Permit, they did not provided the 2013-2014 Entertainment Permit, in response to our Public Records Act request.



Address: 1221 Valley

CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
 1400 HIGHLAND AVENUE 310/802-5500

CITY USE ONLY
 Date Received _____
 Received by _____
 Fee _____
 Receipt No. _____
 Trans. Code # 4110

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

Class I Permit: Group entertainment, either incidental with the business being conducted there, or to conduct group entertainment for which admission is charged. Limited to legally operated businesses which are open continuously such as restaurants, hotels, cafeterias, bars, and fast food establishments. Permits shall be valid for a period of one year, or until March 1, and renewable annually on March 1.

The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name Michael Ziskis on Behalf of Shade Hotel
 Applicant Address 1221 N. Valley Drive
 Phone # 310-546-4995 Driver Lic.# _____ Birthdate _____
 Applicant(s) Employed By Shade
 Business Address 1221 N Valley Drive Phone (310) 546-4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity Events: ie. weddings, conferences
Birthday's + Holiday Parties
 Date(s) of Activity throughout the year Time & Duration see permits & attached conditions
 Describe Type of Music & Amplification _____
 Expected Maximum Attendance X Alcohol Served? Yes X No _____
 Will Persons Under 21 Years of Age be Present? Yes X No _____
 Alcohol Sold? Yes X No _____ If Yes, ABC License # 47478409
 Activity Supervisor(s) Elise Vazant Address 1221 N. Valley Dr Phone # _____

* Based on occupancy

LOCATION OF ACTIVITY

Address of Activity: 1221 N. Volley Drive

Type of Business: Hotel

Occupant Capacity of Building: Dancing _____ Dining _____

Gross Floor Area _____ Floor Area For Dancing _____ Dining _____ see chart

Parking: Number of On-Site Parking Spaces 50 valet

Nearby Parking Facility Metlox Number of Spaces 460

Other _____

Description of Neighborhood: Commercial Residential
 Mixed Commercial & Residential Uses Nearby
 Other _____

APPLICANT STATEMENT

Have you or anyone else listed on this application ever been convicted of committing a violation of law, except any offense resulting only in a fine or bail forfeiture of less than one hundred fifty dollars (\$150)? Yes ___ No

Have you ever obtained or sought to obtain an Entertainment Permit in the past? Yes No ___ If yes, was the issued Permit ever denied or revoked? Yes ___ No

I, the applicant(s) for this Permit shall be responsible for the monitoring of this activity and agree to conduct the activity subject to the conditions listed below and, further, understand that violation of any condition, State Laws or City Ordinances will result in immediate termination of this Permit, upon due process.

I understand that a copy of this Permit must be available during the activity and subject to inspection upon request of any City official.

APPLICANT'S SIGNATURE  DATE 5/9/13

APPROVED BY AUTHORIZED SIGNATURES BELOW, SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement: _____ Date: _____
Planning Division: _____ Date: _____
Director of Community Development: _____ Date: _____

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PAID

E/001-01323547
05-09-2013

Address: 1221 Valley



CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
1400 HIGHLAND AVENUE 310/802-5500

CITY USE ONLY

Date Received _____
Received by _____
Fee _____
Receipt No. _____
Trans. Code # 4110

GROUP ENTERTAINMENT PERMIT APPLICATION (ORDINANCE 1775)

APPLICATION MUST BE SUBMITTED AT LEAST 21 DAYS PRIOR TO COMMENCEMENT

Class I Permit: Group entertainment, either incidental with the business being conducted there, or to conduct group entertainment for which admission is charged. Limited to legally operated businesses which are open continuously such as restaurants, hotels, cafeterias, bars, and fast food establishments. Permits shall be valid for a period of one year, or until March 1, and renewable annually on March 1.

The function of this permit is to regulate gatherings of persons in order to preserve and protect the public's peace, health, safety, morals and welfare.

APPLICANT INFORMATION

Applicant(s) Name Michael Ziskin on Behalf of Shade Hotel
Applicant Address 1221 N. Valley Drive
Phone # 30-546-4995 Driver Lic.# 01146027 Birthdate 10/13/65
Applicant(s) Employed By Shade
Business Address 1221 N. Valley Drive Phone (310) 546-4995

ACTIVITY INFORMATION

Complete Description of Proposed Activity Events: ie. weddings, conferences
Birthdays + Holiday Parties
Date(s) of Activity throughout the year Time & Duration see permits & attached conditions
Describe Type of Music & Amplification _____
Expected Maximum Attendance X Alcohol Served? Yes X No _____
Will Persons Under 21 Years of Age be Present? Yes X No _____
Alcohol Sold? Yes X No _____ If Yes, ABC License # 47418408
Activity Supervisor(s) Trise Vazirani Address 1221 N. Valley Dr. Phone # 310 698-

* Based on occupancy

ATTACHMENT K
PC MTG 2-12-14
Shade Ent Permit-092

LOCATION OF ACTIVITY

Address of Activity: 1221 N. Valley Drive

Type of Business: Hotel

Occupant Capacity of Building: Dancing _____ Dining _____

Gross Floor Area _____ Floor Area For Dancing _____ Dining _____ see chart

Parking: Number of On-Site Parking Spaces valet

Nearby Parking Facility Metlox Number of Spaces 460

Other _____

Description of Neighborhood: Commercial Residential
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APPLICANT STATEMENT

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APPLICANT'S SIGNATURE [Signature] DATE 5/9/13

APPROVED BY AUTHORIZED SIGNATURES BELOW, SUBJECT TO THE CONDITIONS BELOW:

Code Enforcement: [Signature] Date: 11-18-13
Planning Division: [Signature] Date: 11-15-13
Director of Community Development: [Signature] Date: 11-15-13

g:\planning\forms\... 3/7/01

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2014.
Location: 1221 N Valley- Shade Hotel- Metlox

CONDITIONS OF APPROVAL

Police Department:

1. The Police Department shall be notified of entertainment scheduling in writing at least 7 days prior to any event. Notification shall include operating details pertaining to type of entertainment, including size and location of performance or dance area, size of band and number of performers, hours, type of instruments, type of music, type and location of amplification, speakers and other equipment, volume of amplification, type of event, number of guests, location of event, food service, supervision, hours of event including setup and breakdown, and type of transportation for guests. Contact Traffic Sgt. Office at 310-802-5156.
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Required occupancy loads shall not be exceeded and exits shall remain unobstructed. The exact numbers are required to be posted on the site:

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Community Development Department:

1. Entertainment or amplified sound shall be in conformance with the attached approved floor plan including: the designated amplified live entertainment/performer location adjacent to the east wall of the Zinc Lounge, and a dance floor area approximately 15' by 20' adjacent to the performer area.
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GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2014.
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- result in dancing which exceeds the capacity of the 15' by 20' dance floor shall be prohibited. Entertainment and dancing shall conform to the attached floor plan. All doors leading to the outside shall remain closed at all times.
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GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2014.
Location: 1221 N Valley- Shade Hotel- Metlox

Employees shall also remind the patrons as they depart to be respectful of the neighbors and to minimize noise and disturbance.

