

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

FROM: Richard Thompson, Director of Community Development
Laurie B. Jester, Planning Manager

DATE: March 12, 2014

SUBJECT: Consideration of a Master Use Permit Amendment and Possible Modifications, Including but not Limited to: Noise Mitigation Measures, Full Food Service and Marketing, Special Events on the Terrace, and Later Alcohol Service on the Roofdeck, at the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operation Company, LLC- Michael A. Zislis, Owner)

RECOMMENDATION

Staff recommends that the Planning Commission **OPEN THE CONTINUED PUBLIC HEARING AND CONTINUE THE PUBLIC HEARING TO APRIL 23, 2014.**

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

A Master Use Permit for the Metlox project was approved by the City Council in July 2002 and includes a two-story subterranean public parking structure accommodating approximately 460 cars with a public Town Square on top of the parking deck, as well as a commercial development approximately 63,850 square feet in area. The commercial development includes a 38-room hotel, the Shade Hotel. An Amendment to the Master Use Permit was approved in 2005, a 2010 Amendment was never implemented and it expired, and therefore the 2002 Use Permit, as amended in 2005, is still in effect.

The objective of tonight's meeting is to provide a status report and update on the project. Staff has held several meetings with various groups and individuals as discussed below. Further studies, review and input is required in order for staff to provide a recommendation to the Planning Commission.

The original request for an Amendment to the existing Master Use Permit from the Shade Hotel is outlined below. There are a few revisions to the original request as described later in this report.

1. **Noise Mitigation Measures**-Revolving front door adjacent to Valley Drive (and a secondary non-revolving door for disabled access and oversized luggage), acoustic laminated glass on the wall next to the reception desk opposite the new accessible door to replace the open decorative wall, acoustic laminated glass enclosure on the southeast corner of the Terrace located from floor-to-ceiling, acoustic absorbent panels on the ceiling and suspended acoustic panel “clouds” below the ceiling of the Terrace, and curtains surrounding the Terrace in the areas where there is not a full glass enclosure.
2. **Full Food Service and Marketing**-Throughout the entire Hotel, breakfast, lunch and dinner open to the general public as well as hotel guests. In the Lounge and Terrace from 6 AM to 11 PM daily, and the Courtyard and Skydeck 8 AM to 10 PM; currently limited to breakfast and evening appetizers with limited hours. Allow posting of menus in front of the Terrace, and advertising, marketing and promotion of the full food service as well as the Lounge component of the Hotel; currently outside menu posting is not permitted and marketing is limited to attracting Hotel guests and event planners.
3. **Special Events on the Terrace**-Events until 11 pm Sunday through Thursday and until midnight Friday and Saturday; currently special events are not specified on the Terrace. Plans show a proposed occupancy of 90 occupants; currently the area is posted for 47 occupants.
4. **Later Alcohol Service on the Roofdeck**- Alcohol service on the roof (Skydeck) until 9:30 PM; currently the roof deck can serve alcohol until 9:00 PM, closing to remain at 10:00 PM.
5. **Awnings, curtains and decorative lighting**- Decorative perforated metal shade awnings on the south side of the Terrace extending over the walkway and partially over the Terrace, existing curtains floor to ceiling except shorter over the exit steps, and lights on support posts. Addition of a fiberglass canopy over the existing metal arches at the front entry off of Valley Drive.

DISCUSSION

Planning Commission meeting February 12, 2014

At the last meeting the Assistant City Attorney, the Fire Chief and Police Lieutenant Small were in attendance and responded to Planning Commission comments. Additionally, the noise consultant, with Behrens and Associates made a presentation and responded to questions from the Commission. The Commission asked staff to work with the various City Departments, the neighbors, the applicant and the noise consultant to develop balanced solutions and a workable Use Permit Amendment. The status of those discussion are outlined below.

Building Safety, Fire and Police input

Planning, Building Safety, and Fire Department staff met on the site, with the applicant, and had follow up staff meetings to review the proposal. It was determined that the applicant should submit the preliminary plans to plan check so that the City’s outside consultants for Building and Fire could review and provide comments. Community Development staff met with the outside consultants, visited the site and reviewed the plans and proposal with them. As the plans are only

preliminary at this point and do not include the structural, mechanical, electrical or other details that are required for a complete plan check, this review will be limited. The review will focus on if there are any aspects of the project that could be potentially infeasible due to Building Safety, Fire and other Code requirements. Comments on the plans are expected in a few weeks.

Planning staff also met with the Police Department to discuss enforcement of noise and alcohol regulations on the site. Staff will continue to work closely with all Departments to ensure that any conditions developed are realistic and enforceable.

Noise consultant

Staff met with the noise consultant, Behrens and Associates, to discuss noise mitigation options for the site based on input and direction from the Planning Commission at the last meeting. Staff has contracted with Behrens to model several noise mitigation options. The effectiveness of each of the individual options, as well as a combination of the options and the mitigation originally modeled with the Use Permit Amendment submittal, will be provided. This will give the Commission the ability to determine which noise mitigation measures are most effective and desirable and develop a list of conditions. It is anticipated that the conditions will require that certain noise mitigation be installed initially, that there will be a review for effectiveness, and if necessary then additional noise mitigation measures could be required.

Applicant meetings

Staff meet with the applicant several times to discuss the input from the Planning Commission and options for addressing their comments. The applicant is proposing several revisions to the project in response to those comments as outlined below:

- The Terrace occupancy will remain at 47 occupants and is no longer proposed to be increased to 90.
- Full food service (breakfast, lunch and dinner) is only proposed on the Terrace and several tables in the Zinc Bar and Lounge, not throughout the entire hotel. Full food service in other areas will only be during special events and functions. Small-plate food is proposed to continue in the majority of the Zinc Bar and Lobby, the Roofdeck and the conference room. The Courtyard would continue to only be used for special events and functions.
- The proposed fiberglass canopy over the existing metal arches at the front entry off of Valley Drive may not be installed.
- The existing curtains surrounding the Terrace provide some sound absorption but they are not acoustic curtains. These curtains are proposed to remain and only be replaced if the noise consultant recommends, and the Planning Commission agrees, that this would be an effective noise mitigation treatment.
- Options for a vestibule in lieu of a revolving door are being further explored. Structural modifications to the existing support column, located outside of the front door, to facilitate the required access clearance on the public sidewalk in front of the hotel, are being studied.

As more information becomes available on these proposals staff will present these to the Commission at the next meeting. Additionally, the applicants attorney submitted a letter in response to questions on the ABC licenses for the hotel, including correspondence from the ABC

from 2004 and 2010, included as Attachment A. The Hotel has a Type 47 full alcohol-restaurant license and “sub-licenses” to the Type 47 for the in-room mini-bars (Type 66) and portable bars (Type 68). The ABC does not offer a license that would allow full alcohol service for the in-room mini-bars and only beer and wine service in the rest of the hotel; a full alcohol license is required in the hotel in order to have full alcohol for the in-room minibars.

Public comments

Staff reached out to the neighbors and other residents and offered to meet to provide a status and update on the project. A meeting was held the week before the Planning Commission meeting, an update and status was provided, the residents discussed their concerns with noise and possible solutions, and possible new conditions were addressed. Several e-mails were submitted prior to that meeting that are included as Attachment B.

At the last meeting one of the neighbors indicated that the continuous noise monitoring was conducted after Labor Day and therefore there were very few special events or activities that would cause impacts to the neighbors. Attachment C provides a list of the events during the noise monitoring which took place from September 19th through October 4th, 2013.

CONCLUSION:

The project before the Planning Commission is an Amendment to the Master Use Permit for the Shade Hotel. The objective of tonight’s meeting is for staff to provide a status report and update. Staff will continue to work with the consultants, other Departments, the applicant and the neighbors to refine the proposal and bring back those revisions to the Planning Commission for further review, input and action.

Attachments:

- A. E-mail from applicants attorney- 2-19-14
- B. Public comments
- C. Shade Events- September 19 through October 4, 2013

- c: Mike Zislis- Shade Hotel
- Katie Kruff Richardson- Shade Hotel
- Jon Tolkin- Tolkin Group
- Glenn Loucks- Tolkin Group
- Eve Irvine- Police Chief
- Robert Espinosa- Fire Chief
- Sal Kaddorah- Building Official
- Don Behrens, Behrens and Associates
- Diana Varat- Richards, Watson, Gershon

Angela Soo

From: John Strain <jstrain@ustaxlawyer.com>
Sent: Wednesday, February 19, 2014 10:36 AM
To: List - Planning Commission
Cc: Richard Thompson; Laurie B. Jester; Joan Jenkins; Michael ZIslis
Subject: Planning Commissions
Attachments: Ltr to Planning Commission 021914.pdf

Commissioners:

Please see the attached letter related to Shade Hotel.

