

Angela Soo

From: NATHANIEL HUBBARD <natehubz@me.com>
Sent: Monday, May 26, 2014 9:22 AM
To: Paul Gross; Christopher Conaway; Martha Andreani; Steve Ortmann; Kathleen Paralusz
Cc: Bruce Moe; Quinn Barrow; Diana Varat; Richard Thompson; Laurie B. Jester; Partridge Wayne & Mako; McPherson Don
Subject: Residents; Critique of Shade Draft Resolution No. PC 14-XX
Attachments: 140525-2014CUP-Entitlements-Compiled.pdf

Planning Commission
City of Manhattan Beach
Via Email

Subject: Residents Critique of Shade Draft Resolution No. PC 14-XX

Chairman Gross and Commissioners,

The attachment provides our critique of the subject draft resolution, the "2014 CUP," which requires major revisions in order for the planning commission to make the findings required by municipal code section MBMC 10.84.060, Required Findings.

Specifically, Finding G states that the 2014 CUP will not result in any intensification, compared to the current use permit, Resolution No. PC 05-08, the "2005 CUP." The table in our critique delineates many substantial increases, regarding closing hours, increased occupancy, a full-scale restaurant and addition of special-event use to the terrace and rooftop SkyDeck.

Furthermore, as our critique demonstrates, the Behrens's acoustic analysis estimates only 1 to 3 dB reduction for the physical mitigation proposed by the 2014 CUP for the terrace and lobby.

Consequently, unless the commissioners require extensive changes in the findings and conditions, the Planning Commission should deny Mr. Zislis's application.

Nate Hubbard
1300 N. Ardmore Ave
natehubz@mac.com

**LATE ATTACHMENTS
PC MTG 5-28-14**

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OVERVIEW: SHADE HOTEL NEW ENTITLEMENTS AND REQUIRED MITIGATION

SUMMARY.

The draft resolution grants many intensifying new entitlements, compared to terms and conditions in the existing use permit, Resolution No. PC 05-08, the "2005 CUP". The table on the next page delineates the new privileges, which extend closing hours, increase occupancy, permit a full-scale restaurant and add special-event use to the terrace and rooftop SkyDeck.

In exchange, the city requires only token physical and operational mitigation, namely, a revolving door at the lobby front entrance and partial enclosure of the terrace south wall with acoustic glass, leaving the 80 sq-ft south entrance to stand open. The analyses conducted by the City's acoustic expert Behrens show that these two physical measures will reduce noise by negligible amounts, so insignificant, that a person cannot discern the reduction.

Feasible physical measures exist to mitigate the noise in the residential neighborhood across the Valley-Ardmore parkway, but the city chooses not to require them, per **Finding H**.

PHYSICAL MITIGATION. The staff report Exhibit C, Public Comments, documents the physical mitigation required to mitigate the noise disturbances as follows:

◆ **Terrace:** 1) Full enclosure of lower level; 2) Doors for south entrance; 3) Noise absorbers suspended from and on ceiling; 4) Acoustic curtains for all of east and south walls, except entrance; 5) 12ft high acoustic curtains on west side; and, 6) Sound-trap closure of the terrace south-wall horizontal gap at the ceiling.

◆ **Lobby:** 1) Vestibule; 2) Façade upgraded with acoustic glass; and, 3) Acoustic curtains

◆ **Courtyard:** 1) Acoustic curtains; and, 2) Folding wall to isolate guest rooms from nightclub.

OPERATIONAL MITIGATION. Exhibit C also documents the operational mitigation as primarily: 1) A definition for 'hard' closing as no sales, service or consumption of alcohol, drinks or food; and, 2) Use of west entry-exit after 9 PM by non-registered patrons. The 2014 CUP has adopted our definition of a 'hard' close, but not the use of the west entrance, which in 2010, Mr. Zislis accepted in writing. Also, the City permits alcohol consumption until closing time.

OTHER 2014 CUP DEFICIENCIES.

Findings G and H in the 2014 CUP conclude that the project will not increase intensity or change use compared to the 2005 CUP, which the next-page table proves completely false.

For example, Finding G states no change occupancy, yet the 2005 Planning Commission [PC] approved plans that limited the SkyDeck to 45 persons, not the 92 in 2014 CUP Condition 21. Despite our demand submitted last week, staff has withheld from evidence, the 2004 building permit and the 2005 CUP Exhibit F plans approved by the PC, because those documents establish that the 2014 CUP will increase occupancy in alcohol-serving venues by 154. **Conditions 17 and 39** enable Mr. Zislis to reject the use permit, by not implementing requirements, as he did with the 2010 CUP.

Condition 20 requires compliance with plans approved by the planning commission. The staff-report Exhibit D plans specify only a front-entrance revolving door, which will legally eliminate the vestibule mentioned in **Finding F(a)** and **Conditions 2(A) & 9**.

SUMMARY CONCLUSION.

Without effective physical mitigation, the Planning Commission cannot make the necessary **Findings G, H and R** that the intensification will not adversely impact residents.

OVERVIEW: SHADE HOTEL NEW ENTITLEMENTS AND REQUIRED MITIGATION

NEW ENTITLEMENTS GRANTED TO SHADE HOTEL BY DRAFT RESOLUTION NO. PC 14-XX

The items in **red** correspond to changes in the City conditions presented at the April 23 hearing.

<u>2005-CUP REQUIREMENTS</u>	<u>DRAFT 2014-CUP NEW ENTITLEMENTS</u> [Also current violations of 2005 CUP]
50 dB acoustic wall assembly between the Zinc Lounge & lobby [Finding O; Condition 1; and, Entertainment Permits, 2006-2014]	Sound wall eliminated [Condition 11]
<ul style="list-style-type: none"> ●Zinc Lounge occupancy : 77 ●Skydeck occupancy: 45 ●Terrace occupancy: 22 [2004 building permit; Exhibit F plans in 25 May 2005 staff report; Finding S(4); and, Mr. Zislis 2005 application and testimony]	<ul style="list-style-type: none"> ●Zinc Lounge occupancy : 159 ●Skydeck occupancy: 92 ●Terrace occupancy: 47 ●154 total increases from the 2005 CUP [Condition 21]
Zinc Lounge-meeting room closed: 11 PM daily [Finding L]	Increased to midnight daily [Condition 19]
Terrace close: 10 AM Monday-Friday; 11 AM Saturday-Sunday [Finding L, Condition 5]	Terrace close 11 10:30 PM daily [Condition 19]
SkyDeck close: 10 PM daily [Metlox CUP Condition 30]	Increased to 10:30 PM daily [Condition 19]
Dancing restricted to 15'x20' Zinc Lounge floor [Metlox CUP Condition 40; Entertainment Permits 2006-2014, including attached drawing]	Dancing permitted throughout the hotel, without restriction
Special events not permitted on the terrace or the SkyDeck [Condition 2 and Metlox CUP Condition 28]	Special events permitted on both the terrace and the SkyDeck [Condition 19]
Lunch service and full-scale restaurant prohibited [Finding L, Conditions 3 & 5]	Lunch service and full-scale restaurant permitted [Condition 32]
Advertising Zinc lounge and Skydeck as separate attractions prohibited [Cond. 4]	Advertising alcohol-serving venues as separate attractions permitted [Condition 33]
Menu posting outside hotel prohibited [Condition 6]	Menu posting outside hotel permitted [Condition 34]

OVERVIEW: SHADE HOTEL NEW ENTITLEMENTS AND REQUIRED MITIGATION

DISCUSSION OF 2014 CUP DEFICIENCIES.