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6. The primary use and purpose of Shade Hotel is and will

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2014.
Location: 1221 N Valley- Shade Hotel- Metlox

- continue to be to serve the community as a hotel offering first-class accommodations to visitors. All services of the hotel will be focused directly on its guests and event clients.
7. The availability of the Inn for special events shall not be marketed as the primary use.
 8. The Hotel may provide full liquor service throughout the Hotel, including self-service in room "mini-bars", and a portable bar for special events. The service of alcohol at the Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol service, shall be consistent with the project description, which is generally breakfast, evening appetizers and for special events. The Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit. This approval shall operate within all applicable State, County and City regulations governing the sale of alcohol prior to the start of business operations. Any violation of the regulations of the Department of Alcohol and Beverage Control as they pertain to the subject location, or of the City of Manhattan Beach, as they relate to the sale of alcohol, may result in the revocation and/or modification of the subject Master Use Permit.
 9. All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc Lobby Bar and Skydeck will not be marketed to the general public as separate hospitality attractions.
 10. The Wine Bar (Zinc lounge) shall limit its food menu to appetizers or "small plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license. The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast may be served daily in the Living Room (Zinc lounge), Porch (Zinc Terrace), and/or Courtyard.
 11. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel.
 12. The Skydeck shall stop regular alcohol service no later than 9:00 p.m. daily.

Public Works Department:

1. The Entertainment event and hotel operators shall ensure attendees 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 operators shall police and promptly clean up all areas with any litter and spills after all events. Public Works shall bill applicant for any event related clean-up costs.

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2014.
Location: 1221 N Valley- Shade Hotel- Metlox

Risk Manager:

1. The applicant shall comply with all required Insurance and Indemnity requirements of the City of Manhattan Beach as detailed below.

INSURANCE AND INDEMNITY

1.1 Commencement of Work

SHADE HOTEL shall not commence work under this Agreement until it has obtained Owner approved insurance. Before beginning work hereunder, during the entire period of this Agreement, or any extensions hereto, and for periods after the end of this Agreement as indicated below, SHADE HOTEL must have and maintain in place, all of the insurance coverages required in this Article 1. SHADE HOTELS insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Article 1 and SHADE HOTEL shall be responsible to obtain evidence of insurance from each subcontractor and provide it to the Owner before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

1.2 Coverages, Limits and Policy Requirements

SHADE HOTEL shall maintain the types of coverages and limits indicated below:

(1) COMMERCIAL GENERAL LIABILITY INSURANCE - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, or the equivalent thereof with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by Owner. In the event the

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2014.
Location: 1221 N Valley- Shade Hotel- Metlox

policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) **COMMERCIAL AUTO LIABILITY INSURANCE** - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93 or the equivalent thereof including Symbol 1 (any auto) with no special limitations affecting the Owner. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. Owner, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by the Owner. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) **WORKERS' COMPENSATION INSURANCE** - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim.

(4) **PROFESSIONAL ERRORS & OMISSIONS** - a policy with minimum limits of one million dollars (\$1,000,000) per claim and aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to the Owner.

1.3 Additional Requirements

The procuring of such required policies of insurance shall not be construed to limit SHADE HOTEL's liability hereunder, nor

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2014.
Location: 1221 N Valley- Shade Hotel- Metlox

to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against the Owner for payment of premiums or other amounts with respect thereto. The Owner shall notify SHADE HOTEL in writing of changes in the insurance requirements. If SHADE HOTEL does not deposit copies of acceptable insurance policies with the Owner incorporating such changes within sixty (60) days of receipt of such notice, SHADE HOTEL shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by the Owner. Any deductible exceeding \$100,000 shall be subject to the following changes:

(1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to the Owner and its officials, employees and agents (with additional premium, if any, to be paid by SHADE HOTEL) ; or

(2) SHADE HOTEL shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

1.4 Verification of Compliance

SHADE HOTEL shall furnish the Owner with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Owner before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, SHADE HOTEL shall deliver to the Owner a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to the Owner.

GROUP ENTERTAINMENT PERMIT: Class I. Effective to March 1, 2014.
Location: 1221 N Valley- Shade Hotel- Metlox

1.5 Indemnification

- 1.5.1 SHADE HOTEL agrees to indemnify, defend, and hold harmless the Owner and its elective or appointive boards, officers, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by SHADE HOTEL, SHADE HOTEL's agents, officers, employees, subcontractors, or independent contractor(s) hired by SHADE HOTEL. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SHADE HOTEL.
- 1.5.2 The Owner shall cause the Contractor to indemnify and hold harmless SHADE HOTEL from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, expenses and fees that are asserted against the SHADE HOTEL and that arise out of or result from wrongful acts or omissions by the Contractor in performing the Work.

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#5

Angela Soo

From: Laurie B. Jester
Sent: Tuesday, February 11, 2014 12:02 PM
To: List - Planning Commission
Cc: Quinn Barrow; Diana H. Varat
Subject: FW: Shade Hotel Noise Monitoring Analysis
Attachments: Shade Hotel Noise Monitoring Report 2-10-2014.pdf

The Shade applicant requested that I forward this information to you.
Laurie

From: Michael Zislis [<mailto:zislis@aol.com>]
Sent: Tuesday, February 11, 2014 11:20 AM
To: Laurie B. Jester
Subject: Fwd: Shade Hotel Noise Monitoring Analysis

Michael Zislis
zislis@aol.com

Begin forwarded message:

From: "Thomas Corbishley" <tcorbishley@baenc.com>
Subject: **Shade Hotel Noise Monitoring Analysis**
Date: February 10, 2014 4:55:48 PM PST
To: <zislis@aol.com>
Cc: <katie@zislisgroup.com>, "Kristina Baskovic Fileti" <kristina@zislisgroup.com>, <dbehrens@baenc.com>

Mike,

Attached is a report with our findings for the hours you asked us to look at for the measurements made last September/October. As suspected, the main noise sources causing the increase in level were emergency vehicle sirens.

I will be out of the office until Thursday but am available on my cell – (949) 375-7288. If you need someone at the meeting on Wednesday please let us know. Don is available to attend.

Thomas Corbishley
Engineering Manager
Tel: (310) 679 8633
email: tcorbishley@baenc.com
Behrens and Associates, Inc.
ENC (Environmental Noise Control)
www.environmental-noise-control.com
www.drillingnoisecontrol.com

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



February 10, 2014

Zislis Group
321 12th Street, Ste 112
Manhattan Beach, CA 90266

Attention: Mike Zislis

Subject: Sound Monitoring Report for September 21, September 25 and October 1, 2013

Dear Ms. Zislis:

As requested we have analyzed data from the noise measurements obtained between Friday September 20, and Friday October 4, 2014 at the residences on N. Ardmore Avenue to determine the sources of noise causing increases in the average sound levels during the following periods:

September 21, 2013 between 5:00 PM to 6:00 PM at 1300 N. Ardmore Avenue
September 21, 2013 between 7:00 PM to 8:00 PM at 1300 N. Ardmore Avenue
September 25, 2013 between 7:00 PM to 8:00 PM at 1300 N. Ardmore Avenue
September 25, 2013 between 7:00 PM to 8:00 PM at 1140^{1/2} N. Ardmore Avenue
October 1, 2013 between 9:00 PM to 10:00 PM at 1300 N. Ardmore Avenue

The noise measurement locations are shown in Attachment 1. The raw graphed sound data for the hours analyzed are provided in Attachments 2 through 6. The noise sources causing peaks on the graphed charts were identified from the triggered audio data recorded during the measurements. These sources are displayed on the graphs.