Best Regards,

John A. Strain

LAW OFFICES OF JOHN A. STRAIN
321 12th Street, Suite 101
Manhattan Beach, CA 90266
(310) 802-1300
jstrain@ustaxlawyer.com

EXHIBIT A
PC MTG 3-12-14

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
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February 19, 2014

By email:

Manhattan Beach Planning Commission

Dear Commissioners:

In his opening remarks at the February 12 Planning Commission meeting, Commissioner Conaway directed that there should be “no tolerance for personal attacks” in the proceedings. Some of the comments made at the meeting were quite inconsistent with this sensible standard. We note in particular some outrageous contentions by Bill Victor (about Michael Zislis and Shade Hotel) that “anyone else who did this . . . would be subject to all kinds of criminal prosecution” as well as to Viet Ngo’s oft-repeated allegations of an illegal conspiracy between Mr. Zislis, City Staff, and others.

We feel it is necessary to address some other comments made at the February 12 meeting that may feed this kind of allegation. In her comments (at roughly 3:52:00 of the Video posted on line) Commissioner Andreani said:

“[In 2005, Michael Zislis] came in here and he told . . . the Commission and Council there was no . . . ABC license for just in room minibars. It turned out there WAS and there is a license for in room minibars. When we learned that there was . . . why did Mr. Zislis get the Type 47 license for a full liquor when there actually had been another avenue for that? The answer I got from the Staff is that that’s what the Applicant wanted. The Applicant has always asked for more – more hours, more food, more events, and this has caused a problem.”

Some listeners might construe those remarks as suggesting that Michael Zislis intentionally misled the City about ten years ago and that City Staff unduly bends to grant Shade Hotel’s requests. For that reason, we want to set the record straight on some key historical facts.

Commissioner Andreani’s remarks seem to say that the originally conceived “Inn” was supposed to have no alcohol service except in-room minibars. In fact, certain alcohol service in public events at the hotel was part of the original Metlox Master Use Permit as approved in Resolution 5770 in 2002 long before Mr. Zislis had any connection with the development. Condition 28 of that Resolution stated: “The Inn may provide wedding, party, and other special event services.” Condition 38 stated: “The Inn may provide beer and wine service for its guests only and may also provide full liquor self-service in rooms. Sale of alcoholic beverages for consumption off-premise is not approved with this Master Use Permit.” (emphasis added) Clearly, these terms contemplated that the facility would host weddings, parties, and other events

(such as charity fundraisers) and would serve alcohol (that is, beer and wine) to “guests” at such events as opposed to selling alcohol for off premise consumption.

As the concept for Shade Hotel was being developed in early 2004, ABC licensing issues were addressed in correspondence with the ABC. The correspondence addressed how a license allowing alcohol in minibars could be coupled with some type of alcohol license to be used by the overall Inn or hotel. In that correspondence (enclosed with this letter), the ABC stated: “I recommend that you license the whole hotel with a Type 47 license and also get a Type 66 for the Controlled Access Cabinets. According to the licensing supervisor you can’t obtain a Type 66 [minibar license] with a Type 41 [beer and wine] license.” If Commissioner Andreani believes that the ABC gave Shade Hotel (and indirectly the City) erroneous advice, we are not aware of the authority for her position.

Some other correspondence with the ABC also deserves some mention. We are enclosing a copy of a letter the ABC sent to Don McPherson on May 11, 2010. That letter establishes two very important points. First, as a holder of an ABC license, Shade is not permitted to deny service to the general public. Even if Resolution 5770 had directed the Inn to exclude the general public, it could not stand in that form. Second, alcohol served pursuant to the license must be served in conjunction with food. Shade’s lunch service is inherently necessary to satisfy the conditions of the ABC license. This reduces the degree to which Shade emphasizes liquor rather than food. In any event, that outdoor dining is widely enjoyed by residents and visitors. The only argument we heard against a clarification of this point is the allegation that Shade Hotel is a serial lawbreaker that simply deserves to be punished. That claim is unsubstantiated and false.

Businesses such as Shade Hotel must comply with many different laws. The fact that the terms of Resolution 5770 were not entirely congruent with ABC rules merely illustrates the complexity of running such a business or the City itself. Modifications to assure compliance with all relevant standards are sometimes necessary.

The public conflict about activity at the Metlox Plaza has existed ever since it was first proposed to do something with the fallow Metlox Pottery site. The site is zoned for Downtown Commercial use and some neighboring residents have always strongly advocated their interest in residential tranquility. That interest is understandable and always should be kept in mind, but it is only one side of the coin. Resolution 5770 as approved in 2002 involved compromises between those concerns and the interests of the City and the broader community in having an inn or hotel as an anchor to the Metlox project. Other compromises between such competing interests were made in 2005 when PC Res. 05-08 approved the current configuration of the hotel and its lounge. PC Res. 05-08 expanded alcohol service “to provide high quality service to their customers consistent with the business plan for the four star hotel” as well as to comply with ABC rules. Those compromises were based on facts, analysis and community objectives considered most relevant at those respective times.

The terms resulting from those compromises are not as restrictive as one small segment of our community wanted and still wants. It is a fact, however, that such decisions leave Shade

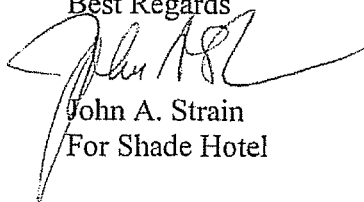
Hotel with uniquely restrictive closing hours and other restrictions not applying to any other business in Metlox or the Downtown area in general (which create difficult challenges for Shade in providing a first class hospitality venue to represent our City). Shade Hotel believes that it has met that challenge well. The Hotel is very popular both with visitors to our City and with a large majority of local residents.

Shade Hotel is now being forced to defend a citation for violating the Municipal Code's noise rules. Ironically, the complaint arises from cheering at the end of an evening fashion show that was sponsored by a local charity as a fundraiser. Such a fashion show was a permitted activity for the Inn even under Resolution 5770 (but for the fact that participants would have been sipping Cabernet and Heinekin but not any martinis). Also note that independent sound studies have demonstrated that Shade is in compliance with the measurable noise standards spelled out in detail in the Municipal Code.

In the face of such objective facts, any implication that Michael Zislis and Shade Hotel have been given special leniency is just not supported by the facts. Quite to the contrary, the "zero tolerance" policy now being applied to Shade Hotel (which appears to have spawned the recent citation) suggests a willingness to impose undue restrictions based not on overall community interests and objective analysis of facts but as a reaction to the persistence of a small minority of the City's residents.

Commissioner Conaway was correct in asking everyone to put personal attacks aside. Each member of the Commission may and should bring his or her perspective to that task, but the focus should be on how best to balance the interests of all segments of the community after considering facts objectively.

Best Regards



John A. Strain
For Shade Hotel

JAS
Encl.
Copies (w/ encl.):

Manhattan Beach City Council
Mr. Richard Thompson
Ms. Laurie Jester
Joan Jenkins, Esq.
Mr. Michael Zislis

Richard Foss
Assistant to Mike Zislis
The Inn At Manhattan Beach
1221 Morningside Drive, Manhattan Beach CA 90266
Fax 310-374-6086

05 March 2004

Department of Alcoholic Beverage Control
Inglewood District Office
Fax 310-673-4 082

Attention to Ms. Taylor

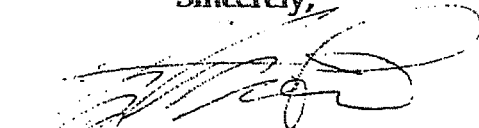
Dear Ms. Taylor.

Thank you for the time you took to talk with me when I was there earlier this week picking up the forms for Controlled Access Cabinets. I have a question which I would appreciate your help with. When I was there you explained that Type 66 Controlled Access Cabinet licenses allow a lodging entity to stock minibars with beer, wine, and spirits, but require the facility to have a license which also allows beer, wine, and spirits (Type 48).

My question is whether there is any type of Controlled Access Cabinet license which only allows beer and wine, and so could be purchased in conjunction with a beer & wine only (Type 41).

Please let me know about this when you can. I appreciate your assistance,

Sincerely,



Richard Foss
Inn At Manhattan Beach

NO ANSWER -
PLEASE REPLY

Department of Alcoholic Beverage Control
Inglewood District Office
1 Manchester Blvd, Sixth Floor
Post Office Box 6500
Inglewood, CA 90306
Phone: 310-412-6311
Fax: 310-673-4062

State of California



FAX TRANSMISSION

Total Number of Pages 1 (Including this cover sheet)

Original: To follow by regular mail Will not follow

To: Richard Foss

Firm/Office: Inn at M.B.

Fax: (310) 374-6086 Date: 3/11/04 Time: 1630

cc('s): _____

From: Inv. L. Taylor Phone: (310) 412-6311

Subject: Questions

Comments:

Mr. Foss,

Please accept my appology, as I just received your fax. I believe that there must have been some confusion. I only faxed you information. If you came into the office, you dealt with someone other than myself.

However, again as my fax originally stated, I reccommend that you license the whole hotel with a Type 47 license and also get a Type 66 for the Controlled Access Cabinets. You don't have to stock, or carry distilled spirits in the access cabinets or hotel if you do not wish to. According to the licensing supervisor you can't obtain a Type 66 with a Type 41 license. Please call me if you have any questions.