This section substantiates statements made in the preceding Summary.

Negligible Noise Reduction by Lobby and Terrace Physical Mitigation.

Lobby Rotating Door Entry-Exit. For the April 23 hearing, the acoustic expert Behrens presented an analysis, that the lobby mitigation would 'substantially' reduce noise by 5 dB. Exhibit 1 presents their noise-difference map, with the 4-6 dB reduction band portrayed in their light shade of green and also in red, on Pages 1 and 2, respectively.

Clearly, the 5 dB reduction occurs completely outside the area where Ardmore Ave residences face the lobby door. The two darker shades of green in that area equate to 3 dB and a -1 dB reductions, respectively. A person cannot discern such small reductions in noise.

Terrace Open South Entry-Exit and Existing Curtains. In their April 23 report and testimony, Behrens stated that terrace south-portal doors and acoustic curtains reduce noise by 13 dB. According to Page 3 in Behrens's April 16 report, eliminating the doors reduces attenuation to 8 dB. Eliminating the acoustic curtains then further reduces attenuation to 1 dB, a negligible amount. The terrace plans in Exhibit D for the 2014 CUP for approval by the PC, require neither the doors to close the south entrance nor the acoustic curtains.

Condition 8 in the 2014 CUP requires the terrace south entry-exit to remain open for emergency access to the three overlooking balconies. To justify their claim, staff cites Section 1029.1 in the state building code, which does not apply to the Group R1 occupancy for hotels. [Exhibit 2] We request that commissioners ask staff whether Section 1029.1 in the 2013 building code for emergency access to the balconies applies to Shade Hotel.

Finding M incorrectly claims that the 2014 CUP will comply with the objective standards in the noise ordinance section MBMC 5.48.160, which reads as follows:

B. Unless otherwise herein provided, no person shall operate or cause to be operated, any source of noise at any location within the City, or allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person which causes the noise level when measured on any other property to exceed the standards in Tables 1 through 6 of this section.

In September 2013, we requested that staff measure noise levels created by Shade just outside its internal property lines on Metlox Plaza, to determine the reduction required to comply with the above objective standards. **Staff refused to make the measurements.**

2014 CUP Intensification by Increased Occupancies from the 2005 CUP by 154.

As per the preceding table, occupancies in the Zinc Lounge, SkyDeck and the terrace have increased by 154 persons, a substantial intensification of use, contrary to **Findings G & H.**

At the April 23 hearing, Mr. Zislis and Director Thompson testified that no changes have occurred in occupancies, since approval of the 2005 CUP on 25 May 2005. The facts do not support their testimony. In the August 2004 building permit, the Fire Department established the Zinc Lounge and Skydeck occupancies as 77 and 45 respectively, subsequently approved by the 2005 PC in the Exhibit F plans for the 2005 CUP public hearing. Staff has withheld these documents from the PC, despite our demand that they provide this evidence.

OVERVIEW: SHADE HOTEL NEW ENTITLEMENTS AND REQUIRED MITIGATION

2014 CUP Intensification by Permitting Special Events on the Terrace and the Skydeck.

The **Section 2 Introduction** acknowledges that the 2014 CUP increases intensity by permitting special events on the terrace, but fails to extend that privilege to the SkyDeck. As per the proceeding table, the 2005 CUP Condition 2 and the Metlox CUP Condition 28 exclude the terrace and Skydeck from special events. These high-intensity special events on the terrace and SkyDeck in violation of the 2005 CUP have resulted in many complaints by residents.

2014 CUP Intensification by Later Hours for Closed Than the 2005 CUP.

Unquestionably, **Condition 19** in the 2014 CUP extends the closing times of the Zinc Lounge, the terrace and the Skydeck, from the hours listed for the 2005 CUP in **Finding L**. This fact alone renders the non-intensification conclusions of **Findings G & H** invalid. Consequently, the PC cannot make the determination that the token mitigation measures will protect "...the surrounding residential uses from the potential adverse effects.. ", as stated in **Finding R(1)**.

CONCLUSIONS.

According to the analysis by the acoustic expert Behrens, the physical mitigation proposed in the 2014 CUP D plans for the terrace and lobby will reduce noise only by 1 to 3 dB, contrary to the claims in **Finding N** of 6 dB.

The acoustic analysis and sound measurements did not address compliance with the objective noise standards on property not controlled by Mr. Zisis, adjacent to Shade Hotel. As result, the City does not know the amount of noise reduction necessary to comply with the objective standards in the municipal code section MBMC 5.48.160, contrary to **Finding M**.

Finding M does correctly state, however, that the City does not know the noise reduction required to comply with the subjective standards in the noise ordinance.

Consequently, the City must require all known mitigation measures that the record has identified as feasible and effective. According to **Finding H**, however, the City has chosen not to require all these practical mitigation measures, neither physical nor operational.

Finding G incorrectly states the 2014 CUP does not intensify use, a misrepresentation proven by the table of new entitlements and 2005-CUP violations on Page 2 of this critique. **Finding G** requires a complete revision that states: 1) Shade Hotel violates its 2005 CUP; and, 2) Legitimization of those violations will result in the intensifications listed herein.

Finding R requires the Planning Commission to determine that the 2014 CUP conditions will mitigate the intensifications, so that Shade Hotel will not adversely impact the residential area across the Valley-Ardmore Parkway. Obviously, from the facts of 2005 CUP violations and 2014 CUP intensifications provided herein, the commissioners cannot make **Finding R**.

If the commissioners cannot make the specific and required quantitative findings, then municipal code section MBMC 10.84.060(C) requires:

*"C. **Mandatory Denial.** Failure to make all the required findings under (A) or (B) shall require denial of the application for a use permit or variance."*

We request that the Planning Commission to either make the extensive revisions required in the 2014 CUP or the application as nonconforming with the municipal code.