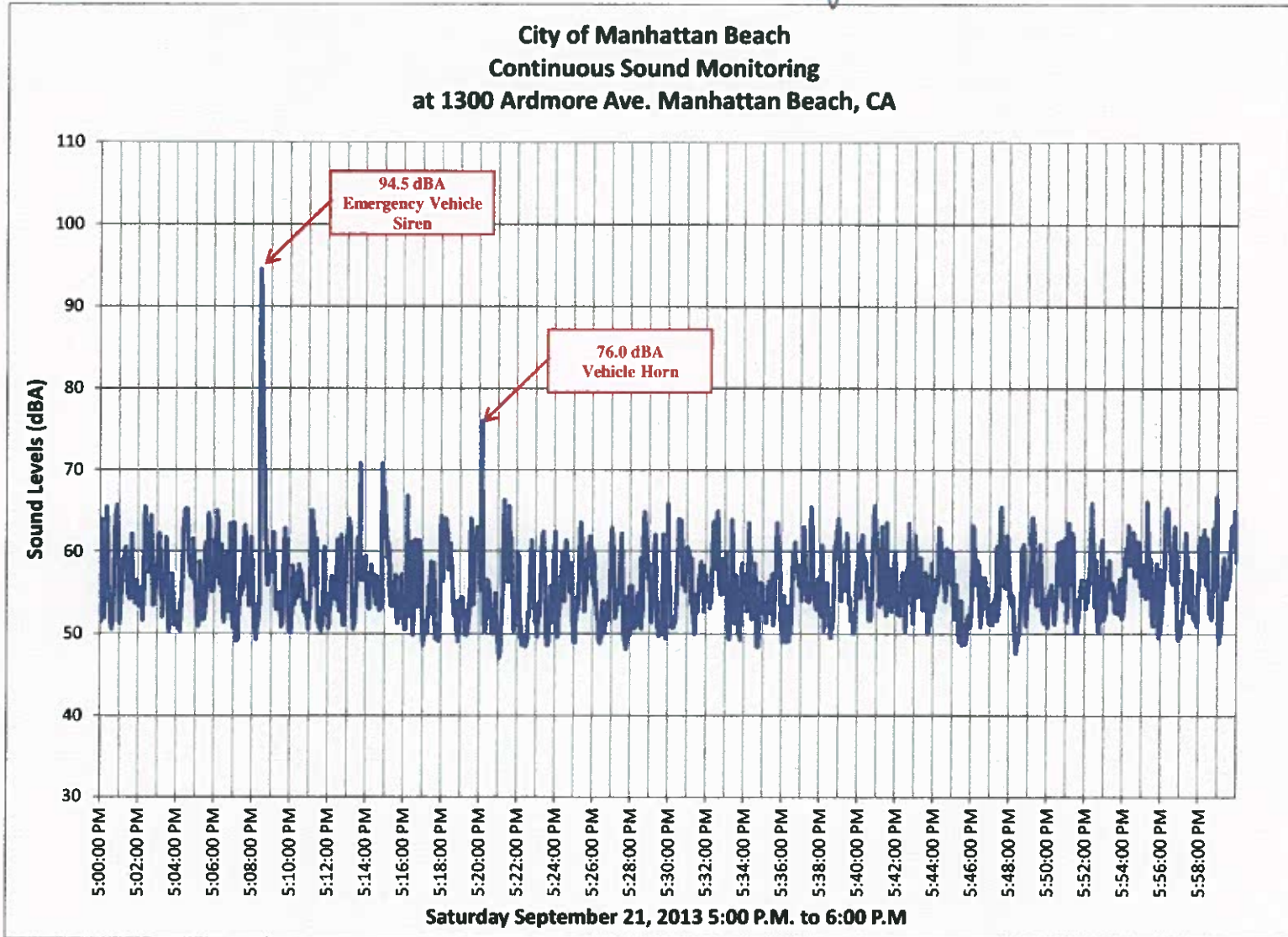
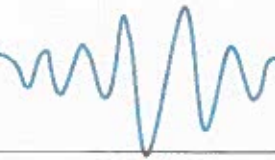
Our analysis indicates that the main cause of the increase in noise level observed during the hours analyzed is emergency vehicle sirens. These sources are short in duration but produce noise levels high enough to significantly increase the hourly average noise level due to the logarithmic averaging process used to average sound data.

Very truly yours,

Thomas Corbishley
Acoustical Engineer

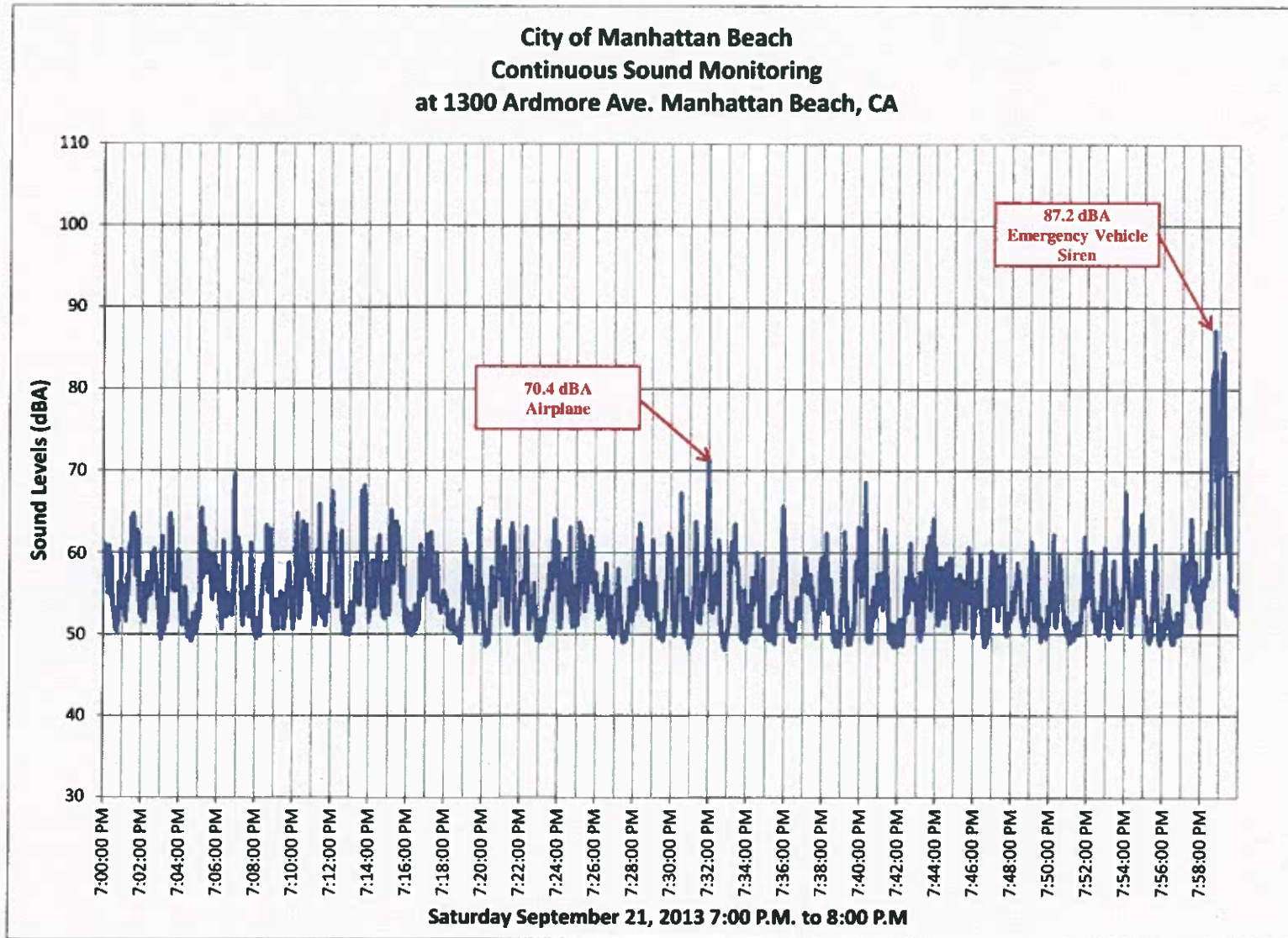
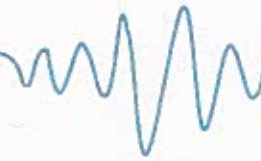