Thank You,
Laura

NOTICE

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"Be Energy Efficient"



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

May 11, 2010

Don McPherson
1014 1st Street
Manhattan Beach, Ca 90266

Dear Mr. McPherson,

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

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

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

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

Sincerely,

Vincent E. Cravens
District Administrator

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Angela Soo

From: NATHANIEL HUBBARD <natehubz@mac.com>
Sent: Thursday, February 13, 2014 9:10 AM
To: Don McPherson
Cc: Christopher Conaway; Kathleen Paralusz; Martha Andreani; Paul Gross; Steve Ortmann; John Jalili; David Biggs; Quinn Barrow; Richard Thompson; Liza Tamura; Laurie B. Jester; Wayne & Mako Partridge; Robert D. Espinosa
Subject: A big thanks from the Shade Neighborhood

Dear Commissioners....thanks for all your hard work at processing all the data. After we left the meeting and walked back to our neighborhood, the neighbors felt that you really understand the issues that we have been dealing since the Shade went operational. Although I'm not as detail-oriented and eloquent as my two colleagues, Don McPherson & Wayne Partidge, I do my best to represent our Neighborhood and we're looking forward to continuing the process

Best Nate Hubbard

EXHIBIT B
PC MTG 3-12-14

Angela Soo

From: Wayne Partridge <wepmako@gte.net>
Sent: Thursday, February 13, 2014 10:54 AM
To: Christopher Conaway; Kathleen Paralusz; Martha Andreani; Paul Gross; Steve Ortmann
Cc: John Jalili; David Biggs; Quinn Barrow; Richard Thompson; Liza Tamura; Laurie B. Jester; 'Nate Hubbard'; Robert D. Espinosa; Don McPherson; Nate Hubbard
Subject: Shade Hotel
Attachments: 10.104.030 pdf.pdf

Members of the Planning Commission:

You have a very tough job, especially with regard to the Shade Hotel. Every meeting of the Planning Commission or City Counsel that I attend deepens my admiration and gratitude for the citizens who volunteer for and work diligently to responsibly handle these very difficult jobs. Thank you for your service.

Your job last night was made more difficult by some unfortunate comments and responses from the assistant city attorney and staff after the public meeting was closed that provided misdirection and misleading information (although I had to leave early, I watched on TV).

First, in response to a question, the assistant city attorney told you, in very strong terms, that MBMC 10.104.030 was not before you last night. In literal terms, this was quite true. You could not have begun a **substantive** discussion last night of whether to apply MBMC 10.104.030 to the Shade matter.

However, the neighbors had not asked or suggested that you have such a discussion last night. I in my presentation asked that you act last night **to put such a discussion on your agenda** for the next appropriate meeting. You are always free at any meeting to consider putting any item within your purview on a future agenda.

So, regrettably, the assistant city attorney's answer, in the context, was irrelevant and misleading. That irrelevant and misleading answer played a part in misdirecting you away from a course that would solve one of the key problems in your consideration of the Shade matter; the problem of making sure that what you ultimately decide will be mandatory, not an option for the applicant.

Richard Thompson promptly reinforced this misdirection by stating something like "that is the revocation provision". Again, this statement is literally accurate, but grossly misleading by omission. MBMC 10.104.030 (copy attached) is for revocation **or modification** in any case in which the Planning Commission (or others) finds reasonable grounds for a **modification**.

No neighbor and no person, as far as I am aware, wants or has sought or suggested "revocation" of the Shade CUP. We seek a binding "**modification**". The reasonable grounds for **modification** are unquestionably present in the case of the Shade, and our request was for you to put the issue of whether there are reasonable grounds for **modification** on your agenda for a future meeting. You had every right and power to do that last night. You will have every right and power to do so at your next meeting, even though Shade is not on that agenda. At risk of trying your patience, we will be there at your next meeting to ask that you put consideration of whether to **modify** the Shade CUP under MBMC 10.104.030 on the agenda for the meeting at which you are to consider the Shade matter again.

At least two or three Commissioners made the point last night that steps were necessary to make sure that the ultimate results of your efforts would be mandatory for the applicant as well as the neighbors. The Director responded with something to the effect that staff was working on that.

We have been immersed in this matter for some time, and unless the City Attorney and staff radically change the opinion that doomed the 2010 CUP (which they have oft insisted is based on some unstated and unexplained requirement of law), there is no way to achieve this assurance of a final and binding result, except by proceeding under MBMC 10.104.030.

Again, thank you for your service, and for your excellent probing and consideration of the Shade issues last night. It is very regrettable that some of the answers you received were so misleading.

Wayne Partridge

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 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)

Angela Soo

From: Don McPherson <dmcphersonla@gmail.com>
Sent: Thursday, February 13, 2014 2:35 AM
To: Christopher Conaway; Kathleen Paralusz; Martha Andreani; Paul Gross; Steve Ortmann
Cc: John Jalili; David Biggs; Quinn Barrow; Richard Thompson; Liza Tamura; Laurie B. Jester; Nate Hubbard; Wayne Partridge; Robert D. Espinosa
Subject: Quick Answers to Questions from Shade 12 Feb 2014 Hearing
Attachments: MBMC10.104-UsePermit-Enforcement-Commented.pdf; MB-ZoningDesignations.pdf

I violate one of my ground-rules, no doubt to my regret, and send this now, not in the morning after review. I have to hit the ground running tomorrow, for the Feb 26 hearing on the 900 Club, one block from my residential building on Bayview Drive. So here goes.

Commissioners,

I marvel at how you raised key issues regarding Shade Hotel, considering its incredible complexity. Having lived with the Shade administrative record for the past five years, my every pass through the evidence answers longstanding questions. No question, however, but that Shade will always remain a mystery.

That being said, I and the Shade neighbors find it incredibly frustrating, that we cannot respond when you ask questions of staff. Invariably, we have the answers, based on factual evidence.

So tonight, I blow off a little steam, while doing my best to respect the standards of decorum.

Commissioner Ortmann. You inquired of the representative from the city attorney office, what options existed regarding implementing Wayne Partridge's recommendation to take action on municipal code section, MBMC 10.104.030 *Revocation and modification of discretionary permits*. [Attached] She answered, "A revocation hearing." Understandably, that turned you off. Please know that Wayne's suggestion addressed modification of the use permit, not revocation. The representative from the city attorney office failed to inform you that the 10.104.030 statute also includes modification, such as what you now consider for the current Shade application. We do not want revocation. Your new use permit will only stick, however, if implemented under 10.104.030. Staff and the city attorney are irrevocably committed to letting Mr. Zislis walk away from a use permit issued solely in response to his application. Never stop believing that.

Chair Conaway and Commissioner Gross. You expressed concern over the efficacy of the proposed mitigation measures, especially the terrace. Staff states that the lower tier of the terrace cannot be enclosed by any means, although Shade pulls the drapes fully closed every night. Staff claims that the Fire Department has determined the lower tier cannot be enclosed, but MBFD has never made such a determination. Chief Espinosa did not testify tonight that the lower tier of the terrace cannot be enclosed, but staff testified for him. No Building & Safety official attended, nor have they ever made a determination that the lower tier cannot be enclosed at night. On March 12, you should ask the Fire Chief and building officials whether the terrace lower-tier can be enclosed, such as with acoustic curtains, provided it includes one of several viable closable ingress-egress designs compatible with state code. The upper tier can remain open as recommended by Behrens's, to qualify the terrace as outside area, not FAR area.

Commissioner Paralusz and Chairman Conaway. You expressed concern over extending the alcohol serving time on the Skydeck. Mr. Conaway puzzled over why the 2010 CUP included a condition to end alcohol service at 20 minutes before close. We provide the answer. In Reso 10-05, the 2010 PC denied Mr. Zislis's request to extend alcohol service on the Skydeck, past 9 P.M. In the run-up to the pro-forma appeal before the city council

in September 2010, Mr. Hubbard and Mr. Zislis had to sign an agreement regarding the terms and conditions of the use permit. Mr. Zislis refused to sign, however, unless Mr. Hubbard agreed to make one more concession, extension of the Skydeck end of service hours. Mr. Zislis's stretch on this matter appears to substantiate Commissioner Ortman's observation, about how Mr. Zislis constantly moves the goal posts down-field.

Commissioner Andreani. You asked specific questions whether Shade violates its 2005 CUP. You did not receive a single forthright answer.

Commissioner Gross. You raised the issue of the 5 dB 'bump' in the objective noise standards, for land-use classifications adjacent to commercial uses, pursuant to MBMC 5.48.140(F), copied below. Staff answered erroneously that the 5 dB 'bump' does apply. The Open Space (OS) land-use classification of the Valley-Ardmore greenway intervenes between the Metlox commercial zone and the residential zone to the east. [2nd attachment] Consequently, the 5 dB 'bump' does not apply to the objective dB standards in the residential area, because it adjoins the OS classification, not the commercial use. We raised this issue at the 28 Oct 2009 hearing for the 2010 CUP, but Behrens still includes the 5 dB 'bump', when evaluating objective noise levels in the residential area. Good to learn, that you consult and closely read the MB municipal code, because in the end, that's what counts, or at least it should. We, however, have our doubts.

MBMC 5.48.160(F). If the measurement location is on a boundary between two (2) different land use classifications, the noise level limit applicable to the more restrictive land use classification plus five (5) dB, shall apply.