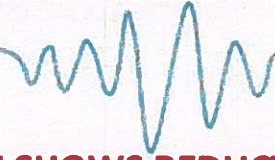
Nate Hubbard, 1300 N. Ardmore Ave

Don McPherson, 1014 1st St

BEHRENS CLAIMS LOBBY MITIGATION REDUCES NOISE BY 5 DB

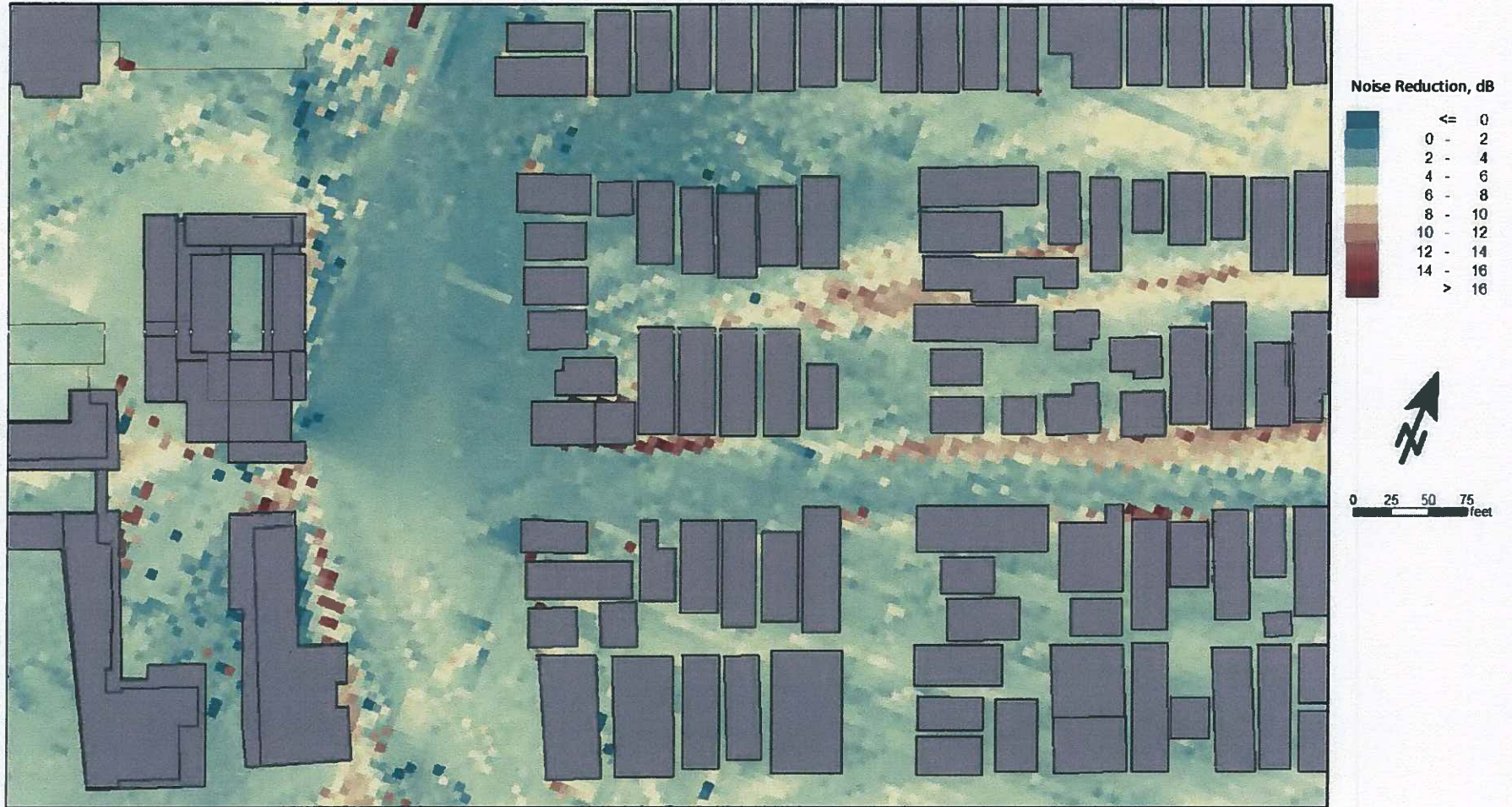
Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



NEXT PAGE SHOWS REDUCTION ONLY 1 to 3 DB

Figure 12. Mitigated Front Entrance Difference Map at 1st Floor (Scenario 5)



LOBBY MITIGATION ACTUALLY ONLY REDUCES NOISE BY 1 TO 3 DB

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants

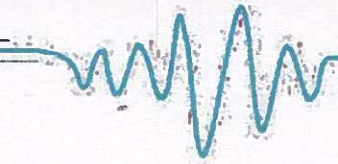
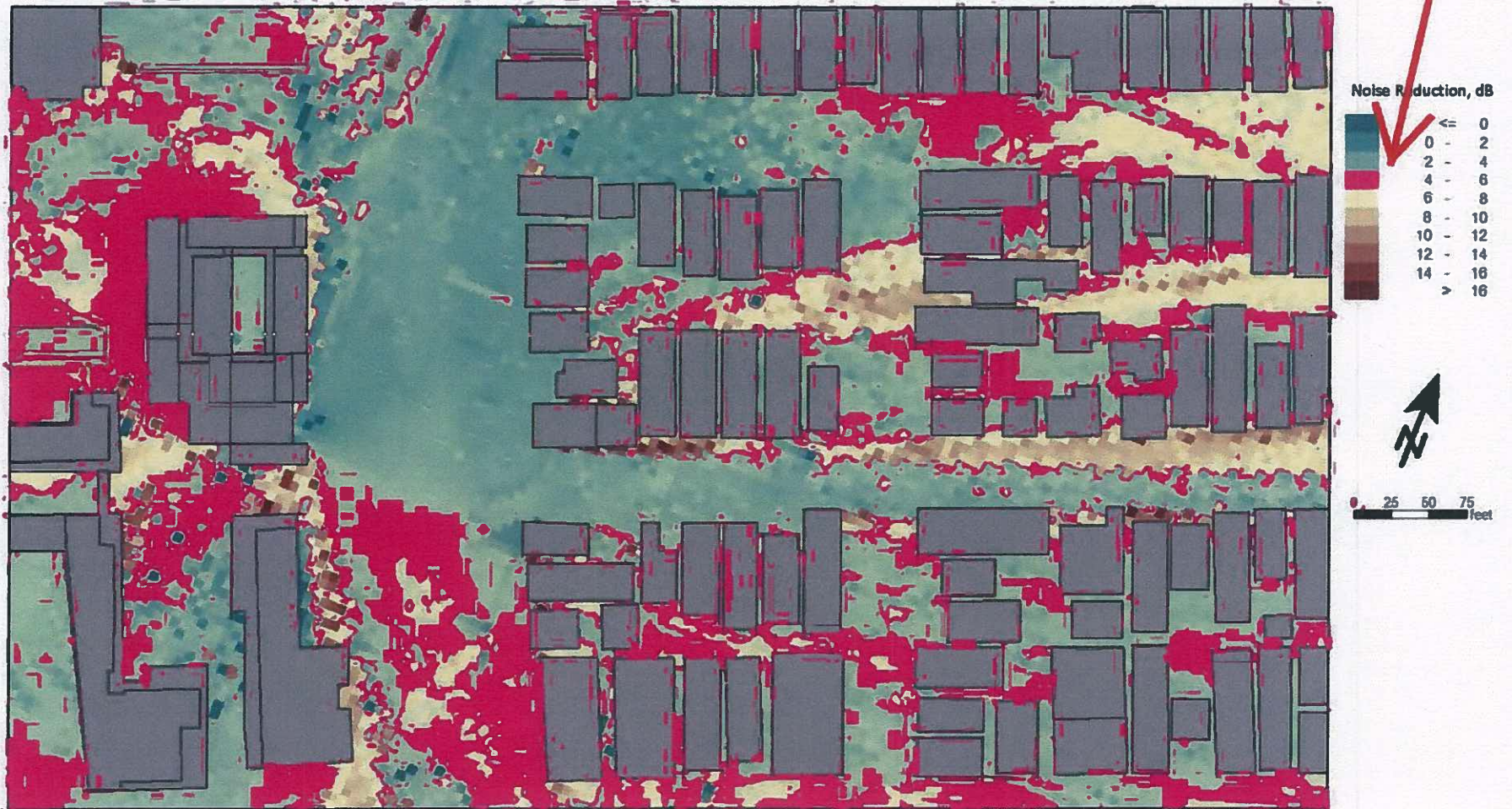


Figure 12. Mitigated Front Entrance Difference Map at 1st Floor (Scenario 5)

4-6 DB NOISE REDUCTION BAND REPLACED BY RED



CONDITION 8 INCORRECTLY APPLIES STATE BUILDING CODE TO TERRACE SOUTH ENTRANCE

In the draft 2014 CUP, Condition 8 requires that the terrace south entrance remain open "to allow required emergency access."