Attachment 1
Locations of Shade Hotel and the Two Analyzed Sound Monitoring Locations



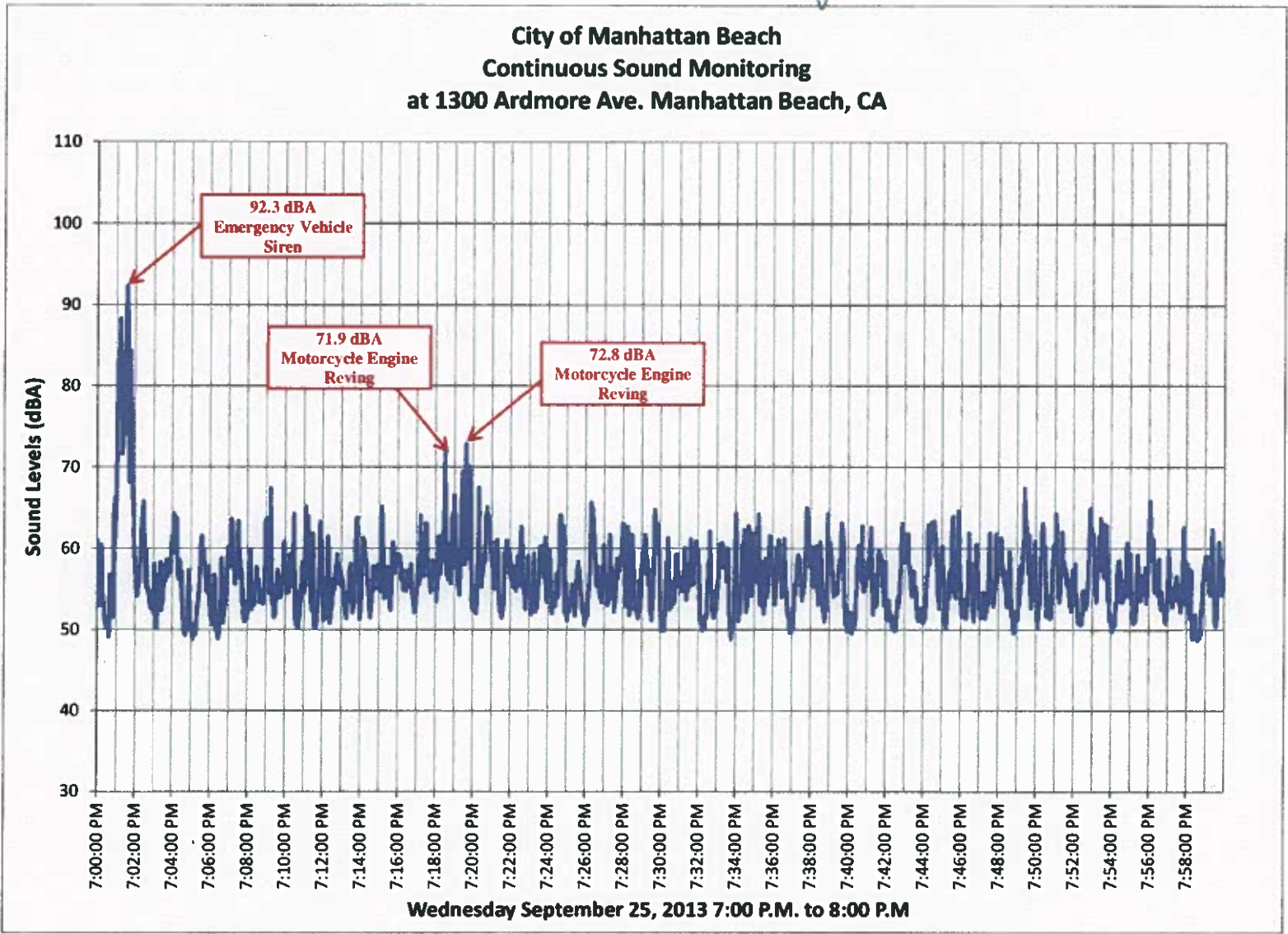
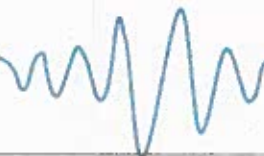
Behrens and Associates, Inc.