Commissioners. Thanks for the hearing. I do not know how you do this every two or three weeks. It exhausts me.

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

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)

CITY OF MANHATTAN BEACH

ZONING DESIGNATIONS

Area District Boundaries

Zoning Designations & Overlays

Residential Districts

- RS** Residential Single Family
 - D1-Design Review -Rosecrans Avenue
 - D3-Design Review -Gaslamp Neighborhood
 - D4-Design Review -Traffic Noise Impact Area
 - D6- Design Review -Oak Avenue
 - D7- Design Review -Longfellow Drive
- RM** Residential Medium Density
 - D1- Design Review -Rosecrans Avenue
- RH** Residential High Density
 - D2- Design Review -11th Street

RPD Residential Planned Development

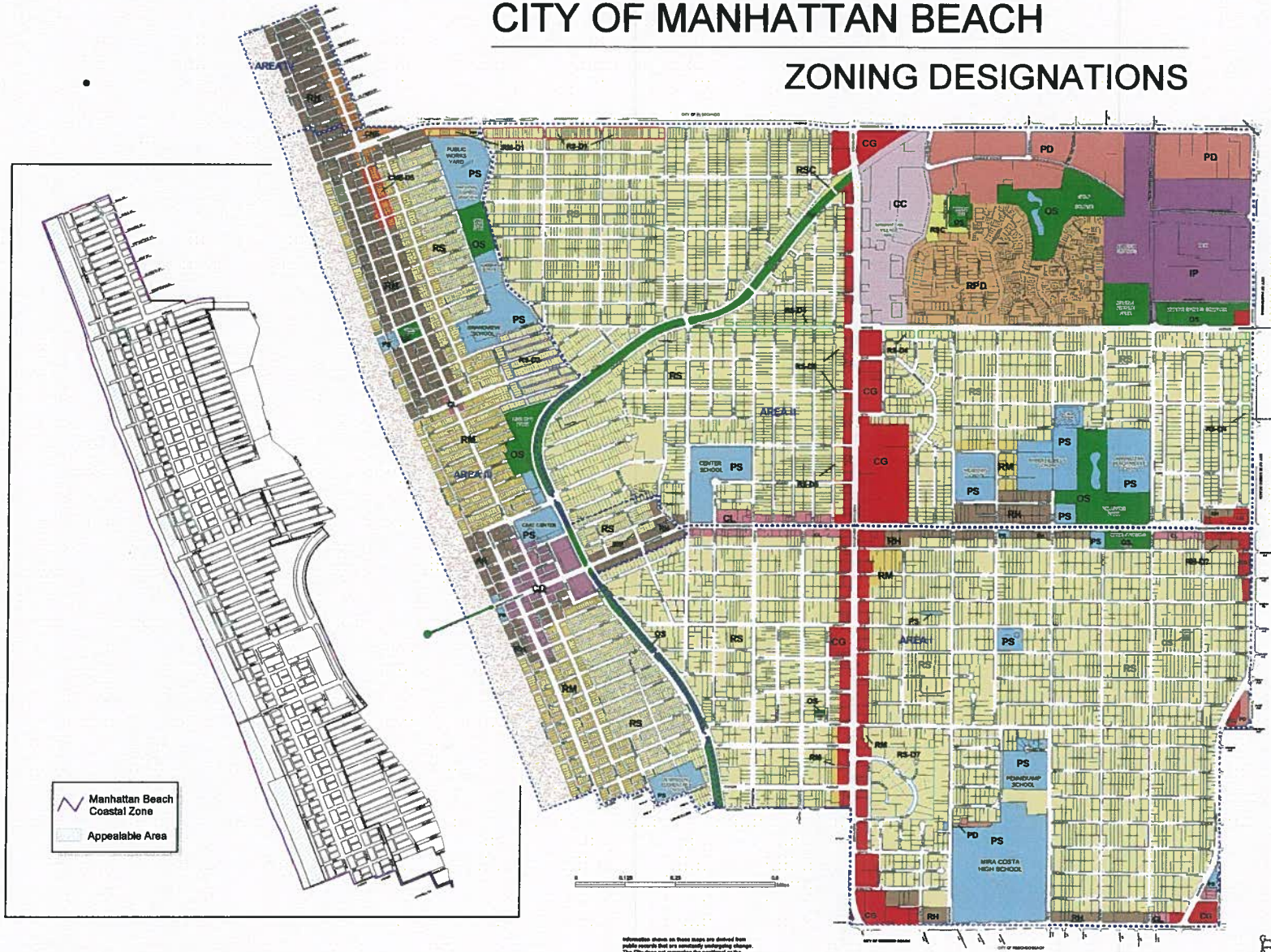
RSC Residential Senior Citizen

Commercial Districts

- CL** Local Commercial
- CC** Community Commercial
- CG** General Commercial
- CD** Downtown Commercial
- CNE** North End Commercial
 - D5- Design Review -North End Commercial

Other Districts

- PD** Planned Development
- IP** Industrial Park
- PS** Public and Semi-Public
- OS** Open Space



Map Adopted by Ordinance Number 2007 on August 3, 2004.
 Address Information for Planning Commission:
 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024.
 All other incorporations for following years: 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024.

Information shown on these maps are derived from public records that are constantly undergoing change. The City does not guarantee the position or the thematic accuracy of the GIS data.



Angela Soo

From: Don McPherson <dmcphersonla@gmail.com>
Sent: Monday, March 03, 2014 5:16 PM
To: Richard Thompson
Cc: David Biggs; Laurie B. Jester; Angelica Ochoa; Robert D. Espinosa; Eve R. Irvine; Sal Kaddorah; Nate Hubbard; Wayne Partridge; Christopher Conaway; Kathleen Paralusz; Martha Andreani; Paul Gross; Steve Ortmann
Subject: Residents' Mitigation Measures for Shade
Attachments: 140303-Resident-MitigationConcepts-Compiled.pdf

Richard Thompson, Director
City of Manhattan Beach
Via Email

Subject: Residents' Mitigation Measures for Shade Hotel

The attachment provides the mitigation measures that we propose for Shade.

Please ensure that experts from the Fire Department, Police Department and Building Division attend the March 12 hearing on Shade, so that they can explain to the commissioners whatever concerns exist regarding these measures.

Thanks,

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

RESIDENT MITIGATION MEASURES PROPOSED FOR SHADE HOTEL

SUMMARY.

This report proposes noise mitigation concepts for the lobby, terrace and courtyard in Shade Hotel. We have developed these concepts based on data and facts documented during nearly five years of study, since the first public hearing on the 2010 CUP, conducted by the Planning Commission on 24 June 2004.

The proposed concepts resolve the deficiencies in the Shade application, filed in November 2013.

The proposed concepts have the following principal attributes:

- **Lobby [Exhibit 3].**
 - ◆ Double-door vestibule to replace the revolving door and its side-hinged bypass door
 - ◆ Replacement of existing single-glazed windows with laminated glass, STC -39 dB;
- **Terrace [Exhibit 4 & 5].**
 - ◆ Extension westward of the new glass panels on south terrace wall, to include the ingress-egress, covering approximately 50% of the south wall
 - ◆ Enclosing the 80 sq-ft open south ingress-egress, with glass sound-doors, 8-Ft wide
 - ◆ Acoustic drapes to cover existing single-glazed east glass panel wall, after 9 PM
 - ◆ Replacement of non-acoustic fabric in existing drapes, with fire-retardant material having a Sound Absorption Average of 0.55, or better; and,
- **Courtyard [Exhibit 5].**
 - ◆ A pair of horizontally sliding canopy covers, to close the open top during special events
 - ◆ Replacement of existing drapes with abovementioned acoustic fabric.

At the public hearing on March 12, experts from the Fire Department, Police Department and Building Division should attend to explain in detail to the Planning Commission, any concerns they have regarding these mitigation measures. Staff has sufficient time to articulate such concerns in the staff report, so that we have the opportunity to rebut.

The following briefly summarizes deficiencies in the Shade application, including an analysis of the Behrens's noise report, demonstrating the predictions useless, considering Mr. Behrens's testified they do not know how much noise reduction required.

Then, we briefly discuss the mitigation measures for the lobby, terrace and courtyard.

SHADE APPLICATION DEFICIENCIES REGARDING NOISE MITIGATION.

As Mr. Behrens testified on February 12, noise mitigation requires enclosure with acoustic materials. He describe in detail, that they must close all gaps in the east single-glazed wall of the terrace, yet Shade ignores the approximately 80 sq-ft open ingress-egress adjoining the east wall. Likewise, the courtyard has an open top. The lobby has a single-glazed window-wall as frontage. Mitigation measures must address all these issues.

The Shade application leaves all these areas untreated. For over a decade, staff has justified not enclosing the Zinc nightclub within STC-50 walls, as required by the 2005 CUP, because the hotel construction used STC 50 materials. The single glazed windows fronting the lobby do not have a STC-50 rating. Actually, our mitigation approach uses STC -39 dB glass, the same as in the Strand House. STC-50 windows would prove far too costly for Shade.