Staff incorrectly applies Section 1029.1 in the 2013 state building code to the Shade Hotel, which has a Group R-1 occupancy. As per below, this section applies only to Group R-2 and R-3 occupancies

We request that the commissioners ask the building official whether the emergency access in Section 1029.1 applies to the Shade Hotel.

SECTION 1029 EMERGENCY ESCAPE AND RESCUE

1029.1 General. In addition to the means of egress required by this chapter, provisions shall be made for emergency escape and rescue openings in Group R-2 occupancies in accordance with Tables 1021.2(1) and 1021.2(2) and Group R-3 occupancies. Basements and sleeping rooms below the fourth story above grade plane shall have at least one exterior emergency escape and rescue opening in accordance with this section. Where basements contain one or more sleeping rooms, emergency escape and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Such openings shall open directly into a public way or to a yard or court that opens to a public way.

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Angela Soo

From: John Strain <jstrain@ustaxlawyer.com>
Sent: Tuesday, May 27, 2014 2:55 PM
To: List - Planning Commission
Cc: Laurie B. Jester; Joan Jenkins; Nate Hubbard; Michael Zislis; Wayne Partridge
Subject: Planning Commissions
Attachments: Comments from Shade Hotel.pdf

Commissioners and others copied:

Please see the attached letter on behalf of Shade Hotel.

Best Regards,

John A. Strain

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May 27, 2014

By email:

Manhattan Beach Planning Commission

Dear Commissioners:

Michael Zislis and Shade Hotel continue to look for steps that will reduce any inconveniences to Shade's immediate neighbors, while still providing the range of hospitality services that the residents of Manhattan Beach want. With that in mind, Mr. Zislis (and myself) met on Friday, May 23 and again on Memorial Day with the neighbors' representative, Nate Hubbard, and with Wayne Partridge who is currently assisting Mr. Hubbard on these matters. We believe that everyone brought a positive spirit to those meetings.

In those meetings, Mr. Zislis expressed a willingness to make two significant changes to the terms as now stated in the draft Master Use Permit amendment. First, Shade would be willing to replace the curtains on the terrace (the south side of the hotel) as part of the contemplated renovation project. That is, instead of waiting three years (the estimated remaining useful life of the current curtains), this change would be made during the next five months. Second, everyone in our meetings agreed that the revolving door proposed for the east side would not be an effective or desirable solution. Accordingly, Shade (and the neighbors' representative) believe that the renovations should require a vestibule. This renovation would use STC 36 rated glass (one half inch) on the door and STC 36 rated glass/laminate on the adjoining windows.

Mr. Zislis and Shade do have a couple of specific concerns with the current draft. We believe that the Terrace hours should run to 11:00 p.m. on Fridays and Saturdays (and before holidays). Also, given the definitions of "closed" we think that the additional restriction limiting sales and services for one hour before closing is excessive regulation. This should either be eliminated or reduced to 30 minutes.

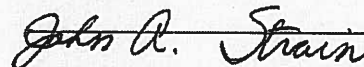
In our meetings, we had an open conversation about other things that might be done to help satisfy the concerns expressed by Mr. Hubbard and some others. We believe that two other major renovations could be quite helpful, but they would require variances. The first variance would allow the hotel to extend its south side entry steps about five feet beyond the current edge of the terrace. This would not interfere with the existing passage through the "12th Street" corridor, since this would correspond with the extended patio at Pain Quotidien and the current placement of various large pots. With that variance, Shade could then install an exit door on the south side. This would deal with Mr. Hubbard's concerns that the proposed acoustic curtains don't block all noise routes on that south side.

The other proposed variance involves height limits and would permit a retractable roof above the SkyDeck. That roof, and a similar roof over the courtyard, would provide a means of sealing off noises in the evening hours when neighbors might be more concerned. Given the local geography, with neighbors looking down at the top of the hotel, we do not believe that this would restrict views at all.

The improvements that could be allowed with those variances would involve substantial costs to the hotel. In return, since noises would be sealed off, this would provide a basis for the SkyDeck, the Courtyard and the Terrace to be used (principally for weddings and other special events) until midnight.

We were rather disappointed this morning to see the most recent submission to the Commission from Mr. Hubbard and Mr. McPherson. Shade remains committed to exploring ideas with the neighbors and their representatives. We believe that Mr. Hubbard shares that commitment.

Best Regards



John A. Strain
For Shade Hotel

WEP.

JAS
Encl.
Copies (w/ encl.):

Manhattan Beach City Council
Mr. Richard Thompson
Ms. Laurie Jester
Joan Jenkins, Esq.
Mr. Michael Zislis
Mr. Nate Hubbard
Wayne Partridge, Esq.
Sheri Bonstelle, Esq.

Angela Soo

From: NATHANIEL HUBBARD <natehubz@me.com>
Sent: Tuesday, May 27, 2014 1:15 PM
To: Paul Gross; Martha Andreani; Christopher Conaway; Steve Ortmann; Kathleen Paralusz
Cc: Bruce Moe; Quinn Barrow; Diana Varat; Richard Thompson; Laurie B. Jester; Partridge Wayne & Mako; McPherson Don
Subject: Residents' Redline for Draft Resolution No. PC 14-XX, Shade Hotel
Attachments: 140528-PC-Hearing-StaffReport-DraftCUP-ABY-B&W-Formatted-v3.pdf

Planning Commission
City of Manhattan Beach
Via Email

Subject: Residents' Redline for Draft Resolution No. PC 14-XX, Shade Hotel

This past week, Wayne Partridge and I have discussed the Shade use permit with Mike Zislis. We make progress, but have not yet reached any formal agreements. Because of the impending public hearing tomorrow, May 28, we submit our proposed modifications to the draft resolution. Although we indicate flexibility in a number of conditions, the attached redlined CUP does not reflect the specifics of our incomplete negotiations.

The subject draft resolution, the "2014 CUP", has many significant deficiencies. We request that the planning commission [PC] continue the public hearing to a date certain, to correct these problems, which will take time. For example, the plans require total revision to depict whatever physical mitigation measures the PC approves.

The sheer number and scope of required modification mandates that the commissioners review the changes before approving the resolution. Please do not repeat the mistake made in 2010, when the planning commission discovered they could not make any substantial changes to the seriously flawed 2010 CUP, which resulted in it not being implemented.

A summary of our principal revisions follows.

1. Condition 19 increases closing times to midnight upon approval, before any mitigation implemented. Our redline corrects that in Condition 17;
2. The Condition 5 penalties to motivate implementation within five months, by limiting special events, will not work. Who will enforce them? Our condition 17 requires escalating daily monetary penalties, which will result in self-enforcement;
3. The City's acoustic expert determined that the only effective mitigation for the terrace requires doors for the south entrance and acoustic curtains. The 2014 CUP requires neither, which results in only a 1dB noise reduction, according to Behrens's April 16 report, Page 3. Our redline adds the terrace doors and acoustic curtains to Condition 2;
4. Condition 2 requires the PC to approve the conceptual plans submitted on 4 February 2014, which require next to none of the effective physical mitigation measures, such as the rotating front door, rather than the vestibule. The plans require a complete revision;
5. Conditions 17 and 39 enable Mr. Zislis to reject the 2014 CUP, by not implementing the mitigation measures or by not filing the affidavit, respectively. Condition 17 uses the same language as in the 2010 CUP Condition 22, which resulted in the demise of that use permit. Our redline corrects these deficiencies in Conditions 17 and 39; and,

6. Finding G ignores the violations of the 2005 CUP, by erroneously claiming that the 2014 CUP does not intensify use, compared to the 2005 CUP. Our revised Findings G and H correct this material misrepresentation of fact.