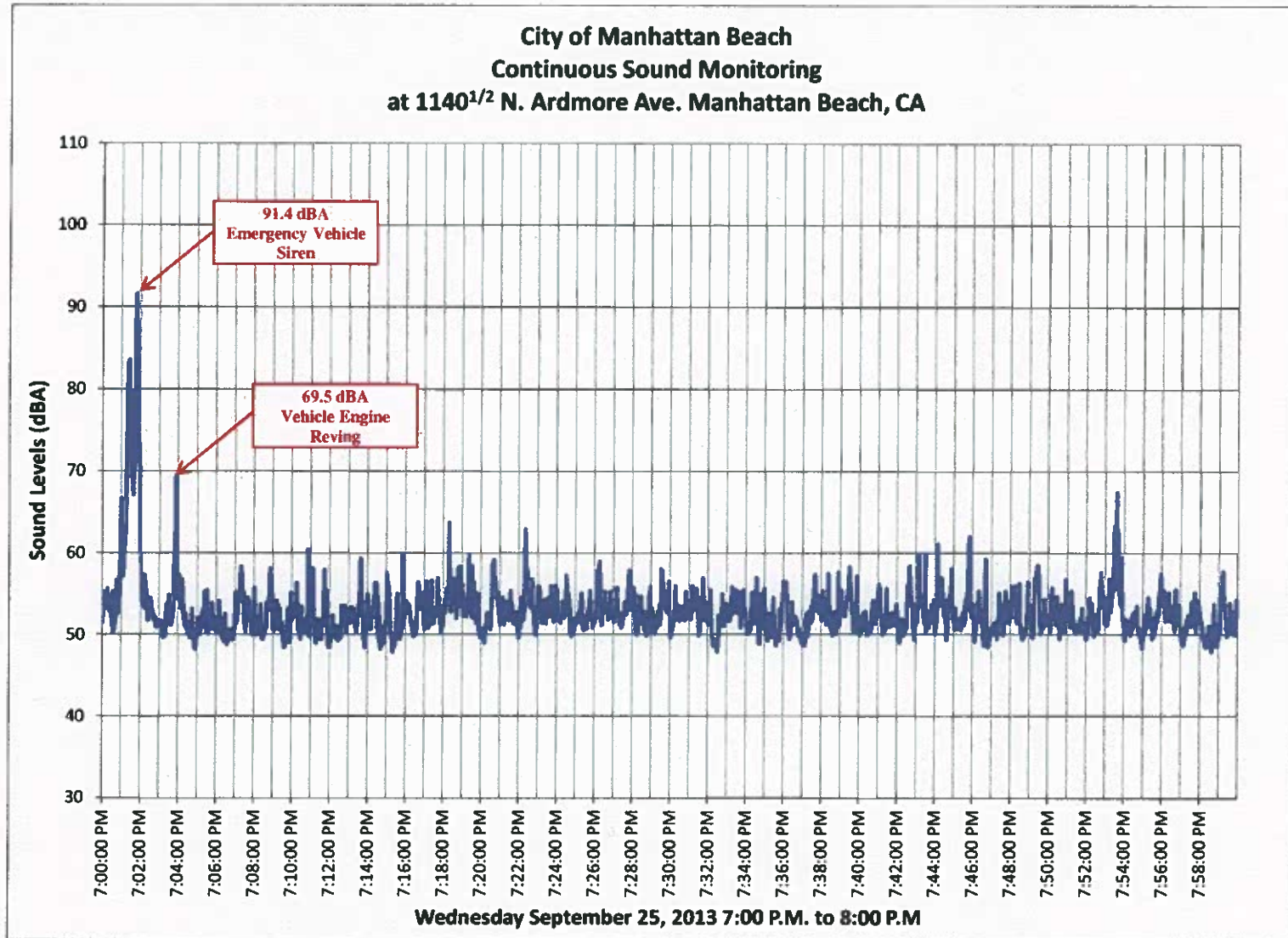
Acoustics, Noise and Vibration Consultants

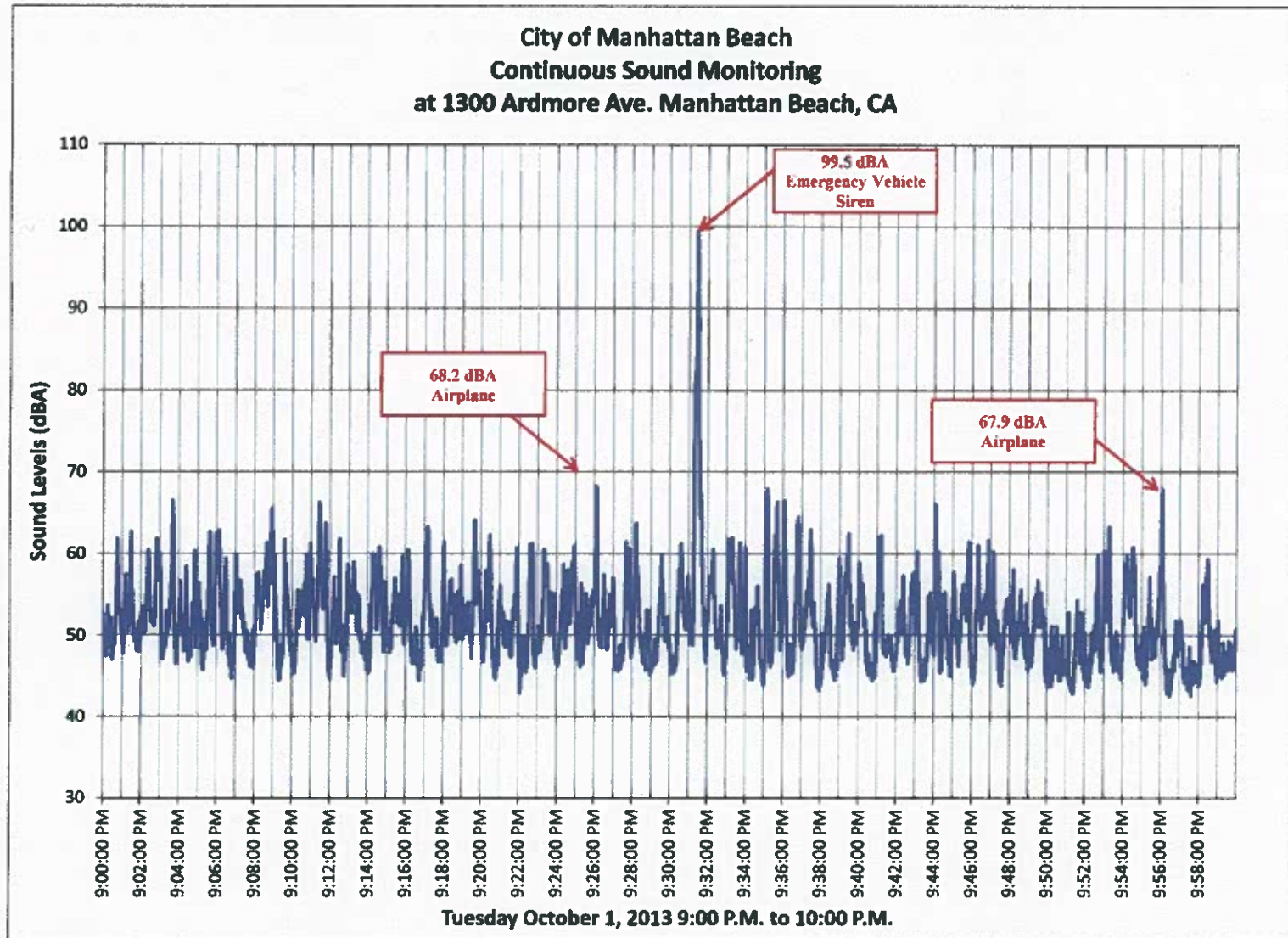


Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants







#6

Angela Soo

From: Richard Thompson
Sent: Tuesday, February 11, 2014 5:29 PM
To: Laurie B. Jester
Cc: Angela Soo
Subject: FW: Shade Master Use Permit Hearing
Attachments: Shade Statement 2.11.14.docx; Metlox-Shade History 2.11.14.doc

From: Gary Osterhout [mailto:garyosterhout@verizon.net]
Sent: Tuesday, February 11, 2014 5:27 PM
To: List - Planning Commission
Subject: Shade Master Use Permit Hearing

Commissioners:

In 2000, I was a member of the campaign Steering Committee of the Residents Against Rezoning (RAR), a group formed to guide the opposition to Measure 2000A on the June 2000 ballot. Measure 2000A was a local resolution that, if successful, would have rezoned this property as non-commercial. Through our campaign—with full support of City Hall—we continually promised and assured voters that the Metlox purchase was precisely to control development. As part of this we provided assurances that the lodging component would be low impact with the sole intent to provide downtown with a unique element that would provide patronage for downtown businesses.