RESIDENT MITIGATION MEASURES PROPOSED FOR SHADE HOTEL

For a second deficiency, where the Shade application does propose mitigation, they do not specify the important parameters, such as the Sound Absorption Average [SAA], the current standard, or the Sound Transmission Coefficient [STC]. All of our measures specify these numerical parameters, as well as citing the state-code standards.

For the third deficiency, the amount of noise reduction estimated by Behrens has no significance. Exhibit 1 provides an analysis of noise reduction at three residences along N. Ardmore Ave; two houses for the lobby revolving door and one for the terrace. The analysis counted pixels in the Behrens's sound maps [Pages 2 and 3] and assigned dB bins corresponding to the calibration colors at the right side-bar.

Where Behrens state a 4-6 dB reduction for the revolving door, the analysis on Exhibit 1, Page 1, discloses a 2-4 dB reduction, at the threshold of sensing by a person. For the terrace mitigation, Behrens predicts 6-8 dB, whereas the data shows 4-6 dB. Behrens does not know what dB reduction required, so these miniscule dB reductions have no relevance.

MITIGATION MEASURES

Exhibit 2 shows the overview of mitigation concepts for the lobby, terrace and courtyard.

Lobby [Exhibit 3].

At the February 12 hearing, commissioners doubted that patrons would use the revolving door. Additionally, they judged the proposed mitigation measures as inadequate.

Exhibit 3 depicts the two elements required to construct a solid noise barrier across the lobby façade, namely a double-door vestibule and replacement of the single-glazed window-wall with laminated glass panels, specified at STC -39 dB or greater. This corresponds to the windows used in the Strand House.

The vestibule poses the problem of having adequate door landings, 44-in long minimum, within the area available. Angling the external doors appears feasible. If staff requires larger landings, reducing the door widths and extending the exterior towards Valley Dr. will work.

Ironically, Shade proposes a laminated-glass sound-wall, to isolate the stairs from the Zinc nightclub noise. They chose, however, not to extend that benefit to the residents.

Terrace [Exhibits 4 & 5].

The terrace poses no particular challenges to enclose the area below the upper belt of horizontal bars, depicted in the south-elevation view in Exhibit 5.

It appears the suspended acoustic disks and ceiling coverings reduce noise sufficiently, so the top can remain open for ventilation. The Behrens report states that enclosing the upper level has little effect on reducing external noise levels.

Exhibit 4 depicts the landing required for the doors that will close the terrace south ingress-egress after 9 PM, seven days a week.

Exhibit 5 illustrates extending the glass panels at the east end of the south wall, to cover the area past the ingress-egress door assembly. At the end of the glass panels, acoustic drapes take over, covering approximately half of the south wall, and wrapping around the southwest corner to cover the west wall, facing the Metlox Plaza.

RESIDENT MITIGATION MEASURES PROPOSED FOR SHADE HOTEL

Additionally, our design requires drapes to cover the existing single-glazed glass wall on the east, bordering Valley Dr., after 9 PM, seven days a week.

Shade proposes to use their existing fire-retardant drapes, but do not provide the SAA or STC values required to evaluate their acoustic effectiveness. The manufacturer of Shade's drapes, Kovenex, does not mention acoustical properties. We have requested acoustical data from them.

A web search discloses a number of firms that do provide acoustical materials and drapes. Their websites indicate that a minimum SAA value of 0.55 appears feasible.

Courtyard [Exhibit 2].

The 2010 CUP did not address the courtyard for noise mitigation. Because the City Prosecutor has filed a complaint over noise from the courtyard, it obviously needs some means to close the open top, temporarily.

Exhibit 2 shows a concept to reduce noise by 20 dB, namely a retractable canopy of acoustical fabric, supported by horizontal east-west structural members that run on north-south rails. With the canopy opened, the fabric will hang in folds, bunched at either end.

We also propose to replace the existing drapes with acoustical material, to reduce reverberation, and therefore, noise levels.

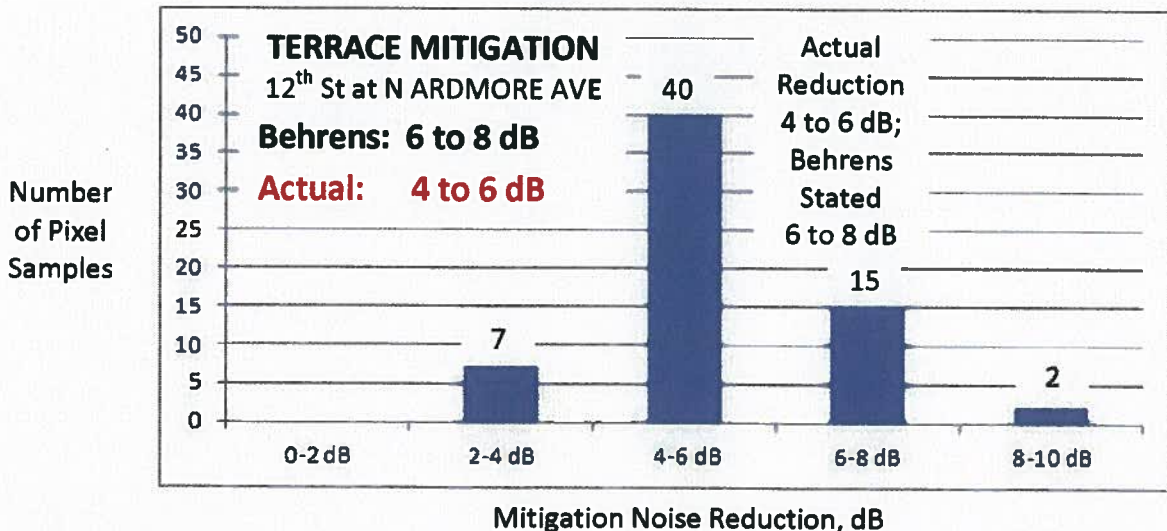
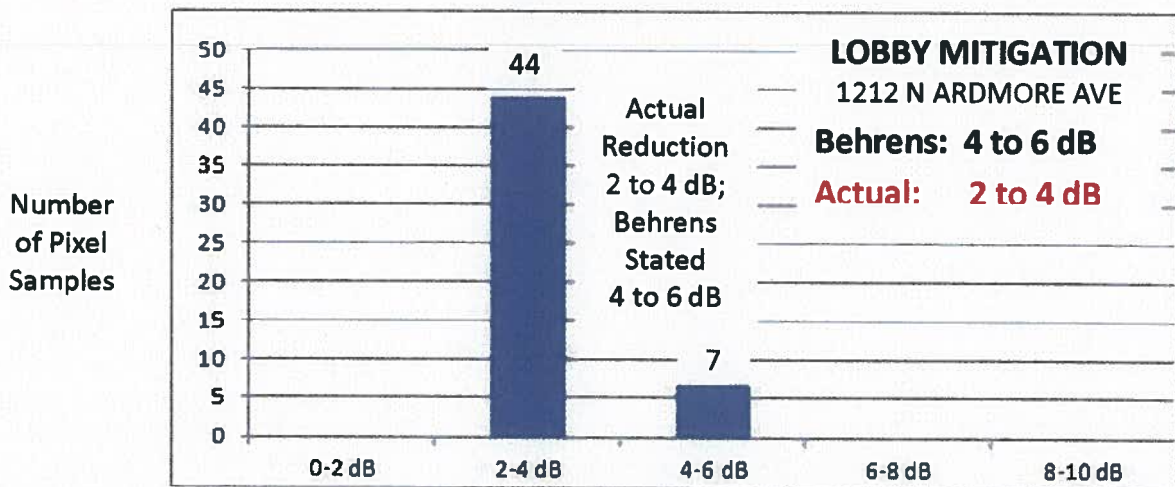
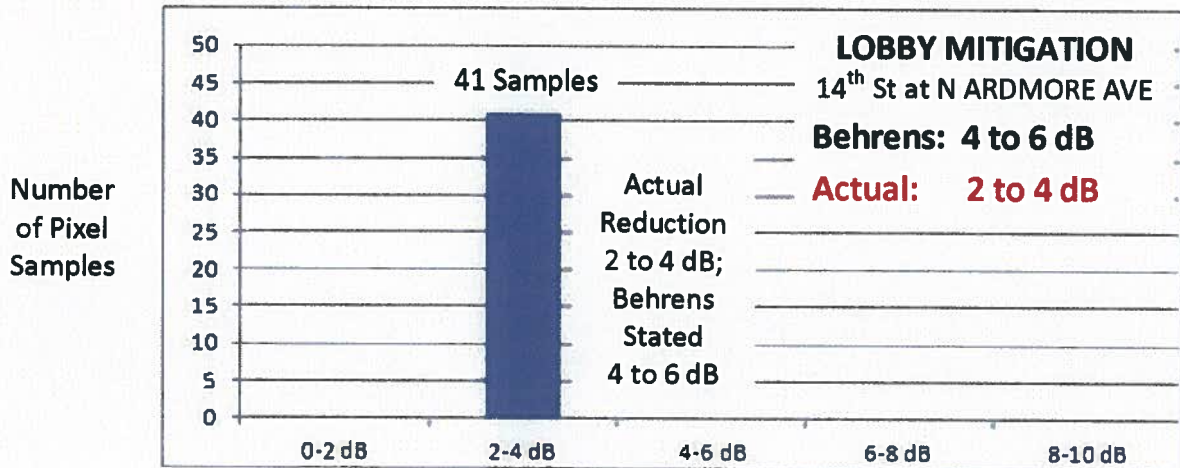
CONCLUSION.