We believe it imperative that the planning commission continues the public hearing to a date certain, to ensure that all required changes get properly implemented in the 2014 CUP, before approving it. If the draft resolution cannot be properly vetted, then the planning commission should deny the application.

Nate Hubbard
Shade Neighborhood Representative
1300 N Ardmore Ave

RESOLUTION NO. PC 14-XX

RESOLUTION OF THE MANHATTAN BEACH PLANNING COMMISSION APPROVING AN AMENDMENT TO A MASTER USE PERMIT ALLOWING NOISE MITIGATION MEASURES, FULL FOOD SERVICE AND MARKETING, SPECIAL EVENTS ON THE TERRACE, MODIFIED ALCOHOL SERVICE HOURS ON THE SKYDECK, AND INSTALLATION OF ARCHITECTURAL IMPROVEMENTS AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATING COMPANY, LLC - MICHAEL A. ZISLIS, OWNER)

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

SECTION 1. The Planning Commission hereby makes the following findings:

- A. Manhattan Inn Operating Company, lie ("Applicant") seeks City approval of an amendment to the Master Use Permit for the Metlox project related to the Shade Hotel ("subject property"). Pursuant to Manhattan Beach Municipal Code Section 10.84, Planning Commission approval is required for the proposed modifications. |
- B. The Planning Commission conducted public hearings regarding the application on February 14, March 12, April 23, and May 28, 2014. The public hearings were advertised pursuant to applicable law and testimony was invited and received.
- C. The original Master Use Permit was approved by the City Council in July 2002 through Resolution Nos. 5770 and 5771 and includes a two-story subterranean public parking structure 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.
- D. An Amendment to the Master Use Permit related to the Shade Hotel was approved in 2005 through Resolution No. PC 05-08.
- E. The Applicant seeks an Amendment in order to incorporate the following revisions to the Master Use Permit:

1. **Noise Mitigation Measures:** Installation of revolving front door adjacent to Valley Drive (and a non-revolving door for disabled access), laminated sound glass enclosure on the southeast corner of the Terrace located from floor-to-ceiling and sealing of "gaps", 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 glass enclosure.
 2. **Full Food Service and Marketing:** Throughout the entire Hotel, allow breakfast, lunch and dinner service open to the general public as well as hotel guests. Increase hours of operation in the Zinc Bar and Lobby, the Terrace, Courtyard and Skydeck for daytime and late night service daily; hours are currently limited to breakfast and evening appetizers with limited hours, and special events. Allow posting of menus in front of the Terrace, and advertising, marketing and promotion of the full food service as well as the Lobby component of the Hotel; outside menu posting is currently not permitted and marketing is limited to attracting Hotel guests and event planners.
 3. **Special Events on the terrace:** Allow events to be scheduled during the daytime and late night; currently special events are not specified on the Terrace. Increase occupancy to 90 occupants, currently 47.
 4. **Later Alcohol Service on the roof deck.** Allow later service of alcohol on the roof deck (Skydeck); currently the roof deck can serve alcohol until 9:00 PM, food and non-alcoholic drinks until 10:00 PM with closing at 10:00 PM.
 5. **Awnings, curtains and decorative lighting:** Allow installation of decorative metal shade awnings on the south side of the Terrace extending over the walkway and partially over the Terrace, 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 ValJey Drive.
- F. In response to comments from the Commission, staff and the public, the Applicant has modified the project as follows:
- a. The option for a front door vestibule in lieu of a revolving door
 - b. Full food service (breakfast, lunch and dinner) only on the entire Terrace and several tables in the Zinc Bar and Lobby, not throughout the entire hotel. Full food service in other areas only during special events and functions. Food service, primarily small- plates, to continue in the majority of the Zinc Bar and Lobby, the Skydeck and the conference room. The Courtyard would continue to only be used for special events and functions. A full scale restaurant is not proposed; the primary use will continue to be a hotel.

- c. The Terrace occupancy will remain at 47 occupants, not increase to 90.
 - d. The proposed fiberglass canopy over the existing metal arches at the front entry off of Valley Drive may shall? not be installed.
 - e. Retain the existing non-acoustic curtains surrounding the Terrace and only replace if necessary to mitigate noise.
- G. Shade Hotel violates its use permit, Resolution No. PC 05-08 (the "2005 CUP"). Violations include: 1) No sound wall between the Zinc Lounge and hotel lobby; 2) Exceeding permitted occupancies, 3) Operation after closing times; 4) Operating a full-scale restaurant; and 5) Conducting special events on the terrace and rooftop SkyDeck. Legitimizing these violations will result in substantial intensification of use. ~~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 as there is no intensification of use or increase in occupancy as the occupancy remains the same as originally approved by the City of Manhattan Beach Fire Department and posted on the site in 2005. The food and drink services and other services offered by the hotel will continue to be accessory to the primary hotel use, which currently is a first-class visitor serving full-service hotel use with food, drink and event services~~
- H. An Environmental Impact Report (EIR) 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 proposed Amendment, as revised, is within the scope of the EIR, and will not cause any significant environmental impacts or more severe environmental impacts that have not been analyzed in the EIR. ~~In fact, as stated throughout these findings, the Amendment, as revised, has the potential to further reduce impacts related to noise. The EIR is the appropriate environmental document to analyze the proposed Amendment, as revised, inasmuch as: (1) there are no substantial changes in the Project that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) no substantial changes have occurred with respect to the circumstances under which the Project is undertaken that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was adopted, shewing that: (a) the~~

~~Project will have one or more significant effects not discussed in the previous EIR; (b) there are significant effects previously examined that will be substantially more severe than shown in the previous EIR; (c) there are mitigation measures or alternatives previously found not to be feasible that would in fact be feasible and would substantially reduce one or more significant effects of the project, but the City declines to adopt the mitigation measure or alternative; or (d) mitigation measures or alternatives that are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effect on the environment, but the City declines to adopt the mitigation measure or alternative.~~ The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The EIR is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerk's office, located at 1400 Highland Avenue, Manhattan Beach, CA 90266, as well as on the City's website. The custodian of these records is Angela Soo, Community Development Department Executive Secretary.

- I. 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.
- J. The General Plan designation for the property is Downtown Commercial.
- K. 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 special event, function, food, and other similar support services as secondary uses. Marketing and promotion of the hotel shall be consistent with these uses as provided in the conditions.
- L. Resolution No. PC 05-08 approved an Amendment to a Master Use Permit, to allow modifications to the previously approved alcohol sales and special events and describes the current approved business operations and project as follows: 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. 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 (midnight) Friday and Saturday. The availability of the Inn for special events

shall not be marketed as the primary use. 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 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. Shade Hotel shall not post any drink or food menus, or any drink or food signage outside of the hotel. The Sun Deck shall stop regular alcohol service no later than 9:00 p.m. daily. 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.. The following room/area names have changed- the "Living Room or Wine Bar" is now the Zinc bar and Lobby, the "Porch" is now the Terrace, the "Meeting Room" is now the "Conference (Green) Room" and the "Sun Deck " is now the Skydeck.