The families neighboring the Metlox center were the driving force behind an earlier citizens' effort in 1999, the Residents for a Smalltown Downtown, formed to oppose a large development at Metlox, and in particular a hotel, together with related meeting and eating facilities.

Our RAR committee realized that if there was to be commercial development at Metlox, it was essential to get the support of this group. Ultimately Smalltown Downtown, realizing the community benefits of a controlled development and comforted by the low-impact assurances provided by our committee and the city, withdrew their opposition to development and, in fact, joined us in the effort to defeat the measure. My opinion is if this group had decided to back those favoring Measure 2000A, we would not be discussing this issue today, as the zoning change would have passed and Metlox would not have been developed. These neighbors could have stopped commercial development entirely, but in the spirit of civic-mindedness they had instead decided to trust the city's representations.

The developer continued assurances of a low-impact lodging component throughout the subsequent approval phases. **In addition, the Metlox Plaza developer, the Shade Developer, and City Hall all formally bought off on the business-plan economics of a small-scale lodging component, even without food service or a full liquor license as major components.** All of the above is documented in the excerpts I attached to this e-mail. This business's perceived economic advantage was clearly that of a lodging component with proximity to the beach and downtown, not in its ability to attract an upscale partying crowd. In turn, the hotel and its guests were to be supported by the surrounding restaurants and liquor licenses. Clearly the information supports

affirmative assurances that there would not be a "restaurant" and, by extension, "full food service and marketing."

Since opening, Shade has received incremental concessions from the City far beyond historical representations, and often because the City is apparently not performing the due-diligence oversight or providing the neighborhood protections both expected and promised by the city. If there are subtext profitability concerns or some behind-the-scenes city hall policy that supersedes the historical community assurances, then let's agendaize those issues separately and place them squarely on the table so everyone can discuss those aspects independently. If there is a question of Ask the petitioner and the Metlox landlord to open their books relative to determining profitability.

I'm not certain what you can legally do in respect to reverting this enterprise to the lodging element of historical and precedential intent. But I believe you have a duty to firmly embrace that obligation, and make your decision accordingly. Not expanding the service offerings clearly seem to be the best that you can do. No doubt Shade has already received concessions far beyond what was represented. What hangs in the balance is the extent we should expect residents to trust the city in respect to future assurances and covenants about development and our ability to control such to their best interest.

Best regards,

Gary Osterhout

Richard Thompson
Director of Community Development
P: (310) 802-5502
E: rthompson@citymb.info



To: Planning Commission

From: Gary Osterhout

Date: February 11, 2014

RE: SHADE MASTER USE PERMIT HEARING

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Excerpts from Various Documents Pertaining to Inn/Shade Hotel

Submitted by Gary Osterhout

10/11/98 (Daily Breeze):

"Manhattan Beach is an extremely desirable and wonderful community that people really like and it's not served by a high-quality, bed-and-breakfast style inn," said Jonathan Tolkin. . . . Because the site sits at the crest of downtown, and ultimately will be what greets visitors as they arrive, its development is undergoing an unusual amount of public scrutiny. And its lodging component will be pivotal. Residents say they want it small, so it won't attract any more visitors to an already crowded downtown district." . . . Tolkin's team would build lodging with the feel of a bed-and-breakfast. . . . Tolkin said he interviewed seven companies before settling on Four Sisters Inns Inc. to run the bed-and-breakfast style inn. Four Sisters, a Monterey-based family company, owns nine small inns in California and Colorado, many in coastal towns. . . .

Tolkin would build an inn with between 35 and 70 rooms, but Shelley Claudel, president of Four Sisters, said the number would more likely be between 35 and 40. Tolkin said it would not have a restaurant to avoid competing with existing restaurants downtown, but it might have a small spa. It also would feature larger conference rooms that could be used for meetings or catered events. None of the rooms would be suites.

.....
[Financial viability]: Anastasia Mann, chairman of Corniche Travel Management in West Hollywood, a company that oversees travel for major accounts like the Los Angeles Dodgers and Pepperdine University, said the Metlox site holds great potential for whoever builds a hotel there.

However, 35 rooms is too small to succeed financially because it won't attract a steady leisure or business clientele to make up for the times when residents' relatives don't use it, she said.

"It's going to be a place where people in the community have their in-laws stay when they don't have a spare bedroom," Mann said. "They have to look at 75 as small. I think 35 is truly too small."

John Kabassi, manager at the Seaview Inn at the Beach in Manhattan Beach, disagrees. Seaview, which might be the closest competition to the Metlox site on Highland Avenue at 34th Street, has just 15 rooms and is regularly booked, Kabassi said. He's looking forward to having a place to send the overflow.

12/16/98 (Daily Breeze): [Article on Tolkin Group awarded Metlox contract]:

The Tolkin Group's plan calls for a series of individual one- and two-story buildings. ...Adjacent to the tower is a 35-room bed-and-breakfast operated by Four Sisters Inns[.]

8/19/99 (Daily Breeze): [Article on council downsizing developer proposals]:

"I was lulled into complacency because I liked the Tolkins," Liza Levine Said. I missed a couple of meetings and it's gotten huge. I'm worried it will be like an Old Pasadena or Third Street Promenade." Added another original supporter, Stephanie Hubbard: "It's getting a little bigger than I hoped."

1999 (undated) – Flyer from "Residence for a Smalltown Downtown": "It is further proposed that any development on the Metlox site must NOT contain:

- A movie theater
- **A hotel, together with related meeting and eating facilities**
- Bars (whether free-standing or attached to restaurants)
- Chain Retail stores (e.g., Banana Republic; J. Crew; Restoration Hardware)

3/26/00 (Daily Breeze): [Letter to Editor by Helene Lohr, President, Residents Against Rezoning Manhattan Beach]:

"RAR does not endorse any particular project. We have, however, gathered the facts and we do know that the proposed project neither includes a "hotel" or "shopping mall." It does propose one- and two-story buildings with a low-impact, 40-room bed-and-breakfast[.]"

5/25/00 (Easy Reader): Letter to the Editor

"Dear ER:

I have worked downtown for the last 15 years. Downtown is more vibrant than it has ever been. We are blessed with best of two worlds, a small casual beach town with an urban feel -- a unique ambiance found nowhere else in Southern California. This experience can be further enhanced with the low impact commercial uses proposed by the Downtown Manhattan Beach Business and Professional Association.

.....
2) A small high quality inn is the lowest traffic generator of any of the proposed uses. An inn also brings visitors from all over the world, enhancing all of our cultural experiences.

.....
I believe this is the right vision for our Downtown, not a parking lot and a small nature park for dogs and cats to relieve themselves. Please join me in voting NO on 2000A.

David Levin
Manhattan Beach

2000 (no specific month/date), circular distributed by the Residents Against Rezoning:

“Both the inn and the office space will bring significant, low impact business to the project, as well as to the rest of downtown. . . . Speaking of our unique “small town downtown,” another local group, “Residents for a Smalltown Downtown,” feel that a small commercial development is the best use for this site.”