Exhibits 2 through 5 provide the specifications for our proposed noise mitigation measures.

At the March 12 hearing on Shade, experts from the Fire Department, Police Department and Building Division should attend to explain any concerns they have with these mitigation measures.

Additionally, we would like those concerns stated in the staff report, so that we can rebut at the hearing.

BEHRENS REPORT OVERSTATES MITIGATION REDUCTION



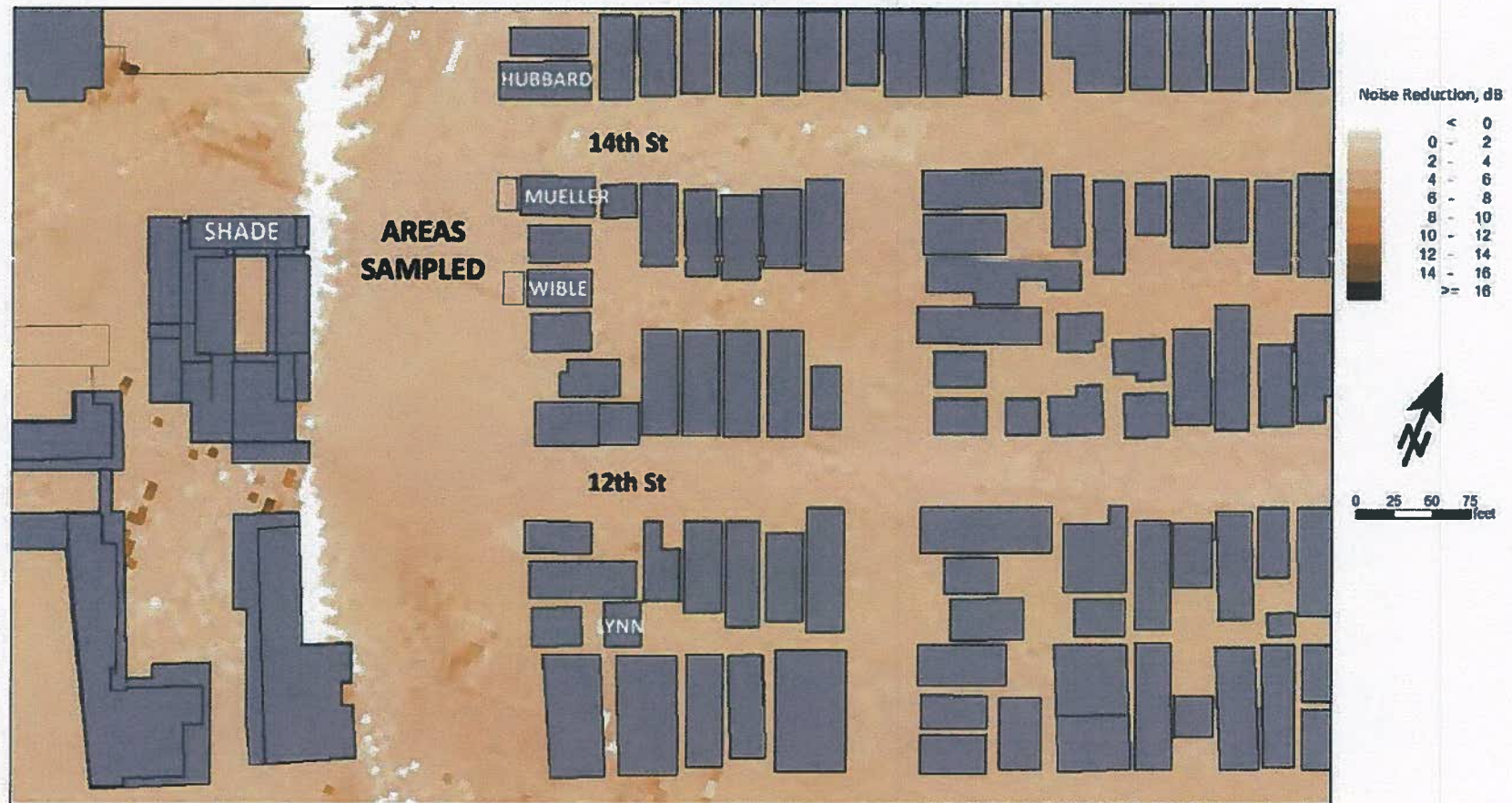
LOBBY MITIGATION REDUCES NOISE BY 2-4 dB AT ARDMORE RESIDENTIAL FRONTAGE

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



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



TERRACE NOISE REDUCTION AT N. ARDMORE, 4-6 dB, NOT BARRONS'S 6-8 dB
Behrens and Associates, Inc.
Acoustics, Noise and Vibration Consultants