- M. Four independent acoustics analyses were conducted by Don Behrens & Associates, two under the direction of the Community Development Department. The first reports, dated September 30 and October 7, 2013, are continuous Sound Monitoring Reports from three residential locations across the street from Shade Hotel to the east on Valley Drive. The reports continuously recorded the noise received by these properties from Friday September 20 through Friday October 4, 2013. The reports indicate that the average hourly sound levels in the area range between a low of about 35 to 47 dBA and a high between about 51 to 69 dBA. The highest levels of noise occur during the daytime, typically 9:00 AM to 7:00 PM, and the lowest levels of noise typically occur between 2:00 AM and 4:00 AM. The Shade Hotel is not shown to significantly alter the noise levels in the area. ~~The noise from the Shade Hotel does not exceed the objective noise standards in the Manhattan Beach Municipal Code (MBMC); the subjective standard was not evaluated in the reports. The actual noise measurements and continuous noise monitoring was conducted during several large events on the Skydeck, in the Courtyard, and in the Lobby.~~
- N. A report dated February 4, 2014 was submitted by the Applicant to evaluate certain noise mitigation measures, based on the proposed architectural plans, dated December 10, 2013. ~~The report provides an assessment and recommendations for the Applicant's proposed noise mitigation measures and indicates a noise reduction of up to 6 dBA at the residences, with the south side Terrace noise mitigation being most effective.~~ Three-dimensional modeling of noise to assess various mitigation measures was also constructed. This acoustic evaluation guided selection of physical noise mitigation measures selected.

~~The Applicant also requested an analysis of the data from the continuous sound monitoring reports prepared for the City in September/October 2013, to determine the source of single-event noise increases above the average sound levels. The twelve instances analyzed show noise levels ranging from 68.2 to 99.5 dB. None of these single-event noise events were attributable to the Shade Hotel but instead were attributable to vehicles, mainly emergency vehicles, and airplanes. The Fire and Police station is directly to the north of the Shade Hotel across 13th street and emergency vehicles exit and enter from that location, sometimes onto Valley Drive.~~

- P. After the February 12, 2014 Planning Commission meeting, City staff contracted with the noise consultant to evaluate additional possible noise mitigation measures for the hotel. The consultant's report dated April 16, 2014 indicates that that the only really effective and clearly significant noise mitigation improvements would be the combination of a door on the Terrace entrance and new upgraded sound curtains, which would achieve a minimum decrease of 5-13 dBA. The City has chosen not to require the door to close the terrace south entrance, which is considered to be clearly noticeable. ~~Three-dimensional modeling of noise to assess various mitigation measures was also constructed. Mitigation is incorporated into the conditions based on all of these evaluations and recommendations, public hearing comments and Planning Commission discussion and direction.~~
- 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. 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 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. 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 changes 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 placed on the amended Use Permit and the additional mitigation measures related to noise that will be implemented. 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.

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 because, 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 modifications. The proposed amended use permit is consistent with the already approved primary and secondary uses of the facility. 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, with accessory food, drink and event services.
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. Additionally the conditions of approval require installation of noise mitigation on the Terrace and front door, limitations on hours of operation, special events, sales and service of alcohol, food and drinks, entertainment, amplified sound, security, marketing, closing of doors and

windows, limitations on valet, taxis, queue, staff parking, buses, and drop off.

- S. 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 Condition Nos. 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.

SECTION 2. The Planning Commission hereby APPROVES the subject Master Use Permit Amendment, including new Noise Mitigation Measures, modifications to Food Service, marketing, Special Events on the Terrace, and alcohol service modifications, and awnings, curtains and lighting as shown in the concept plan dated February 4, 2014, subject to the following conditions:

Entertainment and Noise

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 500 foot radius with standard notice procedures.
2. Noise Mitigation and other improvements. **[THESE CONDITIONS MAY CHANGE, SUBJECT TO ONGOING NEGOTIATIONS]** The following noise mitigation measures, as shown on the ~~approved-revised~~ concept plans dated ~~MM:DD:YYYY~~ February 4, 2014, are required to be installed, as per specifications: 1) All acoustic glass rated at Sound Transmission Coefficient STC-36 or better; 2) All acoustic absorbers rated at Sound Absorption Average of SAA 0.55 or better; and, 3) All assemblies acoustically sealed:
 - A) ~~Revolving front door or a~~ A front-door vestibule adjacent to Valley Drive and lobby frontage upgraded with acoustic glass ~~with a secondary non-revolving door for disabled and oversized luggage access, if required.~~
 - B) Laminated acoustic glass enclosure at the front reception desk ~~on the open display feature wall facing the new accessible door described in "A", off of Valley Drive.~~
 - C) ~~From floor to ceiling, Aa laminated sound partial acoustic glass enclosure wall from on the terrace southeast corner, of the Terrace located from floor to ceiling~~ extending past the south entrance. Doors shall close the south entrance, with an external landing exiting to the west.
 - D) Acoustic sealing of all existing openings and gaps in the glass ~~enclosure on the southeast corner of the Terrace walls~~ on the east and south sides
 - E) Acoustic absorbent panels on the ceiling and suspended acoustic panel "clouds" below the ceiling of the Terrace.
 - F) Acoustic curtains surrounding the Terrace on the east, south and west walls, except at the south entrance. The west-wall curtains shall not exceed 12-feet in height
 - G) At the terrace horizontal opening above the curtains, a sound absorbing assembly that prevents noise from escaping, but provides ventilation as required by the Fire Department
3. Public Areas-Venue (definition). Any area or space open to the public where sales, service and consumption of alcoholic beverages is permitted.

4. Special events and functions (definition).
 - A) Special Events are private events 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, with the exception of non-profit or charity types of events such as the Downtown Open House, Charity Education Wine Events, and Chamber events.
 - B) Functions are generally "themed" public events held periodically for the general public, up to twelve (12) per year, such as, Halloween, New Years, Valentines, St Patrick's Day, Manhattan Beach Open, Surf Festival, Mothers Day, Fathers Day and Six-Man.
 - C) Special Events and functions with over 100 people require pre-approval from the Community Development Department through the annual Entertainment Permit.

5. ~~**DELETE; SEE CONDITION 17 NOISE COMPLIANCE VERIFICATION. Special Events and functions and required noise mitigation improvements**~~ All noise mitigation improvements as detailed in Conditions No. 2, 7-9, 15, and 24-31 must be completed to the satisfaction of the Community Development Director within 5 months of the final approval of this Amendment. No special events or functions after 10:00 PM with more than 100 people may take place during this 5 month period unless they have been booked prior to the approval of this Amendment. After this 5 month period no special events shall be conducted after 10:00 PM with more than 100 people, until all of the required noise mitigation improvements are completed to the satisfaction of the Community Development Director.