6/4/00 (Daily Breeze): [Article on Measure 2000A]:

A no vote would maintain current zoning, which could pave the way for a 60,000- to 90,000-square-foot plaza with shops, restaurants and a small inn.

February 2001 [Completion of EIR; from Christopher A. Joseph & Associates; <http://www.cajaeir.com/portfolio/civiccenter.html>]

“The Metlox project consisted of a mixed-use commercial development comprised of retail, restaurant, a 40-room Bed and Breakfast lodging component, and office uses. Some of the identified feature elements of the proposal included a Gateway Plaza, a Town Square, a Lookout Tower, outdoor dining, and a bed and breakfast style inn.”

2/14/2002 (Easy Reader): [Mayor Fahey’s “Vision for the City”]:

“[The Metlox site] is also an ideal location for a quaint inn.”

4/18/02 (Beach Reporter): [On the entire Metlox development]

“Restaurant use is limited to 8,000 square feet in a **maximum of two restaurants** with the dining area limited to a maximum of 6,400 square feet.”

7/17/02 (Beach Reporter): [City Council approves development agreement and ground lease; Shade not included as a restaurant.]:

“The council also agreed to evaluate design plans that would integrate a potential third floor to a portion of the bed-and-breakfast-style inn as long as the building remained under the 26-foot height limit.”

[Description of the current pool as a “Jacuzzi”]: “The council discussed various operational conditions for the inn and determined that it could have a roof-top Jacuzzi, but that it would have to close at 10 p.m., and that inn events that have more than 60 people would require a temporary use permit.”

[Limit on electronic music]: “The inn’s events would be limited to nonamplified live entertainment with a maximum of two entertainers.”

[In respect to change from 2002 beer/wine license to full liquor license, later]: "Two full liquor licenses would be allowed for the two restaurants, as well as beer and wine for inn guests."

7/18/02 (Easy Reader):

"The council spent most of the discussion working out specific bugs on the bed-and-breakfast that will anchor the northeastern corner of the complex."

1/28/04 (Beach Reporter):

"The Metlox developer presented a plan to lease a proposed bed and breakfast-style inn on the Metlox site to a longtime Manhattan Beach resident and restaurant proprietor, City Manager Geoff Dolan confirmed Tuesday.

Mike Zislis, owner of Rock'N Fish restaurant, said he signed a 55-year, \$6 million contract with developers the Tolkin Group last week. The Four Sisters Inns, a family-owned hotel management company based in Monterey, Calif., are the proposed operators of the inn."

"The plans tentatively call for a private courtyard with a gazebo and chapel that Zislis said would cater to weddings. He also plans to add a computer center and a wine bar that would only be open at night."

[Business model aspects understood and accepted.]: "The Tolkin Group had negotiated with another inn operator last year, which reportedly fell through because it wanted to add a third story to the structure to give some of the rooms an ocean view." The city refused.

"Everything we see seems positive," Dolan said, "The Four Sisters have a great reputation. Mike Zislis knows about hospitality, loves this community and knows lot of people in the community."

2/26/04 (Beach Reporter):

[Business Model Buy-off.]: City Manager Geoff Dolan confirmed Monday that he signed off on the final contract for the inn, tentatively called "The Inn at Manhattan Beach," which includes a 55-year lease between Zislis and developers The Tolkin Group, after the city's financial adviser Kathe Head gave her nod of approval.

"Kathe was confident with the financial aspects of it," Dolan said. "We visited some of the inns in Napa spent some time talking to the (inn operators) Four Sisters and felt good about it."

"We're excited," Michael Tolkin said. "We think it's a great marriage between the Four Sisters and Zislis. The Four Sisters have phenomenal expertise in the hotel industry. Zislis has phenomenal expertise in the service industry."

9/22/04 (Daily Breeze):

[In respect to M. Zislis's current claim of competitiveness with other hotels]: "[Zislis] says Shade's cozy feel, luxurious amenities and proximity to the beach will distinguish it from the large LAX hotels."

[In respect to expectations that lodgers will patronize downtown businesses outside the hotel, and profitability advantages of Shade location]: Manhattan Beach has other hotels including the Marriott Manhattan Beach and Holiday Inn Express. But the Shade would represent the first hotel in the fashionable downtown. And that is why the project is so significant, said Manhattan Beach City Manager Geoff Dolan. "It was important for us to have a lodging component there because the person who sleeps there will eat and shop in the downtown," Dolan said. "Currently there's no lodging in downtown Manhattan Beach. We have no lodging, no B&B's, no nothing."

"[Zislis] raised \$6 million for the hotel from 30 investors, including Skechers USA Inc. President Michael Greenberg. "Because of the numerous corporate executives who visit Manhattan Beach-Skechers, Shade would provide them with a nice place to stay nearby," Greenberg said."

6/21/05 City Council Minutes [excerpts]

Senior Planner Laurie Jester explained that the original approval was for beer and wine, for guests only, with no restrictions on hours. She clarified that the concept of the "evening only Wine Bar" in the lobby is that it would be for the general public; that flexibility would come in if there was a demand from the guests to open the bar at 4:00 p.m. rather than 5:00 p.m.; and that weddings and events would be serviced by the portable bars. She further clarified that the original services approved were not matched to the Alcoholic Beverage Control (ABC) licenses that are available.

In response to Councils' questions, Mike Zislis, owner of the Shade Hotel, emphasized that a full liquor license was necessary in order to have mini bars in the rooms; that he was successful in winning a license in the state lottery; that the liquor carts have to be licensed by the ABC; and that there is an extra fee for the cart. He explained that the cart is only for events in the courtyard or meeting rooms; that in fourteen years of business in Manhattan Beach, he has never had a "happy hour";¹ that the wine bar will only be open from 5:00 -10:00 p.m. on weekdays and 5:00 - 11:00 p.m. on weekends (hours set by him); that a liquor license is necessary as a normal function of a hotel; that it is necessary to book events such as weddings or class reunions; and that in conclusion, in fourteen

¹ From Shade Hotel's current website: "Get Your Fix for Six-The South Bay's favorite lounge, 4-7 pm Monday - Thursday in Zinc. \$6 selected drinks and appetizers."

years of business, he has never violated an ABC law and has proven that he is a responsible business owner.

9/10/09, Manhattan Beach Sun

“Many of the issues surrounding Shade can be traced back to the hotel’s origins. Long before Zislis came into the picture, Metlox developer Jonathan Tolkin envisioned a quiet bed and breakfast concept at the site.

Angela Soo

#7

From: Wayne Partridge <wepmako@gte.net>
Sent: Monday, February 10, 2014 11:35 AM
To: Christopher Conaway; Kathleen Paralusz; Martha Andreani; Paul Gross; Steve Ortmann
Cc: John Jalili; Laurie B. Jester; Quinn Barrow; Richard Thompson; Don McPherson; Nate Hubbard
Subject: Staff Report for Meeting of February 12

Follow Up Flag: Follow up
Flag Status: Flagged

Members of the Planning Commission:

The portion of the Staff Report concerning the above matter under the heading **Revocation and Modification** is, unfortunately, quite misleading in at least the following respects:

A. Instead of explaining Section 10.104.030 of the Code, as was requested, the Staff simply states that “such provisions do not apply here because the present application was initiated by the owner, not the City.”