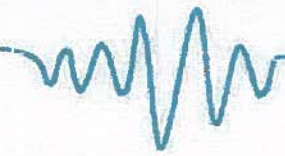


Figure 6. Noise Difference Map - Reduction of South Terrace Noise at 1st Floor

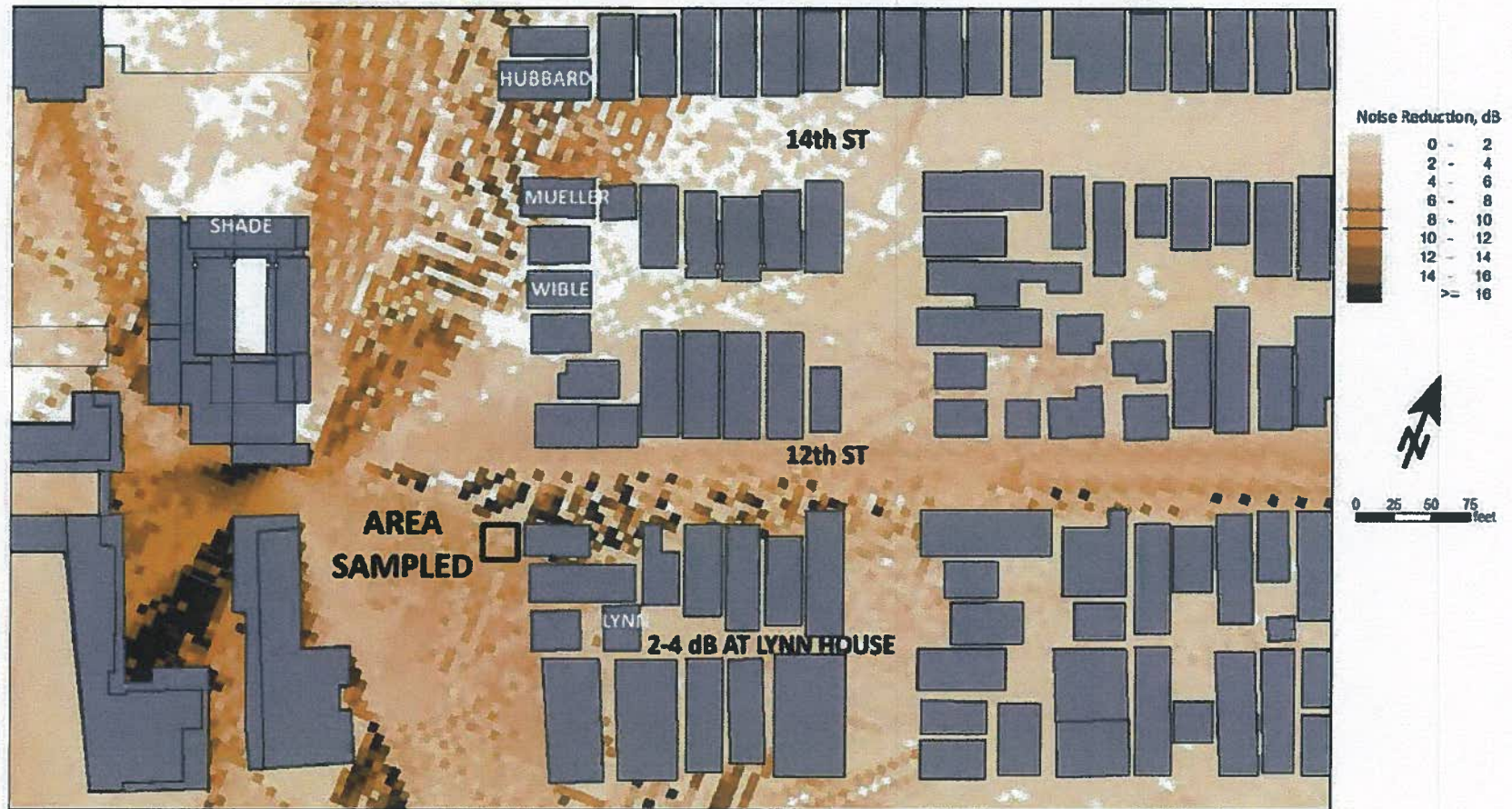


EXHIBIT 2. COMPLETE MITIGATION CONCEPT

PROPOSED LOBBY, TERRACE AND COURTYARD NOISE MITIGATION FOR SHADE HOTEL

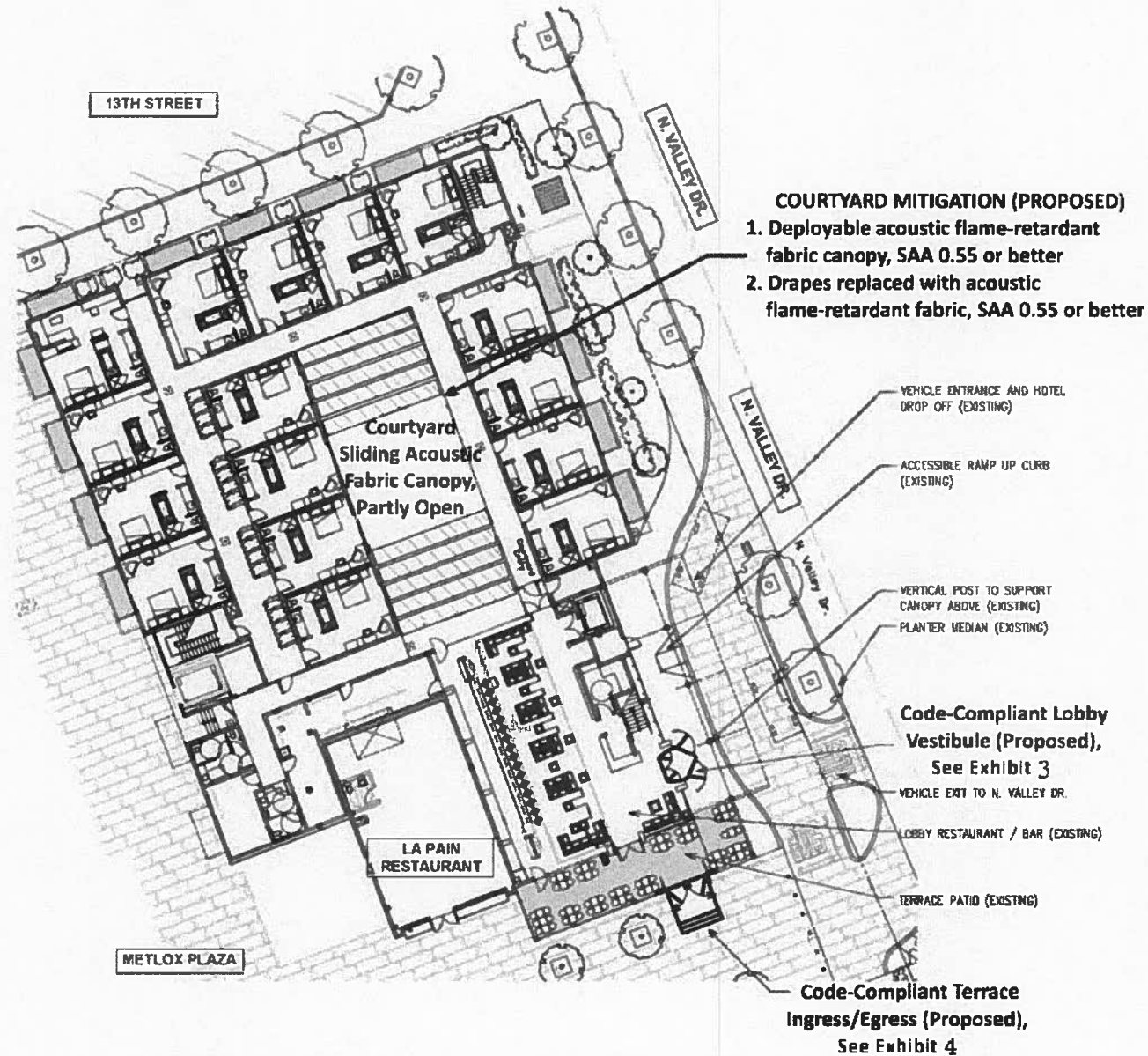


EXHIBIT 3. LOBBY MITIGATION CONCEPT

LOBBY MITIGATION: VESTIBULE & LAMINATED SOUND-GLASS PANELS

- Vestibule meets all California Building Code standards
- Considerable room to increase landing dimensions, if required
- Laminated sound-glass panels, STC -39 dB, replace existing single-glazed windows