6. Entertainment and amplified sound- Non-amplified music and sound is permitted in all public areas/venues described in Condition No. 6 subject to meeting the MBMQ Noise regulations, with the exception that none is permitted on the Terrace. All amplified music and sound, including live entertainment and live music, shall use the house system only and shall be limited to background music, including background music with DJ's, with the following exceptions:
 - A) Courtyard-Microphones are allowed only prior to ~~10 PM~~9:00 PM and shall use the house system only;
 - B) Terrace- Background music through house system only is allowed. No DJ's, microphones, live entertainment, live music, amplified (other than background music through house system) or non-amplified sound.
 - C) Skydeck- Microphones are allowed and shall use the house system only. No amplified live entertainment or amplified live music is permitted. **Microphone use shall end at termination of alcohol service.**
 - D) Zinc bar and Lobby-Amplified sound for DJ's, live entertainment or live music, other than background music is permitted, provided all doors and windows leading to the outside, including those adjacent to the Courtyard, shall remain closed at all times, except when patrons and staff are entering and exiting.

7. House system for amplified sound- The house system shall be reviewed and approved by the Director of Community Development.

8. Terrace enclosure- **NOTE: DUPLICATES CONDITION 2** ~~A laminated sound glass enclosure on the southeast corner of the Terrace located from floor to ceiling, acoustic sealing of all existing opening in the glass enclosure on the southeast corner, acoustic absorbent panels on the ceiling and suspended acoustic panel "clouds" below the ceiling of the Terrace shall be installed.~~

~~The existing curtains shall be replaced within 3 years with acoustic curtains that shall surround the Terrace on all sides in the areas where there is not a floor to ceiling glass enclosure, except the access steps on the south side shall have curtains that are a minimum of 7 feet 6 inches above the finished floor of the Terrace to allow required emergency access. Additionally, curtains shall not be required on the west side of the Terrace, but if they are installed, they shall not be higher than 12 feet above the finished floor of the Terrace floor so that the top portion is always open to provide ventilation to meet Fire Department and Building Safety requirements.~~

~~The terrace doors shall close at 9 PM daily. Thereafter, non-registered patrons shall use the west entry-exit, except for disabled or elderly people. (Subject to negotiation, use of the terrace south entrance after 9:00 PM an option)~~

The curtains shall remain open in the daytime and closed at nighttime, starting at 9:00 PM at the latest and then open again at 11:30 PM. Curtains may also be closed at anytime during inclement weather; such as cold or rain.

Existing heaters or other patio features shall be modified as required to meet Fire and Building Safety requirements. No temporary heaters, umbrellas, covers or other features that violate Fire and Building Safety requirements shall be placed on the Terrace.

9. Front (East) Main Entryway- **NOTE: DUPLICATES CONDITION 2** ~~The existing primary front entrance/exit doors shall be replaced either with a revolving door or with a vestibule, and a single secondary door shall be installed to the side of the revolving door if required to meet the accessibility requirements of the most current California Building Code. The accessible door, if required to be installed, shall remain closed and locked/unopenable from the outside at all times between 10:00 PM and 6:00 AM, with the exceptions below. Hotel staff shall be available at all times to open the door from the inside to allow access from the outside at any time for disabled persons and persons with luggage that cannot be accommodated through the revolving door. Laminated acoustic glass shall be installed at the front reception desk on the side facing the new accessible door.~~

~~If a double door vestibule is installed instead of the revolving door, the~~ The vestibule shall include an automatic mechanism that does not allow more than one set of doors to be open at a time between ~~10:00 PM~~ 9:00 PM and 6:00 AM. Between 6 AM and ~~10 PM~~ 9:00 PM, both sets of doors will remain closed and the automatic mechanism shall be operational. This is to mitigate noise from escaping out of the front door to the east.

The doors shall meet all Building Safety, Fire and other City requirements, including but not limited to emergency egress and accessibility requirements.

10. 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.
11. ~~**DELETE; WALL NOT SHOWN ON REVISED CONCEPT PLANS FOR APPROVAL BY PCZinc bar and Lobby interior separation wall**~~ ~~A separation wall or retractable partition as detailed in Finding "0." of Resolution No. PC 05-08 is not required to be installed.~~
12. Sound audibility- The volume of music, entertainment, group singing or group voices, 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 background ambient noise, nor disturb surrounding residents, as defined in the MBMC "reasonable person" noise regulations, as well as the annual Entertainment Permit.
13. 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. Special events and functions with more than 100 people require an Entertainment Permit.
14. Resident notification- The hotel shall e-mail to adjacent neighbors who sign up, the schedule of special events and functions sent to the City, excluding client information.
15. Balconies- A permanent notice shall be placed on or near 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~~ **9:00 PM**.
16. Exterior Doors- All exterior doors and windows to the public areas of the hotel facility shall be closed after ~~10:00~~ **9:00 PM**.
17. Noise Compliance Verification- ~~The privileges within this Use Permit shall only be granted after the installation of the mitigation measures, implementation of the improvements, and modifications to the operations of the facility.~~ Until all use permit requirements satisfied as required by the Community Development Director, closing times in Condition 19 shall be reduced as follows: 1) 11 PM daily for the Zinc Lounge and 2nd floor conference room; and, 2) 11 PM Sunday through Thursday for special events. If requirements not satisfied within five months, Shade Hotel shall pay the city a \$500 per day penalty. For every month additional delay thereafter, the daily penalty shall increase by \$100. After completion of these requirements, 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.

18. Closed-definition.

A) In all outdoor public areas, including but not limited to the Terrace, Courtyard, and Skydeck, no sales, service or consumption of alcohol or any drinks or food. **At closed, staff shall have picked up all drinks, food and all paraphernalia associated with drinking and eating.** -Music off, and lights turned up or turned off. All areas vacated, except for staff.

B) In all indoor areas, including but not limited to, the Zinc bar and Lobby, the Courtyard and the Conference Room, no sales, service or consumption of alcohol, or any drinks or food. **At closed, staff shall have picked up all drinks, food and all paraphernalia associated with drinking and eating.** Background music only through the house system permitted, no DJ's or live entertainment or live music. All doors and windows, including the folding doors/wall on the east side of the Lobby that opens onto the Courtyard, shall remain closed.

19. Hours of operation - See condition #18 for definition of closed and further regulations for when venues are closed. See condition No. 32 for food service regulations. Although the hotel is a 24-hour operation and is the primary use on the site, there are limits to the hours of operation on the secondary uses of the site for food, drink and alcohol service, events, and other activities, as addressed below and in other conditions.

Public Area/Venue	Day-to-day Hours of		Special Events and Functions Hours of
	Operation- Opening and Closing times	Operation- Opening and Closing times	
	(See Closed regulations in Condition #18); No sales, service or consumption of Alcohol, food or drinks after Closing Time		
Zinc Loungebar and & Lobby; Conference (Green) Room	6 AM to 11 PM 12 AM (midnight) (12 AM if Condition 2 accepted)	6 AM to 11 PM 12 AM (midnight) Sunday-Thursday (12 AM if Condition 2 accepted)	
Terrace/Porch- south side of Lobby outdoor	6 AM to 10:30 PM	6 AM to 10:30 PM	
Conference (Green) Room	6 AM to 12 AM (midnight)	6 AM to 12 AM (midnight)	
Courtyard- Special events and functions only allowed- outdoor	Not permitted except as pass-through area	6 AM to 11 PM Sunday-Thursday 6 AM to 12 AM (midnight)	
Skydeck-outdoor	8 AM to 10:30 10:00 PM 9:00 PM end alcohol	8 AM to 10:30 10:00 PM 9:00 PM end alcohol	

a) Outdoor public areas/venues- All sales and service of alcohol, food, and drinks shall stop 60 minutes prior to closing time (closed).

b) Indoor public areas/venues- All sales and service and consumption of alcohol, food, and drinks shall stop at closing time (closed) and everyone except

staff shall vacate the area. At closed, staff shall have picked up all drinks, food and all paraphernalia associated with drinking and eating. ~~Consumption of alcohol, food and drinks is allowed up until closing time.~~

Room service for alcohol is subject to ABC regulations of 6:00 AM to 2:00 AM. Room service for food is permitted 24/7.

c) Only staff may occupy outdoor and indoor public areas after closing.

d) New Years Eve- Closing hours for all venues as regulated by the MBMC. Currently may request 1:00 AM closing time through a Temporary Use Permit, except the Skydeck which shall close at the time specified above which is 10:30 PM.