All of you and we knew this, which is why we have been asking you, and will be asking you, to act at this meeting to: (1) put consideration of the Shade under Section 10.104.030 on the Planning Commission’s Agenda for its next meeting; and (2) defer consideration of the owner’s application (other than the Owner’s presentation of his position) until the Planning Commission has decided whether to proceed under Section 10.104.030. The application can and should be considered as part of the Commission’s consideration of a modification of the CUP under 10.104.030;

B. The staff attempts to dismiss the difference between these two manners of proceeding as just a matter of semantics, since a “modification” of the Master Use Permit is involved under either procedure.

This is toying with semantics to hide critical substance. The difference remains that, if the Commission proceeds only on the application of the owner, the ultimate product of the process will be a CUP that the owner can elect to implement or not to implement, at his option. It will be just like the 2010 CUP, a great deal of hard work that the owner may cause, if he in his unfettered discretion so chooses, to be just sound and fury signifying nothing.

C. The staff acknowledges but seeks to minimize this issue with its assertion that it will attach “deadlines for compliance” with consequences and conditions for noncompliance. But deadlines for compliance with conditions of a CUP that the owner may implement or not as he chooses will merely give warning that he is not implementing those conditions (hopefully in less than three years, as occurred with the 2010 CUP). It will not obligate him to implement them. And the only consequences of his decision not to implement the new CUP will be that he must continue to operate under the old one, or continue to violate the old one, as he has done for many years.

You may hear various representations to the effect that you cannot deal with 10.104.030 at your upcoming meeting. However, please bear firmly in mind, whatever cloud of obfuscation is thrown up, that you can at any meeting deal with the Commission’s agenda for future meetings. Taking the actions outlined in the second paragraph of this document is all that we ask that you do, and is what you can and should do, at your meeting of February 12th.

Wayne E. Partridge

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HANDOUT REGARDING INADEQUATE SHADE NOISE MITIGATION
SHADE PUBLIC HEARING, PLANNING COMMISSIO
12 February 2014

FIRST CHART.

● Mitigation from lobby revolving door reduces noise at residences fronting Ardmore Ave by 3 dB, the minimum change in sound that people can perceive.

SECOND CHART.

● Noise differences for combined lobby and terrace mitigation will either increase the sound intensity or reduce it, by an amount less than 7 dB

AUDIO DEMONSTRATION OF NOISE REDUCTIONS:

● A 50-second demonstration of actual noise from the Shade terrace, for reductions of: 5 dB, 7 dB and 3dB. Ardmore Ave residents will experience a 3 dB reduction in noise, from the mitigation measures proposed in the application.

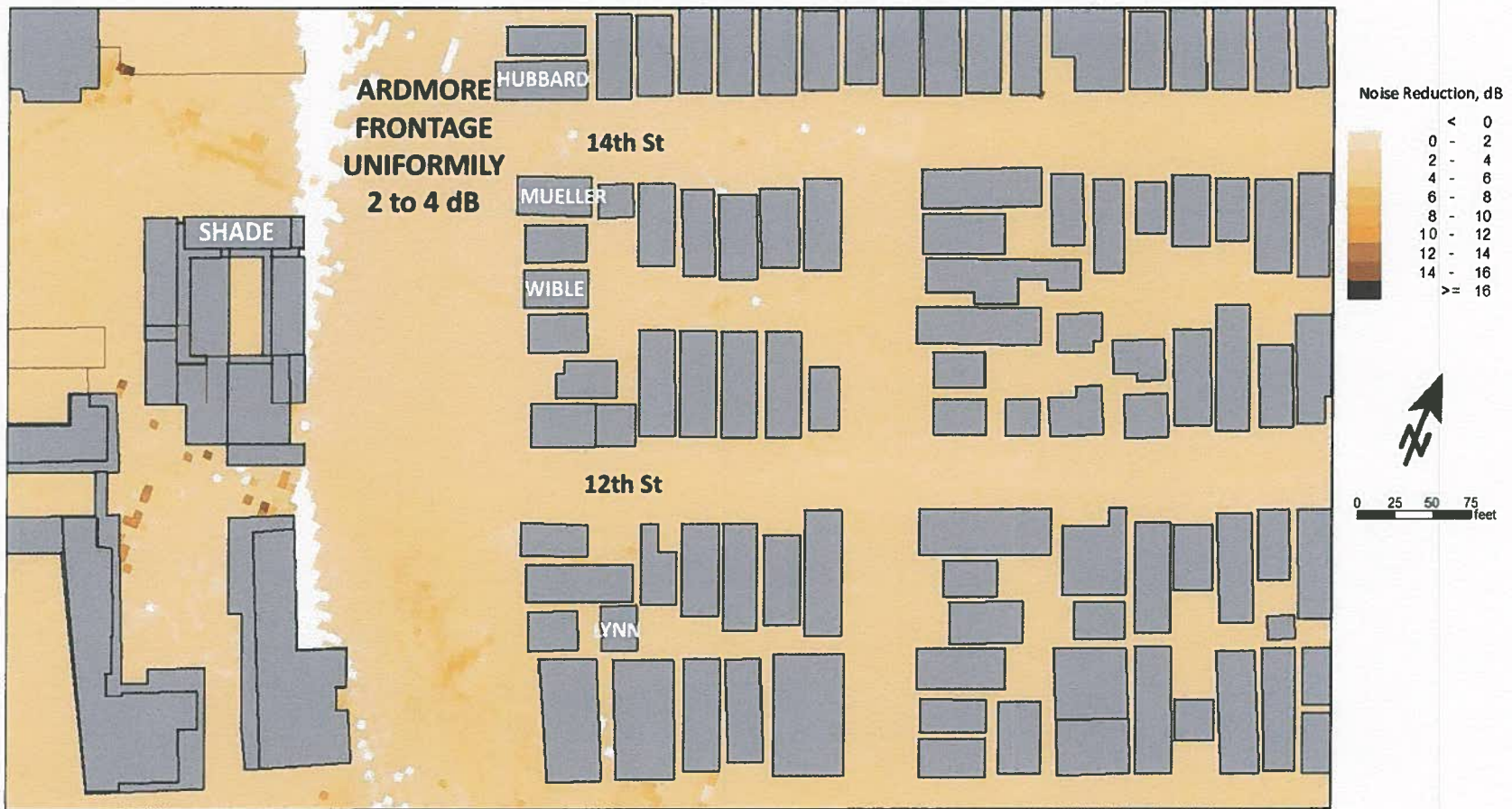
LOBBY MITIGATION REDUCES NOISE BY 2-4 dB AT ARDMORE RESIDENTIAL FRONTAGE

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



Figure 3. Noise Difference Map - Reduction of Front Entrance Noise at 1st Floor



MITIGATION RESULTS IN NOISE INCREASES AS WELL AS DECREASES

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



Figure 9. Noise Difference Map – Reduction of Combined Front Entrance and South Terrace Noise at 1st Floor