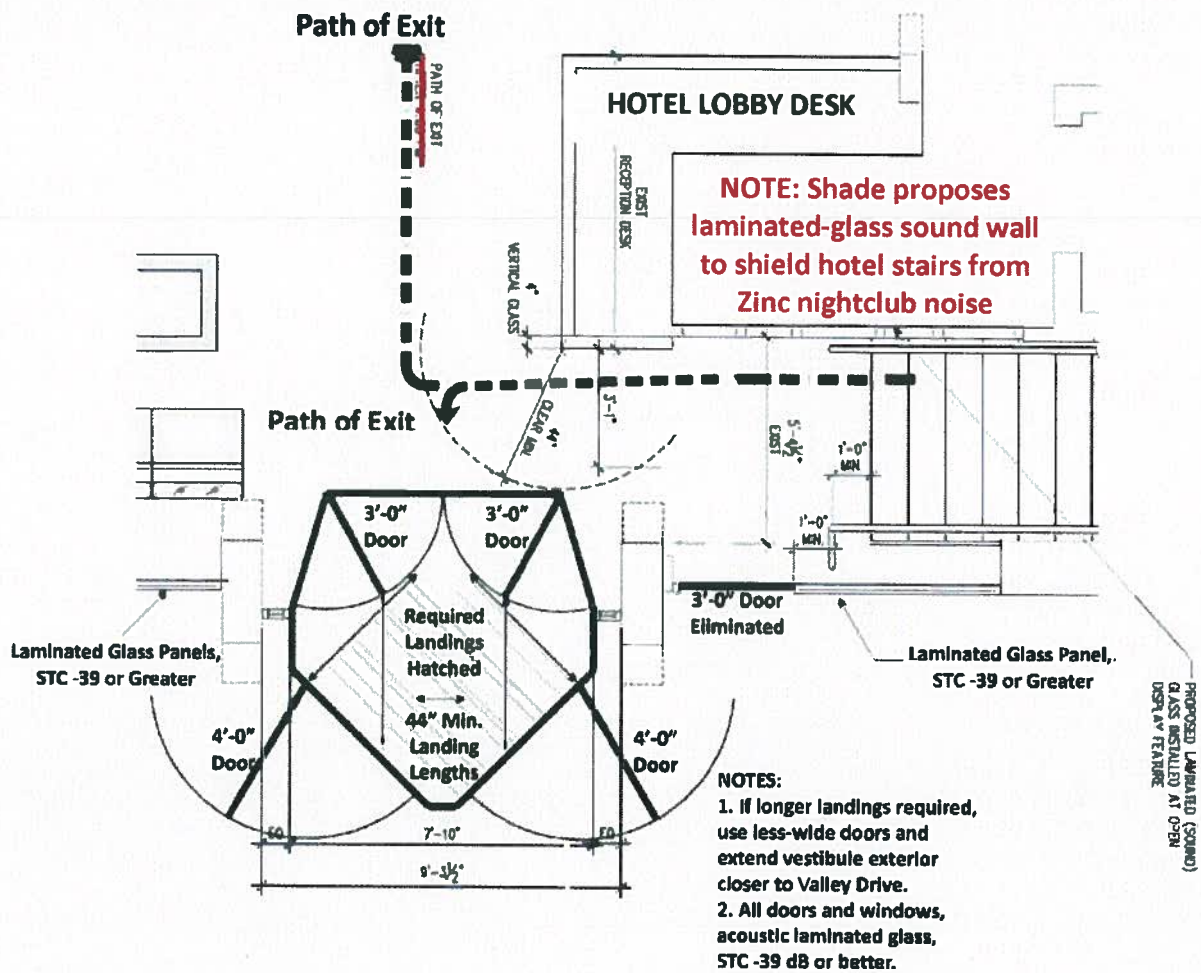


EXHIBIT 4. TERRACE AND LOBBY MITIGATION CONCEPT

TERRACE ENCLOSURE INCLUDES 8-FT WIDE INGRESS-EGRESS DOORS

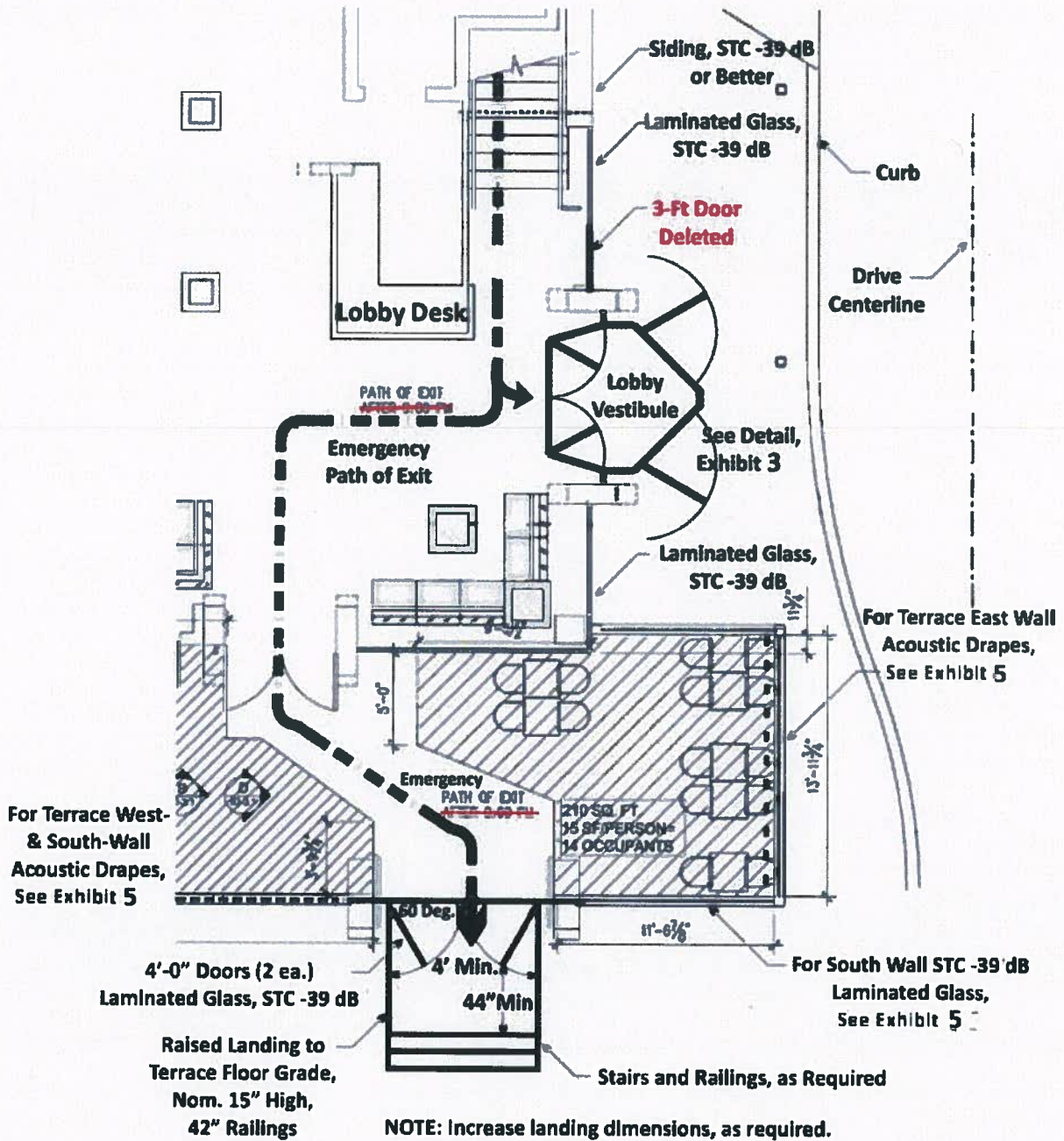


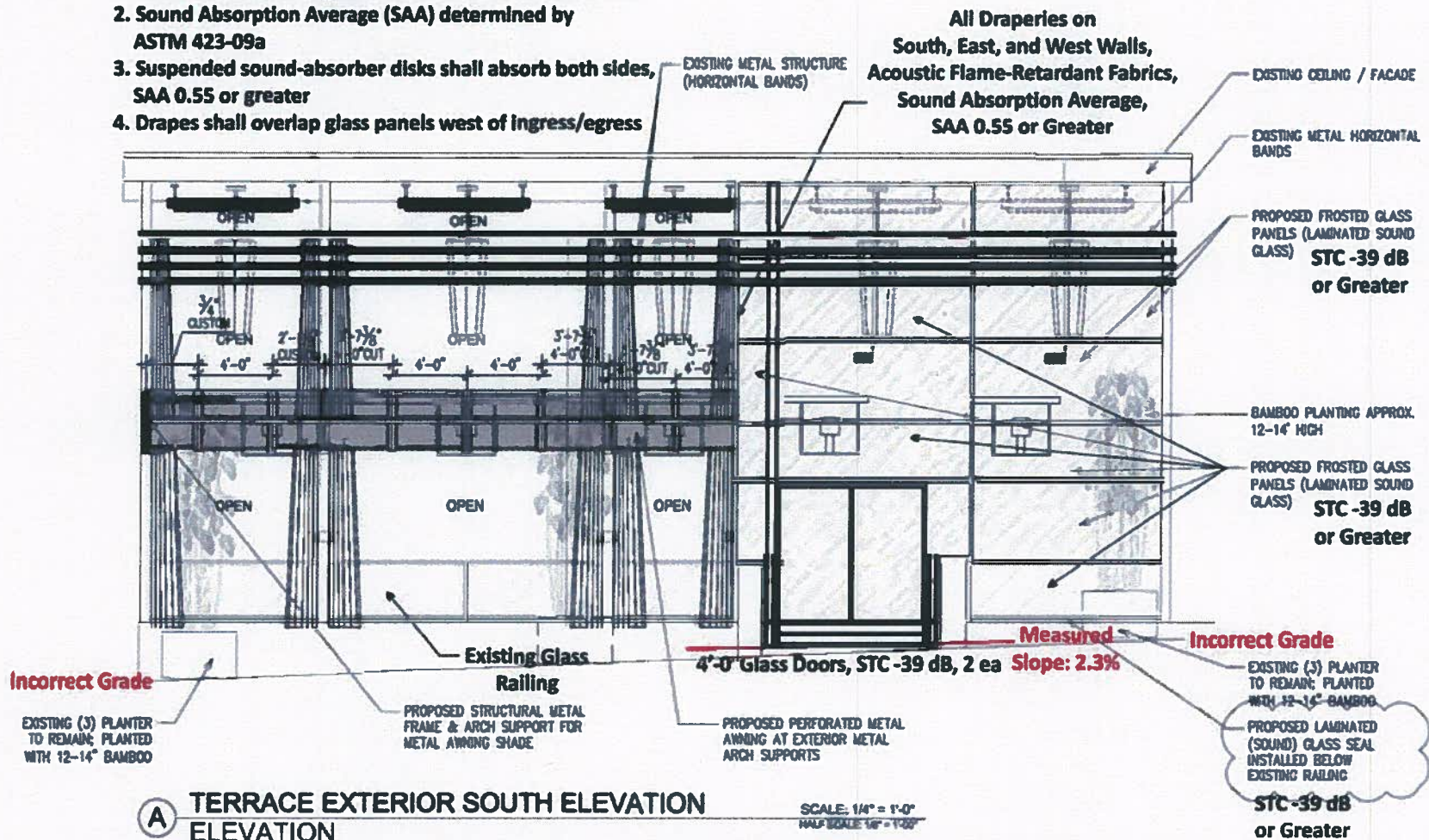
EXHIBIT 5. TERRACE MITIGATION CONCEPT, SOUTH ELEVATION

TERRACE ENCLOSURE: GLASS PANELS EAST SIDE; ACOUSTIC DRAPES WEST SIDE

- STC -39 dB glass panels on terrace south wall extended to include ingress-egress double-door assembly
- After 9 PM, acoustic drapes shall cover the east single-glazed glass panel wall
- Acoustic drapes shall have Sound Absorption Average [SAA] of 0.55 or greater
- Acoustic drapes fire retardant treated, pursuant to California Code of Regulations Title 19, Articles 3 and 8

NOTES:

1. Flame-retardant shall comply with CA fire code, California Code of Regulations Title 19, Articles 3 and 8
2. Sound Absorption Average (SAA) determined by ASTM 423-09a
3. Suspended sound-absorber disks shall absorb both sides, SAA 0.55 or greater
4. Drapes shall overlap glass panels west of ingress/egress



(A) TERRACE EXTERIOR SOUTH ELEVATION ELEVATION

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Date	Day of the Week	Event	Attendance	Time	Comments
9.19.13	Thursday	CalCPA networking event	75	6-10pm	Skydeck
9.20.13	Friday	Donahoe Rehearsal Dinner	80	6-10pm	Courtyard
9.21.13	Saturday	Cross Post Wedding Reception	90 max	6-10pm	Skydeck
9.25.13	Wednesday	Be Inspired PR Cocktail Event	100	6-10pm	Courtyard
9.28.13	Saturday	SantosdeSouza-Doricko Reception	40	6-10pm	Skydeck
10.01.13	Tuesday	Rich Reception	50	6-10pm	Skydeck
10.12.13	Saturday	Garcia Birthday Party	50	6-10pm	Skydeck
10.17.13	Thursday	Muse Cocktail Event	70	6-10pm	Skydeck
10.18.13	Friday	Accenture Event	70	6-10pm	Skydeck
10.19.13	Saturday	Northrop Grumman Event	80	6-10pm	Cocktail hour on Skydeck, Sit-down dinner in Courtyard
10.24.13	Thursday	310 YP Event	150	6-9pm	Zinc Lounge and Zinc Terrace

EXHIBIT C
PC MTG 3-12-14