General Conditions

20. 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 require review by the Director of Community Development, who shall determine if Planning Commission review and a further amendment to the Master Use Permit or other approvals are required.

21. 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:

Skydeck-92

Zinc Bar and Lobby - 159

Terrace/Porch-south side of Lobby- 47

Courtyard 151

Conference (Green) Room - 44

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

23. 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 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.

24. Security. The Hotel shall provide a 3rd party security staff person for all Special Events and Functions with over 50 persons, and any Special Event or Function that has amplified sound, live entertainment or live music after ~~10:00 PM~~ 9:00 PM, and for any Special Event or Function on the Skydeck that ~~ends at 10:00 PM or later and~~ has 50 or more people. The Security staff shall supervise the site and surrounding area to ensure that all conditions of approval, including but not limited to noise, sales and service of alcohol, access, windows and doors being closed, littering, and any other nuisances are complied with. The Security staff shall work cooperatively, and meet periodically with the Police Department, if requested.

Ingress-Egress Control

25. Valet- After ~~10:00 PM~~ 9:00 PM daily, customers using the Shade valet service shall wait inside of the lobby, not outside, until the valet arrives with their vehicle. 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.

26. Taxis- Hotel employees shall discourage the public from using taxis on Valley Drive after ~~10 PM~~ 9:00 PM. Taxi pickups and drop-offs for the general public at the Shade entrance shall be prohibited after ~~10-9:00 PM~~ 9:00 PM. Everyone, except for registered hotel guests and disabled persons, shall be directed to the taxi stand on Morningside Drive and 13th Street, after 9 PM. Hotel staff may call for a taxi to pickup registered guests and disabled persons at the hotel entrance on Valley Drive at any time.

27. Entrv-Exit Queue- After ~~10:00 PM~~ 9:00 PM, no queue or line or gathering of people waiting to enter or exit the Shade shall be located outside of the building ~~except the queue may be located on the Terrace, or~~ After 9:00 PM, the hotel shall either establish the queue west of the hotel or direct customers ~~may be directed~~ to the Metlox Town Square area near the outdoor fireplace and fountain and ~~be provided and provide them~~ with "beepers" or electronic notification devices.

28. Staff parking- The hotel shall instruct its 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.

29. Buses- Any large transportation such as buses, oversized 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.

30. 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 or security shall ensure that patrons do not leave the hotel facility premises with alcoholic beverages.

31. Front Drop Off- Vehicles occupying the drop off/driveway area in front of the hotel off Valley Drive shall not park on the curb or sidewalk or past the end of the south landscaped "island". Any temporary barricade across the driveway shall not block access to 12th Walk at the bollards. The area at Valley and 12th Walk by the bollards shall remain open, unobstructed and free of vehicles at all times, to allow for emergency vehicle access at the bollards, and vehicle access into the parking structure.

Food service

32. Food Service- The hotel may provide full food service (breakfast, lunch and dinner) on the entire Terrace. The Zinc Bar and Lobby may have several seats of "spill-over" from the Terrace with full food service. Full food service may be provided in all other public areas only during Special Events and Functions. Food service, primarily small-plates, may be provided in the Zinc Bar and Lobby at any time, and on the Skydeck only during the hours of operation. This shall not preclude 24-hour room service for food and non-alcoholic drinks, and room service of alcohol in compliance with ABC regulations. A full scale restaurant will not be provided; the primary use on the site will continue to be a hotel.

Marketing

33. 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, as well as food and the bar service, may be marketed as secondary uses, but not as the primary use. The hotel shall not advertise, market or promote drink or "happy hour" types of specials.

34. Menu Posting- The hotel may post drink or food menus or signage outside of the hotel, except that the hotel may not post information about any drink or "happy hour" types of specials. Any menu posted on the south side of the Terrace shall be adjacent to the outside of the Terrace and not extend past the existing planters on the south side.

Procedural

35. Review and Violations. All provisions of the Master Use Permit Amendment shall be reviewed by the Community Development Department within 6 months after completion of improvements and yearly thereafter. The Planning Commission may hold a public hearing within one year after the adoption of this Resolution to review the status of the implementation of the Resolution, conformance with the conditions of approval, and any related information as the Director of Community Development deems appropriate. At any time, the City may schedule a public hearing to consider revocation or modification of the Amended Master Use Permit as it relates to the Shade Hotel. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses. If the Applicant fails to meet the conditions within this Resolution, the City will schedule a revocation or modification hearing.

36. Expiration. Unless appealed to the City Council, the subject Use Permit Amendment and Coastal Development Permit shall become effective after expiration of the time limits established by the MBMC and Local Coastal Program.

37. 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.

38. 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~~ No lapse of approval shall occur, pursuant to MBMC Section 10.84.090, regarding establishments with a certificate of occupancy or an existing use.

39. 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 Applicant to bind all future owners and possessors of the subject property to the terms and conditions. ~~This permit and rights conferred in this approval shall not be effective until the property owner signs and returns an affidavit accepting the conditions of approval. The property owner shall file this affidavit with the Community Development Department within 30 days of the final approval and prior to issuance of any development or building permits pursuant to this approval. The format of the covenant shall be reviewed and approved by the City Attorney.~~

40. 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. ~~Upon becoming effective, the Master Use Permit Amendment shall supersede Resolution No. PC 05-08,~~

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

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

43. Legal. Applicant shall defend, indemnify, and hold the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") free and harmless from and against any and all claims (including, without limitation, claims for bodily injury, death, or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including, without limitation, attorneys' fees, consequential damages, disbursements, and court costs) of every kind and nature whatsoever (individually, a "Claim," collectively, "Claims"), in any manner arising out of or incident to: (i) this approval and related entitlements, (ii) the City's environmental review of this project, (iii) any construction related to this approval, or (iv) the use of the property that is the subject of this approval. Applicant shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding arising out of or incident to this approval, any construction related to this approval, or the use of the property that is the subject of this approval. The City shall have the right to select counsel of its choice. Applicant shall reimburse the City, and the other Indemnitees, for any and all reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Applicant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Applicant or Indemnitees. This indemnity shall apply to all Claims and liability regardless of whether any insurance policies are applicable. Nothing in this Section shall be construed to require Applicant to indemnify Indemnitees for any Claim arising from the sole negligence or willful misconduct of the Indemnitees. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the permit, 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.

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 28, 2014 and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**Richard Thompson,
Secretary to the Planning Commission**

**Rosemary Lackow,
Recording Secretary**

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